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CORRUPTION AND CRIME COMMISSION

OF WESTERN AUSTRALIA

ACTING COMMISSIONER SCOTT ELLIS

TRANSCRIPT OF PROCEEDINGS

AT PERTH ON MONDAY, 16 NOVEMBER 2020, AT 8.58 AM

COUNSEL:

MS NADIA PANTANO

WITNESS: ANDREW JAMES SMITH

WITNESS COUNSEL:

MS KIRSTY STYNES

1   **THE ACTING COMMISSIONER:**   Please be seated.

2  
3   **THE ASSOCIATE:**   The Commission is about to conduct a number  
4 of examinations for the purposes for an investigation under  
5 the Corruption, Crime and Misconduct Act 2003. The scope  
6 and purpose of the Commission investigation is to enable to  
7 the Commission to examine how culture contributes to serious  
8 misconduct in Hakea and other prisons in Western Australia.

9  
10 There is a Commission practice direction which prohibits the  
11 use of electronic devices in the hearing room while the  
12 examination is in session. Therefore, all mobile phones and  
13 tablets must be switched off.

14  
15 Bona fide members of the media and members of the legal  
16 profession sitting at the Bench are exempt. Copies of the  
17 practice directions are available upon request. In  
18 accordance with the Corruption, Crime and Misconduct Act  
19 2003, a suppression order is in place not to publish the  
20 names of certain people and any information that might  
21 identify them.

22  
23 Contact should be made with the Commission for further  
24 information in this regard. Compliance with non-publication  
25 maintains the integrity of the Commission's work, thus the  
26 Commission will view any contravention of these orders by  
27 the media and any other person as extremely prejudicial.

28  
29   **THE ACTING COMMISSIONER:**   On behalf of the Corruption and  
30 Crime Commission, I acknowledge the traditional owners of  
31 the land on which this hearing is being held, the Wadjuk  
32 people of the Noongar nation. I pay my respect to their  
33 elders past, present and emerging.

34  
35 As you've heard, the scope and purpose of these examinations  
36 is to enable the Commission to examine how culture  
37 contributes to serious misconduct in Hakea and other prisons  
38 in Western Australia. The present examinations arise out of  
39 an allegation of the use of excessive force against a person  
40 in a position of disadvantage.

41  
42 The allegation was that a prisoner at Hakea Prison was  
43 assaulted by prison officers. The prisoner wound up face-  
44 down on the concrete floor in the senior officer's office at  
45 Hakea, being restrained by three police officers.

46  
47 In some of the material obtained by the Commission, this was  
48 described as receiving "Concrete justice". It was not  
49 justice at all. The Commission has already conducted private  
50 examinations into the circumstances of the use of force.

1 The evidence obtained suggests that the use of force was  
2 unjustified. More significantly, evidence obtained through  
3 those private examinations and the Commission's other  
4 investigations suggests that there had been a cover up by  
5 the officers involved.

7 The evidence suggests that the reports prepared by the prison  
8 officers about the incident were false. Reports disguised  
9 what had happened and who had been there. These false  
10 reports had been presented to and relied upon by the internal  
11 inquiry into the matter.

13 The purpose of these public examinations is to consider the  
14 broader questions of the culture of Hakea Prison and  
15 Corrective Services and see how this contributes to this  
16 sort of conduct.

18 Ordinarily, hearings by the Commission are conducted in  
19 private. Under section 140 of the Corruption, Crime and  
20 Misconduct Act, the Commission may open an examination to  
21 the public if it is considered that it's in the public  
22 interest to do so.

24 In deciding whether to conduct public hearings, the  
25 Commission must consider the benefits of public exposure and  
26 public awareness, the potential for prejudice or privacy  
27 infringements and the public interest.

29 The Commission accepts that there is a risk associated with  
30 a public hearing. One person has already pleaded guilty to  
31 a charge arising out of this incident. Others may face  
32 criminal prosecutions as well. However, these public  
33 hearings will not examine the persons directly involved in  
34 the incident in Hakea Prison.

36 Further, the persons to be examine during these hearings  
37 hold, to a greater or lesser extent, public positions. The  
38 examination will not consider conduct by these persons in  
39 their private capacities.

41 More significantly, the conduct of prison officers and the  
42 management of the State's prisons is a matter of importance  
43 to the people of Western Australia. Western Australia has  
44 16 public prisons, one private prison and five work camps.

46 In the 2019/2020 year, the facilities collectively housed an  
47 average of 6,957 adult prisoners. Hakea Prison is the main  
48 remand facility for men. There is a significant disparity  
49 in power between prisoners and prison officer and between  
50 junior officers and recruits and the senior, more

1 experienced, officers, who establish and maintain the  
2 culture of an institution.

3  
4 Staff working in prisons, particularly prison officers, are  
5 entrusted with power to manage prisoners, including the power  
6 to use force when necessary. When a prison officer uses  
7 force against a prisoner, the officer is required to prepare  
8 a report about the incident.

9  
10 It's imperative that use of force incidents are reported  
11 accurately and are scrutinised. The Commission has a  
12 longstanding interest in this area. In 2018, the Commission  
13 reported on allegations of inaccurate reporting and cover  
14 ups by prison officers at Eastern Goldfields Regional Prison,  
15 Bunbury Regional Prison and Hakea Prison.

16  
17 It observed a culture within certain prisons that discouraged  
18 staff from reporting misconduct of their fellow colleagues.  
19 In February this year, the Commission conducted public  
20 examinations of senior executives of the Department of  
21 Justice about ways the Department identifies and addresses  
22 misconduct risks.

23  
24 Corrective Services Commission, Mr Tony Hassall noted that  
25 changing the culture in a prison setting is incredibly  
26 difficult. The Commission accepts that this is the case.  
27 The Commission also acknowledges that the work of prison  
28 officers is very difficult.

29  
30 Prisoners are often antagonistic to prison officers to say  
31 the least. During the private examinations, the Commission  
32 heard evidence of assaults on officer by prisoners. However,  
33 the Commission's investigations to date indicate that  
34 cultural issues persist within prisons.

35  
36 These issues may most effectively be highlighted and  
37 addressed by public rather than private examinations. The  
38 Commission considers therefore that on balance, it's in the  
39 public interest that these hearings take place in public.

40  
41 The Commission acknowledges the active cooperation of the  
42 Department of Justice and Corrective Services in the conduct  
43 of its investigation. It would not have been possible to  
44 get to the bottom of the alleged cover up without the active  
45 cooperation of Corrective Services.

46  
47 Now, Ms Pantano, do you wish to make any opening submissions?

48  
49 **PANTANO, MS:** I do, sir.

1 Culture. The social behaviour and norms found in human  
2 societies, encompassing the beliefs, capabilities and habits  
3 of the individuals within those groups. It represents a  
4 shared set of values, attitudes, goals and practices that  
5 characterises and institution or organisation.

7 The Royal Commission into whether there had been corrupt or  
8 criminal conduct by WA Police Officers commonly referred to  
9 as the Kennedy Royal Commission identified in its report  
10 that the prevention and exposure of corrupt and criminal  
11 conduct is affected not only by the operations procedures  
12 put in place but by the prevailing culture.

14 The Commission's public examinations this week are focussed  
15 on the culture within WA prisons, particularly Hakea Prison.  
16 The examinations will explore the impact a toxic culture has  
17 had and continues to have on ongoing serious misconduct  
18 involving systemic concealment of use of force incidents.

20 The use of physical force by prison officers against  
21 prisoners is sometimes necessary in a prison environment.  
22 However, there are comprehensive guidelines to limit when  
23 force can be used and to provide a framework for assessing  
24 the appropriateness of use of force incidents that do occur.

26 The Commission is aware that the underreporting and cover up  
27 of use of force incidents within WA prisons has been  
28 occurring for some time. The Commission has previously  
29 reported on this issue. However, despite the Commission's  
30 extensive reporting, the issue remains live.

32 And recent investigations have illustrated that a closed-  
33 door culture continues to the present day. The influence of  
34 culture has been reported widely, extending to all corners  
35 of the globe.

37 The Mollen Report, which followed an investigation into  
38 allegations of police corruption within the New York Police  
39 Department observed that corruption had flourished within  
40 the NYPD not only because of opportunity and greed, but  
41 because of a police culture that exalted loyalty over  
42 integrity.

44 Because of the silence of officers who feared the  
45 consequences of ratting on another cop. Because of wilfully  
46 blind supervisors who feared consequences of a corruption  
47 scandal more than corruption itself. Because of the demise  
48 of the principal of accountability that makes all commanders  
49 responsible for fighting corruption in their commands. And  
50 the abandonment of responsibility to ensure the integrity of  
51 its members.

1  
2 The Commission acknowledges the challenging environment  
3 within which prison officers operate, at times performing a  
4 thankless task by providing offenders with the skills they  
5 require to address their offending, committed to breaking  
6 the cycle of crime and reducing the number of prisons who  
7 reoffend and return to custody.

8  
9 However, it is because of their role in maintaining security  
10 of offenders and the imbalance of power that ensues between  
11 officers and inmates that necessitates that prison officers  
12 operate with the upmost integrity and accountability when  
13 performing their duties.

14  
15 Prisons are closed environments that cannot be easily  
16 scrutinised by the public, which is what makes internal use  
17 of force protocols so important. It is this feature of  
18 prisons that also makes a toxic culture of under-reporting  
19 so problematic. Often, no one but the prisoner involved and  
20 other prison officers witness the use of force take place.  
21 Therefore, no one else is in a position to stand up for the  
22 prisoner.

23  
24 While prisoners are being held for a reason, it is  
25 fundamental to our values as Western Australians that they  
26 should also be treated with a level of respect and, while  
27 there is unjustified or excessive use of force by a  
28 prison officer towards a prisoner, all prisoners have a  
29 fundamental human right to have it dealt with fairly and  
30 transparently.

31  
32 The Commission has previously reports on a poor reporting  
33 culture within the Department of Justice in its 2018 report  
34 into misconduct risks in WA prisons. The Commission  
35 identified that a culture existed which discouraged staff  
36 from reporting against their colleagues, attributed in part  
37 to a lack of confidence in the confidentiality of reporting  
38 and fear or repercussions from other staff, including prison  
39 management.

40  
41 Following public examinations earlier this year, the  
42 Commission heard from department representatives of the many  
43 changes it was making to the policy landscape. It provided  
44 hope and reassurance of a department committed to change for  
45 the better, to provide clear guidance on the department's  
46 expectations of staff professionalism and integrity. It  
47 released a justice integrity framework, anti-fraud and  
48 corruption plan, and revised Code of Conduct, reformed  
49 employee screening and vetting processes.

1 While the Commission acknowledges the efforts of the  
2 department in acting on many of the Commission's  
3 recommendations following the 2018 parliamentary report,  
4 current investigations have uncovered a toxic culture that  
5 has been slow to change. In a department that manages almost  
6 7,000 adults at 16 public prisons and one private prison,  
7 culture plays a pivotal role.

8  
9 Australian and international research has shown the most  
10 effective protection against corruption is a strong  
11 organisational culture that is alert to integrity risks. The  
12 Kennedy Royal Commission report highlighted a number of  
13 observations from the various reports on corruption  
14 throughout history. It identified a consistent analysis of  
15 the causes of corruption and the prescription for the  
16 measures for the control of it.

17  
18 It stated that the rotten apple theory is long gone, and  
19 there is now no room for doubt that culture and poor  
20 management are principal factors in allowing corruption to  
21 continue unimpeded. The Commission's investigations into  
22 the Department of Justice have highlighted that these are  
23 not one-off incidents. The Commission has witnessed the  
24 steps involved in the cultural indoctrination of various  
25 levels within WA prisons, whether from the ground up or the  
26 top down, all the way to influence of the Western Australia  
27 Prison Officers Union.

28  
29 As is often the case in Commission investigations the initial  
30 report appears seeming innocuous. This was the case in the  
31 current investigation. The Commission's investigation team  
32 worked collaboratively with the department in its attempt to  
33 uncover what is suspects has been a deliberate and calculated  
34 attempt to cover up an assault by[sic]9.13.21 a prisoner by  
35 a prison officer, the officers involved having been entrusted  
36 to support and protect those very prisoners.

37  
38 Throughout the Commission's investigation into the alleged  
39 assault and cover-up, it utilised various surveillance  
40 techniques and heard from numerous witnesses in private  
41 examinations, and the message has remained consistent.  
42 Prison officers live and die by their incident description  
43 reports, which are the reports that prison officers are  
44 required to write after being involved in a use of force  
45 incident.

46  
47 Prison officers stick with their reports, even when they are  
48 not accurate. A culture exists within the prisons whereby  
49 officers cover for each other, even when an officer has  
50 engaged in criminal conduct. A culture exists of sticking  
51 by your colleagues, even when that loyalty could result in

1 the commission of a criminal offence, and the Western  
2 Australian Prison Officers Union, together with senior  
3 prison officers, are contributing to a toxic culture which  
4 undermines the disciplinary process, thereby breeding  
5 corruption.

6  
7 During the Commission's investigation it has become apparent  
8 that there is a real fear of reprisal which is inhibiting  
9 officers from coming forward and saying, "Enough is enough".  
10 There are officers who have attempted to uphold the values  
11 entrusted in them as public officers in standing up for what  
12 is right, and standing up against institutional cover-ups to  
13 break the cycle of corruption. However, what the Commission  
14 has uncovered is a culture where these individuals are  
15 ostracised, shunned and shamed, all in the name of protecting  
16 a comradeship which values secrecy, furtiveness and deceit.

