



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

**PUBLIC HEARING
SYDNEY**

**WEDNESDAY, 25 OCTOBER 2023
AT 10.00 AM**

DAY 10

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 BUTERIN appears for a group of current or former inmates at Dillwynia
MS J. GHABRIAL appears for a group of Correctional Officers
MR R. DEPPELER appears for a group of Correctional Officers
MR A. GUY appears for a group of Correctional Officers
MR J. KADAR (Solicitor) appears for two Correctional Officers**

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<THE HEARING RESUMED AT 10.02 AM

COMMISSIONER: Yes, Mr Sheller.

5 **MR SHELLER:** Commissioner, following on from the matters that were the
subject of evidence yesterday afternoon and your Honour's requests or indications,
a number of steps have been taken. One thing that has happened has been
a document has been prepared which tracks all the things that have been done by
10 the Commissioner since this issue first arose, and it did not arise for the first time
yesterday. I've just, in the last few minutes, given my learned friends a copy of
a document which tracks chronologically all the things that have been done,
including steps that have been taken since yesterday afternoon. I'm happy to
provide to the Commission - it has got a draft stamp on it at the moment. It will be
15 finalised. But I'm happy to hand up to the Commission at any time today that
document.

COMMISSIONER: When it's ready, I'd like to see it. Are you telling me that
steps were taken before yesterday to deal with the problems that were aired
20 yesterday?

MR SHELLER: Problems of the same nature that had aired earlier.

COMMISSIONER: It would not appear to have been totally effective.

25 **MR SHELLER:** Indeed. So it has been doubled down, if I can use that
expression, but those steps have included attendance by the Commissioner at
Dillwynia.

COMMISSIONER: Very well. Well, I'll look forward to receiving the document.
30

MR SHELLER: And I'm happy to address it at a convenient time, your Honour
or my friend, in relation to B in particular and what steps have been taken.

COMMISSIONER: Well, we'll wait until we see the document.
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MR SHELLER: Thank you, Commissioner.

MS GHABRIAL: Commissioner, before we commence, if I may just say this: as
the Commissioner will have noticed to date, since no longer appearing for Officers
40 Giles and Robinson, I have provided some assistance to my instructing solicitor
with regard to those Officers. My instructing solicitor is no longer retained to
appear for those Officers. Arrangements are being made for those Officers to be
completely separately represented. And so, in those circumstances, I will not be
asking any questions or appearing, even in an assisting sense, in respect of
45 Officers Giles and Robinson today and from now on.

COMMISSIONER: Sorry, you're telling me that Giles and -

MS GHABRIAL: Robinson, his partner.

COMMISSIONER: - are not represented at all?

5

MS GHABRIAL: Not today, no. But arrangements are being made for them to be separately represented, and those arrangements have been ongoing up until today, but nobody is available to appear for them today. I thought I should let the Commissioner know that.

10

COMMISSIONER: Well, yes. But, Mr Lloyd, what does that mean for you?

MR LLOYD: It's the first I've heard of it.

15

COMMISSIONER: Well, would you like me to take a minute and then you can discuss it? But - I don't know what's going to happen today. I don't know what the evidence is going to be, what consequences might flow from those two not being represented at all.

20

MR LLOYD: I -

COMMISSIONER: This is something that I apprehended might happen, Ms Ghabrial, and you realise I cautioned about it days ago.

25

MS GHABRIAL: Yes.

COMMISSIONER: It disappointments me immensely that this has come to pass.

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MS GHABRIAL: My instructing solicitor has been making arrangements for them to be separately represented. Perhaps my instructing solicitor can update the Commissioner in that regard.

MR BURNS: Commissioner, I'm making (indistinct) -

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COMMISSIONER: You'll need a microphone, I think.

40

MR BURNS: Sorry, Commissioner. I am making arrangements overnight as a consequence of the evidence. I've got a lot of people seeking representation. I am in contact with solicitors and attempting to do this. I have not been able to secure the representation yet. But I'm intending - I've been working on that today.

COMMISSIONER: As I indicated earlier, it was entirely predictable that this would happen. Are you telling me that steps weren't taken until yesterday?

45

MR BURNS: No, they've been going on in place, and I am working on it as we're going forward. I'm sorry. I'm in - not in a great position for this. I - this position even today, I'm sorry, has taken me a little bit by surprise. I'm not bound to say

much further. I was - I don't mind acting for Mr Giles myself today and carrying through, if that would satisfy you.

5 **COMMISSIONER:** Well, it's a question of whether he needs to be effectively represented having regard to what might happen today. Look, I'm going to adjourn, Mr Lloyd. I want you all to have a discussion about this. But - and can I make plain that this has surfaced today. It must never surface again. I mean by that, steps must be taken forthwith to ensure that any prospect of a conflict is identified and, accordingly, people are appropriately represented.

10 **MR BURNS:** Your Honour, I'm in communications with three different sets of lawyers in relation to three groups of people and making arrangements for all of that. Mr Giles is not the only one.

15 **COMMISSIONER:** I appreciate that.

MR BURNS: And I'm trying my best. If it can assist the Commission, I could ask Ms Ghabrial to maintain her representation of Mr Giles for today until I can secure his representation.

20 **COMMISSIONER:** Well, as I said a minute ago, I think I should adjourn, Mr Lloyd. You can have a discussion with those at the bar table and work out a way forward. I don't want to lose time, but nevertheless we must ensure that we're fair.

25 **MR LLOYD:** Thank you, Commissioner. I've got some thoughts about how to advance things today. And so if you would adjourn -

COMMISSIONER: I will adjourn. You can air those thoughts.

30 **MS GHABRIAL:** Commissioner, can I say this before you do adjourn: my instructing solicitor, Mr Burns, has been making some extraordinary efforts in the last - since late last week to make arrangements for those Officers to be separately represented. And so I hope that the Commissioner does not feel that Mr Burns has not been making those efforts. He certainly has been.

35 **COMMISSIONER:** Well, I don't know - I'm not going to comment upon it, but I raised this issue days ago. And it disappoints me immensely that it arises today in these circumstances.

40 **MS GHABRIAL:** I've assisted to the point where I believe that I have been able to.

45 **COMMISSIONER:** I understand what you've done, but I raised the issue. I could apprehend it was going to arise, and I expected that steps would have been taken long before this to deal -

MS GHABRIAL: Steps have been taken; they just haven't been fruitful to date, unfortunately. But I understand that there are steps underway.

5 **COMMISSIONER:** Well, Ms Ghabrial, it should have been obvious on the first day of this Inquiry to you that you were likely to run into conflicts.

10 **MS GHABRIAL:** Not on the material that was available at the relevant time in terms of the reference - the Terms of Reference of the Letters Patent. I did not apprehend that there would be at that stage. But as time has progressed, it certainly has become apparent, and that's why steps have been taken, Commissioner.

COMMISSIONER: Very well. I'll adjourn. Let me know when you're ready, Mr Lloyd.

15 <THE HEARING ADJOURNED AT 10.10 AM

<THE HEARING RESUMED AT 10.18 AM

20 **COMMISSIONER:** Yes, Mr Lloyd.

MR LLOYD: Thank you, Commissioner. I've taken the opportunity during that adjournment to speak to the relevant parties, and my proposal is this: by complete luck, the evidence today, I expect, is not likely to be relevant to Officers Giles and Robinson, but it was not by design because we only found out they were
25 unrepresented when Ms Ghabrial told you. But in any event, we have it and it's fortunate.

30 What I have proposed to the parties, and what I propose to you, Commissioner, is we proceed with the evidence today. If I'm wrong and there is evidence which Officers Giles and Robinson wish to challenge, they may, once they are represented, make an application to have these witnesses recalled to put whatever propositions need to be put.

35 In saying that, I cannot say that the same will apply to the evidence tomorrow, that is, I am not able to assure you that there won't be evidence tomorrow that may affect those two witnesses and they will need to be represented tomorrow. Otherwise, there is a very real risk of loss of court time.

40 **COMMISSIONER:** Yes.

MS GHABRIAL: Commissioner, if I could just update. I've made a phone call, and I have somebody who has experience with this kind of work calling me back in 10 minutes and who might be able to step in as of today. But I do
45 understand - with regard to the particular clients that I represent today who are giving evidence, I don't think there's much that flows in any event from that. I didn't hear what Counsel Assisting said to you, Commissioner, when I was outside of the room. But my understanding is that there won't be much, if anything

at all, that would impact those two Officers in today's evidence. So those arrangements are currently underway. And if I do leave the room, it will be to take that phone call in respect of that solicitor. Thank you, Commissioner.

5 **COMMISSIONER:** Thank you. Mr Sheller, are you content with what Mr Lloyd says?

MR SHELLER: I am. Thank you, Commissioner.

10 **COMMISSIONER:** Very well. Yes, Mr Lloyd.

MS GHABRIAL: Just one further thing. I'm so sorry. If Mr Deppeler could please seek leave to appear for the two Officers Jeans and Dolly.

15 **MR DEPPELER:** Yes, Commissioner. I seek leave to appear on behalf of Officers Dolly and Jeans. Deppeler is my name, D-e-p-p-e-l-e-r.

COMMISSIONER: You have leave, Mr Deppeler.

20 **MS GHABRIAL:** Thank you, Commissioner.

MR LLOYD: Commissioner, I call Glenn Clark. He will take an oath on the Bible.

25 **COMMISSIONER:** Go into the witness box. The officer will administer the oath to you. Could you stand, though, for it. Thank you.

<GLENN CLARK, SWORN

30 **COMMISSIONER:** Yes. Thank you. Take a seat. Yes, Mr Lloyd.

<EXAMINATION BY MR LLOYD:

MR LLOYD: Thank you, Commissioner. What is your name?

35

MR CLARK: Glenn Clark.

MR LLOYD: And your address is known to the Commission.

40 **MR CLARK:** Yes, it is.

MR LLOYD: You, Mr Clark, have made a statement to this Commission, and you did that on 28 September 2023?

45 **MR CLARK:** Yes.

MR LLOYD: And in that statement, you were telling the truth?

MR CLARK: Yes.

5 **MR LLOYD:** And you earlier made a statement to the police for the purposes of the prosecution of Astill?

MR CLARK: Yes.

10 **MR LLOYD:** And in that statement, you were telling the truth?

MR CLARK: Yes.

15 **MR LLOYD:** The Commission statement, Commissioner, is behind tab 63A in volume 7, and I tender that statement. And if it's convenient, with that tender, I also include tab 63 and the annexures, which is the police statement.

COMMISSIONER: So the two statements together will be exhibit 8.

20 <**EXHIBIT 8 TENDERED AND MARKED**

COMMISSIONER: Yes.

25 **MR LLOYD:** Just pardon me for a moment. Now, Mr Clark, I see you in the witness box there have a folder. Can you turn to tab 63A.

MR CLARK: Yes, I have that.

30 **MR LLOYD:** The document behind that tab is the statement you made to the Commission? I'm sorry, there's two 'A's within that tab.

MR CLARK: Yes, I have it.

35 **MR LLOYD:** Just pardon me. You just need to put that - we'll get it sorted out, Mr Clark.

MR CLARK: Thank you.

40 **MR LLOYD:** You graduated and began work as a Corrective Services Officer in September '06?

MR CLARK: That's correct.

MR LLOYD: And you worked in various places. Just tell us where they were.

45 **MR CLARK:** Yes, the Metropolitan Remand and Reception Centre at Silverwater, Dawn de Loas Correctional Centre, Ivanhoe Correctional Centre and Dillwynia Correctional Centre where I'm currently employed.

MR LLOYD: And you first came to work at Dillwynia at the end of the year 2015?

5 **MR CLARK:** It was, I think, New Year's Day 2015 or thereabouts.

MR LLOYD: I see. In your police statement, I think you said 2014. In this one, you've got 31 December 2015. But is your best recollection end of 2014, start of 2015?

10

MR CLARK: Yes, that's my recollection.

MR LLOYD: And your rank at Dillwynia, when you started, was First Class Correctional Officer?

15

MR CLARK: That's right. And it currently is the same.

MR LLOYD: And between the years 2016 and 2018, you worked in the high needs?

20

MR CLARK: Primarily, yes.

MR LLOYD: In terms of the hierarchy, you tell us something of that in paragraph 10 - about that in paragraph 10. When you were working in high needs between '16 and '18, is the hierarchy within the gaol that, obviously enough, the Governor, Shari Martin, is at the top?

25

MR CLARK: Yes.

30 **MR LLOYD:** Reporting to her was the person in the position Manager of Security?

MR CLARK: That's correct.

35 **MR LLOYD:** That was, when you started, Leanne O'Toole?

MR CLARK: Yes.

MR LLOYD: And later became Sury Hariharan?

40

MR CLARK: Correct.

MR LLOYD: Underneath the position of Manager of Security between '16 and '18 were Principal Correctional Officers?

45

MR CLARK: That's right.

MR LLOYD: Or sometimes Chief Correctional Officers?

MR CLARK: Well, a Chief is under Principal in rank.

5 **MR LLOYD:** I see. Thank you. So the Principals included Pam Hotham, Neil Holman, Michael Paddison and Pam Kellett?

MR CLARK: If I could just correct. Mr Holman wasn't a Principal at that stage; he was a Chief.

10

MR LLOYD: Did he at some point get -

MR CLARK: At some point, he was promoted to Principal.

15 **MR LLOYD:** Sorry, I think I've misled you. The Principals were Sury Hariharan, the same person who at one point was the Manager of Security?

MR CLARK: Yes.

20 **MR LLOYD:** Was that position renamed?

MR CLARK: Yes. I don't know what year it was, but Principal is the equivalent of a Senior Assistant Superintendent. They had an - what was called an island agreement, which covered three Correctional Centres in New South Wales, being
25 Kempsey, Wellington and Dillwynia. There was a different rank structure or different title. So, in recent times, the - it reverted to the same across the State. So a Principal became Senior Assistant Superintendent, the Chief rank was dropped, and Manager of Security and the General Manager was renamed Governor.

30 **MR LLOYD:** And what was Manager of Security renamed?

MR CLARK: Manager of Security.

MR LLOYD: That retained the title?

35

MR CLARK: Yeah.

MR LLOYD: So accepting that people had different positions at different times, was - if you look at paragraph 10, the people in the position of Chief Correctional
40 Officer between this period '16 and '18, were they Neil Holman, Michael Paddison, Pam Kellett, Deb Wilson and Judy Barry?

MR CLARK: Yes, that's correct.

45 **MR LLOYD:** And they were the people who formerly were in that position, as -

MR CLARK: To the best of my knowledge, yes.

MR LLOYD: As in, permanent?

MR CLARK: Yes.

5

MR LLOYD: Now, operating in that role of Chief Correctional Officer from time to time were Wayne Astill and Westley Giles?

MR CLARK: That's correct.

10

MR LLOYD: That is, they held the rank of one below of Senior Correctional Officer?

MR CLARK: No, that's one above -

15

MR LLOYD: I see.

MR CLARK: - a Chief Correctional Officer. A Senior Correctional Officer reports to the Chief in the structure.

20

MR LLOYD: And they were at various times acting in up in the position of -

MR CLARK: Yes. And at some stage, they were both promoted - and I believe it was a temporary appointment, promoted to the rank of Chief Correctional Officer.

25

MR LLOYD: And in terms of your position in the structure - take the high needs unit - when Astill was acting up, he was your superior Officer?

MR CLARK: Well, he was the Senior Correctional Officer to start with. So whether he was the Chief or a Senior, he still outranks me anyway.

30

MR LLOYD: He was always -

MR CLARK: Always outranked me.

35

MR LLOYD: Is the way it works at Dillwynia - is the system quite hierarchical?

MR CLARK: Yes. And it is across the State. That's how it - the design of it.

40

MR LLOYD: That's been your experience at the other Centres you've worked at?

MR CLARK: Yes, it has.

45

MR LLOYD: As in, in terms of reporting structures - and I'll ask you some more about that - it's important to observe reporting up the line -

MR CLARK: Yes.

MR LLOYD: - and to not go out of that -

MR CLARK: That's correct.

5

MR LLOYD: Could I just ask you, then, some questions about what I might call the culture at Dillwynia, particularly between Officers and inmates and also between Officers and other Officers. I'm just asking at the moment between the period 2015 until - take at the other end when Astill was arrested for the moment.

10

Do you understand? This Commission has heard some evidence that Officers - some Officers would routinely refer to inmates by names such as "mutts" and "moles" and "cunts" and derogatory language of that kind. Is that something that you observed?

15

MR CLARK: Not to my knowledge. I've never heard that.

MR LLOYD: I take it from that that you obviously didn't refer to them in that way?

20

MR CLARK: No.

MR LLOYD: And would you regard that as being inappropriate or improper for Officers to talk to inmates like that?

25

MR CLARK: Impolite and improper, yes.

COMMISSIONER: Are you saying to me that you've never heard a single Officer use those terms?

30

MR CLARK: Not to an inmate, sir.

COMMISSIONER: Very well.

35

MR LLOYD: What about staff dealings with other staff members? Have you heard derogatory terms used by staff members to each other?

MR CLARK: Yes, I have.

40

MR LLOYD: And have you observed what you'd call bullying between staff?

MR CLARK: Well, no, I wouldn't call it bullying. Just disagreement. You can see that people don't like each other, which happens everywhere.

45

MR LLOYD: What have you heard and/or seen in terms of staff using derogatory names with each other?

MR CLARK: I can't recall specifics. I've seen an Officer, Jean Dolly - it was sort of common knowledge that Wayne Astill hated her. Why, I don't know. I've seen staff approaching a door which was open and then the door's closed, like, "Oh, sorry." Little subtle things which are not particularly polite.

5

MR LLOYD: What about verbal abuse? Did you hear that?

MR CLARK: No, I haven't heard - heard verbal abuse.

10 **MR LLOYD:** Can I just ask you what you understood - just from the time that you arrived at Dillwynia and again taking at the outer end the period when Astill was arrested, can you tell us what you understood to be the relevant rules about sexual contact between Officers and inmates?

15 **MR CLARK:** Well, it's forbidden.

MR LLOYD: That is, even if it might be thought to be a consensual relationship between the Officer and the inmate, it would still be -

20 **MR CLARK:** No, it's forbidden.

MR LLOYD: - improper conduct by the Officer, if it was occurring?

MR CLARK: Yes.

25

MR LLOYD: And something that needed to be addressed immediately?

MR CLARK: Absolutely.

30 **MR LLOYD:** And would you say - I said improper conduct by the Officer in your view, but misconduct?

MR CLARK: Well, it's misconduct.

35 **MR LLOYD:** And in terms of the situation in which inmates find themselves and the position that Officers occupy, would you agree that there's a very significant imbalance of power?

40 **MR CLARK:** It's - when it comes to offending, as in - against inmates, as in, sexual misconduct, et cetera, the inmates have nowhere to go. They're - they're incarcerated. They're in the care of Corrective Services, and they should be treated professionally, humanely.

45 **MR LLOYD:** And you regard that as being the obligation cast on every Correctional Officer -

MR CLARK: Yes, I do.

MR LLOYD: - in the gaol -

MR CLARK: Yes.

5

MR LLOYD: - to treat them humanely?

MR CLARK: Humanely.

10 **MR LLOYD:** Fairly?

MR CLARK: Fairly.

15 **MR LLOYD:** And to fulfil one part of what - you can tell me if you agree, one part of what you understand to be the function of a gaol, to try and rehabilitate?

20 **MR CLARK:** That's right. And it's - I've heard from - I forget what sources, but the thing is most inmates are released into the community. It's our obligation to at least try to have a better person released into the community than what came into custody.

25 **MR LLOYD:** I'll ask you the details, but just may I ask you this question at the outset: in the period from when you started at Dillwynia until, again, taking Astill's arrest, do you think that was the environment at Dillwynia, one that was supportive of rehabilitation of inmates?

MR CLARK: No.

30 **MR LLOYD:** Could I ask you to just help us with some things about the system, as you understood it, for the reporting of misconduct by Officers.

MR CLARK: Yep.

35 **MR LLOYD:** You deal with that in various places but starting, I think, from paragraph 13.

MR CLARK: Yes.

40 **MR LLOYD:** This is a section of your statement where you're dealing with the process for an inmate reporting an incident.

MR CLARK: Yes.

45 **MR LLOYD:** If it's serious - and again, Mr Clark, I'm just asking you about the position in the same period that I've identified before, when you started until Astill's arrest. I'll ask you about the current position later. If it's a serious

complaint, you'd refer them to the Functional Manager or Chief and then you'd be directed accordingly?

5 **MR CLARK:** That's right. So the period of Astill's offending until his arrest, the Functional Manager is now what - the Senior Assistant Superintendent. So at the time, that - that would be Principal, in - in that time.

MR LLOYD: We read that - sorry, you go.

10 **MR CLARK:** Yeah. Sorry. So depending on what the incident or complaint is, the Area Manager was the Principal. If it was something of a sexual nature, that would be reported directly to the Governor.

15 **MR LLOYD:** Just coming back, if it's serious but not sexual misconduct, that would go either to then the -

MR CLARK: To the Area Manager.

20 **MR LLOYD:** To the - was it the Principal?

MR CLARK: Sorry, the Principal Correctional Officer.

MR LLOYD: That's a person occupying a position within the gaol?

25 **MR CLARK:** Yes.

MR LLOYD: Or the Chief Correctional Officer?

30 **MR CLARK:** The Chief would report to the Principal.

MR LLOYD: When you say - I'm not being critical - refer them to the Functional Manager - so read Principal Correctional Officer or Chief.

35 **MR CLARK:** Yes.

MR LLOYD: Having regard to the hierarchy for someone in your position, would it be the lower rank you'd make the first report to?

40 **MR CLARK:** No. If it was a - a matter of misconduct, I'd report it directly to the Principal.

MR LLOYD: You mentioned that there was a different path if it was sexual misconduct and that that would be a situation where you go straight to the Governor?
45

MR CLARK: I'd go straight to the Governor for that.

MR LLOYD: Again, with a complaint of that kind, of sexual misconduct by an Officer toward an inmate, that would be something where you'd, in effect, bypass the hierarchical chain and go straight to the person at the top of the tree within the gaol?

5

MR CLARK: Yes, I would.

MR LLOYD: Could I - and then you say toward the end:

10 "If I was reporting a misconduct offence, I would go directly to my boss, the Manager of Security, or the Governor."

MR CLARK: Or the Governor.

15 **MR LLOYD:** Could I just ask you: what guidance, again in this same period of time, were you given about where to go and what to do if an allegation of serious sexual misconduct came to your attention, that is, levelled against an Officer within the gaol?

20 **MR CLARK:** Nothing that I recall.

MR LLOYD: When you say in paragraph 13 about - and you just told the Commissioner some things about what you would have done if you received a complaint of this kind. Are you telling us that, in effect, you were just left to work out for yourself what you should do?

25

MR CLARK: I think that was the case for most staff there.

MR LLOYD: You refer to paragraph - in fact, paragraph 14, about an inmate request form.

30

MR CLARK: Yes.

MR LLOYD: Was that generally something that the inmates could fill out but for more minor complaints?

35

MR CLARK: It could be anything from they need a special diet from the kitchen; they need to - could they see the Governor; they require further clothing. All of those type of things can go on an inmate request, which the inmate then signs. It's handed to a Wing Officer, who should sign it, date it, record it in the request register and then forward it up to the line.

40

MR LLOYD: But, again, for more minor things?

45 **MR CLARK:** For more minor - minor things.

MR LLOYD: At paragraph 15, you talk of an inmate application form. That's different to an inmate request form?

5 **MR CLARK:** It's different but similar. However, the same applies where it's signed, dated, forwarded to the relevant person. But that is generally matters which require a decision outside of the Centre.

MR LLOYD: What sort of matters would they be?

10 **MR CLARK:** That could be to do with classification - classification -

MR LLOYD: Moving between -

15 **MR CLARK:** It's a request for them - they'd like to move closer to family, those types of things.

MR LLOYD: Again, in the period I'm asking you about -

20 **MR CLARK:** Yep.

MR LLOYD: - was there information given to the inmates about which form to use for which type of complaint?

25 **MR CLARK:** From my perspective, yes, I would direct them as best I could. But I can't speak for others, so I don't know.

MR LLOYD: What was the document that an inmate might be directed to complete if they had a complaint of sexual misconduct by an Officer?

30 **MR CLARK:** Inmate application, I would have thought.

MR LLOYD: When you say that, I noticed some hesitation in your voice.

35 **MR CLARK:** Yes.

MR LLOYD: Is that because, even sitting here today, in this period of time of Astill's offending, you still don't know what the proper document would be for an inmate to fill out?

40 **MR CLARK:** No.

MR LLOYD: Or what the proper -

45 **MR CLARK:** At that time, no, I'm not sure.

MR LLOYD: Or what the proper process would be for them to raise the issue?

MR CLARK: Correct.

MR LLOYD: I take it if you didn't know back then, you had no ability to give them any meaningful direction about what to do?

5

MR CLARK: No.

MR LLOYD: In paragraph 16, you say during the Astill period you had a complete lack of trust of the management -

10

MR CLARK: Yes.

MR LLOYD: - due to personal experiences with senior staff. Can you tell us something about that?

15

MR CLARK: There's a lot of subtlety amongst - the Governor - or, sorry, the General Manager, Manager of Security, some senior staff members. Things like, I could query an order - be given a legitimate order and - and query it, not - saying, "I'm not going to do it," and the answer I'd receive was, "Don't you like working here, mate? We can always get you moved."

20

MR LLOYD: Who would say things like that?

MR CLARK: Mr Paddison said that to me once.

25

MR LLOYD: What was that about?

MR CLARK: It was about a hospital escort, which was going out in an ambulance, and I - my - my recollection is they wanted me to travel in the back of the ambulance. Two - two - two Officer escort, where one would travel in a motor vehicle behind. And I just suggested I don't think it would be right for me to be in the ambulance with the inmate, I'll get in the car and was told, "Don't you like working here, mate?"

30

35 **MR LLOYD:** What other examples can you think of?

MR CLARK: Walking past the Manager of Security, Ms O'Toole, "Good morning, ma'am. How are you?" And just being grunted at.

40 **MR LLOYD:** Did that happen frequently?

MR CLARK: It happened often.

45 **MR LLOYD:** Were you aware of any kind of personal relationship in the nature of friendship between Ms O'Toole and Wayne Astill?

MR CLARK: Not initially, but I see it only from people talking around the Centre that I became aware of - they had a close relationship.

5 **MR LLOYD:** In terms of some of the things you've told us about, options for reporting serious misconduct by Officers, I think you said if it wasn't sexual, you might go to the Manager of Security?

MR CLARK: Yes.

10 **MR LLOYD:** What was the environment, where you knew or believed the Manager of Security was friendly with Wayne Astill, if you had an allegation of serious misconduct that came to your attention?

