



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

**PUBLIC HEARING
SYDNEY**

**WEDNESDAY, 8 NOVEMBER 2023
AT 10:00 AM**

DAY 18

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
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 appears for two correctional officers
MS L. DOUST appears for one correctional officer**

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<THE HEARING RESUMED AT 10.05 AM

MR LLOYD: Commissioner, the next witness is Michael Hovey. He will take an affirmation. And his statement to the Commission is behind tab 86 in volume 8.
5 And I call him.

COMMISSIONER: Is he here? Do we know if he's here?

MR LLOYD: He's definitely here. I spoke to him about -
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COMMISSIONER: Come forward, sir.

<MICHAEL HOVEY, AFFIRMED

15 **COMMISSIONER:** Take a seat.

<EXAMINATION BY MR LLOYD:

MR LLOYD: Can you tell us your name?
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MR HOVEY: Michael Allan John Hovey.

MR LLOYD: Your address is known to the Commission. And, Mr Hovey, you made a statement to the Commission in October of 2023?
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MR HOVEY: That's correct.

MR LLOYD: And if you just look - hopefully it'll be open in front of you - behind tab 86.
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MR HOVEY: Yes, that's the statement that I gave.

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

35 **MR HOVEY:** Absolutely.

MR LLOYD: I tender that statement, Commissioner.

COMMISSIONER: It will be Exhibit 32.
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<EXHIBIT 32 TENDERED AND MARKED

MR LLOYD: Can I just ask you about some things of background that you deal with in the statement. In paragraph 5, you tell us that you were placed in the role of Director, Corrective Services Investigation Branch, temporarily in January '14?
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MR HOVEY: That's correct.

MR LLOYD: At some point after that temporary appointment, did your appointment in that position become permanent?

5 **MR HOVEY:** It did.

MR LLOYD: When?

10 **MR HOVEY:** I'm unsure of the exact date. I believe it was late 2015, following recruitment action.

MR LLOYD: Prior to that temporary appointment in January '14, you were the Chief of Staff for the Commissioner?

15 **MR HOVEY:** I was the Superintendent in the Office of the Commissioner, which performed the duties relevant to the Chief of Staff. That's correct.

20 **MR LLOYD:** What training or study - sorry, I withdraw that. What training do you have or study had you done prior to January '14 that was relevant to your temporary appointment as Director, Investigations?

25 **MR HOVEY:** From 2004 till late 2007, I'd actually been a member of an anti-corruption taskforce within Corrective Services called Taskforce Sky. I was the 2IC within that taskforce. And I'd also completed the diploma in government investigation.

MR LLOYD: What did you do before two thousand - that was 2004 to 2007?

30 **MR HOVEY:** 2004, I was with the anti-corruption taskforce.

MR LLOYD: What did you do before 2004?

35 **MR HOVEY:** Performed a range of custodial duties throughout Corrective Services.

MR LLOYD: Could you give us the high point of your Corrective Services career up to 2004?

40 **MR HOVEY:** After 2004?

MR LLOYD: No, up to 2004.

45 **MR HOVEY:** I beg your pardon. Yes, certainly. I commenced duty at Long Bay, working at the - what was formerly known as the Reception and Induction Centre. After approximately three years, I was promoted, went to work at Mulawa, the Women's Correctional Centre on the Silverwater Complex. Was subsequently promoted again to work at the MRRC, the Metropolitan Remand and Reception

Centre, and then moved across to what was called in those days S&I, Security and Intelligence.

MR LLOYD: When was that move?

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MR HOVEY: That move was - my recollection is early 2003.

MR LLOYD: So prior to that move to what was known as S&I, is it fair that you effectively moved up the ranks of Corrective Services Officer categories?

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MR HOVEY: Yes. Yes.

MR LLOYD: You started as a First Class Correctional Officer?

MR HOVEY: No, starting as a probationary officer. Moved on to be a Correctional Officer. I went straight from Correctional Officer to Senior Correctional Officer. I didn't actually hold the rank of First Class Correctional Officer. And from there, went to commissioned rank, Assistant Superintendent, Senior Assistant Superintendent, Manager of Security, et cetera.

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MR LLOYD: Could I ask you about paragraph 6. In 2015, another review was conducted and the investigations position transitioned to a civilian role. Do you see that?

MR HOVEY: Yes.

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MR LLOYD: And what was the practical effect of that change?

MR HOVEY: Personally, the effect was - was that the role that I was filling, which was previously being the custodial role and I retained my sworn officer - commissioned officer rank, moved into a civilian position.

30

MR LLOYD: And did that make a difference day to day in what you were doing?

MR HOVEY: No, not at all. It was more related to pay grade and the public service pay grades.

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MR LLOYD: I'll come back to this detail in due course, Mr Hovey, but can I just ask you at this stage: You've told us you've been a Correctional Officer and then moved over, in effect, to the Investigations Branch by January '14.

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MR HOVEY: Yes.

MR LLOYD: Do you think that that, as a matter of structure, is a good one, that is, a former Correctional Officer would then be appointed to be in charge of investigations, including into Correctional Officers?

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MR HOVEY: I - I - I believe that it is a relevant transition into that role as Director. I think that whereas the investigation - hands-on investigations role - the role of investigator - for example, an investigations manager - needs to be more specific. I think overall as a Director, you need an intimate understanding of
5 Correctional Centre function, how it works, culture, et cetera, so that you're able to provide that leadership and guidance to people who are basically unaware of that situation.

MR LLOYD: This Commission has heard evidence from a number of officers about a general reluctance by officers to make reports about misconduct by other officers, sometimes referred to as papering other officers. Are you aware of that kind of cultural reluctance?
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MR HOVEY: Can I say that very early on, both in my career as a Correctional Officer and early on in the appointment as the Director of Investigations Branch, that was certainly an issue of culture, not dobbing. Yes, 100 per cent. However, over the last - my estimate would be two years, that culture was definitely changing. We saw a massive increase in the number of referrals coming from Correctional Officers and Correctional staff, which certainly indicated that that
15 culture was changing, that we were getting these referrals from officers with regards to concerns about behaviour of other officers.
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MR LLOYD: The last two years of your role in investigations, that's the calendar years 2021 and 2022; correct?
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MR HOVEY: Yes.

MR LLOYD: Do we take it from that answer that you consider that there was a problem with the culture of officers reporting on other officers prior to 2021 when you told us those complaints started to increase?
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MR HOVEY: Yes, I would - I would agree with that, that there was a problem.

MR LLOYD: Could I ask you: that's about culture with respect to officers making complaints that might come to the attention of your agency?
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MR HOVEY: Yes.

MR LLOYD: What about the culture within your agency in the period from when you were there, January '14 to December 2022? Do you think there was a culture within investigations which, in effect, involved a reluctance to pursue officers?
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MR HOVEY: Never.

MR LLOYD: You would regard investigations as being tough on officers?
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MR HOVEY: The role of the Investigations Branch doesn't determine whether we - I use "we", as in, the investigation. It doesn't determine as to whether we are tough on officers. It's a very - gaining the evidence and determining if that evidence sustains a finding.

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MR LLOYD: Could I just ask you to help us with some of the acronyms that the Commission -

MR HOVEY: I'll do my best.

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MR LLOYD: - has heard. Is it fair to say broadly within Professional Standards and Investigations, there's no shortage in the use of acronyms?

MR HOVEY: In the whole of Corrective Services New South Wales, there's no shortage of the use of acronyms.

15

MR LLOYD: The PSB, the Professional Standards Branch?

MR HOVEY: That's correct.

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MR LLOYD: That is one of the branches broadly within the Corrections Intelligence Group; is that right or -

MR HOVEY: That - that isn't correct, no, sir.

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MR LLOYD: I'll come back to that.

MR HOVEY: Yes.

MR LLOYD: The Corrections Intelligence Group -

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MR HOVEY: Yes.

MR LLOYD: - what can you - the CIG, what can you tell us about where that sits?

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MR HOVEY: CIG, Corrections - Corrections Intelligence Group. This was a - a unit that stood within the Security and Intelligence Branch, S&I. Their role was undertaking the complex analysis of information and data regarding inmates. So that might relate to, for example, outlaw motorcycle gang management, safety of inmates, anything to do with the inmates in custody.

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MR LLOYD: Not officers?

MR HOVEY: No.

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MR LLOYD: You mentioned the Security and Intelligence Branch.

MR HOVEY: Yes.

MR LLOYD: Where does that sit?

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MR HOVEY: That sits under - that sits - or - can I say, when I was employed by Corrective Services, that was a division in its own right that covered corrections intelligence, transport, emergency unit, that type of function.

10 **MR LLOYD:** The CSIU -

MR HOVEY: Yes.

MR LLOYD: - what's that?

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MR HOVEY: That's the Corrective Services Investigation Unit. So up until recently - when I say "recently", my recollection is about 2019. So from the - let me start the answer to that again. From the moment that I took over until about 2019, the CSIU, the Corrective Services Investigations Unit, was a police unit
20 manned by detectives on secondment from New South Wales Police Force. They came out of New South Wales Police, as I say, on secondment, which was effectively leave without pay, and Corrective Services paid for them. In 2019, that was changed and the funding returned to police. Now, that same police unit, which
25 still exists, is now funded by New South Wales Police.

25

MR LLOYD: The Professional - the PSB, Professional Standards Branch?

MR HOVEY: Yes.

30 **MR LLOYD:** Where does that sit in relation to these other divisions and units you've told us about?

MR HOVEY: Right. So the Professional Standards Branch, as with IB, was a separate division within what was called Governance and Continuous
35 Improvement. The CSIU sat under the Investigations Branch. So as the Director of Investigations, my role was purely as the secondment manager, which meant I was responsible for the provision of cars, for example, the budget. So I managed the fleet and the immediate management of those detectives, but they obviously reported to a superintendent within - within police at State Crime Command.

40

MR LLOYD: Sorry, the Professional Standards Branch?

MR HOVEY: No. I'm sorry. I've misled you. The Professional Standards Branch was located in head office and was a standalone branch under Governance and
45 Continuous Improvement. Investigations Branch was located at a totally different location. It was a standalone branch which incorporated the CSIU.

MR LLOYD: And what division was that in?

MR HOVEY: That was in Governance and Continuous Improvement.

5 **MR LLOYD:** Same division -

MR HOVEY: Yes.

10 **MR LLOYD:** - but two different branches?

MR HOVEY: Investigations Branch was a totally autonomous branch.

MR LLOYD: And in two different places physically?

15 **MR HOVEY:** I beg your pardon?

MR LLOYD: In two different places physically?

20 **MR HOVEY:** Yes, for - for specific reasons.

MR LLOYD: But the Professional Standard Branch employees - I think you tell us in your statement you had at various times something like 20 or so people working for you in that branch?

25 **MR HOVEY:** In the Investigations Branch. I was - there was a separate director to Professional Standards.

MR LLOYD: But just investigations -

30 **MR HOVEY:** Just investigations.

MR LLOYD: - about 20 or so?

35 **MR HOVEY:** I had 20 full-time positions, yes.

MR LLOYD: Where did those people - or you and those people physically sit in comparison, for example, to the police who were on secondment who were within the CSIU?

40 **MR HOVEY:** Yep. So we were all in the same building. That building consisted of two separate floors, with what I can best describe (indistinct). So there was a ground floor wing, which was occupied by the CSIU, and that, as I understand it, is still the case, and the Investigations Branch was located on the second floor on the opposite side of the building.

45 **MR LLOYD:** Were the people within the CSIU broadly under your watch?

MR HOVEY: It's - it's a difficult answer to give from the point of view of I was the secondment manager. So I was responsible for things - until recently, things like budget; as I said, the provision of vehicles; fleet management; et cetera. But I had no authority over investigations or - they didn't report to me the progress of investigations, for example.

MR LLOYD: You couldn't direct them what to do, but you could refer things to them -

MR HOVEY: 100 per cent. That is exactly the way to describe it.

MR LLOYD: What about oversight by you over what they were doing once a referral was made?

MR HOVEY: I'd certainly ask for feedback and, where possible, I would get it. But sometimes the nature of police operations, I - I - I couldn't be told.

MR LLOYD: Can I just get you to help us with some things in your statement, again about the interrelationship between these branches and units. In paragraph 7, you tell us about being the secondment manager for CSIU and that you were briefed on police investigations and covert operations. Do you see that? And you could delegate or authorise covert operations by the police within the CSIU unit?

MR HOVEY: Yes, that's - that's basically correct. So the system worked on a basis that - for argument's sake, say another police division wanted to put a listening device into an area, or perhaps some other form of covert operation. They would fill in what was termed an RFA, a request for assistance, which was a police document. They would furnish that to the commander of the CSIU, who would then come to me. If it was straightforward, I had the delegation from the then Commissioner to approve that operation. However, if it was outside the scope of what I had authority to allow, I would have to do a briefing for the Commissioner. An example of that might be to place a device on an inmate, to introduce a mobile phone to a Correctional Centre. That type of operation had to have the Commissioner's imprimatur.

COMMISSIONER: Do I have this clear: That the Corrective Services operated on the basis that you could use listening devices without reference to any outside authority?

MR HOVEY: No, sir. I'm sorry if I've misled you. This would all be done through the police. They would (crosstalk) obtain a warrant.

COMMISSIONER: The police would go to a judge, would they?

MR HOVEY: Absolutely, sir. All my role was -

COMMISSIONER: So - right.

MR HOVEY: - was to authorise the placement within the Corrective Services property.

5 **COMMISSIONER:** Okay. Sorry, you authorised the police to place it, did you?

MR HOVEY: Yes. Ultimately. So I would arrange access to the centre -

10 **COMMISSIONER:** Yes. But in terms of where it was to go -

MR HOVEY: Yes.

COMMISSIONER: - was that a decision made by the police?

15 **MR HOVEY:** They would come back with a warrant. What we would have to look at would be whether or not the introduction of that device, for example, may compromise the safety of an inmate. And that was my role, just to make sure that it's okay to have a warrant and to say, "We are going to do this," but we had to look at the bigger picture and just say, "Well, this has safety concerns", you know
20 (indistinct) do that.

COMMISSIONER: Well - but the judge would have authorised the device to be in a particular location.

25 **MR HOVEY:** The warrant would be for a particular location.

COMMISSIONER: That's right. So you couldn't change the location that you wanted to use the device, could you?

30 **MR HOVEY:** Not at all. But what we would do is certainly provide advice to say - you know, for example, placing devices in visits might be problematic from the point of view of you can't ensure that an inmate sits at a particular table and, therefore, we wouldn't allow multiple devices to be placed over tables (indistinct).

35 **COMMISSIONER:** No. But all of that is being decided, surely, before the police go to the judge to get the warrant?

40 **MR HOVEY:** Yes, sir. Can I say that 99 times out of 100, these were sorted out before the warrant was applied for so that it was done. It was only occasionally where somebody bypassed the system and came with a warrant that we might have to say, "This can't be done. It's just not feasible."

45 **COMMISSIONER:** Right. So you wouldn't alter the location; you'd just say, "No device."

MR HOVEY: That's right. That's right. We'd say, "Look, we can't go ahead with that operation."

COMMISSIONER: Okay.

5 **MR LLOYD:** In paragraph 15, Mr Hovey, you tell us that the role of the Investigations Branch:

"...independently investigate allegations of misconduct as well as other things."

10 You mention (indistinct) some of them:

"Escape, escapees and deaths in custody."

Do you see that?

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MR HOVEY: Yes, I do.

MR LLOYD:

20 "We were the team that investigated officer misconduct."

Do you see that?

25 **MR HOVEY:** Yes.

MR LLOYD: Just - in paragraph 16:

30 "Professional Standards Branch ran the triage process for these complaints. If you had a complaint that could not be dealt with via policy, you would do a referral to the Professional Standards Committee, and that committee was set up to triage all officer misconduct reports and establish how the complaints should be actioned."

35 Just pausing there. Can you just explain to us what you understood to be the triaging process when a complaint was made about misconduct by an officer? Where did it go first in terms of the system?

40 **MR HOVEY:** The correct procedure would be that a referral was made to the Professional Standards Committee via the Professional Standards Branch.

MR LLOYD: So is the first place that receives a complaint of officer misconduct in the ordinary course the Professional Standards Branch?

45 **MR HOVEY:** It should be, yes.

MR LLOYD: Where would that be received? Who would -

MR HOVEY: At - at the Professional Standards Branch itself. So they had a - a dedicated email. Officers would make the referral, and it would go to Professional Standards to be assessed.

5 **MR LLOYD:** Is this a reporting pathway being an email from an officer to some address of Professional Standards Branch?

MR HOVEY: It would be the completion of a template - a pro forma that would most likely be attached to an email and sent to the Professional Standards Branch,
10 yes.

MR LLOYD: We've heard a good deal of evidence about intelligence reports that are submitted from Correctional Centres by officers within those centres.

15 **MR HOVEY:** Yes.

MR LLOYD: Where do they go?

MR HOVEY: There are two types of intelligence reports - at that stage,
20 information reports - that are submitted from Correctional Centres. If it's to do with inmates or something to do with Correctional Centre security, for example, that would be referred to CIG, the Corrections Intelligence Group. If it was to do with misconduct by staff or allegations of corruption, trafficking by staff - these are examples that I'm giving - it would go into a separate silo called the SIU, the
25 Staff Intelligence Unit.

MR LLOYD: Does the officer who submits the particular intelligence report - take one involving misconduct or corruption by an officer, or allegations. Does that officer select where it goes to when it gets to one of the units or
30 branches that you've told us about?

MR HOVEY: Yes, they do. So upon completion of report, there's a drop-down box and they select SIU portal or CIG portal.

35 **MR LLOYD:** If the SIU portal is selected, who does it go to? Who's the human being who reads it?

MR HOVEY: That would go to the Staff Intelligence Unit based within - it's a subunit, if you will, of the Investigations Branch at Long Bay.
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MR LLOYD: So some person within the Staff Intelligence Unit within investigations would read a report where the officer had selected the SIU function; is that right?

45 **MR HOVEY:** Broadly speaking, yes, that's right.

MR LLOYD: What would happen next in terms of the system anyway, once that officer reads it, if it's an allegation of misconduct by an officer? What's the system require that officer within that branch to do?

5 **MR HOVEY:** Yep. It depends upon the - the nature of the intelligence received. I probably, just for clarity, should point out that up until probably the end of 2019, the beginning of 2020, for a variety of reasons, there was only one person in that Staff Intelligence Unit who, over a period of time, was tasked with performing various functions across the organisation, not only staff intelligence.

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MR LLOYD: Just pausing there. Was that Andrew Tayler?

MR HOVEY: Andrew Tayler was there for a little while, but Andrew took up a position elsewhere within the organisation, leaving a - leaving a void in the SIU area that couldn't be filled immediately.

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MR LLOYD: Could you just explain what you mean when you say in 16:

"The committee..."

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Being the Professional Standards Committee:

"...was set up to triage all officer misconduct reports and establish how the complaint should be actioned."

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Is that correct?

MR HOVEY: If - if the referral was made with regards to officer misconduct to the Professional Standards Branch, they would triage that to basically form the Professional Standards Committee agenda, which would then be looked at by members of the Professional Standards Committee.

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MR LLOYD: But if an intelligence report is submitted via this SIU function, I'm not presently understanding how that would land in the lap of the Professional Standards Committee for triaging.

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MR HOVEY: Yes. So the intelligence might not be perhaps direct information or direct evidence of misconduct, but it might be alluding to something. So it may allude to an officer - an officer's behaviour, for example, which in itself perhaps wouldn't be misconduct but can we say suspicious, and it would then form an intelligence matter rather than evidence of misconduct.

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MR LLOYD: But how - if - you've described one way in which an allegation of misconduct against an officer might come to the attention of the Professional Standards Branch. That's by use of that email function. You remember that?

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MR HOVEY: Yes.

MR LLOYD: If there's a report that's sent - an intelligence report - to the SIU, it sounds like from what you're saying that may or may not be referred to the Professional Standards Committee for triaging to work out what to do with it.

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MR HOVEY: If - if there was enough evidence within that intelligence report, then, yes, it would become a Professional Standards referral. But mainly they're reporting suspicions, for want of a better way of putting it. You know, it might - it might be the - this officer always seems to be carrying a - a heavy bag when he comes into the centre.

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MR LLOYD: We'll take something a little more serious -

MR HOVEY: Yes.

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MR LLOYD: - an allegation of criminal conduct -

MR HOVEY: Yes.

MR LLOYD: - for example, a sexual assault by an officer. If that comes to the attention of the SIU or a person within that unit via an intelligence report, what's the system require that person to do with it?

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MR HOVEY: If - if that came through and it was read timely when it came through, then it would be immediately actioned. And that would normally be via a referral to myself, and I would then liaise with the commander of the SIU to say, "Can you come and read this. Take a look at this. What action can we take?"

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MR LLOYD: So I'm not being -

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COMMISSIONER: Just a minute. Just a minute. What do you mean by "if it was read timely"?

MR HOVEY: Commissioner, there was certainly instances over a period of time, certainly from probably 2015 to 2019, where the intelligence role within the SIU wasn't filled on a permanent or a semi-permanent basis; it was filled more on an ad hoc type basis. So as soon as - rather than say "on a timely basis", perhaps as soon as the Intelligence Officer became aware of anything that serious, it would be brought up to me.

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COMMISSIONER: Sorry, it would be?

MR HOVEY: It would be - that intelligence report would be brought to me with the concerns of the analyst to say -

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COMMISSIONER: This is a report that comes through to the officer on the screen, doesn't it?

MR HOVEY: It loads up onto a database.

COMMISSIONER: Yes. And the officer has immediate access to it?

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MR HOVEY: If that person was in - in the role, then they could have, yes.

COMMISSIONER: And if they weren't in the role, was it the case that it might never be processed?

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MR HOVEY: Sadly, that - that was - that - that did happen, yes.

COMMISSIONER: So some reports came through, which could have been serious, that were never processed?

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MR HOVEY: That's correct, Commissioner, yes.

COMMISSIONER: Did you ever tell anyone that this was happening?

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MR HOVEY: We certainly did, and we made numerous efforts to obtain extra funding. But we're talking of a period - across the whole public service, not just Corrective Services - where there were recruitments freezes, where the - there were budget cuts, and we - we also merged from being Corrective Services into the Department of Justice, and money was - was very, very tight, and we just didn't have the funding to fill those extra positions. And it was the same with investigations. I was short of investigators, short of intelligence analysts, with no budget or funding available for me to fill those roles.

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COMMISSIONER: So let me make sure I've got it correctly. Reports may come through from a gaol of conduct - suggesting criminal conduct by an officer which never got read or processed?

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MR HOVEY: The potential for that to happen is correct, yes, Commissioner.

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MR LLOYD: Or to take up a related aspect of the Commissioner's question, when you talk about "in a timely way", I take it you've got in mind some reports involving serious allegations about Astill that weren't processed for many, many months within the investigations -

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COMMISSIONER: I think he's accepting that some may never have been processed at all.

MR HOVEY: No.

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MR LLOYD: Certainly, Commissioner. But in addition - I'll just pick it up.

COMMISSIONER: Yes.

MR LLOYD: You told the Commissioner some may never get looked at, at all?

5 **MR HOVEY:** Certainly there would - there was a significant delay in some reports. And - and certainly you've mentioned the one concerning Mr Astill, a significant delay in those reports being both found and made available.

10 **MR LLOYD:** But I thought you said to the Commissioner just a moment ago that some may never have been looked at, at all, as in, ever?

MR HOVEY: I'm not sure that the backlog of those reports was ever cleared. So the potential for that - yes, it's possible that that is the case.

15 **MR LLOYD:** I'll take you to the detail, but I think you're aware of the very lengthy delay before anyone in investigations, it would seem, even read serious reports about Astill?

MR HOVEY: I am aware. I am aware of that.

20 **MR LLOYD:** Could I just try and understand, then: some complaints of officer misconduct go to the PSB?

MR HOVEY: Yes.

25 **MR LLOYD:** But others would come to Professional Standards Investigation Branch?

30 **MR HOVEY:** There's no Professional Standards Investigations Branch. That may be the situation now, but when I was employed by Corrective Services, they were two distinct autonomous divisions.

MR LLOYD: I'm sorry, the Investigations Branch that you were the head of.

35 **MR HOVEY:** Yes.

MR LLOYD: It's not called the PSIB; it's just the Investigations Branch?

40 **MR HOVEY:** It's the PSIB now, but in - in the time we're talking about, it was the Investigations Branch.

MR LLOYD: But it's your Investigations Branch that we're talking about?

MR HOVEY: I was the Director of the Investigations Branch.

45 **MR LLOYD:** So coming back to my question: some complaints of officer misconduct, including criminal conduct, would come to the investigations?