17  
18 The Commission has decided to conduct these examinations in  
19 public in part to address the ongoing concerns about  
20 prison officers colluding in the preparation of their  
21 reports, and the ability of prison officer, particularly  
22 those in senior-ranking positions, influencing and  
23 controlling the use of force reporting process. The  
24 Commission is aware of those individuals who choose to close  
25 ranks to protect, rather than focus on accountability and  
26 integrity.

27  
28 The flow-on effect is the disruption of the disciplinary  
29 process with the department and beyond. The purpose-built  
30 Professional Standards Division attempts to hold to account  
31 those officers who fail to uphold the integrity and  
32 accountability expected of public officers within the  
33 department. However, their processes, together with the  
34 Commission's processes, are frustrated by the efforts of  
35 individuals who deliberately and actively undermine these  
36 accountability measures.

37  
38 The examinations this week will provide yet another example  
39 of systemic corrupt practises within Western Australia's  
40 public sector, this time focused within the Department of  
41 Justice. The Commission is aware, and is watching the red  
42 flags, analysing the data and following the trends. The  
43 Commission continues to put its resources into effecting  
44 real change with a long-term strategic focus on reducing  
45 serious misconduct within Western Australia's prison system.

46  
47 The Commission acknowledges the cooperation of many  
48 individuals who have assisted the investigation and provided  
49 frank and candid accounts of how culture is affecting the  
50 way in which the department is effectively able to deal with  
51 serious misconduct. The Commission is cognisant of their



1 privacy and their reputations, and will not be calling them  
2 to give evidence in a public forum.

3

4 During the course of this week and next, the Commission will  
5 hear evidence from union officials, prison officers at  
6 various levels of seniority and the Commissioner of  
7 Corrective Services, in an attempt to tell a story of how a  
8 culture of loyalty overrides integrity and accountability.

9

10 Commissioner, the first witness to be called is Andrew Smith.

11

12 **THE ACTING COMMISSIONER:** Thank you, Ms Pantano.

13

14 I order that the witnesses are not to discuss their evidence  
15 with any other witnesses until that witness has completed  
16 giving his or her evidence. We will now adjourn briefly to  
17 enable the witness to take the stand.

18

19 (Short adjournment)

20

21 (TIMESTAMP) / 09.17.43 AM

1 **THE ACTING COMMISSIONER:** Be seated please.  
2  
3 **SMITH, ANDREW JAMES CALLED AT 09.34 AM:**  
4  
5 **THE ASSOCIATE:** Before your examination beings, it is  
6 necessary for you to take an affirmation. Please stand,  
7 take the card in your right hand and read the affirmation  
8 out loud.  
9  
10 **SMITH, ANDREW JAMES AFFIRMED AT 09.35 AM:**  
11  
12 **THE ASSOCIATE:** Thank you, you may be seated.  
13  
14 **THE ACTING COMMISSIONER:** Mr Smith, I see you have received  
15 and signed the notice to witnesses?---Yes, sir.  
16  
17 Thank you. I have appointed Ms Pantano, Ms Tower and Ms Loo  
18 to assist me in this matter. They will ask questions on my  
19 behalf.  
20  
21 Yes, do you seek to appear?  
22  
23 **STYNES, MS:** May it please, Acting Commissioner, Stynes. I  
24 appear for Mr Smith this morning.  
25  
26 **THE ACTING COMMISSIONER:** Thank you, you have leave.  
27  
28 **STYNES, MS:** Thank you, sir.  
29  
30 **THE ACTING COMMISSIONER:** Ms Pantano?  
31  
32 **PANTANO, MS:** Can you please state your full name?---Andrew  
33 James Smith.  
34  
35 And are you currently employed?---Yes, I am.  
36  
37 I what capacity?---As the secretary of the WA  
38 Prison Officers' Union.  
39  
40 And how long have you held that role for?---Approximately  
41 two-and-a-half years.  
42  
43 And how would you briefly describe what your duties entail?--  
44 --I supervise the management and the administration of the  
45 prison officers' union, which we advocate for prison officer  
46 throughout the State of Western Australia.  
47  
48 Okay. On what sort of things do you advocate?---Anything  
49 from staffing levels at prisons, safety, when a  
50 prison officer may be - anything from short of pay, access  
51 to leave or disciplinary investigations and processes.

1  
2 And you have been in that role, you said, for just over two  
3 years?---Yes. I've worked for the union for longer, but  
4 I've held that role for two-and-a-half years.  
5  
6 So prior to your role as secretary, what role did you  
7 occupy?---I was the assistant secretary.  
8  
9 Okay. For how long?---Approximately two years, two or three  
10 years.  
11  
12 Okay. And prior to that?---Just an industrial officer for  
13 the union as well.  
14  
15 And how long were you an industrial officer for?---Around  
16 two years. I've been with the union for approximately nine  
17 years in total.  
18  
19 Okay. So during that time, you've been an industrial  
20 officer, assistant secretary, and now secretary?---Yes.  
21  
22 And in your current role as secretary, do you also sometimes  
23 act as an industrial officer?---I can give advice to members  
24 on that level, yes.  
25  
26 You can give advice to members, did you say?---Yes, on that  
27 level, yes.  
28  
29 And again, just briefly, what does your role as an industrial  
30 officer, what does that entail?---Advocating for an officer  
31 who may have any problem to do with their employment as a  
32 prison officer.  
33  
34 And - sorry, you said you were with the union for  
35 approximately nine years, you've been the secretary for just  
36 over two, the assistant secretary for approximately two, and  
37 an industrial officer for two - - -?---It must have been  
38 four or five years as an industrial officer, yeah.  
39  
40 Right. Okay?---Yes.  
41  
42 And prior to your role at the union, what did you do before  
43 that?---I was a prison officer at Hakea Prison.  
44  
45 And how long did you occupy that role for?---Approximately  
46 seven to eight years, seven-and-a-half maybe.  
47  
48 All the time at Hakea Prison?---I worked at other prisons on  
49 a temporary basis, at Wooroloo and Bandyup.  
50

1 Okay. And what was the highest level that you reached, or  
2 the highest rank, I guess?---I had short periods as acting  
3 principal officer and acting security - acting  
4 superintendent in Security, there were two roles in there,  
5 yeah.

6  
7 And your substantive position was a prison officer?---Senior  
8 prison officer.

9  
10 Senior prison officer? Okay. And prior to your role as a  
11 prison officer at Hakea, what did you do prior to that?---I  
12 was a salesman and a chef in Sydney.

13  
14 Okay. Mr Smith, I want to take you to some comments that  
15 you've made previously to the Standing Committee on  
16 Legislation, and this is back in 2014, so I appreciate it's  
17 some time ago, but I'm going to bring it up on the screen  
18 for you. And the comments that you've made to the standing  
19 committee were in relation to the Custodial Legislation  
20 (Officers) Amendment Bill, and you gave this evidence before  
21 the standing committee while you were occupying the position  
22 as assistant secretary of the Western Australia Prison  
23 Officers' Union.

24  
25 So if I could have 0104^ please.

26  
27 0104^

28  
29 **PANTANO, MS:** So you can see there it's the Standing  
30 Committee on Legislation, Custodial Legislation (Officers  
31 Discipline) Amendment Bill and it's the transcript of  
32 evidence taken on 2 October 2014. Do you recall giving  
33 evidence before that Standing Committee, Mr Smith?---I don't  
34 recall exactly what I said but I do recall - - -

35  
36 Sure?--- - - - giving evidence, yes.

37  
38 And if I can turn the page please to page 2, we see that the  
39 hearing there commenced at 10.07 am and it mentions you as  
40 Acting Secretary of the Union and some other people who were  
41 also sworn and examined and if we can just scroll down to  
42 the bottom of page 2, you say there:

43  
44 I need to make four points obvious before we start. We are  
45 concerned and we would like to ensure that the Bill as it is  
46 presented, if there are to be changes in our current  
47 disciplinary process that prison officers would be equated  
48 with the same rights and protections that public servants  
49 are afforded foremost.

50

1 You go on to talk about some other points. If we could turn  
2 over to page 3, the top of page 3, and where it says in the  
3 second paragraph:

4  
5 The final point that we would like to make, I will have to  
6 go to my submission shortly, is that the Prison Officers'  
7 Union does not tolerate criminality in any way.

8  
9 Any evidence of criminal activity should be investigated and  
10 criminal activities should be prosecuted to the full extent  
11 of the law. As an ex-prison officer I would like to elaborate  
12 on the point that I have made there.

13  
14 Having worked at three of the State's prisons and worked  
15 extensively with a number of officers, in excess of 500 or  
16 600 officers, I share their opinion that prison officers who  
17 perform acts that are illegal need to be out of the job.

18  
19 No prison officer wants to work next to an officer who is  
20 doing anything that would be considered to be illegal or an  
21 illegal act.

22  
23 Just in relation to that statement, Mr Smith, would you say  
24 - now, granted that was back in 2014 but is that - would you  
25 say that's what you stand for today?---Yes.

26  
27 Okay. And in your opinion, is that what you understand the  
28 union also stands for?---Yes, it is. Yeah.

29  
30 Okay. Tell me, what do you do in your role to demonstrate  
31 that criminality will not be tolerated?---In my role - role  
32 I oversee our industrial officers, ensure that they follow  
33 a strict guideline to the Prisons Act, Prisons Regulations  
34 and mostly - or most of all our Industrial Agreement with  
35 the Department. They are - probably the Industrial Agreement  
36 is the thing that takes most of our - most of our time is  
37 mainly officers that have problems in their working  
38 conditions, so not necessarily the disciplinary side.  
39 Although the - - -

40  
41 Not necessarily what, sorry?---And not necessarily the  
42 disciplinary side. Most of our work is taken up with  
43 industrial issues. But when it is disciplinary, those are  
44 the principles that I ensure. I like to think that I ensure  
45 that our industrial officers also follow.

46  
47 And but what I'm asking you is how. What - what do you do  
48 to demonstrate that these are the principles that you stand  
49 by? Practically, what does it look like?---I'm in contact  
50 with our industrial officers daily, am aware of the cases

1 that they're looking at and would give advice, when - when  
2 required, to ensure that they are adhering to that.

3

4 Adhering to?---To that principle that we'd - we'd strictly  
5 follow, that officers when they come to us tell us the truth  
6 and that they're not committing acts that will be considered  
7 to be criminal.

8

9 Okay. So other than being in contact with industrial  
10 officers daily and giving advice to them and ensuring that  
11 officers are telling the truth, is there anything else you  
12 do to demonstrate that criminality will not be tolerated  
13 within the prison officer, its cohort?---I'm not sure I fully  
14 understand where you want me to - to - to go but I'd exude  
15 that, that's my background.

16

17 Yes?---And the people that are employed by the union and the  
18 people that I deal with daily on our committee know that  
19 they're the principles - principles that I uphold.

20

21 Yes? So what I'm asking you is what do you do in your - in  
22 your daily life as a - as the secretary of the Prison  
23 Officers' Union and acting at times as an industrial officer?  
24 You've said that you have contact with industrial officers  
25 and you give them advice and that you say that officers,  
26 prison officers, should tell the truth. Is there anything  
27 else that you do to demonstrate that you don't stand for  
28 criminality?---I uphold those principles myself and I  
29 believe that I - I show that to the people that are employed  
30 in the union and that are on our various committees.

31

32 So you uphold those values yourself. So what I'm asking  
33 you is how. How - practically, how do you demonstrate that?--  
34 --In - in the way that I operate daily.

35

36 So tell me about - - -?---In the way that I'm talking - - -

37

38 Tell me about that, tell me about the things that you do  
39 daily when you operate. What do you do?---If I'm overseeing  
40 our industrial officers, if they have an issue, that is our  
41 primary concern. That - that initially everything that we're  
42 dealing with fits within agreements that we have and that  
43 we're not stepping out - outside of those principles. I'm  
44 overseeing that, daily.

45

46 When you say stepping outside of agreements, you're talking  
47 about the Industrial Agreement?---Industrial Agreement. And  
48 if there is a - a disciplinary process, obviously there's  
49 codes of conduct and the Prisons Act, Prisons Regulations  
50 that officers are - are expected to work within and - and we

1 make sure that they - they fit within that. That's our only  
2 course of - of a defence for an officer, as an advocate.

3  
4 Okay. So you mentioned that you would advise officers to  
5 tell the truth?---Yes.

6  
7 What about would you - do you advise members to tell the  
8 truth even in circumstances where it might result in that  
9 member calling out another member for wrongdoing?---Yes.

10  
11 In your opinion does the union, as a whole, share these same  
12 values as you?---Yes.

13  
14 And if you become aware that someone within the union was  
15 not acting in this way and upholding these same values, what  
16 would you do?---We've had incidences where - we're only  
17 called to be an advocate so we don't take a case if it does  
18 progress to a - a charge by the WA Police. But if an officer  
19 has committed something that would be contrary to code of  
20 conduct, I've had occasions where we've actually advised  
21 that the officer should resign because we don't back them  
22 being in the job if they're not doing what they're required  
23 to do. People don't come to us with a - a legal matter,  
24 they're referred elsewhere for us. We don't represent them.  
25 We're not lawyers.