15 **MR CLARK:** Well, at that time, I wouldn't have had confidence to go to her or the Governor.

MR LLOYD: When you say "or the Governor" -

20 **MR CLARK:** Sorry. Or the General Manager at the time.

MR LLOYD: What about your experiences with the Governor, Shari Martin, at the time?

25 **MR CLARK:** She was gruff. Never smiling. There were times when I'd be polite and "good morning", "good afternoon" and be grunted at.

MR LLOYD: Did you have any -

30 **COMMISSIONER:** You said you wouldn't have confidence in going to these two senior managers. Why would you not have had confidence?

MR CLARK: Just in their - their attitude towards people.

35 **COMMISSIONER:** Can you help me to understand?

MR CLARK: They weren't approachable for - it was obvious that there was a club mentality in the Centre with the senior management. I can't think of anything more at the moment.

40 **COMMISSIONER:** Have you worked in other gaols?

MR CLARK: Yes, sir.

45 **COMMISSIONER:** For significant periods of time?

MR CLARK: Yes.

COMMISSIONER: How would you describe the management experience at Dillwynia compared with other gaols?

5 **MR CLARK:** At that time, very unprofessional. In - in other Centres, I've felt confident to approach my managers with whatever the issue was. I felt confident.

COMMISSIONER: But you didn't feel that at Dillwynia?

10 **MR CLARK:** No, I didn't.

COMMISSIONER: Because?

15 **MR CLARK:** A lot of talk and - just talk goes around the Centre about certain - you know, on Mr Astill, that he - he was Teflon. Nothing would stick. You'd hear just talk of people of making complaints and nothing had happened. So it was just an environment of mistrust; certainly not an environment where people were confident in coming forward.

20 **MR LLOYD:** In terms of Teflon, nothing would stick, is what you're telling the Commissioner that you heard talk in the Centre that other people had made complaints about Astill -

MR CLARK: And -

25 **MR LLOYD:** - and nothing had happened?

MR CLARK: And it was - it was only talk, and I can't recall who it was or what the allegations were, but just talk amongst people.

30 **MR LLOYD:** And was that - did that talk include the idea that complaints would be made to senior management and then Astill would find out about them?

MR CLARK: That was the impression I - I got.

35 **MR LLOYD:** And that there'd be retribution then by Astill - so the idea is in terms of the talk you heard, an inmate makes a complaint, goes to senior management, Astill finds out and then the inmate gets punished by Astill?

40 **MR CLARK:** I'd heard that. But then again, I - I didn't hear it directly and I can't recall where it came from.

MR LLOYD: Talk amongst Officers?

45 **MR CLARK:** Just talk amongst Officers.

MR LLOYD: A lot of Officers?

MR CLARK: I can't recall how many.

MR LLOYD: Would you describe that kind of belief as being widely held within the gaol?

5

MR CLARK: I would say - I would say widely held.

MR LLOYD: In effect, a belief - tell me if I've got it right - that you're describing widely held in the period up until Astill's arrest -

10

MR CLARK: Yes.

MR LLOYD: - that there was no point complaining about him because nothing would happen?

15

MR CLARK: It appeared to me to be correct.

MR LLOYD: Could I ask you then - look at 19 in terms of the options that you understood were available to make complaints at the time up to Astill's arrest. You mention in -

20

COMMISSIONER: Sorry, Mr Lloyd, just before you move on from the previous section. Paragraph 16, Mr Clark, you describe yourself as having a complete lack of trust of the management team due to personal experiences with senior staff.

25

MR CLARK: Yes.

COMMISSIONER: Now, can you help me by describing those personal experiences and who they were with?

30

MR CLARK: Sir, that was, as I explained, trying to greet an Officer and being grunted at; the incident I had where I queried about the hospital escort and was - and the answer to the query was, "Don't you like working here, mate?" which didn't seem to me to be a professional way of handling a - a query; things of that nature.

35

COMMISSIONER: You talk about lack of trust.

MR CLARK: Yep. And that - that - that goes along with what I was saying about just hearing around the place that Astill was Teflon, that he - you know, nothing happens to him. He - he seems to have a green light, this type of thing. So, as a relatively new Officer at Dillwynia, I felt the best thing I can do is just keep my head down. It wasn't a nice place to work.

40

COMMISSIONER: Well, we know - and you received information - that told you that it wasn't a nice place for some inmates to be either.

45

MR CLARK: I'm aware of that, sir.

COMMISSIONER: Maybe we should come in due course to talk about how you responded to that knowledge.

5

MR CLARK: Yes.

MR LLOYD: Yes, Commissioner. Can I just ask you, in terms of the Commissioner's question -

10

MR CLARK: Yes.

MR LLOYD: - just have a look at paragraph 17. You've already mentioned something about this in your evidence today, about it being obvious to you that there was a boys' club culture.

15

MR CLARK: Yes.

MR LLOYD: And your impression that there was - it was very much a bullying culture, and Astill was part of it.

20

MR CLARK: Yes.

MR LLOYD: Are those kinds of things amongst the things that led you to not having the trust in management that you describe in paragraph 16?

25

MR CLARK: Yes.

MR LLOYD: There was a club which engaged in bullying, and you weren't part of it?

30

MR CLARK: No, I wasn't part of it.

MR LLOYD: Could I ask you, then, about 19. In terms of the options, again up until the period of Astill's arrest, for an inmate to make complaints, you've told us about the inmate request form and the inmate application form, but you refer here to an incident witness statement signed - which might be signed and dated. Is this a document that you're saying an Officer might complete?

35

40 **MR CLARK:** An Officer might complete.

MR LLOYD: When would an Officer complete that document?

MR CLARK: They've witnessed misconduct. They've - it could be a use of force. It could be an assault. Finding drugs, et cetera, where an incident report is generated.

45

MR LLOYD: An assault, including a sexual assault?

MR CLARK: Including sexual assault.

5 **MR LLOYD:** So that system would be the Officer signing a witness statement describing what the Officer had witnessed and leaving it in a pigeonhole in the admin building?

MR CLARK: Yes.

10

MR LLOYD: If you did that and, for example, the event involved allegations against another Officer, is it right that other Officers would just have access to be able to read what you'd written?

15 **MR CLARK:** Not only other Officers; any employee who has access to the administration area, which would be everyone, would have access to those pigeonholes.

20 **MR LLOYD:** Are you aware, in those circumstances, what the practice was at Dillwynia about Officers writing down in these incident witness statements complaints that involved allegations of misconduct by other Officers?

MR CLARK: I - I - I'm not aware of it.

25 **MR LLOYD:** So it sounds like it was something, because of what you've told us, that people just wouldn't do?

MR CLARK: Yeah.

30 **MR LLOYD:** You talk in 20 about the IIS intel system?

MR CLARK: Yes.

35 **MR LLOYD:** And you're describing there an SIU function within that system?

MR CLARK: Yes.

40 **MR LLOYD:** Now, I need to be clear with you. You're talking here about knowledge that you acquired after Astill was arrested?

45 **MR CLARK:** Knowledge I acquired after Astill's arrest where a - a Senior Correctional Officer actually showed me on our workplace computers a function which comes under the heading of Intelligence, and there are a couple of options on this, which I didn't know at the time. One of them is a report - an intelligence report which is generated. When that is sent, it's my understanding that it goes to the Governor of the Centre and the Intelligence Manager of the Centre. The second function, I believe, says SIU, which is Security Intelligence Unit, and

I - it's my understanding that that report goes directly to the Director of the Professional Standards Branch and no one else.

5 **MR LLOYD:** Can I just make sure I understand what you're telling us. At the time, you were aware that you could make a report using the IIS intel system?

MR CLARK: Not at the time, no.

10 **MR LLOYD:** You didn't know about this system at all?

MR CLARK: No.

MR LLOYD: You now know about that system?

15 **MR CLARK:** Yes, I do.

MR LLOYD: And that system allows you to make a report which will go to the Professional Services Branch?

20 **MR CLARK:** Yes.

MR LLOYD: But unless you select the SIU function -

25 **MR CLARK:** Yes.

MR LLOYD: - a report going to the Professional Services Branch would also, in effect, be copied into the Governor. Is that what you're saying?

30 **MR CLARK:** Yes. The first option goes to the Intelligence Manager and the Governor of the Centre. The second one goes to Professional Standards only, my understanding.

35 **MR LLOYD:** But in order for that confidential report to only go to Professional Standards -

MR CLARK: Yes.

MR LLOYD: - and to exclude the Intelligence Officer -

40 **MR CLARK:** Yes.

MR LLOYD: - and the Governor, you need to click some function, being the SIU function?

45 **MR CLARK:** That's my understanding, yes.

MR LLOYD: This is all information you have now?

MR CLARK: I have now.

5 **MR LLOYD:** You were not told about any option for making reports either to the Professional Standards Branch copied to the Governor and Manager of - and Intelligence Officer or excluding them?

MR CLARK: No, I - unfortunately, I didn't know then.

10 **COMMISSIONER:** If you had known, would your actions have been different in any respect?

MR CLARK: Sir, I - in hindsight, I believe they would have.

15 **COMMISSIONER:** What would have been different?

MR CLARK: The report would have gone directly to the Professional Standards Branch.

20 **COMMISSIONER:** Which report?

MR CLARK: I think we're - we were getting to that, an inmate that came to me with some information.

25 **COMMISSIONER:** Which you didn't report?

MR CLARK: I couldn't report it at the time.

30 **COMMISSIONER:** So - but you believe that you would have if you'd known?

MR CLARK: If I had have known what I now know -

COMMISSIONER: I understand.

35 **MR CLARK:** - at the time, I believe I would have gone to Professional Standards.

40 **MR LLOYD:** Is that because - and I'll come to the detail in a minute, but is that because you would have had some faith in Professional Standards dealing properly and confidentially with a report of that kind?

MR CLARK: Yes.

45 **MR LLOYD:** That is, not to immediately bring it to the attention of the Governor or Intelligence Officer within the gaol?

MR CLARK: Yes. Yes.

MR LLOYD: Can I ask you, Mr Clark, to go to paragraph 22 of your statement and just read that to yourself.

5 **MR CLARK:** Yes.

MR LLOYD: Again, this is dealing with the period from when you started at Dillwynia until Astill's arrest, and I just want to ask you some things about it:

10 "Back then, I would not have made a complaint without the inmate putting the complaint in writing. I felt that I had to be very careful because if I put a report in without written confirmation from the inmate and she denied the allegation..."

15 You would have been targeted and that you were afraid of Astill?

MR CLARK: That's correct.

20 **MR LLOYD:** We'll come to the information that you were told by a particular inmate, Ms Sheiles, in one moment, but can I just ask you about your understanding here. This is telling us that in the period I'm asking you about, if an inmate came to you with an allegation of grave criminal conduct by another Officer, you would not have advanced that complaint by making a complaint to anyone unless that inmate was prepared to put the allegations in writing?

25 **MR CLARK:** That's correct.

30 **MR LLOYD:** And you're saying that you would not have done that, that is, you would not have taken any steps to make a report about what you were told, because you were concerned about being targeted?

35 **MR CLARK:** I was concerned about being targeted. Also, that if I forwarded a - a verbal complaint and the inmate then, for whatever reason, didn't support that, my position would become very difficult at the Centre. So it was imperative that the report be - needed to be in writing. I - I feared for my safety and the inmate.

40 **MR LLOYD:** Just so can I understand: You told us about reporting within the hierarchy. Were you trained in your obligations as an Officer to report up the line if you became aware of allegations being made, not in writing but allegations being made of misconduct?

MR CLARK: Yes.

45 **MR LLOYD:** You were told about that at this - during this relevant time?

MR CLARK: I don't recall at that time.

5 **MR LLOYD:** Did you know between when - the period when you started at Dillwynia until Astill's arrest, did you know what your obligations were to report up the line allegations or information that you had about serious misconduct by other Officers?

MR CLARK: At the time I didn't.

10 **MR LLOYD:** No one had ever told you?

MR CLARK: At - at primary training, I would have been - you know, part of the training is on how to act and - and the law, et cetera. As I've said, the culture at Dillwynia at the time made it very difficult to forward complaints.

15 **COMMISSIONER:** Mr Clark, I understand - I do understand what you're saying about the difficulty. But are you saying that if you had reported an oral complaint, but a serious one -

20 **MR CLARK:** Yep.

COMMISSIONER: - which is what you received -

MR CLARK: Yes.

25 **COMMISSIONER:** - are you saying that you were fearful that if the inmate wasn't prepared later to repeat the allegation that your own position in indicating to your superiors what you had been told would put you in jeopardy?

30 **MR CLARK:** Yes, sir.

COMMISSIONER: So what you're saying is they weren't prepared to accept that you would be honest in reporting a complaint. Is that what you're saying?

35 **MR CLARK:** I don't know what their thinking would have been. All I knew that I needed was something in writing to support me attempting to forward the complaint. And I realised how serious it was. As I said, I feared not only for myself but also for the inmate. And that's why if, for whatever reason, she wasn't prepared to put it in writing, it made my position very difficult.

40 **COMMISSIONER:** You speak of a dysfunctional management. In your experience, was that centred upon the actions of Mr Astill?

45 **MR CLARK:** A lot of it. And I - and probably associated with Astill and associations he had around the place, which became widely known.

COMMISSIONER: With whom?

MR CLARK: That, you know, he holidayed overseas with Ms O'Toole, who was the Manager of Security, and that they were close friends, et cetera, et cetera. I didn't have - I don't have associations at Dillwynia. I didn't know who was who.

5 **COMMISSIONER:** Right. Were there others, apart from Ms O'Toole, that you saw as being part of his associates?

MR CLARK: I believe he was very friendly with Shari Martin, the Governor. I believe he was friendly with Deborah Wilson and - and others, which I - friendly
10 with a few - a few Officers. I believe he holidayed overseas with Mr Brumwell.

COMMISSIONER: Any other Officers that stand out as being -

MR CLARK: Not that I'm aware of, sir.
15

MR LLOYD: Can I just ask you, Mr Clark, about some events that the Commission has received some evidence that came to your attention at various times. Now, you've told us in your statement about things that Ms Sheiles told you in the year 2018 -
20

MR CLARK: Yes.

MR LLOYD: - and I'll come to ask you about those. I want to go back, though. Do you remember - and if you need to look at your statement to the Commission in paragraph 93, do so. Do you remember, going back to January of 2016, a particular event on night shift where you and another Officer, Mark Wilson, saw Astill in the J Unit?
25

MR CLARK: Yes.
30

MR LLOYD: Just tell us what you saw.

MR CLARK: I saw Mr Astill close the door to J - K Block - sorry, J Right where he'd been inside of the unit after normal hours.
35

MR LLOYD: Just pausing there. He had no reason to be inside the unit?

MR CLARK: Not that I would be aware of, sir.

40 **MR LLOYD:** It was against the rules for him to be there -

MR CLARK: Against the rules. If you need - even if you're in charge of the gaol and you need to access a cell after hours, you still don't go by yourself.

45 **MR LLOYD:** Was there any conceivable reason that you could think of that was proper for him to be there?

MR CLARK: No.

MR LLOYD: You knew at that time that Witness C - you might need a pseudonym list.

5

MR CLARK: I - I know who that one is.

MR LLOYD: I see. Thank you. You knew that Witness C was housed in the J Unit?

10

MR CLARK: Yes.

MR LLOYD: Did you know at or around the time that you saw Astill in the J Unit at night with no proper reason to be there that there were rumours about an inappropriate relationship between Astill and Witness C?

15

MR CLARK: Nothing that I'd heard.

MR LLOYD: You didn't hear rumours swirling around the gaol about Witness C performing sex acts with Officers?

20

MR CLARK: No. No.

MR LLOYD: Never heard about that? Never heard rumours about the nature of the relationship between Witness C and -

25

MR CLARK: No.

MR LLOYD: - Astill? And you're sure about that?

30

MR CLARK: Yep.

MR LLOYD: Have a look at paragraph 29 of your Commission statement. Now, this is a period you're identifying prior to Trudy's disclosure. That disclosure was in about March of 2018; correct?

35

MR CLARK: March or April.

MR LLOYD: At a time prior to March or April 2018, you'd heard a lot of talk around the gaol -

40

MR CLARK: Yep.

MR LLOYD: - about Wayne being a sleaze, et cetera.

45

MR CLARK: Yep. That was amongst staff.

MR LLOYD: What was the talk?

MR CLARK: Just that he was a sleaze. He'd turn up in places he shouldn't be. Just seemed to run his own race.

5

MR LLOYD: Can I just ask about the talk. You've told us already that it'd be quite improper for any Officer to have any form of sexual or intimate relationship with an inmate?

10 **MR CLARK:** Yes.

MR LLOYD: In the context of talk about being a sleaze, was the talk that he was sleazy with the inmates?

15 **MR CLARK:** Sleazy with the inmates and just sleazy in the way he behaved.

MR LLOYD: In terms of the talk about him being sleazy with the inmates, that's, as I understand what you're telling us, inappropriate sexualised conduct towards inmates?

20

MR CLARK: But none that I'd heard directly.

MR LLOYD: But talk amongst Officers?

25 **MR CLARK:** I'd heard talk amongst Officers.

MR LLOYD: How many Officers?

MR CLARK: Several.

30

MR LLOYD: What were they saying?

MR CLARK: Just that - that he was a sleaze and that he was inappropriate.

35 **MR LLOYD:** Was this kind of talk, talk that you'd heard from shortly after you arrived at Dillwynia?

MR CLARK: I don't remember.

40 **MR LLOYD:** How long before the disclosures in March or April of '18 had you heard talk by other Officers that he was behaving inappropriately and in a sleazy way with inmates?

MR CLARK: A few months.

45

MR LLOYD: Do you remember how many - I withdraw that. Do you remember which Officers were talking -

MR CLARK: No. No, I don't.

5 **COMMISSIONER:** Mr Clark, can you help me. You used the word "sleaze". It's your word.

MR CLARK: Yeah.

10 **COMMISSIONER:** What do you mean? What activities comprised his sleazy activities?

MR CLARK: Perhaps the - the way he - he speaks to people.

15 **COMMISSIONER:** What was the way he spoke to people?

MR CLARK: I think the - the - the talk that I'd heard was implying that he - the language he used towards inmates may have been inappropriate.

20 **COMMISSIONER:** In what way?

MR CLARK: Perhaps of a sexualised nature. But I'd never heard it directly.

COMMISSIONER: But you're prepared to put on paper you heard a lot of talk -

25 **MR CLARK:** Yep.

COMMISSIONER: - about him being a sleaze?

30 **MR CLARK:** Yeah.

COMMISSIONER: Is it just limited to him using inappropriate language or -

35 **MR CLARK:** And then examples of where Mr Wilson reported where he'd walked out of the back of J Unit. Just inappropriate. I - I have no reason - I don't know why he was there. Just his general demeanour. "Sleaze" is just the - the word I can think of.

40 **COMMISSIONER:** Yes. When you got the disclosure from Trudy, did the chat about Mr Astill being a sleaze start to have more substance for you?

MR CLARK: It certainly did, your Honour.

COMMISSIONER: What did you then think?

45 **MR CLARK:** I thought that perhaps what I'd heard all along was correct.

COMMISSIONER: And what is it that you'd heard all along that you concluded may be correct?

MR CLARK: His improper behaviour with inmates.

5

COMMISSIONER: You mean sexual activity?

MR CLARK: Yes.

10 **COMMISSIONER:** So we now understand that what you had been hearing was allegations amongst the Officers of sexual activity, but when you received Trudy's disclosure, that was able to confirm it in your mind?

15 **MS GHABRIAL:** I object, Commissioner. I'm just going to take a formal objection under section 23. I think that perhaps this witness should be just given a moment to consult with me in that regard so that the protection in place under section 23 can have effect.

20 **COMMISSIONER:** Well, if you object and I require him to answer, that's the end of the issue.

MS GHABRIAL: Yes.

COMMISSIONER: Well, I require him to answer.

25

MS GHABRIAL: Thank you.

COMMISSIONER: Can you give me the answer, please? Mr Clark?

30 **MR CLARK:** Sorry, sir. What -

35 **COMMISSIONER:** You've told us that when - that you'd heard previous talk about Mr Astill being a sleaze, and you've said that had a - what was confirmed in your mind once Trudy disclosed to you was that the chat about him being a sleaze confirmed that they were talking about him being sexually inappropriate with inmates.

40 **MR CLARK:** No, I don't know that it confirmed in my mind, but it certainly was - now I've heard - like, another source has told me of something improper. So it certainly strengthened my views.

45 **COMMISSIONER:** So you previously held the view from what you'd heard that he was up to improper activities, and Trudy's disclosure confirmed that to you; is that right?

MS GHABRIAL: Commissioner, if I could just take a formal objection to any questions along this line so that you can overrule and continue to compel him to answer these questions on this topic.

5 **COMMISSIONER:** Very well.

MS GHABRIAL: Thank you.

COMMISSIONER: Mr Clark, could you answer the question, please?

10

MR CLARK: What Ms - what Trudy told me made me think that what I'd heard in the - around the place perhaps could be correct.

15

COMMISSIONER: And when you say what you'd heard around the place, just so we have it clearly, what you were hearing was that he was engaging in sexual activity with inmates?

20

MR CLARK: No, I hadn't heard that. I was told that he was just - sorry, a sleaze. He'd pop up in places where he shouldn't be. He might - may be saying improper things to inmates. Just unprofessional behaviour.

COMMISSIONER: Well, the allegation from Trudy went way beyond unprofessional behaviour, didn't it?

25

MR CLARK: Yes, it did.

COMMISSIONER: Well then, what was it that confirmed in your mind about what you'd been told previously?

30

MR CLARK: The detail of what she told me.

COMMISSIONER: Yes, she told you the detail, but what did that confirm as to your presumption about what you'd previously been hearing?

35

MR CLARK: That Astill was dangerous, obviously couldn't be trusted and was more than likely behaving illegally.

COMMISSIONER: Illegally in the sense of having sexual activity with inmates?

40

MR CLARK: Yes.

MR LLOYD: Is that where we've reached?

MR CLARK: Yes.

45

COMMISSIONER: Very well. Thank you.

5 **MR LLOYD:** Could I just ask you about - in terms of - again, I'm asking you questions before - in the period before the disclosures by Trudy Sheiles, that is, in the period you've identified where you heard a lot of talk and about the things the Commissioner has just asked you about. I want to put to you something that one of the witnesses has told this Commission - this is Witness P; for those at the bar table, it's paragraph 7, tab 12A - that there were multiple occasions where Astill would have three or four girls in his office at lunch, and there was knowledge on the part of Officers about that and that those girls would be late to muster because they were with Astill in his office and that your reaction to that situation was, at 10 muster, to roll your eyes.

MS GHABRIAL: I object. Again, I'm going to continue to object on any - to any questions along any of these lines of questioning.

15 **COMMISSIONER:** Well, I'm not sure what the lines are that you're concerned about.

20 **MS GHABRIAL:** Just in respect of any suggestion to my client that he had certain reactions to certain things that -

COMMISSIONER: I'm not sure that a reaction to certain things matters in the sense that you're concerned about, but I'll require him to answer the question anyway.

25 **MS GHABRIAL:** Thank you. Thank you.

MR LLOYD: Do you remember -

30 **MR CLARK:** I - I don't recall rolling my eyes.

MR LLOYD: And could I just ask you about this: again, Witness P told this Commission that she told you about mistreatment, not sexual offending, by Astill of her and says that you told her that Astill's relationship with Witness C was inappropriate. 35

MS GHABRIAL: I object, again on the same basis. Commissioner, I don't want to keep doing this. So -

40 **COMMISSIONER:** Well, I think you have to under the Act. But, anyway, I'll require you to answer, Mr Clark.

MS GHABRIAL: Thank you.

45 **MR LLOYD:** Do you remember -

MR CLARK: I have no knowledge of that.

MR LLOYD: I didn't put a timeframe on that, but - this may or may not assist - sometime before October of 2016.

5 **MR CLARK:** No, I have no recollection of that.

MR LLOYD: And I think you told us earlier you didn't think at any time that that relationship was inappropriate?

10 **MR CLARK:** No.

MR LLOYD: Can I ask you about this before coming to Ms Sheiles: do you remember there being a meeting of a number of women in November 2017, about 15 or so, including Ms Sheiles, and that group going to Deborah Wilson to make complaints of varying kinds about Astill's behaviour?

15 **MR CLARK:** Not to my knowledge.

MR LLOYD: Did you ever remember hearing talk about that?

20 **MR CLARK:** No.

MR LLOYD: That kind of event might have been capable of adding to the kind of talk you've already told us about, generally Astill being a sleaze and behaving inappropriately?

25 **MR CLARK:** I - I don't know anything about that.

MR LLOYD: Now, can I ask you to go to your - paragraph - I withdraw that - tab 63, which is your police statement. You'll have to go back. It's not your
30 Commission statement, Mr Clark.

MR CLARK: Yep.

MR LLOYD: Now, can I ask you to turn to paragraph 11 and then 12 and just
35 read those to yourself.

MR CLARK: Yes.

MR LLOYD: Now, what you're telling us about here is an event in - this is in
40 paragraph 11, in early March 2018 where an inmate, Witness Z, came and spoke to you?

MR CLARK: Yes.

45 **MR LLOYD:** You say you made a typed Officer incident report about that?

MR CLARK: Yes.

MR LLOYD: Is the document that you're talking about, being that typed incident report, the document behind tab B?

5 **MR CLARK:** Sorry, behind which tab?

MR LLOYD: Just - you'll see there's - behind your police statement, there's tab A and then tab B. Could I approach, Commissioner?

10 **COMMISSIONER:** Yes.

MR LLOYD: You're looking at tab B behind tab 63.

MR CLARK: Yes.

15

MR LLOYD: Now, I won't take you back to the part of your statement, but you say in your paragraph 11 you haven't provided any person this record until you made the statement to the police?

20 **MR CLARK:** Yes.

MR LLOYD: So - and you did that on 7 September 2020?

MR CLARK: Yes.

25

MR LLOYD: Can I just understand, then: the document at tab B, when did you actually type the entries in it?

MR CLARK: March '19, I think.

30

MR LLOYD: And that bears that date of 20 March 2019?

MR CLARK: Yes.

35 **MR LLOYD:** So this report was one that you did, from your memory, in March 2019, that is, after Astill's arrest?

MR CLARK: Yes.

40 **MR LLOYD:** But you were going back in time to recount things which were important that had occurred in 2018?

MR CLARK: Yes.

45 **MR LLOYD:** The first of those things in this document, from the first line until about 10 or so lines down, is the event in March 2018 involving Witness Z. Do you see that?

MR CLARK: Yes.

5 **MR LLOYD:** And what you're recounting here is that Witness Z told you that - it's got a reference to "Witness H", but that's Trudy Sheiles -

MR CLARK: Yep.