MR HOVEY: In the form of an intelligence report, yes.

MR LLOYD: And whether or not anyone looked at those at all or in a timely fashion would dictate what happened to those in terms of triaging?

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MR HOVEY: I - I wouldn't say whether a person looked at them in a timely manner. I don't want to infer that somebody wasn't doing their job. What I am saying is - is that during the time that some of these reports were submitted, the role of the Intelligence Officer, for example, within IB - one person - was also used to screen the employment of all new officers into the organisation. So competing priorities. These had to be - the screening had to be done before officers were allowed to start at the academy.

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We were short-staffed overall in the organisation. We had to recruit 900 officers. So the prioritisation there was given to the screening of staff. This - with one person, that impacts the amount of information reports you can read. We were aware there was a backlog. What we actually did, when we finally got a person into the role on a permanent basis, was work our way with current information reports - because, of course, that intelligence was live and relevant - and slowly but surely work our way back through the historic ones that -

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MR LLOYD: But aside from the things that came to the Investigations Branch, there's another problem, isn't there? You would not necessarily have referred to you from the Professional Standards Branch every complaint that they might have received in the email function about a particular officer; it would just depend on whether they passed it on to you.

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MR HOVEY: It would depend on the decision of the committee. I want to make it perfectly clear: The Professional Standards Branch weren't an authority within itself. They triaged the matters and put them before a committee, and that committee of senior staff then made a decision as to how that matter was handled. Now, some of that might be to be managed locally. Some might say, "It's a grievance referring to HR." Some might say, "Well, that's corruption. Let's refer it to ICAC." Others may say, "This requires more information, and it needs investigating." It would be referred to the Investigations Branch. Some, it might say, "The evidence is there. That is misconduct. We can proceed straight down the misconduct line."

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MR LLOYD: And the person from the Professional Standards Committee or that committee making the decision wouldn't necessarily know about the information that had come via the route to investigations; that's true, isn't it?

40

MR HOVEY: That's certainly possible, yes. Until it was referred from investigations from the Intelligence Unit to PSB as a referral, they wouldn't be aware.

45

MR LLOYD: And so the system is there's no one unit or agency or branch or even human being who is actually receiving all complaints of misconduct by officers and looking at them to triage and to work out what should happen?

5 **MR HOVEY:** If - if we're terming intelligence, sir, as being a referral for misconduct, then that is correct.

MR LLOYD: That sounds like a bad system.

10 **MR HOVEY:** It certainly has problems. I - I can agree with that. But working with the limitations that we had, it was probably the best system that we could function with at that time.

15 **MR LLOYD:** Could I ask about reporting, that is, the structure about the investigations making reports up to Assistant Commissioner and Commissioner level. You've got in paragraph 13 that you would report directly to Assistant Commissioner - just help me with the pronunciation.

20 **MR HOVEY:** That Assistant Commissioner was Carlo Scasserra.

MR LLOYD: And prior to that, Assistant Commissioner James Koulouris?

MR HOVEY: Koulouris, yes.

25 **MR LLOYD:** And in 26, you say that you would report to Assistant Commissioner Scasserra, appraising him of the progress of investigations?

MR HOVEY: Yes.

30 **MR LLOYD:** Would that routinely happen, that is, the Investigations Branch would keep whoever was in that Assistant Commissioner role updated about important investigations?

35 **MR HOVEY:** Investigations Branch investigations, yes. Yes.

MR LLOYD: And how routinely were the meetings?

40 **MR HOVEY:** I would say regularly. At least once a week, but occasionally they would also be supplemented with telephone calls for progress on particular matters.

MR LLOYD: And I think in 17, you tell us the minutes and decisions of committee meetings were sent to the Commissioner.

45 **MR HOVEY:** Yes.

MR LLOYD: Is that the Professional Standards Committee or some other committee?

5 **MR HOVEY:** The Professional Standards Committee would obviously provide minutes of the meeting and the outcomes from the agenda, and they were always documented and sent through to the Commissioner.

10 **MR LLOYD:** The Commission has heard evidence that the officers, when they click the SIU function, thought that those reports were going directly to the police within CSIU. I take it from what you've told us that anyone who had that view would not have been right?

MR HOVEY: That's correct. They wouldn't have been right.

15 **MR LLOYD:** And so, the intelligence reports effectively landed in your agency in the lap of that person, the analyst who you mentioned who was sometimes there and sometimes not?

20 **MR HOVEY:** The role was sometimes there and sometimes not, yes.

COMMISSIONER: Mr Lloyd, do we know how many, on average, intelligence reports came through in a year - in the ordinary year?

25 **MR LLOYD:** I'll have that checked. I don't know the answer.

COMMISSIONER: Well, he may know.

MR LLOYD: (Crosstalk).

30 **COMMISSIONER:** Yes.

MR LLOYD: Have you got any idea, remembering it probably varied?

35 **MR HOVEY:** It did vary, but it could be anywhere from, you know, 150 to 200 a year.

MR LLOYD: Of whatever the number, assuming - and I assume the numbers would be different in the era before 2021 when they increased?

40 **MR HOVEY:** Yes.

MR LLOYD: Of those reports that came through, whatever be the number, do you remember approximately what proportion of them involved allegations which, if true, were of criminal conduct by officers?
45

MR HOVEY: I - I - it would be wrong of me to - I'd be guessing. I - I couldn't tell you that.

MR LLOYD: Could we at least start with this: it wouldn't be every one?

MR HOVEY: No, it would not be every report that came through.

5

MR LLOYD: Would it be fair - and if this is inviting you to speculate, tell me - to say that it would be relatively unusual for an intelligence report to involve allegations of criminal conduct by an officer?

10 **MR HOVEY:** Unusual, yes.

MR LLOYD: And in that sense, obviously if allegations about criminal conduct by an officer are made, those ones, if the system is working properly, should be the greatest priority about any complaints about officers?

15

MR HOVEY: They should be. And if we were aware, they were.

MR LLOYD: Can I just ask you some other things before showing you some documents. The statement to the Commission in paragraph 35 tells us from late '18 onwards, Sarah Casey was in the role of intel analyst?

20

MR HOVEY: Yes, that's - that's about right. From late 2018.

MR LLOYD: And did she replace Andrew Tayler who I asked you about?

25

MR HOVEY: She did. And for a period of time, I was able to have Andrew and Sarah working together, because the funding for Andrew's role that he'd taken up within the gaol had ceased and that, therefore, he was basically excess to requirements within another division of Corrective Services. I had, at that time, some spare budget because I'd had a number of investigators resign and promoted and move on. So I did have some spare budget and was able to utilise Andrew again for a second period with the Intelligence Unit.

30

MR LLOYD: Can I just ask you to move on, then, and deal with - for those intelligence reports which actually were read and processed by investigations, I think you deal in 42 with what ought to have happened. Is it right that for every intelligence report that came to investigations, there ought to be a finding by the Investigations Branch about whether it was sustained or not sustained?

35

MR HOVEY: That's not correct. The - the statement actually - I was asked the question, "What were the different outcomes for your investigations?", not for the intelligence reports.

40

MR LLOYD: I understand. What do you mean, then, sustained or not sustained? Would that be the ultimate conclusion that would have to be reached?

45

MR HOVEY: If as a result of the committee - a referral from the committee, a matter went to investigation, it would - the referral would make a number of allegations of misconduct by staff. From our point of view, we'd independently investigate that, and we would either find evidence to sustain that misconduct or not sustain that misconduct. That's - that's what I mean by that paragraph.

MR LLOYD: I understand. When you say:

10 "The investigation manager read all reports to ensure the integrity of the investigation."

That's - that part of it is right?

MR HOVEY: Yes, absolutely.

15

MR LLOYD: And after your review:

20 "...all reports, sustained or not, would be allocated to a lawyer in Professional Standards Branch for that person to conduct their own review."

20

MR HOVEY: That's right.

MR LLOYD: Is that the system?

25 **MR HOVEY:** Yes, that was the system then.

MR LLOYD: But irrespective of what conclusion the Investigations Branch had reached, every report that came to investigations would be sent on to the Professional Standards Branch -

30

MR HOVEY: Yes, it would.

MR LLOYD: - for, what, an independent review?

35 **MR HOVEY:** Yes.

MR LLOYD: And I'll show you some things about various matters that came to the attention of the investigations shortly, but did that happen?

40 **MR HOVEY:** Yes. Yes.

MR LLOYD: And -

45 **COMMISSIONER:** Mr Lloyd, I'm not clear about this system and who are the decision-makers. Who is this person who's said to be the decision-maker - complaint will then be assigned to "a decision-maker". Who's that?

MR LLOYD: That was my next -

5 **COMMISSIONER:** And there seems to be some sort of chain that goes sideways and then goes down or up.

MR LLOYD: This is -

10 **COMMISSIONER:** And I'd appreciate knowing the steps clearly in the process.

MR LLOYD: So we're up to in 43, Mr Hovey -

MR HOVEY: Yep.

15 **MR LLOYD:** - a point at which someone from investigations has read, analysed and considered the report that's come in? You've got to give a verbal answer. Yes?

MR HOVEY: Yes. Sorry.

20 **MR LLOYD:** Then that report would come to you for sign-off?

MR HOVEY: That's right.

25 **COMMISSIONER:** Sorry, can I go back a step.

MR HOVEY: I signed off on every report before it could be released.

30 **COMMISSIONER:** Does that person - the person who prepares the report, do they actually do any investigating? And if so, what do they do? And, therefore, what conclusion, if any, do they draw before it comes to Mr Hovey?

35 **MR LLOYD:** I'll come to do that. When it comes to you for release, is the - the ordinary course is within that staff of 20 or more, there were some retired police who could conduct investigations; true?

MR HOVEY: There were retired police and qualified investigators. Everyone was qualified.

40 **MR LLOYD:** And it was at your disposal to assign some of those people from within investigations to conduct investigations into complaints?

MR HOVEY: It was the role of the investigations manager. So -

45 **COMMISSIONER:** And what would they do to investigate? How did they go about their job?

MR HOVEY: In terms of the investigator, Commissioner?

COMMISSIONER: What did they do?

5 **MR HOVEY:** Okay. So they'd be allocated a task - a job by the investigations manager. Their role would be to assemble all the available evidence, whether that was CCTV, hand-held video camera, body-worn video camera, cell alarm call systems, taking statements from witnesses, people involved -

10 **COMMISSIONER:** Right. So did they prepare an investigation plan?

MR HOVEY: Yes, they did.

15 **COMMISSIONER:** And did they carry out that investigation in conjunction with police?

MR HOVEY: That would be the role of the investigations manager to confirm, but I - my understanding and belief is that that is the process that was followed.

20 **COMMISSIONER:** So -

MR HOVEY: The investigation plan was completed. The investigation followed that plan. And, of course, the investigation plan could be amended as required when information came to light.

25 **COMMISSIONER:** Sure. And then they prepared a report?

MR HOVEY: That's correct, sir.

30 **COMMISSIONER:** Or that person prepared a report, which came ultimately to your desk?

35 **MR HOVEY:** Ultimately. It would be checked by the investigations manager. When I say "checked", what - what he would do was read - forensically read every document. So he may look at a statement and say, "You've interviewed Michael Hovey here, and he's made reference to Officer B, and you haven't spoken to Officer B. You need to go out and do that because the investigation could be flawed."

40 **COMMISSIONER:** Right. So the conclusion expressed in that report, though, remains the conclusion of the investigator?

MR HOVEY: Yes, it does.

45 **COMMISSIONER:** And the manager of investigations merely approves it going forward to you. Is that the idea?

MR HOVEY: It ensures the integrity of the investigation. May make a comment if they disagree with the findings of the investigator, but cannot change the findings of the investigator.

5 **COMMISSIONER:** Now, you say in your statement that it then comes to you and you sign off for release?

MR HOVEY: Yes.

10 **COMMISSIONER:** What are you having regard to when you sign off for release?

15 **MR HOVEY:** Purely from the point of view that I'm first of all primarily checking that the investigations manager has signed off and look at his comments, but I'm looking at the - really, the quality of the document. Mine's a perfunctory, cursory view to make sure that that is a professional document that goes out to -

20 **COMMISSIONER:** So irrespective of the conclusion, you don't concern yourself with that?

MR HOVEY: That is the role of the investigations manager, Commissioner.

25 **COMMISSIONER:** Right. Well, we've now left paragraph 42. Why does it then go off to the PSB to a lawyer? What's happening in that process?

MR HOVEY: I'm sorry, Commissioner?

COMMISSIONER: You say in paragraph 43:

30 "Whether or not it's been sustained, it's allocated to a lawyer in PSB."

MR HOVEY: Yes.

35 **COMMISSIONER:** Why is that step taken when you've had an exhaustive examination or investigation?

MR HOVEY: Because feedback needs to be provided, and that may be to the officer about who the allegation is made.

40 **COMMISSIONER:** Sorry. Hang on.

MR HOVEY: It could be (crosstalk) -

45 **COMMISSIONER:** Just a minute. Just a minute. Just a minute. Just a minute. Feedback, what do you mean?

MR HOVEY: Let's - let's, for example, say the person that made the referral to the Professional Standards Committee -

COMMISSIONER: Yes.

5

MR HOVEY: The Professional Standards Branch had a - a robust system where they would inform the informant of the outcome of the investigation. The person that was under investigation may also be aware that they were the subject of an investigation, and they would be written to as well to say that the investigation has
10 been finalised and the allegations have not been sustained. So that was the feedback that was provided.

COMMISSIONER: So - but that task has moved from investigators and from your desk across to lawyers in PSB?

15

MR HOVEY: Yes. They were the - if you like, the administrative function for that, to actually draft the letters and provide that feedback.

COMMISSIONER: It couldn't be done by your people?

20

MR HOVEY: I'm not saying it couldn't, that the - the staff didn't have that capability, Commissioner. But the process was all of that administration with regards to complaints and misconduct was managed, and managed effectively, by a team in PSB.

25

COMMISSIONER: Well, you say that it would be allocated to a lawyer in PSB, and you told me that they write letters. But you then say in your statement:

"The complaint would then be assigned to a decision-maker."

30

Now, that's where I came in. I still don't understand who this - a decision-maker who gets this assignment is and what's their function.

MR HOVEY: Sorry, Commissioner. I didn't mean to overtalk. The situation
35 being there, Commissioner, it would be if an allegation was sustained, then a decision-maker would basically have to make a determination that misconduct has occurred. PSB did not have the autonomy to, for want of a better expression, hand out a punishment. (Crosstalk) determination by a decision-maker.

COMMISSIONER: But who is that decision-maker? That's my question. Who is it?

MR HOVEY: It varied, Commissioner, depending upon where the officer subject
45 to the misconduct allegation worked. So if that person was a Community Corrections Officer, for example, the decision-maker might be a Director of Community Corrections.

COMMISSIONER: So it's an ad hoc process, is it, depending upon the report?

5 **MR HOVEY:** I - no, I don't - I don't believe that I would agree, an ad hoc process. It was a system. So if the person, for example, worked at Goulburn, the Director of South-West Region would most likely be the decision-maker. If that person worked at Port Macquarie Court, the Director of Court Escort Security might well be the decision-maker. It would be the person relevant to where the officer subject to allegation was employed.

10 **COMMISSIONER:** And you say that their task was to oversee the complaint. What did you mean by that?

MR HOVEY: Professional Standards.

15 **COMMISSIONER:** It's your statement. You say:

"The decision-maker would oversee the complaint."

20 **MR HOVEY:** Yes. So -

COMMISSIONER: What does that mean?

25 **MR HOVEY:** A decision-maker would formally write to me and to the person about who the allegation has been made.

COMMISSIONER: Sorry, would formally write to you?

30 **MR HOVEY:** Yes. If you will, a written tasking saying, you know, "Dear Mr Hovey, I task you or one of your investigators to conduct enquiries into the allegation that this officer did this on this date."

COMMISSIONER: What decision is that person making? When you say there "the decision-maker", what's their decision?

35 **MR HOVEY:** Ultimately, their decision will be the outcome of misconduct. So that might be a fine. It might be dismissal. It might be demotion. But in the first instance, it can be said that it's a decision to formally investigate an allegation.

40 **COMMISSIONER:** Well, if the report that's been prepared by these people and ends up with the decision-maker is adverse to the officer -

MR HOVEY: Is that?

45 **COMMISSIONER:** Is adverse to the officer.

MR HOVEY: Yes.

COMMISSIONER: What's the process of providing fairness to that officer before any disciplinary or other action is taken?

5 **MR HOVEY:** There's - Professional Standards Branch ensure procedural fairness at each stage once - procedural fairness is first of all administered through the Investigations Branch in - in the way that we manage the investigation. Once it goes to Professional Standards, they ensure procedural fairness from the point of view that the outcome with the investigation is put to the officer. The officer is given a chance to respond and provide mitigating circumstances.

10 That officer is also given an opportunity to be interviewed by the decision-maker before a decision is handed down. So the decision-maker may write to that person and say, "The investigation says the allegations are sustained. I am considering an outcome ranging from a fine to demotion. I look forward to your written
15 submission or to meeting you to discuss mitigating circumstances." So they've got at least two opportunities to provide mitigation.

COMMISSIONER: I think I understand.

20 **MR LLOYD:** Can I come back about something certainly I don't understand. Who determines, and at what stage, whether the complaint is sustained or not sustained, being the first sentence of 42?

25 **MR HOVEY:** That is purely and utterly the role of the investigator.

MR LLOYD: As in, you've just drawn a distinction between the investigation manager and the investigator?

30 **MR HOVEY:** Absolutely.

MR LLOYD: This is the investigator charged with doing the things you told the Commissioner about, interviewing witnesses, et cetera?

35 **MR HOVEY:** Yes.

MR LLOYD: That person would come up with a conclusion about whether the -

40 **MR HOVEY:** They would assess all available evidence and come to a conclusion as to whether there was enough evidence to sustain or not sustain the allegation.

MR LLOYD: Who was the investigation manager during the period, for example - well, start - I assume the role was occupied by different people between '14 and, say, '18?

45 **MR HOVEY:** Again - once again, very, very difficult to provide a finite answer to that. So around the time of 2015 when the roles in Investigations Branch were civilianised, the role of investigations manager was undertaken by a custodial

officer - a senior custodial officer. When those positions were civilianised, he took a role elsewhere as a custodial officer within the organisation.

5 Had to do that because at the time all of the officers of his rank were being either offered a voluntary redundancy or demoted to a different rank. To give him a fair opportunity, he left, which left a void in that investigations manager role. For somewhere around two years, that - that role was filled by myself because we couldn't fill the position for a variety of reasons.

10 **MR LLOYD:** Which two years were you the investigations -

MR HOVEY: That would be, I would suggest, 2016 to 2018. That's my recollection.

15 **MR LLOYD:** I take it the effect of what you're telling us is that that was a resources problem within your branch?

20 **MR HOVEY:** No, not just for my branch, sir, but effectively it did impact my branch. It was a problem across the whole of the public service, with budget cuts, recruitment freezes. And obviously available funding within Corrective Services went to our core business. So it was about keeping gaols open and managing offenders in custody.

25 **MR LLOYD:** So when we read in 42:

"The investigation manager read all reports to ensure integrity..."

Et cetera:

30 "...and the report would come to me for sign off."

Between '16 and '18 -

35 **MR HOVEY:** I - I performed the function of the investigations manager.

MR LLOYD: You were doing both. Signing off your own -

MR HOVEY: Effectively, yes.

40 **MR LLOYD:** Signing off your own reports?

MR HOVEY: I - it basically became one sign-off.

45 **MR LLOYD:** Could I just - before showing you some examples of the way this worked, just look at 46.

MR HOVEY: Yes.

MR LLOYD: Do I take it from what you've said to the Commissioner earlier that that paragraph or sentence needs to be qualified in that you, I think, conceded that it was possible that not every referral was actually investigated?

5

MR HOVEY: Probably a better wording around that paragraph of the statement might be every Professional Standards Committee referral to Investigations Branch. So what I'm saying is - is that the Professional Standards Committee make those referrals. It was the function of Investigations Branch to complete the investigation, not -

10

MR LLOYD: And intelligence reports, because of what you've told us, may or may not have been investigated?

15 **MR HOVEY:** Unfortunately, that's right.

MR LLOYD: Could I ask - Mr Hovey, for now, you can just close up that folder with your statement -

20 **COMMISSIONER:** Just before we leave the statement. In paragraph 46, you say:

"Regardless of the outcome, every referral to Investigations Branch is investigated."

25 Now, that assumes the report has been read in the first place, doesn't it?

MR HOVEY: I'm sorry, Commissioner. That -

30 **COMMISSIONER:** That assumes the intelligence report has been read in the first place.

MR HOVEY: Yeah. I'm just qualifying that the point of paragraph 46 refers to investigation reports, not to intelligence reports.

35 **COMMISSIONER:** I understand that. But the system breaks down if the intelligence report is never looked at, doesn't it?

MR HOVEY: Yes.

40 **COMMISSIONER:** So that to say that regardless of the outcome, every referral to Investigations Branch is investigated, masks a problem in terms of how it ever gets to be investigated.

45 **MR HOVEY:** I - look, I see the point of what you're saying, Commissioner. The point that I'm making is - is that that paragraph refers to every Professional Standards -

COMMISSIONER: I understand what it refers to.

MR HOVEY: Yes.

5 **COMMISSIONER:** But the fact of the matter is here we have a system which was entirely vulnerable to failure, wasn't it? Correct?

MR HOVEY: Yes.

10 **COMMISSIONER:** And could fail in respect of prison officers carrying out criminal activity?

MR HOVEY: If it was reported, yes.

15 **MR LLOYD:** When you say "if it was reported", I rather thought the burden of the Commissioner's question was assuming a report, the system was vulnerable to failure because the report may not have even been read?

MR HOVEY: Yes.

20 **MR LLOYD:** Could I ask Mr Hovey to be provided with volume 15 of the tender bundle, Exhibit 3. You can close up so you're not overly overwhelmed with documents.

25 **COMMISSIONER:** Mr Hovey - Mr Hovey, did you ever make the Commissioner aware of this problem?

MR HOVEY: The moment that I was formally advised, which was the first time I'd heard anything about the allegations involving Mr Astill -

30 **COMMISSIONER:** No, no, no. Not Mr Astill. The problem in terms of anyone processing intelligence reports. Did you ever talk to the Commissioner about that problem?

35 **MR HOVEY:** Not to the Commissioner directly. I did speak to the - the former Assistant Commissioner about it.

COMMISSIONER: Who was that?

40 **MR HOVEY:** That was Mr Koulouris. But as I said previously, the problem being that there was - there was literally no funding. I was short of investigators, short of an intelligence analyst -

COMMISSIONER: You've told us that. I understand. But - okay. I understand.

45 **MR LLOYD:** Could you just turn up tab 489. I just want to, without getting overwhelmed with the details here, Mr Hovey, ask you some questions about

particular allegations of misconduct, starting with this document, tab 489, in February of 2014. Just looking at the first page there - it's a bit hard to follow with the redactions, but do you remember this one? If you don't, just say so.

5 **MR HOVEY:** I - I - I don't. I don't have a recollection.

MR LLOYD: I'll just draw some things to your attention that might prompt memory.

10 **MR HOVEY:** Yes.

MR LLOYD: You've got a document here:

15 "Matters to be referred to the Professional Conduct Management Committee."

MR HOVEY: Yes, which was formerly the Professional Standards Committee. Yes. It's been re-badged since.

20 **MR LLOYD:** I assume that probably had its own acronym?

MR HOVEY: Yes. PCMC, yes.

25 **MR LLOYD:** And we're dealing, just without dwelling too much on the precise details, with allegations of misconduct by an officer involving conduct of a sexualised nature with an inmate, for example, the first arrow:

30 "An inmate had been flirting with a particular officer and provocatively dancing, and the officer was very close with an inmate and another inmate."

Do you see that?

MR HOVEY: I do, yes.

35 **MR LLOYD:** Allegations of this kind about inappropriate closeness in a sexualised way were serious?

MR HOVEY: Yes. Yes.

40 **MR LLOYD:** And required investigation?

MR HOVEY: It would, yes.

45 **MR LLOYD:** And there's nothing here to suggest any sexual assault. Do you see that?

MR HOVEY: I do.

MR LLOYD: But, nonetheless, serious matters requiring a proper investigation, if it came to the attention of the Investigations Branch. Do you agree?

5 **MR HOVEY:** Yes, I do.

MR LLOYD: Just have a look at the previous tab, 488. Do you see this is a letter to you, 14 March '14? And if you go to the second page, from Peter Severin?

10 **MR HOVEY:** Yes.

MR LLOYD: He was the then Commissioner?