26  
27 Okay. So whose interests then - this may be an obvious  
28 question but whose interests do you see that you're serving,  
29 above all else?---Our members that I'm employed by, the  
30 members.

31  
32 And what do you consider the union's role to be with the  
33 Department of Justice? How do you see the interplay between  
34 the two?---Effectively, to ensure that the Department acts  
35 as a responsible employer and provides all the things to our  
36 members that they're entitled to receive.

37  
38 What about with Professional Standards? How would you  
39 describe the interplay between the union and Professional  
40 Standards, if any?---Currently it's disappointing. We in  
41 recent years, possibly the last two years, have not had the  
42 relationship that we've had with Professional Standards in  
43 the past. In fact, I would go so far as to say it's almost  
44 non-existent. We used to enjoy a - I say "enjoy". We used  
45 to have a professional relationship where we would still -  
46 our primary focus would be to represent our members but we'd  
47 have a - a relationship with the Professional Standards that  
48 would enable us to recognise that certain officers can make  
49 a mistake and it's not a serious mistake and it can be  
50 rectified and they become good officers but we would also be  
51 able to recognise - we would be party to perhaps a little

1 bit more information that would enable us to give advice to  
2 wheedle out those that are doing the wrong thing. That  
3 doesn't exist now, unfortunately.

4  
5 And in your opinion, why is that the case?---I - I can't  
6 answer that one. I don't know. I - I don't have necessarily  
7 an opinion. It's just the way it's transpired. There was  
8 a - a significant change in the make-up of Professional  
9 Standards and there's now - there isn't that - - -

10  
11 So you mentioned information sharing, you said that that's  
12 diminished between yourself and Professional Standards?---  
13 Yes.

14  
15 Okay. And when you said diminished would it - is it the  
16 information coming from Professional Standards to the union  
17 rather than info from the union to Professional  
18 Standards?---Predominantly, but it is both.

19  
20 And in order to, I guess, rectify or try to restore that  
21 relationship, from your perspective what are some of the  
22 things that you think would assist?---Initially it would be  
23 imperative for a - a higher level of communication from  
24 myself to - we - I think these days we're a little bit unsure  
25 of the - the structure of Professional Standards. But  
26 certainly at a higher level to - to establish a  
27 communications background. There are quite a few people  
28 that just literally make a mistake and it's not serious but  
29 it's treated, unfortunately, now as top level.

30  
31 So when you - you're talking about conduct of prison officers  
32 as being treated at high level, what - what do you mean by  
33 that?---I - I think the - the current environment is even if  
34 a prison officer's made a small mistake, the intent is to  
35 issue the - the highest level of punishment for that rather  
36 than addressing it as a - as a mistake and a correctable  
37 one.

38  
39 Has that had any influence on how you advise your  
40 members?---I think we're going to a higher level of  
41 discussion at an early stage. We used to be able to converse  
42 with Professional Standards and be able to involve deputy  
43 commissioners or commissioners to address the issue in the  
44 way that it should be, at a lower level. We've - we've heard  
45 so many times from Professional Standards that that was the  
46 intent. The intent was not always to - to sack officers for  
47 every misdemeanour, that it - it was the intent to correct  
48 behaviours but we haven't seen that. We haven't seen it.

49  
50 So when I asked you about the influence that that may have  
51 had on the advice that you give members or the way that you



1 deal with them you said you would now go into a high level  
2 of discussions with the members at an earlier stage, is that  
3 correct?---Yes.

4  
5 Okay. Is there any other impacts that's had on your dealings  
6 with members?---I don't think so, no. No.

7  
8 So why do you - why has I guess a harder stance, for want of  
9 a better word, from PSD, why has that now translated into  
10 the union having to go into a higher level of discussions  
11 with members and why is that a bad thing?---I - I think  
12 having a conversation with Professional Standards if it's a  
13 lower-level misdemeanour would enable us to call up and -  
14 and fix the problem. And now we have to go into full  
15 protection mode, we - we make an assumption that there's  
16 going to be a more grave outcome.

17  
18 Okay. And when you say you have to go into full protection  
19 mode, tell me about what that actually looks like  
20 practically, on the ground level?---Well, the - when the new  
21 legislation came in - we used to have hearings in front of  
22 superintendents and it provided an opportunity to - to  
23 provide a more interactive response and now we are more under  
24 the Public Sector Standards so it's all written replies and  
25 there isn't the ability to put emotion and background into  
26 what - what we had before, and that was our reluctance with  
27 the changes in legislation back in 2014.

28  
29 So you no longer have an ability to put, you said, emotion  
30 into the responses to PSD?---I don't feel that we do, no.

31  
32 Okay. And, sorry, you mentioned that you have to go into  
33 full protection mode so I'm just interested in exploring  
34 that, Mr Smith. What do you mean by that, what do you do to  
35 go into full protection mode for your members?---When the  
36 member comes to us with a problem we're automatically  
37 assuming that it's the most grave outcome, that it might be  
38 the job. So it's probably - probably a little bit more  
39 exploratory than we would normally have done in the past.

40  
41 Okay. So more exploratory is one thing but you said "full  
42 protection mode". I'm - I'm interested in that comment?---  
43 I think I've covered it with the we are assuming that it  
44 wouldn't be senior management saying, look, "Don't do that  
45 again, this is how we might correct that". We're now  
46 assuming automatically that everything from, you know,  
47 failing to write something in a book might end up with your  
48 job.

49  
50 I understand that might be the final result or you're  
51 anticipating that might be the final result. I understand

1 that. So what I'm asking you is can you provide examples  
2 then, if that's what you're anticipating might happen what's  
3 this full protection mode? What do you do to stay in this  
4 protection mode for your members? What - what are you doing  
5 differently now?---We would probably inquire a little bit  
6 more deeper into the circumstances around the allegations  
7 than we would have in the past where we might have made an  
8 assumption that we could ring and say, look, this is a bit  
9 of a mistake and - and sort the problem out. We can't do  
10 that now. We - it's - we would start to prepare a full  
11 written response on every issue.

12  
13 So are you saying your full protection mode consists only of  
14 you making further inquiries than you ordinarily would have?--  
15 --Yes, we'd - the - our replies are much more involved and  
16 - and detailed than they would - would have been prior.

17  
18 Is there anything else, other than further inquiries that  
19 you go - sorry, that you make?---I think that probably covers  
20 it.

21  
22 So your full protection mode that you now go into just  
23 involves you going into further detail with your members  
24 about an incident?---More or less, yes. Yeah.

25  
26 Anything else?---(No audible answer).

27  
28 Mr Smith, I want to show you some additional exhibits but  
29 before I do, the context in which I'll be showing them to  
30 you is that you and others from the union had previously met  
31 with a number of individuals who had been stood down in  
32 August of this year following a suspected assault of a  
33 prisoner by a prison officer and further, that there was a  
34 suspicion that those officers then may have covered up the  
35 involvement of a - of what actually happened and the  
36 involvement of a particular prison officer. So that's the  
37 context in which I'm going to be showing you some additional  
38 exhibits this morning.

39  
40 Can I have 0198-4?

41  
42 And, Mr Smith, you're going to hear audio and you will also  
43 see a document come up on the screen in front of you.

44  
45 0198-4^

46  
47 START TELEPHONE INTERCEPT:

48  
49 Part conversation 09:17:36 to 09:20:07

50

1 SMITH: If at this point in time we can still talk to ya,  
2 I'll probably get you into the office so we can have a chat.  
3  
4 [REDACTED]: Uhm so, ah sorry I know that you gotta go but  
5 what, what's the process like I've been uhm like you know  
6 and this is what, this is what everyone's been saying to me  
7 that they're fuckin' chasing me but at the end of the day,  
8 and it  
9  
10 SMITH: Well look [REDACTED] it's, it's simple if what you told me  
11 on Monday morning  
12  
13 [REDACTED]: Yeah.  
14  
15 SMITH: was, was fact okay, it's, it was fucking simple  
16 everybody stays schtum that's it. But if it, quite simply if  
17 the crim has come forward and I'm this is hypothetical so  
18 I'm still  
19  
20 [REDACTED]: Yeah.  
21  
22 SMITH: trying to get the information. I've wasted three days  
23 right but if the crim has come forward and said that he was  
24 assaulted by you in that office. Right?  
25  
26 [REDACTED]: Yep.  
27  
28 SMITH: If that's his statement, by you if he's named you,  
29 when  
30  
31 [REDACTED]: Yep.  
32  
33 SMITH: gone to the reports and they've looked and you're not  
34 in the office it looks like hang on it, because all you need  
35 is somebody to say yeah, yeah [REDACTED] was in the office and we  
36 don't know that nobody said that  
37  
38 [REDACTED]: But, but  
39  
40 SMITH: but then it looks like everybody's colluded to cover  
41 up that you have assaulted him. Doesn't matter what the facts  
42 are and we can argue the facts  
43  
44 [REDACTED]: Yeah, yeah.  
45  
46 SMITH: but that's what they will be looking at and we need  
47 to react to what they looking at  
48  
49 [REDACTED]: But  
50

1 SMITH: so that we can gather evidence to prove that's not  
2 the case.

3

4 [REDACTED]: but I don't know if you, you did hear me or  
5 you didn't hear me Andy but I did say that I went into the  
6 office.

7

8 SMITH: Yeah.

9

10 [REDACTED]: I went into the office

11

12 SMITH: Yeah, yeah but I'm just saying that what you said is  
13 not right. Okay so other people that were there, you, you  
14 know the, 'cos what the one thing I say is when you come  
15 into the office tell us exactly what happened, the truth  
16 'cos we, we don't have to tell the truth to anybody

17

18 [REDACTED]: Yeah.

19

20 SMITH: but other people that were there said you were already  
21 in the office. You weren't in the control room and some of  
22 the reports say that like the girl went and got the spit  
23 hood it's just like it none of it act, actually adds up which  
24 is (indistinct) you know

25

26 [REDACTED]: Yeah.

27

28 SMITH: react to, to what the facts are and uhm they 'cos  
29 they're gonna find all that

30

31 [REDACTED]: Yeah.

32

33 SMITH: so yeah we just need to be on the ball.

34

35 [REDACTED]: Yeah and, and, and look like as I said and I  
36 think we fucked up 'cos there were so many people there  
37 talking on Monday but I did go in the office. I, I went in  
38 the office and then as I said to, to, to, to Kenny when he  
39 said did you go in the office when it first started I said  
40 no I stood at the in between the fuckin' door and the other  
41 door.

42

43 SMITH: Yeah. Look let, let me find out what Paul's got from  
44 others because the, the triple C being involved stops  
45 conversation going on.

46

47 END TELEPHONE INTERCEPT.

48

49 **PANTANO, MS:** Okay. I just want to take you through a  
50 couple of portions of that transcript, Mr Smith. If I can  
51 go to page 2 and where you say:

1  
2 All you need to say, yeah, [REDACTED] was in the - in the office  
3 and we don't know that, nobody said that. But then it looks  
4 like everybody's colluded to cover up that you've assaulted  
5 him.

6  
7 And you said:

8  
9 Doesn't matter what the facts are and we can argue the facts.  
10  
11 Why does it not matter what the facts are, Mr Smith?---I  
12 think it - it needs to be put into relation and - and another  
13 line on there where I've said, "You didn't tell me the truth  
14 when you first came in," okay? It - I - it doesn't matter  
15 what the fact - the first thing I say to people when they  
16 come in - and this, industrial officers are the same - is  
17 tell us the truth. It doesn't matter what the truth is, you  
18 need to tell us the truth because we will advise you  
19 accordingly. That didn't happen on this occasion. That did  
20 not happen on this occasion. And that's what I've alluded  
21 to there that that particular individual, what they told  
22 us, and - and your party to the fact that you know it's an  
23 assault. When they first come in, it was whether - my belief  
24 whether he was on worker's compensation and should have been  
25 in the unit. And I think I said that in my evidence  
26 previously here.

27  
28 Yes?---So my point is, it doesn't matter what the facts are,  
29 we will deal with the facts. But you need to be honest.

30  
31 Right. Then you go on further to say - sorry, before I ask  
32 the next question, the context of this call is that you had  
33 already met with this individual and you'd already met with  
34 other individuals involved who had told you a different  
35 story, a different version, is that correct?---Their stories  
36 didn't marry up, yes.

37  
38 No, they didn't. So you were aware that there were two  
39 different versions, or various versions?---But I didn't know  
40 at that point - this is only with this conversation that it  
41 came out that it may have hinged on him being - him having  
42 committed an assault.

43  
44 I'll put it to you, Mr Smith, that it wasn't in this  
45 conversation that you found that out. I'll put it to you,  
46 Mr Smith, that it was during your earlier meetings with other  
47 individuals who were involved in this incident that it was  
48 flagged there may have been an assault?---No one actually  
49 said that. That was my feeling that that may have occurred.

50  
51 So when you say:

1  
2 It doesn't matter what the facts are and we can argue the  
3 facts. But that's what they will be looking at. And we  
4 need to react to what they are looking at so that we can  
5 gather evidence to prove that's not the case.

6  
7 Why is that your starting point?---Because that's the  
8 information that he gave to us that that didn't occur.

9  
10 No, that's correct. But you've got one officer, who's at  
11 the centre of something, telling you one version, but then  
12 you've got several other individuals because the Commission  
13 is aware you've met with several other individuals. Not  
14 just one?---Yep.

