



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

**PUBLIC HEARING
SYDNEY**

**TUESDAY, 21 NOVEMBER 2023
AT 12.00 PM**

DAY 25

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 C. WATSON appears for two correctional officers
MR A. WILSON appears for one correctional officer
MR B. DEAN appears for a CSNSW member of staff
MR H. WHITE appears for one correctional officer
MR E. JAMES appears for one correctional officer
MS J. HICKLETON appears for one correctional officer
MR K. HORTON KC appears with Ms Gausson for a CSNSW member of staff**

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<THE HEARING RESUMED AT 12.00 PM

<ANGELA ZEKANOVIC, ON FORMER OATH

5 <EXAMINATION BY MR LLOYD:

MR LLOYD: Could Ms Zekanovic please be provided with Volume 17. Just before I take you to some of the Tabs in that, just understand the nature of the things that I want to ask you about. I want to ask you some questions about -

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COMMISSIONER: Mr Lloyd, I'm not sure you're being picked up well at the moment.

MR LLOYD: Sorry. I'll just start that again and see if it works.

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COMMISSIONER: Yes.

MR LLOYD: I want to ask you some questions about the response of the disciplinary oversight system, if I can call it that, to the events at Dillwynia in the period from about July '22 until pretty much the current time. Do you understand?

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MS ZEKANOVIC: Yes.

MR LLOYD: Some of the things I want to ask you about, you do not have direct knowledge of?

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MS ZEKANOVIC: Yep.

MR LLOYD: But I'll ask you to see if you can respond in a kind of institutional way to tell us what, bearing in mind your current role, is going on in the process. Do you understand?

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MS ZEKANOVIC: Sure.

35 **MR LLOYD:** The first thing is in Tab 568.

COMMISSIONER: Sorry, five?

MR LLOYD: Six eight. Now, before I take you to some parts of this document, I just remind you of some things you may know about them anyway. The Commission has already heard evidence that in terms of any investigation into conduct by officers at Dillwynia in relation to Astill's offending, that process had been put on hold pending the criminal justice system dealing with the complaints and allegations and charges against Astill?

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45

MS ZEKANOVIC: Yes.

MR LLOYD: And the jury entered verdicts in August of 2022? Do you know that?

MS ZEKANOVIC: Yes.

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MR LLOYD: This email in front of you is from Karen Garrard to Steven Karras dated 26 July 2022. Do you see that?

MS ZEKANOVIC: Yes.

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MR LLOYD: And needless to say, that pre-dates the entry of verdicts by the jury?

MS ZEKANOVIC: Yes.

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MR LLOYD: It records - Karen Garrard is recorded as the then Acting Coordinator, Professional Standards Branch?

MS ZEKANOVIC: Yes.

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MR LLOYD: And Steven Karras, was he then the head of that branch?

MS ZEKANOVIC: Yes.

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MR LLOYD: Do you see the email records allegations - this is under Background in the last line - historical allegations against managers who were present at the time of Astill's employment?

MS ZEKANOVIC: Yes.

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MR LLOYD: And allegations from Judy Barry, for example - first bullet point - who's - it's alleged:

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"He was allowed to get away with inexcusable unprofessional behaviour from senior management. No further details regarding the particular managers."

MS ZEKANOVIC: Yes.

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MR LLOYD: And Renee Berry, third bullet point:

"There are still current management staff who turn a blind eye to inappropriate behaviour."

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MS ZEKANOVIC: Yes.

MR LLOYD: And the one above that:

"Four senior managers did nothing when she was subjected to inappropriate behaviour."

5 Do you see that?

MS ZEKANOVIC: Yes.

MR LLOYD: And then under Summary in the final bullet point:

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"No further details provided about the other managers who they allege acted inappropriately and took no action."

See that?

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MS ZEKANOVIC: Yes.

MR LLOYD: The view expressed in the email is:

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"While the historical allegations against the other unnamed managers could potentially be pursued by investigations, lack of information, complexity of having staff members involved in the ongoing court case may hinder any outcome. However, I can prepare for the PSC if you think there's validity in doing so."

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Do you see that?

MS ZEKANOVIC: Yes.

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MR LLOYD: Based upon this material, once the trial of Astill had ended in verdicts against him, these were matters that needed to be investigated? Do you agree?

MS ZEKANOVIC: Yes.

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MR LLOYD: And if you go through - or back to 531 in that same volume -

MS ZEKANOVIC: Yes.

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MR LLOYD: - do you see there's the second email down from Leasha Michaelson?

MS ZEKANOVIC: Yes.

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MR LLOYD: Who's then the Acting Coordinator, Professional Standards?

MS ZEKANOVIC: Yes.

MR LLOYD: And without going through all the details, that's an email about some posts that Westley Giles had made on a Facebook page?

5 **MS ZEKANOVIC:** Okay.

MR LLOYD: And, in effect, what had happened is he'd made some posts on Facebook critical of Astill after the trial had finished, and it had been effectively referred back to local management, which had dealt with it by a warning; correct?

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MS ZEKANOVIC: Yes.

MR LLOYD: And could I just ask: by this time, are you aware - and just - I withdraw that. You weren't in your current position at this time?

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MS ZEKANOVIC: No.

MR LLOYD: Are you aware of what, if any, investigation was underway into those allegations that I took you to in the previous Tab by this time?

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MS ZEKANOVIC: No, I wasn't aware.

MR LLOYD: To your knowledge, was there no investigation at this time being undertaken about those allegations?

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MS ZEKANOVIC: I - I am not sure what - what investigation was underway at that time.

MR LLOYD: But I think you agreed with me that there should have been an investigation as soon as the verdicts had been entered?

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MS ZEKANOVIC: Yes. Well, I think it should have been referred to the CSIU, which is the police.

35 **COMMISSIONER:** Again, I'm not sure that microphone is effective at the moment. Can we make sure the microphones are picking both of you up?

MR LLOYD: I'll just pause. I'll see if this is any better, Commissioner. Have a look at Tab 532.

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MS ZEKANOVIC: I - I notice that it looks like that the recommendation is that it be referred to the Investigations Branch -

COMMISSIONER: I'm sorry, I can't hear you. I'm -

45

MS ZEKANOVIC: - at 531.

COMMISSIONER: I'm sorry. I cannot hear you.

MS ZEKANOVIC: Sorry.

5 **COMMISSIONER:** Officer, does that microphone need to be adjusted so she talks directly into it?

MS ZEKANOVIC: Perhaps I - I'll sit closer. Is that better?

10 **COMMISSIONER:** That's better, yes.

MS ZEKANOVIC: Okay.

15 **COMMISSIONER:** I think it needs to be moved - if you're going to turn your head, I think you have to talk straight into it for it to be effective. Yes.

MS ZEKANOVIC: Okay.

20 **MR LLOYD:** You were just drawing to my attention that Tab 531, the recommendation, was for PSB to prepare misconduct papers for consideration of the decision-maker?

MS ZEKANOVIC: Yes.

25 **MR LLOYD:** But Mr Karras, up the top, says -

MS ZEKANOVIC: Yes.

30 **MR LLOYD:**

"Can we ask the committee to consider referral back as it appears they've taken action through a warning."

35 **MS ZEKANOVIC:** Yes.

MR LLOYD: And nothing wrong in terms of the process with this kind of approach?

40 **MS ZEKANOVIC:** You mean in terms of deciding generally about going back to local management?

MR LLOYD: Yes.

45 **MS ZEKANOVIC:** There are some allegations that come to us or we say before it goes to the PSC that the recommendation to the PSC that it goes to local management, yes.

MR LLOYD: This is a kind of triaging of this allegation and a decision being made by Mr Karras to refer it back for what is termed sometimes as local management?

5 **MS ZEKANOVIC:** Yes, but that ultimately has to be endorsed by the PSC. It's a recommendation.

MR LLOYD: So whatever Mr Karras was doing, in terms of proper process, it should have been endorsed by the PSC?

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MS ZEKANOVIC: Yes. And I assume it would have been.

MR LLOYD: Go, please, to 532.

15 **MS ZEKANOVIC:** Yes.

MR LLOYD: Do you see there's an email there from Cathy McInnes to you and others - or another?

20 **MS ZEKANOVIC:** Yes.

MR LLOYD: And then there's a reference:

25 "As the legal officer who had carriage of a PSB case file, PSB did not hold any materials regarding the matters/complaints that became the criminal proceedings."

Do you see that?

30 **MS ZEKANOVIC:** Yes.

MR LLOYD:

35 "The first notification was the ministerial briefing about his arrest."

Do you see that?

MS ZEKANOVIC: Yes.

40 **MR LLOYD:**

"One case file where Astill is a complainant which was dealt with locally."

45 **MS ZEKANOVIC:** Yes.

MR LLOYD: Do you know that was the complaint he made about another officer, Jean Dolly?

MS ZEKANOVIC: Yes.

MR LLOYD: And then:

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"During the criminal proceedings, several subpoenas asking for this information, complaints against Astill, to which PSB has consistently responded with a nil response. Complaints, however, may have been made locally and not referred to PSB."

10

Do you see that?

MS ZEKANOVIC: Yes.

15

MR LLOYD: Do you know whether at this time there was no investigation being undertaken into any of the unidentified managers at Dillwynia by Renee Berry and Judy Barry that was the subject of the July email?

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MS ZEKANOVIC: I'm not sure because my role at the time didn't require me to liaise with the CSIU.

25

MR LLOYD: But even sitting here now, are you aware one way or the other about whether there was an open investigation into those matters raised by Ms Berry and Barry?

MS ZEKANOVIC: I know that there's - I'm not sure at the time. I can't speak for the time. All I know is that there is an investigation now, which is on pause.

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MR LLOYD: You started in your new role in January of 2023?

MS ZEKANOVIC: Yes.

MR LLOYD: Just have a look in that bundle at Tab 533.

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MS ZEKANOVIC: Yes.

MR LLOYD: Do you see there's a reference there in an email from Kurumi Todoroki?

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MS ZEKANOVIC: Yes.

MR LLOYD: To a number of people, making reference to a referral from ICAC?

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MS ZEKANOVIC: Yes.

MR LLOYD: And the referral was that there was a complainant alleging - who was alleging that an unnamed Corrective Services officer were threatening other staff about speaking up in relation to Astill?

5 **MS ZEKANOVIC:** Yes.

MR LLOYD: And then the recommendation:

10 "Matter referred to investigations for fact-finding. If criminality is identified, it's recommended that it go to the CSIU."

MS ZEKANOVIC: Yes.

MR LLOYD: And:

15 "Subject to what happens there, misconduct papers are prepared for consideration of the decision-maker."

MS ZEKANOVIC: Yes.

20 **MR LLOYD:** Is that a perfectly proper response to a referral from ICAC?

MS ZEKANOVIC: It depends on the nature of what they're putting in the letter - in this letter.

25 **MR LLOYD:** Well, let me show you that. Could Ms Zekanovic please be given the folder (indistinct) served. Just pardon me. Just pardon me, Commissioner. I'll hand this up to you, Commissioner. I'm not sure whether this is in front of you. This was served, just so that people at the bar table are aware, yesterday evening.

30 **COMMISSIONER:** Sorry. And what is it?

MR LLOYD: It's a folder of documents recording disciplinary complaints against Westley Giles, Michael Paddison and Neil Holman.

35 **COMMISSIONER:** So do I mark it as an exhibit?

MR LLOYD: Yes, unless - if there's objection, I'll just ask for it to be marked. But my proposal is to tender it.

40 **COMMISSIONER:** Well, there being no objection, I'll make it Exhibit 48.

<EXHIBIT 48 TENDERED AND MARKED

45 **COMMISSIONER:** What should I call it?

MR LLOYD: You would call it 2023 complaints documents regarding Westley Giles, Michael Paddison and Neil Holman. Now, you've got that slimmer folder there, Ms Zekanovic?

5 **MS ZEKANOVIC:** Yes.

MR LLOYD: I think you said to me that whether the process I showed you in that email at Tab 533 was the proper one might depend upon the nature of the referral?

10 **MS ZEKANOVIC:** Yes.

MR LLOYD: Have a look in that folder at page 19.

MS ZEKANOVIC: Page 19?

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MR LLOYD: Yes, down the bottom right-hand.

MS ZEKANOVIC: Yes.

20 **MR LLOYD:** Do you see that appears to be the referral from ICAC, 13 April, to Mr Corcoran?

MS ZEKANOVIC: Yes.

25 **MR LLOYD:** And if you look there, the second paragraph, a summary of the allegations is enclosed?

MS ZEKANOVIC: Yes.

30 **MR LLOYD:** And then details of the allegations on the next page, 20.

MS ZEKANOVIC: Yes.

MR LLOYD:

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"Complainant alleges that an inmate referred to the prosecution of Mr Astill and that he had been found guilty. Advised that inmates and other CSNSW officers at Dillwynia had further information that inmates had been told to keep their mouths shut and officers told they would be sacked if they spoke up."

40

Do you see that?

MS ZEKANOVIC: Yes.

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MR LLOYD:

"Complainant claims that Corrective Services are trying to sweep it under the carpet."

MS ZEKANOVIC: Yes.

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MR LLOYD: And if you need some more detail, just go over two pages to page 22. Do you see there Issue and then there's, in the second paragraph, the allegation that I've just read out to you in that document:

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"Inmates told to keep their mouths shut. Officers told they would be sacked. Complainant alleges that Corrective Services are trying to sweep it under the carpet."

MS ZEKANOVIC: Yes.

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MR LLOYD: Knowing at least something of the nature of the referral by ICAC, I take it that was plainly appropriate for an investigation?

MS ZEKANOVIC: Yes.

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MR LLOYD: Just as at this date - take the point immediately before the receipt of this referral - was there any open investigation into the allegations made back in July of 2022 at the time immediately prior to this referral?

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MS ZEKANOVIC: I'm not sure. I know the police were looking at a number of things, but I'm not sure - I assume so. I would have to - I don't know off the top of my head if there was already a CSIU investigation. I think there was.

MR LLOYD: A CSIU investigation?

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MS ZEKANOVIC: Yes.

MR LLOYD: Not an investigation by the Investigations Branch?

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MS ZEKANOVIC: No. The CSIU were responsible for investigating allegations that staff knew things and failed to act.

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MR LLOYD: So in terms of any investigation into those unnamed managers back in the July '22 email, is your best understanding that that was being done via a police investigation?

MS ZEKANOVIC: Yes.

MR LLOYD: Not the Investigations Branch?

45

MS ZEKANOVIC: Yes, that's correct.

MR LLOYD: And so then is it right that the Investigations Branch and Professional Standards, albeit at this time in April they're merged, would not be pursuing those matters while the CSIU was investigating it?

5 **MS ZEKANOVIC:** That's correct.

MR LLOYD: Just in terms of your - do you know that to be the case or is there a (crosstalk)?

10 **MS ZEKANOVIC:** I know that the - no, I know that the allegations of this kind are currently with the CSIU and that PSI are not pursuing those investigations.

MR LLOYD: Right now?

15 **MS ZEKANOVIC:** Yes. And at that time.

MR LLOYD: And as at April 2022?

20 **MS ZEKANOVIC:** Yes. There was a - well, I have to check, but I'm almost certain that it was the CSIU that were responsible for that investigation.

MR LLOYD: Could I ask you just to move forward in time, then. Page 4 of that bundle, Exhibit 48. Do you see there's an email from Joanna Wong to you -

25 **MS ZEKANOVIC:** Yes.

MR LLOYD: - bearing the date 19 May 2023?

MS ZEKANOVIC: Yes.

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MR LLOYD: And do you see:

"I met with Renee Barry..."

35 Which is a typo, Renee Berry:

"...on Wednesday, 17 May with respect to a civil claim matter."

Do you see that?

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MS ZEKANOVIC: Yes.

MR LLOYD: And:

45

"Number 1 in our conversation about the way reports were handled, she informed me that Astill and other staff had bullied, harassed and threatened her. She had reported about his offending."

MS ZEKANOVIC: Yes.

MR LLOYD: And that:

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"She had made four reports, but nothing was done until he was charged."

Do you see that?

10 **MS ZEKANOVIC:** Yes.

MR LLOYD: And then a list of acts of bullying and harassment recorded?

MS ZEKANOVIC: Yes.

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MR LLOYD: And staff - an identification of a whole range of staff who should be interviewed?

MS ZEKANOVIC: Yes.

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MR LLOYD: And highlighted in yellow, if you look at the paragraph underneath that:

25 "...were part of management and should be held to account about what they knew and how they..."

MS ZEKANOVIC: Yes.

30 **MR LLOYD:** Sorry, Mr Sheller has intervened, but I'll just make sure I haven't got it wrong:

"The names highlighted in yellow were part of management and should be held to account about what they knew and how they handled the allegations."

35 **MS ZEKANOVIC:** Yes.

MR LLOYD: And:

40 "The names in blue were those involved with Astill's conduct."

MS ZEKANOVIC: Yes.

45 **MR LLOYD:** So as at the report that came to your attention from Renee Berry to Jo Wong on 17 May 2023, if you perhaps look at the second page, what's recorded there is she would like to see the following action taken and a list of things in bullet points?

MS ZEKANOVIC: Yes.

MR LLOYD: With there being, at this time, a CSIU investigation, was that still on foot, to your understanding, as at 19 May?

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MS ZEKANOVIC: Yes.

MR LLOYD: What was the appropriate response, then, to deal with this matter that had come to your attention in this email?

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MS ZEKANOVIC: To be referred to the CSIU.

MR LLOYD: Not for an investigation by the merged PSI; is that correct?

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MS ZEKANOVIC: That's correct.

MR LLOYD: Would you have a look - I'm doing this in chronological order, Ms Zekanovic, so it's necessary for that purpose to go to page 28. Do you see there there's an email from Lucy Connolly to Karen Garrard and Leasha Michaelson, copied to Stuart Hepburn?

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MS ZEKANOVIC: Yes.

MR LLOYD: Karen Garrard then was within the PSI agency?

25

MS ZEKANOVIC: Yes.

MR LLOYD: And so was Leasha Michaelson?

30

MS ZEKANOVIC: Yes.

MR LLOYD: And Lucy Connolly is recorded on the second page as an advisor within the Support Unit?

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MS ZEKANOVIC: Yes.

MR LLOYD: And if you just look at some things - have you seen this email before?

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MS ZEKANOVIC: I'm not copied into it, and I think I was on leave at that time. So I'm not sure if I have.

MR LLOYD: I'll just draw some things to your attention.

45

MS ZEKANOVIC: Sure.

MR LLOYD: If you look at Current Situation, it's got on blank, at least in my version, appears to be at least possibly 8 and 9 June:

5 "Support Unit advises Michelle Young, Lucy Connolly and Belinda Gurney attend at Dillwynia..."

MS ZEKANOVIC: Yes.

10 **MR LLOYD:**

"...to meet with staff who were identified as being adversely affected by Astill's offending."

15 **MS ZEKANOVIC:** Yes.

MR LLOYD: And then a few lines down:

20 "During this attendance, further information was received regarding the ongoing PSI matter..."

Case number referred to:

25 "...and, as such, as review of the original information has been undertaken to ensure the new information is adequately captured and assessed."

MS ZEKANOVIC: Yes.

30 **MR LLOYD:** Could I just ask: what was that ongoing PSI matter? Is that the one that had been referred out to the CSIU or was it something else?

MS ZEKANOVIC: Yes, that would have been just a general reference. But it would have been referring it to be with CSIU. That's correct.

35 **MR LLOYD:** And then:

"Below is an outline..."

Just skipping over the paragraph:

40 "Below is an outline of specific allegations relevant to these employees."

Do you see that?

45 **MS ZEKANOVIC:** Yes.

MR LLOYD:

"This is in addition to information provided that all of them were complicit in some capacity in the cover-up of Astill's offending, intimidation, et cetera."

MS ZEKANOVIC: Yes.

5

MR LLOYD: And then there's five bullet points down there for Westley Giles?

MS ZEKANOVIC: Yes.

10 **MR LLOYD:** Do you see that? And without going through each of those factual things, if you look in the second-last bullet point:

15 "The allegations recorded that he made a reference to the offending being common knowledge at the Centre, stating that Astill had the nickname "Balls Deep" and that..."

So it's recorded:

20 "...recounted a conversation he had with Neil Holman and Michael Paddison during which they joked about not wanting to attend a specific area due to 'Wayne being balls deep'."

Do you see that?

25 **MS ZEKANOVIC:** Yes.

COMMISSIONER: Mr Lloyd, who is the person who is speaking to these people at these dot points? Who is it?

30 **MR LLOYD:** Well, I'll deal with it -

COMMISSIONER: Yes.

35 **MR LLOYD:** - and see if the witness - the record here, Ms Zekanovic - and you've already pointed out you weren't copied into the email, but it is to three Support Unit advisors, Michelle Young, Lucy Connolly and Belinda Gurney, attending?

40 **MS ZEKANOVIC:** Yes.

MR LLOYD: And is it right, at least on your knowledge, that it was those three Support Unit advisors speaking to some of the staff at Dillwynia?

MS ZEKANOVIC: Yes.

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MR LLOYD: And do you know, even if it's not first-hand, that those - that three officers were spoken to by those three Support Unit advisors?

MS ZEKANOVIC: Based on this information, yes.

MR LLOYD: Well - sorry.

5

COMMISSIONER: Sorry, I'm not sure I'm understanding. This is a report from Lucy Connolly about the activities of others?