10 **MR LLOYD:** - was scared of Chief Astill?

MR CLARK: Yes.

15 **MR LLOYD:** And that she'd been paged, that is, Ms Sheiles, to attend the Chief's office and had a panic attack?

MR CLARK: Yes.

20 **MR LLOYD:** And that you record you advised Witness Z to tell Trudy to take someone with her?

MR CLARK: Yes.

25 **MR LLOYD:** And several days later, Trudy was paged to attend, and you saw her near the Wing Office?

MR CLARK: Yes.

MR LLOYD: She told you again that she was scared of Mr Astill -

30 **MR CLARK:** Yes.

MR LLOYD: - and she didn't want to attend?

35 **MR CLARK:** Yep.

MR LLOYD: And you said, "Why?" And she said, "I'll tell you later."

MR CLARK: Yes.

40 **MR LLOYD:** And at that time, we are dealing with a point in time in March '18 after what you've told us this morning, you were aware of talk amongst Officers that Astill was a sleaze and behaving inappropriately?

45 **MR CLARK:** Yes.

MR LLOYD: When you saw Ms Sheiles saying to you that she'd been paged again and saying - or in being told that she was scared and didn't want to go, what

did you think at that point were the reasons that she was scared of Astill and didn't want to go?

5 **MR CLARK:** I was certainly wondering why.

MR LLOYD: And in part of your wondering, did you think that maybe the reason she was scared and didn't want to go had something to do with the rumours circulating about Astill behaving -

10 **MR CLARK:** At that time, I didn't, no.

MR LLOYD: You didn't link the two?

15 **MR CLARK:** No, not at the time.

MR LLOYD: Did you turn your mind to why it was at that time that she might have been scared?

20 **MR CLARK:** No, I didn't.

MR LLOYD: Could I ask you then - the report then goes on from - if you find the line starting on the left-hand side, "During April 2018."

25 **MR CLARK:** Yes.

MR LLOYD: That goes on to a conversation that you had with Trudy Sheiles in that month?

30 **MR CLARK:** Yes.

MR LLOYD: Before that conversation - I won't take you back to your statement, but you say in paragraph 14 that Trudy Sheiles later told you - that's after the incident where she said she was scared to go - that Astill made her skin crawl and that he had made inappropriate comments?

35 **MR CLARK:** Yes.

40 **MR LLOYD:** Did she tell you at that point what the inappropriate comments were?

MR CLARK: No.

MR LLOYD: Did you think that they were of a sexualised nature?

45 **MR CLARK:** I assumed that they would have been.

MR LLOYD: Going back to the note:

"During April 2018, inmate..."

Witness H - that's Trudy:

5

"...approached me at the high needs office."

Do you see that?

10 **MR CLARK:** Yes.

MR LLOYD: Asked if she could speak to you?

MR CLARK: Yes.

15

MR LLOYD: You say you were aware to speak to her outside the Wing Office -

MR CLARK: Yes.

20 **MR LLOYD:** - in view of the CCTV?

MR CLARK: Yes.

MR LLOYD: She began to speak to you and was making allegations of
25 impropriety against Astill?

MR CLARK: Yes.

MR LLOYD: Specific with some details of alleged sexual assaults. Just tell us
30 what she was saying.

MR CLARK: It's listed in my police statement.

MR LLOYD: Is that what you've recorded at paragraph 16 of your police
35 statement? Just go back.

MR CLARK: I'm sorry, I just find it –

MR LLOYD: That's all right. Just if you -

40

MR CLARK: – difficult to repeat.

MR LLOYD: I understand. Just tell me if what you're talking about is paragraph
45 16 and then I'll deal with your concern.

45

MR CLARK: Yes.

MR LLOYD: And so just to make it clear, Mr Clark, what you were being told by Trudy Sheiles in April of 2018, improper conduct by Astill, which included the sexual assault you've described at paragraph 16 of your police statement?

5 **MR CLARK:** Yes.

MR LLOYD: Just dealing with the situation that you found yourself in with that report being made to you by Ms Sheiles first, I take it you believed her?

10 **MS GHABRIAL:** I object. Just making the formal objection.

COMMISSIONER: Yes, please answer the question.

MR CLARK: At the time, I had no reason to disbelieve her.

15

MR LLOYD: And there was nothing then or at any time that's led you to think that what she was saying wasn't the truth?

MR CLARK: Correct.

20

MR LLOYD: An allegation of extremely serious sexual assault by an Officer. If you need time.

MR CLARK: I was disgusted.

25

MR LLOYD: It was, on what you were being told, an extremely serious sexual assault. But also -

MR CLARK: Yes.

30

MR LLOYD: - I think following from your evidence to the Commissioner earlier, in addition to that extremely serious sexual assault, grave misconduct by Astill in his performance of his duties?

35 **MR CLARK:** Absolutely.

MR LLOYD: And at this time, Mr Clark, can you remember whether you thought, "Well, if this is what Trudy is telling me and having regard to the allegations around about him being a sleaze and behaving inappropriately, maybe she's not the only one"?

40

MS GHABRIAL: I object.

COMMISSIONER: Yes, please answer the question.

45

MR CLARK: I had no knowledge of any other inmate being offended against.

MR LLOYD: But you had information in terms of the rumours - not direct knowledge, but information that people were saying he was a sleaze?

5 **MR CLARK:** Yes, people were saying that.

MR LLOYD: And then you had a direct allegation being made to you by Ms Sheiles -

10 **MR CLARK:** Yes.

MR LLOYD: - that she'd been the victim of an extremely serious sexual assault?

MR CLARK: Yes.

15 **MR LLOYD:** Did you put two and two together that maybe she wasn't the only one?

MS GHABRIAL: I object.

20 **COMMISSIONER:** Yes, please answer the question.

MR CLARK: I didn't know what to think.

25 **MR LLOYD:** When you record in your document, "She was crying" -

MR CLARK: Yes.

MR LLOYD: - you say you insisted that she make a statement?

30 **MR CLARK:** Yes.

MR LLOYD: Now, you've told us earlier about your view about what was required in order to protect the inmate and yourself about serious allegations, that is, you wouldn't - you didn't think that you could advance it without something in writing by the inmate?

35

MR CLARK: Yes.

40 **MR LLOYD:** Is that what you're saying there or does that reflect your view that you wanted her to make a statement so you could advance it?

MR CLARK: Yes.

45 **MR LLOYD:** Her position was - she told you she was in gaol for defending herself in relation to rape?

MR CLARK: She told me that.

MR LLOYD: Did she say to you that Astill had raped her?

5 **MR CLARK:** Yes, she did. I forget the - the timeline of it, but she handed me a note.

MR LLOYD: With some dates on it?

10 **MR CLARK:** With some dates on it, which was given in evidence at his trial. And I asked her what - what was that, and she said, "They're the dates that he raped me."

15 **MR LLOYD:** I'll ask you something about that in a minute. But you say Ms Sheiles pleaded with you, said, "Mr Clark. Please, Mr Clark. I trust you. When I summon enough courage, I'll make a statement."

MR CLARK: Yes.

20 **MR LLOYD:** This was her saying to you that at that time she didn't want to make a written statement?

MR CLARK: Yes.

25 **MR LLOYD:** And I think what you're recording here is her pleading with you not to take the things that she'd told you any further?

MR CLARK: Yes.

30 **MR LLOYD:** Can I just ask you some things about the position that you were in with this information -

COMMISSIONER: Mr Lloyd, we might take a short break now. Yes, we'll adjourn for about 10 minutes.

35 <THE HEARING ADJOURNED AT 11.30 AM

<THE HEARING RESUMED AT 11.41 AM

40 **MR LLOYD:** Commissioner, I think there's another application for leave to appear.

45 **MS GHABRIAL:** There is. Commissioner, the solicitor Jared Kadar is here today for Mr Giles and Ms Robinson from Jordan Djundja Solicitors, and the partner will be here, James Jordan, from tomorrow. I will let Mr Kadar seek leave.

MR KADAR: Thank you, Commissioner. I seek leave to appear in the interests of Westley Giles and Mishelle Robinson. And my name for the record is Kadar, K-a-d-a-r, initial J.

5 **COMMISSIONER:** Thank you. You have leave.

MR KADAR: Thank you, Commissioner.

MS GHABRIAL: Thank you, Commissioner.

10

MR LLOYD: Mr Clark, can I just ask you about the position that you found yourself in once Ms Sheiles had told you the things that you've told us she told you in April of 2018. You had an inmate disclosing a very serious sexual assault, including rape?

15

MR CLARK: Yes.

MR LLOYD: You had no reason to disbelieve it?

20

MR CLARK: No.

MR LLOYD: You were being told by that inmate at that time she did not want to make a statement and did not want you to advance a complaint on her behalf; is that right?

25

MR CLARK: Yes, that's correct.

MR LLOYD: I take it that because of what Trudy Sheiles was saying to you about not wanting to make a statement and not wanting you to advance it that you didn't think that it was open to you to call the police to report the crime?

30

MR CLARK: Sorry, I didn't hear.

MR LLOYD: I take it that because of what Trudy Sheiles was saying about not wanting it to go forward at that time that you didn't think it was open to you to call the police and report a crime?

35

MR CLARK: That's correct.

40

MS GHABRIAL: I object.

COMMISSIONER: Yes. Yes, please answer the question.

MR LLOYD: Sorry, Mr -

45

MR CLARK: I - I was respecting her wishes not to advance the complaint at that stage.

MR LLOYD: And you've told us you didn't know at that time about the reporting function to the SIU -

5 **MR CLARK:** No.

MR LLOYD: - to make any intelligence reports outside the gaol?

MR CLARK: No. I wasn't aware of it.

10

MR LLOYD: You've told us in terms of if you wanted to go forward in some confidential way to advance the matter within the gaol that you had no trust in any of the management?

15 **MR CLARK:** That's correct.

MR LLOYD: And I take it from that you believed if you had - contrary to Ms Sheiles' wishes, if you'd gone forward and reported to senior management, you would have had no faith in that being dealt with confidentially and properly?

20

MR CLARK: That's correct. And I also feared retribution if I made any type of allegation, certainly without a written statement to go along with it.

MR LLOYD: And you knew that you're dealing with a highly distressed and vulnerable inmate who's made these disclosures to you, that in terms of options to her to get some support that might be available to people in the community, for example, support of close family, husband, parent, that kind of thing, that that wasn't open either?

25

30 **MR CLARK:** Not that I was aware of.

MR LLOYD: She was in a desperate position?

MR CLARK: She was in a very bad position.

35

MR LLOYD: Did you have, in terms of any kind of guidance or training at any time throughout your career with Corrective Services, any clue that had ever been given to you about what you'd do in this situation?

40 **MR CLARK:** Not that I remember.

MR LLOYD: Did you just find yourself in a position where you were trying to work out for yourself how to manage what to do?

45 **MR CLARK:** I felt very much like that.

MR LLOYD: Had you ever been given any training about what might be called a trauma-informed approach to disclosures of this kind by a vulnerable person?

MR CLARK: Not at that time.

5

MR LLOYD: Did you have any person who, at that time in April 2018, you could go to in the gaol or elsewhere to refer Ms Sheiles to allow her to talk about what the options available to her might be?

10 **MR CLARK:** Not at that time.

MR LLOYD: Just moving forward, if I can, to the position now. You've told us you're still at Dillwynia?

15 **MR CLARK:** Yes.

MR LLOYD: Just imagine the same situation that occurred now -

MR CLARK: Yes.

20

MR LLOYD: - coming to your attention, that is, exactly the same things you've told us about and all of the problems you've told us about, an inmate, serious crime reported to you, believable allegations, reluctance to make a statement but involving misconduct of an extreme nature by a senior person within the gaol.

25 What's the system now?

MR CLARK: I would have every confidence and no hesitation in reporting the matter directly to the Governor.

30 **MR LLOYD:** So that's a personnel change in the sense that you would, if you were in this situation now, have trust and faith in the Governor, whereas you didn't have that trust and faith back then?

MR CLARK: Yes.

35

MR LLOYD: So the system itself is, in that respect, the same in that you would, dealing with the situation now, just take it straight to the Governor?

40 **MR CLARK:** I would take it straight to the Governor, but I'm also now well aware of this SIU function on our computer system to send a report directly to Professional Standards Branch.

45 **MR LLOYD:** In terms of a situation of this kind, what do you understand to be the instruction or training given to Officers at Dillwynia about what to do? Is it you go to the Governor?

MR CLARK: It's - it's listed in the COPP - which is called the COPP, which is Correctional Officers' rule book. It used to be called the Operations Procedures Manual.

5 **MR LLOYD:** And tell me what you understand that to -

MR CLARK: My understanding is that a matter like that would be reported to the Governor.

10 **MR LLOYD:** And not by this function of reporting it to Professional Standards?

MR CLARK: No, it would be a written report, or oral, to the Governor of the Centre.

15 **MR LLOYD:** Not outside the gaol to Professional Standards -

MR CLARK: Not that I understand.

20 **MR LLOYD:** So you're not told in a situation like this that this would warrant a report of the kind you told us about that would exclude the Governor?

MR CLARK: Not that I'm aware of. I believe it'd be a judgment call on - on which way you report it now.

25 **MR LLOYD:** Could I understand what you're telling us, that an Officer in your position now, that is, the position you found yourself in in April '18, would just have to work out for themselves whether it's appropriate to take that information to the Governor?

30 **MR CLARK:** No. Now I - I would be confident to report it directly to the Governor.

MR LLOYD: And in terms of whether that's a good system, if you had a Governor who you didn't trust, what's the situation?

35

MR CLARK: I don't know.

MR LLOYD: So it's -

40 **COMMISSIONER:** Can I ask this, Mr Clark, wouldn't it be a good idea to be able to report to the Governor but also outside the gaol a serious allegation such as this?

45 **MR CLARK:** Yes, your Honour. I'd - I'd like to see a system in place where we can - anyone, inmates or - or staff, can report directly to a totally independent body, whether phone number, computer link - I don't know what - that is totally independent of the Department of Corrective Services.

COMMISSIONER: So it may be to the Governor but also to someone else?

MR CLARK: Maybe the Governor but - and someone else.

5

MR LLOYD: And in the hope that either the Governor or that someone else might have an idea about how to manage a situation like this with a vulnerable inmate making very serious disclosures?

10 **MR CLARK:** I would hope so.

MR LLOYD: Could I just ask, then, going forward to the middle part of 2018 - going back to your Commission statement this time, paragraph 30.

15 **MR CLARK:** I've lost it.

MR LLOYD: 63A, if you could find that one.

MR CLARK: Yes.

20

MR LLOYD: And so in your Commission statement at paragraph 30. Just moving forward in time, you tell us in paragraph 30 and 31 about an incident at the end of June 2018 -

25 **MR CLARK:** Yes.

MR LLOYD: - involving Witness II, who -

MR CLARK: Yes.

30

MR LLOYD: - is now referred to by name, Elizabeth Cox?

MR CLARK: Yes.

35 **MR LLOYD:** And in paragraph 31, you asked her the question you identify there. You've got "Sarah" there -

MR CLARK: That's a typo.

40 **MR LLOYD:** That's meant to be "Elizabeth"?

MR CLARK: That's meant to be "Elizabeth".

MR LLOYD:

45

"Elizabeth then said, 'Clarky, if I wanted drugs, see that man, he brings it in'."

MR CLARK: Yes.

MS GHABRIAL: I object. I object to any questions that relate to these paragraphs in respect of Ms Cox, Commissioner. I take a formal objection.

5

COMMISSIONER: Sorry, I'm not following.

MS GHABRIAL: Information received from an inmate in respect of a serious allegation against another Officer, I take an objection to any answers being given in respect of these questions formally.

10

COMMISSIONER: All right. Well, please answer, Mr Clark.

MR LLOYD: Sorry, do you need it again? I think the only question was, can you see that part of the statement?

15

MR CLARK: Yes, I can.

MR LLOYD: It might have been a pre-emptive strike. You were being told by Elizabeth Cox that Astill was bringing into the gaol contraband and drugs?

20

MR CLARK: Yes.

MR LLOYD: That allegation - even just putting to one side the allegations of sexual assault and sexual misconduct, the allegation about bringing in contraband and drugs in and of itself was serious?

25

MR CLARK: Yes.

MR LLOYD: And Ms Cox said, "I've already reported it to Shari Martin"?

30

MR CLARK: Yes.

MR LLOYD: Just have a look, if you need to remind yourself, of paragraph 32.

35

MR CLARK: Yes.

MR LLOYD: You're telling us there you obviously thought that what Ms Cox had told you was serious and serious enough for you to get in touch with Ms Martin?

40

MR CLARK: I had no reason to doubt what she was telling me.

MR LLOYD: And she was an inmate you'd had experience with?

45

MR CLARK: Yes, over a period of time.

MR LLOYD: Credible person?

MR CLARK: I'd never - she'd never had any interaction with me that proved otherwise.

5

MR LLOYD: And you called Shari Martin, and just tell us what happened in that telephone call.

MR CLARK: Yes, I - I rang Shari Martin. I asked Elizabeth if she'd like to come into - step into the Senior's office where I - my phone was. She said, "Yeah, no problem." She sat down on the other side of the desk. I rang Ms Martin. And I - when she answered the phone, I said, "Ma'am, it's Officer Clark here from high needs. I'm ringing to let you know that I have an inmate sitting in front of me that's just advised me that one of your executive staff is bringing drugs and other contraband into the gaol."

15

MR LLOYD: Did you name that staff member?

MR CLARK: Yes.

20

MR LLOYD: Astill?

MR CLARK: I said, "Wayne Astill."

25

MR LLOYD: What did she say?

MR CLARK: She said, "Oh fuck." And then there was silence, maybe 10 seconds perhaps, and I said, "Ma'am, are you still there?" She said, "Yes, I'm still here. I'll send Pammy up," and then hung the phone up.

30

MR LLOYD: What happened next? Did Pam - and "Pammy" you understood to be a reference to Pam Kellett?

MR CLARK: I believe that's the reference to Pam Kellett. A short time later, 10 or perhaps 15 minutes later, I saw Pam Kellett walk towards the high needs area. She walked straight past my office and went to the K Wing where Elizabeth Cox was housed. She entered the unit, was there a short time, left the unit and returned to the admin area and didn't check in with me on the way in or on the way out.

40

MR LLOYD: Did anyone from within Dillwynia or anywhere else ever speak to you about what you'd reported to Shari Martin again?

MR CLARK: No.

45

MR LLOYD: What did you think about that?

MR CLARK: Didn't know what to think about it.

MR LLOYD: Allegations of serious misconduct that had come to your attention, you passed on to the Governor -

5 **MR CLARK:** Yes.

MR LLOYD: - about a Senior Officer.

10 **MR CLARK:** I would have naively assumed that it was being handled. I'd reported it to the Governor.

MR LLOYD: You certainly didn't notice any difference in the way Astill was treated within the gaol?

15 **MR CLARK:** I couldn't say I noticed any difference.

MR LLOYD: No information that came to your attention of him being the subject of any disciplinary action or anything of that kind?

20 **MR CLARK:** Not to my knowledge.

MR LLOYD: And in you making that report to the Governor, is that what you understood to be your obligation, that is, reporting something that was very serious -

25 **MR CLARK:** Yes.

MR LLOYD: - directly to -

30 **MS GHABRIAL:** I object.

COMMISSIONER: Please answer the question when it's finished.

35 **MR LLOYD:** Reporting something directly to the Governor?

MR CLARK: I believe I'd reported an incident to the Governor and that it was being handled by her.

40 **MR LLOYD:** And that's in accordance with what you told us before the break, that is, if there was something that was very serious, you'd go directly to the Governor?

MR CLARK: Yes.

45 **MR LLOYD:** And this was very serious?

MR CLARK: Yes.

COMMISSIONER: Mr Clark, do you know what sort of drugs were coming in?

MR CLARK: I don't, your Honour.

5

COMMISSIONER: And was this the first time you'd heard of drugs coming into the prison?

MR CLARK: By an Officer, yes.

10

COMMISSIONER: I'm sorry, by?

MR CLARK: Being introduced by an Officer. That was the first time I'd heard that.

15

COMMISSIONER: But you'd heard of them coming in other ways?

MR CLARK: Yes.

20

COMMISSIONER: What are the other ways they come in?

MS GHABRIAL: I object.

COMMISSIONER: Please answer the question.

25

MR CLARK: They - unknown persons will - will throw tennis balls over the - the boundary fence; they'll try to introduce drugs on their person during a visit; secrete - secrete packages within the correctional facility for pick up later; things along that nature.

30

COMMISSIONER: How would someone like Mr Astill be able to bring drugs in?

MR CLARK: I don't know.

35

COMMISSIONER: I mean, I assume that you are all checked when you come in and -

MR CLARK: Yes. Yes, we are.

40

COMMISSIONER: - required to account for what you're carrying?

MR CLARK: We go through a - a scanner - metal detector on the way into the Centre every day. Our bags go through an X-ray machine.

45

COMMISSIONER: Will that pick up drugs?

MR CLARK: Yes.

5 **COMMISSIONER:** So to bring them in, unless there was something very sophisticated, there would have to be cooperation with other Officers. Would that be right?

MR CLARK: I don't know, your Honour.

10 **COMMISSIONER:** Well, if you're being scanned and checked when you come in, presumably the system could fail if the person operating the scanner didn't respond?

15 **MR CLARK:** It - it could, but I have no idea of the sophistication of - of what Astill may or may not have been up to with the introduction of contraband and - and drugs. I don't know what his level of sophistication was.

COMMISSIONER: Has that been the subject of discussion amongst the Officers?

20 **MR CLARK:** Not to my knowledge.

COMMISSIONER: No one sort of said, "How did he do it?"

25 **MR CLARK:** No.

COMMISSIONER: You just let it pass without comment to each other?

MR CLARK: Yes.

30 **COMMISSIONER:** Forgive me, but that's somewhat surprising.

35 **MR CLARK:** I've often wondered how he got away with it, but I - that - that's all it is. No idea. But what you propose, sir, about whether he's had assistance, I - I - I have no idea. It is possible.

COMMISSIONER: Well, something must have gone wrong somewhere.

MR CLARK: It appears so.

40 **MR LLOYD:** Just on the bringing of drugs into the gaol by Astill, did you ever hear rumours that he was trading those drugs for sexual favours by inmates?

MR CLARK: No.

45 **MR LLOYD:** Could I ask you one thing about Ms Cox. Do you remember her telling you, in addition to Astill bringing drugs and contraband into the gaol, that he'd altered the result of one of her urines so that it was falsely recording -

MR CLARK: No. No, I have no recollection of that.

5 **MR LLOYD:** Could I ask you - sorry to go between the two statements, Mr Clark, but go back to your police statement at paragraph 20. At the top behind 63A.

MR CLARK: Yep.

10 **MR LLOYD:** In paragraph 20 - you see, the event I've just been asking you about was on 28 June 2018 involving Ms Cox.

MR CLARK: Yes.

15 **MR LLOYD:** This is an event, in paragraph 20, the very next day. Do you see that?

MR CLARK: Sorry, I'm looking at my statement to the Commission.

20 **MR LLOYD:** Just go back. If you need help finding it -

MR CLARK: Yes, please.

25 **MR LLOYD:** - just let me know and I'll -

MR CLARK: Yes, please.

MR LLOYD: Could I approach again, Commissioner? May I approach again?

30 **COMMISSIONER:** Yes.

MR CLARK: Thank you.

35 **MR LLOYD:** The event in paragraph 20 -

MR CLARK: Yes.

40 **MR LLOYD:** - and 21, that occurred the very next day after the incident with Elizabeth Cox.

MR CLARK: Right.

45 **MR LLOYD:** Do you remember this time - this is - Witness H is Ms Sheiles. This was the occasion when she handed you that -

MR CLARK: Handed me the note.

MR LLOYD: - piece of paper.

MR CLARK: Yes.

5 **MR LLOYD:** And just so we understand, look behind A behind that police statement. This is the first tab behind it at item -

MR CLARK: Yes.

10 **MR LLOYD:** You've got it there. That's the piece of paper she handed you?

MR CLARK: Yes. I've signed it at the bottom.

15 **MR LLOYD:** And you've signed it. And that contained three dates?

MR CLARK: Yes.

MR LLOYD: And she told you that those are dates when Astill raped her?

20 **MR CLARK:** That's what she told me.

MR LLOYD: This is more detail about the very serious allegations she had raised with you for the first time in April?

25 **MR CLARK:** Yes.

MR LLOYD: But is it right that at this time, that is, 29 June, Ms Sheiles was saying to you that she did not want to make a report about it?

30 **MR CLARK:** Yes.

MR LLOYD: You were urging her to do that?

35 **MR CLARK:** Yes.

MR LLOYD: But she was reluctant?

MR CLARK: Yes.

40 **MR LLOYD:** And I take it, in terms of your knowledge about what options were available to you -

MR CLARK: Hadn't changed.

45 **MR LLOYD:** - were the same as before?

MR CLARK: Yes.

MR LLOYD: Really no idea what to do?

MR CLARK: No.

5

MR LLOYD: Could I ask you about this, then. Go, in this police statement, forward to paragraph 24. By this time, September 2018 -

MR CLARK: Yes.

10

MR LLOYD: - Ms Sheiles, you heard, say that she was in fear of her life?

MR CLARK: Yes.

15 **MR LLOYD:** And by this time, another Officer had arrived at Dillwynia, Stephen Virgo?

MR CLARK: Yes.

20 **MR LLOYD:** What position had he come into?

MR CLARK: Mr Virgo was - had just been promoted to Senior Assistant Superintendent and was - the title was Intelligence Manager.

25 **MR LLOYD:** And he came in about the start of September '18?

MR CLARK: I believe it was September.

30 **MR LLOYD:** You say here in paragraph 24 that you'd spoken to him in a private conversation after his arrival -

MR CLARK: Yes.

MR LLOYD: - from Emu Plains?

35

MR CLARK: Yes.

MR LLOYD: What did you say to him when he arrived?

40 **MR CLARK:** I told him that - I told him of the situation with Ms Sheiles and that I was seeking his guidance and assistance.

MR LLOYD: The situation, by that you mean that she'd disclosed to you that she was raped on multiple occasions?

45

MR CLARK: Yes. And - and that - and that I - I was trying to get her to make a statement.

MR LLOYD: How long after Mr Virgo arrived did you have that conversation with him?

5 **MR CLARK:** I can't recall.

MR LLOYD: It must have been pretty shortly after -

MR CLARK: It would have been soon after.

10

MR LLOYD: Did you know him before he arrived?

MR CLARK: I'd worked with him at Dillwynia previously where he'd been a Senior Correctional Officer, and I believe he went to Emu Plains Correctional Centre, won a promotion and returned.

15

MR LLOYD: And just tell me his position again, Senior Assistant Superintendent?