15  
16 Several others who were directly involved in the incident,  
17 telling you a different version?---We - we're not there to  
18 determine what - one - one other person actually backed up  
19 what his story was. So we're not there to discern that.  
20 And to be honest, like I've said, there were three days  
21 wasted. Because if he'd have told us the truth and if we'd  
22 have known what was going on, he wouldn't have even come to  
23 us. We refer them directly to either legal - well, either  
24 way, it's a legal representation.

25  
26 So you just then said it's not for you, as in the - I'm  
27 assuming the union - to determine. But why do you then go  
28 on to say "So that we can gather evidence to prove that's  
29 not the case"?---If there is evidence, we can gather  
30 evidence. That's what we would do. If there was evidence  
31 to prove otherwise, if what he was telling us was the truth,  
32 it's not up for us to decide with four or five people telling  
33 us what happened which one is actually telling the truth.  
34 With him, he was telling one story. If he's got evidence to  
35 prove that what he's saying is right, then give us the  
36 evidence.

37  
38 If we can go to page 1? In the middle of page 1 at paragraph  
39 10, or line 10, where you say:

40  
41 It was fucking simple. Everybody stays (indistinct). That's  
42 it.

43  
44 What did you mean by that?---In - in all these cases, we  
45 always advise that you don't collude. You don't talk.  
46 Everybody stays (indistinct), it means you don't amongst  
47 yourselves. They decided on that day that that wasn't going  
48 to happen. They all gave us an opinion.

49  
50 Further, on the second page, where you say at line - starting  
51 at line 36:

1  
2 What you said is not right. The one thing I say is when you  
3 come into the office, tell us exactly what happened, the  
4 truth, cos we - we don't have to tell the truth to anybody?--  
5 --We - we don't - if somebody comes to us and gives us a  
6 story, we don't portray that to anybody. It's confidential.  
7 If they tell us that - their perception of the truth, and in  
8 this case, we did not know - we had no idea what this was  
9 going to be. And I actually said - and I've - I've not said  
10 it in this conversation but said to the other, wait until we  
11 get what we get from professional standards. We had no idea  
12 what the case was. So we don't tell the truth to them. We  
13 don't actually go out and speak to everybody. Professional  
14 standards, which we believed at that point in time it was  
15 only professional standards when they first came into us,  
16 and they gave us literally "These are the allegations and  
17 these are the facts". So that's what we wait for before we  
18 say to them "Okay. Now, tell us". That's how we proceed.  
19  
20 But you had in this case though, the members had come to see  
21 you because they'd received a stand down notice, which  
22 briefly outlined what they were being stood down for, is  
23 that correct?---Yep. And I don't have it in front of me,  
24 but from my memory, it referred to an incident approximately  
25 two years ago.  
26  
27 Yes?---And it - it said where it occurred, but it didn't say  
28 what it was. My - that's my recollection.  
29  
30 But following discussions with the members, so prior to this  
31 particular call, you had been advised by those members of  
32 what they thought their version of events, which was very  
33 different to this member's version of events, is that  
34 correct?---I - and I still got a phone call following their  
35 meetings with us from somebody from Hakea, and I can't  
36 remember who it was, that said it was centred around this  
37 individual being in the unit while they were on worker's  
38 compensation and that was where it was going. I didn't know,  
39 at the point they came in, that it was actual - a - an  
40 assault investigation. We didn't have the paperwork from  
41 professional standards.  
42  
43 No, I - I appreciate that, Mr Smith. But the information  
44 that the Commission has is that you were told by other  
45 members who came to see you prior to this call that there  
46 may have been an alleged assault, that you were aware that  
47 there may have been an alleged assault by this individual  
48 member who had allegedly been on worker's comp?---At no point  
49 did some - any - any of the five say an alleged assault. At  
50 one point, one person said that he may have been heavy-  
51 handed. Now, I've been a - an officer at Hakea and on many

1 occasions had - I've had prisoners going off. And if you've  
2 got to stabilise them, put handcuffs on, there are - there  
3 have been many occasions where allegations are that you've  
4 gone in heavy. So we had no facts. We had no charges. The  
5 professional standards hadn't given any allegations in  
6 detail. So at the point - I had my own feelings. At the  
7 point somebody said he may have been heavy-handed, we didn't  
8 know to what extent. There was no allegations. We didn't  
9 have the allegation.

10

11 So Mr Smith, the stand down notice did in fact mention the  
12 prisoner's name, the - the date and that the prisoner was  
13 unlawfully assaulted by a prison officer in the senior  
14 officer's office within unit 7 at Hakea Prison. And that  
15 the prison officers on shift that day conspired with each  
16 other to conceal both the circumstances of the alleged  
17 assault together with the identity of the officer or officers  
18 responsible. So that was in the stand down notice, which  
19 all - - -?---I - - -

20

21 - - - members had prior to this discussion. And the  
22 Commission is also aware that several of those members  
23 brought their stand down notice with them when they met with  
24 you at the office?---I - I - I don't recall reading it. As  
25 - and I - I think I've said before, when they come in, the  
26 first thing we do is we don't know what the - what  
27 professional standards are going to do with it, so we - - -

28

29 I appreciate you made - - -?---And - and we didn't - we  
30 didn't offer them any advice of that. That's - I was just  
31 - I - I - apart from wait until you get the - the allegations  
32 in detail.

33

34 Are you sure you didn't offer any advice around this time to  
35 the members, are you sure about that?---I - I told them to  
36 be sure of exactly what - what they want to, how they wanted  
37 to proceed with that.

38

39 What do you mean by that?---I had - I - because there were  
40 four or five different stories. There was something amiss,  
41 but we didn't have the - where - where it was going to go at  
42 that point.

43

44 Was there a common denominator within those four or five  
45 different stories though, Mr Smith?---In what way, sorry?

46

47 You said there were four or five different stories. Well,  
48 was there anything similar about those four or five different  
49 stories?---The participation of one particular individual.

50



1 Right. That wasn't included in those reports. The  
2 participation of one individual?---I - I hadn't seen the - I  
3 hadn't seen the reports.  
4  
5 No, but from what the members told you, what was the common  
6 theme?---One particular person was involved in it.  
7  
8 Yes, and that that one particular person hadn't been included  
9 in the incident description reports?---He - he was included  
10 in there. The - the - what they were telling us was just  
11 where he was while that went on.  
12  
13 And what he was doing?---Whether he was giving a spit - none  
14 of it added to me. There were - but nobody actually that it  
15 was an assault occurred at any time.  
16  
17 They may not have - - -?---But then - - -  
18  
19 - - - used those particular - - -?---Yep.  
20  
21 - - - words, Mr Smith. But the Commission has information  
22 to indicate that the information you were provided by several  
23 members that there may have been a use of force, an excessive  
24 force, used by a particular prison officer, is that correct?--  
25 --I - I had that feeling.  
26  
27 Yes?---(Indistinct). But we - we don't offer legal advice.  
28 They - automatically anybody that's accused of that is  
29 referred to professional.  
30  
31 But the union do assist at times, don't they, in helping  
32 members prepare their responses to the suspensions letter?--  
33 --If it is just purely a suspension letter through  
34 professional standards.  
35  
36 Yes?---But not if it's a charge with WAPOL. We don't get  
37 involved at all.  
38  
39 No, but no one's been charged with these - in relation to  
40 this matter at the time that they came to see you, had they?--  
41 --That's right.  
42  
43 No. Okay. So further down on page - the bottom of page 2,  
44 you said:  
45  
46 Look, let me find out what Paul's got from others because  
47 the CCC being involved stops conversation going on.  
48  
49 Is that Paul Ledingham, you're - you're referring to?---I'm  
50 pretty sure, yes. Yes.  
51

1 Do you have another Paul who works at the office?---No.  
2  
3 Okay. What role does Paul Ledingham hold?---He's currently  
4 the assistant secretary.  
5  
6 Okay. But at this time, what was his involvement?---At that  
7 particular time, none. Bar that I - I was aware that he was  
8 dealing with other people that had contacted him. But the  
9 instruction I give - I'd given him was the same as what this  
10 individual, was that we would find you a lawyer to represent  
11 you and then we wash our hands of it, I suppose.  
12  
13 So why did you need to find out from Paul what he'd been  
14 getting from the others if all you needed to do was find a  
15 lawyer?---I don't know why I've said that, to be honest.  
16  
17 You've what, sorry?---I don't know why I've said that at  
18 that point, because even at that point, I'm - I'm in a  
19 vehicle. I'm caught off guard. I did not expect to get a  
20 phone call from him and I'm basically fobbing him off because  
21 I just need - yeah. And like we did with this individual  
22 was referred him to legal advice.  
23  
24 It was a seven-minute call so you didn't exactly fob him  
25 off, Mr Smith. What were you wanting to find out - this  
26 wasn't that long ago. What were you wanting to find out  
27 from Paul what he got from the others?---I - I can't recall  
28 because my instructions to Paul were just to refer. And  
29 that's exactly what - what happened. All the others go -  
30 referred for professional advice.  
31  
32 Right. You didn't say "I'm just going to refer you to a  
33 lawyer. I'm going to get Paul to get a lawyer for you".  
34 You said "Let me find out what Paul's got from others". You  
35 were trying to find out more info from what other members  
36 had said, weren't you?---I - I can't remember my intent  
37 there, but that's how it appears.  
38  
39 Take your time. Because it wasn't that long ago. You've  
40 got the time, so you can cast your mind back, Mr Smith?---I  
41 - I honestly cannot recall why I said that, what I intended  
42 to get, because my intent was always to refer [REDACTED] and the  
43 others to - to professional advice. We do not represent  
44 them at all. We do not offer them any advice when it is  
45 something that involved this Commission or WAPOL. We do not  
46 under any circumstances offer them advice.  
47  
48 But Mr Smith, not once in - in - in at least this portion of  
49 the call do you talk about just referring Mr [REDACTED] off to  
50 get a lawyer. You're wanting to know what else other people  
51 have said?---Again, I don't recall exactly why I asked the

1 question. I was mobile in the vehicle. I did not - we don't  
2 offer advice. Under no circumstances do we offer any advice  
3 to a member when it is a serious matter. We - we don't  
4 handle those cases.  
5  
6 How did you know this was a serious matter at this point?  
7 You hadn't received anything from PSD. So how did you know  
8 it was a serious matter?---Probably my gut feelings, as I've  
9 said on many occasions, was that it was not as it appeared  
10 to be. But I can't - I - I'm not there to determine exactly  
11 what happened in - in that occurrence.  
12  
13 So then did you say further up on page 2 that:  
14  
15 We need to react to what they are looking at so that we can  
16 gather evidence to prove that's not the case.  
17  
18 You keep saying "We". You don't say professional standards.  
19 You don't say WAPOL. You don't say CCC?---But as I've said  
20 previously today, if - any of these cases, we need to gather  
21 the facts to know what we're going to do.  
22  
23 Right?---If - if he's going to give us proof that he wasn't  
24 there or he didn't do anything, then we need to ascertain  
25 that. That's fair.  
26  
27 So is that why you wanted to get information from Paul?---I  
28 - I don't recall exactly what I was thinking on that  
29 occasion, but it may have been to - to actually try and  
30 determine what exactly was happening.  
31  
32 Is that ordinarily what you would do in these circumstances?--  
33 --This is - this is - this is probably the only case that  
34 I've dealt with at this level in my nine years with the  
35 union.  
36  
37 Okay. So is that what you were doing in this instance?---I  
38 - I can't recall exactly what - what I asked that - that  
39 question for. Because I had no further conversation with  
40 this individual.  
41  
42 Why does the CCC being involved stop conversation going on?--  
43 --Because that's the first we do. That's - we refer people  
44 to professional help. We do not get involved. We never  
45 have got involved in any information or any advice to do  
46 with the CCC case. We refer people to get a lawyer. We  
47 refer lawyers and we have no further conversation whatsoever.  
48 And that's exactly what happened from this -this point. I  
49 spoke to this person. I actually informed Paul to get a -  
50 a referral. And I had no further conversation with this  
51 individual, which is exactly how we should have - should

1 have done it. Had I - in - in retrospect, I would not have  
2 even picked up the phone call if I'd have known it was that  
3 individual.  
4  
5 But the CCC weren't involved with this individual at this  
6 point in time?---That's what - I'd spoken with Paul. I knew  
7 there were others. And I'd authorised him to get them legal  
8 assistance, which may have been the only reason I said I  
9 need to speak to Paul, because I need to refer him - him on.  
10 But I had no contact with this individual post that - that  
11 conversation.  
12  
13 So once the CCC are involved, you said "We" - as in the union  
14 - would have no further conversation once you're aware the  
15 CCC is involved. Why?---Whilst we're not trained - we're  
16 not trained lawyers, it is our - and I've inherited that as  
17 an instruction, that when CCC is involved, the lawyers  
18 represent them. We do not get involved with individuals.  
19  
20 Who have you inherited that instruction from?---From the  
21 previous secretary.  
22  
23 Do you know whether other union reps share that same view  
24 within your office that once the - - -?---They absolutely  
25 should. That's my instructions. And that's what we've done  
26 on this occasion. And it's what we've done with that  
27 individual, is referred them for legal assistance and had no  
28 - and the instruction is no further conversation with him.  
29  
30 Okay. Could the union act as a - say a support person for  
31 a member once the CCC are involved?---No. Well, our office  
32 doesn't act as a support person, no.  
33  
34 On any occasion?---Not that I'm aware of.  
35  
36 Okay. And why not?---It would conflict with the instruction  
37 that I've given. Once they're - a - a union or a - a prison  
38 officer with - regardless of whether they're a union member  
39 or not, if - if they need support, there is outside  
40 providers, EAP, through the Department. And we teach - we  
41 - we have our own mental health program for prison officers  
42 to teach them to do exactly that.  
43  
44 Okay. Just on the topic of once the CCC are involved, would  
45 you advise a member that other members had been contacted by  
46 the CCC? Would that be appropriate, in your opinion?---I -  
47 I wouldn't do that. I - I - yeah.  
48  
49 Why not?---Just again, we're not trained in this, but it's  
50 just my interpretation once the CCC are involved, we don't

1 - we don't discuss the matter. Or we shouldn't discuss the  
2 matter.