MR LLOYD: Yes.

10

COMMISSIONER: And then when we get to the dot points, conclusions are being drawn based upon interviews, so it would seem.

MR LLOYD: Yes.

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COMMISSIONER: Whose conclusion is that?

MR LLOYD: Perhaps I'll ask and then -

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COMMISSIONER: It doesn't seem to be Lucy Connolly's.

MR LLOYD: Well, I'll first see if I can get from Ms Zekanovic what she knows about who the officers at Dillwynia who were spoken to by these Support Unit advisors were. Do you know that, even if it's second-hand?

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MS ZEKANOVIC: I do now.

MR LLOYD: I think the way - let's not be clandestine about it. The Commission asked the Department to find out who the Dillwynia officers spoken to by these Support Unit workers were?

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MS ZEKANOVIC: Yes.

MR LLOYD: And you were informed of that request by the Commission?

35

MS ZEKANOVIC: Yes.

MR LLOYD: And some enquiries were made by the Department, which revealed that the three officers - tell me if I've got it right - were Renee Berry?

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MS ZEKANOVIC: Yes.

MR LLOYD: Judy Barry?

45

MS ZEKANOVIC: Yes.

MR LLOYD: And Jean Dolly?

MS ZEKANOVIC: Yes.

5 **MR LLOYD:** And so the information, to try and come to the
Commissioner's - part of the Commissioner's question, that's being recorded here
is a record of what one or other, or perhaps all, of those three officers you just told
us about were telling these three support -

10 **COMMISSIONER:** Were they telling the three or - it's a very odd way of doing
an interview. But there are conclusions expressed here. Whose conclusions are
they? Are they the conclusions of the three or of one? I mean, I - it's
a funny-looking document at the moment.

15 **MR LLOYD:** I'm quite confident that this witness cannot help us with your
questions. I understand why you're asking them, and it is a matter that will be
taken up. But just dealing with the information recorded, as you understand it,
Ms Zekanovic, this is the person typing the email - that's Lucy Connolly - typing
in what appears to be stated anyway or appearing as conclusions drawn from an
interview process with one or two or all three of those officers. Is that how we
20 understand it?

MS ZEKANOVIC: I'm not sure if it was an interview or more of
a support-providing session in which this information then came out.

25 **MR LLOYD:** And you probably know, because you would have looked at the
material later, there's some questions raised about what this process was, and at
least some people subsequently wished to make it clear that it's not an
investigation?

30 **MS ZEKANOVIC:** That's right.

MR LLOYD: It was done for an entirely different purpose?

35 **MS ZEKANOVIC:** That's my understanding.

MR LLOYD: Could I just ask you about this -

40 **COMMISSIONER:** Did the people who carried out this work keep notes of what
they were being told? Is there any file that tells us -

MR LLOYD: Mr Sheller, who I should say for the record has been of assistance
to the Commission dealing with getting to the bottom of this issue, says there's no
notes. As in, the only -

45 **COMMISSIONER:** This is the only record of what they were told. Is that right?

MR LLOYD: That's what we're told. This email is the documentary record of the process.

5 **COMMISSIONER:** It seems surprising because there's multiple people spoken to with multiple issues raised. Someone must have a very good memory not to have made notes about what they were being told.

10 **MR LLOYD:** Which, in fairness, Commissioner, may depend a little bit on the subjective view of those three Support Unit advisors as to why they were there.

COMMISSIONER: Well, there's a lot of questions that are raised by a process such as this. But, anyway, you go forward, see where we end up.

15 **MR LLOYD:** Could I just ask you about this, Ms Zekanovic, about this issue about what these support workers were doing -

MS ZEKANOVIC: Are we still on page 28?

20 **MR LLOYD:** Yes, but I'm not - for the purpose of this question, just leave that open, but I'm not going to read from that page. Do you know Jacob Jackson?

MS ZEKANOVIC: Yes.

25 **MR LLOYD:** Who's he?

MS ZEKANOVIC: He's the Director of Culture, Wellbeing and Staff Support.

30 **MR LLOYD:** If I said to you that his response, at least in part, to this process being undertaken in - on an unidentified date and then 9 June 2023 was that the Support Unit transitioned to Staff Support, Culture and Wellbeing Director as part of the Corrective Services Towards 2013 reform?

MS ZEKANOVIC: Yes.

35 **MR LLOYD:** 2030, sorry. With one of the reasons stated that they - they, the Support Unit staff, would not be seen as involved in or part of any PSB investigations?

40 **MS ZEKANOVIC:** Yes.

MR LLOYD: So that is an attempt to distinguish the Support Unit people from investigations?

45 **MS ZEKANOVIC:** Yes.

MR LLOYD: And if I said that his response is that:

"We..."

That is, the Staff Support, Culture and Wellbeing group:

5 "...had been working actively to remove the perception that we were involved in investigations or PSB in general, as staff have clearly stated to the team that if they were with PSB, they would not talk to them."

10 **MS ZEKANOVIC:** Yes.

MR LLOYD: Do you agree with that conclusion, that is, the impression that he has from the staff stating to his team that if his people were from the Professional Standards Branch that they wouldn't talk to them?

15 **MS ZEKANOVIC:** I think there is some reluctance by staff to talk to staff in PSB. So I think in some cases his statement is correct.

MR LLOYD: Your response to what I put to you from him - some reluctance, I think you said - that's as at now?

20 **MS ZEKANOVIC:** I think it's probably just a general feel that still is around among staff.

25 **MR LLOYD:** You must be aware there's been a lot of evidence that the Commission has heard about barriers to reporting by staff and inmates -

MS ZEKANOVIC: Yes.

30 **MR LLOYD:** - of misconduct by other officers? The concept of not papering other officers, et cetera?

MS ZEKANOVIC: Yes.

35 **MR LLOYD:** It sounds like, from what I put to you from Mr Jackson and what you've just told the Commissioner, that at least to a degree that cultural problem remains today?

MS ZEKANOVIC: Yes.

40 **MR LLOYD:** And if what I read to you from Mr Jackson is right, that staff are saying that they would be reluctant to speak to the PSB, it sounds like a very significant problem with the whole process?

MS ZEKANOVIC: Yes.

45 **MR LLOYD:** Just going back so we can get to the bottom of - I'm told there are some notes.

COMMISSIONER: There are some notes, are there? It doesn't surprise me. Do we have them here?

5 **MR LLOYD:** I think they're trying to be located. Could I just - I don't want to get bogged down on a document that's not yours, Ms Zekanovic, but back to the page 28 document. There's then recorded what appear to be allegations about both Mr Holman and Mr Paddison?

10 **MS ZEKANOVIC:** Yes.

MR LLOYD: And, again, they include, in some sort of summary form, what it appears the Support Unit workers were being told by one or more of the officers they spoke to?

15 **MS ZEKANOVIC:** Yes.

MR LLOYD: And under Recommendation:

20 "Given the seriousness of the allegations made and the documented detrimental impact of these staff continuing to be in the workplace, it's recommended that PSC considers the suspension of those three officers during the misconduct process."

25 Do you see that?

MS ZEKANOVIC: Yes.

30 **MR LLOYD:** Could I just ask about process here. Lucy Connolly, advisor, Support Unit, making a recommendation for the PSC to consider the suspension of those three officers pending or during the misconduct process, is that regular?

MS ZEKANOVIC: No.

35 **MR LLOYD:** It sounds, but I don't want to overstate it, so tell me if I am - it sounds highly irregular that a recommendation would be coming from someone in her position.

40 **MS ZEKANOVIC:** The Support Unit don't usually provide us with recommendations. They may provide us with the information, but they wouldn't necessarily provide us with a recommendation of this kind. That's correct.

45 **MR LLOYD:** That's a process issue, but quite separately - and, again, stressing, Ms Zekanovic, you're not receiving this email - you're not on the distribution list. But even if the process wasn't a problem, acting on information that came in this way and is recorded in this way would be also highly irregular?

MS ZEKANOVIC: You mean acting on behalf of PSI or -

5 **MR LLOYD:** Any action to suspend officers on information that is coming in this way, that is, interviews by three Support Unit workers of three unnamed officers, not attributing particular facts to particular officers, not recording statements or anything that allows a proper identification of where the allegations are coming from or what the basis. It would be highly irregular, wouldn't it?

10 **MR SHELLER:** I object.

MR LLOYD: I withdraw the question. I'll deal with it in a different way. Just dealing with the information as recorded in the document, it would be highly irregular for the PSI to act on information in that form to do something such as recommending a suspension. Do you agree with me?

15 **MS ZEKANOVIC:** No. We suspend staff based on allegations that we receive. And then the investigation follows after we've - you know, if we - if we identify that someone is a risk to the agency for whatever reason, we put that to the PSC. We give them the information that they need to make that decision and then we suggest suspension. They don't always suspend. But in a situation like this, with 20 this sort of information, we may make a recommendation to suspend someone, or multiple staff in this case.

MR LLOYD: But would it be the case that it would be necessary to exercise 25 a degree of care about the use of allegations recorded in this way?

MS ZEKANOVIC: Yes, which is why we would do an investigation.

30 **MR LLOYD:** Could I ask you to go to -

COMMISSIONER: Can I understand to make sure I do understand. Any allegation might be made about any prison officer.

35 **MS ZEKANOVIC:** Yes.

COMMISSIONER: If that allegation is heard by, or made known to, someone in a management position, do they have an obligation to report it to someone else?

40 **MS ZEKANOVIC:** Yes.

COMMISSIONER: Who do they have an obligation to report to?

MS ZEKANOVIC: PSI.

45 **COMMISSIONER:** And then PSI, without more, could decide to suspend?

MR SHELLER: I object.

MS ZEKANOVIC: No.

COMMISSIONER: I press the question.

5

MR SELLER: It's not the PSI who makes the decision.

COMMISSIONER: I'm sorry?

10 **MR SELLER:** It's not the PSI making -

COMMISSIONER: Well, she can answer the question, Mr Sheller.

15 **MS ZEKANOVIC:** No. The PSI will prepare that particular matter for consideration by the Professional Standards Committee and may make a recommendation to suspend, but it's ultimately the decision of - then the committee will either accept that decision or not. And then that decision will be put to a decision-maker who has responsibility for those staff, and the decision-maker will make the ultimate decision about whether a staff member gets
20 suspended.

COMMISSIONER: What's happening in this document that Mr Lloyd has taken us to? Something entirely outside that process; is that right?

25 **MS ZEKANOVIC:** Yes. But that - this matter still would have gone before the PSC. So while there's a recommendation here to suspend these staff, that doesn't mean that it happened based on this email. It still went to the Professional Standards Committee and was considered by that committee and then the decision would have ultimately been made by the decision-makers.

30

COMMISSIONER: Well then, is it the position that anyone who receives a complaint can make a recommendation that goes up the chain that someone be suspended?

35 **MS ZEKANOVIC:** No.

COMMISSIONER: Well, what was the authority that allowed these three people, through Ms Connolly, to make this recommendation?

40 **MS ZEKANOVIC:** It's purely based on her opinion to make the recommendation. It's - I have not seen another recommendation like this in the past. So this is a very unusual - this is not - this doesn't routinely happen in this way.

45 **COMMISSIONER:** Mr Lloyd is no doubt going to tell me he's going there, but was this recommendation actioned by anyone?

MS ZEKANOVIC: I'm assuming that the - there was a recommendation put before the Professional Standards Committee to suspend these people, but I've not seen the document, yes. But I'm sure you have a copy.

5 **COMMISSIONER:** So who would have put that recommendation before the Professional Standards Committee?

MS ZEKANOVIC: The professional - PSI.

10 **COMMISSIONER:** So, somehow, PSI would have found out about this recommendation and then, from there, it would have gone to the PSC?

MS ZEKANOVIC: But despite this recommendation, PSI would still be assessing the material on its merits. They wouldn't necessarily agree with the
15 recommendation that was put forward by someone in another directorate. And then it's still ultimately up to the Professional Standards Committee.

COMMISSIONER: To do what?

20 **MS ZEKANOVIC:** To make a recommendation to the decision-maker.

COMMISSIONER: What do they do in order to found that recommendation?

MS ZEKANOVIC: The decision-maker?
25

COMMISSIONER: No, no. The PSI. What do they do - if they receive this recommendation from these people, what would they do to pursue, in an effective way, their role thereafter? What would they have done or should they have done?

30 **MS ZEKANOVIC:** They - they ordinarily assess the material that's been provided as part of a referral. They then look at other information that is in the database about, for instance, these particular officers, whether there's other allegations of a similar kind, what other information we may have available and then, in preparing the agenda for the Professional Standards Committee, would
35 include a lot of that information in there.

COMMISSIONER: Well, Mr Lloyd is no doubt going to tell me whether that happened.

40 **MR LLOYD:** Have a look, please, at page 7. Up the top - just to orient you, Ms Zekanovic, I'm taking you to page 2 of that document, which is a submission to the Assistant Commissioner and Director, which, if you look at page 8, is dated 21 June. Do you see that?

45 **MS ZEKANOVIC:** Yes.

MR LLOYD: But what I just want to draw to your attention in order to deal with the Commissioner's questions is the top - or the bottom of page 6. See, a report was forwarded to the PSC for the reconsideration of the matter. Do you see that?

5 **MS ZEKANOVIC:** Sorry, where are you? Sorry.

MR LLOYD: Bottom of page 6.

MS ZEKANOVIC: Yes.

10

MR LLOYD: And that comes after a reference to:

"On 8 and 9 June, the Professional Standards Support Unit attendance at Dillwynia."

15

MS ZEKANOVIC: Yes.

MR LLOYD:

20 "A report was forwarded to PSC for reconsideration of the matter."

MS ZEKANOVIC: Yes.

MR LLOYD: Tab E.

25

COMMISSIONER: Why reconsideration?

MR LLOYD: Well, I was about to -

30 **COMMISSIONER:** Okay. I'll leave it with you.

MR LLOYD: Will you take from me that Tab E is the 15 June email?

MS ZEKANOVIC: I take your word for it.

35

MR LLOYD: To take the Commissioner's question for starters, do you know why there was a reconsideration by the PSC - why that word is used here?

40 **MS ZEKANOVIC:** There may have been some information presented earlier. It looks like the paragraph beginning, "On 17 May," at the bottom - it says:

"On 24 May, the PSC recommended the matter be referred to CSNSW Investigation to combine with their ongoing assessment of the ICAC referral."

45

So I'm assuming that's additional information to that original referral.

MR LLOYD: So reconsideration because I think you told us earlier (crosstalk) -

MS ZEKANOVIC: New information.

5 **MR LLOYD:** - from Renee Berry at least had been sent over to CSIU?

MS ZEKANOVIC: Yes.

10 **MR LLOYD:** So just working out what's happened here from the top of page 7. On 20 June, the PSC considered the matter, recommended that it be referred to CSIU?

MS ZEKANOVIC: Yes.

15 **MR LLOYD:** And that's the additional information going over?

MS ZEKANOVIC: Yes.

20 **MR LLOYD:** And investigations concurrently. PSC further recommended the suspension of the three officers pending the outcome of those assessments. Do you see that?

MS ZEKANOVIC: Yes.

25 **MR LLOYD:** So that was the PSC determination on 20 June 2023?

MS ZEKANOVIC: Yes.

30 **MR LLOYD:** But what status does that have? Is that the decision-maker?

MS ZEKANOVIC: No.

35 **MR LLOYD:** That is a recommendation by that committee to the decision-maker?

MS ZEKANOVIC: That's correct.

40 **MR LLOYD:** And is what we're seeing here, then - if you go back to the first page of this, page 6, Submission to Assistant Commissioner and Director.

MS ZEKANOVIC: Yes.

MR LLOYD: Is this a submission being made to the decision-maker?

45 **MS ZEKANOVIC:** Yes.

MR LLOYD: Who was that human being?

MS ZEKANOVIC: For the purposes of these matters, it looks like it was Custodial Director Emma Smith and Assistant Commissioner Steve Thorpe.

5 **MR LLOYD:** Both of them?

MS ZEKANOVIC: Yes, because these two officers - one - one decision-maker was responsible for one of them and the other one was responsible for the other person.

10

MR LLOYD: I see. Because they're in different -

MS ZEKANOVIC: Different parts of Correctives, yes.

15 **MR LLOYD:** - levels of the hierarchy?

MS ZEKANOVIC: Different areas of the organisation entirely.

MR LLOYD: Okay. The recommendation on page 8 -

20

MS ZEKANOVIC: Yes.

MR LLOYD: So this recommendation is being made by you. That's how it works?

25

MS ZEKANOVIC: The recommendation - the submission is drafted by the solicitor and then it comes to me and I endorse the recommendation.

30 **MR LLOYD:** But in a way which is consistent with the determination of the PSC on 20 June?

MS ZEKANOVIC: Yes.

MR LLOYD: Did you just flesh out the reasoning process (crosstalk)?

35

MS ZEKANOVIC: That's right.

MR LLOYD: Recommendation that each of the letters to Holman and Giles suspending them - that's Emma Smith signing those letters?

40

MS ZEKANOVIC: Yes.

MR LLOYD: And then Mr Thorpe signing the letter suspending Mr Paddison?

45 **MS ZEKANOVIC:** Yes.

MR LLOYD: And that's - so, obviously enough, the recommendation at this point is being made to the decision-maker to suspend each of those men?

MS ZEKANOVIC: Yes.

5

COMMISSIONER: Well, I've got to get a couple of questions answered before we go further. Am I right in thinking this recommendation, which you endorsed, was based only on the information collected by the three support officers?

10 **MS ZEKANOVIC:** I don't think so, no.

COMMISSIONER: What was the other information that was collected?

15 **MS ZEKANOVIC:** There's a reference here to information received by ICAC, which was already considered by the Professional Standards Committee, it looks like in late May.

COMMISSIONER: Do you know what that information was? Is it referred to in this document?

20

MS ZEKANOVIC: It's meant to be Tab D.

COMMISSIONER: Sorry?

25 **MS ZEKANOVIC:** It is Tab D.

MR LLOYD: Commissioner, if it helps, page 26 is Tab D. That's the document that I took Ms Zekanovic to earlier, being the summary of the referral from ICAC over to Professional Standards.

30

COMMISSIONER: Right. So that's not an investigation by ICAC; that's just information, is it?

35 **MS ZEKANOVIC:** Yes, that they referred to us.

35

COMMISSIONER: Right. So is that the extent of the information upon which the recommendation was based?

40 **MS ZEKANOVIC:** That in combination with the 15 June email information.

40

COMMISSIONER: Sorry, in combination with what?

MS ZEKANOVIC: With the information that was provided by the Support Unit.

45 **COMMISSIONER:** Yes. The three people?

MS ZEKANOVIC: Yes.

MR LLOYD: And in fairness -

COMMISSIONER: That's it?

5

MR LLOYD: Sorry to interrupt. And the 17 May email recording what Renee Berry had said.

MS ZEKANOVIC: Yes.

10

MR LLOYD: That appears from the second-last paragraph on page 6.

MS ZEKANOVIC: That's correct.

15 **MR LLOYD:** They're the three matters.

COMMISSIONER: Right. Now, had any of these people who are recommended for suspension been spoken to about the allegations?

20 **MS ZEKANOVIC:** My understanding is not at that time, no.

COMMISSIONER: Is it usual to suspend people without giving them an opportunity to say whether or not they should be suspended?

25 **MS ZEKANOVIC:** In most cases, we - when we issue them a letter of suspension, we put some allegations in the letter. Depending on the nature of the allegations will depend how much we can disclose.

30 **COMMISSIONER:** Well, you put it in the letter, but the allegation might be - I'm not saying it was, but it might be entirely false.

MS ZEKANOVIC: Yes.

COMMISSIONER: Do you still suspend them?

35

MS ZEKANOVIC: We take a number of factors into consideration, including the seriousness of the allegations, the risk to the security of Correctives, the staff involved, their level of seniority. Yes.

40 **COMMISSIONER:** But even so, you take action to suspend even when they don't have the slightest idea they're under suspicion; is that right?

MS ZEKANOVIC: Yes. In some instances, yes.

45 **COMMISSIONER:** And I take it you have authority to recommend suspension with pay or suspension without pay?

MS ZEKANOVIC: We - there's a Premier's memorandum that talks about some guidelines that we adhere to in relation to suspensions, and most people are suspended with pay. It's only in exceptional circumstances that we can suspend without pay.

5

COMMISSIONER: So I take it that, effectively, there's no attempt to make a value judgment about the strength of the material that's coming to you?

MS ZEKANOVIC: Sometimes there is an immediate risk in which we need to suspend staff, so we take that step and then we do the investigation.

10

COMMISSIONER: What sort of case would that - would be justified by that?

MS ZEKANOVIC: Often our sexual misconduct matters where someone presents a risk to the workplace, we will suspend them. So they're removed from the workplace and then we will do an investigation.

15

COMMISSIONER: That wasn't the case here, was it?

MS ZEKANOVIC: In terms of the allegations? No.

20

COMMISSIONER: But, nevertheless, you were prepared to recommend suspension?

MS ZEKANOVIC: Yes, because it was in relation to a serious criminal matter.

25

COMMISSIONER: I'm sorry?

MS ZEKANOVIC: It was in relation to a serious criminal investigation.

30

COMMISSIONER: I'm not sure I understand that.

MS ZEKANOVIC: Well -

COMMISSIONER: Who is the one under a serious criminal investigation?