20 **MR CLARK:** Yes. Upon his return - well, sorry, upon his return, it was Principal. They've recently changed that.

MR LLOYD: Can you just help me with this, because at least for my part, in terms of the changing roles, I just want to make sure I understand -

25

MR CLARK: I'm confused about the changing roles also.

MR LLOYD: That makes two of us. The Senior Assistant Superintendent position -

30

MR CLARK: Yes.

MR LLOYD: - was that on the same level of seniority as the Principal Correctional Officer?

35

MR CLARK: Yes.

MR LLOYD: And so he came into a position of seniority that was the equivalent of -

40

MR CLARK: Principal.

MR LLOYD: - Sury Hariharan and Pam Hotham -

45 **MR CLARK:** Yes.

MR LLOYD: - who were Principals. That is, was his position below the Manager of Security?

MR CLARK: Yes.

5

MR LLOYD: What I want you to try and help us with, Mr Clark, is this situation: the people within management who were at the level of Mr Virgo and above, before his arrival, at various times included Shari Martin, Leanne O'Toole, Deborah Wilson, Sury Hariharan, Pam Hotham - correct so far?

10

MR CLARK: Yes.

MR LLOYD: The people in the positions of seniority that were one immediately below the position Mr Virgo held were Neil Holman, Paddison, Pam Kellett?

15

MR CLARK: Yes.

MR LLOYD: Or were they on the same level?

20

MR CLARK: Kellett was also a Principal, I - I believe.

MR LLOYD: She was on the same level of position as Virgo?

MR CLARK: Same level. Yes.

25

MR LLOYD: But are the others in a position immediately below in seniority the position of Virgo?

MR CLARK: Yes.

30

MR LLOYD: So there's approximately six or so, perhaps more, Officers who you've identified in senior positions at the time of Astill's offending before Mr Virgo's arrival?

35

MR CLARK: Yes.

MR LLOYD: Mr Virgo arrives into the position you've told us about, and it sounds like, from what you're saying, within days or a very short number of weeks, you felt able to tell him -

40

MR CLARK: Yes.

MR LLOYD: - what Trudy Sheiles had told you starting back in April of 2018; correct?

45

MR CLARK: Yes.

MR LLOYD: I take it from that that when you talk about not trusting management in the earlier part of your statement to the Commission, you did not feel that you were able to trust any of those people in the positions of seniority that I've just asked you about to pass on the information that you passed on to Mr Virgo within days or a short number of weeks after his arrival?

MR CLARK: That's correct.

MR LLOYD: What is it about the culture there prior to Virgo's arrival and his arrival that meant that there were these significant number of people who you did not feel you could pass on information of the gravest kind that Trudy Sheiles was telling you about?

MR CLARK: I really don't know.

MR LLOYD: What was it about Mr Virgo and his arrival that meant the -

MR CLARK: I'd worked with Mr Virgo numerous times when he was a Senior prior to his departure to Emu Plains. And I'd always observed him to be very professional in his dealings, very honest. If he tells someone, inmate or staff, he will do something, he did it. He wasn't judgmental. He's been in Corrective Services for a very long time, and I - and from my dealings as working as one of his staff from time to time, my opinion of him was that I could trust him.

MR LLOYD: And do we understand this correctly: when you say you felt you could trust him, that you didn't feel that way with any of the other senior people I've asked you about?

MR CLARK: Unfortunately, yes.

MR LLOYD: After you had that conversation with Mr Virgo, you went back to Trudy Sheiles and, in effect, said to her, "There's a person here who I think you can trust"?

MR CLARK: Words to that effect. I believe we had a conversation - I think she may have said to me, "Who's this new bloke?" And I said, "Who - who are you talking about?" She said, "The - the tall fella." I said, "Mr Virgo." And it was that conversation or - or one after that, and she said, "And who's he? What does he do?" I said, "He's the new Intelligence Manager." Trudy said, "And do you trust him?" And I said, "Yes, I do." And she said, "How - how far will you trust Mr Virgo?" And I said, "I trust the man implicitly." And she said, "Well, Mr Clark, I trust you. You trust him. Can you" -

MR LLOYD: Just take your time.

MR CLARK: "Can you get Mr Virgo. I'd like to make a statement." I then facilitated Mr Virgo meeting Trudy in the interview room of the BIU unit at

Dillwynia. I sat in the Wing Office directly opposite, but I couldn't hear them. But I could see both of them. And I believe Trudy gave Mr Virgo a statement.

5 **MR LLOYD:** And what you're telling us, at least on your understanding, is that disclosure by Trudy to Mr Virgo was the time when she was prepared to have the complaint about the conduct of Astill advanced?

10 **MR CLARK:** Advanced. And it's my understanding that Mr Virgo advanced that to the New South Wales Police.

MR LLOYD: And on what you're telling us, is this right: what that took for that to occur, that is, Trudy being willing to have the complaint advanced, was one Officer in a position of seniority who she believed she could trust?

15 **MR CLARK:** Unfortunately, yes.

MR LLOYD: Could I ask you this: There was another incident involving an inmate, Sarah Ward?

20 **MR CLARK:** Yes.

MR LLOYD: This occurred in about - on or about 3 October 2018. It's paragraph 30 in your police statement, if you've got that in front of you.

25 **MR CLARK:** Yes.

MR LLOYD: She is Witness K, as identified in the version that might be in front of you. What happened?

30 **MR CLARK:** I was working as the Reception Officer on afternoon shift. And I can't recall who the inmate was, but I'd just printed a release certificate for an inmate, which was handed to Mr Astill, as it was his duty to actually release an inmate when the time was appropriate. Handed him the release certificate. Him and the inmate, who I can't recall who she was - I heard the back gate open.

35 A short time later, I saw an Officer who was not Mr Astill. I know him as Josh Gibson, who was, I believe, a casual at the time. And I saw him walking with the same inmate towards our gate for release, which I thought was odd.

40 I - I continued carrying out my duties in the reception area, and I had cause to move to the end of the bench where we had a laminating machine. I was working at the laminating machine and looked up and the door from the reception through to what's an old truck bay and then there's - the next door is the BIU unit, which I saw was ajar. This was outside of normal business hours, and there was no reason for that door to be ajar.

45 I walked over to the reception door, to the truck bay. I could see around the door that Cell 3 was open. I saw Wayne Astill standing in - in the doorway of the cell.

I knew inmate Sarah Ward was in Cell 3, which was open. I fully opened the door to the BIU, the outer door. I walked in behind them at probably three or four metres - four metres. And Sarah could see me; Astill couldn't. He had his back turned to me. And I thought I'll challenge him, and I did. I said, "Wayne, what the fuck do you think you're doing?" And he turned around to me, and as he turned around to me to try to answer, I could see Sarah standing in the cell and she was mouthing to me, "Help."

10 **MR LLOYD:** And by this time, of course, you knew -

MR CLARK: Oh, yeah.

MR LLOYD: - about the things Trudy had been telling you?

15 **MR CLARK:** Yes, I did. So after I challenged him, "Wayne, what do you think you're doing?" He 'umm'ed and 'ah'ed, "Um, um, um, not sure," and then he walked out.

20 **MR LLOYD:** And you know Ms Ward later came forward and made allegations to the police about -

MR CLARK: Yes.

25 **MR LLOYD:** - criminal sexual -

MR CLARK: Yes.

30 **MR LLOYD:** Could I just ask you, Mr Clark, to go forward to the current time - the current climate at Dillwynia.

MR CLARK: Yes.

35 **MR LLOYD:** I just want to read to you something that Elizabeth Cox has told the Commission in her evidence about things that have occurred more recently there, just to see if you have a response to it. She says that you and some other person came down to her and said that if anything happened to her that she should tell you straightaway. She thought she had a bunch of Officers that were pissed off at her because she dobbed on Astill, but that you came down to support her and let her know that she was safe and that supporters of Astill were not tolerated at the
40 Centre, and if any Officer said anything about it, that she should report it straightaway. First, do you remember having a conversation -

MR CLARK: I - I don't recall that conversation.

45 **MR LLOYD:** In terms of the substance of it, is there presently a group of Officers that you're aware of at Dillwynia who still support Astill and are hostile to inmates who have come forward?

MR CLARK: Not that I'm aware of.

5 **MR LLOYD:** Is there a lot of talk in the gaol about his offending and what happened?

MR CLARK: No.

10 **MR LLOYD:** Is there a lot of talk in the gaol about this Inquiry into that conduct?

MR CLARK: No. And if I can just go a bit further. My current role where I work is quite isolated from - well, it's isolated from inmates, and it's isolated from most staff. I work in the Intelligence Unit at the moment.

15 **MR LLOYD:** Are you the Intel Officer now?

MR CLARK: No, I'm not. No. I'm on light duties due to a shoulder injury, but I - I assist them with certain roles which are not an accredited Intelligence Officer.

20 **MR LLOYD:** But you're - in that role, you're now a bit remote from dealings - day-to-day dealings with inmates and other Officers; is that right?

MR CLARK: Yeah, I don't have dealings with -

25 **MR LLOYD:** Just pardon me. Those are my questions.

COMMISSIONER: Mr Clark, you mentioned earlier there are a group of Officers - Senior Officers who you didn't trust to take allegations to. Do you remember that?

30

MR CLARK: Yes.

COMMISSIONER: Should I understand that those Officers are still in the gaol?

35 **MR CLARK:** No, they're not, your Honour.

COMMISSIONER: They've all gone?

MR CLARK: Yes.

40

COMMISSIONER: Yes. Does anyone else have any questions?

<EXAMINATION BY MR SELLER:

45 **MR SELLER:** Yes. Thank you, Commissioner. Mr Clark, we met earlier today. I'll just remind you. My name is James Sheller. I'm one of the legal representatives of Corrective Services. And just so you understand for the

purposes of my questions, there is no criticism by me or my client of your conduct, and an expression of apology has been made. And if I could indicate now the regret that in April 2018, as an example, you found yourself in a position where, having received very serious information which you formed a view on, you
5 didn't know where to go with it. Could I just ask you by reference to your Commission statement - if you could just open that up at page 3. There's a paragraph, paragraph 18.

10 **MR CLARK:** Sorry, I've done it again.

MR SELLER: That's all right. It's the most recent statement -

MR CLARK: I've got it. Sorry. Paragraph 18, Mr Sheller?

15 **MR SELLER:** Yes. You'll see there there's the heading:

"As an Officer receiving a complaint, what are your reporting options?"

20 **MR CLARK:** Yes.

MR SELLER: And you've just given some evidence that you're now doing some work in the Intelligence Office at Dillwynia?

25 **MR CLARK:** Yes.

MR SELLER: And through that work, you understand the various options in terms of passing on intelligence?

30 **MR CLARK:** Yes. Yes.

MR SELLER: And one of them is to select the SIU button, which would be to send information only to Professional Standards?

35 **MR CLARK:** Yes.

MR SELLER: And is it right that there's another button, which I think might either be general, which you can press -

40 **MR CLARK:** Yeah.

MR SELLER: - which will send the information to multiple -

MR CLARK: Multiple. And I believe that's the Intelligence Manager and the Governor.

45 **MR SELLER:** And there's also a body called CIG. Are you familiar with that?

MR CLARK: Criminal - Corrections Intelligence Group.

MR SELLER: And is this right: your understanding is that the CIG mainly deals with intelligence relating to inmates?

5

MR CLARK: I believe so, but I'm - I'm not really sure what their role covers.

MR SELLER: And the process now is - is it one where you receive yourself information from Officers or other staff at Dillwynia and gather that information?

10

MR CLARK: No, I don't. That would be the Intel Manager. My role - I monitor telephone calls. I monitor mail -

MR SELLER: Yes.

15

MR CLARK: - incoming and outgoing, and work as directed by the Intel Manager.

MR SELLER: Now, going back to what we call the time of Mr Astill's offending, so say 2015 to 2018.

20

MR CLARK: Yeah.

MR SELLER: Were you familiar then that someone was performing the role of Intelligence Manager?

25

MR CLARK: Yes.

MR SELLER: And do you have a recollection of whether - within that period, 2015 to 2018, for example, knowing what the role of the Intelligence Manager was?

30

MR CLARK: I didn't.

MR SELLER: And is this right: that you don't recall ever receiving any specific training about what interaction a Corrections Officer may have with someone who was the Intelligence Manager working -

35

MR CLARK: No, I don't recall that.

40

MR SELLER: Then could I ask you just to go back to your police statement of 7 September 2020. And you've been asked some questions about events in September/October 2018. It starts at about paragraph 24. In paragraph 24, you talk about how, at that point in time, Mr Virgo had transferred to Dillwynia?

45

MR CLARK: Yes.

MR SELLER: And I think you describe him here as Senior Assistant Superintendent, and I think you've also told us that he took on the role of the Intelligence Officer as well?

5 **MR CLARK:** Yes. Yes.

MR SELLER: And then you talk about speaking to him in a private conversation once his arrival - after his arrival?

10 **MR CLARK:** Yes. Yes.

MR SELLER: Can I just clarify this: your account to him of what Sheiles had told you, did that precede - I withdraw that. Did that come before or after you'd had that discussion with Ms Sheiles as to your view that Mr Virgo was
15 a trustworthy person she could talk to?

MR CLARK: I - I can't recall now, I'm sorry.

MR SELLER: And it seems to be the case that the sequence was Mr Virgo had
20 arrived, and you thought that was someone you could speak to?

MR CLARK: Yes.

MR SELLER: At a level above you?
25

MR CLARK: Several levels above me.

MR SELLER: Then there appears to be two events close in time but unrelated:
30 one, the incident that you've described with Ms Ward at the BIU?

MR CLARK: Yes.

MR SELLER: And then your discussion with Ms Sheiles in relation to her
35 being able to trust Mr Virgo and relay what she had told you?

MR CLARK: Yes, they are - they are close time-wise.

MR SELLER: But you say that - sorry, I withdraw that. Is it correct that, to
40 your observation, Mr Virgo acted upon all the information that he was receiving both from you and Ms Sheiles in October 2018?

MR CLARK: Yes.

MR SELLER: I think you suggest in your Commission statement that your
45 understanding was that he was in communications with the police about -

MR CLARK: That's my understanding.

MR SHELLER: Yes, those are my questions. Thank you.

COMMISSIONER: Yes, Ms Ghabrial.

5

MS GHABRIAL: Commissioner, if I may just ask this question.

<EXAMINATION BY MS GHABRIAL:

10 **MS GHABRIAL:** Mr Clark, in your time as a Correctional Officer, have you or are you aware of any training or education that's been provided to Officers about protections in place for people working in the public sector, like Correctional Officers, under the Public Interest Disclosures Act 1994?

15 **MR CLARK:** Not to my knowledge.

MS GHABRIAL: And that's otherwise known as the Whistleblowers' Legislation.

MR CLARK: No.

20

MS GHABRIAL: Any - nothing along those lines?

MR CLARK: Not to my knowledge.

25 **MS GHABRIAL:** Has there been any information or education or training or any mention to Correctional Officers, to your knowledge, about the recent replacement of the Public Interest Disclosures Act 1994 with a new Act called the Public Interest Disclosures Act 2022 which came into force on 1 October this year that provides greater protections for what's otherwise known as Whistleblowers in the public sector? Any information about that?

30

MR CLARK: No, that's the first I've ever heard of that.

MS GHABRIAL: Nothing further, Commissioner. Thank you.

35

COMMISSIONER: No one else? Yes. Thank you, Mr Clark. You are excused.

MR CLARK: Thank you, your Honour.

40 **<THE WITNESS WAS RELEASED**

MR LLOYD: Commissioner, the next witness is Stephen Virgo. I'm very happy to start him now if it's convenient. He won't finish by lunch.

45 **COMMISSIONER:** No, start him now.

MR LLOYD: I call Stephen Virgo. His Commission statement is behind tab 64A in volume 7.

5 **COMMISSIONER:** Please remain standing, Mr Virgo. Will you take an oath on the Bible or an affirmation?

MR VIRGO: An affirmation, please, Commissioner.

10 <**STEPHEN VIRGO, AFFIRMED**

COMMISSIONER: Thank you. Take a seat.

<**EXAMINATION BY MR LLOYD:**

15 **MR LLOYD:** What is your name?

MR VIRGO: Stephen Virgo.

20 **MR LLOYD:** Your address is known to the Commission. In that folder in front of you, Mr Virgo, can you try and find tab 64A. Do you need some help?

MR VIRGO: It ends at 63.

25 **MR LLOYD:** Can I approach - or can Ms Davidson approach?

MR VIRGO: Yes.

30 **MR LLOYD:** Have a look at that document. That's a statement that you made to this Commission on 13 September 2023?

MR VIRGO: That's right.

MR LLOYD: And in that statement, you're telling the truth?

35 **MR VIRGO:** Yes, I am.

MR LLOYD: And you made a statement to the police on 17 June 2020?

40 **MR VIRGO:** Yes.

MR LLOYD: And in that statement, you're also telling the truth?

MR VIRGO: I was.

45 **MR LLOYD:** You just need to keep your voice up.

MR VIRGO: Okay.

MR LLOYD: It's being recorded. Your answer to that question was "yes"?

MR VIRGO: Yes. Yes.

5

MR LLOYD: I tender those statements together, Commissioner.

COMMISSIONER: They will be exhibit 9.

10 <**EXHIBIT 9 TENDERED AND MARKED**

MR LLOYD: Could I just ask you to have regard to your statement to the Commission, the tab 64A one that hopefully is still open in front of you. You came to Dillwynia at the start of September 2018?

15

MR VIRGO: 3 September 2018, yes.

MR LLOYD: And you'd worked at other Centres before then?

20 **MR VIRGO:** Yes, I have.

MR LLOYD: When did you start in Corrective Services New South Wales?

MR VIRGO: July 1989.

25

MR LLOYD: How many places have you worked at in terms of different Centres over that period of time?

MR VIRGO: Approximately 13 or 14.

30

MR LLOYD: I just need to understand - in paragraph 6, you had done some work at Dillwynia prior to your arrival in - on 3 September 2018?

35 **MR VIRGO:** Yeah, I did two or three years as a Senior Correctional Officer there, intermittently. I worked at other Centres at that time.

MR LLOYD: Was that more casual-type work?

40 **MR VIRGO:** No, no, no. I was a Senior Prison Officer, but I got promotions as - on a temporary basis at Geoffrey Pearce and Ivanhoe Correctional Centres.

MR LLOYD: So between 2012 and 2015, you worked at more than one Centre -

MR VIRGO: Yes.

45

MR LLOYD: - but one of those was Dillwynia?

MR VIRGO: Yes.

MR LLOYD: Just dealing with what you noticed about Dillwynia when you arrived back there on 3 September 2018, would you describe the culture there, just at that level of generality at the moment, as being different from the other places you'd worked?

MR VIRGO: No, not really.

MR LLOYD: What did you notice about the culture there? How would you describe it as at 3 September 2018 or the period shortly after that?

MR VIRGO: As I worked there before, I knew some people there and no different to when I worked there previously.

MR LLOYD: Did you think that in terms of the management of the facility, obviously putting yourself to one side, that it was being properly governed?

MR VIRGO: I - Shari Martin was the Governor at Emu Plains, the Centre I was at prior to going to Dillwynia, and I hadn't had a problem.

MR LLOYD: You hadn't had a problem with her?

MR VIRGO: No.

MR LLOYD: What about other people within senior management who were at Dillwynia as at September 2018?

MR VIRGO: No.

MR LLOYD: No previous problems?

MR VIRGO: No.

MR LLOYD: Did you notice anything about the management in the period after you arrived about whether they appeared to be doing a good job?

MR VIRGO: As I'd just come back from the Centre, some - some of the management would have been moved to other Centres due to the deletion of the Chief rank. So there might have been a little bit of angst, if you will, of people that had been there didn't get promoted, so they were moved to other Centres. Other than that, all the management were fine with me. No problem.

MR LLOYD: Did you - I'll come to the detail, but pretty shortly after you arrived, do you remember having a discussion with Officer Glenn Clark?

MR VIRGO: On or - yes. Early October, I do believe.

MR LLOYD: And within about a month of you being there, some things were being told to you about the conduct of Astill?

5 **MR VIRGO:** Only by Trudy Sheiles, an inmate there. She asked Mr Clark if I'd come and speak to her. I did that. She divulged some horrendous facts.

MR LLOYD: And facts that you understood when they were told to you that had -

10

MR VIRGO: Accusations at that time. Yeah.

MR LLOYD: But things that had occurred some time ago?

15 **MR VIRGO:** Yeah. Over a period of years, yeah.

MR LLOYD: Just - I will come to the detail, but just when that occurred, that is, you were being told shortly after you arrived what you've described, horrendous things -

20

MR VIRGO: Yep.

MR LLOYD: - by Trudy Sheiles that had happened some - maybe years ago -

25 **MR VIRGO:** Yes.

MR LLOYD: - did you wonder why it was that they were only coming to light, on your understanding, shortly after you got there?

30 **MR VIRGO:** Yeah, I didn't know at that time whether she'd reported it previously to other management or - or this - had to divulge it to me now. I wasn't sure.

MR LLOYD: You came to find out at some point that she hadn't divulged it to management previously?

35

MR VIRGO: Only talking to detectives after the fact, yeah.

MR LLOYD: When you found that out, that she hadn't divulged it, did you think about why it might be that she hadn't divulged things that had been going on for years until you arrived?

40

MR VIRGO: Yeah, it surprised me because I wasn't there. I only started acting in the intel role probably a week or two weeks prior to her divulging that information to me, yeah.

45

MR LLOYD: Did you think when you found out that these things had not been told to management over a period of what you've told us, years, that that spoke of a problem with management at Dillwynia?

5 **MR VIRGO:** I'm not sure what - whether something had been brought up by staff or other inmates and whether it had been reported or not.

MR LLOYD: But the promotion that you got that took you back to Dillwynia in September '18, that was to run the Intelligence Unit?

10

MR VIRGO: That's correct, yeah.

MR LLOYD: In terms of that unit within the gaol, you tell us at paragraph 8 of your Commission statement that you didn't have any staff reporting to you?

15

MR VIRGO: No. No.

MR LLOYD: You ran it on our own?

20 **MR VIRGO:** That's correct, yeah.

MR LLOYD: You took that position over from Deborah Wilson?

MR VIRGO: That's correct.

25

MR LLOYD: Could I ask you - you're still in that - or you're still at Dillwynia now?

MR VIRGO: I'm still at Dillwynia, in a different -

30

MR LLOYD: In a different role. What are you doing now?

MR VIRGO: Security.

35 **MR LLOYD:** You're the Functional Manager of Security?

MR VIRGO: Yeah.

40 **MR LLOYD:** The staffing for that Intelligence Unit, that is, being operated by you when you arrived with no one reporting to you, was that sufficient staff to do that job?

MR VIRGO: No. No. Not even close, no.

45 **MR LLOYD:** Just tell us a bit about the role in that Intelligence Unit that you took up when you arrived. What kinds of things did you do?

MR VIRGO: It's telephone monitoring, mail monitoring, weekend visits. You - you - you check all the - the visitors and inmates having visits for the weekend to see if there's any previous issues or drug introduction, things of that nature. Phone monitoring for inmates' progression for 6.2s on and off the complex, that's basically inmate progression. So - yeah.

MR LLOYD: Looking at CCTV footage where it was necessary?

MR VIRGO: That's the security function. I did do a bit of that whilst at intel, but that's actually the Functional Manager of Security's role.

MR LLOYD: How many people at Dillwynia are in that Intelligence Unit now?

MR VIRGO: Now? It's just one Functional Manager or SAS, and now there's been assigned a Senior Correctional Officer, Urinalysis, to assist.

MR LLOYD: So that unit that you went into, manned by you and you alone, in September of '18 is now manned by someone in your position but with some assistance?

MR VIRGO: Yes, from a Senior Correctional Officer. Yeah.

MR LLOYD: You said before something to the effect when I asked you about whether the resources within that unit when you arrived were enough. I think you said something like, "Not near enough."

MR VIRGO: Not near enough, I don't believe, no.

MR LLOYD: What about now?

MR VIRGO: No. I don't think so.

MR LLOYD: How many more people for the Intelligence Unit to be able to function properly would you need?

MR VIRGO: A minimum one. A minimum one. Because now with the introduction of the inmate tablets, inmates are making phone calls up until 10 o'clock at night. And they've now been extended from six-minute calls to 10-minute calls. That's a lot of phone monitoring to try and get through during - during the day.

MR LLOYD: When you say, "minimum one", you're saying minimum one extra person?

MR VIRGO: Yes. Yeah.

MR LLOYD: Can I ask you what you noticed about the Intelligence Unit that you inherited from Deborah Wilson. Did you make any observations about whether that unit had been run properly in the period before you arrived?

5 **MR VIRGO:** Not in my opinion. I - I run it different - differently to what Ms Wilson was doing. I do believe Ms Wilson had some relief staff that would - into that role when she was on leave or days off as well. Can I just put it - I'd run it different to what - what she - what she did, yeah.

10 **MR LLOYD:** When you talk about relief staff, this Commission has heard some evidence about Officers other than Ms Wilson who would be from time to time allocated the position on a particular shift of Intelligence Officer.

MR VIRGO: Correct.

15

MR LLOYD: You're aware of that practice?

MR VIRGO: Yes.

20 **MR LLOYD:** This Commission has also heard some evidence of one particular event where Wayne Astill was filling in that position for a particular shift, and an intelligence report about him was referred to him in that capacity.

MR VIRGO: I have heard that. I - I wasn't there, obviously for it.

25

MR LLOYD: No, no. Take it from me that there's some evidence about that. I want to get you to tell us about the staffing arrangements for that unit. That sounds like a bad system to have staff coming in and filling in, in circumstances where reports might actually be made about them.

30

MR VIRGO: In my experience and at my request, if you like, I have another Senior Assistant Superintendent with intel access, the I - integrated intelligence system access, and you'd like to trust that then people would do a good job on your days off, yeah.

35

MR LLOYD: Did the position after you arrived at Dillwynia in September '18 change in terms of staff in a temporary way performing the function of Intelligence Officer?

40 **MR VIRGO:** Yes, I was the only one doing it.

MR LLOYD: So there was no system of the kind that -

MR VIRGO: No.

45

MR LLOYD: - was in place beforehand where they'd do it on a temporary basis?

MR VIRGO: No, that position is actually a five and seven day position. So on my days off, that wouldn't be manned.

5 **MR LLOYD:** So no one was doing that job when you weren't there?

MR VIRGO: No. No.

MR LLOYD: It doesn't sound like a good system either.

10 **MR VIRGO:** I've - I caught up.

MR LLOYD: You just added more resources for perhaps someone dedicated to that unit to be there when you weren't there?

15 **MR VIRGO:** Yeah. You could have a Senior Correctional Officer with intelligence access to act in your role. That would happen occasionally, I'd say, but not - not frequently, no.