MR HOVEY: He was.

15

MR LLOYD: And you're being appointed to conduct an investigation?

MR HOVEY: Yes.

20 **MR LLOYD:** And do you know how it was that what appears to be a referral to the Professional Conduct Management Committee in about February '14 landed on the desk of the then Commissioner?

MR HOVEY: Look, I don't know.

25

MR LLOYD: Was that normal, for allegations of this kind about alleged misconduct by an officer of this nature - was that normal, for it to be elevated to the Commissioner?

30 **MR HOVEY:** Yes, I - I - I don't know the circumstances behind why Commissioner Severin referred that. However, I am aware that the Commissioner did receive a number of - a variety of complaints, let's say, that he would always refer on appropriately to the Professional Standards Branch. I can only - and I am assuming here. It's hypothesis only. I - I'm hypothesising that this was one of those
35 cases where he was made aware of it and basically sent that through.

MR LLOYD: So to your understanding, this is in that category of a referral to you at least broadly in the territory of one coming from the Professional Standards Committee?

40

MR HOVEY: Yes.

MR LLOYD: Albeit directly from the Commissioner himself?

45 **MR HOVEY:** Yes.

MR LLOYD: And requiring you to conduct an investigation -

MR HOVEY: Absolutely.

MR LLOYD: - in your capacity as the head of the Investigations Branch?

5

MR HOVEY: Yes.

COMMISSIONER: Mr Lloyd, what's the reason for the redaction?

10 **MR LLOYD:** I'm tempted to invite Mr Sheller to explain that. There's been - they're redacted at the request of the Department on the basis that there are a range of current and former investigations into misconduct by officers that are thought to be sensitive and -

15 **COMMISSIONER:** Sensitive doesn't justify redaction in this forum.

MR LLOYD: Can I just say this, Commissioner: We've been trying to deal, in a practical way, with a very large range of matters of this kind and in circumstances where it's not been necessary, in effect, to get to the bottom of whether the redactions are appropriate.

20

COMMISSIONER: Well, except that at the moment this letter comes out of the blue, as far as I'm concerned. I can't put it into context.

25 **MR LLOYD:** Could I at morning tea speak to Mr Sheller about -

COMMISSIONER: I'd like you to, and I'd like - I mean, as I say, it's got no context for me at the moment. And if there's some means by which I can have the context, I'd appreciate it.

30

MR LLOYD: I understand exactly what you're saying, Commissioner. I must say I have the benefit, because I've called for the document, of knowing what's behind the redactions.

35 **COMMISSIONER:** Well, I assumed you did, but I don't.

MR LLOYD: I appreciate that. Nor does the witness.

COMMISSIONER: No.

40

MR LLOYD: Just pardon me, Commissioner. We might come back to it after the break, Mr Hovey, but I can just press on and ask you about some things. So you've got that referral from the then Commissioner. Could I just ask you, then, to look at tab - just the first page for now, tab 491. You'll be pleased to know, Mr Hovey, I'm not going to invite you to read the entirety of that tab, but let me just put this to you: that behind tab 491 is contained documents that have been produced to this Commission said to be the results of the investigation that you were charged with

45

conducting. Just accepting that from me, does that accord in terms of the volume of material with your expectation about what might be generated about the investigation of a complaint of this kind?

5 **MR HOVEY:** Yes, the - I can see, I think, that the investigation report is in here.

MR LLOYD: I'm going to draw some things to your attention -

MR HOVEY: Yes.

10

MR LLOYD: - about it.

MR HOVEY: Could I - could I get the question again?

15 **MR LLOYD:** I withdraw the question. I'll show you some things in their place.

MR HOVEY: No worries. Thank you.

MR LLOYD: Have a look at page 11 up the top right-hand corner, 0011.

20

MR HOVEY: Yes.

MR LLOYD: This is a little out of order, but this is advice to Anne-Marie Martin, Assistant Commissioner, from a legal officer, 31 July '14. Do you see that?

25

MR HOVEY: Yes, I do.

MR LLOYD: This comes toward the end of the process, doesn't it, in the sense that this is a legal officer giving advice or consideration to the investigation of the sort that you've told the Commissioner about earlier?

30

MR HOVEY: That's correct, yes.

MR LLOYD: Just going to the things which occurred before, have a look, for example, at 83.

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MR HOVEY: Page or tab?

MR LLOYD: Page 83.

40

MR HOVEY: Yes.

MR LLOYD: I don't want to take you through each and every page of this document. If need for context to have a look at the starting point, it's 58. But this is the report from the investigator?

45

MR HOVEY: Yes.

MR LLOYD: You remember - is it Mary Farrell?

MR HOVEY: Mark.

5

MR LLOYD: Mark Farrell, I'm sorry.

MR HOVEY: Yes.

10 **MR LLOYD:** And so that's in terms of the process. We're dealing with a report spanning 119 paragraphs?

MR HOVEY: Yes.

15 **MR LLOYD:** Addressed to you, from page 58?

MR HOVEY: Yes.

20 **MR LLOYD:** This is the system playing out in the way you described?

20

MR HOVEY: Yes.

MR LLOYD: As in, investigation allocated to you; you appointed an investigator; investigation done; and report prepared?

25

MR HOVEY: Yes.

MR LLOYD: Just to get a flavour, without going to every page, of the kinds of things that the investigator did, just have a look, for example, at 149.

30

MR HOVEY: Yes.

MR LLOYD: I think you've got - you've got there, and a number of pages following, a transcript of an interview between the inspector, Farrell, and a person who's name is redacted. Do you see that?

35

MR HOVEY: I do.

MR LLOYD: So part of a proper investigation into allegations of this kind involve interviews between the investigator and relevant witnesses?

40

MR HOVEY: Yes.

MR LLOYD: And they'd be transcribed?

45

MR HOVEY: That's right.

MR LLOYD: And, again, just if you look at 163, there's another interview there of the same nature, again transcribed?

MR HOVEY: Yes.

5

MR LLOYD: And there's another principal investigator, Glasheen?

MR HOVEY: Yes, that's correct.

10 **MR LLOYD:** G-l-a-s-h-e-e-n?

MR HOVEY: Yes.

MR LLOYD: So there were two investigators involved in this?

15

MR HOVEY: The investigator was Mark Farrell. To conduct a - sorry, a - an interview of this nature required a second chair - a second interviewer. So he was there as a support.

20 **MR LLOYD:** So there's, at this time at least, two investigators at your disposal to conduct the investigations?

MR HOVEY: Yes.

25 **MR LLOYD:** And you would expect, for allegations of this kind, this process to be followed, that is, an investigator or two conducting investigations, transcripts, analysis; is that right?

MR HOVEY: Certainly the main investigator, yes.

30

MR LLOYD: And consideration of that material and then the preparation of the detailed report?

MR HOVEY: Yes.

35

MR LLOYD: And that resulted in the document I showed you at the start, page 11, with that advice from the lawyer to the Assistant Commissioner within Professional Standards?

40 **MR HOVEY:** Yes.

MR LLOYD: And then to complete the process in tab 490, culminating in a letter, take it from me, to the officer under investigation from Dr Anne-Marie Martin, Assistant Commissioner, Offender Management and Policy, notifying of
45 the outcome of the investigation and consideration by Professional Standards?

MR HOVEY: Yes.

MR LLOYD: Would this be fairly described in your opinion, Mr Hovey, as the system, at least when it came to referrals to investigations, working properly?

5 **MR HOVEY:** Yes. From what I've - I've been able to see, that would appear be the process that we would have done.

MR LLOYD: At least for a referral in, as opposed to an intelligence report -

10 **MR HOVEY:** Yes.

MR LLOYD: - this was what was meant to happen?

MR HOVEY: Yes.

15

MR LLOYD: Commissioner, I'm finished on this particular topic, but I'm conscious that Mr Sheller might be able to get some instructions to assist with the redaction issue. Could I invite to you take an early morning tea?

20 **COMMISSIONER:** We'll take the morning adjournment.

<THE HEARING ADJOURNED AT 11.20 AM

<THE HEARING RESUMED AT 11.42 AM

25

MR LLOYD: Mr Hovey, can you just go back to tab 489. Just pardon me. Sorry, Mr Hovey. I just want to give you the name of the officer referred to here to see if it prompts any memory. I can start with the surname - just pardon me. Surname McCall. Ring any bells?

30

MR HOVEY: I've no recollection, I'm sorry.

MR LLOYD: Allan McCall. Commissioner, I will - we will come back to deal with the question that you asked me about, the redactions in that document. Could I ask that Mr Hovey be relieved of volume 15 and given volume 16. Turn, please, to tab 494 in that bundle. You see, again, there's redactions applied, but do you see this is a briefing note to Minister - if you see on the second page, it's authored by James Koulouris and Peter Severin. And do you see that the background involves allegations about an assault by an officer, Southwell, on an inmate? Particularly if you look at the third-last bullet point under Background.

40

MR HOVEY: Yes.

MR LLOYD: Do you remember this one coming to your attention?

45

MR HOVEY: Vaguely, yes.

MR LLOYD: If you go back in time to the document at 492. You see that's a submission to Assistant Commissioner. And over the page, you'll note that the authors are Patricia Fleming, Director, Professional Standards Division; James Koulouris, Assistant Commissioner, Governance and Continuous Improvement; and Kevin Corcoran, Assistant Commissioner, Custodial Corrections. Do you see that?

MR HOVEY: Yes. Yes.

MR LLOYD: And the submission is said to be to the Assistant Commissioner from Business Unit Professional Standards Branch, at the top right-hand corner of page 1?

MR HOVEY: Yes, the submission to the Assistant Commissioner. That's a submission to Assistant Commissioner Corcoran.

MR LLOYD: It's to Assistant Commissioner Corcoran even though his signature is on the second page.

MR HOVEY: Yes.

MR LLOYD: And was this normal so far, in terms of the allegations that I've drawn to your attention, about this officer landing, at this point, in a submission evidently from the Professional Standards Division to the Assistant Commissioner Corcoran?

MR HOVEY: In this particular instance, we would be looking for - that officer was charged - formally charged by police, and obviously we would be looking at a suspension. But that decision would be made - at that time would be made by the Assistant Commissioner.

MR LLOYD: Is that - does it get dealt with in that way because once there's a charge been laid, it's out into the public domain?

MR HOVEY: I think partially. That certainly is a - an aspect of it, that you would certainly look at the reputational damage that that type of charge could bring against the organisation. But also there would be an element of risk management as well of removing that officer from the workplace.

MR LLOYD: And if you have a look, for example, at 493. This is a Department of Justice briefing to the Attorney-General?

MR HOVEY: Yes.

MR LLOYD: And Key Summary of Issue:

"To advise the Minister of the court result with an appearance on 10 September '14."

MR HOVEY: Yes.

5

MR LLOYD: And do you see Current Position:

"He pleaded guilty to a charge of common assault."

10 **MR HOVEY:** Yes.

MR LLOYD: And in the fourth bullet point under Current Position:

15 "He is currently suspended with pay, and CSNSW will now initiate disciplinary action."

MR HOVEY: Yes.

20 **MR LLOYD:** May I just ask you this, to the extent you can help us: The process where someone is charged and is before the courts but before there's been either a plea of guilty or a finding of - or a verdict of guilty, for example, is that one where there would not be an investigation by the Investigations Branch in that period of time?

25 **MR HOVEY:** That's correct, yes.

MR LLOYD: As in, you'd wait to see what the courts have done before conducting your own investigation?

30 **MR HOVEY:** At that time, that's exactly what we did, yes.

MR LLOYD: But that, here, wouldn't stop the particular officer being suspended, in this case with pay, and removed from the particular prison?

35 **MR HOVEY:** Given the gravity of the allegations against him, that would be a reasonable course of action.

MR LLOYD: But the disciplinary investigation would be suspended pending the resolution of the prosecution; true?

40

MR HOVEY: With this particular matter, sir, he pleaded guilty and, therefore, disciplinary action will be taken against that guilty plea as opposed to an internal investigation.

45 **MR LLOYD:** And once there's been a plea of guilty or a verdict of guilty, then the disciplinary investigation would kick in; is that right?

MR HOVEY: Yes, I - I'd suggest that the next stage here would be we'd immediately - I use the royal "we" - Corrective Services would immediately move that officer from suspension with pay to suspension without pay, and a disciplinary process would be initiated.

5

MR LLOYD: And when you say "a disciplinary process", would that be an investigation by your branch?

MR HOVEY: Not in this particular case because he's pleaded guilty. So, ultimately, he would be written to and asked for justification as to why his employment shouldn't be terminated.

10

MR LLOYD: Do you see on the second page of this document behind 493, the Department of Justice briefing, that your name appears as the contact officer?

15

MR HOVEY: Yes, it does, because I - I completed that briefing.

MR LLOYD: Why are you doing this?

MR HOVEY: Basically because with regards to anything to do with court outcomes, those court processes that have been initiated by the CSIU, I'd have the information relatively immediately. I'd be phoned from the court with the outcome, which meant that we could very swiftly brief the Commissioner, the Secretary and the Minister before they heard it on the radio.

25

MR LLOYD: Was this a CSIU police investigation?

MR HOVEY: My recollection is - is that it was.

MR LLOYD: Do you remember how it came to the attention of the CSIU?

30

MR HOVEY: I'll be honest. I've no recollection of - of - accurate recollection of how that happened. I would assume that it was the normal referral process.

MR LLOYD: Could I just ask you to go forward to 497, to do this in chronological order.

35

MR HOVEY: Yes.

MR LLOYD: You see a letter there from Kevin Corcoran to Mr Southwell, referring in the second paragraph:

40

"An allegation of misconduct arising from the incident is to be the subject of an investigation."

45

Do you see that?

MR HOVEY: I do see that.

MR LLOYD: And pending that investigation, he was - the position was continue, that is, his suspension, from duty with pay?

5

MR HOVEY: Yes. I - I - as I said, I've no recollection of it. It surprises me, but I've - I've no recollection of it.

MR LLOYD: I think from what you said before, your expectation might have been dismissal around this point?

10

MR HOVEY: Yeah, on the grounds of the fact that he's pleaded guilty.

MR LLOYD: In terms of what happened next, just go back, would you, to 495. Do you see there's a director's report here?

15

MR HOVEY: Yes.

MR LLOYD: And that you're the author?

20

MR HOVEY: I am.

MR LLOYD: And it's dated 14 December '14?

MR HOVEY: Yes.

25

MR LLOYD: Is what happened here that - if you just have a chance to look at the document, I'll draw some things to your attention. In the third paragraph, it says:

30 "Contained within the brief is the police statement of the victim, and in that version of events the victim makes further allegations that are of concern."

And then they're set out in the three bullet points?

MR HOVEY: Yes, I - I see that.

35

MR LLOYD: And you state your concern then:

40 "Whilst the evidence is uncorroborated and untested, it supports that the incident with which Southwell was charged may not have been a moment's aberration."

Do you see that?

MR HOVEY: Yes.

45

MR LLOYD: This - and the reference up in the first paragraph to a report submitted by principal investigator John Glasheen -

MR HOVEY: Yes.

5

MR LLOYD: - obviously enough, suggests that however it came to pass, your branch performed an investigation -

MR HOVEY: Based on this evidence, yes, we did.

10

MR LLOYD: And in effect, on your view, that investigation exposed things beyond the subject of the criminal proceedings and the plea of guilty. Is that effectively what you're saying?

15

MR HOVEY: Yes, I'm raising those concerns. That's my recollection from re-reading that now.

MR LLOYD: Could I just ask you - this, in a sense, moves forward in time. But in terms of process, is this right: If a criminal charge of an officer came to the attention of the Investigations Branch, then I think what you've told us is the proper process was that you wouldn't conduct an investigation pending the result; true?

20

MR HOVEY: Yes.

25

MR LLOYD: But after the result, for example, a plea of guilty or a verdict of guilty, this is demonstrating to us, isn't it, that it would be critical for investigations to conduct an investigation into the subject matter of the complaint; true?

30

MR HOVEY: Yes. Yes. In this instance, yes.

MR LLOYD: Because the matters that came before the criminal courts might not be the universe of the matters that would be of relevance in a conduct sense to the Department. Is that true?

35

MR HOVEY: That's correct. From the point of view for a criminal charge, it may not meet the threshold of beyond reasonable doubt but may reach the threshold of reasonable expectation from us.

40

MR LLOYD: And so albeit there would be a period of suspension of any investigation, as soon as one gets to a position of a guilty verdict, either after a trial or otherwise, that requires a proper investigation?

45

MR HOVEY: Yes. I - as I said, in this instance, I can see that that did happen. I - I usually expect that upon a guilty plea, we transition straight to the disciplinary process without the investigation. But in this case, we didn't.

MR LLOYD: And just to draw your attention to what ultimately happened after your report of 14 December 2014, if you have a look at 495 - I withdraw that - 499. You see there's a letter from Marilyn Wright, Director, Custodial Operations, 3 March '15, reprimanding Mr Southwell. Do you see that?

MR HOVEY: Yes, I do.

MR LLOYD: Do you understand that to be issued after whatever further investigation was thought necessary was done in light of your December memo?

MR HOVEY: Ultimately, yes. I mean, that's the first time I've seen the outcome of that particular matter. Because, of course, the - the role is, if you like, analogous to - to police and the court system. We just provide the investigation. The punishment that's meted out is nothing to do with Investigations Branch. So that's the first time that I've seen that particular letter. But in answer to your question, yes, sir, I believe that that is the response to our briefing and investigation.

MR LLOYD: And do we take it from that that you can't recall anything being - I withdraw that - that investigations asked to do anything more about the concerns that you'd raised at the bottom of your memo?

MR HOVEY: No.

MR LLOYD: Is that surprising to you?

MR HOVEY: That's my recollection.

MR LLOYD: Is that surprising, that you wouldn't be asked to do more about the concerns that you'd raised?

MR HOVEY: Now more so, yes. Yes.

MR LLOYD: Can I ask you to close up that folder. Could Mr Hovey be supplied again with folder 14. While that's happening, can I ask you whether you can recall something - I can't show you the document about - any report, that is, intelligence report, information note, referral, anything, that you can recall coming to your attention in your role in March 2016 about the conduct of Astill concerning a Witness C? In order to answer that question, you're going to have to take out that pseudonym list from that folder - envelope.

MR HOVEY: I have no recollection of that before - I think it was sometime in March 2019 that I became aware of some information with regards to Mr Astill. But at that time, of course, it was historic because events had overtaken the records. But I - I've no recollection of seeing anything to do with that particular witness prior to - prior to then.

MR LLOYD: The Commission has received some evidence that at least one written report was made in the gaol about Witness C and Astill having an inappropriately close relationship and Witness C being rumoured to be giving oral sex to officers, plural. Just take it from me that we've had evidence to that effect.

5

MR HOVEY: Right.

MR LLOYD: If that information became available or known to you in investigations, would that have warranted an investigation?

10

MR HOVEY: Until some ICAC findings later, Investigations Branch has not had the capacity to initiate investigations on their own merit, per se. So from that particular type of information - I can refer to - I can't speak specifically about that. That would have led me to draft a highly confidential briefing to the Commissioner, highlighting those issues, and that would initiate a process that would most likely lead back to an investigation.

15

MR LLOYD: So that would be one thing if that information came to you informally, for example, in a phone call or a report of that kind? You would elevate that in the way you've described?

20

MR HOVEY: Yes.

MR LLOYD: What about if it came to you in the form of an intelligence report or an information note?

25

MR HOVEY: Similar and same. If it came in the form of an intelligence report iterating the circumstances that you're talking about, I would most likely do that in the form of a highly confidential briefing. Something less serious, I'd probably do a referral to the Professional Standards Committee.

30

MR LLOYD: I just am not understanding why this scenario would be a highly confidential briefing to the Commissioner as opposed to an investigation.

35

MR HOVEY: Because the allegations are criminal. So as part of that referral to the Commissioner, I would be advising him that I'd referred that matter to police.

MR LLOYD: So a highly confidential briefing but a referral to the people with CSIU -

40

MR HOVEY: Yes.

MR LLOYD: - that are seconded to your branch?

45

MR HOVEY: Yes. Yes.

MR LLOYD: Just so I can understand, those two things would be bound to follow if that information came to you in the form of an intelligence report?

5 **MR HOVEY:** Yes. And what I - what I would hope to try to do would be to initiate, through the commander, the police enquiries so that, as well as informing the Commissioner of the incident, I would be able to tell him how it was being progressed, what action we were taking, trying to pre-empt the questions he would ask.

10 **MR LLOYD:** Could I ask you this: You've told us about the process for people within your branch reading intelligence reports when they come in. Is there any ability, so far as you know, to - by anyone to permanently delete an electronically submitted intelligence report?

15 **MR HOVEY:** My understanding of the IIS process is that is impossible once it's been submitted.

MR LLOYD: So if it's submitted from the particular Correctional Centre, it's there with an electronic footprint or record forever?

20 **MR HOVEY:** Absolutely. And I know that process because we've had a number of instances within Investigations Branch where we've created file notes that are perhaps inaccurate or containing the wrong information, and we've had to add a reference to that, "Supersedes information date whatever", because we can't
25 delete it.

MR LLOYD: So anyone who tells this Commission that a report in the form of an intelligence report with information of the kind was submitted in or about March of '16, if you assume that no record electronically has ever been found of such
30 a report, would have to be wrong. Is that what you say?

MR HOVEY: I'd say they're mistaken, yes.

MR LLOYD: Could you have a look in that volume 14 at tab 444. Have a look
35 behind that tab. About eight-tenths of the way down the page, you see Michael Paddison, email to Kevin Corcoran?

MR HOVEY: Yes.

40 **MR LLOYD:** And if you just have a look at some things in that email. Do you know who Michael Paddison -

MR HOVEY: I know him, yes.

45 **MR LLOYD:** And do you see there's some information recorded in 1 through 11 on the second page? See that?

MR HOVEY: Yes.

MR LLOYD: A range of things of seriousness; agree? I see you're nodding.

5 **MR HOVEY:** Yes. Sorry. Yes.

MR LLOYD: For example, 9:

10 "Claims inmates are giving officers head jobs. Described the officer as a short little fella, thinks his name is..."

I can tell you what's behind that black redaction:

15 "...Jamie."

MR HOVEY: Are we in 444?

MR LLOYD: Yes, on the second page.

20 **MR HOVEY:** Sorry.

MR LLOYD: Paragraph 9.

25 **MR HOVEY:** Yes.

MR LLOYD:

30 "Claims inmates are giving officers head jobs. Described the officer as a short little fella, thinks his name is Jamie. He gives girls cigarettes for the head jobs."

That's a serious allegation. Would you agree?

35 **MR HOVEY:** Yes, I do. Yes.

MR LLOYD: That involving sexual contact between officers and inmates, but evidently the trade being contraband in the form of cigarettes for the sexual favours.

40 **MR HOVEY:** Yes.

MR LLOYD: Would you agree that that allegation, as it appears there, is one that at least might involve criminal behaviour by the particular officer?

45 **MR HOVEY:** Absolutely, yes. Yes.

MR LLOYD: And you say "absolutely". I think we know why you'd agree, but just tell us why?

5 **MR HOVEY:** Because the - the alleged actions by the officers here are a criminal offence.

MR LLOYD: Number 10:

10 "Two inmates claim to be pregnant by officers..."

MR HOVEY: Yes.

MR LLOYD:

15 "...and can't remember the girls' names, but one of them is tall and looks pregnant, been in longer than nine months."

MR HOVEY: Yes.

20 **MR LLOYD:** That, again, an allegation, if true, of the utmost seriousness?

MR HOVEY: Yes, it would. Yes.

25 **MR LLOYD:** Do you see - if you go back to the first page, the email is forwarded from Kevin Corcoran to James Koulouris -

MR HOVEY: Yes.

30 **MR LLOYD:** - and then from James Koulouris on to you and Mr Peter Robinson.

MR HOVEY: That's correct.

35 **MR LLOYD:** Peter Robinson was at the same level in the hierarchy, that is, then Director of the Professional Standards Branch?

MR HOVEY: That's correct, yes.

40 **MR LLOYD:** So I take it you and he would have at this time had quite a bit to do with each other?

MR HOVEY: We had a symbiotic relationship, yes.

MR LLOYD: Have a look at Peter Robinson's email to you and others up the top.

45 **MR HOVEY:** Yes.

MR LLOYD:

"Please find forwarded allegations in relation to illegal behaviour by staff and inmates at Dillwynia CC."

5 **MR HOVEY:** Yes.

MR LLOYD:

10 "Subject to your views, recommended that CSIU and IB review and action appropriate strategies."

See that?

15 **MR HOVEY:** Yes.