35

MS ZEKANOVIC: There is - my understanding is that the police are looking at - I'm not sure if it's these staff exactly, but I understand that - and can I - it's an ongoing -

40

COMMISSIONER: You understand the police may be investigating someone? Is that what you're saying?

MS ZEKANOVIC: I'm not sure how much I'm at liberty to disclose in this forum around what the police are investigating.

45

COMMISSIONER: Look, all I'm trying to find out is the foundation for something, which is a pretty serious step, to suspend someone, when they may not even know they're under suspicion. And what you're telling me is it's a judgment call that's made in relation to serious matters - sexual assault matters, but none of these people are being suggested to have sexually assaulted people, are they?

MS ZEKANOVIC: Even if we have information that suggests that people may be involved in a criminal investigation, if - if we assess it as being a risk to the organisation, we take steps to recommend suspension based on the information that we have.

COMMISSIONER: And is that why you did it here?

MS ZEKANOVIC: Yes.

COMMISSIONER: The document doesn't tell me that, does it?

MS ZEKANOVIC: I think the submission goes into detail about the information, that at the time PSI had to make a recommendation of suspension to the PSC.

COMMISSIONER: Yes. But this document doesn't suggest that it's because it's serious criminal matters, does it?

MS ZEKANOVIC: Well, it indicates that the matter has gone to the CSIU -

COMMISSIONER: Yes.

MS ZEKANOVIC: - which is -

COMMISSIONER: Mr Lloyd, back to you.

MR LLOYD: Just to draw one thing to your attention, Ms Zekanovic. On the bottom of page 7, there is a reference to some further information, that:

35 "At least two employees are currently on workers' compensation following claims of psychological injury as a result of the inaction of management."

Do you see that?

40 **MS ZEKANOVIC:** Sorry, where are you at?

MR LLOYD: Second-last paragraph, page 7.

MS ZEKANOVIC: Yes. Okay.

MR LLOYD: Just out of interest, did you - do you remember whether you or anyone from the PSC sought the views of police about whether they agreed with the decision to suspend them with a pending CSIU investigation?

5 **MS ZEKANOVIC:** I may have had at the time some conversations with the CSIU about whether they had any views about whether we should suspend these officers. Often CSIU will say it's a matter for Correctives, and if we feel the need to take steps to protect the good order and governance of a correctional environment, we are entitled to do that.

10 **MR LLOYD:** But you know, concluding from some of the evidence we've heard, that sometimes police might express a view that if, for example, there's a covert operation, to keep them on board even where allegations are as serious as the ones against Astill?

15 **MS ZEKANOVIC:** Yes.

MR LLOYD: My question was, do you remember getting the views of the CSIU police officers before making this recommendation?

20 **MS ZEKANOVIC:** I may have had a conversation. I can't recall specifically, but I have - on occasion, I will speak to the CSIU about where we're recommending suspension of someone who is also subject to a criminal investigation.

25 **MR LLOYD:** Could you turn to page 34, please. Again, I'm interested in at least the process here, Ms Zekanovic. Do you see there there's an email from Assistant Commissioner Snell to Mr Thorpe and Ms Smith, copied to some others?

30 **MS ZEKANOVIC:** Mmm.

MR LLOYD: Now, they're the two decision-makers who you identified -

MS ZEKANOVIC: That's correct.

35 **MR LLOYD:** - at whom your submission was directed:

"Thank you for providing your views concerning PSI's recommendation to suspend the three officers from duty with pay."

40 You've noted that:

"This matter cannot progress until further information is obtained from the CSIU and/or Investigations which is likely to take several months."

45 See that?

MS ZEKANOVIC: Yes.

MR LLOYD:

5 "I note your concerns that the indefinite suspension may hinder the investigation itself in circumstances where the officer is not presently aware they are persons of interest."

Do you see that?

10 **MS ZEKANOVIC:** Yes.

MR LLOYD:

15 "Noting your respective feedback I confirm the subject officers will not be suspended from duty at this stage, but it may be revisited when the findings of the investigation are known."

MS ZEKANOVIC: Yes.

20 **MR LLOYD:** Do you see that? Just before I take you to the last bit of the email, what is going on here in terms of the process with this communication being sent by Assistant Commissioner Snell to the two decision-makers talking about a confirmation that they won't be suspended?

25 **MS ZEKANOVIC:** I am not sure if a conversation came before that email was sent.

MR LLOYD: Well, just in fairness, it does talk about providing your views, up the top. But whatever had occurred, be it conversation, exchange of emails,
30 exchange of text message, whatever, between Assistant Commissioner Snell and the two decision-makers, is what, to your understanding, is occurring here that your recommendation to those decision-makers - the recommendation recorded in your document - well, just pause. I'll withdraw that. Mr Sheller intervenes and says it is not your recommendation, it was your recommendation.

35

MR SELLER: (Indistinct).

MR LLOYD: No, allow me to ask the question. It was your recommendation, wasn't it?

40

MS ZEKANOVIC: But ultimately the PSC decide or determine whether our recommendation progresses or not.

MR LLOYD: No, no. Don't take it as a criticism. I'm really just intervening on
45 Mr Sheller's objection. You recommended in your document what should happen; correct?

MS ZEKANOVIC: Yes.

MR LLOYD: That was consistent with the determination by the PSC?

5 **MS ZEKANOVIC:** The PSC endorsed that decision.

MR LLOYD: Yes. But it's nonetheless your recommendation?

10 **MS ZEKANOVIC:** Yes, it appears so.

MR LLOYD: (Indistinct) decision-makers.

MS ZEKANOVIC: Yes.

15 **MR LLOYD:** What is happening here as recorded here in this email of 29 June, as you understand it, is the PSC's determination, your recommendation is being effectively changed?

20 **MS ZEKANOVIC:** Sorry, say that again? Yes, that's right.

MR LLOYD: Now, as a matter of process, what is going on here? How does that change in a governance sense - come about without it going back to the PSC for reconsideration, or back to you for reconsideration of whatever the additional (indistinct). What is going on?

25 **MS ZEKANOVIC:** The decision-makers make their decisions based on the information that we provide in our submissions. Our submissions, I think, are quite thorough. But, ultimately, it's a matter for them whether they want to take on our recommendation or not, because while PSC throughout - PSI throughout the whole misconduct process we're purely making recommendations, we are not
30 deciding on the outcomes.

MR LLOYD: Do you understand that the decision-makers are rejecting the recommendation? Is that what's going on?

35 **MS ZEKANOVIC:** Yes.

MR LLOYD: What is Ms Snell, Assistant Commissioner Snell's involvement in the process then?

40 **MS ZEKANOVIC:** I'm not - she is a member of the PSC.

MR LLOYD: She is not a decision-maker?

45 **MS ZEKANOVIC:** No.

MR LLOYD: Why, to your knowledge, is she being involved?

MS ZEKANOVIC: She may have been involved in some discussions. She is responsible for PSI.

5 **MR LLOYD:** In terms of transparency, a word we've heard about the disciplinary process within Corrective Services, in your view as the Director of PSI at this time, is this a transparent process?

10 **MS ZEKANOVIC:** I don't think there's anything in this email that suggests that she was interfering or otherwise getting involved. She was just, you know, noting their decision not to suspend, and indicates that we can revisit the decision if further information comes to light.

15 **MR LLOYD:** Is it normal for decision-makers to reject -

MS ZEKANOVIC: It happens. They don't always take on the PSC's recommendation. They don't always take on the recommendations of PSI.

20 **MR LLOYD:** But could you just go in terms of the next thing in sequence, to page 37.

MS ZEKANOVIC: Sorry, could I just have some water?

25 **MR LLOYD:** Sorry.

MS ZEKANOVIC: Sorry.

30 **MR LLOYD:** On page 37, again I take you to the document. Just in fairness, this is a submission, if you go to the end, from you, that's on page 42 but up on the first page on 37 it's a submission to the Commissioner of 31 July 2023.

MS ZEKANOVIC: Yes.

35 **MR LLOYD:** And I just want to ask you about some events though that are recorded in the document, again going through it in chronological order. If you look on page 37 at the second-last paragraph -

MS ZEKANOVIC: Yes.

40 **MR LLOYD:** Just pausing here. At this time, that is 31 July, the position is the decision-makers have rejected the recommendation made to suspend the three officers?

45 **MS ZEKANOVIC:** Yes.

MR LLOYD: Is that correct? On 7 July an article appears in the paper?

MS ZEKANOVIC: Yes.

MR LLOYD: See that? And on 13 July PSI reviewed the police brief -

5 **MS ZEKANOVIC:** Yes.

MR LLOYD: - of evidence used in the prosecution. And then on 24 July further information was sought from the PSI Support Unit to clarify their referral?

10 **MS ZEKANOVIC:** Yes.

MR LLOYD: That was the referral of 15 June that we've spoken about; correct?

MS ZEKANOVIC: Yes.

15

MR LLOYD: So those, at least, were some of the additional things that had come to light by the time of this document?

MS ZEKANOVIC: Yes.

20

MR LLOYD: And that's what justified, was it, a further submission to the Commissioner of the kind that we see here?

MS ZEKANOVIC: Yes.

25

MR LLOYD: And just, if you look on the second page, which is 38, it has got for Westley Giles?

MS ZEKANOVIC: Yes.

30

MR LLOYD: Some things, I won't dwell on all the details but the evidence on the right-hand column identifies that the source of the material.

MS ZEKANOVIC: Yes.

35

MR LLOYD: Some of it is the 15 June email?

MS ZEKANOVIC: That's correct.

40 **MR LLOYD:** Next is the file note clarifying on 24 July?

MS ZEKANOVIC: Yes.

45 **MR LLOYD:** And then next is a statement played by Witness O obtained from the prosecution?

MS ZEKANOVIC: Yes.

MR LLOYD: And then finally - I'm not sure what form you have it in, but just take it from me - is verbal advice from the police about a very serious allegation that the police were passing on that - where it was said that Mr Giles had
5 knowledge in the form of an allegation of Astill's sexual offending and took the inmate to Astill for her to repeat it.

MS ZEKANOVIC: Yes.

10 **MR LLOYD:** So that contains some additional information that wasn't the subject of the previous submission that I asked you about?

MS ZEKANOVIC: That's correct.

15 **MR LLOYD:** In relation to Mr Holman - again, it's the same structure, 15 June email and then some additional information?

MS ZEKANOVIC: Yes.

20 **MR LLOYD:** And the additional information is the file note and those two statements that are recorded there?

MS ZEKANOVIC: Yes.

25 **MR LLOYD:** And for Mr Paddison, same deal -

MS ZEKANOVIC: Yep.

MR LLOYD: - same process. And then in your submission - and when we see it's
30 a submission to the Commissioner - this is to Commissioner Corcoran?

MS ZEKANOVIC: Yes.

MR LLOYD: Why was this going to him?
35

MS ZEKANOVIC: He decided that he wants to be the decision-maker for these matters given the seriousness of the allegations.

MR LLOYD: When was that communicated to you?
40

MS ZEKANOVIC: I can't recall off the top of my head.

MR LLOYD: Obviously before the document?

45 **MS ZEKANOVIC:** Yes, it would have been sometime before the document. That's right.

MR LLOYD: Was it directly communicated to you?

MS ZEKANOVIC: Perhaps it was directly communicated to him or via AC Snell.

5

MR LLOYD: So directly to you from him or via -

MS ZEKANOVIC: Yes, it would have come either of those ways.

10 **COMMISSIONER:** Mr Lloyd, we'll break for lunch in a minute, but can I just try and understand this. We've looked at the memorandum with your recommendation on page 8 of these documents. It's dated 21 June. And in that document, there are some very brief dot points in relation to the allegations. Do you see that?

15 **MS ZEKANOVIC:** Yes.

COMMISSIONER: But, nevertheless, you were prepared to recommend suspension; is that right?

20 **MS ZEKANOVIC:** Yes.

COMMISSIONER: Now, that document, as I understand it, is going - or that recommendation is going to the Assistant Commissioner; is that right?

25 **MS ZEKANOVIC:** On page 8?

COMMISSIONER: Yes.

30 **MS ZEKANOVIC:** One was an Assistant Commissioner and the other one is a Custodial Director. There's two staff members that we were recommending suspension for. One of those staff was under the responsibility of an Assistant Commissioner; the other one was the responsibility of a Custodial Director.

35 **COMMISSIONER:** I understand. Now, document 6, page 37, is a submission to the Commissioner.

MS ZEKANOVIC: Yes.

40 **COMMISSIONER:** Now, the date on that is July. And, again, it's your recommendation, I think. Is that right?

MS ZEKANOVIC: Yes.

45 **COMMISSIONER:** This document relates only to Giles. Is that right?

MS ZEKANOVIC: This document relates to all three officers.

COMMISSIONER: I'm sorry, the recommendation is only in relation to Giles.

MS ZEKANOVIC: I'm just having a look at the recommendation.

5 **COMMISSIONER:** And in this document, you've - or someone who's authored this has carried out some sort of evaluation of the material that's available. Do you see that?

MS ZEKANOVIC: Yes.

10

COMMISSIONER: Well, can I just understand how it is that a recommendation that Mr Giles be suspended in June has virtually no evaluation, but when it comes to the July document that you append your name to, there is an evaluation. What is this telling me about the process being undertaken?

15

MS ZEKANOVIC: The - the - the submission in July - the - demonstrates that we received more information, including the police brief. So there was more material for the legal officer to assess, which would explain why this brief includes more detail - sorry, the submission includes more detail.

20

COMMISSIONER: So do you say there's a police brief that you worked with for the second recommendation?

25 **MS ZEKANOVIC:** Well, the submission includes references to information that PSI obtained from a police brief of evidence.

COMMISSIONER: Is that what enabled you to make an evaluation of the situation?

30 **MS ZEKANOVIC:** That in combination with the information received from the Support Unit and information received directly from the CSIU.

COMMISSIONER: Well, how did it come about that within one month there's a report to the Assistant Commissioner and then a month later a report making the same recommendation to the Commissioner himself?

35

MS ZEKANOVIC: The Commissioner indicated once we had been - once all this additional information had been made available, I understand that he made the decision to suspend these - or wanting to review the submission in relation to the suspension of these officers.

40

COMMISSIONER: So are you saying that the June report wasn't acted upon?

MS ZEKANOVIC: The third - the third - the June submission, the decision-makers decided not to suspend. That's correct. But at that time, they had less material available to them to support a suspension.

45

COMMISSIONER: Sorry, at that time they had?

MS ZEKANOVIC: They had less evidence available to them to support a suspension.

5

COMMISSIONER: Well - and you say that further evidence is contained in this later document?

MS ZEKANOVIC: That's correct.

10

COMMISSIONER: Now, you appreciate that there's no attempt to evaluate the material in the first report? You appreciate that?

MS ZEKANOVIC: Yes.

15

COMMISSIONER: But there is in the second?

MS ZEKANOVIC: At - at the time that we are suggesting suspension of someone, there is not always a lot of material to assess. As I mentioned earlier, we're really making - doing a risk assessment about whether that person should remain in the workforce while we investigate.

20

COMMISSIONER: But obviously the decision-maker receiving the first report had the somewhat sceptical view that I think they were entitled to have, and that is, "We don't have enough information."

25

MS ZEKANOVIC: And that's entirely a matter - entirely appropriate for them, of course.

30

COMMISSIONER: Well, doesn't it cause you to ponder what you're doing by way of recommendation?

MS ZEKANOVIC: I think what this Inquiry has shown is that we are doing everything we can to manage risks around certain criminal matters. So we've increased the number of people we are suspending because we are trying to manage the risks to Corrective Services. And at the time, with the information that we had available, we put to the Professional Standards Committee that we think they should be suspended and the PSC agreed.

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40

COMMISSIONER: When you say you are trying to manage the risks, can you tell me what - what are the risks that you are trying to manage?

MS ZEKANOVIC: Well, these officers were - the allegations against them were quite serious.

45

COMMISSIONER: Yes, but what is the risk you are trying to manage to Corrective Services?

MS ZEKANOVIC: Well, there's bullying and harassment claims, they were intimidating their colleagues, as part of Astill's offending.

5 **COMMISSIONER:** All right. We will have lunch.

<THE HEARING ADJOURNED AT 1.08 PM

<THE HEARING RESUMED AT 2.04 PM

10

MR LLOYD: Thank you, Commissioner. Ms Zekanovic, before the break, I was asking you about the document, the last page of which is page 42.

MS ZEKANOVIC: Yes.

15

MR LLOYD: This is the submission to the Commissioner dated 31 July 2023.

MS ZEKANOVIC: Yes.

20

MR LLOYD: And, in fairness, I should just get you to confirm this: Your name - you are the sign-off on this submission?

MS ZEKANOVIC: Yes.

25

MR LLOYD: But the actual words are inserted for your consideration, and ultimately approval, on the document by the author, Stefan -

MS ZEKANOVIC: Skopelja.

30

MR LLOYD: - Skopelja?

MS ZEKANOVIC: Yep.

MR LLOYD: And that's recorded on the first page.

35

MS ZEKANOVIC: Yes.

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MR LLOYD: But just in terms of the process here, you told us before the break that either directly from Commissioner Corcoran or, on your understanding, from him via Assistant Commissioner Snell, he became the decision-maker by this point in time?

45

MS ZEKANOVIC: Sorry. No. Dr Anne-Marie Martin, who was Acting Commissioner, was the decision-maker for this - for the purposes of this particular matter at that time - the sign that I signed it.

MR LLOYD: I see. So when we see submission to the Commissioner on the first page -

MS ZEKANOVIC: Yes.

5

MR LLOYD: - that is, in fact, a reference to the then Acting Commissioner?

MS ZEKANOVIC: Yes.

10 **MR LLOYD:** So at this time, it's Dr Anne-Marie Martin (crosstalk)?

MS ZEKANOVIC: Yes.

15 **MR LLOYD:** In terms of the recommendation in the document, under Risks on the final page, page 42 -

MS ZEKANOVIC: Yes.

20 **MR LLOYD:** - in the submission:

"Risks and benefits are outlined in the dot point considerations above."

Do you see that?

25 **MS ZEKANOVIC:** Yes.

MR LLOYD:

30 "One of the factors is Corrective Services are already under considerable scrutiny in respect of its handling of Mr Astill's offending..."

MS ZEKANOVIC: Yes.

MR LLOYD:

35

"...and further perceived inaction (indistinct) if that inaction was an error, would exacerbate criticisms."

MS ZEKANOVIC: Yes.

40

MR LLOYD: Now, that is a factor or a risk factor that might support, on a proper consideration, suspensions?

MS ZEKANOVIC: In this - in this situation, yes.

45

MR LLOYD: Alternatively, what you're doing there is raising a competing - or consideration that might pull in the opposite direction in the next part of it?

MS ZEKANOVIC: Yes.

5 **MR LLOYD:** And that being statutory obligation - or obligation to exercise its statutory power reasonably and on a proper basis, and Corrective Services being open to criticism and scrutiny if it's perceived as victimising non-senior staff without credible evidence in self-preservation or as blame-shifting?

MS ZEKANOVIC: Yes.

10

MR LLOYD: And that particular consideration about a decision to suspend if it wasn't on a proper basis being seen as being self-preservation or blame-shifting was a legitimate consideration?

15 **MS ZEKANOVIC:** I think it's a risk to call out, yes.

MR LLOYD: And you record in the next paragraph - I don't want to tax you with the details, but there's the patchwork nature of the evidence complicating things?

20 **MS ZEKANOVIC:** Yes.

MR LLOYD: The ultimate recommendation made is that the decision-maker approved the suspension of Officer Giles?

25 **MS ZEKANOVIC:** Yes.

MR LLOYD: But declined to exercise a discretion to suspend Officers Paddison and Holman?

30 **MS ZEKANOVIC:** Yes.

MR LLOYD: Just one thing I wanted to draw out of you about that, arising from something the Commissioner asked, in terms of the risks posed to Corrective Services by not suspending the officers. I think you gave some evidence about one
35 situation being risks if an officer is accused of sexual misconduct, for example?

MS ZEKANOVIC: Yes.

40 **MR LLOYD:** In this case for both - for Officer Giles, there were some allegations that he had engaged in bullying, harassment and threatening staff?

MS ZEKANOVIC: Yes.

MR LLOYD: They were only allegations?
45

MS ZEKANOVIC: Yes.

MR LLOYD: But that, I take it, is a factor which deserves weight in terms of the decision to suspend, allegations of that kind?

MS ZEKANOVIC: Yes.

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MR LLOYD: But for Officer Holman - again, if you need to look at 39, do so. His name is not on that page, but if you go to the previous page -

MS ZEKANOVIC: Yes.

10

MR LLOYD: - there's a description of some things about him. In the third-last entry:

"...was not identified as someone who bullied, harassed or threatened staff."

15

MS ZEKANOVIC: That's right.

MR LLOYD: And the same for Officer Paddison, the fourth-last entry for him. Do you see that?

20

MS ZEKANOVIC: Yes.

MR LLOYD: And so ultimately when you get to the recommendations made not to suspend, at least on your understanding, factors relevant for the recommendation not to suspend Officers Paddison and Holman is that there were no allegations that you were aware of at this time that they'd engaged in bullying, harassment or intimidation of other staff?

25

MS ZEKANOVIC: That would have been part of it, yes.

30

MR LLOYD: Could I move on - we're at 31 July. I - just to get you to identify the document without dwelling on it. At page 36, there was a reference in the recommendation document to a file note, Clarifying Referral, dated 24 July?