3

4 Why shouldn't you discuss it?---My - my contact with the CCC  
5 now under these circumstances, I'm aware of legislation that  
6 I - I not been aware of prior to this.

7

8 What legislation is that, that you're talking about?---Well,  
9 just instruction that I've received while summonsed to here  
10 that conversations are more restricted than I believed they  
11 were prior to this.

12

13 Okay. But even prior to now, your involvement, you said  
14 that your understanding was at this point in time, so in  
15 August, that once a member has been contacted by the CCC  
16 that the union is to have no further involvement?---We  
17 shouldn't contact them, no.

18

19 Right. So I'll just go back to my earlier question, is that  
20 would you think - or do you think it's appropriate to advise  
21 a member that other members have also been - sorry, have  
22 been contacted by the CCC. To disclose that fact to another  
23 member?---I - I wouldn't think so now. I would not think  
24 that. At the time, I probably - I - I still think I would  
25 have known to say that, yeah.

26

27 You still think you would have known. Did you know or did  
28 you not know? It was only a couple of months ago?---I know  
29 it's only a couple of months ago. There's a - like  
30 (indistinct) for a couple of months. But yeah, I was pretty  
31 sure that I - I was aware of that. That would be sound to  
32 say "No, don't discuss anything between people".

33

34 Yes, but to - so my specific question is, do you think it is  
35 okay to, as a union rep, to advise one member that other  
36 members have been approached by the - - -?---No.

37

38 - - - CCC? And why not?---It's my belief now that that's  
39 not appropriate. And not - it's not allowed, it's just -  
40 you wouldn't do that.

41

42 And what are some of the reasons why you wouldn't let one  
43 member know that other members had been approached by the  
44 CCC? Tell us some of the reasons why you wouldn't do that,  
45 other than it may be against legislation, but what are some  
46 of the other reasons?---Well, I think my main concentration  
47 would be the fact that it's not permissible.

48

49 It's not what, sorry?---Permissible.

50

1 Right. What about confidentiality of those members who had  
2 been contacted by the CCC, and then you are disclosing that  
3 fact to another member?---It wouldn't be something that I  
4 would do or recommend, no.

5  
6 Just while we're on confidentiality, in circumstances where  
7 you've been approached by several members relating to the  
8 one incident, like what happened in this case, how do you  
9 deal with that? For example, do you assign separate  
10 industrial officers to deal with each member?---Ordinarily,  
11 we would - and this is the first case that I've dealt with  
12 where there's a large number, but if there are two  
13 individuals, which is the maximum we've dealt with in the  
14 past, so we'd have two separate industrial officers assigned.  
15 On this particular occasion, these individuals came in pairs  
16 and - I think it was two pairs and one - - -

17  
18 Mm hmm?---But ordinarily, they would be assigned - but we  
19 didn't get to that stage because we didn't have to. It's -  
20 it was a matter that we wouldn't deal with.

21  
22 So you didn't get to that stage "because we didn't have to"?  
23 What do you mean?---It wasn't an industrial matter. It was  
24 higher, it was CCC, but even Professional Standards, we  
25 hadn't got to that, it was taken out of our hands before  
26 then. We gave them legal representation.

27  
28 It was taken out of your hand - what, sorry?---We gave them  
29 legal representation. I didn't have to assign - there wasn't  
30 a point at which I assigned different industrial officers.  
31 We assigned everybody legal representation.

32  
33 You met with several members involved in this incident -  
34 sorry, I'll rephrase that. Did you in fact meet with all of  
35 the five individuals were involved in this alleged incident?--  
36 --Yes.

37  
38 Why did you not assign someone different to meet with some  
39 of those individuals to keep some sort of - or to avoid any  
40 potential conflict of interest that may arise from you  
41 meeting with all of them?---At the point at which they came  
42 in, from - and in hindsight I might have fixed that - well,  
43 moving forward I have, but I didn't know the extent of what  
44 the allegations were. They came in in pairs because they  
45 chose to, and I didn't know what - what it was until they  
46 came in, and at that time it was too late. I should have  
47 had a better control over how they came in and who they saw,  
48 and so on. To be honest, five of them, I'm not sure, in a  
49 small office like ours, how I would have dealt with that,  
50 but yeah - hindsight, it would have been dealt with in a  
51 much different way.

1  
2 Can I have 0198-1^ please.  
3  
4 0198-1^  
5  
6 START TELEPHONE INTERCEPT  
7  
8 Part conversation 09:14:05 to 09:15:33  
9  
10 SMITH: Uhm, ah, I'm a little bit disturbed about where we're  
11 currently at or where your situation is uhm, ah, have you  
12 been contacted by triple C?  
13  
14 [REDACTED]: No.  
15  
16 SMITH: You haven't? Okay  
17  
18 [REDACTED]: No.  
19  
20 SMITH: so I, I at this point in time I can still talk to ya  
21 but one of the things that greatly worries me is when you  
22 first came in on Monday the one thing I said to you mate is  
23 tell us the truth. What happened.  
24  
25 [REDACTED]: Yeah.  
26  
27 SMITH: Uhm and we've basically lost three days and once the  
28 triple C contact you we can't talk to you anymore.  
29  
30 [REDACTED]: Yeah.  
31  
32 SMITH: Uhm so what I expected from you was the truth and  
33 it's not, you and you didn't tell us that you know.  
34 [REDACTED]: Okay.  
35  
36 SMITH: And so we're way behind the fuckin' eight ball. I'll  
37 speak with Paul when I get back in the office. He's aware of  
38 things that are goin' on in the background and we might uhm  
39 give you a call to see what we can do uhm, I'm not, I, I  
40 think we've missed the boat uhm three days is a fucking long  
41 time uhm with this so let, I'll, I'll be speaking with Paul  
42 within about half an hour  
43  
44 [REDACTED]: Yep.  
45  
46 SMITH: uhm and then if we can do something for you we will  
47 uhm I think at this point in time uhm  
48  
49 [REDACTED]: So, so it is me then that they're chasing.  
50

1 SMITH: Well it's looking like that mate, it's looking like  
2 that and yeah had we had known what was actually going on,  
3 on Monday I would have reacted in a way, different, in a  
4 different way you know I would have been able to engage you  
5 know uhm ah  
6  
7 [REDACTED]: I  
8  
9 SMITH: different people to help ya.  
10  
11 END TELEPHONE INTERCEPT  
12  
13 **PANTANO, MS:** So this is the same call as we heard earlier  
14 it's just a different portion of it. It's an earlier portion  
15 of the call. So again, you also talk again about speaking  
16 with Paul.  
17  
18 He's aware of things that are going on in the background,  
19 and we might - I'll give you a call to see what we can do.  
20  
21 Were you looking for extra information so you could get all  
22 of their stories straight?---No. I know what you're  
23 inferring. No, absolutely not. I do not, and I will not,  
24 stand beside an officer that is doing the wrong thing, that  
25 has illegally used force that he shouldn't have - he or she  
26 - and even there, you can tell, if he had have been honest  
27 with me in the first - in the first instance - I didn't know,  
28 because he came in first - my gut feeling is he told me a  
29 story. As it progressed during the day, my gut feeling was  
30 there was something amiss, and I would have referred him  
31 straight - straight to legal advice and washed my hands of  
32 it, which is what I've told him there, if he had have told  
33 me the truth in the first part - and I'm still, having been  
34 a prison officer, I in a way still wanted him to have the  
35 opportunity to say to me what the truth was.  
36  
37 Can I have 0200-2^.  
38  
39 0200-2^  
40  
41 This is not a call involving you, Mr Smith, but it references  
42 you - again about the same incident we're talking about.  
43  
44 START TELEPHONE INTERCEPT  
45  
46 Part conversation 17:45:59 to 17:46:17  
47  
48 LLOYD-CRESSWELL: What, what are they gonna do? His word  
49 against fuckin' four officers, five officers.  
50  
51 [REDACTED]: Yeah. Yeah.



1  
2 LLOYD-CRESSWELL: So.  
3  
4 [REDACTED]: I mean, fuckin' like, as I said to 'cos  
5 fuckin' Andy and Ken are like look in here we don't give a  
6 fuck so if someone's givin' him a touch up, tell us.  
7  
8 END TELEPHONE INTERCEPT  
9  
10 PANTANO, MS: I appreciate this is somebody else repeating  
11 what they think that you have said, or words to the effect  
12 of what you've said. Is that the message that you were  
13 giving?---No, it is not the message I'm giving, and Pete -  
14 I've been an officer, a senior officer, and a principal  
15 officer at Hakea Prison, and that is not ever, ever, ever my  
16 intent under any circumstances. I don't know why he said  
17 that, and I'm deeply offended by it. I've held positions of  
18 high responsibility at Hakea. I've overseen a management  
19 unit, which is a punishment unit there, and under no  
20 circumstance and in no circumstances was an officer ever on  
21 my shift ever investigated or charged with an incident,  
22 because I don't - I do not condone that behaviour.  
23  
24 Can I have 0179-1^ please.  
25  
26 0179-1^  
27  
28 Again, another call not involving yourself, but referencing  
29 you, Mr Smith. This is on another day.  
30  
31 START TELEPHONE INTERCEPT  
32  
33 Part conversation 17:57:40 to 17:59:06  
34  
35 [REDACTED]: Yeah well when I talked to Talunga he said what  
36 they're gonna do is try and break one of youse  
37  
38 [REDACTED]: Yep.  
39  
40 [REDACTED]: (indistinct) he said like look, we'll look after you  
41 if you tell me what actually happened?  
42  
43 [REDACTED]: Mm.  
44  
45 [REDACTED]: But as long as we all stick together and we all say  
46 what the truth is that we went, like the reports  
47  
48 [REDACTED]: Mm.  
49  
50 [REDACTED]: it is what it is, we wrote that for a reason because  
51 that's what happened

1  
2 [REDACTED]: Yeah.  
3  
4 [REDACTED]: like you have, you won't have an issue but if one  
5 lingers off by himself and says something you're fucked.  
6  
7 [REDACTED]: Yeah, yeah exactly.  
8  
9 [REDACTED]: But 'cos there's so many of you you've gotta be  
10 careful make sure that you're all on the same page, you're  
11 all gonna make sure that you all stick to your reports and  
12  
13 [REDACTED]: Yeah.  
14  
15 [REDACTED]: you're all gonna be on the same page like if you're  
16 not you're fucked.  
17  
18 [REDACTED] [REDACTED]: Hundred per cent and that's what Clive and  
19 Andy ah Smith has said.  
20  
21 [REDACTED]: What have you talked to [REDACTED] and [REDACTED] and they  
22 understand that as well?  
23  
24 [REDACTED]: Yeah, yeah they, they understood that at the  
25 pub but I'll give 'em a ring after I get off the phone.  
26  
27 [REDACTED]: Yep make sure.  
28  
29 [REDACTED] [REDACTED]: And just let, let them know that, that uhm  
30 the Unions gotten back to me.  
31  
32 [REDACTED]: Yeah 'cos apparently they're gonna do everything  
33 they can to separate us.  
34  
35 [REDACTED]: Yeah.  
36  
37 [REDACTED]: Yeah.  
38  
39 [REDACTED] [REDACTED]: hundred per cent. Yeah, they'll say oh look  
40 well, you'll get immunity if that's  
41  
42 [REDACTED]: Yeah.  
43  
44 [REDACTED] [REDACTED]: but at the end of the day the reports,  
45 (indistinct) reports that's what happened.  
46  
47 [REDACTED]: Yep, perfect. That's exactly right. Yep, okay, cool.  
48  
49 [REDACTED] [REDACTED]: I mean, I mean at the end of the day as I  
50 said they're gonna, just can't instantly thought that I had  
51 fucken belted him and I said that to Clive.