MR LLOYD:

20 "PSB will await your report prior to considering whether or not the Commissioner ought to refer the allegations to ICAC."

MR HOVEY: Yes.

25 **MR LLOYD:** So far, in terms of the information and Mr Robinson's suggestion, this looks broadly in accordance with the system you told us about before, namely, Professional Standards become aware of serious matters and have tasked the Investigations Branch and the CSIU with investigating?

30 **MR HOVEY:** Tasked us to review and action appropriate strategies. So in this particular instance, the commander of the CSIU has been included in that dissemination. And I - I - I would believe that that's gone for a criminal investigation.

35 **MR LLOYD:** That's Robert Hollows. In terms of what you understood this to be, you understood this, in effect, to be a request for the police seconded to investigations within CSIU to investigate the criminal behaviour?

MR HOVEY: Yes, sir.

40 **MR LLOYD:** Could I ask you to look at 445. You see down - from about the middle of the page, there's an email from you to Shari Martin, copied to James Koulouris and Peter Robinson, 20 July 2016?

MR HOVEY: Yes.

45 **MR LLOYD:** That's a little short of two months after the email I just asked you about?

MR HOVEY: Yes, it is.

MR LLOYD: Subject: Pregnant Inmates. See that?

5 **MR HOVEY:** Yes, I do.

MR LLOYD: Do you remember why it was that you sent this email to Shari Martin?

10 **MR HOVEY:** I do. There was an element within this that Investigations Branch can have no access to an inmate's medical file. My recollection is - is that we made a general enquiry - a broad-brush enquiry through Justice Health at the time along the lines of, "Can you advise if any inmates in this particular unit are pregnant." But to do a thorough analysis of that information, what we would be looking for
15 are the results of the - female inmates, certainly at this time, were pregnancy-tested on arrival in custody. We would be looking for the records that show that they weren't pregnant when they came into custody, compared to information that they were pregnant now. We couldn't obtain that information, so asked Shari for her help.

20 **MR LLOYD:** Just have a look at some things in the email.

MR HOVEY: Yes.

25 **MR LLOYD:**

"As you're aware, a number of allegations made recently regarding Dillwynia."

30 **MR HOVEY:** Yes.

MR LLOYD:

35 "These allegations were tested as far as possible based on the available information but in the main could not be progressed."

Do you see that?

40 **MR HOVEY:** I do.

MR LLOYD: That obviously was said by you with knowledge of the nature of the investigation that had been conducted -

45 **MR HOVEY:** I - I - I'd suggest that would be the case, yes.

MR LLOYD: From your description here, would that be - would that suggest to you that the investigation had been conducted by the Investigations Branch or the CSIU?

5 **MR HOVEY:** I - I've no recollection, but it could have been either.

MR LLOYD: Well, may I suggest this to get your response: that if had been referred off to the CSIU for it to conduct the investigation, it would be unlikely that you'd be told the precise details of what the police were doing and it's more
10 likely, from your description, that the investigation was conducted by the Investigations Branch.

MR HOVEY: I - I would agree with that. I'd suggest that probably the police were unable to progress it criminally and, therefore, it would have come back to
15 investigations.

MR LLOYD: And then you say:

20 "Whilst this was due mainly to conflicting or weak evidence from an informant, IB still conducted a thorough assessment of all the alleged issues raised."

Do you see that?

25 **MR HOVEY:** Yes.

MR LLOYD: Then you go on and deal with one such issue, being the two inmates who were said to have been pregnant?

30 **MR HOVEY:** Yes.

MR LLOYD: And then:

35 "We have been reviewing this matter because we would like to close it."

Do you see that?

MR HOVEY: Yes, I do.

40 **MR LLOYD:** And could I just ask this: Do you remember whether the allegations in the 27 May email were allocated to one of your investigators within the Investigations Branch for that person to conduct an investigation of the sort we saw in that tab which occupied almost an entire folder?

45 **MR HOVEY:** Yeah. I'm sorry. I've no recollection as to whether it was or who it might have been allocated to. Refreshing my memory from these documents now,

there's a lot of broad-brush comments that people say. But how do you corroborate? It's a he said, she said scenario.

5 **MR LLOYD:** To finish - to try and finish your sentence in the form of a question, that suggests there hadn't been a proper investigation conducted by one of your investigators into all these allegations?

MR HOVEY: It's possible that that's the case, yes.

10 **MR LLOYD:** That would be - I withdraw that. If there was not an investigation conducted by one of your investigators that was thorough into these allegations, that would be a serious failure. Do you agree?

15 **MR HOVEY:** If there's no investigation, I - without being able to access records that I have no access to anymore, I - I'm unable to comment on that. I'm sure that there would have been a process followed to arrive at that conclusion.

MR LLOYD: You see in your email toward the bottom:

20 "Can you advise any inmates who have recently, in the last three months, been identified as pregnant. If so, this lends weight to the allegations."

MR HOVEY: And would help us develop lines of enquiry, yes.

25 **MR LLOYD:**

"And if not, we will arrange to interview our potential witness and reassess."

30 By this time, there was one more witness who had been identified but you hadn't spoken to, it would seem. Do you agree?

MR HOVEY: Yes. I'd - I'd say on the wording of that, that's possible, yes.

35 **MR LLOYD:** Have a look at the next tab, 446.

MR HOVEY: Yes.

40 **MR LLOYD:** You see Confidential Briefing to Commissioner, and just look at the second page. This is August of '16. You're the author. Do you see that?

MR HOVEY: I do.

45 **MR LLOYD:** You see the names on there include James Koulouris and Peter Severin?

MR HOVEY: Yes.

MR LLOYD: Does that mean that they received this document?

MR HOVEY: Yes.

5 **MR LLOYD:** The handwritten note at the bottom of that page, is that James Koulouris?

MR HOVEY: That's James Koulouris' writing, yes.

10 **MR LLOYD:** Could I just ask you about the confidential briefing. It describes in the third paragraph under Background:

"Matter unable to be progressed criminally and investigations took carriage."

15 **MR HOVEY:** Yes.

MR LLOYD:

"Several investigative strategies undertaken..."

20

Including the things you've identified there, showing a photoboard -

MR HOVEY: Yes.

25 **MR LLOYD:** - to the informant and those other matters. And then in the next paragraph:

"Upon a briefing being provided for the Commissioner's consideration, the Commissioner was able to provide a further potential witness."

30

Do you see that?

MR HOVEY: Yes.

35 **MR LLOYD:** And then, without taking you to every part of it, the witness was - a further witness was interviewed?

MR HOVEY: That's correct.

40 **MR LLOYD:** The conclusion was that that witness didn't add anything?

MR HOVEY: That's right. Only opinion.

45 **MR LLOYD:** Do you think it's surprising if there was an investigation actually conducted by an investigator, that is, interviewing relevant witnesses, in a thorough way that we saw in that tab 491 example, that you're not referring and closing that detailed investigation in this briefing?

MR HOVEY: It would appear from the briefing note that I've done to the Commissioner that an investigation was conducted utilising a number of strategies to be able to challenge those allegations.

5

MR LLOYD: What I want you to help us with, Mr Hovey, is if you look at your comment:

"Without further evidence, not hearsay, the lines of enquiry are exhausted."

10

MR HOVEY: Yes.

MR LLOYD: And the recommendation is:

15

"The information held by investigations regarding allegations of sexual impropriety be retained."

Do you see that?

20

MR HOVEY: Yes.

MR LLOYD: You told us earlier that the process or the system was irrespective of the view of the investigator or the investigations manager about whether it was sustained or not sustained, there would be a referral back to a lawyer at Professional Standards Branch for that lawyer to prepare a briefing to whoever the decision-maker the Commissioner asked you about. Do you remember that evidence?

25

MR HOVEY: Yes.

30

MR LLOYD: What is going on here and how does it accord with that system?

MR HOVEY: I'm unsure. I'm unsure as to whether there's a - an investigation report that - that links to this. I can't say.

35

MR LLOYD: This is, I want to suggest to you, an example of the system that you identified before not being followed.

MR HOVEY: Yep. You can -

40

MR LLOYD: To the point where your recommendation was there were - while there were allegations of sexual impropriety - and I pause there. You knew the name of the officer who was the subject of the allegations?

45

MR HOVEY: Yes.

MR LLOYD: The conclusion you were making is it just be retained - that information be retained for intelligence purposes.

5 **MR HOVEY:** I'm not unsure what else we could have done with it -

MR LLOYD: Well -

10 **MR HOVEY:** - given that the police couldn't progress it, given that all we had was opinion from offenders as to what they thought and they believed and - there was no tangible evidence for us to be able to come back to - to sort of say an officer was guilty of misconduct.

15 **MR LLOYD:** Could I suggest to you one option would be to have followed the process you identified before about sending it back to the Professional Standards Branch for someone there to review it.

MR HOVEY: I'm unsure that this wasn't sent back to Professional Standards Branch.

20 **MR LLOYD:** But I thought you told us the system was the decision-maker - you've got in your statement to us, the decision-maker - the decision would be made by someone from Professional Standards.

25 **MR HOVEY:** Yes, but we haven't got any allegations of misconduct with this particular matter, have we?

MR LLOYD: Well -

30 **MR HOVEY:** We haven't got any sustained findings of misconduct with this particular matter.

MR LLOYD: But you told us before that whether they were sustained or not sustained at your end, would be referred back for someone to make the decision.

35 **MR HOVEY:** Yes. I -

MR LLOYD: That's not what's happening here, is it?

40 **MR HOVEY:** It would appear not.

MR LLOYD: Is this – I withdraw that. Could I just ask you about 447. You see you've sent an email to Ian MacRae, who was then the Acting Governor of Dillwynia, 29 August 2016:

45 "We have conducted a number of enquiries with regard to allegations of inmates providing officers with sexual favours."

Do you see that?

MR HOVEY: Yes.

5 **MR LLOYD:** And the feedback from one of the sources was that Unit L4 was an area which, if it was occurring, effectively allowed that conduct -

MR HOVEY: It - it was the - the opinion of one of the people interviewed. That's right.

10

MR LLOYD: And without taking you to all the details, Mr MacRae responded, 30 August 2016, saying he wasn't personally aware of the allegations or staff involved. Do you see that?

15 **MR HOVEY:** Yes.

MR LLOYD: But the outcome was a local order that we find at 448, being entry by staff into accommodation areas being issued by Mr MacRae. Do you see that?

20 **MR HOVEY:** Yes, I do.

MR LLOYD: And then at the next tab, you ultimately reported in your email of 30 August to Mr Koulouris and Antonia Barilla that:

25 "See the email trail below."

And about the local order, and that, in effect, was the end of the matter?

MR HOVEY: Yes.

30

MR LLOYD: Could I ask you now to - I withdraw that. I put to you that was the end of the matter. There is something that occurs in December of '16 that I'll take to you in a minute. But in the meantime, do you remember having your attention drawn to an unrelated allegation at Dillwynia involving Astill and Witness C in about November of '16?

35

MR HOVEY: No.

40 **MR LLOYD:** If Mr Hovey could be given back his - the folder 8 with his Commission statement. You see - have a look at the document which is Annexure 1. It's tab 86. The page number for this document is up the top right-hand corner, 1153. It's the first annexure to your statement.

MR HOVEY: Yes.

45

MR LLOYD: Just have a look - you'll see here an intelligence report.

MR HOVEY: Yes.

MR LLOYD: Just go to page 6 of the report.

5 **MR HOVEY:** Yes.

MR LLOYD: You see CI Analyst, Andrew Tayler?

MR HOVEY: I do.

10

MR LLOYD: Location, SIU Intel, Security Investigations Unit. Date Analysed, 11 November 2016. See that?

MR HOVEY: Yes, I do.

15

MR LLOYD: And then CI Reviewer, your name. And Date, 14 November 2016.

MR HOVEY: Yes, I see that.

20

MR LLOYD: I'm going to take you to the document to help you.

MR HOVEY: Yep.

MR LLOYD: I just wanted you to help me with what this -

25

MR HOVEY: Sorry. Yes.

MR LLOYD: No, what this means. Does this mean that Andrew Tayler looked at this document on that date identified?

30

MR HOVEY: Yes, it does.

MR LLOYD: And where you are recorded as a CI reviewer, Date Reviewed, 14 November, does that mean that you looked at this document on that date?

35

MR HOVEY: It means three days later, yes. I basically finalised that document.

MR LLOYD: Can you help us - if you go back to the first page.

40

MR HOVEY: Yes.

MR LLOYD: I just want to see if this - if you can help us with whether you remember that this was initially lodged as an SIU report or not.

45

MR HOVEY: I can see - I don't recall that it was, but I can see that it was, yes.

MR LLOYD: There's just one detail I'll see if you can help us with. Go to page 4.

MR HOVEY: Page 4, yes.

5 **MR LLOYD:** I'm putting something here on information from the Department. See if it accords with your recollection. See the Automatic Dissemination on Submission to those six people?

MR HOVEY: Yes.

10 **MR LLOYD:** That kind of dissemination would be inconsistent with an SIU report?

MR HOVEY: It - it would. It would, yes.

15 **MR LLOYD:** Just take it from me that there's some material that suggests that what happened here is that the person who lodged it, Pamela Kellett -

MR HOVEY: Yes.

20 **MR LLOYD:** - didn't lodge it as an SIU report, but within a matter of minutes that was corrected and it was converted over to an SIU report.

MR HOVEY: Right.

25 **MR LLOYD:** Is that - in terms of your evidence, is that a process that you are familiar with in respect to -

30 **MR HOVEY:** To be honest, it isn't. My understanding was - was that - and I - I'll stand corrected, but my understanding was - was that once a report had been submitted from a centre, officers at the centre no longer had the ability to view those IRs. I'd suggest that it's probably been picked up at CIG -

MR LLOYD: At your end.

35 **MR HOVEY:** - and - and moved to our silo, not from -

MR LLOYD: Sorry, I wasn't clear. At your end, someone has identified that this should be an SIU report and has corrected it?

40 **MR HOVEY:** That's possible, but only remotely possible. I'd suggest that somebody at CIG has opened it up and gone, "This is SIU," and moved it across to our silo.

45 **MR LLOYD:** Whatever the administrative exercise that happened, there's no doubt that this report landed, at least initially, from your branch in the lap of Mr Tayler?

MR HOVEY: Yes.

MR LLOYD: And shortly thereafter, you?

5 **MR HOVEY:** As a finalised report, yes.

MR LLOYD: When you say - well, I'll come back to what you mean by "a finalised report". I'll just draw your attention to some of the contents. Have a look on the second page. Do you see there's a code - an admiralty code there?

10

MR HOVEY: On the second page?

MR LLOYD: Yes.

15 **MR HOVEY:** I'm sorry. Can you just point me to the direction of the code you're talking about?

MR LLOYD: If you've got page 1 of 14 in the report, it's page 2 of 14.

20 **MR HOVEY:** Sorry, in my statement or the report?

MR LLOYD: No, in the report. Go to page 2 of 14 of the report.

MR HOVEY: Okay. Yes.

25

MR LLOYD: You see there's an admiralty code?

MR HOVEY: Yes, highly protected.

30 **MR LLOYD:** And LIO Evaluation is F6, that is, the local response is reliability unknown, cannot be judged?

MR HOVEY: That's right.

35 **MR LLOYD:** But someone from CIG has evaluated it B2. Do you see that?

MR HOVEY: No.

40 **MR LLOYD:** Your version might be different to the one I'm looking at. Take it from me that there's a B2 evaluation next to CIG (indistinct).

MR HOVEY: I can see that. Yes. I'm sorry. I do see that.

45 **MR LLOYD:** Does that mean that someone within CIG has determined that the source is usually reliable and that the information in it is probably true?

MR HOVEY: It would appear so, but I can't comment because I don't know who made that.

MR LLOYD: Who does that?

5

MR HOVEY: I've no idea. That's the first time I've picked that up.

MR LLOYD: Does that happen before it gets to Mr Tayler?

10 **MR HOVEY:** No, not that I'm aware of.

MR LLOYD: Would Mr Tayler be the likely person who's entered that evaluation?

15 **MR HOVEY:** I - I don't know. We would have to ask Mr Tayler, but I - I - I don't know.

MR LLOYD: When you reviewed this as recorded on 14 November, what is it that you're reviewing?

20

MR HOVEY: Basically I'm going through the initial allegation, the summary, and then I'm following through on the background information with regards to this particular matter.

25 **MR LLOYD:** Would you -

MR HOVEY: Sorry, that - that background information comes under the CI analysis, which Mr Tayler would have (crosstalk).

30 **MR LLOYD:** When you -

MR HOVEY: I'm really looking at what he's done.

MR LLOYD: When you see it, is that evaluation response on it, B2?

35

MR HOVEY: No, I don't. I don't. I - I wouldn't have classed that as B2. I mean, a - a B2 suggests that the informant is usually reliable. I'd need to see some background on that informant to be able to make a considered (crosstalk).

40 **MR LLOYD:** That's telling us that that's not your entry because it wouldn't reflect your view, B2 classification?

MR HOVEY: That's right.

45 **MR LLOYD:** The question -

MR HOVEY: I - I - I would have kept that at F6 until I was provided with information that, whichever witness it is - HH, P, C - had been validated and shown to be validated as a credible witness.

5 **MR LLOYD:** Have a look on the third page, 3 of 14, under Information. You see there it was a mail intercept, m-a-i-l?

MR HOVEY: Yes.

10 **MR LLOYD:** Containing a statement by one - by an inmate that another inmate was a dead-set screw-loving dog who was having a fling with one of the male officers who was getting - and was getting him to bring her stuff in, and she'd seen it with her own eyes. Do you see that?

15 **MR HOVEY:** Yep.

MR LLOYD: In terms of the assessment of the reliability of that information, obviously it was reliable that the statement had been made in the letter because - I won't tax you with the details unless you want me to - a copy of the letter is attached. The statement had been made. No doubt about that.

MR HOVEY: Mmm.

MR LLOYD: Yes?

25

MR HOVEY: Yes.

MR LLOYD: No reason to doubt that the inmate was faithfully stating what she believed to be true in the letter.

30

MR HOVEY: I - I don't agree with that. There's - (indistinct) discounted is the way that I would -

MR LLOYD: You wouldn't know until you investigated.

35

MR HOVEY: Certainly until further enquiries were made, yes.

MR LLOYD: And the allegation included that there was a male officer who was in some sort of romantic or sexual relationship with an inmate; is that correct?

40

MR HOVEY: Yes.

MR LLOYD: And that the person recorded here, the author of the letter, had seen it with her own eyes; correct?

45

MR HOVEY: Yes.

MR LLOYD: That allegation - I withdraw that. That statement in the letter containing the allegation of that nature was extremely serious, wasn't it?

5 **MR HOVEY:** Yes, it was. I mean, at the end of the day, the allegation is serious.

MR LLOYD: And for the similar reasons to no doubt those you told the Commissioner about a short while ago with respect to the allegation in the May email of an officer exchanging tobacco for oral sex, where you described your view that that was criminal conduct?

10

MR HOVEY: Yes.

MR LLOYD: This, if true, would, in your view, be at least capable of being, if not likely to be, criminal conduct?

15

MR HOVEY: Yes.

MR LLOYD: That is, an allegation in a letter involving criminal conduct by an officer; true?

20

MR HOVEY: Yes.

MR LLOYD: Do you see there are some things in the Local Analysis on the balance of page 3 and then Local Intelligence Gaps at the top of page 4? Do you see those sections?

25

MR HOVEY: Yes, I do.

MR LLOYD: And then the summary. That's, again, the local people from Dillwynia?

30

MR HOVEY: Yes, it is.

MR LLOYD: And Local Actions. Do you see that? That's, again, Dillwynia?

35

MR HOVEY: Yes, it is.

MR LLOYD: But you drew attention, one or two moments ago, to the CI Analysis. That's the entry made - tell me if I've got it right - by Mr Tayler?

40

MR HOVEY: That's - that's right. Yes, ultimately.

MR LLOYD: Would he, to your knowledge, have entered that information on or around 11 November but at any event before 14 November when you reviewed?

45

MR HOVEY: He would have done it by 11 November, because the Date Analysed would be the date that it's been entered and made available on my dashboard to read.

5 **MR LLOYD:** Just have a look under Background, then, about the information here. I don't want to dwell on every part of it, but the fourth-last paragraph:

10 "The letter contained allegations of improper conduct with the possibility/probability of sexual relationships between C and an unnamed officer."

MR HOVEY: Yep.

15 **MR LLOYD:** Now, I think that's consistent with what you told us; that's correct?

MR HOVEY: Yes.

MR LLOYD: Then second-last paragraph:

20 "Ms Martin then took the letter to the relevant Regional Commander, Marilyn Wright. Then Ms Wright and Ms Martin spoke to Astill, giving him a warning and a caution."

25 Do you see that?

MR HOVEY: Yes.

MR LLOYD: And then:

30 "The letter was returned to the Intelligence Officer and the IR was raised on 8 November."

Do you see that?

35 **MR HOVEY:** I do, yes.

40 **MR LLOYD:** What is described there, Mr Hovey, as a response to these allegations, which you've agreed with me are allegations, if true, of criminal conduct by an officer at Dillwynia - start with this: does that accord with the system for dealing with allegations or complaints of that kind you told us earlier; correct?

MR HOVEY: Yes.

45 **MR LLOYD:** What was required to deal with this, plainly, I suggest to you, was a thorough investigation by the Investigations Branch of the kind that I showed you in tab 491. Do you agree?

MR HOVEY: Yes, I would.

5 **MR LLOYD:** What you were being told - I withdraw that. But what is recorded
evidently by Mr Tayler here that this had been dealt with by Astill being given
a warning and a caution, was an extremely serious departure from what the system
of investigating complaints of this kind required, wasn't it?

10 **MR HOVEY:** The answer is yes. On this particular instance, I think that I can't
avoid the fact that, with hindsight, it should have been investigated. I'm - I'm not
denying that. In this particular instance, bearing in mind the workloads we were
under, the pressure, et cetera - and I'm not making that an excuse, just as an
observation - the situation was such that the person alleged to be involved brings
15 this to the attention of the Governor who then initiates the procedure locally and
managing that instance.

COMMISSIONER: Mr Hovey, it didn't need hindsight to realise this should have
been investigated, did it?

20 **MR HOVEY:** It's - when I say hindsight, Commissioner, I'm just - it's - it's now
been brought to my attention for an opinion and my opinion is, in hindsight,
I would have managed that differently -

25 **COMMISSIONER:** It's not in hindsight. It's looking at the circumstances that
existed at the time. It's clear from those circumstances it should have been
investigated. Isn't that right?

MR HOVEY: I - I wouldn't argue with that.

30 **COMMISSIONER:** And it's a very serious failure, whatever be the cause of the
failure, it's a very serious failure that it wasn't investigated, isn't it?

MR HOVEY: Yes.

35 **MR LLOYD:** And just in terms of your particular branch, you've talked about the
resourcing issues in your evidence to us today, but the fact that you were able to
look at this within three days of Mr Tayler looking at it, and you personally did
nothing, I want to suggest to you, you personally did nothing to cause an
investigation to be conducted, that was a serious failure on your part, wasn't it?
40 Just pause.

Commissioner, I have spoken to Mr Hovey about section 23 and I take an
objection on his behalf.

45 **COMMISSIONER:** Yes, I require you to answer, Mr Hovey.

MR HOVEY: No problem, Commissioner. Yes.

MR LLOYD: But dealing with other failures on the information that you have available from here, what can you tell us about your opinion that allegations of this kind would be dealt with by the Regional Director and the Governor of the gaol giving the officer, the subject of the alleged criminal conduct, a warning and a caution? What do you say about that?

MR HOVEY: Yes. I mean, looking at it now, then you'd say, no. At the time, as I said, looking at it in the totality of what we had, that the person self-reporting has come to light, it's been - it's been dealt with locally, it should have been dealt with differently.

MR LLOYD: And we know, going forward, that after November of 2016, Astill stayed at this gaol and sexually assaulted scores of women; you know that?

MR HOVEY: Yes.

MR LLOYD: This is a disaster, isn't it, the way this was handled.

MR HOVEY: It's - it's - yes, it's problematic.

MR LLOYD: It effectively sidelines the whole process that you told us about which, not just your agency by the way, ought to have been followed by a range of people in the sense of thorough investigation, determination by an investigation manager, sustained or unsustainable, referral to PSB for them to consider, and then an ultimate decision?

MR HOVEY: Those processes weren't in place for intelligence reports, but I don't deny that they should have been.

MR LLOYD: That itself, the fact that those processes weren't in place for reports that came to the attention of your agency in this form, that suggests a serious system failure too, doesn't it?

MR HOVEY: Yes.