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MS ZEKANOVIC: Yes.

MR LLOYD: That's the document at 36.

MS ZEKANOVIC: Yes.

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MR LLOYD: And if you look at that, that's from Mr Skopelja to two of the Support Unit workers?

MS ZEKANOVIC: Yes.

45

MR LLOYD: Making reference to some discussion evidently had?

MS ZEKANOVIC: Yes.

MR LLOYD: And if you look at the final bullet point, that appears to be the source of the summary entry that I just took you to, that is, no allegations about bullying, et cetera, against Officers Holman and Paddison?

MS ZEKANOVIC: That's right.

MR LLOYD: Could I move forward in time, then, by taking you to page 83.

MS ZEKANOVIC: Yes.

MR LLOYD: This is an email from Assistant Commissioner Snell to Mr Buckley, you, and copied to Anne-Marie Martin?

MS ZEKANOVIC: Yes.

MR LLOYD: Who you've identified as the decision-maker; correct?

MS ZEKANOVIC: That's right.

MR LLOYD: And this is Assistant Commissioner Snell:

"With regards to the suspension review related to Westley Giles where a decision has been made to suspend, in discussing this matter with the Assistant Commissioner this evening, we will need to first ensure the Minister is briefed."

Do you see that?

MS ZEKANOVIC: Yes.

MR LLOYD: Do you take it from this that a decision had been made by this time to act on the recommendation to suspend Officer Giles?

MS ZEKANOVIC: Yes.

MR LLOYD: And did you know that the decision had been made by this time with respect to Officers Holman and Paddison to also follow the advice, that is, decline what's called the discretion to suspend?

MS ZEKANOVIC: They're not mentioned in this email.

MR LLOYD: The question is a little different. Do you know whether a decision had also been made in line with the recommendation by this time with respect to those -

MS ZEKANOVIC: I can't recall. It's not in this email, so I can't recall.

MR LLOYD: And, in fairness, the subject - it's got "Suspension of Westley Giles".

5

MS ZEKANOVIC: Yes.

MR LLOYD: It might be that this email is only dealing with that aspect of the (crosstalk).

10

MS ZEKANOVIC: Possibly.

MR LLOYD: If you go forward next to 82. You'll see down the bottom is an email from Mr Buckley to Assistant Commissioner Snell and you and Ms Martin?

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MS ZEKANOVIC: Yes.

MR LLOYD:

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"I've spoken with Emma, and Mr Giles apparently has some support at the Centre. Unlikely to evolve into overt industrial action."

Do you see that?

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MS ZEKANOVIC: Yes.

MR LLOYD:

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"Overall, if suspension is warranted, it should occur."

Do you see?

MS ZEKANOVIC: Yes.

35

MR LLOYD: Then a decision up the page that it was on hold, presumably until more enquiries were made about that issue?

MS ZEKANOVIC: Yes.

40

MR LLOYD: What is going on here, to your knowledge, in terms of decision-making, is this - these are communications involving Ms Martin about what - noting that the 14 August one appears to record that a decision has been made to suspend. What is going on here in a decision-making sense?

45

MS ZEKANOVIC: Perhaps some internal conversations about whether to progress with the suspension. I'm not entirely sure.

MR LLOYD: Perhaps whether to change the decision?

MS ZEKANOVIC: No, I don't think in relation to Mr Giles. Are you asking in relation to Mr Giles?

5

MR LLOYD: Well, I thought you said, from your understanding, that this looks like it's only about (indistinct) Mr Giles.

MS ZEKANOVIC: Yes. I don't think it suggests that a decision is going to be changed. I just think it's outlining other factors that need to be taken into consideration, such as the industrial action.

10

MR LLOYD: Maybe it's revealed by what follows. Go to page 85. This is you to Assistant Commissioner Snell and others, subject: Very Urgent Astill ICAC Letter to PSI dated 13 April. Do you see that?

15

MS ZEKANOVIC: Yes.

MR LLOYD:

20

"Hi, Chantal. Giles, Holman and Paddison came to our attention."

And then you recount some of the things that you've already told the Commissioner about?

25

MS ZEKANOVIC: That's correct.

MR LLOYD: And that's effectively a summary by you of where you got to by that time?

30

MS ZEKANOVIC: Yes.

MR LLOYD:

"In terms of why we are considering suspension now, it's because we weren't aware of these allegations until recently."

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MS ZEKANOVIC: Yes.

MR LLOYD:

40

"Given that we've received them from multiple sources, we consider it appropriate to do what we normally would do in these circumstances and suspend him."

45

MS ZEKANOVIC: Yes.

MR LLOYD: And - I should draw to your attention. That appears to be a response to Assistant Commissioner Snell's email, 21 August, at the bottom of the page, trying to prepare some bullet points for Leon - that's Leon Taylor?

5 **MS ZEKANOVIC:** Yes.

MR LLOYD: And that's, again, about the suspension of Giles?

MS ZEKANOVIC: Yes.

10

MR LLOYD: And why now?

MS ZEKANOVIC: Yes.

15 **MR LLOYD:** And then:

"Same with the info re Michael Paddison and Neil Holman. Can I have these points ASAP."

20 **MS ZEKANOVIC:** Yes.

MR LLOYD: And you're doing that, that is, trying to put some bullet points together about these matters?

25 **MS ZEKANOVIC:** That's correct.

MR LLOYD: And there was no different - the position in respect of Officers Paddison and Holman was no different, factually, in terms of what was known about the allegations on this date at the time of these bullet points as it was on the

30

MS ZEKANOVIC: Yes, that's correct.

COMMISSIONER: Mr Lloyd, do we actually know anything more about allegations against Mr Giles or is it merely a repetition of what was already known -

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MR LLOYD: I'll ask -

40 **COMMISSIONER:** - using different words?

MR LLOYD: I know the answer, but I will ask the witness. At this time, there's also no further information about Giles than the information recorded in your submission - the 31 July submission?

45

MS ZEKANOVIC: Yes.

MR LLOYD: That is, I thought you agreed with me that a critical additional piece of information is the report by the police of that serious allegation?

MS ZEKANOVIC: That's correct.

5

COMMISSIONER: Well, I'm not sure what that - well, this document says, "We weren't aware of these allegations until recently. Given that we received them from multiple sources, we considered it appropriate to do what we normally would." Now, I understand that at the moment to be the same allegations but being repeated perhaps by different people or different persons investigating. I don't understand at the moment there to be any extra information at all -

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MR LLOYD: Well, I think -

15

COMMISSIONER: - including from the police.

MR LLOYD: I think in fairness, Commissioner, just - I can do this because there's already some evidence. If you go back to the part of the 31 July document, particularly for Officer Giles, at -

20

COMMISSIONER: Page?

MR LLOYD: - page 38. I will test this with Ms Zekanovic to make sure I've got it right, but the recent information is that which is recorded in the last entry for the box in the table for Westley Giles.

25

COMMISSIONER: It's a bit hard to read in my copy.

MR LLOYD: And there is a degree of sensitivity about it. But at the moment, where the evidence stands is that the CSIU detective, Bamford, advised on 28 July of an allegation that came to the attention of Officer Giles - and it's just an allegation - that an inmate had been sexually assaulted and his response, as alleged -

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35

COMMISSIONER: So is that said to be -

MR LLOYD: Said to be -

40

COMMISSIONER: Is that said to be, "We weren't aware of these allegations until recently"? It doesn't read that way.

MR LLOYD: No. Well, that I will take up with the -

45

COMMISSIONER: It doesn't relate back in the words, anyway, at all.

MR LLOYD: I'll try and clear it up. Your email, 21 August, page 85:

"We weren't aware of these allegations until recently."

Do we take that as a reference to the allegation that I've just addressed the Commissioner about -

5

COMMISSIONER: No, it can't be, Mr Lloyd. It's this document. It's referring to this document:

10 "In terms of why we are considering suspension now, it's because we weren't aware of these allegations..."

Now, "these allegations" must surely be the ones in the document.

MR LLOYD: Well -

15

COMMISSIONER: There's nothing to tell us anything else.

MR LLOYD: I'll just try and explore it, if I can. In the bullet points, you've referred to the Support Unit workers' -

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MS ZEKANOVIC: Yes.

MR LLOYD: - email of 15 June? The Renee Berry 19 May email?

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MS ZEKANOVIC: Yes.

MR LLOYD: The - I'll come back to the CSIU, but the ICAC referral?

MS ZEKANOVIC: Yes.

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MR LLOYD: And to take the Commissioner's point, all of those were known for months by the time of this email?

35 **MS ZEKANOVIC:** I think it's a - just a poorly worded end to that email. It should have said, "In terms of why we are considering suspension now, is because we received additional information from the CSIU."

MR LLOYD: And that's the third bullet point?

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MS ZEKANOVIC: That's correct.

MR LLOYD: So that reference, to pick up the Commissioner's point, is these allegations are limited to the allegations about Giles that came from Detective Bamford?

45

MS ZEKANOVIC: That's correct.

MR LLOYD: That was the only thing which had changed from the time when the decision was made by the decision-makers first to reject the advice (crosstalk).

MS ZEKANOVIC: Yes.

5

MR LLOYD: I'm not sure if that sufficiently clears it up.

COMMISSIONER: Well, I'll have to look at it, but - yes.

10 **MR LLOYD:** The response to your email from Joanna Wong up the top:

15 "That's also my recollection. The other reason why now is that prior to what CSIU recently informed us that Giles had led the victim to Astill and then Astill had assaulted her again, we didn't have enough information about his involvement."

Do you see that?

MS ZEKANOVIC: Yes.

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MR LLOYD: And that's making a reference to that matter which is in the third bullet point in your email?

MS ZEKANOVIC: That's correct.

25

MR LLOYD: And I think you've told us that was the consideration which had changed from the time of the rejection of your earlier information?

MS ZEKANOVIC: Yes.

30

MR LLOYD: Can I ask this, then: on page 90, on that same day, that is, 21 August, this email comes later, that is, 9.32 pm, from Assistant Commissioner Snell to Assistant Commissioner Taylor?

35 **MS ZEKANOVIC:** Yes.

MR LLOYD:

40 "See some points below. Discussion with the Secretary tomorrow regarding the Westley suspension..."

Do you see that?

MS ZEKANOVIC: Yes.

45

MR LLOYD:

"...and consideration of other staff."

MS ZEKANOVIC: Yes.

5 **MR LLOYD:** Do you understand, at least from looking at this, that this information, at least on its face, purports to relate to a decision to be made about suspending Mr Giles but also consideration of the position of Officers Holman and Paddison?

10 **MS ZEKANOVIC:** Yes.

MR LLOYD: What is going on here, on your understanding, in terms of the decision-making process? We have an identified decision-maker, being Ms Clark - Dr Martin, sorry - Dr Anne-Marie Martin?

15

MS ZEKANOVIC: Yes.

MR LLOYD: What do you understand to be the, in terms of the decision-making process, discussions between - occurring evidently between Mr Taylor and the Secretary about these issues - about what to do?

20

MS ZEKANOVIC: I think at the time that this email was drafted, Leon Taylor was acting as the Commissioner. So my understanding is that he would have raised this information and this issue with the Secretary, given that he would be, in his capacity as Acting Commissioner, reporting to the Secretary.

25

MR LLOYD: What's recorded in the document is - in the four bullet points, repeat in slightly different words your four bullet points?

30 **MS ZEKANOVIC:** Yes.

MR LLOYD: And then:

35 "In terms of why we are considering suspension now, it's because we weren't aware of these allegations until recently."

Now, just pausing there, without being too critical of the words in your email, Ms Zekanovic, that repeats what, I think, you said was the poorly worded -

40 **MS ZEKANOVIC:** Yes.

MR LLOYD:

45 "They are serious in nature, and given that we've received them from multiple sources, consider it appropriate to do what we would normally do and suspend Giles."

Do you see that?

MS ZEKANOVIC: Yes.

5 **MR LLOYD:** That, in substance, was at least consistent with the 31 July recommendation in your document?

MS ZEKANOVIC: Yes.

10 **MR LLOYD:**

"Consideration is also being given to the locations of the other staff."

Do you see that?

15

MS ZEKANOVIC: Yes.

MR LLOYD: That would also at least not be inconsistent with your recommendation in that consideration, as recorded here, is not being given to suspending Officers Holman and Paddison but location, as in, moving them?

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MS ZEKANOVIC: Yes.

MR LLOYD: And moving staff, in circumstances where there's allegations of the kind against those two officers at least, a perfectly open and reasonable consideration in decision-making, in your experience?

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MS ZEKANOVIC: Yes.

MR LLOYD: As opposed to a far more Draconian or harsh decision to actually suspend them, whether it's with or without pay?

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MS ZEKANOVIC: It'll depend on whether we can accommodate people at a certain level in a different work location.

35

MR LLOYD: But certainly every effort should be made, shouldn't it, in your experience, to accommodate them by moving if that's a proper alternative to a suspension?

MS ZEKANOVIC: Yes. And we, in many cases, I would say, especially recently, include in our submissions to the decision-maker that they have the option of considering alternate work arrangements for a different workplace for that person if that's something they consider appropriate.

40

COMMISSIONER: Tell me, how many decision-makers - or how many people are authorised to make decisions as decision-makers? How many are there?

45

MS ZEKANOVIC: All the Assistant Commissioners are decision-makers, and the Custodial Directors.

COMMISSIONER: So how many people is that?

5

MS ZEKANOVIC: Quite a few. Over 10, I would say.

COMMISSIONER: Over 10. And how are they chosen to make a decision in a particular case? Is it a random exercise or is it structured in some way?

10

MS ZEKANOVIC: No, there's an internal delegation that empowers people at a certain level and above to make decisions in misconduct matters.

COMMISSIONER: Well, I understand that, but how do they get the papers on their desk to make the decision?

15

MS ZEKANOVIC: It depends if that - if that staff member falls within their area of responsibility.

COMMISSIONER: So if they're in a direct line of report in some way -

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MS ZEKANOVIC: Yes.

COMMISSIONER: Right. And does one decision-maker get a copy of the decision-maker and the papers relevant to the decision made by another decision-maker?

25

MS ZEKANOVIC: Not necessarily, no. No.

COMMISSIONER: Is there any attempt to get consistency between decision-makers? How do you do that?

30

MS ZEKANOVIC: We're in the process of developing - well, as part of Project Merge, we want to develop a system where we record a lot of our decisions - and I - and I think the new database will help us do this - so we can ensure consistency across decision-making. Also, a few times this year, PSI have hosted training for decision-makers, and part of that training includes the types of evidence and information they need - they should consider in - when they make their decisions.

35

COMMISSIONER: So the answer is not much, in terms of present capacity to ensure consistency?

40

MS ZEKANOVIC: If - if the decision-maker is unsure and they need to check on how decisions have been made past - in the past in relation to similar misconduct, they can make those enquiries of PSI and we can always make that information available to them.

45

COMMISSIONER: Yes, but it doesn't automatically go to them.

MS ZEKANOVIC: At the moment, it's not automatically included in the submission, no.

5

MR LLOYD: Could I ask you this in terms of process: The additional information recorded in the 31 July document, in particular that had come from Detective Bamford, on the documents so far, there's not a record that I can discern of the matter going back to the committee - the Professional Standards Committee for it to reconsider its original recommendation based upon the information as it stood on that earlier date.

10

MS ZEKANOVIC: That's right.

15 **MR LLOYD:** Does that accord with your - first, your understanding of the situation, it wasn't sent back to the PSC for it to reconsider (crosstalk) -

MS ZEKANOVIC: That's correct.

20 **MR LLOYD:** - recommendation based on the new information?

MS ZEKANOVIC: Yes, I think that's correct.

MR LLOYD: Is that normal?

25

MS ZEKANOVIC: No.

MR LLOYD: It sounds - again, tell me if this is an overstatement - highly irregular that it would not go back for the committee to reconsider, before you to make your recommendation, the new information?

30

MS ZEKANOVIC: That's correct. In - in a - in a normal process, it would go back before the PSC. However, we took the view that given the new information presented that at Commissioner level, the decision - it was important to (a) escalate it, because there's new information presented by police, and a decision was made that it should be considered by someone at DC level and above.

35

MR LLOYD: You said before the break that you had an understanding that now Commissioner Corcoran might have been involved in that decision to escalate in that way. Have I got that right?

40

MS ZEKANOVIC: At the time that the submissions we've just gone through, he was not - he was on leave. When he returned, yes.

45 **MR LLOYD:** As in, after that recommendation of 31 July was made, you became aware that he became aware of effectively what had happened up to that point?

MS ZEKANOVIC: I'm not sure when he became aware of when - or how events unfolded. He's not included in these emails, from what I can tell.

5 **MR LLOYD:** Was there ever a discussion around this time, that is, mid to latter part of August this year, about why on earth this had not gone back to the PSC to be reconsidered - for it to reconsider its position in light of the new information?

10 **MS ZEKANOVIC:** I think there was some urgency, and - to this particular matter, and information was unfolding at a quite - I think - I think the decision was made that there is a risk, potentially, by keeping this person in the workplace. And the Commissioner or Acting Commissioner can make the decision to remove someone if they - if that person poses a risk.

15 **MR LLOYD:** In terms of the urgency, Astill's offending occurred between 2015 and 2018?

MS ZEKANOVIC: Yes.

20 **MR LLOYD:** Take Officer Giles. He'd been working at Dillwynia right throughout that period and beyond, up to (crosstalk).

MS ZEKANOVIC: Yes.

25 **MR LLOYD:** What do you understand was the particular urgency of dealing with it in August of 2023 without following what I think you say is the proper process of it going to the PSC?

MR SHELLER: I object to "proper". I think it's normal.

30 **MR LLOYD:** The normal process.

MS ZEKANOVIC: Sorry, can you repeat the question?

35 **MR LLOYD:** Sorry, let me just deal with it this way. The normal process was for it to go to the PSC to reconsider new information?

MS ZEKANOVIC: Yes.

40 **MR LLOYD:** And that also was the proper process, wasn't it?

MS ZEKANOVIC: The normal process, yes.

MR LLOYD: It was the proper process, wasn't it?

45 **MS ZEKANOVIC:** Yes.

MR LLOYD: And that's why it's normal. It's normal to do things properly, isn't it?

5 **MS ZEKANOVIC:** That is the normal process that we follow, is for matters - when new information is presented, it gets reconsidered by the PSC, yes.

MR LLOYD: And it's normally done that way because that's the proper way to do it; agree?

10 **MS ZEKANOVIC:** That's the way we do it, yes.

MR LLOYD: It's the proper way to do it, isn't it?

MS ZEKANOVIC: Yes.

15

MR LLOYD: You don't try and do things the improper way, do you?

MS ZEKANOVIC: No.

20 **MR LLOYD:** Going back, then. There was no real urgency, was there, in your mind, to this - to warrant it bypassing that normal and proper process, was there?

25 **MS ZEKANOVIC:** Well, I think the information presented demonstrated that there was someone in the workplace that was intimidating other staff, bullying them. To me, that would suggest that there is some urgency to act on that information.

30 **MR LLOYD:** Could you have a look at 91. I don't want to take you to all the details here in an email from Emma Smith. Do you see it records there that Officer Giles was served with the letter, 30 August?

MS ZEKANOVIC: Yes.

35 **MR LLOYD:** And then there's a detailed description of effectively what happened during that process?

MS ZEKANOVIC: Yes.

40 **MR LLOYD:** And this is only about the decision made to suspend Officer Giles and its communication, that is, the communication of that decision?

MS ZEKANOVIC: Yes.

45 **MR LLOYD:** At this point - and I will show you a document in fairness in a minute. But it's right, isn't it, that a decision had been made not just to suspend Officer Giles but also to accept the recommendation on 31 July not to suspend

Officers Holman and Paddison? That was the state of play as at the end of August 2023, wasn't it?

5 **MS ZEKANOVIC:** This document doesn't suggest that, I don't think, the one you're referring to at the moment.

MR LLOYD: No. That's right, but not my question.

10 **MS ZEKANOVIC:** Yes.

MR LLOYD: That was the state of play -

MS ZEKANOVIC: I think so, from memory.

15 **MR LLOYD:** I'll show you something that might assist you. This is a document that - we can hand one to Ms Zekanovic and one to the Commissioner. I've got my own. Could this be added, if it's convenient, Commissioner, to Exhibit -

20 **COMMISSIONER:** 48.

MR LLOYD: Eight.

COMMISSIONER: To Exhibit 8?

25 **MR LLOYD:** To Exhibit 48, the bundle -

COMMISSIONER: Added to 48, yes.

30 **MR LLOYD:** Just have a look. You see this is a -

MS GHABRIAL: Commissioner, (indistinct) before these questions are asked.

35 **MR LLOYD:** Just to explain, Commissioner, for my part, I was handed this document at about two minutes to 12.

COMMISSIONER: I had assumed that.

MR LLOYD: Submission to Commissioner. Do you see that?

40 **MS ZEKANOVIC:** Yes.

MR LLOYD: And just go to the final page. Authored but in the same way as the earlier one is authored, that is, the words put on the page by Mr Skopelja but signed off by you?

45 **MS ZEKANOVIC:** Yes.

MR LLOYD: 20 September 2023?

MS ZEKANOVIC: Yes.

5 **MR LLOYD:** You might recognise that that's a fraction over a week before this Commission of Inquiry started the public hearing?

MS ZEKANOVIC: Yes.