1  
2 END TELEPHONE INTERCEPT  
3

4 **PANTANO, MS:** So again, Mr Smith, someone has referenced  
5 advice that allegedly you have given about sticking with  
6 reports?---I've had two contacts with this individual, one  
7 in the office. At the point - he was the first one in - and  
8 I wasn't sure of what the allegations were, and you've got  
9 a transcript of my only other conversation with this  
10 individual.  
11

12 Mm hmm?---At no time have I given him the advice that he's  
13 referring to there. They are the only two contacts I've had  
14 with him, and he was referred to legal counsel after that,  
15 and that's it. There's no - so I've not said that; they are  
16 the only two times I've contacted that individual.  
17

18 What about the other individual in the call? Did you give  
19 that advice to the other individual?---I've not spoken to  
20 anybody about this case to anybody else.  
21

22 The other individual in this call was another prison officer  
23 who was involved in the incident and who also came to the  
24 union office and met with you and others?---And they - it  
25 was probably, by the time they came in, it was even vaguer,  
26 the conversations we had with them. It was becoming to be  
27 a little bit more complex than what we should be dealing  
28 with, even at that stage, so no, I didn't give that advice  
29 to them. I don't know the other individual. I've worked  
30 with [REDACTED] - I've not been in the same unit, but I've worked  
31 in the same prison as him, but I'm not familiar with the  
32 other individual at all.  
33

34 So are you saying it wasn't your advice to anybody to stick  
35 with their reports?---Absolutely not, and I think I've given  
36 that before to the same question. That is not my advice,  
37 that is - people need to - when it's apparent that the  
38 reports not reflect what has actually happened, I give advice  
39 that they need to seriously think about telling the truth.  
40

41 Can I have 0171-1^ . Another call, another day, involving  
42 different parties.  
43

44 0171-1^  
45

46 START TELEPHONE INTERCEPT  
47

48 Part conversation from 21:11:35 to 21:12:50  
49

1 [REDACTED]: Just 'cos he tried to call me and I don't know  
2 what, do I tell him that we told them or, I don't know  
3 (laughs).  
4  
5 [REDACTED]: Nah.  
6  
7 BROWN: Just don't contact him like you guys aren't meant to  
8 speak aren't ya?  
9  
10 [REDACTED]: No but he's trying to call me, he like called me  
11 like three times.  
12  
13 [REDACTED]: Has he? He hasn't tried calling me three times.  
14  
15 [REDACTED]: (indistinct)  
16  
17 [REDACTED]: Doesn't matter if we tell, we just told him the  
18 truth because that's what he wanted to know.  
19  
20 BAWDEN: Mm.  
21  
22 [REDACTED]: Mm.  
23  
24 [REDACTED]: (indistinct)  
25  
26 [REDACTED]: As far as, as far as [REDACTED] aware, we're saying what  
27 the report is.  
28  
29 BAWDEN: Mm.  
30  
31 [REDACTED]: Yeah okay. So you reckon just tell him that like  
32 yeah we told them but they ment, like they, but they said  
33 stick by your report and just, oh fuck I'm fucken over him  
34 man.  
35  
36 [REDACTED]: Yeah just say we  
37  
38 BAWDEN: Just stick to your report.  
39  
40 [REDACTED]: we told them what happened and they just said stick  
41 with our reports. That's all he needs to know. At the end  
42 of the day we're covering for him remember so he should be  
43 quite thankful that that's what we've done.  
44  
45 [REDACTED]: Yeah.  
46  
47 [REDACTED]: Don't stress over it, I'm not stressed after today.  
48  
49 [REDACTED]: No it's not that, I just don't want to deal with  
50 [REDACTED] being like ahh at me.  
51

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51

END TELEPHONE INTERCEPT

**PANTANO, MS:** Mr Smith, while your name is not mentioned and either are the union, the information the Commission has is that this call occurred after certain individuals, who were party to this call, had been at the union office and that this was advice that the union had given them?---I definitely did not give that advice.

Can I have 0172-1^. Different call.

0172-1^

START TELEPHONE INTERCEPT

Part conversation from 21:13:34 to 21:14:28

██████: I don't wanna, I don't wanna lie anymore, I don't lie, I'm not a liar, like.

██████: We, we're not lying, we told 'em the truth today.

██████: Exactly (indistinct)

██████: I feel good after that.

██████: Yeah.

██████: If he wants to keep going with the lie it's gonna fuck us over. Oh, it won't actually 'cos we're rolling with the reports but he's just gonna make himself look like a dick to the union.

██████: Yeah.

██████: That's why I said to him he's probably not going to tell you the full truth which he didn't by the sounds of it.

██████: Yeah, by the sounds of it definitely.

██████: It's up to him what he tells them. We've told 'em the truth and we feel better for it.

██████: Yeah and they're on our side so.

██████: Exactly. I had no issue telling them. I would have an issue telling Professional Standards that same thing, they definitely wouldn't have it.

██████: Yeah, yep.

1  
2 [REDACTED]: Yeah 'cos they're out to try and take our jobs, the  
3 Union are trying to help us keep them.

4  
5 [REDACTED]: Yeah, that's it.

6  
7 [REDACTED]: Yeah.

8  
9 END TELEPHONE INTERCEPT

10  
11 **PANTANO, MS:** The messages are seemingly quite consistent,  
12 Mr Smith, that the takeaway from these officers, who the  
13 Commission is aware met with you and other union reps, their  
14 takeaway message was that, despite telling the union the  
15 truth, they came away with the message that they were to  
16 stick by their reports?---I am the secretary of the union,  
17 employed by the members, and that is not my advice to them.  
18 It never has been, never would be. That is not my advice.  
19 My instruction to the employees of the union, which in this  
20 instance you've got Paul Ledingham's name, but there are two  
21 other industrial officers, would not be that.

22  
23 Did anyone, throughout this entire - we'll call it incident  
24 - in your presence give advice to any member that they were  
25 to stick with their reports, despite the fact that they have  
26 some suspicion that the reports were not correct?---The  
27 advice, I believe, from the president of the union at that  
28 time was that they had filled out a report; at this point  
29 their report stands, not to stick regardless of fact,  
30 regardless of what happened. That was not - what you've  
31 just said did not occur.

32  
33 So just to take that back and to break that down a little  
34 bit, you and other union - sorry, is it correct that you and  
35 other members knew at some point that there were various  
36 versions of the one incident?---Whilst we never discussed -  
37 we were all party to those conversations. I think that  
38 anybody that had worn the uniform would have realised there  
39 were disparities between the parties.

40  
41 Right, and that those disparities were not reflected in these  
42 prison officers' reports? Is that correct?---We hadn't seen  
43 the reports, and we weren't party to the reports - - -

44  
45 No - - -?---At all.

46  
47 - - - but from what you had been told, I understand you may  
48 not have seen the reports, but from what you and other union  
49 members, in your presence, had been told was that the  
50 disparities that were being discussed with you were not  
51 reflected in the reports that these prison officer had

1 prepared?---And at the point that they attended the union  
2 office, I expected that to come out through Professional  
3 Standards.

4  
5 Okay, but before that, what I'm asking you is, at the point  
6 at which these people had met with you and the president of  
7 the union, were you aware that the discrepancies that were  
8 being discussed in relation to this incident, were not  
9 reflected in these officers' reports?---I can't say we were  
10 aware. We had our suspicion that that's exactly what had  
11 occurred.

12  
13 Based on what these members were telling you - - -?---Just  
14 on what they were telling us - - -

15  
16 Right?---It seems that that would be the case.

17  
18 Right, okay. So that, despite the fact that you and the  
19 president were being made aware that there were disparities  
20 between the versions of the same incident, that these  
21 disparities were not reflected in their individual reports,  
22 is it the case that the president was still giving the advice  
23 that they were to stick with their reports?---No. We were  
24 both there - part of the advice - when the first two people  
25 came in, they had their story and it was the same, so we had  
26 no suspicion at that point.

27  
28 Okay?---When the second people came in, I made the comment  
29 again - there were two - two comments, that you have already  
30 filled out a report. If that's what you believe happened,  
31 you stick with it, but what I said to them, what I actually  
32 said to them, was, "It doesn't ring true to me. You need to  
33 - actually, when you're speaking with Professional  
34 Standards, be sure of what the truth actually is. They were  
35 both told that, the second people that came in were both  
36 told that. And that's not reflected in these conversations.

37  
38 No, but what is reflected in several of these conversations,  
39 Mr Smith, is these members take away from their meeting with  
40 you and the president was that we've told them the truth,  
41 we've got everything off our chest, but we need to stick  
42 with our reports, and our reports are not reflecting the  
43 truth?---It's not the advice I gave. I can only go speak  
44 for me, that was not the advice I gave, have ever given, and  
45 I wouldn't give it in the future.

46  
47 Did Mr Brown give that advice to stick with your reports?--  
48 -I think they may - they may picked that up from - from what  
49 he said, but it was clear I added to it, and said that it  
50 just doesn't ring true.

51

1 Did Mr Smith give advice to these individuals, who have come  
2 to you - - -?---Mr Brown.  
3  
4 Sorry, Mr Brown, apologies, did Mr Brown give the advice to  
5 these individuals after they had highlighted discrepancies  
6 with what went on, did he give advice to them to still stick  
7 with their reports?---My recollection is he gave the advice,  
8 you've written reports and you stick - but that was at the  
9 beginning of the meetings, not after we had noticed - and  
10 it's my recollection.  
11  
12 Commissioner, now might be an appropriate time for a  
13 15-minute adjournment.  
14  
15 **THE ACTING COMMISSIONER:** Before we go, you just said that  
16 Mr Brown gave that advice at the beginning of the interview.  
17 Did he ever correct it?---I corrected by - - -  
18  
19 No?---Sorry.  
20  
21 At the time, did Mr Brown ever correct that advice as the  
22 interview went on?---I - I don't - don't recall whether  
23 anything else was. I know what I said, Commissioner,  
24 directly after that there was - it didn't appear to be  
25 correct.  
26  
27 We'll adjourn for 15 minutes.  
28  
29 (THE WITNESS WITHDREW)  
30  
31 (Short adjournment)  
32 (TIMESTAMP) / 10.40.20 AM



1 SMITH, ANDREW JAMES RECALLED ON FORMER AFFIRMATION AT  
2 10.58 AM:

3  
4 THE ACTING COMMISSIONER: Please be seated.

5  
6 Yes?

7  
8 PANTANO, MS: Mr Smith, just to take you back to where we  
9 left off you said that - in your evidence now that you recall  
10 Mr Brown giving the advice to the members, to stick with  
11 their reports, prior to you and him becoming aware or having  
12 a suspicion that there may have been differing versions, is  
13 that correct?---It's my recollection, because it's not an  
14 unusual statement. At this point in time you're working  
15 with a report. That's what we work on. It's my recollection  
16 that that's what occurred.

17  
18 And you could somewhat understand giving that advice if  
19 members had come in to see you and, given the lapse of time,  
20 they may have been unsure in their recollection of what had  
21 actually occurred. Would you agree that that would be a  
22 common piece of advice to give, "Well, listen, what you wrote  
23 at the time is a contemporaneous version of or account of  
24 what happened, you wrote it shortly after the incident. So  
25 stick with that because that will be the best - your best  
26 version," would you agree?---I would agree with what you -  
27 you're saying.

28  
29 Right?---And this occasion, I think it was two years  
30 but - - -

31  
32 Yes?---And that might be some - yeah.

33  
34 However, the difference in this occasion, Mr Smith, is that  
35 on a lot of the information that the Commission has, many of  
36 these officers weren't confused, they didn't - they couldn't  
37 not recall what had happened. They recalled what happened,  
38 it was just different to what they'd put in their reports.  
39 So it wasn't a case that they'd come into the union and said  
40 two years ago, we can't remember. The difference here was  
41 they did remember and it was different to what they had  
42 written down?---The first two people that came in were -  
43 that was their story. The second - - -

44  
45 Yes?--- - - - I already had suspicions but they were also  
46 told by me that what you're saying doesn't jell, you need to  
47 make a choice. This - tell the truth.

48  
49 Right?---So the second people in were clearly told not stick  
50 by your reports, they were clearly told by me there - there  
51 is a truth in here and it's not what we're seeing. They

1 were clearly told that and that's not reflected in - in what  
2 you've seen but they were clearly told that.

3  
4 Clearly told by you just to - to - to what? What was your  
5 advice to them---You make - make a choice. If - if you're  
6 saying something in a report that doesn't reflect what  
7 actually happened, you need to tell the truth. They were  
8 clearly told that by me.

9  
10 Okay. But now by Mr Brown, you said just earlier that he  
11 gave the advice of sticking with your - with their reports.  
12 This is the second group of people, the one that - a male  
13 and female who came in in a pair that - now, I just want to  
14 be clear. Is it your advice today that he gave that advice,  
15 to stick with their reports, before or after they gave their  
16 recount of what actually happened?---It - it's my  
17 recollection that it's what - it's a standard thing we're  
18 saying to people you've got a report, that you would say  
19 that at the beginning of a meeting with them. It became  
20 clear during their recollection this isn't right.

21  
22 Okay?---And the advice that they got clearly at the end was  
23 from me, that it's not jelling. It's what I said to the  
24 individual where you played the report, what you're telling  
25 us is not the truth; the first thing, and they've all said  
26 it. But we've specifically told them to tell the truth and  
27 it didn't appear to be that way.

28  
29 Okay.

30  
31 **THE ACTING COMMISSIONER:** To tell the truth to you?---To  
32 tell the truth to us to start - - -

33  
34 The instructions were that they should tell - - -?---  
35 Commissioner, yes, but - - -

36  
37 - - - you the truth?---But - - -

38  
39 You didn't say tell everybody - - -?---Yes.

40  
41 - - - the truth?---Yes, I did. Yes, I - yes, I did,  
42 Commissioner.

43  
44 That's not the evidence you've been giving?---In the second  
45 meeting. Not in the first because we weren't aware that  
46 there was any anomalies, but in the second it was clear that  
47 they needed to make a - a choice.