20 **MR LLOYD:** Could you just try and help us with the rank structure in paragraph 14. You've set that out there.

MR VIRGO: Yep.

25 **MR LLOYD:** The Manager of Security position, is that now replaced by the title Functional Manager of Security?

MR VIRGO: No. Manager of Security we have and also a Functional Manager of Security.

30 **MR LLOYD:** Does the Functional Manager come underneath the Manager of Security in the chain?

35 **MR VIRGO:** That's correct. Manager of Security is directly under the Governor. Yep.

MR LLOYD: Could I ask you some things about the complaint system. And again, Mr Virgo, I'm going to ask you about the system that existed, to your knowledge, at the time that you first arrived at Dillwynia.

40 **MR VIRGO:** Right.

MR LLOYD: So September '18. That is, the system at that time for complaints by inmates.

45 **MR VIRGO:** Inmate complaints or staff?

MR LLOYD: Correct. Inmate complaints.

MR VIRGO: Inmates. I believe it's not too dissimilar now. The CSSL line, the Ombudsman, on all - all on the offender telephone system, and the Official Visitor coming into the Centre.

5

MR LLOYD: So, that is, those options you've just mentioned, Ombudsman, the C -

MR VIRGO: CSSL.

10

MR LLOYD: CSSL?

MR VIRGO: Yeah, it's basically for inmate complaints. It's all free calls on the offender telephone system.

15

MR LLOYD: And the Official Visitor are all options?

MR VIRGO: Yes.

20

MR LLOYD: And were at the time that you arrived?

MR VIRGO: I believe so, yeah.

25

MR LLOYD: What about making a complaint in writing, that is, an inmate making a complaint - take a complaint of serious misconduct?

MR VIRGO: Serious misconduct?

30

MR LLOYD: By an Officer.

MR VIRGO: How I would do it or what was -

35

MR LLOYD: Well, what did you think was in place if an inmate said, "I want to make a complaint that's serious about an Officer"? What -

MR VIRGO: I would interview that inmate. I would - I would raise a report. I would forward that report to the Governor, but I would also upload that report, along with an intelligence report, to Investigations.

40

MR LLOYD: So let me just work through that. This is a complaint being made orally, that is, an inmate telling you, about serious misconduct by an Officer.

MR VIRGO: Yep.

45

MR LLOYD: You would make your own report?

MR VIRGO: Correct.

MR LLOYD: And who would you deliver that report to?

5 **MR VIRGO:** The Governor. And also, I would upload it to the intelligence system under the SIU function to Investigations.

MR LLOYD: Take a complaint of serious sexual misconduct by an Officer. Is it any different?

10 **MR VIRGO:** No.

MR LLOYD: So that is your understanding of the proper process as at September '18 for a complaint like that verbally to be made to an Officer, is they'd physically deliver a report that the Officer would prepare to the Governor?

15 **MR VIRGO:** Yes.

MR LLOYD: But they would also make a report using the SIU function to go to the - is it the -

20 **MR VIRGO:** Integrated Intelligence System, and that function itself goes to Investigations. Now, once you submit that report, you no longer have any control over it and a little notice comes on the screen to let you know that.

25 **MR LLOYD:** And if you click that SIU function, that report goes to the Corrections Intelligence Group?

MR VIRGO: That's correct.

30 **MR LLOYD:** But in a way which means the Governor does not know that you've made that report?

MR VIRGO: That's correct.

35 **MR LLOYD:** So there are two places where the report of the kind at the moment I'm asking you about would end up?

40 **MR VIRGO:** Out of courtesy you would inform the Governor verbally and give them a copy of your report and let them know that I've also uploaded this report on the IIS system to Investigations.

MR LLOYD: Did you have a view about whether Officers, at the time you arrived in September '18 at Dillwynia, knew about that SIU function?

45 **MR VIRGO:** A lot wouldn't, no.

MR LLOYD: I don't know if you heard Officer Clark's evidence that he just told us that he was not aware of the SIU function and he was not even aware of being able to make reports, that's back in the offending period by Astill, to the Corrections Intelligence Group?

5

MR VIRGO: That's probably correct.

MR LLOYD: Is that your experience or understanding with other Officers that similarly -

10

MR VIRGO: Some Officers have approached me. I've instructed them, "That's how you do it". There is no course unless you do the intelligence course, part of Corrective Services Intelligence Course. If you don't do that course, you probably wouldn't know about it, or if not instructed by senior staff.

15

MR LLOYD: You've mentioned the system as you understood it as - where there's a complaint made verbally to an Officer, which includes that Officer making a report to the Governor?

20

MR VIRGO: Yes.

MR LLOYD: What do you understand to be the position if the particular Officer has no faith or trust in the Governor?

25

MR VIRGO: Approach a manager that they do trust or contact police.

MR LLOYD: Could I ask you about paragraph 20 in your Commission statement. You refer there to:

30

"Officer misconduct reports or serious incident reports must be submitted to the Security Manager."

The position you're now in?

35

MR VIRGO: Yes.

MR LLOYD: How does that procedure of submitting those reports to the Security Manager differ from what you've just told us about, about bringing reports to the attention of the Governor?

40

MR VIRGO: This is in regards to paragraph 20 I'm talking about, inmate assaults and fights, and things of that nature.

MR LLOYD: Not complaints about Officers?

45

MR VIRGO: No. No.

MR LLOYD: And so is there a different system, or at least as at September 2018, is there a different system depending on whether the serious allegation was made between inmates as opposed to by inmates toward an Officer?

5 **MR VIRGO:** With my intelligence training, I go straight to the SIU function, and verbal reporting to the Governor. I'm - I'm not sure what other staff would do.

MR LLOYD: Do you think, just dealing with September 2018, that the information known, both to inmates and Officers about what to do when they
10 wanted to make or advance a complaint of misconduct by an Officer, was confusing?

MR VIRGO: Yeah, probably. Basic reporting would be to report up to your Governor. And, as I said, with my intelligence training, I reported it to SIU and
15 a verbal report - a verbal to my Governor that I've done - that I submitted that report.

MR LLOYD: You talk about the Security Manager liaising with police in relation to some reports. When would that happen?
20

MR VIRGO: I'd do that regularly in regard to inmate assaults, inmates want police action in regard to what's occurred to them. I verbally contact police and arrange for them to come out to interview inmates and wait for an evidence number in regard to that.
25

MR LLOYD: I will ask you some more things about this after the break, but can I just ask you about this: Moving forward to the position currently, as you understand it, if you have a situation where an inmate makes a disclosure verbally to an Officer of serious criminal conduct by another Officer, do you understand
30 what I'm talking about so far?

MR VIRGO: Yep.

MR LLOYD: What do you understand to be the system in place right now?
35

MR VIRGO: They're duty bound to report that.

MR LLOYD: Duty bound to report that to who?

40 **MR VIRGO:** To your Governor, to your manager, yeah.

MR LLOYD: And to the SIU?

MR VIRGO: Yes.
45

MR LLOYD: What about if the inmate, in making the verbal report says to the Officer, "I'm not prepared to make a formal complaint at this stage"?

MR VIRGO: The Officer is still duty bound to report that.

MR LLOYD: Are officers -

5

MR VIRGO: Even - even if it's a false allegation. Correctional Centre staff aren't there to investigate staff related issues. That is Investigations. So -

MR LLOYD: And so we're just dealing with this kind of situation about which we've heard some evidence -

10

MR VIRGO: Yeah.

MR LLOYD: - an inmate highly distressed making a disclosure of very serious sexual assault against a Senior Officer, telling that verbally to an Officer, saying to that Officer, "I do not want you to pass this on." Just pausing there: what's the training or instruction to Officers right now about how to manage a situation like that?

15

MR VIRGO: There isn't any.

20

MR LLOYD: Just leave it for themselves to guess as to what to do?

MR VIRGO: I couldn't tell you a course that I've done in regard to that. But over my service, that's what I'd do. In regards to other staff, I'm not sure whether there's any training in regard to that.

25

MR LLOYD: You've been working, as you've already told us, in a number of different Correctional Centres for many, many years.

30

MR VIRGO: Yes.

MR LLOYD: Just dealing with female prisoners, you must know there are a large range of female prisoners who themselves, in the period before they've been incarcerated, have been subject to very serious and distressing histories of being assaulted, including -

35

MR VIRGO: Yes. Domestic violence as well.

MR LLOYD: Including sexually?

40

MR VIRGO: Yep.

MR LLOYD: Child sexual abuse?

45

MR VIRGO: Yes.

MR LLOYD: Domestic violence?

MR VIRGO: Yep.

5 **MR LLOYD:** A whole range of factors known to those running Corrective Services that might have the capacity to inhibit inmates coming forward about complaints of sexual misconduct by Officers. Is that fair?

MR VIRGO: Quite possibly, yes.

10

MR LLOYD: A particular part of the community where particular care is required, would you agree, in dealing sensitively with situations where they are able to come forward?

15 **MR VIRGO:** Yes, I agree.

MR LLOYD: And you must be aware of concepts like trauma-informed approach to disclosures of -

20 **MR VIRGO:** Yes.

MR LLOYD: - behaviour of this kind?

MR VIRGO: Yes.

25

MR LLOYD: And Officers in a prison, in circumstances where inmates don't have other people readily available to them, loved ones, to make disclosures of this kind, might end up being the person who get disclosures made to them?

30 **MR VIRGO:** Possibly, yes.

MR LLOYD: You know from the facts here that's exactly what happened with Officer Clark, isn't it?

35 **MR VIRGO:** Yes.

MR LLOYD: Is there any training, even now, to the Officers about how they are to respond where a woman comes forward and discloses that they're being sexually abused by an Officer?

40

MR VIRGO: I can't think of a specific course, no. But there are courses online in regard to conduct and ethics and things of that nature. But in regard to dealing with - there is a course dealing with women in Corrections. I know that's a recent course that's - I haven't completed that as yet. But I do know that's available now. Sorry.

45

MR LLOYD: Does that course, to your knowledge, deal with this position that an Officer might be in of a distressed female inmate coming forward with a disclosure but being unwilling at that time to move the complaint forward?

5 **MR VIRGO:** I - I can't tell you the content of the course, Mr Lloyd. I haven't completed it as yet. So, I'm sorry, I can't (crosstalk).

COMMISSIONER: Mr Virgo, you speak of this course, and I assume there are other courses that Prison Officers undertake from time to time about different
10 matters?

MR VIRGO: That's correct, Commissioner, yes.

COMMISSIONER: Is there - are you required to fulfil these courses?
15

MR VIRGO: Yes, they're mandatory courses, your Honour.

COMMISSIONER: They're?

20 **MR VIRGO:** Mandatory courses.

COMMISSIONER: And is there a program, then, of mandatory courses that you are required to complete?

25 **MR VIRGO:** Yes. On the Corrective Services website, there's an app or a function called Thrive, and you go into that - that - that app. That will let you know what courses are due - that you have completed or ones that you need to - to re-complete.

30 **COMMISSIONER:** And are these courses that you do online, or do you attend together with other Officers at some educational establishment?

MR VIRGO: There's some online, Commissioner, and some that you attend.

35 **COMMISSIONER:** Which is the most effective, in your experience?

MR VIRGO: The attendance. The online you can sort of skip through.

COMMISSIONER: You can cheat a bit on the online?
40

MR VIRGO: A little bit.

COMMISSIONER: Okay. What's the majority of these courses - are they online, the majority?
45

MR VIRGO: I believe the majority are online, Commissioner. Yes, online.

MR LLOYD: Mr Virgo, you don't have to be shy in answering this. We've got some evidence that you were an Officer who was trusted and respected.

MR VIRGO: Yeah.

5

MR LLOYD: Can you tell us whether, in terms of your dealings with Officers right now at Dillwynia, whether you think they have any idea how to handle a situation of the kind I've just asked you about?

10 **MR VIRGO:** No. None.

MR LLOYD: That doesn't sound very good. Would you agree?

MR VIRGO: No, that's correct.

15

MR LLOYD: Running a women's prison with women with these kinds of histories, or some of them, that you've told us we all know about.

20 **MR VIRGO:** I believe 99 per cent of them would go to management for assistance with that.

MR LLOYD: And we live in a world where it's common knowledge, isn't it, that women who have been subject to highly distressing sexual assault often might be reluctant in coming forward and formalising the complaint?

25

MR VIRGO: Yes.

MR LLOYD: And you've got Officers, you're telling us, at Dillwynia who have got no idea how to deal with the situation?

30

MR VIRGO: I wouldn't believe they would, no.

MR LLOYD: I note the time.

35 **COMMISSIONER:** Very well. We'll take lunch.

<THE HEARING ADJOURNED AT 12.56 PM

<THE HEARING RESUMED AT 2.00 PM

40

COMMISSIONER: Mr Lloyd.

MR LLOYD: Thank you, Commissioner. Mr Virgo, can you take up your statement to the Commission in paragraph 28. 64A.

45

MR VIRGO: Yes.

MR LLOYD: At paragraph 28.

MR VIRGO: Yes.

5 **MR LLOYD:** Can I just ask you about one of the things you say in this paragraph. Before you came back to Dillwynia in September of 2018, you were the Intel Officer at Emu Plains?

MR VIRGO: That's correct.

10

MR LLOYD: Do you remember receiving calls from two Officers at Dillwynia asking how they could submit reports outside the Centre?

MR VIRGO: That's correct.

15

MR LLOYD: Those two Officers were Jean Dolly and Renee Berry?

MR VIRGO: Yes.

20

MR LLOYD: Did they tell you what it was that they wanted to report?

MR VIRGO: No.

25

MR LLOYD: Did they tell you anything about why it was that they wanted to make a report outside the Centre?

MR VIRGO: No. No none whatsoever.

30

MR LLOYD: Do you recall approximately when it was that they contacted you?

MR VIRGO: Approximately a few months before I arrived there. I couldn't tell you an exact - it was just a phone call.

MR LLOYD: Separate occasions?

35

MR VIRGO: Yes.

MR LLOYD: Do you know why they were coming to you?

40

MR VIRGO: I'd worked with them previously when I spent a bit of time at Dillwynia as a Senior. Other than that - plus which they knew I - I was an Intelligence Officer.

45

MR LLOYD: When you gave them the instruction, you say, over the phone about how to use the SIU function, did you get the sense that that was news to them?

MR VIRGO: I believe so, yes.

MR LLOYD: Could you have a look, please, at paragraph 30. You probably need to look at 29 in order to make sense of what you say at 30. Do you see that?

5 **MR VIRGO:** Yes.

MR LLOYD: Do we understand that to be you telling us that there's been no change, on your understanding, to the system in place at Dillwynia regarding reporting serious incidents -

10

MR VIRGO: No, I don't believe anything has -

MR LLOYD: - between September 2018 when you arrived back there and now?

15 **MR VIRGO:** I don't think so. I don't believe so, no.

MR LLOYD: Mr Virgo, can you just help us with this: that I suspect you know, from at least things you've been told, that one of the things that emerged is that between about 2015 and 2018, there was offending on a very significant scale by Astill of a sexual misconduct nature?

20

MR VIRGO: Yes.

MR LLOYD: Multiple women, multiple occasions?

25

MR VIRGO: Yes.

MR LLOYD: And I take it you know by now there's at least some evidence that an Officer or Officers were told about some of the things Astill was doing to women in the period before he came to be arrested?

30

MR VIRGO: I believe so, yes.

MR LLOYD: The fact that - if it's right, that Officers were told about sexual offending, and nothing happened in terms of it being dealt with within Dillwynia at the time it was occurring speaks of a failure. Do you agree?

35

MR VIRGO: Yes, I agree.

40 **MR LLOYD:** Somewhere - somewhere along the line, without saying whose fault it is, something has gone wrong?

MR VIRGO: Correct.

45 **MR LLOYD:** To find out now from what you say that in circumstances where it's now known that there's been a failure in that way - and you would agree that's a - that the women there have been failed?

MR VIRGO: Yes.

MR LLOYD: That there's no change in the system sounds surprising?

5

MR VIRGO: Yes, I believe the reporting of these incidents was available but just weren't used.

MR LLOYD: That is, the system was there, but Officers weren't told about it?

10

MR SHELLER: I object. I object. That's not a fair (indistinct).

MR LLOYD: I'll withdraw it and just do it in a different way. What do you mean by what you just said? The system was there -

15

MR VIRGO: I - I believe the systems were available, but whether staff weren't aware or didn't use those systems, I couldn't tell you.

MR LLOYD: But in any event, on your - on what you're telling us, there's been no identified need to change the system for reporting?

20

MR VIRGO: Not that I'm aware of, no.

COMMISSIONER: Mr Virgo - I can't remember precisely, Mr Lloyd. When was Mr Astill arrested?

25

MR LLOYD: In February of 2019.

COMMISSIONER: 2019?

30

MR LLOYD: 20 February.

COMMISSIONER: That's more than four years ago.

35

MR VIRGO: Yes.

COMMISSIONER: Has there been any attempt within Corrective Services to create a process to evaluate what might have gone wrong?

40

MR VIRGO: Not that I'm aware of, Commissioner, no.

COMMISSIONER: I mean, one would normally expect that some critical incident material might be gathered and analysed, but that hasn't been attempted?

45

MR VIRGO: I believe so, yeah.

COMMISSIONER: Yes, Mr Lloyd.

MR LLOYD: Thank you, Commissioner. Could I ask you to help us with paragraph 32. You're identifying there the Central Intelligence Group, being a separate unit comprising intel analysts, custodial staff and police officers?

5

MR VIRGO: Yes.

MR LLOYD: In terms of those intel analysts and custodial staff, they're Corrective Services people?

10

MR VIRGO: Yes, I believe so.

MR LLOYD: And the police officers sit, on your understanding, physically in the same place as those -

15

MR VIRGO: Yes, I - I believe they're attached to Corrective Services.

MR LLOYD: And the people within that group, the CIG, field complaints that might be sent out of particular prisons in the way you've told us about?

20

MR VIRGO: Yes.

MR LLOYD: That is, complaints which would include serious matters?

25

MR VIRGO: Yes, I believe so. Yeah.

MR LLOYD: Can I just ask you about something that Mr Clark told us before you came along and started giving evidence, that he might have some more faith in terms of making complaints outside the gaol to people who were completely independent of Corrective Services?

30

MR VIRGO: That's possible, yes.

MR LLOYD: When you say "possible", I wanted to get your view on whether you think that it would be something that might increase the likelihood of complaints of serious misconduct being passed on by Officers if there was somewhere to go outside the gaol that was completely independent of Corrective Services?

35

40 **MR VIRGO:** Yeah, I believe it would. Yes.

MR LLOYD: Do you think that might instil confidence?

MR VIRGO: Yes.

45

COMMISSIONER: Presumably that's what the Ombudsman process is supposed to achieve; is that right?

MR VIRGO: Yes. And the Official Visitor, I believe, has a - reports - or can report directly to the Commission's office.

5 **COMMISSIONER:** And the Official Visitor is responsible to the Inspector; is that right?

MR VIRGO: I think so, yes.

10 **COMMISSIONER:** So those processes are there?

MR VIRGO: Yes.

COMMISSIONER: The question is whether they're being used or -
15

MR VIRGO: Being used correctly in this instance.

COMMISSIONER: - whether they are effective. Yes.

20 **MR VIRGO:** Yeah.

MR LLOYD: And with the Official Visitor, is that service, as you understood it or understand it now, one that was really intended to be available to women, as in, inmates?
25

MR VIRGO: I believe Official Visitors are at all Correctional Centres, so men and women.

MR LLOYD: But is the Official Visitor, on your understanding, available to staff to make complaints?
30

MR VIRGO: Yes, they are.

MR LLOYD: So the Official Visitor, on your understanding, should be there to field complaints of serious misconduct by both inmates and staff?
35

MR VIRGO: That's correct.

MR LLOYD: Could I ask you to look at paragraph 34.
40

MR VIRGO: Yep.

MR LLOYD: This is an intel report being received within the gaol, and you're asked whether that gets disseminated to the CIG, and you say:
45

"Yes. All reports are uploaded onto the integrated intelligence system database."

MR VIRGO: That's correct.

5 **MR LLOYD:** Now, does that mean if an intelligence report is received by the Intel Officer at Dillwynia that it gets uploaded onto that database and is able to be seen by other people at Dillwynia?

10 **MR VIRGO:** General - they're classed as general intelligence reports. SIU reports aren't on that database.

MR LLOYD: In terms of the Intel Officer, that person has got the same option available that you've told us about -

15 **MR VIRGO:** Correct.

MR LLOYD: - of creating a confidential report -

MR VIRGO: Correct.

20 **MR LLOYD:** - by clicking the SIU function?

MR VIRGO: That's correct.

25 **MR LLOYD:** Can I ask you, then, to go forward to paragraph 51 in this statement. I'm moving forward in time, Mr Virgo, to the occasion when you were first approached by Glenn Clark about the disclosures made by Trudy Sheiles.

MR VIRGO: Yes.

30 **MR LLOYD:** That happened on 5 October 2018?

MR VIRGO: That's correct.

35 **MR LLOYD:** And you were told that there was an inmate, being Ms Sheiles, that wanted to speak to you?

MR VIRGO: That's correct.

40 **MR LLOYD:** And it was a sensitive matter?

MS DAVIDSON: Yes.

MR LLOYD: And you went and spoke to her?

45 **MR VIRGO:** Yes, I did.

MR LLOYD: And she told you that she had been sexually assaulted by Astill?

MR VIRGO: Correct.

5 **MR LLOYD:** Obviously a matter of extreme seriousness, what you were being told?

MR VIRGO: Yes.

10 **MR LLOYD:** You've made a record in writing about dates and times on a notepad?

MR VIRGO: Yes, rough - rough -

15 **MR LLOYD:** And I'm not being critical. You don't have a copy of that?

MR VIRGO: No, no.

20 **MR LLOYD:** In terms of the information that you were given by Ms Sheiles on this occasion, you determined that you needed to do something about it?

MR VIRGO: Correct.

25 **MR LLOYD:** Was there a discussion between you and her about whether she was happy for you to go ahead and advance the complaint?

MR VIRGO: No, she informed me pretty much straightaway that she was happy to speak to me and - and make a statement.

30 **MR LLOYD:** Judging from something you told us before lunch about a complaint of this seriousness being made verbally, was your position that even if she was not prepared to go ahead and make a statement in writing that you were bound to do something about it?

35 **MR VIRGO:** Yes. Correct.

MR LLOYD: If she was not prepared to go ahead, what were the options available to you, do you think?

40 **MR VIRGO:** I would have submitted the report anyway, whether it be a false allegation or, as it turns out, misinformation. I lodge - I lodge that.

MR LLOYD: Lodge it - well -

45 **MR VIRGO:** Via - via the integrated intelligence system, yeah.

MR LLOYD: Can I ask you to turn up tab 64. This is your police statement. And if you can just go -

MR VIRGO: I'm sorry, it ends at 63.

5 **MR LLOYD:** No, that's - could Ms Davidson approach? It's tab A behind 64.

MR VIRGO: Okay.

10 **MR LLOYD:** That document behind tab A in tab 64 is the intelligence report that you submitted?

MR VIRGO: Yes.

15 **MR LLOYD:** Do you see the incident date you've recorded there, 9 October 2018?

MR VIRGO: That's correct.

20 **MR LLOYD:** Is it easy - I withdraw that. Was it easy for you to access the form in order to type in the information?

MR VIRGO: I started the report on that day. I didn't complete it until the following Monday, I believe, or Tuesday.

25 **MR LLOYD:** Is what happened that you left it with Ms Sheiles on 5 October -

MR VIRGO: Friday afternoon about 4 o'clock - 3 o'clock - 4 o'clock, I believe.

MR LLOYD: At that point, she was still reluctant to come forward?

30 **MR VIRGO:** Yeah.

MR LLOYD: You arranged to see her again?

35 **MR VIRGO:** Yes.

MR LLOYD: But what she was saying is she wanted to be moved out of Dillwynia before she made the statement?

40 **MR VIRGO:** That's correct. Yeah.

MR LLOYD: And then the next time you came back, she had in fact been moved?

45 **MR VIRGO:** She was gone, yes.

MR LLOYD: And at that point, she's out of the gaol. She's told you what you told us she told you on the 5th. You determined that it was necessary for you to make the report?

5 **MR VIRGO:** Correct.

MR LLOYD: And just talk us through some parts of the document. The information on the first page here:

10 "Name: Witness H."

That's now Trudy Sheiles.

15 **MR VIRGO:** Yes.

MR LLOYD: And by this time, you've recorded where she'd been moved to?

MR VIRGO: Yes.

20 **MR LLOYD:** And the information category:

"Primary SIU."

25 Just pausing there, does that indicate you've clicked the SIU function?

MR VIRGO: Correct. Yes.

30 **MR LLOYD:** So this is you determining that this is - that the circumstances of this disclosure to you warranted a confidential complaint in the form of this report being made to the CIG?

MR VIRGO: Correct.

35 **MR LLOYD:** And it wouldn't have gone to the Governor?

MR VIRGO: No.

MR LLOYD: The information you've got there:

40 "Inappropriate sexual conduct, offender in custody."

MR VIRGO: Yes.

45 **MR LLOYD:** And if you go over the page, there's more information that you've recorded under that heading Information. Do you see that?

MR VIRGO: Yes.

MR LLOYD: And without taking you through each line, you tell us in your statement to this Commission that you were reluctant to include all of the details that she had told you at this point?

5

MR VIRGO: Yes, I wanted her to speak directly to police in regard to it.

MR LLOYD: And that was your belief, that that was going to happen -

10 **MR VIRGO:** Yes.

MR LLOYD: - because she'd been moved out of the gaol, and you thought the police were -

15 **MR VIRGO:** I - I knew they were, yes.

MR LLOYD: And yet after you submitted this report, you had a discussion with Michael Hovey?

20 **MR VIRGO:** Correct.

MR LLOYD: And what was that discussion?

25 **MR VIRGO:** In regard to a - a serious intelligence report that I'd submitted and that he needed to have a look at it.

MR LLOYD: Did you tell him all of the details that Trudy Sheiles had told you?

30 **MR VIRGO:** Yes. Well -

MR LLOYD: That is, more information than was in the written document?

35 **MR VIRGO:** No. Information in the written document is - like, Trudy Sheiles didn't divulge all the sexual offending, but the majority of it, I think.

MR LLOYD: She told you about serious sexual offending?

MR VIRGO: Yes. Yes.

40 **MR LLOYD:** Did you tell that to Michael Hovey when you spoke to him?

MR VIRGO: Yes.

45 **MR LLOYD:** But is what happened in that telephone discussion that you both were of the view that the police were now investigating?

MR VIRGO: Yes, I was contacted pretty much frequently by the detectives that actually covered the case, as I'd dealt with one of them before.