10 **MR LLOYD:** This is a submission that went to now or present Commissioner Corcoran?

MS ZEKANOVIC: Yes.

15 **MR LLOYD:** How did it come to pass that on 20 September of this year, you were preparing a further submission to Commissioner Corcoran?

20 **MS ZEKANOVIC:** There was - the submission makes reference to the Commissioner attending Dillwynia on 19 September, on the first page. In the submission, it indicates that the Commissioner was presented with additional information. PSI weren't aware of that information. But we were asked to consider putting all of the information that we were aware of in a submission to him.

25 **MR LLOYD:** Can I just understand some things. The record in this document - just put aside the reference on page 1 to, "On 19 September," and the next paragraph -

MS ZEKANOVIC: Yes.

30 **MR LLOYD:** - for one moment. These things that are recorded on this page and then in the table in relation to Mr Holman and Mr Paddison, they're not new, are they?

MS ZEKANOVIC: No.

35

MR LLOYD: They were known both at the time of the original submission and the 31 July submission?

MS ZEKANOVIC: Yes.

40

MR LLOYD: And do you see there's a record in the paragraph above, the one, "On 19 September, they were not suspended"?

MS ZEKANOVIC: That's correct.

45

MR LLOYD: And so that reflects the fact that a decision had positively been made prior to this date to follow the advice and not suspend Officers Holman and Paddison?

5 **MS ZEKANOVIC:** Prior to this date, yes.

MR LLOYD: And what's being recorded in this document - I withdraw that. The information in the table about Holman and - Officers Holman and Paddison, that had obviously, when you prepared the earlier submission, been prepared with
10 some care in order to ensure that both the allegations and the sources were identified?

MS ZEKANOVIC: Yes.

15 **MR LLOYD:** And that obviously, in terms of a proper process, if a decision is serious, a suspension is to be made, is a necessary and fair (indistinct)?

MS ZEKANOVIC: Yes.

20 **MR LLOYD:** So it's known, in a documentary sense, what it is the decision-maker is acting on?

MS ZEKANOVIC: Yes.

25 **MR LLOYD:** The only additional piece of information that you were aware of that had come to your attention was the fact of the Commissioner going out on 19 September?

MS ZEKANOVIC: Yes.

30

MR LLOYD: And did you understand, from your perspective at least, what the purpose of that attendance was? Was it part of an Investigations Branch or Department investigation?

35 **MS ZEKANOVIC:** No, I - I - I think it was more in relation to the Commissioner - I think there were some welfare concerns about staff at Dillwynia, and he was going out there to speak to staff and check in on their welfare. I - I - I wasn't part of that meeting, and that's - that's all I really know.

40 **MR LLOYD:** And, in fairness, if you look at the paragraph under, "On 19 September," you say:

"As a result, the Commissioner has expressed his intent to revisit whether it's
45 appropriate to suspend."

45

MS ZEKANOVIC: Yes.

MR LLOYD: This was something communicated to you either directly from or, to your knowledge, indirectly from the Commissioner himself that he wanted to revisit the decision that had been made?

5 **MS ZEKANOVIC:** Yes.

MR LLOYD: And this submission - by that you mean you and Mr Skopelja are not aware of the content of any concerns expressed?

10 **MS ZEKANOVIC:** That's right.

MR LLOYD: How on earth, Ms Zekanovic, could a proper submission be prepared by Mr Skopelja or you making any recommendations about whether to suspend officers if you were not told about that information?

15

MS ZEKANOVIC: Well, if you go to the recommendation, we - we give a - we don't actually suggest that the Commissioner make a decision one way or the other. We provide the following options: one is to suspend; and the other one is to decline the suspension.

20

MR LLOYD: And I'll come to that. You're not positively advocating one way or the other?

MS ZEKANOVIC: No, we're just presenting the information -

25

MR LLOYD: In terms of a submission -

MS ZEKANOVIC: - in what we have. Yes.

30 **MR LLOYD:** In terms of a submission, though, you've agreed with me that care was exercised to lay out the information for the previous two submissions?

MS ZEKANOVIC: Yes.

35 **MR LLOYD:** In order to make sure it was done fairly?

MS ZEKANOVIC: Yes.

40 **MR LLOYD:** Even here where you get to a position - it's obvious from the document that you can't form a view in terms of a recommendation one way or other; correct?

MS ZEKANOVIC: Yes.

45 **MR LLOYD:** You couldn't do a submission of this kind, even where you don't come to a view, properly without having the additional information, could you?

MS ZEKANOVIC: I think we're entitled to present the information in a document, as we have, so the - the Commissioner has all the information available to him in order to make a decision (a) based on this information and other information that he had been presented with as a result of his visit.

5

MR LLOYD: Understand, my questions are really about the process here. This would be another occasion where the proper process, if this was to be pursued, that is, the revocation of the decision to follow the advice and not suspend these officers - that's what we're dealing with?

10

MS ZEKANOVIC: Yes.

MR LLOYD: A proper process would start with the information that is said to be new being made known to the PSC?

15

MS ZEKANOVIC: Yes.

MR LLOYD: The PSC considering whether it changes things?

20

MS ZEKANOVIC: Yes, that would be the normal process.

MR LLOYD: A recommendation from the PSC for you and Mr Skopelja to consider?

25

MS ZEKANOVIC: Yes.

MR LLOYD: You to form your own view about what you recommend, exercising your professional functions?

30

MS ZEKANOVIC: Yes.

MR LLOYD: And for that view having - you having communicated in the document identifying the position of the PSC and the available information, for then the decision-maker to make the decision -

35

MS ZEKANOVIC: Yes.

MR LLOYD: - is not what is happening here, is it?

40

MS ZEKANOVIC: No. The Commissioner may have been - and I don't know what the information was - may have been presented information that, in his view, was so serious that he had to take immediate steps before referring the matter to the PSC.

45

MR LLOYD: Well, this is really what I'm trying to get at, Ms Zekanovic. In terms of the need for transparent decision-making process, first, do you agree that in this disciplinary area, it's critical for the decision-making to be transparent?

MS ZEKANOVIC: Yes.

5 **MR LLOYD:** That's one of the reasons, I assume, why there is this process of the PSC considering it, you making a decision and then decisions get made.

MS ZEKANOVIC: That's correct.

10 **MR LLOYD:** This is not transparent decision-making, it is?

MS ZEKANOVIC: I think - I don't know what the ultimate reason was to suspend. However, I think that PSI did what we were supposed to do in terms of presenting the information and presenting options.

15 **MR LLOYD:** It's not necessarily a criticism of you.

MS ZEKANOVIC: I appreciate that.

20 **MR LLOYD:** You, I assume, got to the point where you weren't prepared to advocate for one position or the other because you didn't have enough information.

MS ZEKANOVIC: That's correct.

25 **MR LLOYD:** In fact, the position that you had was that you had no details that would have changed the position from your perspective as compared to 31 July?

MS ZEKANOVIC: That's correct.

30 **MR LLOYD:** And from your perspective, no information was made known, to your knowledge, to you or anyone else that was different from the decision by the decision-maker to follow the 31 July advice?

MS ZEKANOVIC: Yes.

35 **MR LLOYD:** It sounds like an improper corporate governance process playing out here, culminating in the decision to suspend.

MR SHELLER: Well, I object.

40 **COMMISSIONER:** No, you can ask the question.

MR LLOYD: You're the Acting Director of Professional Standards.

45 **MS ZEKANOVIC:** I -

MR LLOYD: If you tell the Commissioner you can't answer my question, then say so.

MS ZEKANOVIC: I think the Commissioner needs to be able to take steps to address any risks that are presented to Corrective Services, as he needs to. And - and perhaps the information that he was presented was so serious that he needed to take these steps to suspend these officers.

MR LLOYD: The Acting Director of Professional Standards, ie, you, didn't even know; correct?

MS ZEKANOVIC: That's correct. (Indistinct).

MR LLOYD: Because of that, the Commissioner was being deprived of the very thing that had played out with these submissions you and Mr Skopelja are writing, that is, your informed and considered views; correct?

MS ZEKANOVIC: That's one way to look at it, yes.

MR LLOYD: Well, in terms of ways to look at it, can you think of any others?

MS ZEKANOVIC: As I mentioned, I think the Commissioner is entitled to make decisions if he thinks they're appropriate in the - at the time that he's presented with information that would suggest that immediate suspension needs to happen. Yes, it is bypassing the ordinary process. Again, I'm not privy to that information.

MR LLOYD: It's sidelining the ordinary process, isn't it?

MS ZEKANOVIC: That's one way to look at it, yes.

MR LLOYD: Acting as a lone wolf in the sense that being deprived of the consideration both by the Professional Standards Committee and you.

MR SELLER: I object.

MS ZEKANOVIC: Well, we -

COMMISSIONER: I'll allow the question.

MR SELLER: (Indistinct).

MR LLOYD: I'll withdraw the question.

COMMISSIONER: Well, before you put another question, can I just understand this. On page 3 of this extra document, the first dot point under the heading Balanced Against This Is - do you see that?

MS ZEKANOVIC: Yes.

COMMISSIONER: You say - or the document says, which you endorsed - says:

"It should be approached carefully and based on compelling evidence."

5 **MS ZEKANOVIC:** Yes.

COMMISSIONER: Over the page, you say:

10 "The decision to suspend is complicated by the patchwork nature of the evidence."

"Patchwork nature" doesn't suggest compelling, does it?

15 **MS ZEKANOVIC:** No.

COMMISSIONER: So was it your view that the evidence actually wasn't good enough to suspend?

20 **MS ZEKANOVIC:** At that time, we didn't have enough. That's right. Because we said on 31 July, there wasn't enough to - well, no, we didn't have enough. That's correct.

25 **COMMISSIONER:** Why didn't you tell the Commissioner that? Why didn't you just say, "Our recommendation is you don't suspend. There is not compelling evidence"?

30 **MS ZEKANOVIC:** Because the - the Commissioner received information on 19 September at Dillwynia that he was told - or he was informed about, and he took the view that that information warranted suspension.

COMMISSIONER: No, that's not my question. My question was, why didn't you correct this document and have it actually reflect your view that there should not be suspension?

35 **MS ZEKANOVIC:** Well, our - my view was that the Commissioner needs to be presented with all the information that we had available. Whether he used that information and then the additional information that he had been advised of was a matter for him.

40 **COMMISSIONER:** But he's asking, and you're endorsing, recommendations to him. Isn't that what a good administrative process does?

MS ZEKANOVIC: Yes. Yes.

45 **COMMISSIONER:** Your recommendation, as I understand it, should have reflected your view that there should not have been suspension; that's right, isn't it?

MS ZEKANOVIC: That's correct. And I think we make it clear in the submission that we are not supporting the suspension. But ultimately it's a matter for him, which we present to him the options, either suspend or not to.

5

COMMISSIONER: But you didn't give him the benefit of your view that these two gentlemen should not be suspended.

MS ZEKANOVIC: I - I think it's quite clear in the submission what our view was, that the evidence wasn't strong enough.

10

COMMISSIONER: Where do you say, "Having regard to the fact that there's not compelling evidence, only a patchwork nature of evidence, our recommendation is there should not be suspension"? Where's that?

15

MS ZEKANOVIC: It's not in there.

COMMISSIONER: No.

MR LLOYD: Ms Zekanovic, is this the way to understand the change between 31 July and 20 September in terms of your recommendations, going from decline your discretion to exercise the power to suspend on 31 July as opposed to acknowledge and consider the two competing options - is the best way to understand the change that you were told there was additional information -

25

MS ZEKANOVIC: Yes.

MR LLOYD: - that had come to the Commissioner?

MS ZEKANOVIC: That's correct.

30

MR HORTON: I object. The letter makes it very clear (indistinct) -

COMMISSIONER: The letter? What are we referring to?

35

MR HORTON: Sorry (indistinct), the document, makes clear the information is not information but concerns expressed surrounding Mr Astill's offending. It's quite specific as to what the information is. But could the question be put on the basis of what the document asserts, rather than being suggestive of there being -

40

MR LLOYD: Okay. I'll withdraw it.

COMMISSIONER: You've won. It's all right.

MR LLOYD: The record of the information, Ms Zekanovic, on page 1, is that conversations were had where concerns were - further concerns were expressed surrounding Mr Astill's offending. See that?

45

MS ZEKANOVIC: Yes.

5 **MR LLOYD:** And as a result, the Commissioner has expressed his intent to revisit whether it's appropriate to suspend. Do you see that?

MS ZEKANOVIC: Yes.

10 **MR LLOYD:** You didn't have any information about what relevant part of any conversation had on 19 September bore on the decisions already made not to suspend Holman and Paddison; true?

MS ZEKANOVIC: True.

15 **MR LLOYD:** And what you were being told is that something had been conveyed which led to the Commissioner deciding to revisit that decision not to suspend?

MS ZEKANOVIC: Yes.

20 **MR LLOYD:** And that's really the only change, isn't it?

MS ZEKANOVIC: Yes.

25 **MR LLOYD:** And is that why the recommendation goes from recommend - 31 July - not to suspend to here are two options, you don't know which one you can recommend because you're not being told information that would have been critical; is that right?

MS ZEKANOVIC: Yes.

30

MR LLOYD: Did it ever get on to the PSC agendas, to your knowledge?

MS ZEKANOVIC: I - I - I'm not sure.

35 **COMMISSIONER:** Mr Lloyd, I'm troubled by what you just put. My understanding was that her view was there should not have been suspension having regard to the nature of the evidence. That's the answer she gave me.

40 **MR LLOYD:** I'll clear it up. Your view that the Commissioner just stated was your considered view on 31 July; correct?

MS ZEKANOVIC: Yes.

45 **MR LLOYD:** There was nothing that came to your attention to mean that you changed your view by now. Is that fair?

MS ZEKANOVIC: Yes.

MR LLOYD: The only thing that had happened is you were aware of information, but you weren't told what the relevance to Holman and Paddison was?

5

MS ZEKANOVIC: That's correct.

MR LLOYD: The Commissioner, on your understanding, was the person who had that information?

10

MS ZEKANOVIC: Yes.

MR LLOYD: And so -

15

COMMISSIONER: No, no, no. This document doesn't suggest that that's the foundation for an either/or. This document is expressing a conclusion having regard to the nature of the evidence.

20

MR LLOYD: Well, the - I'll take it up:

"The Commissioner acknowledge and consider the availability of the following options, being suspend or decline to suspend."

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COMMISSIONER: Mr Lloyd, that's my point. This document does not reflect her view, which should have been recommend not suspend.

MR LLOYD: Well, you heard the Commissioner's question. What's your response to that question?

30

MS ZEKANOVIC: I think the submission, as I said previously, makes it clear that at the time we, as PSI, didn't have information that would suggest suspension is warranted. However, we came to understand that the Commissioner was presented with information on 19 September in which he formed the view. So we - we drafted this submission to include all of the information that PSI had, giving him those options either to suspend or not. So it wasn't that -

35

COMMISSIONER: No, but that's not what you said in the document. What you said in the document - I put it to you before - is that the evidence is a patchwork and is not compelling. That's what you said in the document.

40

MS ZEKANOVIC: Yes, the evidence that we have in this submission. That's right. Is that's -

45

MR LLOYD: And that was a repeat from 31 July, wasn't it?

MS ZEKANOVIC: I don't have the 31 July in front of me, but - yes. Yes.

MR LLOYD: (Indistinct) the same words.

MS ZEKANOVIC: Yes. Okay.

5 **MR LLOYD:** And the other thing you said just before that on the third page, drawing - under Risks. Again, they're the same words from 31 July.

MS ZEKANOVIC: Yes.

10 **MR LLOYD:** Same risks.

MS ZEKANOVIC: That's correct.

15 **MR LLOYD:** One of the risks being that it opens Corrective Services to criticism and scrutiny that's perceived as victimising non-senior staff without credible evidence -

MS ZEKANOVIC: Yes.

20 **MR LLOYD:** - in self-preservation or is blame-shifting.

MS ZEKANOVIC: That's correct.

25 **MR LLOYD:** There was no information that came to you in terms of the particulars of anything to do with Officers Holman or Paddison that had shifted your view when you balanced those risks that the decision recommended 31 July was not to suspend.

30 **MS ZEKANOVIC:** That's right, which is the reason why it's included again.

MR LLOYD: And just in terms of the process, are you aware of whether anyone other than the then Commissioner knew of what had been told to him on the 19th?

35 **MS ZEKANOVIC:** No, I don't think so.

MR LLOYD: Was there a file note or documentary record of what was told to him?

40 **MS ZEKANOVIC:** I don't - not that I saw.

COMMISSIONER: Ms Zekanovic, I have to put this to you: at the moment, it seems to me one possible conclusion is that this report was prepared in order that the Commissioner would have the option of suspending, but that was not an option which you thought should be taken. Do you understand?
45

MS ZEKANOVIC: Yes.

COMMISSIONER: Why was this report prepared? Who requested it?

MS ZEKANOVIC: The Commissioner.

5 **COMMISSIONER:** The Commissioner. And did he ask that it provide options, suspend or not suspend?

MS ZEKANOVIC: I think the instructions were to prepare a submission to suspend these officers. However, when we looked at the information, we
10 obviously didn't have the information of 19 September, so we put the options in.

COMMISSIONER: So you were told to prepare a report recommending suspension, were you?

15 **MS ZEKANOVIC:** I was told that the Commissioner is considering suspending these officers and to prepare a submission.

COMMISSIONER: Who told you that?

20 **MS ZEKANOVIC:** I think the direction came via Assistant Commissioner Snell.

COMMISSIONER: In writing, or was it orally?

MS ZEKANOVIC: I think it was oral.
25

COMMISSIONER: So a phone call to you or -

MS ZEKANOVIC: I think I was in the office that day with her.

30 **MR LLOYD:** I just want to understand something you just told the Commissioner. The instruction or advice, whatever you want to call it, from Assistant Commissioner Snell was to prepare a submission recommending suspension? Is that what you meant to say?

35 **MS ZEKANOVIC:** I - I think it was instructions that the Commissioner was considering suspension of these officers, and we were to prepare papers or a submission or words to that effect.

MR LLOYD: About that question, or a submission recommending suspension?
40

MS ZEKANOVIC: It was just suspension papers that we were being asked to prepare. So I assume that it was to make a recommendation of suspension. However, once we analysed all the information that we had, we obviously took the view to put the options in.
45

MR LLOYD: Did you understand you were being asked to prepare a submission and being told what the conclusion ought to be, that is, to suspend?

MS ZEKANOVIC: I - you can suggest that, but -

5 **MR LLOYD:** No, no. I don't want to put words into your mouth. If I've got it wrong, it's important for you to say so.

10 **MS ZEKANOVIC:** No. I - I think the way that the submission is written shows that, based on our analysis, we had a particular view on the evidence, which is why we presented it as options.

MR LLOYD: That's not quite my question, though. I'm asking you about -

15 **COMMISSIONER:** No. No, the question - I asked the question earlier on. You said quite plainly that your instructions were to prepare a report for suspension or a recommendation for suspension.

MS ZEKANOVIC: Yes.

20 **COMMISSIONER:** That's what you said.

MR LLOYD: Suspension papers.

MS ZEKANOVIC: Suspension papers.

25 **COMMISSIONER:** Well, what does that mean?

MR LLOYD: And -

30 **COMMISSIONER:** To suspend?

MR LLOYD: And what is - that, I think, came from Assistant Commissioner Snell, that -

35 **MS ZEKANOVIC:** From the Commissioner via Assistant Commissioner Snell, yes.

40 **MR LLOYD:** In terms of process, what is going on here in your view? You have this process which has played out, detailed recommendations, 31 July; a decision made not to suspend; and you are then told by Assistant Commissioner Snell to prepare a submission stating something different to the submission that you prepared before.

MR SELLER: Well, I object. That's not the evidence.

45 **MS ZEKANOVIC:** Well -

MR LLOYD: Well, I think I press that question.

MR SELLER: (Indistinct).

MS ZEKANOVIC: Well, I think there was -

5

COMMISSIONER: I'll allow that question.

MS ZEKANOVIC: There was additional information presented, as is outlined in the submission, on the 19th. Obviously we didn't have that information. PSI, in drafting its submissions, do not draft the submissions necessarily to cater towards a particular end result, which is why these were presented with options. There is no strong recommendation here that says -

10

MR LLOYD: This is you in writing what you're talking about now; correct?

15

MS ZEKANOVIC: Yes.

MR LLOYD: That is, you didn't actually recommend suspension, is what you're saying?

20

MS ZEKANOVIC: I said - I think what I'm saying is that based on the evidence at the time, we didn't think suspension was warranted.

MR LLOYD: My question is the step before suspension papers. Is - and I think my ultimate question is, what is going on here?

25

COMMISSIONER: Well, Mr Lloyd, you need to explore that. I interpret at the moment suspension papers to be papers which recommend suspension. That's my present understanding. Is that correct, Ms Zekanovic?

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MS ZEKANOVIC: Yes.

COMMISSIONER: Yes.

MR LLOYD: And my question is, what's going on? Why - in terms of the decision-making process here, why do you have a situation where a direction is coming from Assistant Commissioner Snell for you to prepare a submission with an identified outcome? She's not the decision-maker.

35

MS ZEKANOVIC: No, she is not, but she's passing the message down from the Commissioner who had the information, which in his view, obviously, warranted the suspension.

40

MR LLOYD: If the suspension was warranted and that was coming from the Commissioner, he hardly needed your submission, on your understanding.