MR LLOYD: Could I ask you - I'm sorry to go between folders, Mr Hovey, but the material is located in more than one place. Could Mr Hovey then have volume 14 placed before him. I said to you before there was some things that I hadn't yet put to you about that May 2016 email that I wanted to come back to. Do you remember I said that?

MR HOVEY: Yes.

MR LLOYD: Can you just have a look at tab 451 in that folder? Do you see, without taking you to every part of it, this is a memo from Doug Greaves,

Manager of Professional Standards to Peter Robinson, director of that branch? See that?

MR HOVEY: Yes.

5

MR LLOYD: 30 December 2016?

MR HOVEY: Yes.

10 **MR LLOYD:** And this is recording ultimately what came of the 27 May 2016 allegations?

MR HOVEY: Yes.

15 **MR LLOYD:** And just going over the page that's recorded in the third-last paragraph:

"At the suggestion of Assistant Commissioner Koulouris..."

20 You -

"...and the local Governor, Acting Governor MacRae, that the local order be issued."

25 Do you see that?

MR HOVEY: Yes.

MR LLOYD: And then ultimately the conclusion expressed is:

30

"You may wish to forward a copy of this memo to the Commissioner, Assistant Commissioner Corcoran, Hamish Shearer and Shari Martin so they're aware of the outcome."

35 **MR HOVEY:** Yes.

MR LLOYD: Then if you go to the previous tab, you see Mr Greaves sends that memo to a number of people including Mr Severin, Mr Corcoran, Mr Shearer and you. You're copied in?

40

MR HOVEY: Yes.

MR LLOYD: Can I ask you this: do you remember back - I'll try and see if you remember without taking you back to the document - in your memo that you prepared about this, you said it should be retained for intelligence purposes?

45

MR HOVEY: Yes.

MR LLOYD: That is, couldn't quite get to the bottom of whether there was a proper basis for these allegations, serious as they were, but it was relevant to intelligence gathering. That was, in effect, what you were saying?

5

MR HOVEY: Yes.

MR LLOYD: That was expressed in the second half of this year, 2016?

10 **MR HOVEY:** Yes.

MR LLOYD: I've just asked about an intelligence report which came to your attention on 14 November 2016, that is roughly in the same period; do you remember that?

15

MR HOVEY: Yes.

20 **MR LLOYD:** Did you put those two events together? That is an allegation in the intelligence report of sexual activity between an officer and an inmate, that is the intelligence report allegation, and these serious allegations involving the trading of sexual favours for contraband involving another officer. Did you put two and two together?

25 **MR HOVEY:** I didn't personally. I would have expected that sort of link to have been made, really, through the intelligence analyst. But I didn't make the link personally.

MR LLOYD: As in Mr Tayler?

30 **MR HOVEY:** If Mr Tayler was there at that time, yes.

MR LLOYD: Whoever is the person responsible, that's a failure of intelligence gathering to not put those two reports together; do you agree?

35 **MR HOVEY:** Fundamentally, yes. Very difficult for one person.

40 **MR LLOYD:** When you say "very difficult for one person", isn't this suggestive of a system that is not working, that there isn't a person who has access to all relevant intelligence reports about a particular gaol?

MR HOVEY: Yes, it's - it's reflective of an intelligence unit that's severely understaffed.

45 **COMMISSIONER:** Well, is it just a question of understaffing? Surely, if you are going to have an intelligence unit at all, one of the fundamental systems you need in place is one which allows you to connect bits of intelligence with other bits of intelligence to tell you a bigger story, isn't it?

MR HOVEY: I agree, Commissioner.

5 **COMMISSIONER:** There's no point in gathering individual items unless you do have a capacity to put them together to tell the bigger story. You just didn't have that system, did you?

MR HOVEY: We had the system. We didn't have the capacity to run the system. I think that's the best way I can describe it.
10

COMMISSIONER: Well, did you run it at all?

MR HOVEY: Not to its capability, no.

15 **MR LLOYD:** At all, though?

MR HOVEY: Not to its capability. There would have to be a catalyst that would, you know, cause us to search the intelligence database.

20 **MR LLOYD:** Could I move forward -

COMMISSIONER: Why wouldn't the system be capable of being programmed so that if the same name keeps turning up or the same context keeps turning up, the system will automatically tell you that?
25

MR HOVEY: I think to answer that question, Commissioner, you'd need a bespoke system that would require heavy investment. We certainly went to see various systems of intelligence gathering around various public sector agencies. Certainly, I recall going to the Regional Fire Service and looking at their
30 intelligence and investigative capacity for a database, and we made enquiries elsewhere. But it would have required significant investment. And what actually happened, if I could use the expression "bastardised", we used a bastardised system which belonged to Corrections Intelligence Group and was just tweaked and developed to give us what was little more than an access database. And it
35 didn't allow the interrogation to occur to cross-reference in the manner that you're describing which would have been ideal.

COMMISSIONER: Well, I mean, given 200 complaints a year, a manual card system sounds like it might have been a better facility to have, wouldn't it?
40

MR HOVEY: Commissioner, I - I'm not disagreeing with what you're saying. What I am saying is - is that it just - just - that would rely, really, on the operator and the person doing that - that particular job. It required a bespoke system and heavy investment that was not forthcoming.
45

COMMISSIONER: And I'm sure you realise that what you are looking at is a system which is designed to protect the security of a gaol system?

MR HOVEY: Absolutely.

COMMISSIONER: Correct?

5

MR HOVEY: Yes.

COMMISSIONER: It's also designed to protect inmates who are necessarily incarcerated within that system, isn't it?

10

MR HOVEY: It is, sir, yes.

COMMISSIONER: And what you're saying is you didn't have a system capable of carrying out those protective functions?

15

MR HOVEY: That's right.

COMMISSIONER: Yes.

MR LLOYD: Was there any ability within the system - for example, I've drawn to your attention the serious allegations in the 9 November intelligence report. Is there any system availability when you get something like that to simply key in a search about whether there had been other allegations of sexual misconduct by officers at that particular gaol?

25

MR HOVEY: Yes, certainly. You can certainly search by centre. You can search by name of officer, name of offender. But you're really relying on that human approach to make a link between saying, "We got this" - it's very time-consuming with - and just making the comment that it's time-consuming with the other duties involved with that role, that the onus on that particular person to be searching every centre, every inmate, every officer's name for possible links for previous intelligence. The system is flawed. I - I -

30

MR LLOYD: You could have an analyst, receiving these serious allegations about Astill, type in a keyword search, "Astill, sex, drugs, contraband"?

35

MR HOVEY: Yes. And I'd suggest that post this incident, that's how it would be done. But at that time, it wasn't.

MR LLOYD: At no time until the point you ended your service?

40

MR HOVEY: No, I'm saying - I'm saying while I was still in service, we actually - I organised a restructure of the particular area and moved funding from savings and investigation to fund a second position within intel, realising how that system and process needed to be revamped.

45

MR LLOYD: Was that your resourcing decision?

MR HOVEY: Was that my?

5 **MR LLOYD:** Was that your resourcing decision, to move resources from investigations -

10 **MR HOVEY:** Yes. Yes, I changed the grade of the investigators, making savings by employing lower grades as well as senior grades. But with those savings, I was able to provide the funding for another qualified trained intel analyst. So there's - there's two positions there now.

15 **MR LLOYD:** But could I ask you to move forward in time to July of 2017. In paragraph 67 of your Commission statement - I need not take you there - you just tell us:

"I don't recall a particular intelligence report from July 2017."

And it appears, if taken out of context, was a one-off report. And:

20 "Given there's a lot of hearsay and not a lot of direct evidence, I may have been cautious to action it."

Do you remember saying that?

25 **MR HOVEY:** If I put it in my statement, then I said it.

30 **MR LLOYD:** Could I - actually, you can close up that folder for present purposes, and could volume 8 be put before Mr Hovey. Just go back to the tab 86, which has got your statement in it. Now, I just read to you from paragraph 67 and, in fairness, you might just want to look at that. And you say that by reference to the intelligence report which is behind Annexure 2, which is - the page number up the top is 1167. Have you got that one?

35 **MR HOVEY:** I do, yes.

MR LLOYD: It's an intelligence report recording an incident date, 21 July 2017?

MR HOVEY: Yes.

40 **MR LLOYD:** And then just go to page 5, if you would.

MR HOVEY: Yes.

45 **MR LLOYD:** CI Analyst, again, Andrew Tayler. Date Analysed, 26 September '17?

MR HOVEY: Yes.

MR LLOYD: And then you - Date Reviewed, the following day?

MR HOVEY: Yes.

5

MR LLOYD: And, again, that reflects the same thing you told us with the previous one I asked you about, that he had reviewed it and entered comments on the 26th, and you read those comments and the document itself the next day?

10 **MR HOVEY:** That's correct.

MR LLOYD: And just in terms of the timing - just go back to page 4. Do you see the submission date is 30 July '17?

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

MR LLOYD: Now, I take it from the delay of almost two months that that might be reflective of what you told us about resourcing issues in terms of taking that long for the review by Mr Tayler?

20

MR HOVEY: I would suggest that's the case, yes.

MR LLOYD: Can you remember, sitting here now, the contents of this particular intelligence report?

25

MR HOVEY: I - I don't. Even after reading it, I don't recall reading it at that particular time.

MR LLOYD: But no doubt from what I've shown you, you did?

30

MR HOVEY: I did, yes.

MR LLOYD: Could I just draw some things to your attention about it.

35 **MR HOVEY:** Yes.

MR LLOYD: On page 2, you see Human Source 1, in the -

MR HOVEY: Yes.

40

MR LLOYD: - fifth paragraph, was asked why she made statements to that effect, and Human Source 1 stated that she had been told by another inmate, Witness M, that Astill had attempted to kiss her one time and would frequently rub his hand up and down her arm, and he was always asking her to the Chief's office. Do you see that?

45

MR HOVEY: Yes.

MR LLOYD: That allegation recorded there from Witness M was serious; agree?

MR HOVEY: Yes.

5

MR LLOYD: It would be suggestive of what might at least possibly be criminal conduct by Astill?

MR HOVEY: Yes.

10

MR LLOYD: In the form of an assault or battery; agree?

MR HOVEY: Yes.

15 **MR LLOYD:** At this point, Human Source 2 - that's a different inmate to Human Source 1, obviously?

MR HOVEY: Yes.

20 **MR LLOYD:** Stated that she had seen Astill directly rubbing his hand on inmate Witness M's arm, and Human Source 1 stated Witness M had informed her of these events in the company of Human Source 2 and identified two inmates there being involved. Do you see that?

25 **MR HOVEY:** Yes, I do.

MR LLOYD: That moves from a recounting of Witness M of an allegation of criminal conduct by Astill to another inmate, described as Human Source 2, saying that she had herself seen Astill behaving that way; agree?

30

MR HOVEY: Yes.

MR LLOYD: That is, put together, allegations of extreme seriousness being levelled if this report was true?

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MR HOVEY: Yes.

MR LLOYD: And allegations positively demanding a full investigation. Would you agree?

40

MR HOVEY: I would, yes.

45 **MR LLOYD:** In fact, those allegations - the proper place for those to be sent, from what you've told us, would immediately for them to be sent to the CSIU. Do you agree?

MR HOVEY: Yes, I would suggest that would be.

5 **MR LLOYD:** Not least of at all because you've got allegations - I take it you wouldn't have known - necessarily known the age of Witness M when you looked at it, but allegations made by a woman of a at least indecent assault by a senior officer; true?

MR HOVEY: Yes.

10 **MR LLOYD:** And with the knowledge you must have had that allegations in terms of dealing with a complainant of that kind have to be handled sensitively by people who know what they're doing in speaking to women who have come forward; agree?

15 **MR HOVEY:** Yes.

MR LLOYD: Commissioner, I will be a little while on this particular issue, and I note the time.

20 **COMMISSIONER:** Very well. We'll adjourn until 2.

<THE HEARING ADJOURNED AT 12.58 PM

<THE HEARING RESUMED AT 2.03 PM

25 **MR LLOYD:** Thank you, Commissioner. Mr Hovey, before the break, I was asking you about page 2 of the IR report, which is Annexure 2 to your statement. Do you remember that?

30 **MR HOVEY:** Yes.

MR LLOYD: Have a look, please, at the bottom of page 2. Do you see there that what's recorded in the information is that in addition to the report that I've asked you about, that is, about Astill's assault of Witness M and the evidence of an eyewitness to an event of that kind, there was a second report? Do you see that?

35 **MR HOVEY:** Yes.

40 **MR LLOYD:** And in that second report, it's recorded there to be threatening behaviour of Astill towards Human Source 1, being one of the people you told us about, referred to in the middle of the page?

MR HOVEY: Yes.

45 **MR LLOYD:** And that - would you agree with me that what's recorded there was, in effect, at least a suggestion that Astill was engaging in retribution against one of the inmates who had come forward?

MR HOVEY: Yeah, it would certainly appear so from that.

5 **MR LLOYD:** Do you agree that, quite apart from the allegations recorded in the middle of the page, which you agreed with me were serious, involving criminal conduct, if true, this separately was an allegation of the utmost seriousness?

MR HOVEY: Yes.

10 **MR LLOYD:** In terms of your analysis over the years of matters that have gone before the courts and legal matters more generally, you've heard of the phrase "suborning a witness"?

MR HOVEY: Yes.

15 **MR LLOYD:** It looks like it might be in that kind of territory?

MR HOVEY: It's analogous to it, for sure.

20 **MR LLOYD:** And so it might, subject to the truthfulness of that, be a separate matter that might actually involve criminal activity by Astill?

MR HOVEY: It could be.

25 **MR LLOYD:** Just go over, please, to the next page. You see Local Intelligence Gaps. Just above that:

"Witness M, housed at Silverwater and could not be interviewed."

30 Do you see that?

MR HOVEY: Yes.

35 **MR LLOYD:** And so it was obviously known by you when you read this that she had not been interviewed to find out what she had to say?

MR HOVEY: Yes.

MR LLOYD: And then Local Intelligence Gaps:

40 "Unknown if Astill attempted to kiss or touch M."

Do you see that?

45 **MR HOVEY:** I do.

MR LLOYD: That is, these things are not known locally, but plainly from your perspective requiring or demanding an investigation. Do you agree?

MR HOVEY: Certainly chasing up for further information.

5 **MR LLOYD:** Do you see - go over the page to CI Analysis on page 4.

MR HOVEY: Yes.

10 **MR LLOYD:** Consistently with what you told us about the earlier intelligence report, I take it these words are likely to have been authored by Andrew Tayler, the intelligence analyst?

MR HOVEY: Yes.

15 **MR LLOYD:** And reviewed by you when you conducted your review?

MR HOVEY: Yes.

MR LLOYD: Do you see this IR is related to IR 16-2783? Do you see that?

20 **MR HOVEY:** Yes.

MR LLOYD: Now, I asked you some questions, as did the Commissioner, before the break about the ability of intel analysts to piece together various bits of intelligence that were housed within investigations. Do you remember those questions?

MR HOVEY: Yes.

30 **MR LLOYD:** And I think, in effect, you said there was the capability there, but it wasn't always done. Is that a fair - sorry, I withdraw that. Not always used -

MR HOVEY: Not - not always. That's right.

35 **MR LLOYD:** However this came to pass, Mr Tayler appears to have been able to relate the allegations recorded in this intelligence report to the allegations in the intelligence report 16-2783?

MR HOVEY: Yes.

40 **MR LLOYD:** And that one, if you need me to remind you, is the one I asked you about from November of 2016.

MR HOVEY: Yes.

45 **MR LLOYD:** That linking together, just pausing there, is an appropriate bit of intel analysis. Would you agree?

MR HOVEY: Yes.

MR LLOYD: Do you see that in both, Astill is accused of improper conduct with inmates. That was obviously correct?

5

MR HOVEY: Yes.

MR LLOYD: However, the same problem arises with this IR as did in the first, namely:

10

"The reliability of the sources cannot be assessed, and the validity of the information cannot be judged."

Do you see that?

15

MR HOVEY: I do.

MR LLOYD: Just dealing with the first aspect of those words. It's suggested there that there was a problem with the earlier IR in that the reliability of the sources could not be assessed, and the validity of information in that report could not be judged. Do you agree?

20

MR HOVEY: Yes.

MR LLOYD: That statement, in the absence of any investigation by the Investigations Branch or anyone else, was false, wasn't it?

25

MR HOVEY: Certainly misleading.

MR LLOYD: And the related assertion here that there was the same problem with this IR, that is, reliability of sources couldn't be assessed and validity of information couldn't be judged, that was also false, wasn't it?

30

MR HOVEY: Could have been worded better, for sure, yes.

35

MR LLOYD: In terms of - it's not just a wording issue, though, is it? That is, in substance, an entirely wrong way to characterise the situation as at the time that those words were put, to your knowledge, on the page, 26 September twenty -

MR HOVEY: The validity of the information wasn't tested.

40

MR LLOYD: The person who wrote those words didn't know about whether the information could be tested or not.

MR HOVEY: That would be the case. With all due respect to Mr Tayler, he was a teacher. He wasn't a trained intelligence analyst.

45

MR LLOYD: And just dealing with it -

COMMISSIONER: Sorry. Sorry. Are you saying that as a consequence, you couldn't expect him to get it right? He's just a teacher, not a trained analyst?

5

MR HOVEY: Mr Tayler was - he was a - came to Investigations Branch from the education division within the organisation.

COMMISSIONER: Yes. But are you saying that as a consequence, he didn't have the skills to do the job?

10

MR HOVEY: I think so, yes, sir. That's -

COMMISSIONER: So why did you let him stay in the job?

15

MR HOVEY: Resources, really, sir. I mean, I had no other choice. It was either him or no one. And I don't want to say that to disparage Mr Tayler, who worked hard in that area. But the reality is - is that if I didn't have him, I had no one in that chair at all.

20

COMMISSIONER: Well, you signed off on this report, didn't you?

MR HOVEY: I signed off on the CI review. Yes, I did.

COMMISSIONER: Sorry, you signed off, yes, on the whole deal - the whole shooting match. You signed off that -

25

MR HOVEY: The actual sign-off is on the review that's conducted by Mr Tayler, but ultimately I signed off on that.

30

COMMISSIONER: You're accepting Mr Tayler's view of the matter?

MR HOVEY: I did in this instance, yes.

COMMISSIONER: Even though it was wrong?

35

MR HOVEY: As it transpires, yes, it was wrong. The reality is - is that, as I pointed out in my earlier evidence, Commissioner, at that time, I was performing two roles within the organisation. Something had to give, and sadly I - unfortunately I - I missed this.

40

COMMISSIONER: Mr Hovey, it can't be pressure of work that causes you not to make the right decision in this case, can it be? All you had to do was read the material and think for yourself, and the answer was plainly not what Mr Tayler was saying.

45

MR HOVEY: No, I agree.

5 **MR LLOYD:** Can I just - in terms of your own position when you reviewed it, could I just understand: do you agree with me that there is no investigation conducted by one of your investigators in relation to the allegations raised in this IR?

MR HOVEY: There isn't. No.

10 **MR LLOYD:** Just starting with the obvious: that was contrary to I think what you told us is the required step?

15 **MR HOVEY:** When we spoke earlier, we were talking about investigations. This is intelligence. I'm not trying to be pedantic or smart; I'm just saying that, yes, there should have been progress - this should have been processed differently than it was. But it falls - it's not the same process as you would do for an investigation.

MR LLOYD: I understand you're drawing a distinction in that answer as to process, that this was not a referral from the PSB to you.

20 **MR HOVEY:** That's right.

MR LLOYD: In substance, the fact that this came to investigations via a different route didn't detract from the fact that what is contained here are allegations which, if true, were of the utmost gravity of criminal conduct by an officer.

25 **MR HOVEY:** Yes.

MR LLOYD: That positively demanded an Investigations Branch investigation.

30 **MR HOVEY:** Certainly a referral.

MR LLOYD: Or a referral to the CSIU.

35 **MR HOVEY:** Certainly a referral, yes.

MR LLOYD: Now, neither of those things were done.

MR HOVEY: No.

40 **MR LLOYD:** That is a very serious failure on the part of this agency, Investigations, wouldn't you agree with me? Commissioner, I seek a - I take an objection.

45 **COMMISSIONER:** Yes, I require you to answer.

MR HOVEY: Yes.

MR LLOYD: Could I just understand the degree of departure from what was required in not conducting either an investigation or making a referral here. Just, again, focusing on the words in the CI Analysis, same problem arises as with the other one; reliability of sources cannot be assessed, validity information cannot be judged. You see that?

MR HOVEY: Yes.

MR LLOYD:

"A lot of the accusations made are at least second-hand, ie, the person making the accusation is reporting some other person has made an accusation. As such, no reliable conclusions can be drawn from the information at hand."

MR HOVEY: Yes.

MR LLOYD: In order to get to the bottom of these serious allegations relating, as these words say, as they do, to the earlier one, IR 2783 -

MR HOVEY: Yes.

MR LLOYD: - what would have been necessary for your agency to have done - or your branch to have done is to have conducted some sort of - or made some sort of attempt to speak to the three inmates who were the subject of the earlier one, that is, inmate C; inmate P, being the author of the letter; and inmate HH, the recipient of the letter?

MR HOVEY: Yes. I think given the inference to what's occurred, what should have happened is a referral to the CSIU to allow police to interview those three inmates.

MR LLOYD: And if there had not been a referral, the Investigations Branch would have been required, in order to discharge its function, to do that itself. Do you agree?

MR HOVEY: It would have been required to make the referral, yes.

MR LLOYD: If - you know there are situations when the CSIU say, "We can't advance a criminal investigation."

MR HOVEY: Yes.

MR LLOYD: And in those situations, it gets referred back.

MR HOVEY: It does, but it gets - the correct process is to refer back via Professional Standards.

MR LLOYD: Certainly. I think you've told us that, here, the allegations were of a sufficient gravity to warrant an immediate referral to CSIU?

MR HOVEY: It should have done, yes.

5

MR LLOYD: My question really is in a universe where, for whatever reason, there's no referral of that kind or no investigation by the police, the Investigations Branch would have had to conduct its own thorough investigation. Do you agree?

10 **MR HOVEY:** What I'm saying to you is - is at that time, Investigations Branch had no, for want of a better word, imprimatur to conduct its own investigations. It should have been referred. And that referral would have been the catalyst for those enquiries.

15 **MR LLOYD:** But I asked you about that thorough investigation in tab 491 that was done by Investigations Branch before the break. Do you remember that one?

MR HOVEY: Yes.

20 **MR LLOYD:** It filled almost a whole folder. Remember that?

MR HOVEY: Yes.

25 **MR LLOYD:** If there was no investigation done by the police, these allegations had to be investigated at that level of thoroughness by your branch, didn't they?

MR HOVEY: Ultimately they would have had to have been, yes.

30 **MR LLOYD:** And, clearly, any investigation undertaken by your branch, if that was what was to occur, would have had to have involved an attempt to speak to Human Source 1, Human Source 2 and also Witness M?

MR HOVEY: Yes.

35 **MR LLOYD:** And maybe, depending on where that got to, the officer the subject of both series of allegations?

MR HOVEY: Yes.

40 **MR LLOYD:** Could I then ask you about this: Do you have any recollection of seeing any document or note or record of an officer, Michael Paddison, contacting anyone from investigations or anyone from the CIG about these Witness M allegations?

45 **MR HOVEY:** No. I don't.

MR LLOYD: He told this Commission in his evidence that he remembers making a phone call because there was some problem making a report using the IIS.

MR HOVEY: Right.

5

MR LLOYD: He spoke to someone from the CIG.

MR HOVEY: Okay.

10 **MR LLOYD:** Do you - you don't know about this?

MR HOVEY: I wouldn't be aware of that conversation. CIG, totally separate unit, housed in a separate location. Can I just qualify that, that CIG are the administrators of the intelligence system. So if there are any issues uploading or transferring, they'd be referred to CIG in the first instance.

15

MR LLOYD: But the Commission has also heard a little bit of evidence that, for a time at least, the gaol itself was attempting to conduct its own investigation into the Witness M allegations. What do you say about the proprietary or wisdom of the gaol taking it upon itself?

20

MR HOVEY: It shouldn't ever occur. All investigations should be independent and certainly not conducted locally by - by staff on their own staff, as it were.

25 **MR LLOYD:** So if you had people from the gaol making attempts to contact Witness M, that would be - would you agree - thoroughly inappropriate?

MR HOVEY: Yes. Yeah, it would be.

30 **MR LLOYD:** Presumably, one might work on the basis, the intelligence report having come to your branch -

MR HOVEY: Yes.

35 **MR LLOYD:** - that in the ordinary course, if the system is working properly, the gaol could reliably leave it to you to make sure these serious allegations get investigated?