48  
49 Mr Smith, a few seconds ago you said that by the time the  
50 second couple of prison officers came in you had suspicions  
51 that what the first couple of officers had told you wasn't

1 correct?---No, I think I've said when they came in and gave  
2 their account that's when it became evident that there was  
3 a difference in their stories.  
4  
5 Well - - -?---I didn't have any idea - when the first people  
6 had come in that was their story.  
7  
8 That's not my recollection of what you said earlier. My  
9 recollection of what you said earlier was when the second  
10 lot came in you had suspicions - - -?---After they'd - - -  
11  
12 - - - by the time they came in?---After they'd given us their  
13 account. I'd had no suspicion - we only had two accounts  
14 and they both jelled, so I had no suspicion until we got  
15 another story.  
16  
17 Don't you think it's reckless to tell prison officers to  
18 stick with their reports before you've asked them what had  
19 happened?---(No audible answer).  
20  
21 But they come in, first thing you say to them is stick to  
22 your report and then you say, "What happened"?---It wouldn't  
23 be - - -  
24  
25 Isn't that reckless?--- - - - something that I would do,  
26 Commissioner.  
27  
28 Well - - -  
29  
30 **PANTANO, MS:** Isn't it the case, Mr Smith, that that's not  
31 what Mr Brown did? That Mr Brown in your presence said after  
32 he had heard the versions, that he said after that, "Still  
33 stick with your reports"?---It - it's not my recollection.  
34  
35 Mr Smith, I'm going to put some evidence that you've  
36 previously given the Commission to us - sorry, given to the  
37 Commission to you and you said, when I asked you on a previous  
38 occasion did Mr Brown say words to the effect of stick to  
39 your reports your response was, "Yes; he must have done it,  
40 yes." And I asked you:  
41  
42 He may or he did, Mr Smith?---Yes, he did.  
43  
44 Why were you reluctant to commit to that?---Good question.  
45 It's - yeah, just was reluctant.  
46  
47 Yes, I know you were. That's my interpretation. I'm asking  
48 you why?---Can't obviously answer the question.  
49

1 Take your time?---Possibly because I thought at the time it  
2 was probably not a good advice to - to give. And I did  
3 correct the advice.

4  
5 What did you do to correct the advice?---I actually said to  
6 everybody, I said to each individual, 'We don't know what  
7 the particulars are, wait until we do and get a copy of your  
8 report'.

9  
10 Why did you think it wasn't correct advice to  
11 give?---Because I - like I've said before, I had a suspicion  
12 that the stories didn't align.

13  
14 So your advice on an earlier - your evidence, sorry, on an  
15 earlier occasion was that Mr Brown had given these members  
16 the advice to stick with their reports after there was a  
17 suspicion raised that something wasn't right?---I think if  
18 you reread it, I corrected his advice. I didn't say I did  
19 it there and - I didn't say, 'Shut up, Ken, this is it'. I  
20 corrected the advice once I'd heard their reports.

21  
22 Yes. But I said why did you not think - sorry, "Why did you  
23 think it wasn't correct advice to give," that being  
24 Mr Brown's advice. You said:

25  
26 Because like I've said before, I had a suspicion that the  
27 stories didn't align.

28  
29 So you already had the - and I understand it's your suspicion  
30 that the stories didn't align. It may not have been  
31 Mr Brown's suspicion but you had a suspicion that the stories  
32 didn't align when you gave - when you corrected Mr Brown's  
33 advice. Now, you've just given evidence today that said -  
34 where you said that you only formed a suspicion that stories  
35 didn't align until after you had heard the version of events  
36 from the - from the - from the other two members who came to  
37 see you and Mr Brown?---Yes.

38  
39 Is that correct? Right. So if you didn't - if you only  
40 formed that suspicion after you had heard a different version  
41 of events - - -?---What you've read is my evidence. I've  
42 not specifically - - -

43  
44 **THE ACTING COMMISSIONER:** Mr Smith?---Sorry.

45  
46 Wait for the question to be finished.

47  
48 **PANTANO, MS:** If you didn't form your suspicion that there's  
49 something else was going on until after hearing the version  
50 of events from these two other members, Mr Brown was in the  
51 same meeting as you, you were of the opinion, based on your

1 evidence last time, that Mr Brown's advice was not correct,  
2 to stick with their reports and the reason you said it wasn't  
3 correct was because you had a suspicion that the stories  
4 didn't align. So my question is cast your mind back,  
5 Mr Brown - sorry, Mr Smith, and is it the case that Mr Brown  
6 gave these members the advice to stick with their reports  
7 even after you - you and Mr Brown had heard a differing  
8 version?---No. And the way you've read that out, I - I've  
9 said I've corrected his advice. His advice to them was don't  
10 worry, stick to your story. My - when I've listened to the  
11 story I've corrected it and gone no, it - it doesn't jell.  
12 I have not at any time said that I immediately stopped him  
13 speaking and corrected it. I don't do - I wouldn't do that,  
14 anyway. But they've - the - the two pieces of - of advice  
15 were at two different times and it was only in the second  
16 interview not in the first, because we only had one story at  
17 the - at the first.

18 Even if you read it there I've not said I directly stopped  
19 him speaking or anything. I've just said he gave advice,  
20 "We've got an account of what happened," and I've gone no,  
21 that's not good advice and I've told them to tell the truth.  
22

23 I understand what - - -?---I've told them all to tell the  
24 truth.  
25

26 I understand what you said you've told them but what I'm  
27 interested in is that you've said something in a previous  
28 examination, we've then got several members who've met with  
29 you and Mr Brown, all appearing to come away from meetings  
30 with you both with the same message - and I'll play you some  
31 more calls, Mr Smith - and that is to stick to our  
32 reports?---I - I - I can't say what they take away from the  
33 meetings but they've also - if they've taken away that, okay.  
34 But in all of them they all refer to me having told them to  
35 tell the truth or they're all talking about what - that's  
36 all - all we've said to them, "Tell the truth".  
37

38 That's not entirely correct and I'll take you back to some  
39 of those calls where that's not actually correct.  
40

41 Can I have 0179-1, please?  
42

43 0179-1^  
44

45 START TELEPHONE INTERCEPT  
46

47 Part conversation 17:57:40 to 17:59:06  
48

49 [REDACTED]: Yeah well when I talked to Talunga he said what  
50 they're gonna do is try and break one of youse  
51

1 [REDACTED]: Yep.  
2  
3 [REDACTED]: (indistinct) he said like look, we'll look after you  
4 if you tell me what actually happened?  
5  
6 [REDACTED]: Mm.  
7  
8 [REDACTED]: But as long as we all stick together and we all say  
9 what the truth is that we went, like the reports  
10  
11 [REDACTED]: Mm.  
12  
13 [REDACTED]: it is what it is, we wrote that for a reason because  
14 that's what happened  
15  
16 [REDACTED]: Yeah.  
17  
18 [REDACTED]: like you have, you won't have an issue but if one  
19 lingers off by himself and says something you're fucked.  
20  
21 [REDACTED]: Yeah, yeah exactly.  
22  
23 [REDACTED]: But 'cos there's so many of you you've gotta be  
24 careful make sure that you're all on the same page, you're  
25 all gonna make sure that you all stick to your reports and  
26  
27 [REDACTED]: Yeah.  
28  
29 [REDACTED]: you're all gonna be on the same page like if you're  
30 not you're fucked.  
31  
32 [REDACTED] [REDACTED]: Hundred per cent and that's what Clive and  
33 Andy ah Smith has said.  
34  
35 [REDACTED]: What have you talked to [REDACTED] and [REDACTED] and they  
36 understand that as well?  
37  
38 [REDACTED]: Yeah, yeah they, they understood that at the  
39 pub but I'll give 'em a ring after I get off the phone.  
40  
41 [REDACTED]: Yep make sure.  
42  
43 [REDACTED] [REDACTED]: And just let, let them know that, that uhm  
44 the Unions gotten back to me.  
45  
46 [REDACTED]: Yeah 'cos apparently they're gonna do everything  
47 they can to separate us.  
48  
49 [REDACTED]: Yeah.  
50  
51 [REDACTED]: Yeah.

1  
2 [REDACTED] [REDACTED]: hundred per cent. Yeah, they'll say oh look  
3 well, you'll get immunity if that's  
4  
5 [REDACTED]: Yeah.  
6  
7 [REDACTED] [REDACTED]: but at the end of the day the reports,  
8 (indistinct) reports that's what happened.  
9  
10 [REDACTED]: Yep, perfect. That's exactly right. Yep, okay, cool.  
11  
12 [REDACTED] [REDACTED]: I mean, I mean at the end of the day as I  
13 said they're gonna, just can't instantly thought that I had  
14 fucken belted him and I said that to Clive.  
15  
16 END TELEPHONE INTERCEPT.  
17  
18 **PANTANO, MS:** So we can see there where they - if we can  
19 scroll up just a little bit? A little bit further. A little  
20 bit further.  
21  
22 Cos there's so many of you -  
23  
24 - line 16 -  
25  
26 - we've got to be careful. Make sure that you're all on the  
27 same page. You're all going to make sure that you all stick  
28 to your reports. And you're going to be on the same page.  
29 Like, if you're not, you're fucked 100 per cent and that's  
30 what Clive and Andy Smith had said.  
31  
32 ?---I - I haven't said that to him. He's got advice from  
33 Clive and they've - he's made a reference to (indistinct).  
34 This is not my advice. It absolutely is not my advice to -  
35 to do that. You're aware of two conversations I've had with  
36 - with [REDACTED]. One was in the office and one you have a tape  
37 transcript. They are the only two conversations I've had  
38 with them. The first one being in the office, where I've  
39 not assumed - made any assumptions. And the second one, you  
40 have word for word what I've said.  
41  
42 And then we have additional conversations.  
43  
44 And if I can have 0172-1^, please?  
45  
46 0172-1^  
47  
48 **PANTANO, MS:** I don't need the audio. We've already listened  
49 to this. If I could just have the transcript, please? And  
50 if we can leave it at that. Sorry, just scroll down just a  
51 little bit so we can see the (inaudible).

1  
2 We've also got transcripts, albeit not with you as a party,  
3 but with others who have met with you and Mr Brown. And the  
4 takeaway message is the same, Mr Smith. And further, they  
5 go on to say:  
6  
7 I have no issue telling them -  
8  
9 - being the union:  
10  
11 I would have an issue telling professional standards that  
12 same thing. They definitely wouldn't have it. Yeah, cos  
13 they're out to try and take our jobs. The union are trying  
14 to help us keep them.  
15  
16 My question is, how are you, in this instance, where you  
17 were aware there were various versions of the same event,  
18 what were you doing to try and help these officers keep their  
19 jobs?---At this point, nothing. We've referred them all for  
20 professional help. At this point, absolutely nothing. At  
21 this point, no conversations. The conversations ceased.  
22 Even the last point of contact with [REDACTED] was the telephone  
23 call that you have taped. And they were referred on. And  
24 in - to my - the best of my knowledge, none of these, they  
25 certainly haven't contacted me. And they should not have  
26 contacted or any - had any contact with the union office.  
27  
28 Can I have another call? 0175-6^, please?  
29  
30 0175-6^  
31  
32 **PANTANO, MS:** Another call not involving yourself but  
33 talking about the outcome of the union meeting.  
34  
35 START TELEPHONE INTERCEPT  
36  
37 Part conversation 13:17:13 to 13:17:31  
38  
39 BROWN: Because then they'll be like caught out and have  
40  
41 [REDACTED]: Yeah.  
42  
43 BROWN: what did he say when you guys told him that?  
44  
45 [REDACTED]: They were like yep alright that's, that's good to  
46 know uhm, the whole outcome of thing was stick with your  
47 reports  
48  
49 BROWN: Mm hm.  
50



1 [REDACTED]: if your report said [REDACTED] came and put the spit hood  
2 on that's all you guys are rollin' with.  
3  
4 BROWN: Mm hm. Perfect.  
5  
6 END TELEPHONE INTERCEPT  
7  
8 **PANTANO, MS:** Again, we're hearing the same message. This  
9 is not them saying that PSD are telling them to stick with  
10 their reports or anybody else. It's following a meeting  
11 with the union, where the consistent take home message of  
12 these officers was to stick with their reports?---It is not  
13 my message to them.  
14  
15 Can I have 0175-9^? Same call, but different portion.  
16  
17 0175-9^  
18  
19 START TELEPHONE INTERCEPT  
20  
21 Part conversation 13:27:35 to 13:28:16  
22  
23 [REDACTED]: 'Cos we got that [REDACTED] thing off our chest. That's the  
24 main thing that's basically been plaguing, plaguing us.  
25  
26 BROWN: Yeah I don't blame you for that, that would stress me  
27 out.  
28  
29 [REDACTED]: If the union weren't concerned about it then that  
30 doesn't concern me now. It takes the weight off my chest.  
31  
32 BROWN: Yeah.  
33  
34 [REDACTED]: Just that I was worried about that we were gonna go  
35 into the union and tell them the same story that we were  
36 rollin' with was, even though we told 'em and they didn't  
37 really care anyway 'cos they were just like no that's all  
38 good, I'm, I'm glad you told us but you're gonna roll with  
39 this anyway. They can't prove fuck all.  
40  
41 BROWN: Good.  
42  
43 [REDACTED]: Unless one of you fuckin' changes your story  
44 dramatically, they can't prove fuck all.  
45  
46 END TELEPHONE INTERCEPT  
47  
48 **PANTANO, MS:** What do you have to say about that, Mr Smith?--  
49 --Still the same. My message to them was that their stories  
50 didn't gel. And it's in the transcript to - to [REDACTED]. Their