45

MS ZEKANOVIC: No, I think a submission is still warranted.

COMMISSIONER: Mr Lloyd, I'm not sure we can take this matter much further. I understand what's happened.

5 **MR LLOYD:** Can I just ask you: was there any discussion around this time about whether it might be necessary to try and be seen to be doing something in the form of suspending officers in view of the publicity? Is that what was going on in your mind?

10 **MS ZEKANOVIC:** No. Because we'd already taken the decision not to suspend these officers, and it wasn't until after the Commissioner was made available of this additional information on 19 September that that decision was then revisited.

MR LLOYD: Commissioner, those are my questions.

15

COMMISSIONER: Yes, Mr Sheller.

MR SHELLER: I was going to go - I just wanted to see if there were any other questions that anyone wanted -

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COMMISSIONER: Sorry?

MR SHELLER: I was going to go last if anybody else wanted to ask any questions.

25

COMMISSIONER: Okay. No, that's fine. Anyone else got any questions?

<EXAMINATION BY MR WATSON:

30 **MR WATSON:** Thank you. My name is Watson (indistinct) Giles. You were admitted as a lawyer in 1999?

MS ZEKANOVIC: Sorry? I wasn't admitted as a lawyer in 1999.

35 **MR WATSON:** All right. Sorry. You've been a lawyer for a long time; is that right?

MS ZEKANOVIC: A few years, yes.

40 **MR WATSON:** So you're familiar with the - an aspect of what natural justice is?

MS ZEKANOVIC: Yes.

45 **MR WATSON:** And with regards to Westley Giles, he was never given the opportunity - or he was never interviewed, say, with a legal representative of his to address the allegations that have been formed against him that are in - for example, in the document dated 31 July 2023; is that right?

MS ZEKANOVIC: Yes.

5 **MR WATSON:** So I think you spoke - in some of your documents, you spoke about - terms about credible evidence. You understand that even in the terms that you've put in in the recommendations regarding Mr Giles -

MS ZEKANOVIC: Sorry, what page are you at?

10 **MR WATSON:** I'm at - if I can take you to page 37.

MS ZEKANOVIC: Yes.

15 **MR WATSON:** And the Commissioner and Senior Counsel Assisting have taken you to some of these aspects already, but I just want to ask you some questions about the terminology in the document where you say "concerning Westley Giles" and under the heading. It's page 38. Have you got that?

MS ZEKANOVIC: Yes.

20

MR WATSON: It says:

"Staff member, Westley Giles, allegation."

25 Do you see that?

MS ZEKANOVIC: The table?

MR WATSON: Yes.

30

MS ZEKANOVIC: Yes.

MR WATSON: It says:

35 "Complicit 'in some capacity'."

MS ZEKANOVIC: Yes.

MR WATSON: Do you see that?

40

MS ZEKANOVIC: Yes.

MR WATSON: That's a fairly loose term. Do you agree?

45 **MS ZEKANOVIC:** That's just a summary of the allegation.

MR WATSON: Right. But in some capacity - it's not fleshed out. It's not detailed. It's not particularised.

5 **MS ZEKANOVIC:** A decision-maker would have got as an attachment the -

MR WATSON: Well, sorry to interrupt, but -

MR SHELLER: Allow the witness to answer the question.

10 **MR WATSON:** Did he or didn't he get the details?

MS ZEKANOVIC: The decision-makers get all the information that PSI get in making their decisions.

15 **MR WATSON:** But you know he got that material?

MS ZEKANOVIC: Yes.

20 **MR WATSON:** Sure?

MS ZEKANOVIC: Who, Mr Giles?

MR WATSON: No, no, no.

25 **MS ZEKANOVIC:** The decision-maker?

MR WATSON: Yes.

30 **MS ZEKANOVIC:** Yes.

MR WATSON: All right. So in some capacity - do you agree, though, that's a loose term; correct?

35 **MS ZEKANOVIC:** Yes. But as I said, it's a - a summary for the purposes of this table of that allegation.

MR WATSON: All right. Well, why at the end of that section does it say "no specifics"?

40 **MS ZEKANOVIC:** In relation to that point, yes.

MR WATSON: Why does it say "no specifics" if it's detailed -

45 **MS ZEKANOVIC:** Perhaps - perhaps at that time that we received that information, there was no further information about that point.

MR WATSON: Didn't you just say that the decision-maker was provided with details?

5 **MS ZEKANOVIC:** Yeah, but the decision-maker would have been provided with all the information that the Support Unit got on 15 June.

MR WATSON: The next - with the next allegation:

10 "Highly probable he was aware."
Do you see that?

MS ZEKANOVIC: Yes.

15 **MR WATSON:** "Highly probable" was, again, another loose term. Do you agree?

MS ZEKANOVIC: Yes, but these were serious allegations.

20 **MR WATSON:** No, no. Just listen to my question. "Highly probable" is a loose term.

MR SHELLER: (Indistinct).

25 **MR WATSON:** Do you agree?

MS ZEKANOVIC: A loose term?

MR WATSON: Yes. It lacks particularity, doesn't it?

30 **MS ZEKANOVIC:** It does. But I think for the purposes of suspending someone, with such serious allegations, sometimes that's all we've got to - to remove someone from our workplace.

35 **MR WATSON:** See, that's the conundrum, isn't it, because it's such a serious process to suspend someone - it's serious, isn't it?

MS ZEKANOVIC: Yes.

40 **MR WATSON:** Right. And what you're, in fact, doing - and even though Mr Giles was suspended with pay, it meant that any application that he made for promotion was just stalled; correct? He couldn't apply for a promotion; is that right?

45 **MS ZEKANOVIC:** It depends. The decision-makers can check with PSI what the allegations are, if they're going for a suspension.

MR WATSON: Well -

MS ZEKANOVIC: So not - not - sorry.

5 **MR WATSON:** Take it from me, he hasn't been able to apply for a promotion since he's been suspended.

MS ZEKANOVIC: Mmm.

10 **MR WATSON:** It also - you would understand, I'm sure, that there is an impact upon his welfare and mental health for being suspended?

MS ZEKANOVIC: I understand.

15 **MR WATSON:** Is that right?

MS ZEKANOVIC: Yes.

20 **MR WATSON:** Even though he sits at home and he's being paid, you would understand, fairly, that it impacts on aspects of his life; correct?

MS ZEKANOVIC: No doubt.

MR WATSON: So there's a cost; is that right?

25 **MS ZEKANOVIC:** Yes.

30 **MR WATSON:** So it's a serious process where a whole range of things have to be taken into account, and I'd suggest to you one of the most important considerations is the strength of the evidence to substantiate or warrant the suspension of a Correctives officer. Do you agree?

MS ZEKANOVIC: Yes.

35 **MR WATSON:** Rather than just rumour or innuendo. Do you agree?

MS ZEKANOVIC: Yes, but I think this table clearly sets out that we had a number of sources.

40 **MS ZEKANOVIC:** Have you listened to the evidence of Westley Giles in this Inquiry?

MS ZEKANOVIC: No, I have not.

45 **MR WATSON:** Have you tasked anybody to listen to the evidence - because I'm appearing for Mr Giles, that's the only officer I'm concerned with. Have you tasked anybody to listen to the evidence of Mr Giles concerning these very allegations?

MS ZEKANOVIC: No.

5 **MR WATSON:** I think you've said already to the Commissioner that he was never offered an opportunity to respond to the allegations?

MS ZEKANOVIC: Not yet.

10 **MR WATSON:** Not yet. Excuse me, Commissioner. The document that you have in front of you concerning Mr Holman and Mr Paddison dated 20 September 2023 -

MS ZEKANOVIC: Sorry, what page are you on?

15 **MR WATSON:** The last page.

MS ZEKANOVIC: Last page of the submission -

20 **MR WATSON:** Yes.

MS ZEKANOVIC: - or this new document?

MR WATSON: The new document that we provided.

25 **MS ZEKANOVIC:** Yes.

MR WATSON: I think it was Exhibit 48, I think. It says at the top:

30 "The decision to suspend is complicated by the patchwork nature of the evidence."

Do you see that?

35 **MS ZEKANOVIC:** Yes.

MR WATSON: That was - I think the Commissioner asked you a question about what that actually meant, and I think it meant that it was - meant that the evidence either lacked substance or clarity. I'm not exactly sure of the term that the Commissioner used. Remember being asked that question about what "patchwork of evidence" meant?

40 **MS ZEKANOVIC:** Yes.

45 **MR WATSON:** In fact, the same words - the document of 31 July says exactly the same terms:

"The decision to suspend is complicated by the patchwork nature of the evidence."

And you go further and say this:

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"While it's appreciated that time is of the essence, further investigations are forthcoming."

Is that right, concerning Mr Giles? Is there further investigations forthcoming?

10

MS ZEKANOVIC: I'm not sure I'm able to answer that at this point.

MR WATSON: All right:

15

"It may be most prudent to act where the evidence is strongest and await further information in respect of the rest."

So Mr Giles' evidence in this Inquiry could be considered as something relevant for your considerations, do you think?

20

MS ZEKANOVIC: I'm not sure what evidence Mr Giles came, so I can't answer that question.

MR WATSON: And then further you say:

25

"There's no bar to reconsidering suspension at any time..."

Has that occurred regarding Mr Giles, a consideration?

30

MS ZEKANOVIC: Every 30 days, each person that's suspended, their suspension is revisited by the decision-maker.

MR WATSON: All right. Well, when's the next 30 days come up for Mr Giles?

35

MS ZEKANOVIC: I don't know off the top of my head.

MR WATSON: And because that consideration seems - well, it's got to come up at some point. Would the evidence that he's given in this Inquiry be considered at that time?

40

MS ZEKANOVIC: I'm not sure. I would have to take that on notice.

MR WATSON: All right. Anyway, what you say here is:

45

"There is no bar to reconsidering suspension at any time, and this could be done as and when that information is received."

Is that right?

MS ZEKANOVIC: Yes.

5 **MR WATSON:** They're my questions. Thank you.

COMMISSIONER: Ms Zekanovic, in that same document on the first page, the document is dated 20 September. You record you understand the Commissioner attended Dillwynia on the 19th.

10

MS ZEKANOVIC: Sorry, where are you?

COMMISSIONER: The first page.

15 **MS ZEKANOVIC:** Yes.

COMMISSIONER: Down about point 7:

20 "During this visit, conversations were had with staff where further concerns were expressed surrounding Mr Astill's offending."

Now, who told you that?

25 **MS ZEKANOVIC:** I think I got that information from Assistant Commissioner Snell.

COMMISSIONER: And you weren't told who he spoke to - who the Commissioner spoke to?

30 **MS ZEKANOVIC:** No.

COMMISSIONER: Did it occur to you it might be the same people that had already come forward?

35 **MS ZEKANOVIC:** Possibly. I - I assumed it may have been some of those people.

COMMISSIONER: Well - but as far as you're concerned, you were excluded from knowledge of what they'd said?

40

MS ZEKANOVIC: I was not privy to that knowledge. That's correct.

COMMISSIONER: Would you normally prepare a report when you actually didn't know all of the facts?

45

MS ZEKANOVIC: The report - this submission was prepared with the information that we did know - what we did know, obviously, and the fact that the

Commissioner attended Dillwynia and was presented with further information, which is all we knew. So everything that we knew has been included in here. But in terms of those specifics, no, we did not know that, which is why we gave the options of to suspend or not to suspend.

5

COMMISSIONER: Do you think that someone who's suffered suspension would think it was a fair process that a report had gone to the decision-maker saying, "It's open for you to suspend," when the person making that report didn't know all the facts? Would that be fair?

10

MS ZEKANOVIC: In most cases that we suspend staff, we only present to them the allegations in a very general -

COMMISSIONER: No, no, no. No. You're writing to the decision-maker. You're recommending that suspension is available, but you do it knowing that you don't know all of the facts.

MS ZEKANOVIC: But the decision-maker in this instance knew the information that he was relying on. I -

20

COMMISSIONER: You're not listening to me. You're making a report to the decision-maker, right? And in that report, you say, "It's open to you to suspend." But you make that decision or recommendation without knowing all of the facts yourself. Do you understand? Do you think that someone who's suffered suspension ultimately in those circumstances would think they'd been fairly treated when the report recommending the possibility of suspension was made without knowing all of the facts?

25

MS ZEKANOVIC: I can - I can absolutely see the unfairness in that. I can only assume that the information the Commissioner had at the time was so serious to warrant immediate action.

30

COMMISSIONER: Well, you don't know, do you?

MS ZEKANOVIC: No.

35

COMMISSIONER: Anyone else have questions?

MR HORTON: Yes. May I?

40

COMMISSIONER: Yes.

<EXAMINATION BY MR HORTON:

MR HORTON: I'd like to just ask you a few questions, not many, about the policies and procedures which you've annexed to your first statement. You're responding, as I understood it, to a summons?

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MS ZEKANOVIC: Yes. I don't have a copy of my first statement.

MR HORTON: Might that be provided?

5

MS ZEKANOVIC: Thank you.

MR HORTON: Would you just turn to paragraph 23, please, of your first statement there if it's in front of you.

10

MS ZEKANOVIC: Paragraph 23? Yes.

MR HORTON: You say there you're responding to a summons -

15

MS ZEKANOVIC: Yes.

MR HORTON: - to produce all policies and procedures applicable during the period of Mr Astill's employment at DCC?

20

MS ZEKANOVIC: Yes.

MR HORTON: And you've done that, I think, in Annexure 1?

MS ZEKANOVIC: To the best of my knowledge.

25

MR HORTON: And then you go on to say some of those you think were still applicable now - in fact, "remain in force today" are the words you say in the next paragraph.

30

MS ZEKANOVIC: Yep.

MR HORTON: I'm going to take to you just two aspects of it, because I'm trying to understand this: Whether in any of the policies and procedures you've produced that might have still applied at September 2017 - whether there's some established entire process revealed in them, in writing, where all matters are to be referred to PSB rather than dealt with in terms of more minor matters at managerial level.

35

MS ZEKANOVIC: I would have to go back and have a look at the documents.

40

MR HORTON: Might I give you just two specific respects in case that jogs your memory. The first one is - just for the assistance of those looking, PDF page 161 of the statement. And that is the document called the Management of Professional Conduct in the Department of Corrective Services. It's a dated September 2002.

45

MS ZEKANOVIC: Sorry, which Tab are we -

MR HORTON: I haven't been provided with tabs, I'm sorry. PDF161 is the best I can do on my electronic version. Tab 142, I'm told, in Volume 9.

MS ZEKANOVIC: These - these documents aren't Tabbed. Sorry.

5

MR HORTON: I'm sorry. You'll be shown the document. Do you recall whether this document, the Management of Professional Conduct in the Department of Corrective Services, September 2002, was applicable as at September 2017?

10 **MS ZEKANOVIC:** It would have to depend on when the document ceased to exist.

MR HORTON: Yes, that's my question.

15 **MS ZEKANOVIC:** I'm not sure what I put in my statement. I haven't -

MR HORTON: You've said those two matters I took you to, which is it was in force at the time of Mr Astill's employment.

20 **MS ZEKANOVIC:** Yes.

MR HORTON: But you said some of these remain in force today.

MS ZEKANOVIC: Yes.

25

MR HORTON: My question is about this document.

MS ZEKANOVIC: No. Are you asking me if it remains in force?

30 **MR HORTON:** As at September (indistinct). I'm sorry.

MS ZEKANOVIC: I'm sorry. These are historical documents. Unless it's included in my first statement, I can't verify that.

35 **MR HORTON:** This is in your first statement.

MS ZEKANOVIC: So which paragraph in my first statement?

MR HORTON: The ones I took you to, 23 and 24, at Annexure 1.

40

MR LLOYD: I rise not to object or attempt to be difficult but rather to assist. Paragraph 45 of Ms Zekanovic's statement of 17 November says something about this topic.

45 **MR HORTON:** Might (indistinct) be provided with a copy of that?

MR LLOYD: Certainly. I think that's -

MS ZEKANOVIC: I don't have a copy of that. I don't have a copy of my statement. The second statement, I think we're referring to now.

5 **COMMISSIONER:** Which paragraph was that, Mr Lloyd?

MR LLOYD: Paragraph 45, Commissioner.

10 **MS ZEKANOVIC:** This is my - do you mean my third statement? Because my - third statement, sorry, because my second statement only has -

MR HORTON: 14 paragraphs.

15 **MS ZEKANOVIC:** Yes.

MR HORTON: Yes. That's my understanding. Sorry, I'm going off what someone else is telling me about where the answer is. It must be the third, perhaps. It is paragraph 45 of your second supplementary statement (indistinct).

20 **MS ZEKANOVIC:** Okay. Yes.

MR HORTON: In what way?

25 **MS ZEKANOVIC:** So it looks like the Management of Professional Conduct issued 2002 was superseded by the Department of Justice Managing Misconduct Procedure in February 2016.

30 **MR HORTON:** Yes. And did that policy reveal any written process by which all complaints were to be sent to PSB?

MS ZEKANOVIC: I wasn't working for - for Professional Standards or Corrective Services at that time, so I don't know the intricacies of that document.

35 **MR HORTON:** Thank you. Can I ask you about one other - just one other aspect of your first statement.

MS ZEKANOVIC: Yep.

40 **MR HORTON:** You might recall it's the Commissioner's instruction number 10 of 2013 about reporting corrupt conduct. For the reference, it's at PDF228 of the version which is electronic of your statement, about halfway through that document. I'm going to ask you the same question. To your knowledge, was that or was that not in force as at September 2017?

45 **MS ZEKANOVIC:** If it was issued in 2013, highly likely, yes.

MR HORTON: Unlikely what?

MS ZEKANOVIC: Highly likely that it was in force.

MR HORTON: As at September 2017?

5

MS ZEKANOVIC: Yes, unless another one was issued afterwards. But if I didn't include it in my evidence, then - yeah, it was unlikely.

MR HORTON: Thank you. Are you aware of any other policy or procedure that's not annexed to your statement which as at September 2017 was - reflected an entire established process by which all complaints - all complaints - were to be referred to PSB or its then equivalent?

MS ZEKANOVIC: Everything that I've included in my first statement is all that I'm aware of that operated at that time.

15

MR HORTON: Including as at September 2017, to be sure?

MS ZEKANOVIC: Yes, the - yes.

20

MR HORTON: Thank you.

COMMISSIONER: Anyone else?

MS GHABRIAL: Thank you, Commissioner.

25

<EXAMINATION BY MS GHABRIAL:

MS GHABRIAL: Ms Zekanovic, my name is Ms Ghabrial and I appear for a group of correctional officers. I just wanted to start by asking you a question about the submission to the Commissioner that you did in September 2023. Now, as I understand your evidence, you received a direction from the Commissioner that was orally communicated to Assistant Commissioner Snell; correct? And then communicated to you? And that was a direction that came from the Commissioner?

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MS ZEKANOVIC: A request, yes.

MS GHABRIAL: Well, the word you used earlier was it was a direction. So it was a direction, wasn't it?

40

MS ZEKANOVIC: You can take it as a direction, yes.

MS GHABRIAL: Well, the word you used earlier was that you were directed -

45

MS ZEKANOVIC: Sure.

MS GHABRIAL: - to do that.

MS ZEKANOVIC: Okay. Correct.

5 **MS GHABRIAL:** So it was a direction; correct?

MS ZEKANOVIC: Yes.

10 **MS GHABRIAL:** Now, at the time that you received that direction, you were the Acting Director of Professional Standards; correct?

MS ZEKANOVIC: Yes.

15 **MS GHABRIAL:** And as the Acting Director of Professional Standards, even though you report to Assistant Commissioner Snell, was your position, as you understood it, meant to be an independent one?

MS ZEKANOVIC: Yes.

20 **MS GHABRIAL:** And that you were able to independently exercise your own judgment in respect of what was right and what was wrong; correct?

MS ZEKANOVIC: Yes.

25 **MS GHABRIAL:** So when you received this direction from the Commissioner, did you think to yourself, "This is highly irregular"?

30 **MS ZEKANOVIC:** I thought that, yes, it's a deviation from the usual process, but I also thought that the Commissioner must have some information that's so overwhelmingly serious that requires him to act urgently in relation to considering suspension.

35 **MS GHABRIAL:** So not knowing that information, which you've indicated to the Commission today, would you agree that if there was no information at all, that it was highly irregular?

MR SHELLER: I object. My friend says "no information". No information from whom concerning -

40 **MS GHABRIAL:** Well, no further information known to the Commissioner, then it would be highly irregular; correct?

MR SHELLER: I object.

45 **COMMISSIONER:** Well -

MR SHELLER: Is the witness to assume that (indistinct)?

COMMISSIONER: That's - no, it's all right. That's contrary to the report.

MS GHABRIAL: I'll ask it a different way.

5

COMMISSIONER: We've been well over this ground.

MS GHABRIAL: I will -

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COMMISSIONER: I fully understand what happened, and I don't think I need any more help.

MS GHABRIAL: I just want to ask this, Commissioner, in terms of this officer's duties.

15

COMMISSIONER: Well, I think she's dealt with that too. Her obligation was to make a recommendation based upon the material that was known to her. She's accepted that.

20

MS GHABRIAL: Well, I dispute that, and I'm challenging it, Commissioner.

COMMISSIONER: What, that she didn't -

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MS GHABRIAL: That that was what her obligation was. I'd like to suggest to this witness -

COMMISSIONER: Her obligation wasn't to act upon what she knew?