40

MR HOVEY: There would be that expectation from them, yes.

MR LLOYD: Could you keep that folder open, but could I ask Mr Hovey to be shown - it's actually in the same volume - tab 84, Annexure K to that statement.

45

COMMISSIONER: Sorry, Annexure?

MR LLOYD: K. Have you got - just to make sure I've sent you to the right place - an email - you might have to go to - if you look at the first page down the bottom, 12 September '17, from Hamish Shearer?

5 **MR HOVEY:** I haven't got a date on it, but the email is from Hamish Shearer.

MR LLOYD: Just going -

10 **COMMISSIONER:** Mr Lloyd, there's an awful lot of black on my copy of this document. Does it matter?

15 **MR LLOYD:** I just want to make sure. Commissioner, no, they are actually legitimate privacy redactions of addresses. But the relevant email is if you go over the page, Commissioner and Mr Hovey. Do you see the email from Hamish Shearer to Linda Ferrett and others? Do you see that?

MR HOVEY: Yes.

20 **MR LLOYD:** Could I just ask you to read - and, Mr Hovey, I'm not suggesting you received this.

MR HOVEY: No.

25 **MR LLOYD:** Understand? I do want you to read its contents so you can answer some questions.

MR HOVEY: You want me to read it out loud?

30 **MR LLOYD:** No, no. Just to yourself. Are you aware of that direction, if it could be called that, before having read that today?

MR HOVEY: No. I - I can't say that I've seen that before.

35 **MR LLOYD:** You told us before about what I suggest to you is a reasonably elaborate system of referrals and cross-referrals between the PSC and the Investigations Branch. Do you remember that?

MR HOVEY: Yes.

40 **MR LLOYD:** Just looking at this, is this telling you that in September of 2017 there was a change of approach about referrals direct to Professional Standards Branch for investigation? Do you see that in the first line?

45 **MR HOVEY:** I do.

MR LLOYD: And the reason is stated in the next sentence. And then:

"Some matter referred to PSB may be more effectively managed under performance management."

Do you see that?

5

MR HOVEY: I do, yes.

MR LLOYD: And then:

10

"In future, any incidents of a disciplinary or performance nature that warrant elevation are in the first instance to be raised with me, and we'll decide on whether a performance or disciplinary investigation is most appropriate."

MR HOVEY: Yes.

15

MR LLOYD: Do you know what that is talking about or what change that effected?

20

MR HOVEY: I - I don't know. I don't know the provenance of the instruction. I'd suggest it's fraught with danger, but -

MR LLOYD: I was going to ask you: on your understanding of the way these various branches interrelated, does that sound to you like a significant change?

25

MR HOVEY: Yes.

30

MR LLOYD: That is, instead of what you told us in your statement, the Professional Standards Branch and then the PSC, Professional Standards Committee, effectively triaging things that came to them to work out in what circumstances, for example, to refer on to you - you remember that?

MR HOVEY: Yes.

35

MR LLOYD: This is now the person in the position of Director of the particular region performing that triage role.

MR HOVEY: This is - this is suggesting exactly that, that there's a - as you point out, a level of triage before it's even sent to the PSC.

40

MR LLOYD: Did anyone ever tell you that there'd been a change?

MR HOVEY: No.

45

MR LLOYD: That it was now Hamish Shearer, or whoever sat in that role, who would be responsible for passing on referrals to you after triaging it, if that's what was happening?

MR HOVEY: No, not at all. My inference from reading this is that Mr Shearer would be making those decisions for Metro West and other Directors of Custodial Corrections would be making the decisions for their area. So I don't think Mr Shearer would be seeing everything; just the things in his area.

5

MR LLOYD: Just in his -

MR HOVEY: Yes.

10 **MR LLOYD:** - region.

MR HOVEY: Yes.

15 **COMMISSIONER:** I know it's not your document - it's not your document. I know that. But do you have any understanding of what he might have meant when he said, "This change will provide a greater transparency of key issues"?

20 **MR HOVEY:** No, I don't, sir. I - I would have thought the opposite, but - so I'm not sure what he meant by that comment.

20

COMMISSIONER: Well, your comment reflects my next question, so I won't ask it. Thank you.

25 **MR LLOYD:** Just looking at the language, "disciplinary" - and there's a typo. I'm not being critical about that. "Disciplinary investigative", but "disciplinary investigations". What did you understand to be the difference between a performance or a disciplinary investigation?

30 **MR HOVEY:** Investigations Branch did not conduct investigations into what basically were performance management issues. They were referred back to HR. But these matters - to put into context, these matters came before the Professional Standards Committee, and that would be the decision made by the - the voting executive on the Professional Standards Committee to say, "This is a performance management issue. Refer it to HR." And it wouldn't come to investigation.

35

MR LLOYD: In terms of disciplinary investigations, though -

MR HOVEY: Yes.

40 **MR LLOYD:** - I thought the way it worked is that for referrals that went to Professional Standards, if it required an investigation, it'd be sent over to you -

MR HOVEY: Yes.

45 **MR LLOYD:** - to come back once that thorough investigation had been done?

MR HOVEY: That's right. So, invariably, the referral would go to the Professional Standards Branch, who would do the agenda for the committee. The committee would then ratify the recommendation, if you will, that this matter be investigated and that it be forwarded to investigations.

5

MR LLOYD: And so a disciplinary investigation - it's hard for you to tell us what those words mean, but that's really an investigation by you in order to come back to the Professional Standards Branch -

10 **MR HOVEY:** Yes.

MR LLOYD: - from the decision-maker, as you identified, to make -

MR HOVEY: That - that's how I'm reading that - the context of that email.

15

MR LLOYD: And I take it from what you've told us, you don't know anything about the context or reasons for that change?

MR HOVEY: No.

20

MR LLOYD: Could you -

COMMISSIONER: Do we know, Mr Lloyd, whether that change was made in other districts?

25

MR LLOYD: I will ask the witness. For my part, I don't know. I haven't seen a document. Mr Hovey, I take it from what you've told us, you didn't know about the change for this region, so you don't know whether this was a uniform -

30 **MR HOVEY:** No, I don't.

MR LLOYD: Could I take you back, then, to the sequence of events in relation to Witness M. Could I ask for Mr Hovey to have placed before him volume 14. Just turn up, please, tab 452. Just have a look in this tab at the email about three-quarters of the way down the page from Doug Greaves -

35

MR HOVEY: Yes.

40 **MR LLOYD:** - to Hamish Shearer, copied to Peter Robinson. Do you know who Doug Greaves or Graves was?

MR HOVEY: Doug Greaves, yes.

MR LLOYD: Doug Greaves at this time.

45

MR HOVEY: Yes.

MR LLOYD: He was, it's recorded, a manager within the Professional Standards Branch; correct?

MR HOVEY: Yes.

5

MR LLOYD: Just read this to yourself. You've read that?

MR HOVEY: Yes.

10 **MR LLOYD:** What Mr Greaves is pointing out in this email to Mr Shearer is what would appear to be a very serious irregularity with the way that the Witness M allegations have been handled. Do you agree?

MR HOVEY: Yes.

15

MR LLOYD: And the second bullet point might be thought to understate things:

"This allegation involves, taken at face value, serious misconduct."

20 Do you see that?

MR HOVEY: Yes.

25 **MR LLOYD:** I think you've agreed with me, the allegations, if accepted, involved criminal conduct?

MR HOVEY: Yes.

MR LLOYD:

30

"Therefore, it should have been reported to the Professional Standards Committee and then considering initiating the investigation by your branch."

Do you see that?

35

MR HOVEY: Yes.

MR LLOYD: He's recording there the system for referrals that you've already told us about; correct?

40

MR HOVEY: That's correct, yeah.

MR LLOYD: Do you agree with me that it appears from the words in the email that the author, Mr Greaves, is writing it in ignorance of the intelligence report?

45

MR HOVEY: Yes, I would agree.

MR LLOYD: And him reporting this to the Regional Director, copied to the head of Professional Standards, in ignorance of that intelligence report was a very serious omission not by him but in terms of his knowledge?

5 **MR HOVEY:** Yes, it could be viewed that way.

MR LLOYD: It means people involved in this email did not know about the intelligence report it was necessary for them to find out?

10 **MR HOVEY:** Yes.

MR LLOYD: You see above, Mr Greaves, two days later, has said:

15 "Peter, Hamish called me after making enquiries with Shari Martin."
Do you see that?

MR HOVEY: Yes.

20 **MR LLOYD:**

"It appears this wasn't an investigation as such; instead, some information about an officer."

25 Do you see that?

MR HOVEY: Yes.

30 **MR LLOYD:**

"Shari liaised with Mick Hovey about it..."

MR HOVEY: Yes.

35 **MR LLOYD:**

"...in line with his staff intelligence role, and the interview described below was one step down the path of assembling relevant information."

40 Do you see that?

MR HOVEY: Yes.

45 **MR LLOYD:** And then:

"If Mick is still in intelligence-gathering mode, it makes sense the matter hasn't yet been referred to the PSC. As a result, I don't see any need for further action."

5 Do you see that?

MR HOVEY: Yes.

10 **MR LLOYD:** Now, a number of things. First, the conclusion of Mr Greaves that if, in fact, those allegations were being investigated by your branch that it had not yet been referred to the PSC, that was a reasonable conclusion on the information evidently known to him (indistinct). He didn't know, it would seem - and tell me if you agree - that, in fact, the Investigations Branch were not conducting any investigation.

15 **MR HOVEY:** It would appear from what Mr Greaves says is that he believes that we're still information gathering.

20 **MR LLOYD:** And that belief was, from I think what you've accepted, wrong?

MR HOVEY: Yes.

MR LLOYD: You see the reference in the email - in Mr Greaves:

25 "Shari liaised with Mick Hovey about it in line with his staff intelligence role, and the interview described below is one step..."

Did you speak to Shari Martin about what it was that the gaol was recorded as doing in terms of its own investigation?

30 **MR HOVEY:** I don't recall a conversation with Shari Martin about this. However, given that this email was closer to the time, I would say it's more accurate than my memory.

35 **MR LLOYD:** Well, in fairness, Mr Hovey, this is, at best, second-hand. This is coming from Mr Shearer after speaking with Shari Martin and then Mr Shearer calling up Mr Greaves who's, in turn, telling Mr Robinson. So don't accept just from the writing that this happened. I'm really asking for your recollection.

40 **MR HOVEY:** I - I have no recollection of that conversation, but -

MR LLOYD: At any event, this is recording Mr Shearer saying that there had been a liaison between you and Ms Martin.

45 **MR HOVEY:** Yes.

MR LLOYD: And the effect of it is - what's written anyway - that with your blessing or imprimatur, the gaol was conducting its own investigation, as recorded in the email at the bottom of the page?

5 **MR HOVEY:** Not - not with my imprimatur.

MR LLOYD: You have no recollection of whether you spoke to Shari Martin?

10 **MR HOVEY:** No. But I - I wouldn't have authorised someone to conduct an investigation. We might have requested an Intel Officer perhaps to speak to someone, because they could do it more discreetly than an investigator turning up at a gaol, which obviously sends a - a message. We might well ask an Intel Officer to assist, but we wouldn't ask them to conduct an investigation.

15 **MR LLOYD:** And so what you're saying is, without an actual recollection of this, it would be completely inconsistent with your invariable practice to have said to someone at the gaol, Dillwynia, "Conduct your own investigation into allegations of this kind"? Is that a fair summary of what you -

20 **MR HOVEY:** That I wouldn't have said that?

MR LLOYD: Yes. It would be inconsistent with -

25 **MR HOVEY:** That's right. It would be inconsistent, yes.

MR LLOYD: Up the top, Mr Robinson responds and says:

"It still remains all a bit odd."

30 **MR HOVEY:** Yes.

MR LLOYD: You'd agree with that -

35 **MR HOVEY:** Yep.

MR LLOYD: - as being an accurate description of where things were at by this time?

40 **MR HOVEY:** Yes.

MR LLOYD: Have a look at tab 453. You see this is an email chain here that starts with the same email I've asked you about, the one from Mr Greaves to Mr Shearer. Do you see down the bottom?

45 **MR HOVEY:** Yes.

MR LLOYD: And then it's forwarded, that email, it would seem, on to Mr Koulouris and you. Do you see that?

MR HOVEY: Yes.

5

MR LLOYD:

"James and Mick, FYI. Interesting if it is accurate information."

10 Do you see that?

MR HOVEY: Yes.

MR LLOYD: Do you remember reading that email?

15

MR HOVEY: No. I - I - I don't recall reading it.

MR LLOYD: Do you agree with me that by 11 October - you've already told us that in late September, you reviewed that intelligence report about these allegations?

20

MR HOVEY: Yes.

MR LLOYD: The material or information in the email that you're being forwarded is information that ought to have been of very great concern to you in your capacity as manager of that Investigations Branch. Do you agree?

25

MR HOVEY: Yes, I - ultimately, I probably should have made a link between the two.

30

MR LLOYD: When you say you should have made a link, this was telling you that the gaol was conducting its own investigations into sexual advances by an officer toward an inmate, first. That, of itself, is of high alarm. Do you agree?

35 **MR HOVEY:** Yes, I do. Yep.

MR LLOYD: And you must have known by this time that you weren't investigating it?

40 **MR HOVEY:** The - at this particular time, this was a particular bone of contention. You'll read in the email of 11 October:

"PSB is currently conducting some very sensitive enquiries."

45 It wasn't PSB's role at that time to be doing that. And that was - you'll see the response from the Assistant Commissioner is:

"Please have gov keep me posted."

5 That's not - not the way it should be done. It should be referred to Investigations Branch. But this was a - a quasi-investigation being conducted by Mr Greaves, basically, from what I can see.

MR LLOYD: I was going to come to that once I finished asking you about the things about -

10 **MR HOVEY:** Sorry.

MR LLOYD: - your own agency. But I assure you I will come back to what you've just said. But the knowledge that you had at 10.05am on 11 October '17 included that your agency or branch was not conducting an investigation into the
15 Witness M allegations.

MR HOVEY: That's right.

MR LLOYD: You were being told the gaol was conducting its own investigation.
20

MR HOVEY: Yes.

MR LLOYD: No matter how busy you were, Mr Hovey, I want to suggest to you that it is unfathomable to think that you would not have put the intelligence report that you read in late September together with this email received a couple of
25 weeks later, inputting those two events together about Witness M. Do you agree with me?

MR HOVEY: I - I should have done. I -
30

MR LLOYD: Do you know that on the evidence that this Commission has heard with respect to Witness M's allegations of sexual assault by Astill that until Astill was arrested much later and the police spoke to her at that point - this is more than one year after this - no one actually ever came to her to ask her what it was that
35 happened? Do you know that?

MR HOVEY: I - I didn't realise that, but I accept it.

MR LLOYD: Do you agree that that situation, where this intelligence report has gone up to your agency and you know by 11 October '17 that the gaol seems to be conducting its own investigation and that you're not, suggests an extremely serious failure on the part of your branch to do its job? I object to that question.
40

COMMISSIONER: Yes, I require you to answer.
45

MR HOVEY: Yes.

MR LLOYD: I promised that I would come back to ask you about what you said about a different point, which is: what do you know about the Professional Standards Branch conducting very sensitive enquiries? What do you know about that?

5

MR HOVEY: I'm aware that, on occasions, that branch did conduct their own enquiries, calling in witnesses, interviewing witnesses, taking statements, et cetera. I argued and protested against that, but it was allowed to continue.

10 **MR LLOYD:** Well, that was done, from what you've told us, in complete defiance of the structure that you've told us about -

MR HOVEY: Yes.

15 **MR LLOYD:** - about who was doing what between (indistinct).

MR HOVEY: Yes.

20 **MR LLOYD:** Was that a problem, that you've given one example of that being a problem, that one side, the PSB, is doing things that belonged to your branch? Was that kind of thing about one branch doing things that were in the domain of the other - did that happen routinely?

25 **MR HOVEY:** At that particular time, it was problematic, yes.

MR LLOYD: Problematic to the point of impairing your ability and, to your knowledge, their ability to do their job properly?

30 **MR HOVEY:** Yes.

MR LLOYD: Just to draw your attention to 454, these are emails that you're not a party to. But do you see on 31 October, Lisa Miller from the PSB says:

35 "We have a response from Hamish Shearer re the below. The matter is closed, but I would like to finalise trim."

Do you see that?

40 **MR HOVEY:** Yes.

MR LLOYD: And then Doug's response:

45 "Thanks for the reminder. I had forgotten to trim an email I sent to Peter about the matter. It's now on the file."

MR HOVEY: Yes.

MR LLOYD:

"Please feel free to close it."

5 That appears, Mr Hovey, to be the end of either the Professional Standards or Investigation Branch's consideration of the allegations made in the IR about Witness M.

MR HOVEY: It would appear so, yes.

10

MR LLOYD: That's an egregious failure, isn't it?

MR HOVEY: Yes.

15 **MR LLOYD:** It's an egregious failure for it to have ended that way without any investigation of those allegations?

MR HOVEY: Yes.

20 **MR LLOYD:** Can I move you forward. The Commission has heard some evidence that in addition to the IR that I've drawn to your attention about Witness M, that sometime in the second half of 2017 an officer from Dillwynia lodged a report about those same allegations which included a scanned copy of a diary or notebook recording the allegations. Now, just take it from me, we've heard some
25 evidence to that effect. I take it you have no recollection of receiving any -

MR HOVEY: No, not - not that I recall.

MR LLOYD: And, again, you told us earlier that even if it wasn't read
30 electronically, there'd be a footprint if a report of that kind was made?

MR HOVEY: Yes.

MR LLOYD: And so, again, you'd be telling us anyone who said that a report had
35 been sent to either the CIG or CSIU of that kind must be wrong?

MR HOVEY: They must be mistaken, yes.

MR LLOYD: Similarly, I'll ask you this: The Commission has heard some
40 evidence about allegations, including allegations of indecent assault, by Astill being made to an officer at Dillwynia in about November of 2017. Just take it from me that there's evidence. There's also evidence to the effect that an allegation like that would have been reported up to either SIU or the CIG. Take it from me
45 that there's evidence to that effect.

MR HOVEY: Yes.

MR LLOYD: If there is no document, again, does that same thing apply, that anyone who says that a report of that kind was made must be mistaken?

MR HOVEY: Yes.

5

MR LLOYD: Could you go - you can close up for now volume 14. And if you can - if Mr Hovey could be given his Commission statement, volume 8, again. And it's tab 86. Just turn - I think one of the helpful Commission staff might have put some tabs in there to allow you to get to Annexure 3.

10

MR HOVEY: Yes.

MR LLOYD: You see this is another of the intelligence reports that you've annexed, this one being IR 1378?

15

MR HOVEY: Yes.

MR LLOYD: Just go, please, to page 9, as in, the internal pagination on the document. Page 9 in mine.

20

MR HOVEY: Yes. I only go up to page 8.

MR LLOYD: I - it's just a problem with the way yours has been reproduced. Can I just approach and show Mr Hovey page 9?

25

COMMISSIONER: Sure.

MR LLOYD: I've just shown you page 9, which has been omitted from your statement. That records that Sarah Casey analysed this intelligence report on 12 April 2019?

30

MR HOVEY: Yes.

MR LLOYD: And that you were the reviewer and that you reviewed it on 28 May 2019?

35

MR HOVEY: That's correct.

MR LLOYD: You've got no reason to doubt the accuracy of those entries?

40

MR HOVEY: None at all.

MR LLOYD: The report itself was submitted - and this is on page 8, which you have - on 6 June 2018.

45

MR HOVEY: Yes.

MR LLOYD: That's a gap - I mean, we can easily do the mathematics - of a little over 10 months.

MR HOVEY: Yes.

5

MR LLOYD: That is a serious - whatever the reason, resourcing or otherwise, that's a serious problem in terms of the delay?

MR HOVEY: It - it - it was at the time, yes.

10

MR LLOYD: And in circumstances where the review was not done until a time after you knew that Astill had been arrested; is that right?

MR HOVEY: I would suggest in this particular instance, sir, that I'm aware from - providing my statement that there's a number of reports similarly dated, and all referred to a particular case number. I would suggest that these information reports have been supplied following a request - following the arrest of Astill.

MR LLOYD: Let me just understand what you're saying about that. You say "supplied". You don't doubt that they were submitted by, in this case, Deborah Wilson -

20

MR HOVEY: Yes.

MR LLOYD: - on or about the date recorded on page 8, that is, 6 June 2018?

25

MR HOVEY: I'm not disputing that at all.

MR LLOYD: And that they were submitted in a way which was capable of coming to the attention of an intel analyst within your branch?

30

MR HOVEY: If we'd had one, they would have come to the attention of an intel analyst.

MR LLOYD: What you're telling us is that no one from the Investigations Branch reviewed this until that date in April of 2019?

35

MR HOVEY: Yes, that's right.

MR LLOYD: And that review came about in a block?

40

MR HOVEY: I'm suggesting the catalyst for that was a request for intelligence holdings in relation to Astill.

MR LLOYD: But it came about in a block with some others that I'll show you?

45

MR HOVEY: I believe so, yes.

MR LLOYD: And as a result of some sort of a request being made for what intelligence holdings the investigations had?

5 **MR HOVEY:** That's - that's how I'm interpreting.

MR LLOYD: This may be a difficult question for you to answer, but do you take it from that that if there had not been that kind of request that came in as a result of Astill's arrest that this intelligence report may have sat in the Investigations
10 Branch capable of being reviewed but never actually being, forever?

MR HOVEY: I would say that given the changes that had been made post 2019 to the Intelligence Unit that it would have been looked at, but certainly not as - not as early as it was. We're talking those 10 months. I - with respect, I suggest that it
15 would be a longer period of time (indistinct).

MR LLOYD: Sorry, I just don't understand. Can you explain?

MR HOVEY: So at the moment, we've produced that some 10 months later at
20 a request. I'm suggesting that we would have looked - if that request hadn't been made, we would have looked at that report, but it would have been some time down the track. It wouldn't have been longer than 10 months.

MR LLOYD: Obviously after 10 months?
25

MR HOVEY: Yes. Yes.

MR LLOYD: That's just completely unacceptable, isn't it, in terms of the time - we'll come to the reasons, but do you agree with me -
30

MR HOVEY: Yes.

MR LLOYD: - that an agency charged with the things that the Investigations Branch was charged with, for there to be no review of an intelligence report for 10
35 or more months is completely unacceptable, isn't it?

MR HOVEY: I agree.

MR LLOYD: And I think you're telling us that, or about to, that for part of that
40 10-month period, there was no intel analyst employed; is that right?

MR HOVEY: That's right.

MR LLOYD: When did Andrew Tayler leave?
45

MR HOVEY: I couldn't give you the exact date. My recollection is sometime in late 2017, I think.

MR LLOYD: And Sarah Casey started when?

5 **MR HOVEY:** She started in - originally she was employed as an administration officer but has a background in intelligence and policing, so we were able to move her into that intelligence role late 2018. But at that point - that's my recollection, 2018. I'm sure employment records would give you a more accurate account. But around that time as well, we were also tasked with conducting the screening of new employees through the academy. So the ratio of the amount of work she was
10 doing on intelligence in that role - and I'm talking this type of intelligence - was greatly reduced.

MR LLOYD: Could I just understand, then, throughout calendar year 2018, approximately, there was no Intel Officer charged with the function of reviewing
15 these intelligence reports?

MR HOVEY: That's right.

MR LLOYD: Your job was - you were the Director of the Investigations, but also
20 I think you told us before that - pull me up if I've got it wrong - you were also doing the Investigations Manager job?

MR HOVEY: That's right.

25 **MR LLOYD:** At this time?

MR HOVEY: Yes.

MR LLOYD: So Director, Investigations Manager and, to the extent it was being
30 done, also analyst?

MR HOVEY: To be frank, I wasn't doing much by way of the analyst work. The work of the Investigations Manager on top of my own workload was just - I was - yeah.
35

MR LLOYD: Is a better answer to that question, you weren't doing any analyst work?

MR HOVEY: I think that's probably a fair - a fair reflection, yes.
40

MR LLOYD: And so for an entire year in your Investigations Branch, there was no one assessing intelligence that was coming in from the Correctional Centres throughout New South Wales?

45 **MR HOVEY:** That's correct.

MR LLOYD: How - I withdraw that. Did you draw that state of affairs to the attention either of - any one of the Assistant Commissioners in the various areas -

MR HOVEY: Yes.

5

MR LLOYD: - or to the Commissioner himself?

MR HOVEY: Yes.

10 **MR LLOYD:** And who? Who were the people?

MR HOVEY: My recollection was Mr Koulouris.

MR LLOYD: Mr Koulouris. And what did you say to him?