5 **MR LLOYD:** So the state of satisfaction you got on to 9 October or thereabouts was that what Trudy Sheiles had told you was being pursued?

MR VIRGO: Yes. Correct.

10 **MR LLOYD:** Do you know, just going back to the first page, about the evaluation response?

MR VIRGO: No. Once I submit that document, I don't get to see it or touch it again.

15 **MR LLOYD:** That's not your entry, the two F6s, I take it?

MR VIRGO: No. That's - that'd be Investigations.

20 **MR LLOYD:** It's put on after -

MR VIRGO: Yes.

MR LLOYD: - you - it leaves your -

25 **MR VIRGO:** Yes. I - I think they evaluate the information, and - and they go from there.

MR LLOYD: Do you remember being told of allegations that an inmate, Sarah Ward?
30

MR VIRGO: I believe so.

MR LLOYD: Similar kind of allegations?

35 **MR VIRGO:** No, not as - I don't think as - as severe as - as this, no.

MR LLOYD: But sexual assault by Astill nonetheless?

40 **MR VIRGO:** I believe so, yes.

MR LLOYD: What did you do about those allegations?

45 **MR VIRGO:** I can't remember whether I submitted a report or just contacted - as I knew the detectives, they had already started an investigation regarding Ms Sheiles. I can't remember whether I submitted a - a report or contacted the detectives by phone.

MR LLOYD: Either way, you contacted someone about it?

MR VIRGO: Yes. Yes.

5 **MR LLOYD:** Do you remember an occasion where she came along to speak to detectives?

MR VIRGO: No. No.

10 **MR LLOYD:** You weren't involved -

MR VIRGO: No. No. The involvement I would have from there would be to escort the inmate to the room, and they would take it from there.

15 **MR LLOYD:** Could I ask you some things - some more things about Deborah Wilson and the work she'd been doing as Intelligence Officer at Dillwynia before you arrived.

MR VIRGO: Yeah.

20

MR LLOYD: You've already told us you took over from her?

MR VIRGO: Yes.

25 **MR LLOYD:** There was a handover?

MR VIRGO: Yes.

30 **MR LLOYD:** You've dealt with that in paragraph 48 of your statement to the Commission?

MR VIRGO: Yeah.

35 **MR LLOYD:** If you need to just remind yourself -

MR VIRGO: No.

40 **MR LLOYD:** You remember it? Do I take it from the fact that you remember it might be because you've got a good memory, or it really sticks in your memory?

MR VIRGO: A little bit, yes.

MR LLOYD: A little bit that it sticks -

45 **MR VIRGO:** A bit of both.

MR LLOYD: It was pretty extraordinary?

MR VIRGO: It wasn't a - a - a detailed handover, if I could put it that way. It was basically, "Watch out for Astill. He's up to no good." And that was basically the handover.

5

MR LLOYD: Can you just help us with this: The position you're describing of the Intelligence Officer within a gaol, it sounds like an important position if the gaol is to run properly?

10 **MR VIRGO:** I believe so, yes.

MR LLOYD: One of the things you've told us about that the person in that position does is to monitor the outgoing and incoming mail?

15 **MR VIRGO:** Yes, that's correct.

MR LLOYD: And it's necessary to do that in order to keep ahead of any things that the -

20 **MR VIRGO:** Any wrongdoings inmates or staff might be doing, yeah.

MR LLOYD: Say that again?

25 **MR VIRGO:** Any wrongdoings, inmates, and - and - and any complaints about staff. You can hear inmates - if they have - what's the word? If they discuss staff on the phone or if they're going to hurt staff or whatever, it's - it's - it's good for an all-round picture on what's going on in the Centre.

30 **MR LLOYD:** Is one of the things in terms of letters - correspondence that the Intel Officer is to do, if they're doing their job properly, to keep a particular lookout for any allegations that inmates may be making about staff members?

MR VIRGO: Yes.

35 **MR LLOYD:** Is that what you're telling us?

MR VIRGO: That's correct, yeah.

40 **MR LLOYD:** Allegations of any kind?

MR VIRGO: Any kind, yeah.

MR LLOYD: Aside from legal mail, that is, by mail by inmates to their lawyers -

45 **MR VIRGO:** Yes.

MR LLOYD: - is a part of the job of an Intel Officer to read all of that correspondence?

5 **MR VIRGO:** Anything from the Ombudsman, no. Basically families, friends, that nature. But usually - you can't go through every letter. So you have a - a targeted list of inmates that have previously been up to no good, and you keep an eye on them.

10 **MR LLOYD:** I'll ask you some things about the contents of some correspondence in one moment, but can I just take you back to the handover. How long did it go for?

MR VIRGO: 15 seconds.

15 **MR LLOYD:** I take it your view was that that was an inadequate handover?

MR VIRGO: Pretty much. With - with now knowing what was going on at the place, it's horrendous.

20 **MR LLOYD:** What do you mean by that?

MR VIRGO: Knowing that Astill had been sexually assaulting a number of inmates, bullying and harassing staff, things - that's, yeah, not a good handover.

25 **MR LLOYD:** So in terms of the extremely short handover that you've just described, you've identified in paragraph 48 that the only thing Ms Wilson - that's Ms Deborah Wilson - thought to tell you was, "Watch out for Astill. He's up to no good"?

30 **MR VIRGO:** Pretty much.

MR LLOYD: Did she tell you what form of "no good"?

MR VIRGO: No.

35

MR LLOYD: No details?

MR VIRGO: No details, no.

40 **MR LLOYD:** No information about where to look for any relevant documentary evidence or which inmates to speak to?

MR VIRGO: No.

45 **MR LLOYD:** Or which inmates to look out for?

MR VIRGO: No.

MR LLOYD: Any information about investigations that she was aware of that had been done?

5 **MR VIRGO:** No. None of that, no.

MR LLOYD: No details at all?

MR VIRGO: No.

10

MR LLOYD: Just, "He's up to no good."

MR VIRGO: Yeah.

15 **MR LLOYD:** And you came, in your discussions with Mr Clark, to find out pretty shortly after what kinds of things she might have been -

MR VIRGO: Horrendous activities, yeah.

20 **MR LLOYD:** Could I just ask you about some things that this Commission has heard some evidence about in terms of information that was available to the Intelligence Officer at Dillwynia in the period of Astill's offending, that is, in the period before you arrived.

25 **MR VIRGO:** Yep.

MR LLOYD: If an inmate wrote a letter saying that Astill, or someone who could easily be identified as being Astill even if he wasn't named, was having a fling with an inmate, is that the kind of thing that would have come to the attention of the Intel Officer?

30

MR VIRGO: Straightaway. Yep.

MR LLOYD: Serious red flag -

35

MR VIRGO: Yes.

MR LLOYD: - that something needs to be looked at?

40 **MR VIRGO:** Yes.

MR LLOYD: What, if the person in that position of Intel Officer is acting properly, should happen next after that's been read and noticed?

45 **MR VIRGO:** Create a report for the Governor and - and SIU intelligence report.

MR LLOYD: Just so I can understand, then, that is the kind of thing you'd expect to be noticed, I think you've said?

MR VIRGO: Yeah.

5

MR LLOYD: And if it was noticed of such seriousness to warrant both a report to the Governor and the confidential report using the SIU function?

MR VIRGO: Yes.

10

MR LLOYD: Could I ask you this about that letter, and this might apply to some other examples I might ask you about: would it be the job, in the period before you arrived at Dillwynia, of the Intel Officer to conduct some kind of internal investigation about that or just make the report?

15

MR VIRGO: As an Intel Officer, I don't investigate staff. It's not my role. But you're duty bound to report anything like that and then the Investigations can decide - and can have a look at it and decide whether it's - it's right or not.

MR LLOYD: If the - either the Intel Officer or other people in management at the gaol are doing their job properly with an allegation like that, do we understand what you've just said to us to mean that the staff within the gaol ought not conduct their own investigation about an allegation like that; it should be reported using the SIU function out of the gaol?

25

MR VIRGO: Straightaway. Yes.

MR LLOYD: Also report it to the Governor?

MR VIRGO: Yes.

30

MR LLOYD: But not for the gaol - or the people within the gaol -

MR VIRGO: No.

35

MR LLOYD: - to conduct their own investigation?

MR VIRGO: No. No.

MR LLOYD: So that is, the system, operating properly, is one where, if allegations come to the attention of staff, the allegations get referred out before there's any kind of internal investigation?

40

MR VIRGO: That's - that's correct, yes.

45

MR LLOYD: Would the same kind of thing apply, then, if I asked you to assume there's a group of inmates coming to the person in the Intelligence Officer's

position raising a range of complaints about inappropriate conduct by Astill, including inappropriate sexualised conduct? That is -

5 **MR VIRGO:** That - that's straightaway a report.

MR LLOYD: Straightaway a report -

MR VIRGO: SIU intelligence report.

10 **MR LLOYD:** And to the Governor?

MR VIRGO: Yes.

15 **MR LLOYD:** What about if there was a position that the Governor was thought not to be worthy of trust, would there be an occasion where it would be the SIU report that kind of information?

20 **MR VIRGO:** Me personally, I've never done that. I've always given the Governor the respect of letting them know what's - the intelligence report goes in regardless.

MR LLOYD: And what about this scenario - I'll just ask you to assume this occurred - two inmates coming in and informing the Intel Officer that Astill had been guilty of sexual touching of one or more inmates. Is that another immediate report?

25 **MR VIRGO:** Yes.

30 **MR LLOYD:** What about if, in the context of those allegations being passed on to the Intel Officer, the inmate or inmates coming and passing on the information said they had a document in the form of notes recording or referring to the allegations? What should the Intelligence Officer do when told about that documentary record?

35 **MR VIRGO:** I would photocopy it, scan it and attach it to my SIU intelligence report.

40 **MR LLOYD:** One of the concerns might be if there was a record held by inmates in the gaol and an Officer the subject of the commentary in the report, like Astill, who was a bully, who intimidated them, is that if he found it, there might be serious trouble.

45 **MR VIRGO:** Well, again, it's the inmates' private document. You'd ask them if they wanted it sent out of the gaol to a - to a legal representative or - or whatever, but I'd go through the Governor for that.

MR LLOYD: If, in order to protect the inmates from that kind of risk of their cell being ramped and Astill discovering the document, there was advice given to send

it outside the gaol, then the Intelligence Officer, acting properly, I take it what you're saying to us, would make sure that that person retained a copy for themselves?

5 **MR VIRGO:** I - I would have scanned a copy, reported it to SIU, and I would have contacted them in regard to what they want me to do with that document.

MR LLOYD: Would asking the inmates - the Intel Officer in this position - whether they wanted to shred the documentary record ever be
10 acceptable?

MR VIRGO: No. I would never do that, no.

MR LLOYD: What do you do - if I ask you to assume this - ask you to assume
15 the same things, that report document -

MR VIRGO: Yeah.

MR LLOYD: - that the information in the document is brought to the attention of
20 the Governor, and the Governor resolves to do nothing?

MR VIRGO: I've already reported it to Investigations, so I'd seek advice from them.

25 **MR LLOYD:** As in, bypass the people within the gaol -

MR VIRGO: Yep.

MR LLOYD: - and go to the office -
30

MR VIRGO: Yep. The CIG.

MR LLOYD: The CIG.

35 **MR VIRGO:** So they're there for advice as well as dealing with reports.

MR LLOYD: Can I ask you about a different category of knowledge. I've asked you here about some examples with respect to disclosures, that is, direct disclosures of things, either in the form of correspondence or women coming
40 forward and saying that there's been inappropriate sexual touching.

MR VIRGO: Yep.

MR LLOYD: I want to ask you about a different category. What about
45 information, that is, more generalised information, for example, like, common talk widely discussed amongst Officers that a particular Officer was a sleaze or was inappropriate with women? That is, not specific allegations, but just talk.

MR VIRGO: That's - I'd - I'd report that also, just - smoke, there's fire. But that's for the Investigations Branch to work out whether there's any truth in that or not.

5 **MR LLOYD:** And so is that kind of thing - just information in terms of discussions, rumours of that kind, would that warrant an SIU function report also?

MR VIRGO: Yes. I'd do that, yes.

10 **MR LLOYD:** Would the same apply if there was widely - if there were widely circulating rumours that a particular Officer was bringing drugs into the gaol?

MR VIRGO: That would be a SIU and - yeah, that'd be an SIU straight up.

15 **MR LLOYD:** Dealing with the position now, the Investigations and Professional Services Branches have been combined?

MR VIRGO: Yeah.

20 **MR LLOYD:** Yes?

MR VIRGO: Yes. Yes.

25 **MR LLOYD:** Have you had experience of the way that they deal with complaints of serious misconduct by Officers?

MR VIRGO: No, I haven't. That's just recently occurred, and I've been out of the intel role for a year and a half now.

30 **MR LLOYD:** In the previous existence when you made those - I withdraw that. Did you make reports, other than the two - or the one I've asked you about with respect to Trudy Sheiles, to the CIG of serious misconduct by Officers?

MR VIRGO: No.

35

MR LLOYD: Did you know other people who had made reports to the CIG?

MR VIRGO: I couldn't tell you.

40 **MR LLOYD:** So I take it from that, you can't tell us whether you think that they were any good at their job?

MR VIRGO: Surely if someone had put a sexual misconduct intelligence report to CIG, the staff there would have picked that up. Surely.

45

MR LLOYD: What about a different issue with an Intelligence Officer receiving reports or information of the kind? You know that there was - there's CCTV footage?

5 **MR VIRGO:** There is?

MR LLOYD: Yes. Within the gaol?

MR VIRGO: There is, yes.

10

MR LLOYD: And you know that after a period of time, it gets erased?

MR VIRGO: I'm not sure of the period of time. We've got a new system now that that doesn't occur.

15

MR LLOYD: Whatever the period of time, if there are complaints made that come to the attention of the person in the Intelligence Officer position about serious misconduct, is one of the things that they need to do to immediately seek to preserve any CCTV footage?

20

MR VIRGO: Guaranteed, yes.

MR LLOYD: So you can immediately - just doing the position now, you can immediately move to preserve that footage?

25

MR VIRGO: Yes.

MR LLOYD: For however long it's retained?

30 **MR VIRGO:** Yes. And you can attach that to an SIU report as well, footage.

MR LLOYD: As in - I'm sure the way I put this will be inaccurate, but download in, what, a digital form -

35 **MR VIRGO:** Yes.

MR LLOYD: - the footage from the relevant period and attach that to your report?

40 **MR VIRGO:** Yes, you can attach that to a SIU report.

MR LLOYD: And in terms of serious allegations of the kind I've been asking you about, is that something that the Intelligence Officer ought to be doing, is going back and -

45

MR VIRGO: Guaranteed, yes.

MR LLOYD: Because the CCTV footage is an obvious -

MR VIRGO: Yes.

5 **MR LLOYD:** - record that you can't argue with?

MR VIRGO: First place I'd go looking.

10 **MR LLOYD:** Would you think that the Intelligence Officer receiving reports of that kind - would you actually go back yourself physically and look at that footage?

MR VIRGO: Yes. Guaranteed.

15 **MR LLOYD:** To see whether it proved or disproved the allegation?

MR VIRGO: Correct. Yes.

20 **MR LLOYD:** But not to test - to form your own view about whether there might -

MR VIRGO: To - to add to the information I was putting on my - my report, yes.

MR LLOYD: But to identify more information you might attach to your report?

25 **MR VIRGO:** Yes.

MR LLOYD: And that's really the only proper thing to be done?

MR VIRGO: Yes.

30 **MR LLOYD:** Can I then ask you, to the extent you're able to tell us, about the role of the Governor when particular information came to the Governor's attention. Now, can you tell us what you understand to be the obligations on the position - in the Governor's position before you arrived at Dillwynia?

35 **MR VIRGO:** Could you rephrase that, sorry.

40 **MR LLOYD:** Are you in a position to tell us what you think was the proper response by someone in the Governor's position at Dillwynia to receiving information and complaints?

MR VIRGO: To ensure it's reported correctly by the Intel Officer.

45 **MR LLOYD:** If the Governor received, in the period up to September 2018, specific allegations from inmates about sexual offending by Astill, what do you regard as being necessary for the Governor to do with that information?

MR VIRGO: Ensure it's reported correctly and contact Investigations myself and let them know there's a report coming of improper conduct, of sexual assault. Yeah.

5 **MR LLOYD:** I take it for the Governor, there's no need to worry so much about the SIU function, or is there?

MR VIRGO: No, you give your Intel Officer each one of the reports submitted and contact the Director or Governor of CIG and let them know what's going on, a report's forthcoming.

MR LLOYD: Again, is it a matter for the Governor to be conducting investigations him or herself into whether the allegations are true or -

15 **MR VIRGO:** No.

MR LLOYD: So that was "no"?

MR VIRGO: No.

20 **MR LLOYD:** So the Governor's job isn't to get to the bottom of the truthfulness; the Governor's job with that information is to -

MR VIRGO: To ensure it's reported.

25 **MR LLOYD:** - get it reported out?

MR VIRGO: Correct.

30 **MR LLOYD:** And to try and make sure that it's been properly followed up once reported out?

MR VIRGO: Yes.

35 **MR LLOYD:** Would the same apply to allegations of drugs and contraband being brought into the gaol by a Corrective Services Officer?

MR VIRGO: Exactly the same, yes.

40 **MR LLOYD:** That is, if the Governor found that out, you'd have to report it out in the same way you've told us?

MR VIRGO: Yes.

45 **MR LLOYD:** Can I ask you to just have a look at one thing. Just pardon me. I'll just have you shown volume 5 in what we call exhibit 3.

MR VIRGO: Okay.

MR LLOYD: Tab 15. Mr Virgo, you've got tab 15 there?

5 **MR VIRGO:** Yes, I do.

MR LLOYD: Can you just - don't worry about the statement, but just go on a few pages in to close toward the end of that tab and find an inmate application form.

10 **MR VIRGO:** Yes.

MR LLOYD: We've got that one with Witness O?

15 **MR VIRGO:** Yes. No, Witness T.

MR LLOYD: Keep going.

MR VIRGO: Yes.

20 **MR LLOYD:** I take it you haven't - I'm not suggesting you should have, but you have not seen this document?

MR VIRGO: No. No.

25 **MR LLOYD:** I just want to ask you some things about it. This is, on the evidence that this Commission has heard, an inmate application filled out by inmate Witness O on 29 March 2017.

30 **MR VIRGO:** Yeah.

MR LLOYD: Could you just have a look to give you some context. It's got recorded in about the middle of the page:

35 "I believe that something inappropriate happened yesterday, 28 March 2017, between inmate Witness H..."

That's Trudy Sheiles.

40 **MR VIRGO:** Yes.

MR LLOYD:

"...and Chief Astill. I believe I witnessed this on previous occasions also."

45 **MR VIRGO:** Yes.

MR LLOYD: Do you see that?

MR VIRGO: Yes.

5 **MR LLOYD:** Just dealing with that information in those three lines there, obviously it's of a generalised nature in the sense it doesn't identify exactly what happened, save that it's inappropriate.

MR VIRGO: Correct.

10 **MR LLOYD:** And that it also identifies that whatever that was witnessed that was inappropriate was witnessed on previous occasions. So it's happened more than once.

MR VIRGO: Yep.

15 **MR LLOYD:** Just on allegations of that kind, what do you say is the appropriate response at that stage where an inmate has either recorded or asked an Officer to write down their allegations of that kind?

20 **MR VIRGO:** I would take it upon myself to interview the inmate to see if she's prepared to elaborate and, if not, I would SIU report, attaching this for Investigations to - to conduct what they need to do.

MR LLOYD: So an immediate SIU function report to the CIG?

25 **MR VIRGO:** Yes.

MR LLOYD: And also bring it to the attention of the Governor?

30 **MR VIRGO:** Yes.

MR LLOYD: Can I ask you, then, to go to the document before that in the bundle. It's called inmate (indistinct). And just take it from me that this was - or is a record of an interview that was conducted with that witness a few days after that written complaint had been made.

MR VIRGO: Okay.

40 **MR LLOYD:** And this interview was conducted by the then Manager of Security. Take it from me?

MR VIRGO: Yep.

45 **MR LLOYD:** There's a written record I need not trouble you with all of the details of, but just first in terms of the process, where an inmate has made an allegation of the kind in the first document I showed you, in terms of the proper

way to manage that, is - was it appropriate, as at April 2017, for the Manager of Security to come in and conduct a further interview with that particular inmate?

5 **MR VIRGO:** Yes, that's fine, just to gather further information prior to a report going in.

MR LLOYD: So for the purpose of gathering more information in order to attach that information to the report to the CIG?

10 **MR VIRGO:** Try to get the inmate to elaborate on the inappropriate comment.

MR LLOYD: That is, not to try and test whether it's truthful -

15 **MR VIRGO:** No.

MR LLOYD: - but to get more information?

MR VIRGO: Correct. Yeah.

20 **MR LLOYD:** And could I then ask you: would it be appropriate for the next step to be taken by the Manager of Security to be to conduct an interview with the Officer the subject of the allegations?

25 **MR VIRGO:** No. Not at all.

MR LLOYD: Now, there's a transcript here you've been shown on the livestream, but I observed the reaction by you to my question, which indicated that you think that that's deeply inappropriate?

30 **MR VIRGO:** Yes.

MR LLOYD: Why is it deeply inappropriate?

35 **MR VIRGO:** There's absolutely no need for that. That - that gives the - the Officer under the allegation an opportunity to try and badger, stand over, have the inmate change their information in the report. Yeah, it's - no.

40 **MR LLOYD:** So inappropriate because it would give that Officer an opportunity to try and intimidate the -

MR VIRGO: Correct. And it tells the Officer that this inmate has made a report against them. That's - no.

45 **MR LLOYD:** And you know, don't you, that an inmate who's been prepared to be brave enough to make a report in writing about inappropriate conduct who then finds out within days that the Officer the subject of the complaint knows that they've made the complaint - again, I see your reaction.

MR VIRGO: They lose trust in the - the system and the Officer that took the initial report straightaway.

5 **MR LLOYD:** Do you think this is right: That this kind of conduct of interviewing the Officer in the way that I've drawn to your attention would be the very thing that would have a chilling effect on inmates ever coming forward?

MR VIRGO: Correct. Yes.

10

MR LLOYD: And would create an environment where inmates would be perfectly entitled to think it was hostile to them bringing forward complaints?

MR VIRGO: Yes, I agree.

15

MR LLOYD: What about the next thing in the sequence I want to ask you about: go to a document which is about five pages before. You'll be able to identify it. Up the top right-hand corner, it ends with the number 30.

20 **MR VIRGO:** 30?

MR LLOYD: Three zero. It's the last numbers. It's addressed to Ms S. Martin.

MR VIRGO: Okay.

25

MR LLOYD: Have you got that one?

MR VIRGO: Yes.

30 **MR LLOYD:** This is dated - pardon me. I'll just make sure - it's confused at least some people at the bar table, Mr Virgo. Have you got the document addressed to Ms S. Martin dated Tuesday, 4 April 2017?

MR VIRGO: Yes, I have.

35

MR LLOYD: Can I just ask you about some parts of this. Take it from me that there's evidence before this Commission that this letter is written by the same person who conducted the interview with the Officer, Astill, that I just asked you about and who conducted the interview with Witness O that was the subject of the typed note.

40

MR VIRGO: Okay.

MR LLOYD: This appears to be a report by that person, you'll see from the document, Mr Bartlett, to Shari Martin dated 4 April 2017, which starts:

45

"Ma'am, as requested on 3 April 2017, I interviewed SMAP inmates Witness O and Witness T regarding allegations of inappropriate behaviour."

Do you see that?

5

MR VIRGO: Yes.

MR LLOYD: So the event which you just told the Commissioner a couple of minutes ago, being the interview - I withdraw that. This - the interview done with Witness O and Witness T was, obviously enough, done at the request of the Governor, and I think you've told us that that was okay.

10

MR VIRGO: Yeah.

MR LLOYD: You see, then, background. There's some information we can pass over. And Local Action:

15

"Inmate statements obtained on behalf of both inmates."

MR VIRGO: Yes.

20

MR LLOYD:

"Report submitted by the Officer, Astill."

25

That's the thing you've described as deeply inappropriate?

MR VIRGO: Yes.

MR LLOYD:

30

"Inmates interviewed separately."

That's okay?

35

MR VIRGO: Yes.

MR LLOYD: Have a look at the next page, Interview Findings. There's a section here where the author of the letter talks about a number of features of the interviews with Witnesses T and O in relation to the allegations that had been made. Do you see that?

40

MR VIRGO: Yes.

MR LLOYD: And, for example, in the second-last paragraph under Recommendation:

45

"In relation to the allegations made by Witness O, Mr Astill strongly denied deliberately touching her but may have done so accidentally whilst Witness H was cleaning."

5 **MR VIRGO:** Yeah, I see that.

MR LLOYD: And I see your reaction again. What do you think about that?

MR VIRGO: Should never have happened.

10

MR LLOYD: This is what used to be an investigation by Mr Bartlett attempting to come to a conclusion about whether these allegations were truthful.

MR VIRGO: Yeah, I wouldn't have done that, no.

15

MR LLOYD: When you say you wouldn't have done it, I understand from what you're telling us that no person -

MR VIRGO: Shouldn't happen.

20

MR LLOYD: - in the position of Manager of Security at this time at Dillwynia should have been doing it?

MR VIRGO: No.

25

MR LLOYD: And the idea of conducting an internal investigation within the gaol with allegations like this is completely inappropriate?

MR VIRGO: Correct.

30

MR LLOYD: You see the recommendation:

35 "At this time, there appears to be insufficient evidence or information available to warrant further action or investigation. However, I'll closely monitor all the parties concerned."

Do you see that?

MR VIRGO: Yes, I see that.

40

MR LLOYD: Completely inappropriate?

MR VIRGO: I believe so.

45 **MR LLOYD:** What about if you are to conduct an investigation within the gaol in circumstances where these allegations are of inappropriate conduct by Astill

towards Witness H, Trudy Sheiles? If you are to conduct any kind of investigation within the gaol, do you think it might be an idea to speak to Ms Sheiles?

MR VIRGO: Correct.

5

MR LLOYD: And you told us that they shouldn't be conducting an investigation within the gaol anyway.

MR VIRGO: No.

10

MR LLOYD: But if you are information gathering for the purpose of an SIU report, as I think you've said -

MR VIRGO: Yes.

15

MR LLOYD: - is appropriate, would it be absolutely necessary to find out from Ms Sheiles what she had to say about the allegations?

MR VIRGO: That would have been the whole purpose, is to gather more information for the investigators to handle, yes.

20

MR LLOYD: Rather than asking Astill what he had to say, you might actually concentrate on the person who's said to be the victim of the sexual assault?