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MS GHABRIAL: Not to act upon the direction given to her by the Commissioner, that she had another -

COMMISSIONER: I don't think she had much choice but to prepare another report.

35

MS GHABRIAL: Well, that's what I'm trying to get to.

COMMISSIONER: The question is what goes in it.

40

MS GHABRIAL: Can I just ask a couple of - if the Commissioner could just indulge me for a short time.

COMMISSIONER: We've been well over this ground.

45

MS GHABRIAL: I know, but if you could just indulge me for a moment and I'll try and get to the point quickly. You didn't ask the Commissioner what that further information was; correct?

COMMISSIONER: We know that. She's told us that.

MS GHABRIAL: Okay.

5 **COMMISSIONER:** She didn't know what it was.

MS GHABRIAL: Not knowing that information, you would have to agree that this was a highly irregular step; correct?

10 **MS ZEKANOVIC:** I've already agreed that, yes.

MS GHABRIAL: All right. And did it not occur to you, as the Acting Director of Professional Standards, that the Commissioner might not have been exercising his duties appropriately?

15

MR SELLER: I object.

MS GHABRIAL: Is that a section 23 objection? Yes.

20 **COMMISSIONER:** Well, I'm not sure that it's fair to ask her that question.

MS GHABRIAL: Well -

25 **COMMISSIONER:** She has, I think rightly, been put in a position where she received and acted upon a direction. She did that to the best of her ability perhaps. But as I've pointed out to her, and as she has accepted, the document that she ultimately prepared doesn't reflect her true view, and that's where it sits.

MS GHABRIAL: Well, just in relation -

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COMMISSIONER: It will be open for me to draw conclusions when I've heard all of the evidence in relation to what all that means.

35 **MS GHABRIAL:** In relation to that, Commissioner, I will ask a question specifically in relation to her view. When you go -

COMMISSIONER: We know her view. She's given it to us already.

40 **MS GHABRIAL:** But it's not what's reflected in this report, Commissioner.

COMMISSIONER: I know. We've been over that as well. Please listen to what I'm saying. We have fully explored this issue. I have a complete understanding of her evidence in relation to it.

45 **MS GHABRIAL:** All right. Then I'll -

COMMISSIONER: There may be more evidence to come. But nevertheless, at this stage, I know what she's been saying.

5 **MS GHABRIAL:** Then I'll ask this question: did you think to yourself, "I've worked at ICAC. I have helped ICAC with reviews. I have experience in this area." Did the definition "corrupt conduct" not -

COMMISSIONER: I'm not going to allow that question.

10 **MS GHABRIAL:** Did you not feel that you had an obligation to report the Commissioner to ICAC at that stage?

COMMISSIONER: I'm not going to allow that question either.

15 **MS GHABRIAL:** Did you feel like you had any choice at all to challenge the Commissioner's direction in any way?

20 **MS ZEKANOVIC:** I think that the submission, because it doesn't come to a firm view - we don't say in the submission we agree with suspension. We give options. So it's ultimately a matter for the decision-maker who, in that case, was the Commissioner.

25 **MS GHABRIAL:** Did you think to challenge the Commissioner in respect of the route that he was taking in bypassing the PSC?

MS ZEKANOVIC: Again, I think I said earlier that, at that time, the Commissioner must - or was presented with information that, in his view, required immediate action. He is the head of the agency. He's entitled to take - take steps to reduce a risk that he sees.

30

MS GHABRIAL: Even though he's not the delegated decision-maker?

MS ZEKANOVIC: He is a delegated decision-maker under the -

35 **MS GHABRIAL:** He wasn't the delegated decision-maker in respect of this decision, was he?

MS ZEKANOVIC: Not initially.

40 **MS GHABRIAL:** No. In fact, nowhere in your recommendations do you say to the Commissioner, "I recommend that this goes back to the PSC for reconsideration and that it is not appropriate for the Commissioner to be making a determination on information that I'm not aware of." You don't say that, do you?

45 **COMMISSIONER:** Well, look, this is not helping me at all. We've been over this ground completely. I fully understand what's happened, at least so far as this witness's evidence is concerned.

MS GHABRIAL: You didn't discourage him from taking that step, did you?

5 **COMMISSIONER:** I'm not going to allow that question. Look, we've - I'll say it again, we've exhausted it. I'm going to ask you to sit down very soon.

10 **MS GHABRIAL:** Well, I will move on, Commissioner. When you came into your role as the Acting Director of Professional Standards, did you make yourself familiar with the report that had been produced by ICAC in relation to Operation Estry?

MS ZEKANOVIC: I was -

15 **MR SELLER:** I object.

MS GHABRIAL: Can I tell your Honour the relevance of this?

20 **COMMISSIONER:** I'm not sure why you object, Mr Sheller. I'm not sure where it goes at this stage, but I'll allow that question.

MS GHABRIAL: Thank you. Did you?

25 **MS ZEKANOVIC:** I read the recommendations when I started working at Professional Standards in February 2022, but that was a while ago.

MS GHABRIAL: Have you read the recommendations?

MS ZEKANOVIC: That was a while ago, so I don't remember them.

30 **MS GHABRIAL:** And I'll be brief in summary. It was about the use of force at Lithgow Correctional Centre?

MS ZEKANOVIC: Yes.

35 **MS GHABRIAL:** Yes. And the Assistant Commissioner for Custodial Corrections at the relevant time, as far as you're aware, was the now Commissioner Corcoran; correct?

40 **MS ZEKANOVIC:** Yes.

45 **MS GHABRIAL:** And in that report, did you read that when the - when ICAC came to make a recommendation in respect of the Corrective Services New South Wales investigations and the types of things - or the types of problems that were faced in respect of the decision-making process, this is what ICAC actually said - this is page 79. Commissioner, I've provided a copy of this report last night to those assisting the Commissioner. This is the full ICAC report. I'm going to page 79:

5 "During 2014, the decision-maker in relation to alleged misconduct at the
LCC was the Assistant Commissioner of Custodial Corrections, who was
responsible for the management of all Correctional Centres. Across
Correctional Services New South Wales more generally, the decision-maker
was the person responsible for the area in which the misconduct had
occurred. Therefore, the officer who decided whether a formal investigation
would take place was not independent. This was not consistent with best
practice, including advice provided in the Australian Standard on Fraud and
10 Corruption Control, AS8001-2008. It also had the potential to undermine
statutory reporting to the Commission under section 11 of the ICAC Act."

15 So, firstly, just in relation to that, the current regime still has - as I understand your
evidence today, the Assistant Commissioner who is responsible for the business
unit over which they have oversight is the person who is responsible as the
decision-maker in respect of conduct of their employees; correct?

MS ZEKANOVIC: Sorry. I don't think I follow.

20 **MS GHABRIAL:** So the decision-maker - I think the evidence that you gave
earlier was - and I think giving Michael Paddison and Mr Giles as the examples.
You said that there were two different decision-makers.

25 **MS ZEKANOVIC:** Yes.

MS GHABRIAL: That was because Michael Paddison was working under
a different division in head office at that time; correct?

30 **MS ZEKANOVIC:** He was working under a different division. I'm not sure if he
was based at head office, but -

MS GHABRIAL: So the Assistant Commissioner that was the head of his
division was the decision-maker in respect of his conduct; correct?

35 **MS ZEKANOVIC:** Initially yes.

40 **MS GHABRIAL:** And in respect of Mr Giles, the Assistant Commissioner in
respect of what used to be known as Custodial Corrections - I don't know what the
name of that division is in its entirety now, but the equivalent of that is also the
decision-maker then for that person, the person who works under them; correct?

MS ZEKANOVIC: Yes.

45 **MS GHABRIAL:** So what the ICAC said about that is:

"The lack of independence created, at the very least, a perception that
investigations might be compromised. Mr Hovey informed the Commission

that there had previously been cases where PSB requested an investigation, but the decision-maker from the operational business unit resisted creating a war of attrition. More generally, there were perceptions of self-interest if a decision-maker refused to authorise an investigation into his or her area.
5 These perceptions could exist even if the decision in question was entirely justified."

They then also said this:

10 "Given the decision-maker was ultimately responsible for the conduct or misconduct of officers who might be the subject of investigation, there was a significant risk that the decision-maker's decision would be regarded as one infected by favouritism, thereby affecting the willingness of correctional officers to report misconduct in the future."

15 Was that something that you were aware of as being stated by ICAC after they did their investigation resulting from Operation Estry?

20 **MS ZEKANOVIC:** As I said, I read the report briefly in February 2022. I haven't had the time to revisit it again. That report was from a few years ago. That was in relation to conduct that was almost a decade ago, is my understanding.

25 **MS GHABRIAL:** But what ICAC had raised were legitimate issues in relation to the lack of independence of the decision-makers, because the decision-makers, on your evidence today, are still the people who have oversight of the people over which they are making the decisions.

30 **MS ZEKANOVIC:** What happened with the recommendations in Operation Estry - I had no involvement or oversight. So in terms of the people that you're referring to, I'm not sure what else you'd like me to comment.

35 **MS GHABRIAL:** But does it not concern you that the people who are making the decisions in respect of the employees under their direct command are actually not independent decision-makers? Does that not concern you?

MS ZEKANOVIC: They are - they - it's PSI that provides a level of independence and provides the recommendations to be able to look at the material that PSI obtain, to look at it objectively and make that assessment.

40 **MS GHABRIAL:** But, ultimately, it's the decision-maker that makes the decision; correct?

MS ZEKANOVIC: Yes.

45 **MS GHABRIAL:** And in this case, in September 2023, it wasn't even the decision-maker; the Commissioner bypassed the entire process all together, didn't he?

MR SHELLER: I object. The Commissioner is the decision-maker.

MS ZEKANOVIC: The Commissioner is entitled to make decisions.

5

MS GHABRIAL: By bypassing Professional Standards all together, didn't he?

MS ZEKANOVIC: He didn't bypass Professional Standards all together; we still provided him with a submission.

10

MS GHABRIAL: Did that not create - well, just in respect of that, the direction was to prepare a submission for suspension; correct?

MR LLOYD: I object. Commissioner, I'm quite sure that you made it clear about 10 minutes ago that this had been explored, and we're now back to it.

15

MS GHABRIAL: I'm asking a different question, Commissioner, if I may. Just one question, please.

COMMISSIONER: All right. Yes.

20

MS GHABRIAL: So obviously I've asked the question that he's bypassed the Professional Standards. Did it not occur to you that that might not - that might have been evidence of a lack of independence in the Commissioner?

25

MS ZEKANOVIC: The Commissioner was still making his decision based on the information that we provided in the submission.

MS GHABRIAL: Just moving forward, do you think that there is utility to address the actual issues raised by ICAC in June 2019? I take it from your evidence that you're not aware of any of those concerns actually having been addressed by Corrective Services New South Wales; correct?

30

MS ZEKANOVIC: That report came out at a time that I wasn't at Corrective Services.

35

MS GHABRIAL: I'm not criticising you for them not being implemented.

MS ZEKANOVIC: No, I just - I - I honestly can't answer that. I was not there at that time.

40

MS GHABRIAL: But I take it from your evidence that the concerns expressed by ICAC have not been addressed by Corrective Services New South Wales. That would be fair to say?

45

MS ZEKANOVIC: I can't answer that question.

MR SHELLER: I object. "Concerns" should be specified rather than just the question being put in general terms.

5 **MS GHABRIAL:** Well, the concerns about the decision-makers not actually being independent, and what I've actually read out on to the record as being the concerns by ICAC. It would be fair to say that that regime hasn't changed?

10 **MS ZEKANOVIC:** I'm not sure what the regime was in 2019 in relation to (crosstalk).

MS GHABRIAL: Well, I've just read it to you. ICAC said that it was that the Assistant Commissioner who was in charge of the business unit in which the employee worked was the decision-maker, which created concerns for ICAC that there was a lack of independence.

15 **MS ZEKANOVIC:** Well, that was - that was what ICAC found at the time, and that person was in that position then. So I'm just not sure I can answer that question.

20 **MS GHABRIAL:** That person was Assistant Commissioner Corcoran at the relevant time.

MS ZEKANOVIC: I can't answer a question that goes to an ICAC report from 2019.

25 **MS GHABRIAL:** When you received the direction, were you aware that Commissioner Corcoran was the Assistant Commissioner of Custodial Corrections during the period of Wayne Astill's offending conduct?

30 **MS ZEKANOVIC:** Yes.

MS GHABRIAL: And so when the words on page 3, at the bottom under the heading Risks, were written - which says:

35 "CSNSW is already under considerable scrutiny in respect of its handling of Mr Astill's offending. Further perceived inaction, particularly if hindsight demonstrates that inaction was an error, would exacerbate any criticisms."

40 So when you wrote those words, you knew that the person who was in charge and responsible for the officers at the Correctional Centres was Assistant Commissioner Corcoran during the relevant period, didn't you?

MS ZEKANOVIC: Yes.

45 **MS GHABRIAL:** And so you were highlighting to the Commissioner - would it be fair to say - that any further perceived inaction by him could result in criticism of him? Would that be fair to say?

MS ZEKANOVIC: No. I think what this was talking about was these matters before him, not for matters in the past, of which I had no understanding or visibility of how things operated then or decisions that were made then. Those risks were highlighted in relation to the matters - or the POIs that are raised in this submission.

MS GHABRIAL: Did you not think to yourself that because he was the Assistant Commissioner of Custodial Corrections in charge and responsible for the officers at Dillwynia at the relevant time of Astill's offending, that he had a conflict of interest in giving that you direction?

MS ZEKANOVIC: No. He'd - he'd been elevated to the level of Commissioner. He still has the delegation ability to be a Commissioner over these officers.

MS GHABRIAL: Do you think that there is some utility in making the PSI an actual completely independent unit under the ambit of the Department of Justice as opposed to being under the umbrella of Corrective Services New South Wales, so as to actually address the concerns that were expressed by ICAC in June 2019. Do you think there would be utility in that?

MS ZEKANOVIC: I am not sure. Corrective Services, unlike the other areas or directorates or divisions under The Department of Communities and Justice, Corrective Services is quite unique and has obviously a unique function and staffing. So I'm not sure that DCJ oversight in terms of moving PSI into their Conduct and Professional Standards would necessarily provide anything additional. The HR of DCJ sits on the Professional Standards Committee and already has a say in how Correctives handles its misconduct matters. So I'm not sure moving it to that area (a) they would have the understanding or familiarity exactly with how a correctional system or environment operates, and (b) whether it would add anything additional in terms of independence.

MS GHABRIAL: What about having independent decision-makers who have delegated authority but who are actually external to the organisation so that there is a complete independence in respect of the decision-making process?

MS ZEKANOVIC: I think.

COMMISSIONER: I don't think that could work, I'm sorry. That's not going to happen. You can't be delegating to people outside the entity.

MS GHABRIAL: In respect of the concerns expressed by ICAC, as the Acting Director of Professional Standards, how do you think those concerns can actually be addressed?

MS ZEKANOVIC: A good question. I think the Professional Standards and Investigations Branch, when providing advice provides it independently.

Obviously you know, we've got a number of lawyers in the team who prepare their advice based on their own analysis of the information before them. The Professional Standards Committee is a next layer of, I guess, independence from PSI to, I guess, validate or not our recommendations. So, in terms of that independence, I think we are independent from the rest of Corrective Services. There are no staff - most staff come from outside the agency or a non-custodial environment.

MS GHABRIAL: You have no power to disagree with the decision-makers in any way, do you?

MS ZEKANOVIC: That's not our function. No. Our function - our function is to provide advice and recommendations.

MS GHABRIAL: What if you perceive that the decision-maker is not acting in accordance with proper judgment or appears to be acting outside of the recommendations for ulterior interest or ulterior purposes?

COMMISSIONER: I'm not sure that's a helpful question.

MS GHABRIAL: Well, I would like to know, Commissioner, what the PSC and the PSI feel that they can do if they have got a decision-maker who is making decisions that are questionable.

COMMISSIONER: Well, if the decision-makers are making decisions that are questionable, they will be questionable. That may end up visiting real problems involving the organisation. But it's a question of whether or not the organisation is effectively managed or not, and that starts at the bottom and goes right through to the top. That's one of the reasons we're here.

MS GHABRIAL: Can I just take you to Volume 18, if I may.

COMMISSIONER: How much longer are you going to be?

MS GHABRIAL: Not long. This is the last area.

COMMISSIONER: Mr Sheller, how long do you need?

MR SELLER: I'll need about 20 minutes or so.

COMMISSIONER: Well -

MR SELLER: I mean, I want to - this has been exhausting for the witness. I'm not sure if the witness - how much more time the witness can -

COMMISSIONER: I've only got until 10 past 4.

MR SHELLER: Thank you.

MS GHABRIAL: I'm not going to be much longer, Commissioner. Thank you. Have you got Volume 18? If I could first take you to Tab 614. This is a briefing
5 that was done in July - just bear with me for a moment.

MS ZEKANOVIC: So did you say 604?

MS GHABRIAL: It's Tab 614 and it's a briefing regarding Corrective Services
10 New South Wales staff.

MS ZEKANOVIC: Yes.

MS GHABRIAL: There doesn't appear to be a date on this but - no, that's right.
15 14 July 2023 at the bottom of the page -

MS ZEKANOVIC: Yes.

MS GHABRIAL: - appears to be the date. So this was a briefing that was done in
20 respect of a referral to ICAC; is that correct?

MS ZEKANOVIC: Yes.

MS GHABRIAL: And there was a referral to ICAC in respect of a number of
25 staff, and you can see a number of staff's names have been blacked out. Can I take
you to page 5, please. Under the heading Other Staff to Note there are two names
in the blacked out: one is no longer employed and the other one is active. In
relation to those two people, they appear to be referred to in a letter from ICAC to
the Commissioner, Kevin Corcoran, in Tab 615. I just wanted you to confirm.

30

MS ZEKANOVIC: Yes.

MS GHABRIAL: So if you look at page 2 of that document in Tab 615, there's
35 reference to point number 4 in the table at the top and it says this:

35

"Amongst other allegations it was alleged that former Director Investigations
Branch Michael Hovey was selective in what he investigated and
manipulated investigation outcomes. Further, it was alleged that intelligence
analyst Sarah Casey performed black book work for Mr Hovey with this
40 work suggested to involve manipulation of investigations."

40

Do you see that?

MS ZEKANOVIC: Yes.

45

MS GHABRIAL: So I take it those two people referred to there by ICAC are
actually the two people that are blacked out earlier in the document?

MS ZEKANOVIC: I don't know. I didn't write the briefing note.

5 **MS GHABRIAL:** When this letter was received by Commissioner Corcoran, it was copied into you. Do you remember receiving this?

MS ZEKANOVIC: Yes.

10 **MS GHABRIAL:** And there it says before that table was produced, on page 1 it says:

"The Commission has reviewed its information holdings and considers the following matters..."

15 And I quote:

"...of which CSNSW are aware may assist in any investigation."

20 **MS ZEKANOVIC:** Yes.

MS GHABRIAL: So what ICAC has said is that the CSNSW, Corrective Services, is aware of what has been quoted in point number 4; correct?

25 **MS ZEKANOVIC:** Yes.

MS GHABRIAL: And ICAC then said on page 1 that:

"The Commission will await the outcome of the Inquiry and any investigation of further enquiries undertaken by CSNSW."

30 Now, there two questions that arise from that statement. Firstly, at the time that the Commissioner made this referral in July 2023 to ICAC, he was aware - you are aware that he was aware that there was going to be an Inquiry in relation to Wayne Astill?

35 **MS ZEKANOVIC:** Yes. I assume so.

MS GHABRIAL: And by August of 2023, he was aware that that Inquiry was coming up in September 2023; correct?

40 **MS ZEKANOVIC:** Yes. I assume so.

MS GHABRIAL: Well, you had conversations with him, didn't you?

45 **MS ZEKANOVIC:** The Commissioner was on a period of leave, July/August, so I can't speak for him.

MS GHABRIAL: But certainly he was aware that there was a Commission of Inquiry that had been -

MS ZEKANOVIC: Yes, I'm sure he would.

5

MS GHABRIAL: And can I just ask you, the second part of that question that I wanted to ask but that statement is:

10 "Further enquiries to be undertaken by Corrective Services New South Wales."

In relation to the allegations relating to Michael Hovey and Sarah Casey, what actual investigations have been done since that was referred back to Corrective Services New South Wales in August of 2023?

15

MS ZEKANOVIC: Is that something I can reveal?

MS GHABRIAL: Have there been investigations?

20 **MS ZEKANOVIC:** There has been internal conversations and a plan about what will happen. I mean, I don't want to pre-empt or disclose anything that relates to an investigation that could -

25 **MS GHABRIAL:** There appears to be a file in relation to those two people; correct?

MS ZEKANOVIC: I'm not sure I can answer that at this point.

30 **MS GHABRIAL:** Well, I think on this letter it says your reference point 4, D22/0840149. So it would be fair to say that you could infer from that that there is a file in relation to these two people; correct?

MS ZEKANOVIC: Yes.

35 **MS GHABRIAL:** And they're currently being investigated; correct?

MS ZEKANOVIC: There is a file.

40 **MS GHABRIAL:** About Sarah Casey having performed black book work for Mr Hovey?

MS ZEKANOVIC: (Indistinct).

45 **MS GHABRIAL:** Is there any reason why that file has not been produced to the Commissioner for his consideration?