15

MR HOVEY: Basically that we had no intelligence function, that we just couldn't fill the position. At the time, budget constraint, we were trying to save money across the organisation, recruitment freezes, problematic at filling that role. To the end where how I did it, ultimately, was internally, as I said, moving someone from the administration role into that position.

20

MR LLOYD: Redeploying staff you had at your disposal?

MR HOVEY: Yes. And then I used an agency to be able to have an admin person, you know, doing the phones and the paperwork.

25

MR LLOYD: Did you know whether this problem came to the attention of the then Commissioner?

30 **MR HOVEY:** I don't know that.

MR LLOYD: From that, you didn't have any discussions with him?

MR HOVEY: No, not - not at my level. They'd be referred through the chain of command, and I would have expected, if he were aware, it would be through Mr Koulouris.

35

MR LLOYD: Mr Hovey, it seems like, in terms of core functions of departments or agencies, you were at Corrective Services who has the responsibility for looking after a significant number of inmates throughout the state?

40

MR HOVEY: Yes.

MR LLOYD: You told us that in terms of investigations, it would not only be allegations, including allegations of criminal conduct, by officers - now, just pausing there. Plainly, conducting investigations and analysing intelligence about that was of itself of critical importance?

45

MR HOVEY: Was a - sorry?

MR LLOYD: Of critical importance.

5

MR HOVEY: Yes.

MR LLOYD: But you also told us that another part of the investigations function was to analyse and then, if necessary, investigate allegations of criminal activity within gaols associated with outlaw gangs?

10

MR HOVEY: No, that was the Corrections Intelligence Group that did that.

MR LLOYD: That was only the CSIU?

15

MR HOVEY: The CIG. Their role was the (crosstalk) -

MR LLOYD: I understand.

20

MR HOVEY: - cohort, not staff.

MR LLOYD: So the Investigations Branch didn't do anything about that?

MR HOVEY: No.

25

MR LLOYD: That core function, about investigating allegations of criminal conduct by officers, was being done, you're telling us, for an entire calendar year without any Intel Officer actually analysing intelligence coming in?

30

MR HOVEY: Yes.

MR LLOYD: And the only way that ever got fixed was by you redeploying resources from taking them away from the investigations arm -

35

MR HOVEY: Yes.

MR LLOYD: - which I assume, when that happened, depleted the capacity of that arm to conduct proper investigations?

40

MR HOVEY: Yes. The problem that we had at that particular time, of course, was that we were receiving intelligence reports on a daily basis. And I think I mentioned earlier in my evidence that obviously the priority for the new intel analyst was to deal with that information coming in as it would be the most relevant and, when opportunity arose, to work back.

45

COMMISSIONER: I don't follow that. You said it before. I don't follow that. If you've got serious allegations which happened to have been sitting in the office and going nowhere for months, surely they were the priority, weren't they?

5 **MR HOVEY:** The problem was, Commissioner, that we were unaware of their content.

COMMISSIONER: That's because you hadn't looked at them.

10 **MR HOVEY:** No.

COMMISSIONER: Well, why wouldn't you go back and do a quick review of what you've got before you just concentrated all your efforts on what was coming in today?

15

MR HOVEY: We did, on the process of working backwards. Now, if that was wrong, then that was wrong. That's - but my -

20 **COMMISSIONER:** Well, can't you see that it was wrong, because it would leave open opportunities for criminal conduct to continue unabated?

MR HOVEY: As it turned out, that was the case, Commissioner, yes.

COMMISSIONER: Well -

25

MR HOVEY: But what I'm saying is - is that, at the time, I had to make an operational decision as to how we were going to most effectively use the time, 35 hours a week, for an intelligence analyst to be able to get us the most relevant information. And I made that decision to work backwards from the most recent intel, working our way back.

30

COMMISSIONER: I just don't understand it, I have to tell you, because embedded in what you had in going backwards, as you say, were very serious allegations of criminality.

35

MR HOVEY: Yes.

COMMISSIONER: And your decision meant that they weren't looked at.

40 **MR HOVEY:** Yes. The other alternative was I could have done it another way, but I made that operational decision at that time.

COMMISSIONER: Well, do you think it was the right one to make, now?

45 **MR HOVEY:** Again, looking at it today, I - I agree. But at the time, that was the decision I made, sir.

MR LLOYD: And you know, Mr Hovey, I think, from the documents, some of which you've annexed, there were reports - multiple reports coming in to Investigations throughout 2018 -

5 **MR HOVEY:** Yes.

MR LLOYD: - which did not get looked at until that job lot in April and then May of 2019?

10 **MR HOVEY:** That's right. That's correct.

MR LLOYD: And throughout that year, women getting assaulted by Astill?

15 **MR HOVEY:** I - I acknowledge that.

MR LLOYD: Mr Hovey, I'm not saying that that's your - that's your - you're culpable for the assault, but you understand -

20 **MR HOVEY:** I - I feel responsible in some way. But I - I did the best that I could with the limited resources I had, and I acknowledge what you're saying.

MR LLOYD: I won't take you, then, to the other reports that were received throughout 2018, but I'll just ask this - until we get to the one from Mr Virgo on 9 October. They're in the same category -

25 **MR HOVEY:** Yes.

MR LLOYD: - as we discussed; is that right?

30 **MR HOVEY:** Yes.

MR LLOYD: Could I ask you about a separate one before I come to Mr Virgo's 9 October report. Could Mr Hovey be shown volume 10. Have a look at 174.

35 **MR HOVEY:** Yes.

MR LLOYD: You see that's an information note?

40 **MR HOVEY:** Yes.

MR LLOYD: And it's in - it's a two-page document. Do you see that?

MR HOVEY: Yes.

45 **MR LLOYD:** Those information notes of this kind, did they arrive at the Investigations Branch along with the intelligence report?

MR HOVEY: If they were sent to the SIU portal, then yes.

MR LLOYD: If not?

5 **MR HOVEY:** They would have gone into the CIG portal.

MR LLOYD: And is there any liaison between CIG and investigations about the material that CIG is receiving and the material -

10 **MR HOVEY:** Usually. To be fair, what would happen is someone from CIG would contact Investigations Branch and say, in this case, "Information note 18-0936 has been received. We believe it's staff related, and we've moved it to (indistinct)." That's - that's what would normally occur.

15 **MR LLOYD:** Would that be done by an email or some documentary -

MR HOVEY: Usually a phone call. In my experience, it's - you'd receive a phone call.

20 **MR LLOYD:** Can you work out from looking at this document whether it ever was removed?

MR HOVEY: Unfortunately, I - I can't tell. There's no dissemination, which suggests to me it could have been SIU. But I've only got two pages.

25

MR LLOYD: And just look at 175 and tell me if that's any different. Another information note, the same date. Is there any clue there as to whether it ever reached -

30 **MR HOVEY:** I'm sorry, there's no indication there that this was SIU or CIG.

COMMISSIONER: Mr Hovey, this was described as, I think, "inappropriate association".

35 **MR HOVEY:** Yes.

COMMISSIONER: Was that a common problem in the prison system?

40 **MR HOVEY:** It's a - it's a - a generic term that's used, Commissioner. As to whether it's prevalent, I would say not. But it's a term that's used not only to describe an inappropriate association with an inmate in a gaol, but it may be an officer and a person in the community. It may be perhaps a blurred professional boundaries type of scenario, but it's - it comes under the umbrella -

45 **COMMISSIONER:** It sounds like an omnibus phrase. But nevertheless, you say it's not that common to find -

MR HOVEY: Sorry?

COMMISSIONER: Not that common to find a report that talks about inappropriate association?

5

MR HOVEY: No.

COMMISSIONER: So for that reason, I assume, when you get one, it would stand out?

10

MR HOVEY: Yes, it - it's the sort of thing that should be brought to my attention earlier. Yes.

MR LLOYD: The events of early to mid-October 2018, that involved an intelligence report being submitted by Stephen Virgo?

15

MR HOVEY: Yes.

MR LLOYD: That did come to your attention?

20

MR HOVEY: Yes.

MR LLOYD: Why was that different to the other ones?

25

MR HOVEY: My - this would be the intelligence report that led to my briefing up. And I have a - I have a recollection that perhaps I had a telephone conversation with Mr Virgo, who sort of gave me a heads-up that this report was coming in.

MR LLOYD: A report submitted but notification by way of a phone to look at -

30

MR HOVEY: That - that's my recollection, that it was - you know, this is coming in, but - giving you the heads-up.

MR LLOYD: I'll show you the document if you need me to, but do you accept that that records the analyst date of 12 April and your review date of 28 May, the same as the other ones I've asked you about?

35

MR HOVEY: Yes, I'd agree with that.

MR LLOYD: But that is not accurate, in the sense that you knew about this report and you took action by - I think you said a minute ago - reporting it up?

40

MR HOVEY: Yes, my recollection was a highly confidential briefing to the Commissioner. I know that I took action upon the information that I'd received. So I knew that - my recollection is police went to the gaol the next morning before let-go, interviewed the inmate. The lady involved was credible. The police were moving forward with enquiries.

45

And I also remember a request from police to keep that inmate at the centre for a period of time. And Mr Severin, who was the Commissioner at the time, made it quite clear that the safety of that inmate was paramount, and he - he agreed that she could stay. But if there was any indication that she was in any form of danger, she had to be moved. And - and the inference from that was I was being tasked with making sure that she was - her safety was monitored.

5
10 **MR LLOYD:** And reporting up to the Commissioner occurred?

MR HOVEY: My report went to my Assistant Commissioner. And - but it was a highly confidential briefing to - to the Commissioner himself.

15 **MR LLOYD:** And to your knowledge, police involved in the matter?

MR HOVEY: I know police were involved, because that was the catalyst for the criminal investigation into Astill. Two detectives attended Dillwynia that morning, and I was able to - I think it's in that briefing note. I was able to tell the Commissioner the outcome of the interview police had with the lady involved.

20 **MR LLOYD:** And it's right, isn't it - I'll try and relieve you of the obligation to be shown hundreds of documents and just see if you agree with this: That there was sensitivity identified about how to handle it at the gaol in terms of - to your knowledge, the police were wanting the people involved to be very careful about how to handle it?

25 **MR HOVEY:** Yes.

MR LLOYD: And there was a covert operation?

30 **MR HOVEY:** There was.

MR LLOYD: And for that reason, it was necessary in that early period for agencies, including yours, to take a back seat while the police did what they wanted to do?

35 **MR HOVEY:** Yes. Yes.

MR LLOYD: And, again, I'll - I won't show you the hundreds and hundreds of pages about this. I'll see if you just agree: that what happened in the years following his arrest in February of '19 was, in effect, the Professional Standards and Investigations Branches kept an eye on the criminal prosecution?

40 **MR HOVEY:** More Professional Standards than Investigations.

45 **MR LLOYD:** But to the effect that no disciplinary action would be taken while the matter was before the courts?

MR HOVEY: My recollection is that Mr Astill was suspended, and no disciplinary action took place until the outcome of the criminal matter was known.

5 **MR LLOYD:** Similar to the one I asked you about earlier -

MR HOVEY: Yes.

10 **MR LLOYD:** - effectively suspended, investigation or disciplinary complaint being pursued while the matter is before the criminal courts -

MR HOVEY: Yes.

15 **MR LLOYD:** - until either he pleaded guilty or there was a verdict of guilty?

MR HOVEY: Yes.

20 **MR LLOYD:** Could I just ask you this question. You may or may not be able to answer it. Having regard to the problems with reviewing the reports that were coming in, should we assume that had Stephen Virgo not called you about this particular intelligence report that it might have just sat in the same place as the other unreviewed ones?

25 **MR HOVEY:** I - I honestly can't answer that, but - I - I'd suggest that based on the evidence that we've seen that the possibility that would occur couldn't be discounted.

30 **MR LLOYD:** Could I ask - have you still got volume 10 there, Mr Hovey? Tab 177?

MR HOVEY: Yes.

35 **MR LLOYD:** Can you just look at that one. Intelligence report - do you see - 1 November 2018?

MR HOVEY: Yes.

MR LLOYD: Page 4. Reviewed in that same job lot way as the other ones?

40 **MR HOVEY:** Yes.

MR LLOYD: This was about Witness Q. Do you see that?

45 **MR HOVEY:** Yes.

MR LLOYD: And allegations recorded on page 3 about inappropriate conduct by Astill?

MR HOVEY: Yes.

MR LLOYD: Do you know happened within your branch about this one?

5

MR HOVEY: No. I don't. If these reports were provided as a - a package to the CSIU.

MR LLOYD: Did you assume, do you think, that the police were investigating that matter involving that particular witness?

10

MR HOVEY: Yes, I probably would have assumed that. I think, from the point of view of - of this, of knowing that all these reports were required for police, I would assume that they were being (indistinct).

15

MR LLOYD: Can't remember checking?

MR HOVEY: No. I - I don't recall that at all.

COMMISSIONER: Mr Hovey, what is meant by the phrase, which is common in these reports, "no information currently recorded"?

20

MR HOVEY: So I would suggest, Commissioner, that that means that - I'm just looking at the way that's in this particular report.

25

COMMISSIONER: Well, against Mr Astill:

"No information currently recorded."

30 What does that mean?

MR HOVEY: Yeah. So it's - it's a referral for CI additional information. So confidential informant. It means that the person that's completed this report has no information with regards to that person as - as an informant prior to the information being provided in that report.

35

COMMISSIONER: Sorry. So that's a comment upon the informant, not on the subject of the information?

MR HOVEY: Yes. So - you're right. It does appear a lot in the - in the reports. So under Local Actions, that - that's just a - a standard in-fill when you don't put an answer in. So if there's been no local action that you are aware of, it automatically sort of places in the report, "No information currently recorded."

40

COMMISSIONER: Sorry, you're exciting my curiosity. Who's putting those words in?

45

MR HOVEY: It's my understanding of how these intelligence -

COMMISSIONER: Sorry, Mr Hovey. Just stop there for a moment.

5 **MR HOVEY:** Yes.

COMMISSIONER: You had a senior position in the gaol in relation to these matters.

10 **MR HOVEY:** Yes. But I'm - I'm not a technical person, sir.

COMMISSIONER: But you were reading these reports on a regular basis.

MR HOVEY: I do. I don't -

15

COMMISSIONER: What did they mean to you?

MR HOVEY: I don't want to mislead you, sir, by saying, but my understanding is - is that in this report, it - if no entry was made, it automatically put in - automatically in-filled, "No information recorded."

20

COMMISSIONER: Sorry. If no entry was made, what do you mean by that?

MR HOVEY: If I was completing this report, sir, and it said Local Actions, if I was to say, "Officer to be interviewed," I'd type that in. And "no information currently recorded" would disappear. But because I haven't made an entry, the system automatically includes in that disseminated report, "No information currently recorded." So it's a system entry that's there because no other entry has been made to override it.

30

COMMISSIONER: Well, I must have completely misunderstood it. I assumed that it was a comment by someone that there was no information currently recorded in the system.

MR HOVEY: That's not my understanding, sir. That's - my understanding is - is that this - the system automatically puts that in the report. Automatic filling, if you like, of the report.

35

COMMISSIONER: Well, I confess I'm amazed by that use of the English language, but nevertheless.

40

MR LLOYD: In any event, the automatic generation that the Commissioner has drawn to your attention in this particular case was extremely inaccurate, wasn't it? Investigations had a raft of information that was relevant.

45

MR HOVEY: Yes, but - but the point - the point being is that from the point of view of the officer who's completing that information report locally, he's - he's not

got any local intelligence gaps, for example. So he doesn't put anything in there. The report then says, "No information currently recorded." But for us, we've done no - we've done no work on that report; it's just been printed - processed and printed off to provide the information within it to police. We've done no
5 evaluating, no analysis, no nothing. So every - every chapter will have "no information currently recorded" because we've not typed anything in.

MR LLOYD: I suppose the question that I'll ask you, really, is this: in terms of the information - or the system capability, was there capability in the system in
10 that box to automatically generate all records of previous intelligence reports about the particular officer?

MR HOVEY: I don't believe there is. I think that - that my understanding again of - a limited understanding of this system - bearing in mind that it's a Corrections
15 Intelligence Group process. But my understanding of the system is it would do that. If you initiated a search, then it would come up with a number of reports that you would have to print off individually.

COMMISSIONER: Mr Lloyd, I think you might be at cross-purposes, because I
20 think you were telling me that what those words mean in this document is that no research or investigation has been done at the local level. Is that what you were saying to me?

MR HOVEY: In essence, yes, sir. Because if there had, then somebody would
25 have typed in the actions that they'd taken. They haven't done anything locally or - for this particular one with a matter that we've dealt with. So nothing has been typed in, so the system automatically puts in there "no information recorded".

COMMISSIONER: But it's not telling us what information might have been
30 held -

MR HOVEY: No.

COMMISSIONER: - in head office, so to speak?
35

MR HOVEY: No. No, that would have to be manually inputted following a separate search.

COMMISSIONER: And where does this document go? You say it goes to the
40 police?

MR HOVEY: In this particular instance, my recollection is these were all printed off on a particular day to be made available to police, yes.

COMMISSIONER: Well, what would the police made of the "no information
45 currently recorded" entry? Because I confess I didn't understand it. What were the police supposed to do with it?

MR HOVEY: I don't know, sir. I don't know the answer to your question, sorry.

COMMISSIONER: All right.

5

MR LLOYD: Just to clear up, in the question -

COMMISSIONER: By the way, is this still the reporting - I suppose you don't know whether this label "no information currently recorded" is still used in the system?

10

MR HOVEY: It was up until the time I left the organisation, Commissioner. I - that's all I can say.

MR LLOYD: Could I ask for Mr Hovey to have put before him volume 17 and close that one up and have it taken away. Just turn to tab 542. Do you see in the middle of the page, email, 21 November 2018, from you to - it's clear from the above - Peter Severin?

MR HOVEY: Yes.

20

MR LLOYD: Do you remember this email?

MR HOVEY: Yes.

25

MR LLOYD: Just to the extent you need to be reminded, you say in the fourth paragraph or so:

30

"I've had the opportunity to read the copy of Astill's New South Wales Police Professional Standards file..."

MR HOVEY: Yes.

MR LLOYD:

35

"...a highly confidential document."

Do you see that?

MR HOVEY: Yes.

40

MR LLOYD: Was that file available to you in your capacity as the Director of the Investigations Branch at all relevant times?

MR HOVEY: It was available to me very close to the date in November 2018 when I advised the Commissioner. I would suggest that I'd received that day - two days beforehand.

45

MR LLOYD: Just by asking?

MR HOVEY: Yes.

5

MR LLOYD: Was it open to you to ask at any time that investigations was being told the information that I've drawn to your attention in your evidence about Astill?

10 **MR HOVEY:** I'm sorry, I'm not -

MR LLOYD: Could you have asked for it, say, back in November of 2016?

MR HOVEY: Possibly, yes.

15

MR LLOYD: Do you think you should have, having regard to the -

MR HOVEY: If -

20 **MR LLOYD:** Sorry, you go on and I'll see if you answer my question.

MR HOVEY: If - yes.

25 **MR LLOYD:** Because it would aid understanding exactly what's being investigated and the subject of the investigation; true?

MR HOVEY: Yes.

30 **MR LLOYD:** It reveals some - well, to use the Commissioner's words in response, some disturbing things; agree?

MR HOVEY: Yes.

35 **MR LLOYD:** Including that at the time of Astill's resignation from the police force in March of 1996, the evidence supported him having engaged in acts of gross - gross acts of misconduct and neglect of duty?

MR HOVEY: Yes.

40 **MR LLOYD:** Do you see that?

MR HOVEY: Yes.

45 **MR LLOYD:** And the Assistant Commissioner of Professional Standards of the police reported:

"It's in the public interest and in the interests of this service that his resignation be accepted."

MR HOVEY: Yes.

5

MR LLOYD: And wouldn't give him a satisfactory certificate of discharge?

MR HOVEY: Yes.

10 **MR LLOYD:** Do you see that? And then there's some particulars of things that came to your attention at this time. Complaints that he demanded money with menaces from a subject -

MR HOVEY: Yes.

15

MR LLOYD: - was sustained. See that?

MR HOVEY: Yes.

20 **MR LLOYD:** Tasked with informing a lady that her brother had been murdered and didn't do so. Counselling?

MR HOVEY: Yes.

25 **MR LLOYD:** Then complaint by a female prisoner that Astill had harassed her and demanded and received 3500 in cash?

MR HOVEY: Yes.

30 **MR LLOYD:** Allegation of solicit/accept bribe, times two. Sustained?

MR HOVEY: Yes.

35 **COMMISSIONER:** It's remarkable that he wasn't prosecuted, apart from being removed from the police force. Not that that's within our terms a reference, but -

MR LLOYD: You heard what the Commissioner says. I know it's not your -

40 **MR HOVEY:** I don't - I've got no comment. That's a decision made by a senior police officer.

MR LLOYD: What is relevant - what is within your capacity to comment, Mr Hovey, I suggest to you, is that information of this kind should have been sought and obtained by your agency at an early stage when information came in
45 about Astill. Do you agree?

MR HOVEY: Could have been, yes.

MR LLOYD: Should have been? Should have been?

MR HOVEY: Yes.

5

MR LLOYD: And if it was, that would have put Investigations Branch squarely on notice that these allegations about Astill that were coming forward from the latter part of 2016, at a minimum, were being made about someone who, stating it in the mildest way, had a chequered history. Do you agree?

10

MR HOVEY: Yes.

MR LLOYD: And putting your Investigations Branch on notice that the allegations might well be true; agree?

15

MR HOVEY: Yes, would - would lead to tendency. I - I agree.

MR LLOYD: Was it standard to get a professional history of this kind for subjects of investigations?

20

MR HOVEY: No.

MR LLOYD: Was that a resourcing issue or -

25

MR HOVEY: Is it a what issue?

MR LLOYD: Was that a resourcing issue or something else?

30

MR HOVEY: No. Not particularly. I think it's something that came up in the course of matters as to - we knew that he was a former police officer because that's in his Corrective Services file. And the question was raised, why did he leave New South Wales Police?

35

COMMISSIONER: Mr Lloyd, it should have been disclosed when he was employed, and it should have been on his personnel file, is the simple answer to it.

MR LLOYD: There will be at least one witness who will be asked some questions about that.

40

COMMISSIONER: Well, I think we might leave it for that witness to explain what happened.

45

MR LLOYD: I just take it - one last thing. I take it the fact that the police evidently having found those allegations in that last paragraph about the female prisoner sustained, that they nonetheless accepted his resignation. That wouldn't, in your mind, mean that these matters were not very serious; agree?

MR HOVEY: No. I - I think those matters are serious. I think once we'd got this information and we understood the circumstances of his exiting, then, yes, they - they are serious allegations of conduct as a police officer.

5 **MR LLOYD:** Just pardon me. Do you remember hearing about Taskforce Themis?

MR HOVEY: Yes.

10 **MR LLOYD:** Could Mr Hovey be shown tab 10 - I withdraw that - volume 10, tab 154. In that tab - I'm not suggesting, Mr Hovey, this is your document. Do you understand?

MR HOVEY: Yes.

15

MR LLOYD: It describes some things about Taskforce Themis. See that?

MR HOVEY: Yes.

20 **MR LLOYD:** In 2018, it was established?

MR HOVEY: Yes.

25 **MR LLOYD:** And in terms of the things that, to your knowledge, it was looking at, one of them was inappropriate relationships between staff and inmates?

MR HOVEY: Yes.

30 **MR LLOYD:** And do you see there's here in this document recorded some statistics about how many files there were recording allegations of inappropriate relationships over 10 years?

MR HOVEY: Yes.

35 **MR LLOYD:** And of those files, there were some numbers there about allegations of non-physical, non-intimate, and 52 allegations of sexual relationships. Do you see that?

MR HOVEY: Yes.

40

MR LLOYD: And of that number of 322, only a quarter are found to be substantiated. Do you see that?

MR HOVEY: Yes.

45

MR LLOYD: Do you know whether the people who were responsible for conducting that taskforce and obtaining those statistics and information - did they have all of the intelligence reports that were coming to your branch?

5 **MR HOVEY:** I'm not sure about intelligence reports, to be honest. They had our historic investigation files, hard files - pre-computer days - and access to all of our electronic records, but I'm not sure that included intelligence reports. I just don't recall.

10 **MR LLOYD:** We found out just with regard to one Correctional Centre, those intelligence reports contain serious allegations of sexual activity between officers and inmates.

MR HOVEY: Yes.

15

MR LLOYD: And perhaps it's for someone else, but can you say? Do you remember ever being asked to go through all of the intelligence reports to provide to someone related to that taskforce the information you had about (indistinct)?