MR VIRGO: Correct. I wouldn't have asked Astill anything.

25

MR LLOYD: And you might know this - I think you probably do. Ms Sheiles, at this very time, was the victim of sexual offending?

MR VIRGO: Correct. Yes.

30

MR LLOYD: And they never bothered to ask her what had happened?

MR VIRGO: No.

35

MR LLOYD: And are you able to say what you expect if a report had been made - an SIU report had been made containing the relevant information? Are you able to say what you would expect ought to have happened?

MR VIRGO: An investigation to be undertaken, information passed on to police to investigate the matter.

40

MR LLOYD: The police - at least initially, the police within the CIG?

MR VIRGO: Yes. Yes.

45

MR LLOYD: Thank you. You can close that folder and return it to Ms Messina. Can I ask you one final thing, Mr Virgo.

MR VIRGO: Yes.

5

MR LLOYD: Go back - I'll just let you (indistinct) paper. Back to your Commission statement, if you can find it.

MR VIRGO: Yes.

10

MR LLOYD: Turn, please, to paragraph 62.

MR VIRGO: Sorry, that's the police one.

15

MR LLOYD: It's the next -

MR VIRGO: Sorry, I've lost it again.

20

MR LLOYD: That's okay. Ms Davidson, with the Commissioner's approval, will help you.

MR VIRGO: Sorry about that. Yeah, it didn't have a green tab. Thank you. Yes, Mr Lloyd.

25

MR LLOYD: Just re-read paragraph 62.

MR VIRGO: 62. Done.

30

MR LLOYD: You've already told us some things about changes either made or not made at Dillwynia about complaint handling.

MR VIRGO: Yes.

35

MR LLOYD: Do you remember that?

MR VIRGO: Yes.

40

MR LLOYD: I want to ask you - and I'm directing your attention to the current time at Dillwynia. What directions from management at Dillwynia have you received, or to your knowledge have other staff received, about how to deal with the fact of all of the allegations about Astill within the Centre?

MR VIRGO: I haven't received any.

45

MR LLOYD: Is there talk within Dillwynia?

MR VIRGO: I believe only between the - the parties that actually gave evidence - the staff that actually gave evidence. I think they might discuss things here and there. Not really.

5 **MR LLOYD:** Do you mean the staff who have given evidence or are scheduled to give evidence here?

MR VIRGO: No, for the police inquiry.

10 **MR LLOYD:** For the criminal prosecution?

MR VIRGO: Yeah. Yes, yes.

MR LLOYD: You think those staff talk to each other?

15

MR VIRGO: Yes. I think they do, yeah.

MR LLOYD: What about the staff in that category, that is, who gave evidence at the criminal trial, who are still there and the inmates who are still there who were either victims or knew about what Astill was doing?

20

MR VIRGO: I haven't heard any personally, but there might be some banter. But I don't think in a negative way.

25 **MR LLOYD:** Is there talk currently in the gaol about this Inquiry?

MR VIRGO: I - I - I haven't heard much, to tell you the truth, personally.

MR LLOYD: You say in paragraph 62 some staff did approach you to ask how you were able to report the conduct outside of the senior management team?

30

MR VIRGO: I couldn't remember who that would be, though.

MR LLOYD: That's okay. But you remember some staff; you don't remember who?

35

MR VIRGO: Yes.

MR LLOYD: This is effectively people coming to you and saying, "How was it that you were able to make a report to the CIG? We didn't know how to do that"?

40

MR VIRGO: Correct. Yes.

MR LLOYD: And you showed a number of the staff members the SIU function you've told us about?

45

MR VIRGO: Yes.

MR LLOYD: And you made sure that they knew, effectively, how to work it?

MR VIRGO: Yes.

5

MR LLOYD: So that they could make a report that would be confidential -

MR VIRGO: Yes.

10 **MR LLOYD:** - in the sense of not requiring the cooperation of the Governor or someone else within the gaol -

MR VIRGO: Correct. Yes.

15 **MR LLOYD:** - to get outside of the gaol?

MR VIRGO: Yes, that's right.

20 **MR LLOYD:** And I take it what you're saying to us is that that information that there was that thing was news to the staff?

MR VIRGO: A lot of them, yes.

MR LLOYD: A lot of them?

25

MR VIRGO: A lot of them, yeah.

MR LLOYD: Most of them?

30 **MR VIRGO:** Yes. Yes.

MR LLOYD: Did it fall to you to just train them in this kind of ad hoc -

35 **MR VIRGO:** Where I - where I could. If someone asked me or if - if someone was relieving in the SCO Urinalysis position, I'd show them. If they had access to the IIS system, I'd show them different functions and how - how to work things for the reports, things of that nature, yeah.

MR LLOYD: And do you think you managed to train all of the staff?

40

MR VIRGO: No. No.

MR LLOYD: Do you think there are staff still there who don't know about it?

45 **MR VIRGO:** Yes.

MR LLOYD: Is there any formal training about it?

MR VIRGO: Only the intel course - the intelligence course.

5 **MR LLOYD:** Is that one of the online ones the Commissioner asked you about?

MR VIRGO: No. No, that's a - that's a - that's a good course, yes.

MR LLOYD: Can I ask you, then, about the final sentence in paragraph 62:

10 "A fracture in the staff because some of the Officers were friends with Astill
and do not believe he did anything wrong."

15 **MR VIRGO:** I believe there was - I don't know if there's there - if they're there
now, but I believe - when I got there, there was - Astill - people that worked with
him previously in other Centres that liked the guy. Yeah.

MR LLOYD: You're talking there about a period after you came back in
September '18 and the allegations about Astill started to surface?

20 **MR VIRGO:** Yes. Yes.

MR LLOYD: And is what you're telling us that there were some Officers who
were saying to you or who you believed didn't think he'd done anything wrong?

25 **MR VIRGO:** Not directly to me, but I heard a rumour and - and some staff saying
that they believe it was all allegations.

MR LLOYD: What was the rumour?

30 **MR VIRGO:** That he didn't do anything wrong, it was just allegations; he was
having consensual sex with them.

35 **MR LLOYD:** Didn't do anything wrong in the sense that there was sexual
activity, but it was said it was consensual?

MR VIRGO: That's the rumour that I heard, yeah, on the grapevine.

MR LLOYD: Do you know who was saying that?

40 **MR VIRGO:** No. No, it's just -

MR LLOYD: Do you know whether the Officers who were said to have been, as
the rumour goes, saying that are still there?

45 **MR VIRGO:** I don't believe so. There's been a lot of staff turnaround lately.

MR LLOYD: What do you think about the notion that you heard the rumour about of some staff saying, "He hadn't done anything wrong because the sexual activity was consensual"?

5 **MR VIRGO:** Mind-blowing. That's -

MR LLOYD: Mind-blowing in the sense it doesn't pay any attention to the power imbalance and misuse of position that Astill engaged in in -

10 **MR VIRGO:** Correct. And - and consensual sex with an inmate is - is - is a criminal offence.

MR LLOYD: Sorry, just one other thing about the police housed within the CIG. Do you know what involvement they have in dealing with the allegations that
15 come to their attention?

MR VIRGO: I believe they investigated it.

MR LLOYD: As in, it's the -
20

MR VIRGO: Josh Palmer and Michael Cambridge.

MR LLOYD: As in, it's the police within that group who take over investigations of serious -
25

MR VIRGO: Correct. I believe so, yes.

MR LLOYD: Thank you. Those are my questions.

30 **COMMISSIONER:** We've heard evidence, Mr Virgo, that Dillwynia seemed to be - or resemble a cult that was in charge of the gaol. Do you have any comment on that?

MR VIRGO: No, not really. I believe there might have been some fractured staff
35 members around at the time of Mr Astill's arrest, but I believe - me personally, I believe the culture of the place is changing and coming good.

COMMISSIONER: Do you believe it's changing?

40 **MR VIRGO:** Yes.

COMMISSIONER: What's it changing from?

MR VIRGO: A lot of - a lot of staff were bullied and harassed by Astill, if you
45 like, or - not bullied and harassed, but (indistinct) bit of an ogre. And since he's gone and, you know, there's - it seems to be a little bit more relaxed at least (indistinct) this is probably (indistinct) a little bit that the staff were a bit worried

about what's going on here. But no one's come to me in regard to any issues they've had.

5 **COMMISSIONER:** Go back to when Astill was there. Is the impression I should get from what you're saying that he effectively ran the gaol?

MR VIRGO: He had a big say in a lot of things that were going around, even though his rank didn't - wasn't at that level. I think he - I think he was a big bully.

10 **COMMISSIONER:** He was?

MR VIRGO: A big bully, I think.

15 **COMMISSIONER:** A big bully. Did he have any companions in the bullying that you observed?

MR VIRGO: Not that I observed, Commissioner, no. People that I walk around - at my level, people don't do that sort of thing, that I've seen.

20 **COMMISSIONER:** Right. So you wouldn't be able to tell me whether he had others who supported him in his control of the gaol?

MR VIRGO: Not really, Commissioner, no. I didn't see it personally.

25 **COMMISSIONER:** Should I get the impression from what you're saying that, in reality, the gaol was not being effectively managed when you arrived?

30 **MR VIRGO:** As I wasn't there prior to him really being arrested or charged with (indistinct), I didn't see anything untoward from - from the management.

COMMISSIONER: But a man at his level who is bullying and, as you say, controlling, doesn't bespeak an effective management of the institution, does it?

35 **MR VIRGO:** Yeah, you're right. You're right. He should have been pulled up in regard to any staff sort of bullying or intimidation straightaway. As soon as it raises its head, it should have been pulled up.

40 **COMMISSIONER:** And as I understand the evidence we've had so far, the problems were going on for years.

MR VIRGO: That's - that's what I've been (indistinct).

45 **COMMISSIONER:** Well, from all of your experience, lengthy as it is, that's not what should have been happening, is it?

MR VIRGO: No. No.

COMMISSIONER: Yes. And just so I have the structure appropriately in mind, responsibility for the gaol, of course, rests with the Governor?

MR VIRGO: Yes.

5

COMMISSIONER: But then there was a more senior person to the Governor, wasn't there?

MR VIRGO: Director.

10

COMMISSIONER: Director, who was responsible for more than one gaol?

MR VIRGO: That's correct.

15

COMMISSIONER: And that Director would, I assume, have a responsibility to ensure that the Governor was effectively managing the gaol that the Governor was responsible for?

MR VIRGO: That's correct, yes.

20

COMMISSIONER: Yes. Very well. Does anyone else have any questions?

MR SELLER: Yes, I do have one, if I may. Thank you, Commissioner.

25

<EXAMINATION BY MR SELLER:

MR SELLER: Mr Virgo, my name is James Sheller. I'm one of the legal representatives for the Commissioner of Corrective Services.

30

MR VIRGO: Yep.

MR SELLER: Could I just ask you to have a look at your - I think it's your police statement. It's the 17 June document, tab 64.

35

MR VIRGO: Yes.

MR SELLER: Have you got that? Now, you will see that that's a two-page document, then immediately following it is the intelligence report -

40

MR VIRGO: Yes.

MR SELLER: - dated 9 October 2018. If you could just accept from me - at that time, 9 October 2018, Governor Martin was Governor both of Emu Plains and Dillwynia?

45

MR VIRGO: Correct.

MR SHELLER: And you obviously were working under her at Emu Plains before you came across?

MR VIRGO: Correct.

5

MR SHELLER: Did you make any observation as to how frequently she was at Emu Plains compared to Dillwynia through the process of going from one facility to the other?

10 **MR VIRGO:** I believe she spent more time at Dillwynia than - than Emu Plains.

MR SHELLER: All right. Now, when you were at Emu Plains, was the process that you've given evidence on today, that is, a verbal report indicating that a report through the SIU had been sent - was being given to her?

15

MR VIRGO: Yes.

20 **MR SHELLER:** And do you recall that in relation to this document, the attachment - the 9 October 2018 intelligence report, telling Governor Martin that you were putting a report in through the SIU?

MR VIRGO: Correct.

25 **MR SHELLER:** And did you mention that that was in relation to Mr Astill?

MR VIRGO: Yes, I would have. Yes.

MR SHELLER: Do you have any recollection of her reaction on that occasion?

30 **MR VIRGO:** No, I don't, I'm afraid. No.

35 **MR SHELLER:** Do you recall any occasion, whether it was for the short period of time that you were together at Dillwynia after you came back in the Intelligence Officer role or at Emu Plains, where she had said anything to you in relation to your disclosure to her that you were putting a report through the SIU?

MR VIRGO: I - I don't remember that. It would have been verbal communication between me and her, and I - I couldn't tell you exactly what was said, no.

40 **MR SHELLER:** At the time you would give the verbal report, would you have already sent the report through the SIU?

MR VIRGO: Yes.

45 **MR SHELLER:** Now, when you took over from Ms Wilson - took on the job from her, were you able to ascertain whether she had been putting any reports through the SIU at all?

MR VIRGO: No, I didn't get any verbal instruction from her. And once you submit an SIU report, Intel Officers can't get access to it. So I wouldn't have been able to see it or anything.

5

MR SELLER: And you weren't able to undertake any sort of audit of the system to see whether she had sent reports in -

MR VIRGO: Not in SIU. We don't get - we don't get to see them.

10

MR SELLER: And I understand just from some evidence you gave as well to Mr Lloyd, there was a fairly free communication between an Intelligence Officer and CIG about matters?

15 **MR VIRGO:** Yes.

MR SELLER: So that report - albeit you didn't get to see what happened to the report ultimately, you could notify a report was coming in?

20 **MR VIRGO:** I'd notify them, yes. Yes.

MR SELLER: Could you notify them seeking confirmation that they had the report?

25 **MR VIRGO:** Yes.

MR SELLER: And that was what you did in relation to this report -

MR VIRGO: Correct. Yes.

30

MR SELLER: - with Mr Hovey?

MR VIRGO: Yes.

35 **MR SELLER:** Now, could I then ask you just to go to your Commission statement.

MR VIRGO: Yes.

40 **MR SELLER:** Just in that section that's on the fifth page, it's paragraph 26 to following.

MR VIRGO: Yes.

45 **MR SELLER:** Just in relation to the SIU reporting, just so I understand this, is it right that the CIG by and large deals with matters concerning inmates?

MR VIRGO: Yes.

MR SHELLER: And so that might be threats from - perceived threats from inmates -

5

MR VIRGO: Yeah.

MR SHELLER: - or threats to inmates?

10 **MR VIRGO:** Yes.

MR SHELLER: But matters concerning staff would go to what was then the PSI?

MR VIRGO: Yes. Yes.

15

MR SHELLER: And did that communication that you had with CIG did you also have with the PSI?

MR VIRGO: Yes, Mr Hovey. Yes.

20

MR SHELLER: Now, in terms of your evidence as to your understanding that at least at Dillwynia there hasn't been a significant or any change in the reporting, is it fair to say that in your opinion based on all your experience, including your time in intelligence, that the failing was what was being - or, sorry, I withdraw that - that the failure was not in the system but in the way the system was being conducted?

25

MR VIRGO: Yes.

30 **MR SHELLER:** And that, as you understand it, as an example, your predecessor may not have been passing information on?

MR VIRGO: I believe if she had, there would have been an investigation started prior to me arriving.

35

MR SHELLER: And that persons, for example, of a position of the Manager of Security, rather than passing information on, were conducting their own investigations?

40 **MR VIRGO:** That's what it looks like, yes.

MR SHELLER: In your current role, your immediate report is the Manager of Security; is that right?

45 **MR VIRGO:** That's correct.

MR SHELLER: So that gives you an opportunity to comment on what previously Managers of Security have done; is that right?

MR VIRGO: Yes. Yes.

5

MR SHELLER: And is it correct that in the time that you were Intelligence Officer at Dillwynia, you didn't observe any of these types of behaviours, that is, Manager of Security undertaking their own investigations?

10 **MR VIRGO:** No, I didn't see that. No.

MR SHELLER: And I take it that in your time as Intelligence Officer, no example in which a Governor was telling you not to put a report through to the SIU?

15

MR VIRGO: No.

MR SHELLER: Your sources of information, when you were the Intelligence Officer, included listening to telephone calls?

20

MR VIRGO: Yes.

MR SHELLER: I think you might have described some telephone calls that you wouldn't listen to. Is that right? Calls to the Ombudsman weren't listened to?

25

MR VIRGO: Yeah, you can't listen to them.

MR SHELLER: And calls to legal advisors?

30 **MR VIRGO:** Correct. You can't listen to them either.

MR SHELLER: And, similarly, mail going to the Ombudsman wouldn't be read?

MR VIRGO: No.

35

MR SHELLER: And mail going to legal advisers wouldn't be read?

MR VIRGO: No.

40 **MR SHELLER:** What Mr Lloyd asked you about was an example of a letter that someone had intended to send to a friend identifying observations made, and that letter being intercepted.

MR VIRGO: Right.

45

MR SHELLER: I'll just ask you this question: If it is the case that a letter from an inmate to a friend contained serious allegations, as I understand your evidence, the

letter having been intercepted would be copied and then included in an SIU report?

MR VIRGO: Correct.

5

MR SELLER: What would then be the - what would then happen to the original letter?

MR VIRGO: The original letter would have been kept in the intelligence office and marked, in a safe, and wait for confirmation from CIG in regard to letting the letter go or if they wanted it for evidence.

10

MR SELLER: So wait for advice as to whether the letter -

MR VIRGO: Correct.

15

MR SELLER: - would be allowed to be sent to the original -

MR VIRGO: Yes.

20

MR SELLER: - proposed recipient.

MR VIRGO: Yes.

MR SELLER: Just pardon me a moment.

25

COMMISSIONER: Could the inmate be told what had happened to that letter?

MR VIRGO: Not initially until advice was - was received from CIG. And if it was taken into evidence, the inmate can be informed, "Your letter has been taken into evidence."

30

COMMISSIONER: What do you mean "taken into evidence", what do you mean?

35

MR VIRGO: CIG, or police attached to CIG wanted the original letter because they feel there was a crime committed, they would get the original and the inmate could be informed that, "Your letter's been taken into evidence."

COMMISSIONER: But what about if that doesn't happen, is the inmate told what happened to the letter?

40

MR VIRGO: Usually they - they let you know pretty quickly and (indistinct).

COMMISSIONER: Sorry, what are they told?

45

MR VIRGO: If the letter is held for a day or two -

COMMISSIONER: Yes.

MR VIRGO: No.

5

COMMISSIONER: They are not told but if the letter, having been held, is then let go, does it go on to the -

MR VIRGO: It goes on to the original intended recipient.

10

COMMISSIONER: And does the inmate know that the letter has been read and detained?

MR VIRGO: No.

15

COMMISSIONER: And if the letter is then sent to the police, is the inmate told about that?

MR VIRGO: Yes.

20

COMMISSIONER: At the point of which it is being sent or when?

MR VIRGO: Yes, to my understanding. That's what I've done.

25

COMMISSIONER: Now, there's a concern, I understand, amongst some inmates, that legal mail is being intercepted and read at the gaol.

MR VIRGO: No, that's - no.

30

COMMISSIONER: How can you be sure that that's not happening?

MR VIRGO: Because the only mail that - I've been in intelligence for over a year and a half. Since the COVID thing came in, all inmate mail is photocopied and handed to them, other than legal mail, that's addressed to the Governor. The Governor gives the functional managers of the areas, I believe, to open the mail in front of them to make sure it is legal mail, and the inmates sign a document on the front saying it was received unopened, and they take the mail.

35

COMMISSIONER: So any belief by an inmate that although that process occurred, the letter had been previously intercepted and opened, you don't believe that's possible?

40

MR VIRGO: It's possible if someone's doing the wrong thing but that's a (indistinct).

45

COMMISSIONER: So are you able to assure those inmates, who may be concerned about this, that it's definitely not happening?

MR VIRGO: I can't do that. I can't do that.

COMMISSIONER: No?

5

MR VIRGO: I'm not - I don't have any dealings with the mail, over - over a year now.

COMMISSIONER: Okay.

10

MR VIRGO: That's in my experience.

MR SHELLER: And, Mr Virgo, I think the other example provided to you by Mr Lloyd was the circumstance when a notebook with a large number of pages was intercepted by some means, or whether it was found during ramping. If those materials are photocopied or scanned and then to be sent to SIU, are what's left, that is the original documents, kept intact?

15

MR VIRGO: I believe so, yes.

20

MR SHELLER: And then a request or, sorry, a notification would be given to the inmate?

MR VIRGO: Well, I believe on this case the inmate brought it to the Intel Officer to have a look at.

25

MR SHELLER: But I take it that notes could be kept intact, and depending on the attitude of CIG or whoever was investigating, there'd be a communication to the inmate about that?

30

MR VIRGO: In regard what to do with the document.

MR SHELLER: There wouldn't be a circumstance where documents of the document were pulled apart and pages discarded or anything like that?

35

MR VIRGO: No.

MR SHELLER: Just going back to your role as Intelligence Officer, when you took it over at Dillwynia, were you regularly communicating with Corrections Officers about information that was happening at Dillwynia?

40

MR VIRGO: Not initially. After I got into - into the role, staff and inmates would come to me and divulge information, yes.

MR SHELLER: And now in your current role as Functional Manager for Security, are you responsible for CCTV?

45

MR VIRGO: Yes.

MR SHELLER: And from time to time does someone fulfilling the role of Intelligence Officer at the moment come and request from you, footage?

5

MR VIRGO: Yes.

MR SHELLER: And you're responsible for maintaining the footage?

10 **MR VIRGO:** But the Intel Officer now has access to that footage in their office. So they can - they can download it themselves if need be.

MR SHELLER: Without going through you?

15 **MR VIRGO:** Yes.

MR SHELLER: And when you were in the role of Intelligence Officer, would you go to Functional Manager of Security to look at -

20 **MR VIRGO:** Yes, to request the footage, yes.

MR SHELLER: Yes, thank you. Those are my questions.

COMMISSIONER: Do you have any questions?

25

MS GHABRIAL: Yes, just a couple of questions.

<EXAMINATION BY MS GHABRIAL:

30 **MS GHABRIAL:** Mr Virgo, you started your career as a Correctional Officer in 1989. When, back in 1994, a piece of legislation came in which has been known as the Whistleblowers Legislation, the Public Interest Disclosures Act 1994. Back then, and over the years, have you been provided, or are you aware of any specific training and education that's been given to Officers in relation to what that
35 legislation is about and the protections that are available to public sector employees under that legislation?

MR VIRGO: No, I'm not, no.

40 **MS GHABRIAL:** Are you aware that that piece of legislation was recently replaced by the Public Interest Disclosures Act 2022 that came into force on 1 October of this year?

45 **MR VIRGO:** No - vaguely, but I think it's a broader reaching - for public sector staff, police, and - I'm not aware of it.

5 **MS GHABRIAL:** Has any training or education been provided, to your knowledge, to Correctional Officers about the broader protections provided to public sector employees under that legislation for the reporting of serious misconduct and the protections that are available to the people who make those reports?

MR VIRGO: No, I'm not, no.

10 **MS GHABRIAL:** Nothing further. Thank you, Commissioner.

COMMISSIONER: No one else? Yes, Mr Lloyd.

MR LLOYD: Commissioner.

15 **<FURTHER EXAMINATION BY MR LLOYD:**

MR LLOYD: Mr Virgo, this Commission has received some evidence about the staff at Dillwynia, many of whom have been there working full-time for a very long period.

20 **MR VIRGO:** Yes.

MR LLOYD: And also, evidence of a number of romantic relationships between staff there.

25 **MR VIRGO:** Okay.

MR LLOYD: As in husband and wife.

30 **MR VIRGO:** Right.

MR LLOYD: You, I think, agreed with me when you said that something has obviously gone wrong in relation to the way that the conduct of Astill didn't come to the attention -

35 **MR VIRGO:** Yes.

MR LLOYD: - of people within the gaol. Is it a problem to have a lot of Officers in the one Centre who have been there for a very long period of time?

40 **MR VIRGO:** No, not - not really. Experienced staff in the Centre can be a good thing and a bad thing I suppose.

45 **MR LLOYD:** What about in circumstances where it's known or believed by inmates that a lot of the staff are very friendly including outside the gaol?

MR VIRGO: That's prison officers' business, they tend to stick together due to the nature of the job.

5 **MR LLOYD:** That kind of knowledge or belief that, for example, a person in the position of seniority is good friends with an Officer, you would agree, can inhibit disclosures?

MR VIRGO: Yes. Yes.

10 **MR LLOYD:** But are you telling us that, that being so, there's really not much that can be done about it?

15 **MR VIRGO:** I don't believe, like, management hang around with junior staff and things of that nature, not from what I've seen.

COMMISSIONER: Mr Virgo, there would be many enterprises, including public institutions, which would not encourage, indeed some prohibit, married couples working in the same, certainly, department -

20 **MR VIRGO:** Yes.

COMMISSIONER: - of the institution. What you've got here of course is a breach of any such rule.

25 **MR VIRGO:** Yeah.

COMMISSIONER: Right? Now, the rule at other institutions that is designed to protect the effective management of the institution. Why shouldn't prisons be the same?

30 **MR VIRGO:** Yes, Commissioner, I - I see the benefits.

35 **COMMISSIONER:** And, secondly, many institutions consider, large institutions consider, it necessary to ensure that the staff are renewed, and enthusiasm is maintained. One way of doing that is to not let people rest, as it were, in the same job for a long period of time.

MR VIRGO: Yes, I can see that, yes.

40 **COMMISSIONER:** Why wouldn't prisons be the same?

MR VIRGO: No reason why not.

45 **COMMISSIONER:** Which means someone needs to take a good look at Dillwynia to ensure these aspects are effectively managed, isn't it?

MR VIRGO: Yes.

MR LLOYD: Thank you, Commissioner. Those are my questions.

COMMISSIONER: Thank you. Thank you, Mr Virgo. You're excused.

5

MR VIRGO: Thank you, Commissioner.

<THE WITNESS WAS RELEASED

10 **MR LLOYD:** Mr Sheller has an update.

MR SHELLER: Commissioner, this morning I mentioned a document that was in the process of being prepared relevant to the matters raised at the close of proceedings yesterday. I wonder if I could hand up to you a little bundle of three documents. I'll provide copies to my friends at the front bar table. I'll just explain in broad terms what the documents are, then we're available to address any matters that arise from them.

15

The first document is a chronology of events going back to 19 September, going through to today, concerning this issue and actions taken in relation to the issue. The first document - sorry, the second document is the attachment referred to in paragraph 4 of the first document. It is the Commissioner's Instruction that was communicated to all staff on or about 14 October 2023.

20

And then the last document is the document referred to in paragraph 8 of the first document, being an email from the current Governor at Dillwynia - that's Nicola, N-i-c-o-l-a, Chappell, C-h-a-p-p-e-l-l - to staff, the Governor on-forwarding an email from the Commissioner. That occurred late last night. As I indicated, this material is such that Corrective Services, or the legal representatives, are available to answer any questions that arise from them or clarify any matters therein.