MR SELLER: I object.

COMMISSIONER: Why?

5 **MR SELLER:** The process of production of documents is, by and large, in answer to requests from the Commission. So it's really -

COMMISSIONER: Sorry?

10 **MR SELLER:** The process of producing documents is, by and large, in response to a request from the Commission, or if something else arises. Now, unless I'm wrong there has been no relevant request.

MS GHABRIAL: Actually last night, I -

15 **COMMISSIONER:** That doesn't stop her asking the question.

MR SELLER: No, but it's a question, by and large, that directed, in a sense, to the Commission rather than this witness.

20 **COMMISSIONER:** Well, she can ask the witness. The witness may not know.

MS GHABRIAL: Before she answers, Commissioner, just to address what Mr Sheller has said, last night I specifically requested for a copy of that file to be made available and it has not been made available.

25 **COMMISSIONER:** Well, if it matters we can get it but -

MS GHABRIAL: So can you explain to -

30 **COMMISSIONER:** You may not get access to it.

MS GHABRIAL: No, I don't need access to it. I think that the Commissioner should have access to it, and is there any reason why it has not been produced?

35 **COMMISSIONER:** I don't know. Anyway, what's the question?

MS GHABRIAL: Is there any reason why that file has not been produced to the Commission?

40 **MS ZEKANOVIC:** I'm not sure if it was ever requested or whether it comes within the Terms of Reference within this Inquiry.

COMMISSIONER: We will find out.

45 **MS ZEKANOVIC:** It's something, you know -

COMMISSIONER: We'll find out. Don't you worry about it. We'll find out.

5 **MS GHABRIAL:** Just bear with me for a moment. Just finally, you were asked about what changed in respect of - I'm just trying to think how I word it - the original opinion or recommendation that you made not to suspend those officers, Paddison and Holman, and were you asked some questions about what changed, and I think the Commissioner also asked you some questions, what actually changed. Isn't the reality that something happened whilst the Commissioner was on leave and when he became aware of it he sought to rectify that knowing that the Commission of Inquiry was coming up at the end of September 2023? Isn't
10 that the reality of the situation?

MR SHELLER: Well, I object. That really requires the witness to enter into the mind of the Commissioner.

15 **COMMISSIONER:** It's furthermore a question that is entirely inconsistent with the known evidence.

MS GHABRIAL: Yes.

20 **COMMISSIONER:** So I'm not sure it's helpful.

MS GHABRIAL: I have nothing further. Thank you, Commissioner.

25 **COMMISSIONER:** Mr Sheller.

MR SHELLER: Thank you.

<EXAMINATION BY MR SHELLER:

30 **MR SHELLER:** Ms Zekanovic, could you just - could I just ask you a little bit quickly about the PSC. The PSC met today; is that right?

MS ZEKANOVIC: Yes.

35 **MR SHELLER:** You normally chair those meetings; is that right?

MS ZEKANOVIC: Yes. I'm the deputy chair.

40 **MR SHELLER:** You couldn't do that today because of your giving evidence?

MS ZEKANOVIC: That's correct.

45 **MR SHELLER:** Today was the first day where there was a representative from the CSIU to participate?

MS ZEKANOVIC: They were supposed to attend, but that - there was a change of plans.

MR SELLER: Is it still intended that someone from the CSIU attend future meetings of the PSC?

5 **MS ZEKANOVIC:** I think at this stage, yes.

MR SELLER: And is it the head of the CSIU who is likely to attend?

MS ZEKANOVIC: Yes.

10

MR SELLER: Who's that?

MS ZEKANOVIC: John Bamford.

15 **MR SELLER:** That's the same Mr Bamford who provided some information in relation to Officer Giles that we've been discussing?

MS ZEKANOVIC: That's correct.

20 **MR SELLER:** And what do you envisage his role to be on the PSC?

MS ZEKANOVIC: An advisory role.

MR SELLER: Advise in relation to what?

25

MS ZEKANOVIC: In relation to matters that are in the agenda that relate to any criminal conduct.

30 **MR SELLER:** Is it the case that some of the matters that come before the PSC are matters where there's some uncertainty as to whether they should go to the CSIU or should be dealt with by the PSI or its investigative -

MS ZEKANOVIC: Quite a number of them, yes.

35 **MR SELLER:** Is it envisaged that the representative from the CSIU may provide some advice as to whether those matters should stay with the PSI or should they go to the CSIU?

MS ZEKANOVIC: Yes.

40

MR SELLER: It's the case, isn't it - and it's been the case this year - that in circumstances where matters are presented to the PSC which show clear criminal conduct, those matters are referred to the CSIU?

45 **MS ZEKANOVIC:** Yes.

MR SELLER: So anything in the nature of an assault?

MS ZEKANOVIC: Yes.

MR SHELLER: A sexual assault?

5

MS ZEKANOVIC: Yes.

MR SHELLER: Or any other crime are sent through the PSC to the CSIU?

10 **MS ZEKANOVIC:** That's correct. Or sometimes if it's - if there's some urgency to it, it goes directly to the CSIU and the PSC may validate the decision at a later date.

15 **MR SHELLER:** One of the questions you were asked about yesterday was the - I won't take you because of the time, but Annexure 5 to your most recent statement which identified the management of complaints this year?

MS ZEKANOVIC: Yes.

20 **MR SHELLER:** And, for example, there seemed to be identified 30 sexual assault matters this year?

MS ZEKANOVIC: Yes.

25 **MR SHELLER:** And are you satisfied that all of those matters have been referred to the CSIU?

MS ZEKANOVIC: Yes.

30 **COMMISSIONER:** Mr Sheller, maybe I'm missing something, but I thought if you had an allegation of serious criminal conduct in a gaol, the first thing you did was call the police?

MR SHELLER: That's certainly one option.

35

COMMISSIONER: Well, it sounds to me like the logical option, frankly.

MR SHELLER: Yes.

40 **COMMISSIONER:** Because for anyone inside Corrective Services to be undertaking some investigation or consideration has a real capacity to contaminate the investigation. The only option, if you've got a real allegation of real criminal conduct, is to go to the police, isn't it?

45 **MR SHELLER:** Well, that's true. In other cases where the information may not be as clear-cut -

COMMISSIONER: There may be other cases where you're not sure. But surely you'd err on the side of caution and send it to the police anyway, wouldn't you?

5 **MR SELLER:** Well, in circumstances where the matters are referred to - for whatever reason, referred to the PSI -

COMMISSIONER: Well, that's my problem, you see? I'm not sure that if you've got a crime that's allegedly been committed that there's any room for other than the Governor of the gaol referring it to the police.

10 **MR SELLER:** Well, I'll just perhaps explore that with the witness. That option is certainly available to the Governor if a clear criminal matter -

MS ZEKANOVIC: Of course. Yes. And often that does happen and then the local police will get in touch with the CSIU to take on that investigation.

COMMISSIONER: Well, it becomes a matter for the police as to how they approach it, surely.

20 **MS ZEKANOVIC:** That's right. That's right.

COMMISSIONER: But it's the police who should have control of the process.

MR SELLER: Yes. And just going back to having a representative of the CSIU on the PSC for these other types of matters that are coming through your department. As you understand it, the commander has access to all police resources; is that right?

30 **MS ZEKANOVIC:** That's correct.

MR SELLER: And so the commander, for example, could give advice that a matter not go to the CSIU but go to some specialist division within police for management; is that right?

35 **MS ZEKANOVIC:** That's correct.

MR SELLER: Now, just coming back to the other persons within the PSC. By and large, all the Assistant Commissioners are invited to attend the PSC meeting weekly?

40 **MS ZEKANOVIC:** Yes.

MR SELLER: And I think you've told us before, those Assistant Commissioner in their own right are decision-makers?

45 **MS ZEKANOVIC:** Yes.

MR SHELLER: And so is it the case that having those Assistant Commissioners sitting in on the PSC regularly has some role in improving consistency of decision-making processes?

5 **MS ZEKANOVIC:** Yes. And we often talk about that at the PSC meetings, about certain outcomes or certain ways that they're going to treat particular matters.

MR SHELLER: So in this instance, when the PSC recommended that each of the officers we've described today be suspended - that was the June 2023
10 recommendation - the PSC, in that instance, would have included a number of decision-makers, that is - sorry, persons capable of making decisions in other contexts, being Assistant Commissioners?

MS ZEKANOVIC: Yes.
15

MR SHELLER: Now, can I then just ask you to have a look at this document. I know it's been dealt with exhaustively, but I'll have a try. This is the 20
September document, which has Mr Corcoran's signature at the bottom. Just so it's not disputed - or so it's clear, the "please action option 1" on the last page, that's
20 the writing of the Commissioner?

MS ZEKANOVIC: Yes.

MR SHELLER: Then if you just go back to the first page. On the author's name, that's again Mr Skopelja?
25

MS ZEKANOVIC: Yes.

MR SHELLER: And is it your recollection that he was initially tasked with preparing this document?
30

MS ZEKANOVIC: Yes.

MR SHELLER: Just that heading, Submission to Commissioner, is that the template of a document of this nature?
35

MS ZEKANOVIC: Yes.

MR SHELLER: And if you go under the heading Subject -
40

MS ZEKANOVIC: Yes.

MR SHELLER: - you'll see the description - I'm not sure if you've been shown these words:
45

"Advice to Commissioner Kevin Corcoran regarding known information and allegations about..."

And I'll shortcut it, Holman, Paddison:

"...with further advice regarding options."

5

MS ZEKANOVIC: Yes.

MR SHELLER: And does that, to your recollection, adequately capture what you understood both you and Mr Skopelja were involved in?

10

MS ZEKANOVIC: Yes.

COMMISSIONER: It's reinforced, Mr Sheller, by the last written paragraph on that page - the last line.

15

MR SHELLER: Is that the - sorry, Commissioner. Are you referring to, "It is intended to as a brief"?

20

COMMISSIONER: Yes, "Brief of the information currently known." That's (indistinct).

MR SHELLER: Yes. And then what happens thereafter is, by and large, a recapturing of the material contained in the 31 July document?

25

MS ZEKANOVIC: Yes.

MR SHELLER: And then the further analysis. Could I then just ask you this, though: What's your understanding of the Commissioner's power in relation to suspension?

30

MS ZEKANOVIC: The Commissioner is entitled to suspend.

MR SHELLER: He doesn't need to - he doesn't the input of the PSC to make that decision?

35

MS ZEKANOVIC: No.

MR SHELLER: And he doesn't need the input of the PSI to make that decision?

40

MS ZEKANOVIC: No.

MR SHELLER: And he, as best you understand it, has a power, whether it's properly exercised or reasonably exercised, which is independent of anything you can do?

45

MS ZEKANOVIC: Yes.

MR SHELLER: And anything independent of what the PSC can do?

MS ZEKANOVIC: Yes.

5 **MR SHELLER:** And did you regard this exercise in which the Commissioner was involved him exercising his independent power to make a decision to suspend?

MS ZEKANOVIC: Yes, with the information that was presented to him.

10

MR SHELLER: And that information being whatever was told by officers or other persons to him at Dillwynia?

MS ZEKANOVIC: Yes.

15

MR SHELLER: Now, can I then just go back to some of your evidence yesterday. This is on the question of staffing.

MS ZEKANOVIC: Yes.

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MR SHELLER: And I'm sorry if this adds to your blood pressure. Is this correct: That at the moment, the PSI is down about 14 people in terms of legal officers?

MS ZEKANOVIC: That's correct.

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MR SHELLER: You've lost four this year?

MS ZEKANOVIC: Yes.

30 **MR SHELLER:** And you haven't been able to replace one at the moment?

MS ZEKANOVIC: That's correct.

MR SHELLER: One of the four you've lost, however, is on maternity leave?

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MS ZEKANOVIC: No, that's for investigators.

MR SHELLER: And you're down 11 in investigators as well?

40 **MS ZEKANOVIC:** That's correct.

MR SHELLER: And, again, you've lost four this year?

MS ZEKANOVIC: Yes.

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MR SHELLER: There was a process of recruitment through the DCJ which you were obliged to follow. That's an expression of interest to existing employees?

MS ZEKANOVIC: Yes.

5 **MR SHELLER:** And that wasn't productive in producing either an investigator or a legal officer of sufficient quality; is that right?

MS ZEKANOVIC: That's correct.

10 **MR SHELLER:** So the position now is that these processes of employing adequate staff have gone to the public?

MS ZEKANOVIC: Yes.

15 **MR SHELLER:** The process of finding suitable legal officers has recently closed, and I think there's 20 or more applicants for the 14 positions?

MS ZEKANOVIC: Yes.

20 **MR SHELLER:** And the position in relation to investigators has closed some time ago, and that produced 100 or so applicants?

MS ZEKANOVIC: Yes.

25 **MR SHELLER:** You will have some involvement in sitting on panels in relation to the investigators?

MS ZEKANOVIC: Yes.

30 **MR SHELLER:** There will be other panels composed in relation to the legal officers. You won't sit on that?

MS ZEKANOVIC: I'll sit on the most senior legal officer panels.

35 **MR SHELLER:** I see. The process of interviewing a recommendation for employment of any of those applicants also includes some checks - probity checks?

40 **MS ZEKANOVIC:** Yes. Some of those are external to the Department, such as police checks, and other checks that are done by HR, which Corrective Services have no control over because HR is a DCJ-run service.

MR SHELLER: I see. So is this right: that there's at least hope that early into next year, there will be more investigators and legal officers within the PSI team?

45 **MS ZEKANOVIC:** Yes.

MR SHELLER: As I understand it, the PSI team, fully composed, is 72 people?

MS ZEKANOVIC: Yes.

MR SHELLER: And it's somewhere closer to 40 or so at the moment?

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MS ZEKANOVIC: Yes.

MR SHELLER: And that - low numbers has persisted for obviously a significant period of time?

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MS ZEKANOVIC: Yes.

MR SHELLER: And when we look at the number of complaints that have been able to be dealt with in the last 18 or, say, 21 months since you started, that should be viewed in the context of these depleted resources?

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MS ZEKANOVIC: Definitely.

MR SHELLER: And is it fair to say, again without being too precise on the numbers, that the number of complaints that the PSI has managed to dispose of, whether it's through to the disciplinary process or referral out to CSI, has been less than the number of new complaints that have come in over the last 21 months?

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MS ZEKANOVIC: Yes.

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MR SHELLER: And what is hoped is that with additional staff resources, the future complaints will be able to be managed appropriately; is that right?

MS ZEKANOVIC: Yes.

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MR SHELLER: And the lack of staff resources has required the appointment of the CSO, Crown Solicitor's Office, to manage matters?

MS ZEKANOVIC: That's correct, in the short term.

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MR SHELLER: And they are effectively, that is, employees or solicitor employees of the Crown Solicitor's office, are fulfilling the role of legal officer -

MS ZEKANOVIC: Yes.

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MR SHELLER: - in PSI and exercising the same functions; is that - and that even achieving that outcome has had some problems in terms of engagement with the PSA and others?

MS ZEKANOVIC: That's right.

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COMMISSIONER: How did you end up 14 short?

MS ZEKANOVIC: Sorry?

5 **COMMISSIONER:** How did you end up 14 short? Did they all walk out in a short period of time? What happened?

10 **MS ZEKANOVIC:** No. Staff, over time, resigned; took on other opportunities; secondments with other government agencies. And then because we were going through a restructure, the decision - we received advice from HR that perhaps it wasn't the best time to bring new staff on board, because we don't know where those staff will be based, which team they will be based in. So - and then we lost some -

15 **COMMISSIONER:** You lost 14 in a short period of time.

MS ZEKANOVIC: No, no. That's 14 - I don't - we wouldn't have lost - we lost four this year. I don't know how many we lost last year. But at the moment, that's how many -

20 **COMMISSIONER:** You've been carrying a loss for a long time.

MS ZEKANOVIC: We're almost always - my understanding is there's always been a loss by both the investigations team and legal officers. I don't think either team has been fully staffed.

25 **COMMISSIONER:** Mr Sheller, someone might have to tell me whether that is a result of management failure. It's a very big number to be down.

30 **MR SHELLER:** And the absence of staff is adding pressure to existing staff; is that right?

MS ZEKANOVIC: Yes.

35 **MR SHELLER:** Now, then - and just going back to the role of the Crown Solicitor's Office. Is that an open-ended - in terms of - or is it set in that role of providing the equivalent of legal officers to manage that side of the -

40 **MS ZEKANOVIC:** No, I understand that we have got a timeframe set with them. We've given them an initial 300 files to work on, which they're going to do by the end of the year, and then they will get some further matters early next year.

MR SHELLER: And as part of their role -

45 **MS ZEKANOVIC:** It's not an open-ended agreement.

MR SHELLER: As part of their role in dealing with the 300 matters is to identify serious versus less serious?

5 **MS ZEKANOVIC:** It's more - yes, although the serious matters within that bundle are already dealt with seriously. We always prioritise those matters internally anyway. So those matters that are on the list are of the less serious kind, and it's more about whether some of those matters could be considered more trivial action - trivial misconduct and should be dealt with either by HR or local management.

10 **MR SHELLER:** In terms of reform that you discussed in answer to some questions particularly from the Commissioner yesterday, is it right that there's two streams of reform: there's one in terms of what I'll call computer management of documents; is that right?

15 **MS ZEKANOVIC:** Yes.

MR SHELLER: And that is at a stage where it is planned shortly to have some sort of tender -

20 **MS ZEKANOVIC:** Yes.

MR SHELLER: - for previous suppliers to Corrective Services to offer their services to create a new document management system?

25 **MS ZEKANOVIC:** Yes.

MR SHELLER: And is it right that the vision is that that document management system may be up and running roughly this time next year or in October next year?

30 **MS ZEKANOVIC:** We're hoping 12 to 18 months.

35 **MR SHELLER:** In advance of that, in terms of human resources, the proposal is to have a change within the PSI whereby the PSI can earlier on determine whether complaints it receives fall into the serious category or the less serious category; is that right?

MS ZEKANOVIC: That's correct.

40 **MR SHELLER:** And the serious category would automatic include anything that warrants referral to the CSIU?

MS ZEKANOVIC: Yes.

45 **MR SHELLER:** It would include matters of harassment?

MS ZEKANOVIC: Yes.

MR SHELLER: It would include matters of bullying and intimidation?

MS ZEKANOVIC: Yes.

5 **MR SHELLER:** It would include matters of repeated bad behaviour on the part of one or more corrections officers?

MS ZEKANOVIC: That's correct.

10 **MR SHELLER:** The matters that are to be characterised as less serious -

MS ZEKANOVIC: Yes.

MR SHELLER: - may include things such as isolated bad language?

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MS ZEKANOVIC: Yes.

MR SHELLER: Isolated not following orders?

20 **MS ZEKANOVIC:** Yes.

MR SHELLER: Absenteeism?

MS ZEKANOVIC: Yep.

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MR SHELLER: Any other matters that I've left out as falling into the non-serious category?

30 **MS ZEKANOVIC:** Yes, that's correct, such as one comes to mind a one-off sleeping on duty, for instance.

MR SHELLER: And is the view that those non-serious matters, once considered by the PSI, would then be sent down for management at the local level, that is within the facility, including, if required, human resources involvement?

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MS ZEKANOVIC: Yes, so that involvement would be - those matters that would be referred down would still have the oversight of PSI. PSI would assist local management in how to deal with those sort of more low-level type of misconduct matters. HR would be available to assist and also the Staff Support Culture and Wellbeing Director, which is a new directorate that's been created, to support staff in the workplace.

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MR SHELLER: So there seems to be perhaps a three-pronged attack that the PSI is engaged in. One, more staff?

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MS ZEKANOVIC: Yes.

MR SELLER: Two, new computer management system for documentation?

MS ZEKANOVIC: Yes.

5 **MR SELLER:** Three, an earlier recognition of what's serious and what is less serious, with the less serious being sent back to be dealt with at the local level?

MS ZEKANOVIC: That's correct.

10 **MR SELLER:** Just going back to, again, a question asked by the Commissioner. I think you indicated to us that one of the proposals or one of the systems in place at the moment is anonymous reporting?

MS ZEKANOVIC: Yes.

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MR SELLER: And anonymous reporting can extend to dealing with non-serious matters?

MS ZEKANOVIC: Yes.

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MR SELLER: And is it the case, if you know, that if a non-serious matter is referred back for management at the local level, with or without HR involvement, the identity of the person making or notifying the complaint will be or will not be revealed?

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MS ZEKANOVIC: Will not be revealed.

MR SELLER: Then -

30 **COMMISSIONER:** Mr Sheller, I'm really going to have to go in a minute. I don't know how long you want now, but we may have to come back tomorrow.

MR SELLER: I'll speak to the witness to see if there's any other matters (indistinct).

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COMMISSIONER: Well, if there's material that you wish to pursue tomorrow, that's fine, but -

MR SELLER: Yes. I'll notify -

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COMMISSIONER: - I am afraid I'll have to go for now.

MR SELLER: Thank you for the (indistinct).

45 **COMMISSIONER:** All right. 10 o'clock in the morning.

MR LLOYD: Could I just say something before you go, Commissioner, just so that all the parties are aware. It had been hoped that we'd finish tomorrow. I think that that is not going to happen and that we'll be going into Thursday.

5 **COMMISSIONER:** Very well.

**<THE HEARING ADJOURNED AT 4.09 PM UNTIL WEDNESDAY, 22
NOVEMBER 2023 AT 10.00 AM**