20 **MR HOVEY:** I don't recall being asked for that information, no.

MR LLOYD: Could Mr Hovey have volume 17 back. I'll take you through some things that happened post Astill's arrest. Have a look at tab 558. Have you got that one?

25

MR HOVEY: Yes.

MR LLOYD: Just go to the back. Do you see there's a subpoena - it's from Subpoenas CSNSW?

30

MR HOVEY: Yes.

MR LLOYD: - directed to your attention, and the documents required all records and all documents in relation to complaints by any inmate -

35

MR HOVEY: Yes.

MR LLOYD: - Correctional Services Officer or any other person about Wayne Astill during the period he was employed. Do you see that?

40

MR HOVEY: Yes.

MR LLOYD: The intelligence reports were documents - that I've asked you about were documents falling in that category?

45

MR HOVEY: Sorry.

MR LLOYD: Do you agree? The intelligence reports that I've asked you about -

MR HOVEY: Yeah.

5 **MR LLOYD:** - obviously fall within this category.

MR HOVEY: The intelligence reports - this was a - a subpoena sent - sent to me for action on a particular - aspects of the subpoena. My recollection is - and - and the system was - was that any intelligence reports, whether they be SIU or CIG, 10 had to be released by the General Manager of the Corrections Intel Group. So that person would have received the subpoena for any intelligence reports.

MR LLOYD: Is that why you responded in the email on the previous page, 17 August, that the items requested in paragraph 10 will have to be sourced locally? 15

MR HOVEY: Where I've - I'm sorry, where I've -

MR LLOYD: See your response, Michael Hovey to -

20 **MR HOVEY:** On 9 October?

MR LLOYD: On 17 August. The previous page to the one recording the paragraph 10 -

25 **MR HOVEY:** Sorry.

MR LLOYD: - in the subpoena. You see 17 August 2020?

MR HOVEY: Yes. So I haven't got the whole subpoena here, but what I'm saying 30 to our subpoena branch is - is that those items will need to be sourced at Dillwynia. They would be records held by the centre, not by Investigations Branch. The inmates themselves had made no complaints to Investigations Branch. And with regard to the emails, with the list of A to EE, I'd liaised with the technical department - the IT area of the organisation who were preparing that 35 information so that I could include it in the subpoena. But apart from that, I have no other information that I could provide that met the criteria of the subpoena.

MR LLOYD: You read what was required of you to only disclose documents containing, what, a direct allegation by an inmate as opposed to a report from an 40 officer about a direct allegation by an inmate; is that right?

MR HOVEY: I would say so, yes. As I said, I haven't got the - the full subpoena in this - I haven't got the full subpoena. I've only got a couple of pages, with 45 sections 13 and 14 on it.

MR LLOYD: Could I ask you now to - if Mr Hovey can have access to volume 14.

COMMISSIONER: Sorry, volume?

5 **MR LLOYD:** 14. Have a look at 478. You see this report at 478 is from Mr Virgo to the then Governor of Dillwynia about a possible relationship and corrupt conduct by a staff member?

MR HOVEY: Yes.

10 **MR LLOYD:** Did you become aware of this one?

MR HOVEY: Just looking at it from the - the generic content, yes, I think I was aware of this.

15 **MR LLOYD:** Have a look - having drawn your attention to that, go back to 471. You see the next thing in sequence, if you go to the back of that tab - or three pages from the end, anyway - sorry, are you there?

20 **MR HOVEY:** Where am I looking, I'm sorry?

MR LLOYD: 471, three pages from the end. Emma Smith's email of 4 February 2021?

25 **MR HOVEY:** Yes.

MR LLOYD: See that? Now, without dwelling on every part of it, this records, if you look at the second paragraph, a meeting between Ms Smith and a particular officer, the subject being whether the officer had acted inappropriately with an inmate. Do you see that?

30 **MR HOVEY:** Yes.

MR LLOYD: And then if you go one page earlier in the chain, you've got in the middle of the page Leah Nicholson. Who was she at that time?

35 **MR HOVEY:** I'm unsure what position Leah was holding, but she's a substantive General Manager.

40 **MR LLOYD:** A question being asked:

"Can I confirm if this will be referred to the PSB?"

Do you see that?

45 **MR HOVEY:** Yes.

MR LLOYD: And then go one page before that.

MR HOVEY: Can I just clarify for you, sir. I can see from the contents of that email that Leah Nicholson would have been the General Manager of Inmate Transfers at that particular time.

5

MR LLOYD: Thank you. Go to the previous page.

MR HOVEY: Yes.

10 **MR LLOYD:** Emma Smith to Leah Nicholson, copied to Tracey Mannix and you?

MR HOVEY: Yes.

15 **MR LLOYD:** It's been transferred to you for review and appropriate investigation with PSB also advised?

MR HOVEY: Yes.

20 **MR LLOYD:** What's going on here in terms of the adoption of anything that resembles the system you told us about?

MR HOVEY: The answer to that question is - is that it was referred to PSB, but I believe that was after information was sent through to me.

25

MR LLOYD: Have a look at Leah Nicholson's email to Doug Greaves.

MR HOVEY: Yep.

30 **MR LLOYD:** He's from PSB?

MR HOVEY: Yes.

MR LLOYD:

35

"Good morning, Doug. Confirm if PSB has received the matter and what action has been taken. I note the matter was also referred to Mick Hovey."

MR HOVEY: Yep.

40

MR LLOYD:

"I'm assuming that is via PSB or has the process changed?"

45 Do you see -

MR HOVEY: Yep. The process hadn't changed.

MR LLOYD: You agree a pretty legitimate question is being asked -

MR HOVEY: Yes.

5

MR LLOYD: - about what's going on here?

MR HOVEY: Yep.

10 **MR LLOYD:** Have a look, then - Doug Greaves then responds:

"It's not recorded by PSB."

And then in the second paragraph in his 9 February email:

15

"Where a CSNSW employee has engaged in misconduct or it's unclear what action should be taken, then it should be referred to PSB in the first instance so we can assess and guide it down the right path."

20 Do you see that?

MR HOVEY: Yes.

MR LLOYD: And then over the page:

25

"When an employee has engaged in criminal conduct, which will or could require sensitive or covert enquiries, then it's best if the allegation, and any supporting information, is passed directly to you and your agency so that you can liaise with the CSIU."

30

Do you see that?

MR HOVEY: Yes.

35 **MR LLOYD:** Does this mean that - I withdraw that. Is that a correct description of the system?

MR HOVEY: No, I don't - I don't believe it is. Yes, from the point of view of - at that time, we would have said get the information to me so that I can advise police in a timely manner. But it should still have gone before the Professional Standards Committee. So there should still have been a referral with the committee ratifying that it was going for a police investigation.

40

MR LLOYD: Could I just ask you - I think we've got Doug Greaves' email sign-off, but he was quite a senior person within -

45

MR HOVEY: He was the Professional Standards Manager.

MR LLOYD: And he had been in that position by this time for many years?

5 **MR HOVEY:** I wouldn't say many years, but, you know, some time. Two, three years at least.

MR LLOYD: He was involved back in that October '17 email?

10 **MR HOVEY:** Yes. Yes.

MR LLOYD: What do you think it says about the transparency or clarity of this system from the perspective of the people within gaols working out where to send allegations of serious misconduct by officers, that Doug Greaves by this time, from what you're telling us, is unable to correctly state what the system is?

15 **MR HOVEY:** I - I - it would lead to confusion. I would agree.

MR LLOYD: I omitted to ask you this before. In terms of any documents that a person within either the PSB or a Professional Standards Committee or the Investigations Branch or the CSIU or the CIG might go to, to try and work out what on earth to do in these various situations that you've been telling us about, was there any document, policy, protocol, guideline?

25 **MR HOVEY:** Yep. So certainly from the point of view of investigations, there was an Investigations Branch manual. That was basically an electronic document with all templates relevant to Commissioner's Instructions, et cetera, legislation, all hyperlinked so that officers could just basically open it on the computer - click the hyperlink, and it would take them to the relevant legislation, order, et cetera. With regards to the Professional Standards Committee, I know that when the new Assistant Commissioner started, he revamped the committee and provided

30 a distinct terms of reference that had to be adhered to. But my understanding is that that is still being used today. So I know of - I know of those two.

MR LLOYD: Was training conducted to tell the people within your branch and, to your knowledge, within the Professional Standards Branch about what to do when complaints were received?

40 **MR HOVEY:** I - I can't comment on Professional Standards Branch. I - I suspect that their process was - training was conducted. I know they established a support branch to assist officers who had made complaints or were the victims of any particular misconduct. But I can't comment on - on specific training.

MR LLOYD: In terms of training elsewhere about what's available within your branch or the Professional Standards Branch, the Commission has heard evidence from a large range of officers at a more junior level that they knew nothing about the ability to make an SIU report electronically. Were you aware of that?

5 **MR HOVEY:** It - I'm not aware of that, but it doesn't surprise me. A lot of this information is contained on the Department's intranet. So you can actually access all this information, which is where you would get the link to be able to make the SIU report. But it's - it's not readily broadcast, is probably the best way that I can describe it. So you've either got to know it or talk to somebody who knows it who can talk you through how to get to the area. It's not common knowledge, is the best way to say it.

10 **MR LLOYD:** It should be.

MR HOVEY: I don't disagree. Yes.

15 **MR LLOYD:** Could Mr Hovey have before him now volume 17, and turn to tab 560. Can I just ask you - if you turn to 560. This is an email which you're not a party to, 9 March 2022. Just have a look in the middle of the page. Astill -

COMMISSIONER: Sorry, this is behind tab five -

20 **MR LLOYD:** 560.

COMMISSIONER: There's an awful lot of black on my page.

25 **MR LLOYD:** There is a - this one, there is a good reason. This is unrelated matters that were before the Professional Standards - unrelated to (indistinct). The Astill matter, though, is awaiting the court outcome before taking further action. See that?

MR HOVEY: Yes, I do.

30 **MR LLOYD:** And consistently with what you've told us before, accepting from me that the trial had not occurred by this time, that was appropriate, to await that outcome?

35 **MR HOVEY:** Yes.

MR LLOYD: That is, before conducting any disciplinary investigation?

MR HOVEY: Yes.

40 **MR LLOYD:** Go forward, please, to tab 568. You see this first email behind tab 568, Karen Garrard to Steven Karras, copied to someone else?

MR HOVEY: Yes.

45 **MR LLOYD:** 26 July 2022. You're not a recipient of this -

MR HOVEY: No.

MR LLOYD: - but are you aware - if you just have a - I'll just draw to your attention some things. There were allegations made by two officers at Dillwynia, Judy Barry and Renee Berry. Do you see that?

5

MR HOVEY: I do.

MR LLOYD: And the allegations included allegations about senior management, named as the Governor, Shari Martin, and the Manager of Security, Leanne O'Toole. Do you see that?

10

MR HOVEY: Yes, I do.

MR LLOYD: But under allegations from Judy Barry, the last bullet point:

15

"No support from senior management."

Do you see that?

20 **MR HOVEY:** I do.

MR LLOYD:

"No further details regarding the management personnel."

25

That is, who it was she was talking about?

MR HOVEY: Sorry?

30 **MR LLOYD:** You see:

"No support from senior management."

MR HOVEY: Yes, I see that.

35

MR LLOYD: And then:

"No further details regarding the management personnel."

40 **MR HOVEY:** Yes.

MR LLOYD: So you wouldn't know from that record of Judy Barry's allegations who within management she was talking about?

45 **MR HOVEY:** No, I don't.

MR LLOYD: Except that, it's a fair bet, it at least included Leanne O'Toole?

MR HOVEY: I - it would be reasonable to surmise that, reading the content of the email.

5 **MR LLOYD:** And then Renee Berry -

MR HOVEY: Yes.

10 **MR LLOYD:** - direct allegations against Shari Martin and Leanne O'Toole. Do you see that?

MR HOVEY: Yes.

15 **MR LLOYD:** Four senior managers, who weren't named, did nothing when she was subjected to inappropriate behaviour by Astill. No further details regarding, effectively, the identity of those four senior managers. See that?

MR HOVEY: Yes.

20 **MR LLOYD:**

"There's still current management staff who turn a blind eye to inappropriate behaviour at Dillwynia."

25 Do you see that?

MR HOVEY: Yes.

30 **MR LLOYD:** View - underneath View:

"As GM Martin and Manager of Security O'Toole are no longer employed, misconduct allegations could not be pursued."

35 Do you see that?

MR HOVEY: Yes.

40 **MR LLOYD:** To your knowledge, is that a correct statement, that because they'd left employment, there was no ability by the PSB to investigate a disciplinary complaint or Investigations Branch to investigate them?

45 **MR HOVEY:** I - I'll put it this way: it's somewhat of a - in circumstances like this, somewhat of a toothless tiger. Investigations Branch will be required to interview and speak to Ms Martin and Ms O'Toole. If they said no, we - we wouldn't be able to proceed with it. We would have - I wasn't party to this decision, but if I was involved, I would have probably arrived at a similar decision given the impact on resources to be able to take that any further.

MR LLOYD: I might have some news for you, Mr Hovey, about your involvement. But just in terms of at this stage -

5 **MR HOVEY:** Yes.

MR LLOYD: - are you agreeing that because they're former employees, in effect, it would be very difficult at least to conduct a disciplinary investigation?

10 **MR HOVEY:** Yes. Yes.

MR LLOYD: And very difficult to conduct an investigation in your branch?

15 **MR HOVEY:** Yes.

MR LLOYD: The allegations about the other unnamed managers, though, they were in a different category, weren't they?

20 **MR HOVEY:** Yeah, I think they are. Yes.

MR LLOYD: And what about the allegations that "still current management staff who turn a blind eye to inappropriate behaviour"? That's as at July 2022.

25 **MR HOVEY:** Yes.

MR LLOYD: Very serious allegation. Would you agree?

MR HOVEY: Yes.

30 **MR LLOYD:** Demanding investigation? I didn't pick up a verbal response, but you were agreeing with me?

MR HOVEY: Yes.

35 **MR LLOYD:** Could you just have a look at 569. You see there an email from Saffron Cartwright -

MR HOVEY: Cartwright. Yes.

40 **MR LLOYD:** - to others. And then we're dealing here with two confidential reports relating to a request by staff not to have Witness C placed at Dillwynia, and it nominates the two officers that are in the previous document.

45 **MR HOVEY:** Yes.

MR LLOYD: Now, at this point, one of the things that's arising in this email, and also the previous one, is a difficulty in speaking to those officers, Renee Berry and Judy Barry, because Astill's case was still on foot; correct?

5 **MR HOVEY:** Yes.

MR LLOYD: And they were to be witnesses?

MR HOVEY: Yes.

10

MR LLOYD: So that was a very good reason not to conduct any investigation involving interviewing them at that time?

MR HOVEY: Yes. Yes.

15

MR LLOYD: But that was not a good reason after the case had finished, though, was it?

MR HOVEY: No.

20

MR LLOYD: Could I just ask you to have a look at 530.

MR HOVEY: Sorry, five -

25

MR LLOYD: Three zero. Have a look, please, about three-quarters of the way down this page, Saffron Cartwright to you, copied to Emma Smith. 6 September.

MR HOVEY: I have no document at 530.

30

MR LLOYD: That's a shame. We'll see if we can get that fixed up.

MR HOVEY: Is that email dated 26 August?

35

MR LLOYD: No, it's one 6 September 2022. We'll get a copy. I'm not sure what's gone on there, but we'll get one.

MR HOVEY: Thank you.

40

MR LLOYD: Just have a look, three-quarters of the way down the page, Saffron Cartwright to you and copied to the then Governor, 6 September 2022. See that?

MR HOVEY: Yes.

45

MR LLOYD:

"Hi Mick, hope this email finds you well."

And then over the page:

5 "Two of my staff have raised concerns that Dillwynia management between '14 and '19 were aware and failed to report allegations that Officer Astill was sexually abusing inmates. I've updated Director Smith. I was hoping to have a quick chat with you about the below email."

Do you see that?

10 **MR HOVEY:** Yes.

MR LLOYD: That was the same thing, wasn't it, that was in the email I asked you about from March, that is, the two officers, Renee Berry and Judy Barry, making complaints?

15 **MR HOVEY:** Yes.

MR LLOYD: And complaints, I think you agree with me, about very serious things, if proven or established, about management; true?

20 **MR HOVEY:** Yes.

MR LLOYD: Including management, to your knowledge, who may still actually be at Dillwynia performing a role?

25 **MR HOVEY:** Yes.

MR LLOYD: Just have a look at your response of 6 September, you to Saffron Cartwright, copied to Emma Smith. You had a telephone conversation - or it says plural. Do you remember what you spoke to them about?

30

MR HOVEY: I don't recall the telephone conversation, but - there would have been one.

35 **MR LLOYD:** Just have a look at what you say, then:

"Mindful of the horrendous impact of the actions of Astill on victims and other staff..."

40 And you say about things from your own knowledge as a male officer working in the female system, finding this behaviour abhorrent. Do you see that?

MR HOVEY: Yes.

45 **MR LLOYD:**

"That said, I'm unsure how I can assist Renee and Judy when the complaints are against two former staff members and any resources deployed affects my BAU..."

5 **MR HOVEY:** Yes.

MR LLOYD:

10 "...with no prospect of an outcome other than one which may, dependent upon the evidence, appease both ladies."

Do you see that?

15 **MR HOVEY:** Yes.

MR LLOYD:

20 "I don't want to sit here and merely wash my hands of this. Not only will that solidify a view that no action is taken, I think we have to help Renee and Judy somehow."

Do you see that?

25 **MR HOVEY:** Yes.

MR LLOYD:

30 "I don't think it's appropriate to meet with them, especially if senior executive request Investigation Branch conduct enquiries as our bias could be questioned."

See that?

35 **MR HOVEY:** Yes.

MR LLOYD:

40 "Perhaps Assistant Commissioner Martin could advise. Happy to work with the plan (indistinct)."

See that?

MR HOVEY: Yes, I do.

45 **MR LLOYD:** Mr Hovey, whether the outcome of an investigation would depend upon the evidence given by these two officers, was no reason not to conduct an investigation, was it?

MR HOVEY: It - it - I think it's very easy to say that's no reason to conduct an investigation. However -

5 **MR LLOYD:** No reason not to?

MR HOVEY: No reason not to, I beg your pardon. But bearing in mind that at this particular time, I - I'm looking at eight vacancies within Investigations Branch, an outstanding backlog of something like 140 investigations - that's an
10 approximate recollection by the way, that many investigations - I have to look at how I could resource these matters as well as deal with deaths in custody, escapes, et cetera. I've got to make a decision as to - in an ideal world, yes, I - I would
15 deploy resources and chase every rabbit down every hole but the reality is, is that two former staff members - that resources would just impact my business as usual at that particular time. And that may not be the de rigueur, as it is, with the action. But that was the decision that - that we had to make at that time. It was - it was - to do such a job would be resource intensive.

MR LLOYD: Do you remember that Astill was found guilty, pleaded to some but
20 pleaded guilty as to a whole raft of crimes just the month before this, August of 2022?

MR HOVEY: Yes. I mean, I'm aware of that.

25 **MR LLOYD:** Acknowledging what you have said to the Commissioner about the things that you were required to deal with and you've told us about, you had here a situation where a guard had just been found guilty of a very large number of criminal acts, including sexual abuse, of a significant number of inmates at a gaol; true?
30

MR HOVEY: Yes.

MR LLOYD: He hadn't yet been sentenced but it was pretty obvious how serious
35 it was?

MR HOVEY: Yes.

MR LLOYD: You had two officers who were at that gaol who were saying that, one, they had information about people, to your knowledge, might still be
40 employed in management at Dillwynia who knew?

MR HOVEY: Yes.

MR LLOYD: And, two, that there were still inappropriate things happening to the
45 knowledge of management?

MR HOVEY: Yes.

MR LLOYD: Acknowledging the gravity of the matters you've identified, this situation that presented itself in September 2022 to you was one of the utmost gravity, wasn't it?

5

MR HOVEY: I - I totally agree. But I mean that's - are you reading something into that email that I'm not? I mean that obviously respectfully but I'm just - what I'm saying is, is that I'm sort of declining meeting with those two ladies individually. What I'm saying is, is that what we need to do is to go through the process to get the senior executive, through PSB, to initiate an investigation that I can send out an investigator for, not me personally meeting with two members of staff who may be key witnesses in an investigation.

10

MR LLOYD: Are you agreeing with me that what was plainly required here was a thorough investigation -

15

MR HOVEY: Yes.

MR LLOYD: - by your branch?

20

MR HOVEY: Yes.

MR LLOYD: And if that wasn't done that would be a serious failure?

MR HOVEY: I - I don't disagree and that's what I'm actually saying, is that we need to request IB to conduct enquiries, working with a plan to arrange to take statements, gather evidence, make findings, et cetera.

25

MR LLOYD: And, in fairness, you left a few months later?

30

MR HOVEY: In fairness I went overseas shortly after this email was - and I returned overseas to leave the organisation.

MR LLOYD: You were away shortly after this and then came back?

35

MR HOVEY: Yes, shortly afterwards. This was 6 September. I think I went away in - from memory, in mid-October.

MR LLOYD: And so you can't help us with what, if any investigation was actually -

40

MR HOVEY: I'm - I'm unaware with what happened with that.

MR LLOYD: Someone presumably from the period after you left.

45

MR HOVEY: It would have been someone who was relieving in my role would be able to answer that question.

MR LLOYD: One final thing I want to ask you about. One of these officers, Renee Berry, has told us something in her evidence which I want to put to you. I'll try and do this without showing you the documents. Officer Berry wrote an email to you in September of 2020 saying she had been given your contact details about many of her SIU reports.

MR HOVEY: Yes.

10 **MR LLOYD:** Do you recall that?

MR HOVEY: Yes, I recall that.

15 **MR LLOYD:** She said she had been subpoenaed to give evidence and had given a statement, and parts of the statement she'd made reference to those reports.

MR HOVEY: Yes, I recall getting that from Officer Berry, yes.

20 **MR LLOYD:** And do you remember making an effort to try and find those reports.

MR HOVEY: My recollection is, is that I would have referred that to the intel analyst, just asking them to locate those reports, make them available to Officer Berry.

25 **MR LLOYD:** Officer Berry has told us that at least some reports that she submitted have never been located.

30 **MR HOVEY:** Yeah, I can't comment on that. At the end of the day, if - we will be using a generic search information, I would suggest, maybe using her name, maybe using a serial number, perhaps the content, to recover all the reports. If those reports were submitted, as I've stated earlier, I'm sure they would have been in the system and we would have made them available to her.

35 **MR LLOYD:** Those are my questions.

COMMISSIONER: Mr Sheller, do you have any questions?

40 **MR SHELLER:** Yes, I do.

COMMISSIONER: How long do you expect to be?

MR SHELLER: I expect to be more than half an hour and I've got some matters upon which I need to -

45 **COMMISSIONER:** In that event, we will adjourn now until 10 o'clock on Friday.

5 **MR LLOYD:** Commissioner, I'm just thinking on my feet about timing on Friday. I was going to enquire whether you could sit at 9.30 but, on reflection, I don't think it's necessary because we won't finish Ms Martin's evidence on that day either.

COMMISSIONER: We won't be able to sit beyond 4 on Friday.

10 **MR LLOYD:** No, that's - I'm not requesting an early start.

COMMISSIONER: All right. Well, we will adjourn until 10 o'clock then on Friday morning.

15 **MS GHABRIAL:** Commissioner, can I raise something, if I may?

COMMISSIONER: Yes. Quickly. Quickly.

20 **MS GHABRIAL:** From 31 October on three occasions I've asked for copies of the protocols and all procedures that are in place to govern the Investigations Branch. To date, nothing has been received. This witness has given evidence that there was a manual in respect of the Investigations Branch. I'm inviting the Commissioner to compel production of that manual.

25 **COMMISSIONER:** Have you asked Mr Sheller to provide -

MS GHABRIAL: I have asked on three occasions in an email.

COMMISSIONER: What is the answer, Mr Sheller?

30 **MR SELLER:** I don't think we've been asked but there has been some work done in the background and between those instructing Counsel Assisting and those instructing me, I think for the issue on notice, we can provide the documents Ms Ghabrial is asking for.

35 **COMMISSIONER:** So you expect it to come by Friday?

MR SELLER: Sorry, I didn't hear?

40 **COMMISSIONER:** You expect to be able to give it to her before Friday?

MR SELLER: I don't know the answer to that question but I think we will make every effort to.

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

COMMISSIONER: Very well. We'll adjourn.

**<THE HEARING ADJOURNED AT 4.03 PM TO FRIDAY, 10 NOVEMBER
2023 AT 10.00 AM**