25

30

COMMISSIONER: Yes. Thank you, Mr Sheller.

MR SHELLER: Yes. Thank you, Commissioner.

35

COMMISSIONER: I think I probably should mark this as an exhibit.

MR SHELLER: Yes. Thank you.

COMMISSIONER: It's - the documents in relation to the Commissioner's actions with respect to any intimidation of inmates will become exhibit 10.

40

<EXHIBIT 10 TENDERED AND MARKED

45 **COMMISSIONER:** Yes, Mr Lloyd.

MR LLOYD: Thank you, Commissioner. The next witness is Mirza Mohtaj. His statement is behind tab 72 in volume 7. Could I also - I've been asked to raise that there was an administrative error, and the statement was included also in tab 72A, but it's the - that's the same statement, and it's the one at tab 72, which is the one we'll be proceeding with.

COMMISSIONER: All right. Do you want to tender that separately?

MR LLOYD: Well, there's - I'll just tender 72 and invite people, including you, Commissioner, to -

COMMISSIONER: All right. Perhaps we should have the witness sworn and then we can do that.

MR LLOYD: Certainly. I call Mirza Mohtaj.

COMMISSIONER: Will you take an oath on the Bible or an affirmation?

MR MOHTAJ: Affirmation.

<MIRZA MOHTAJ, AFFIRMED

<EXAMINATION BY MR LLOYD:

MR LLOYD: Just pardon me, Commissioner. Could you tell us your name?

MR MOHTAJ: My name is Mirza Mohtaj.

MR LLOYD: And, Mr Mohtaj, you made a - sorry, your address is known to the Commission?

MR MOHTAJ: Yes.

MR LLOYD: You made a statement to the Commission, and you did that on 19 September 2023?

MR MOHTAJ: Yes.

MR LLOYD: It might already be there but have a look at tab 72.

MR MOHTAJ: Yes.

MR LLOYD: That's the statement?

MR MOHTAJ: Yes.

MR LLOYD: And in that statement, you're telling the truth?

MR MOHTAJ: Yes.

COMMISSIONER: It will become exhibit 11.

5

<EXHIBIT 11 TENDERED AND MARKED

MR LLOYD: Thank you. And can you just make sure, in that bundle that you've got in front of you, there is no tab 72A, I take it?

10

MR MOHTAJ: Yes.

MR LLOYD: Could you just take up your statement, and I'll just ask you some questions about it. In paragraph 5, you started as an employee with Corrective Services in '03?

15

MR MOHTAJ: Yes.

MR LLOYD: You did five years' work as a Correctional Officer at Emu Plains?

20

MR MOHTAJ: Yes.

MR LLOYD: And then six years in Community Corrections at Blacktown?

25

MR MOHTAJ: Yes.

MR LLOYD: And two years in the Compulsory Drug Treatment Centre?

30

MR MOHTAJ: Yes.

MR LLOYD: And you rose to the rank of First Class Corrections Officer?

MR MOHTAJ: Yes.

35

MR LLOYD: And then in 2015, you applied for Seniors and were offered ultimately a position at Dillwynia?

MR MOHTAJ: Yes.

40

MR LLOYD: And you started there, what, around the end of 2015? Correct?

MR MOHTAJ: Yes.

MR LLOYD: What rank did you start there?

45

MR MOHTAJ: As a Senior Correctional Officer.

MR LLOYD: And did you stay in that rank the whole time you were there until mid '19?

MR MOHTAJ: Yes.

5

MR LLOYD: You came to know, in the period that you were at Dillwynia, Wayne Astill?

MR MOHTAJ: Yes.

10

MR LLOYD: Can I ask you just about your current position. Have a look at - toward the end - in paragraph 7.

MR MOHTAJ: Sorry.

15

MR LLOYD: Mid-2019, you applied for an executive role?

MR MOHTAJ: Yes.

20

MR LLOYD: And you became the Senior Assistant Superintendent at Long Bay?

MR MOHTAJ: That's correct.

MR LLOYD: And then just tell us about what you're currently doing.

25

MR MOHTAJ: I'm currently posted at John Morony Correctional Centre, still on the same rank, Senior Assistant Superintendent.

30

MR LLOYD: Could I just ask you some questions about what you noticed when you first arrived at Dillwynia in 2015. You'd come there from having worked in other correctional facilities; correct?

MR MOHTAJ: That's correct.

35

MR LLOYD: Did you notice anything different about Dillwynia when you compared it to those other places?

MR MOHTAJ: In what way?

40

MR LLOYD: Well, how would you describe the culture of Dillwynia, to your observation, when you arrived?

45

MR MOHTAJ: From - from my - from my experience there, I found it was a training centre whereby we had a lot of new Correctional Officers coming in straight from the academy. So it was a good environment for learning.

MR LLOYD: Did you notice, when you arrived, any bullying between staff members?

MR MOHTAJ: No.

5

MR LLOYD: None at all?

MR MOHTAJ: No. I would not ever entertain it.

10 **MR LLOYD:** When you say - I'm sorry, we may be at cross-purposes. I'm not suggesting for one moment, Mr Mohtaj, that you bullied anyone. Do you understand?

MR MOHTAJ: Yep.

15

MR LLOYD: Did you notice staff members, that is, different staff members to you, sometimes bullied each other?

MR MOHTAJ: In what way?

20

MR LLOYD: Derogatory language?

MR MOHTAJ: There was conversations and all that. However, it wasn't - it was more of conversations, and especially between staff members. Or sometimes if we have a down time, people would talk about their, you know, experiences outside.

25

MR LLOYD: What sort of things?

MR MOHTAJ: Just, like, if they've gone fishing, if they've gone for a holiday or something like that and, you know, funny experiences. It was, like, bantering, but I didn't see it being something of abusive.

30

MR LLOYD: You didn't hear abusive language, derogatory terms being used by some Officers - not all, but some Officers toward each other?

35

MR MOHTAJ: No.

MR LLOYD: What about what you observed other Officers saying or doing to inmates? Did you ever see other Officers using derogatory language to inmates?

40

MR MOHTAJ: No. Apart from firm directions, no.

MR LLOYD: Firm directions?

45 **MR MOHTAJ:** Directions. If - just directions in - in terms of searches, a firm direction. Or if there's non-compliance, there will be some firm - firm direction, but not derogatory abuse.

MR LLOYD: Any firm directions involving Officers referring to inmates as "mutts" or "moles" or "cunts"?

5 **MR MOHTAJ:** No.

MR LLOYD: Never heard that?

MR MOHTAJ: No.

10

MR LLOYD: Are you sure?

MR MOHTAJ: Yes.

15 **MR LLOYD:** Could I ask you some questions about the system, as you understood it, when you were at Dillwynia, about inmates making reports about misconduct by Officers. Can you just describe what you understood that system to be?

20 **MR MOHTAJ:** If an inmate wanted to make - if they wanted to make a report, usually the first person whoever receives the report, they can be afforded the inmate's application. If - if it's of sensitive nature and all that, the Officer then takes them to the next manager, usually have been a Senior, then goes straight to a Chief.

25

MR LLOYD: Reporting to the one immediately above you in the hierarchy?

MR MOHTAJ: Exactly.

30 **MR LLOYD:** What about a report, to your understanding during the period you were at Dillwynia, by an inmate of serious misconduct of a sexual nature by an Officer toward an inmate? What would happen then?

35 **MR MOHTAJ:** Okay. I have never experienced it while I was in Dillwynia, but I will believe that it will go straight - whoever the person is receiving it has to make a report.

MR LLOYD: To who?

40 **MR MOHTAJ:** To the Governor. A briefing report -

MR LLOYD: Anywhere else? Sorry, I cut across you. Finish the sentence.

45 **MR MOHTAJ:** So a briefing report to the Governor. If it's the Chief, then the next one is the Governor. If it was a First Class or a Senior, they go to the manager. And the inmate will be called in to be interviewed.

MR LLOYD: By who?

MR MOHTAJ: By the manager.

5 **MR LLOYD:** Let me just understand. Someone with a rank of First Class Correctional Officer gets told -

MR MOHTAJ: Yep.

10 **MR LLOYD:** - by an inmate that an Officer has sexually assaulted them, right?

MR MOHTAJ: Yes.

15 **MR LLOYD:** That - on your understanding of the system, that First Class Correctional Officer would be bound to report that matter to the person immediately above them in the hierarchy. Is that what you're saying?

20 **MR MOHTAJ:** That will be a Senior. Because depending on where the First Class Officer is based, if it's in the accommodation area, they'll go to the senior. But also, it depends on the inmate. If the inmate is not confident with the Officer, then it goes straight to the Governor. The Correctional Officer can go either to the manager or to the Governor depending on how the inmate's comfort level is.

25 **MR LLOYD:** What do you mean "comfort level"?

MR MOHTAJ: Certain inmates would prefer to have only one person handling their - their matters all the way, and that's a rapport that they will have had with the first point of contact, CO.

30 **MR LLOYD:** Do you remember being told anything when you were at Dillwynia about how to manage a disclosure of serious sexual misconduct by an Officer toward an inmate if that report was made to you?

35 **MR MOHTAJ:** Yes.

MR LLOYD: Who told you what you should do?

MR MOHTAJ: Not from Dillwynia.

40 **MR LLOYD:** When you -

MR MOHTAJ: Just from my experience.

45 **MR LLOYD:** From your experience at other Centres?

MR MOHTAJ: Yes.

MR LLOYD: So during the period when you were at Dillwynia, you don't remember receiving any training or advice about how you should handle a situation like that; is that right?

5 **MR MOHTAJ:** That's correct.

MR LLOYD: What did you learn at other Centres about how to handle a situation like that?

10 **MR MOHTAJ:** It's (indistinct) other Officers. As I say, when we have down time, we do brief each other. So from my - from my learning from others, as my mentors, I will ask scenarios like that so I can prepare myself should a situation like that arises.

15 **MR LLOYD:** Is what you're telling us that in terms of your understanding about how you should deal with a situation I'm asking you about, an inmate reporting serious sexual misconduct by an Officer, your training was informal training by way of advice from other Officers at other Centres you've been at? Is that fair?

20 **MR MOHTAJ:** That would be correct.

MR LLOYD: Describe to me, if you would, what advice you were given at the other Centres about how you should handle a situation like the one I've asked you about?

25 **MR MOHTAJ:** A situation like that should be treated of a serious nature. Confidentiality should be of high importance. And you have to seek and maintain a continuous chain of evidence. So whatever you receive from beginning, try to interview the person - the victim, get more information and then present it to the
30 Governor.

MR LLOYD: When you say, "try to interview the person", that's the person with the complaint about the sexual misconduct?

35 **MR MOHTAJ:** Exactly.

MR LLOYD: And when you say doing the other things you've mentioned, doing an investigation yourself?

40 **MR MOHTAJ:** It's not an investigation. It's more of collecting more information so that you could present it to - to the reporting Officer - to the person you're reporting to.

45 **MR LLOYD:** What did you understand to be the obligations on you in collecting more information? What kinds of places would you look for more information?

MR MOHTAJ: Talk to the inmate. I didn't understand the question.

MR LLOYD: You've mentioned "try and get more information". On your understanding of the system -

5 **MR MOHTAJ:** Yep.

MR LLOYD: - when you were at Dillwynia, where would you look for the other information? You've got on this scenario a report from an inmate about serious sexual misconduct by an Officer.

10

MR MOHTAJ: Yep. So you -

MR LLOYD: You've got that information. What other information?

15 **MR MOHTAJ:** You will ask her the dates, the time, the severity of it. And then with that information is what you go further, because that's the initial information that you're getting, right?

MR LLOYD: Where would you go further?

20

MR MOHTAJ: To the Governor.

MR LLOYD: I see. So you wouldn't conduct an investigation by acquiring more information; you'd take that information from the inmate to the Governor?

25

MR MOHTAJ: Exactly.

MR LLOYD: Just in terms of the process of getting information from the inmate, dates and the like, did you receive any training either when you were at Dillwynia or any other time about how to deal with a woman who was disclosing to you that they'd been sexually abused?

30

MR MOHTAJ: Training, no. However, I - you - training is no. However, the approach - the women, you start with the application - getting an application from her.

35

MR LLOYD: That was just the document. I'm talking about you've got a situation - you must know from all your experience, a number of women who are in gaol have histories where they've been sexually abused by partners, sometimes by adults when they were children; is that right?

40

MR MOHTAJ: That's correct.

MR LLOYD: Highly vulnerable women?

45

MR MOHTAJ: That's correct.

MR LLOYD: And if they're at the point of making a verbal disclosure to you about being sexually abused by an Officer, this might well be another event in the continuum of events for an inmate where a person in authority is abusing their position, right?

5

MR MOHTAJ: That's correct.

MR LLOYD: Highly difficult situation, wouldn't you agree, for the inmate?

10 **MR MOHTAJ:** That's correct.

MR LLOYD: What training did you receive about how to deal with the woman at the point that they're coming to you and making a disclosure of that kind?

15 **MR MOHTAJ:** On our initial training, we didn't have managing females - offenders at risk.

MR LLOYD: Anything about managing a situation where they're disclosing to you a sexual offence that's been committed on them while they're in custody?

20

MR MOHTAJ: No, it was more of managing while they're in custody and how to look after them.

MR LLOYD: Can I ask this: In terms of your career progression after you left Dillwynia, it sounds like you've risen or continued to rise through the ranks. Is that fair?

25

MR MOHTAJ: That's correct.

30 **MR LLOYD:** Have you been given any training about the sort of thing that I'm asking you about in the period after you left Dillwynia?

MR MOHTAJ: I - I went into a male stream. I started managing male inmates. So, no.

35

MR LLOYD: I take it the answer is "no"? Can I ask you this - I've asked you about an example about what you understood the system to be if a disclosure was made by a woman of sexual misconduct or abuse by an Officer, right?

40 **MR MOHTAJ:** That's correct.

MR LLOYD: What about a different kind of thing: if information that was less than a direct complaint by an inmate came to your attention, that is, you heard rumours that an Officer was behaving inappropriately in a sexualised way, what did you understand to be your obligations as an Officer if you heard information of that kind?

45

MR MOHTAJ: It's my duty of care to report it further.

MR LLOYD: Where?

5 **MR MOHTAJ:** Again, I will formalise by putting a report and taking it to my immediate manager.

MR LLOYD: Did you know, when you were at Dillwynia, that there was a function available to make a report to the CIG, that is, an entity outside the
10 gaol - I'll just start with that. Did you know about that?

MR MOHTAJ: Yes, I did.

MR LLOYD: Did you know that in making a report to the CIG, there was a function available - an SIU function - where a report could go to the CIG and the
15 Governor would not be aware of the fact that it had gone to the CIG?

MR MOHTAJ: Not at that time.

20 **MR LLOYD:** You do know about that now?

MR MOHTAJ: Yes.

MR LLOYD: How did you come into that information?
25

MR MOHTAJ: When - when we changed to Functional Managers, I was given the training for it as part of my career development.

MR LLOYD: That was the first time you were told about that function?
30

MR MOHTAJ: That's when I came to understand what it's for.

MR LLOYD: Pretty important piece of information that ought to be available to all Officers within gaols, isn't it, that you can make a report about a serious matter
35 that would go to someone within the CIG?

MR MOHTAJ: I did know - I knew about the others on the IIS, but I wasn't - I hadn't used that SIU function.

40 **MR LLOYD:** But that function's pretty important. Would you agree?

MR MOHTAJ: Yes.

MR LLOYD: Can I ask you about paragraph 24 in your statement. You deal elsewhere in your statement with a scenario where an inmate might be alone in an
45 office with a Chief Correctional Officer; correct?

MR MOHTAJ: Repeat the question?

5 **MR LLOYD:** You deal elsewhere in your statement with situations where it might be perfectly legitimate for an inmate to be alone in an office with a Chief Correctional Officer?

MR MOHTAJ: That's correct.

10 **MR LLOYD:** And there are situations you've identified that it would be normal - for example, I think you say intel gathering. It would be appropriate in that kind of situation for a Chief Correctional Officer to be alone in a room with an inmate; correct?

15 **MR MOHTAJ:** That's correct. It was a common practice.

MR LLOYD: Any - I want to ask you about 24. Any interaction of that kind ought to be documented in the OIMS system. Is that true?

20 **MR MOHTAJ:** Yes.

MR LLOYD: And so if there were situations where, to the observation of Officers, there were multiple occasions where inmates were going in one on one into an office with a Chief Correctional Officer, every time that that inmate was in that office, there should be a record made on the OIMS system. Would you agree with me?

25 **MR MOHTAJ:** Not really.

MR LLOYD: Well, when would it not be required to record an entry in that system when there's a one-on-one contact in an office like that?

MR MOHTAJ: It depends on - it depends on what the contact was. If it wasn't significant, then there was no requirement to place it there.

35 **MR LLOYD:** When would it be okay for the Chief Correctional Officer to be alone in their office with an inmate where it wasn't significant?

40 **MR MOHTAJ:** It depends on the scenario. Should - should it be an inmate chasing up on inter-centre phone call or just the phone system is not working and needed clarification or - there can be different avenues which are, as I said, not significant. It's not a complaint in a manner that required an entry for it.

45 **MR LLOYD:** Were you aware when you were at Dillwynia of a practice of Astill either summoning over the loudspeaker or arranging for other Officers to bring inmates to see him in his office routinely?

MR MOHTAJ: Yes.

MR LLOYD: And were you aware that when that happened, the inmates would be in there and the door would be closed?

5 **MR MOHTAJ:** Yes.

MR LLOYD: Now, in circumstances - you've identified some circumstances where it's appropriate or necessary for that kind of interaction - one-on-one interaction to occur; correct?

10

MR MOHTAJ: That's correct.

MR LLOYD: When would it be acceptable for it to occur with the door closed?

15 **MR MOHTAJ:** I can't say for what his actions are.

MR LLOYD: No, no. I'm not asking you about that. I'm just asking you about, as a matter of proper practice within the gaol, you've told us that sometimes Officers - the Chief Correctional Officer would be alone one on one with an inmate in their office; correct?

20

MR MOHTAJ: Yes.

MR LLOYD: Generally, I think, you describe the practice elsewhere that you deal with inmates in company with another Officer. That's generally the position?

25

MR MOHTAJ: Yes, by - by - the policy is we always have to be two-out. However, should an inmate wish to have that one on one with a manager, the manager then can excuse you and say, "This is confidential. She's not comfortable with you being there." However, we are within eyesight of whatever the office is. And -

30

MR LLOYD: Sorry, you go on.

35 **MR MOHTAJ:** The office is in the admin area where there are other staff members who move around.

MR LLOYD: Can I just understand whether I understand what you're telling us correctly. The general position is you'd always be with another Officer when you're with an inmate; correct?

40

MR MOHTAJ: That's correct.

MR LLOYD: There were exceptions to that. Sometimes it would be acceptable, for the reasons you've told us, for an Officer to be one on one with an inmate?

45

MR MOHTAJ: That's with managers.

MR LLOYD: Only for Chief Correctional Officers and above rank; is that correct?

5 **MR MOHTAJ:** That's correct.

MR LLOYD: But where that happened when it came to a Chief Correctional Officer, I think what you told us - tell me if I've got it right - is that if they were one on one in an office, you'd have the other Officer effectively in line of sight?

10

MR MOHTAJ: That's correct.

MR LLOYD: So that the other Officer could keep an eye on what was going on in case something went wrong. Is that fair?

15

MR MOHTAJ: That's correct.

MR LLOYD: So it would be highly irregular, wouldn't it, for a Chief Correctional Officer to be taking inmates into their office regularly and closing the door; is that right?

20

MR MOHTAJ: It will be irregular.

MR LLOYD: Highly irregular?

25

MS GHABRIAL: I object.

MR LLOYD: I'll withdraw the question and just move on. The - could I ask you, then, about some things involving an inmate, Trudy Sheiles. Do you remember her?

30

MR MOHTAJ: Yes.

MR LLOYD: Do you remember that there was an occasion in January of 2017 when Astill arranged for you to get her and bring her to see him in his office?

35

MR MOHTAJ: I have no recollection of that.

MR LLOYD: Was that something, at least generally, putting aside the date, that you remember happening from time to time, that is, Astill arranging for you to retrieve Ms Sheiles and bring her to his office?

40

MR MOHTAJ: Not - repeat the question, please?

MR LLOYD: Was it something that happened - put aside January 2017. Do you remember there being occasions when Astill arranged for you to retrieve Trudy Sheiles and bring her to see him in his office?

45

MR MOHTAJ: Yes. And to be within business core hours. The fact that I will be a Senior in that area - the SMAP area was secured, and it was a matter of just about five to - five to 10 metres from the office to the accommodation area.

5

MR LLOYD: But it was necessary, because of the particular arrangements with SMAP inmates, for them to be escorted?

MR MOHTAJ: Because of protection, yes.

10

MR LLOYD: And so do we take that that you do remember there being occasions when Astill arranged for you to escort Ms Sheiles to see him in his office?

MR MOHTAJ: Yes.

15

MR LLOYD: Did it happen a lot?

MR MOHTAJ: Not with me.

20

MR LLOYD: You knew about it happening a lot with other Officers?

MS GHABRIAL: I object.

COMMISSIONER: On what basis?

25

MS GHABRIAL: Just the objection in respect of the trigger under section 23, Commissioner.

COMMISSIONER: Well, I require an answer. I don't understand the objection, but I'll -

30

MS GHABRIAL: I understand it requires an answer. I'm taking the objection.

COMMISSIONER: I know, but I don't understand the foundation of the objection, I'm sorry. But anyway, he can answer the question.

35

MS GHABRIAL: It goes to knowledge.

COMMISSIONER: He can answer the question.

40

MR LLOYD: Now, do you remember the question?

MR MOHTAJ: Can you repeat the question, please?

45

MR LLOYD: I think you said, when I asked you whether it would happen routinely with you escorting Ms Sheiles to Mr Astill - I withdraw that - Astill's office, and you said not with you. Do you remember that?

MR MOHTAJ: Yes.

5 **MR LLOYD:** I then asked you, "With other Officers?" There was an objection.
Now I want your answer to that question.

10 **MR MOHTAJ:** It was a common practice for any manager, not only Astill - any
manager can page, if it was any inmate who was in an - a confined or a secure
area, for Officers to go and escort them in a two-out.

MR LLOYD: Did it happen, to your knowledge, a lot with Astill and Trudy
Sheiles?

15 **MR MOHTAJ:** Not to my knowledge.

MR LLOYD: Was there talk amongst the Officers about how often she was going
to Astill's office?

20 **MR MOHTAJ:** Not to my knowledge.

MR LLOYD: I want to put to you something Ms Sheiles has told this
Commission about something that she says happened on 8 January 2017. Do you
understand?

25 **MR MOHTAJ:** Yes.

MR LLOYD: She says that she was approached on that day by you, and you
informed her that she was required over at the office to see Astill. Now, you've
told us you don't have a memory of this happening on the 8th; correct?

30 **MR MOHTAJ:** That's correct.

MR LLOYD: But the kind of thing I put to you so far, it sounds like, is not
outside your experience, that is, you being told by Astill to go and retrieve her?

35 **MR MOHTAJ:** Yes.

MR LLOYD: She says that you escorted her over to see him in his office, the
office being at the back of the SAPO office. Do you know what I'm talking about?

40 **MR MOHTAJ:** SAPO?

MR LLOYD: Yes.

45 **MR MOHTAJ:** Yes.

MR LLOYD: And when you arrived with her, Astill said, "I'll call you when we're done." Is this ringing any bells?

MR MOHTAJ: Still, no recollection.

5

MR LLOYD: She says that you left and left the door slightly open. Now, I take it you don't remember that?

MR MOHTAJ: No.

10

MR LLOYD: But in accordance with what you've told us about the practice, that would sound like something you might do, that is, leave the door open?

MR MOHTAJ: And if I was to do that, I - I will have been with someone else. Because every escort, we do two-out.

15

MR LLOYD: That's you with someone else doing the escort, but in any event, it doesn't sound like it would be unusual for you to leave on being dismissed by Astill but leave the door open?

20

MR MOHTAJ: That's correct.

MR LLOYD: Because that's what should have been happening anyway, the door should have been open?

25

MR MOHTAJ: That's correct. With any manager.

MR LLOYD: Could I just ask - put this to you: That you went away for a period and came back, knocked on the door while pushing it open and saw Astill red-faced and gave him a strange look. Do you remember an event of this kind?

30

MR MOHTAJ: No recollection of that.

MR LLOYD: Are you sure?

35

MR MOHTAJ: Yes.

MR LLOYD: If that happened, would that be unusual? As in, you coming back, seeing Astill obviously red-faced and flushed with an inmate after being alone in his office with the inmate?

40

MR MOHTAJ: Should that have happened, I will have started questioning it.

MR LLOYD: Questioning him?

45

MR MOHTAJ: Questioning the scenario - the situation (indistinct).

MR LLOYD: If that - sorry, I interrupted you. You go.

MR MOHTAJ: I will have asked, "What's going on here?"

5 **MR LLOYD:** And -

COMMISSIONER: Sorry, are you saying this just did not happen or you don't remember it happening?

10 **MR MOHTAJ:** I do not remember it, Commissioner. I have no recollection of it.

MR LLOYD: But if it happened, you're accepting, I think - but I'll make sure I've got it right - that you would have been bound to do something about it?

15 **MR MOHTAJ:** Yes, it's my duty of care.

MR LLOYD: I think you mentioned asked questions but what about make a report?

20 **MR MOHTAJ:** I will first ask - offer assistance to the victim or I'll ask around and see if any of this - however, should I not get an answer, I will still raise it as an observation that I had for that day.

MR LLOYD: In what forum? Where would you record that?

25 **MR MOHTAJ:** I will go to the next available manager.

MR LLOYD: The one up the chain?

30 **MR MOHTAJ:** That's correct.

MR LLOYD: Can I ask you whether you ever noticed with Ms Sheiles when you were escorting her to or from Astill's office, her breaking out in an obviously noticeable rash?

35 **MR MOHTAJ:** No.

MR LLOYD: Would that have raised interest in you if you had noticed someone in that situation breaking out in an obvious and noticeable rash?

40 **MR MOHTAJ:** I would have asked her if she's okay.

MR LLOYD: I note the time, Commissioner. I will be another 15 minutes. And so -

45 **COMMISSIONER:** I think we'd better finish for the day, then. If that's a convenient point for you?

MR LLOYD: Yes.

COMMISSIONER: Very well. We'll adjourn until 10 o'clock in the morning.

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**<THE HEARING ADJOURNED AT 3.59 PM TO THURSDAY, 26 OCTOBER
2023 AT 10.00 AM**