1 stories did not gel. They need to make a choice to tell the  
2 truth.  
3  
4 Did anybody - - -?---Can only say that's my story.  
5  
6 Did anybody in your presence give differing advice after  
7 being made aware that there were differing versions?---Not  
8 to my knowledge, no. There were no conversations that went  
9 off - went on after they left the union office, to my  
10 knowledge.  
11  
12 So did anybody in your presence then give contrary advice to  
13 what you're saying what you gave?---Only what I've said in  
14 my previous evidence.  
15  
16 That Mr Brown told them to stick with their reports. But  
17 that was given prior - - -?---Yep.  
18  
19 - - - to him knowing of a different version. Is that - - -?--  
20 --Well - - -  
21  
22 - - - what your evidence is?---My recollection of that, yes.  
23  
24 Not only do we have the - a consistent message in these  
25 calls, Mr Smith, that to stick with - with the reports, but  
26 there's another message that's coming through. And I'm -  
27 I'm going to put to you that the other message that's coming  
28 through is that the union don't care what the truth is. And  
29 he said - the individual in this instance said:  
30  
31 Even though we told 'em, they didn't really care anyway.  
32  
33 And I've shown you calls where you've also said, words have  
34 come out of your mouth, "Tell us the truth. We don't have  
35 to tell the truth to anybody". The message appears to be  
36 coming out of the union. And this is my interpretation,  
37 that the union don't care what the truth is because "We're  
38 not going to tell anybody what the truth is. And neither  
39 are you, members. You are going to stick with your reports".  
40 That is message, in my opinion, of what's coming through  
41 these calls. What do you have to say about that?---That's  
42 your opinion and it's incorrect.  
43  
44 Can I have 0200-2^, please?  
45  
46 0200-2^  
47  
48 **PANTANO, MS:** Another call involving not you, but another  
49 two individuals.  
50  
51 START TELEPHONE INTERCEPT

1  
2 Part conversation 17:45:59 to 17:46:17  
3  
4 LLOYD-CRESSWELL: What, what are they gonna do? His word  
5 against fuckin' four officers, five officers.  
6  
7 [REDACTED]: Yeah. Yeah.  
8  
9 LLOYD-CRESSWELL: So.  
10  
11 [REDACTED] [REDACTED]: I mean, fuckin' like, as I said to 'cos  
12 fuckin' Andy and Ken are like look in here we don't give a  
13 fuck so if someone's givin' him a touch up, tell us.  
14  
15 END TELEPHONE INTERCEPT  
16  
17 **PANTANO, MS:** Same message?---No, different - different  
18 message. My - my message to everybody that comes in is they  
19 need to tell me the truth. "I can't make a - a choice unless  
20 you tell me the truth. I don't care what the truth is. You  
21 tell me". And that's standard for everything regardless of  
22 whether it's the use of a pen, taking something through the  
23 - the gate, whatever. You've put it - a different spin to  
24 it. That's always what I would stick with. I've asked them  
25 to tell the truth.  
26  
27 Yes, to the union?---I have never - - -  
28  
29 Tell the truth to the union, is that advice?---In the first  
30 instance. And as I've said before, in the second - the  
31 second two people that came into the union office were told  
32 by me that they need to make a - a choice. You need to tell  
33 the truth. There were anomalies in the reports. And I  
34 hadn't seen the reports. They were only in their stories  
35 that they gave us.  
36  
37 Can I have 0192-3^, please?  
38  
39 0192-3^  
40  
41 START TELEPHONE INTERCEPT  
42  
43 Part conversation 18:37:03 to 18:37:26  
44  
45 [REDACTED]: But what, what they're, he's trying to allege that  
46 fuckin' uhm [REDACTED] was the one that did it all to him.  
47  
48 POPE: What, assaulted him?  
49  
50 [REDACTED]: Yeah, assaulted him.  
51

1 POPE: Yeah, uhm ah youse are all as long as you all stick to  
2 the same story  
3  
4 [REDACTED]: Yeah, that's  
5  
6 POPE: that is not what happened, he did not assault him, it  
7 all happened when he hit the ground.  
8  
9 [REDACTED]: And that's what the union's tellin' us to do as long  
10 as you say  
11  
12 POPE Is that what the story  
13  
14 [REDACTED]: as per my fuckin' report.  
15  
16 POPE: is that what the story, paperwork said?  
17  
18 END TELEPHONE INTERCEPT  
19  
20 **PANTANO, MS:** As you can see at line 10:  
21  
22 And that's what the union is telling us to do. As long as  
23 you say as per my fucking report.  
24  
25 Again, another call involving other parties?---In previous  
26 transcripts, you've seen reference to two union delegates at  
27 Hakea. So advice - it appears to me advice is coming from  
28 all over the place. And if - if their wearing a badge and  
29 given a - it's not coming from the interview that we had  
30 with them in the union office. And certainly not coming  
31 from me. It is not advice that I've ever given or would  
32 ever contemplate giving.  
33  
34 The Commission's aware that the individual highlighted at  
35 line 10 met with you and met with Mr Brown. The Commission  
36 knows that?---So line 10, sorry, you made a reference - - -  
37  
38 The person at line - the individual at line 10 who said:  
39  
40 And that's what the union is telling us to do as long as you  
41 as per my fucking report.  
42  
43 That individual met with you and Mr Brown. So yes, there  
44 may be other union reps, but the Commission knows that that  
45 individual met with you and Mr Brown. We know that. His  
46 message throughout all of these calls, his takeaway message  
47 from his meeting with you and Mr Brown has been very  
48 consistent. And that is stick to our reports:  
49  
50 That what's the union's telling us to do as long as you as  
51 per my fucking report.

1  
2 ?---It is not the advice I gave them and that's all I can  
3 say. It is not the advice that I gave them - I gave them.  
4  
5 I'm finished with that call, thank you.  
6  
7 Is there any way, Mr Smith, help me to understand if there's  
8 any way that these members have got your advice and Mr  
9 Brown's advice so wrong? Help me to understand how they've  
10 got it so wrong. How could that have happened, in your  
11 opinion?---As I've said before, they're two conflicting  
12 pieces of advice. That they should have walked away - in my  
13 eyes, walked away with my advice, which was "You need to  
14 tell the truth".  
15  
16 But based on what we've seen today, no one's walked away  
17 with that advice. So I'm asking you to help me to understand  
18 how they've got it so mixed up. How could they in your  
19 opinion?---In - in my opinion, as I've just stated only  
20 minutes ago, they're getting advice from other people.  
21 They're making reference to at least two other people. And  
22 - and it's not my advice. It's not the advice that would  
23 come out of the union office. It is absolutely not the  
24 advice that comes from the paid officials of the union.  
25  
26 Sitting here today, seeing these calls, is it still your  
27 evidence that you don't think that advice is coming out of  
28 the union office?---It is not coming from paid officials at  
29 the union. It is not my instruction. It is not what we  
30 teach our industrial officers. And it is not something that  
31 should come out of the union office.  
32  
33 It maybe shouldn't come out, but would you from hearing what  
34 your members are taking away from meetings at the union  
35 office, if you could just let me finish, please, can you see  
36 that that is what these members are taking away from meeting  
37 with you and Mr Brown? That's their takeaway. So is  
38 something getting lost in translation, Mr Smith?---I - I  
39 can't answer for those individuals as to why they took away  
40 what they did and what they're stating. I can only say to  
41 you what I actually said in those meetings and the advice I  
42 gave as a paid official of the union. And I would stand by  
43 that now. That was prior to this meeting. And moving  
44 forward, that is our advice.  
45  
46 Can I have 0175-8^, please?  
47  
48 0175-8^  
49  
50 **PANTANO, MS:** Again, it's not a call between yourself. It's  
51 others.

1  
2 START TELEPHONE INTERCEPT  
3  
4 Part conversation 13:19:54 to 13:20:22  
5  
6 [REDACTED]: They said we could be required for an interview or we  
7 might not be so, uhm they were, they're gonna send us a  
8 letter the Professional Standards and that's gonna be the  
9 full allegation  
10  
11 BROWN: Mm hm.  
12  
13 [REDACTED]: where we have to respond and then the union will  
14 doctor it so you'll have to help me with that.  
15  
16 BROWN: Oh okay. So you'll  
17  
18 [REDACTED]: But the Union will  
19  
20 BROWN: send your response to the union and then they'll edit  
21 it from there.  
22  
23 [REDACTED]: the union and they'll edit it  
24  
25 BROWN: Yep.  
26  
27 [REDACTED]: how they want it to be.  
28  
29 BROWN: Yep.  
30  
31 [REDACTED]: So it just so it doesn't look like they've copied and  
32 pasted everyone's.  
33  
34 END TELEPHONE INTERCEPT  
35  
36 **PANTANO, MS:** What's your understanding of what they're  
37 talking about here, Mr Smith?---As I've said before, the  
38 point that they came into the - and I'm not sure when this  
39 occurred in relation to the - the visits into the union  
40 office. At that point, we believed it was professional  
41 standards that they would - and as it says there, would give  
42 the full allegation. And what we current - we always do, we  
43 get the individual to reply by putting it in writing. And  
44 we doctor it. We correct spelling mistakes. We put it in  
45 a way that is presentable. That's what we do. That's public  
46 sector standards. That's standard I think in most  
47 situations. That's - that's it.  
48  
49 Correcting spelling mistakes is one thing - - -?---And - and  
50 putting in a form that would accurately represent - take out  
51 emotion if there's abuse or there's quite a bit that goes

1 into it. That's what we do with every response to  
2 professional standards.

3  
4 You said earlier in your evidence that one of your - the  
5 criticisms that you had of the way that the system is being  
6 dealt with now or that the way the system is dealing with  
7 these issues now as opposed to before was that it's not just  
8 a matter of picking up a phone or meeting with the Department  
9 on these sorts of issues. You've got to do a written  
10 response. And one of your - the criticisms that you had  
11 about that process was that emotion was taken out of it.  
12 And the way I interpreted what you said was that that wasn't  
13 a good thing. So you just said now that one of the things  
14 that you actively would do is that when you're going through  
15 a member's written response, you would take out the emotion.  
16 So if - if you saw it as a good thing in the - I was going  
17 to say the olden days, why - why are you talking it out now?--  
18 --Surely you would understand there's two types of emotion.  
19 If somebody's dealing with a minor issue, they need to put  
20 it emotion in there that they might regret what they've done  
21 and - and fall on their sword. In this instance, there might  
22 be anger in there. So you're taking out - sometimes you  
23 take out if there's anger or abuse or - so the - the both  
24 are - are correct.

25  
26 Right?---It - it's a case that you're asking what we would  
27 do with this. It comes in. We read it. We - we change it.  
28 We take out if there's abuse or if things aren't relevant  
29 or - - -

30  
31 So taking out emotion then, would - - -?---May or may not.  
32 We may leave it in.

33  
34 If - if it's in the - not appropriate, would you agree that's  
35 a subjective - that's quite a subjective thing for a - a  
36 member to include in their report. Would you agree? Or not  
37 their report, their response?---Maybe.

38  
39 It's subjective. It's - it's - it's personal to them, the  
40 emotion that they might put on the page?---It may or may not  
41 be. Yes, depending on what they're referring - it's not  
42 characterised always to be appropriate and emotive.

43  
44 Right?---It might be inappropriate emotion. Like I say,  
45 anger or abuse.

46  
47 Right. Well, when at line 15 the member as said:

48  
49 So it just - so - so it doesn't like they've copied and  
50 pasted everyone's.

51

1 What do you understand that to mean?---I don't know what  
2 they mean with that.  
3  
4 It says:  
5  
6 The union, they'll edit it how they want it to be so It just  
7 doesn't look like they've copy and pasted everyone's.  
8  
9 I - I don't know what they mean by that. That's their  
10 statement.  
11  
12 No, I understand. But does the union have any involvement  
13 so it doesn't look like people have copy and pasted responses  
14 to allegations?---As you're inferred earlier on today, if -  
15 if we assign different people to - to do different returns,  
16 it ensures that it's not just a - and at this point in time,  
17 we thought that it was a - a - professional standards would  
18 apply. And that it wasn't to the extent that it currently  
19 is. So under those circumstances, there would be a reply  
20 come in and there would be different people - that might be  
21 their interpretation of what that means. It certainly  
22 doesn't refer to anything that I would say.  
23  
24 You mean different industrial officers replying to the one  
25 incident?---Yes.  
26  
27 Right. But that didn't happen in this case, did it? It  
28 didn't - It didn't get - apologies, I'll rephrase. It didn't  
29 get referred to different industrial officers, did it?---It  
30 didn't get anywhere. But it didn't get any returns like  
31 they're - they're stating there, they're stating things that  
32 didn't happen either.  
33  
34 No, but there were several meetings that went on with these  
35 individuals, weren't there?---No, the - we had the one  
36 meeting on - there were several people.  
37  
38 Yes?---But it was only on that one occasion, that one day.  
39  
40 But they were all - all meetings were had with you and  
41 Mr Brown though, weren't there.  
42  
43 Right. Do you see an issue relating to - and we'll - we've  
44 touched on this earlier about conflicts of interest. The  
45 fact that you and Mr Brown met with any individual who was  
46 involved in this incident, do you see that as a potential  
47 issue?---I - I think I've said in my previous that yes, had  
48 I - could I apply hindsight, we had no idea the extent of  
49 what we were entering into on that day. And hindsight  
50 applied, I wouldn't have approached this in the way that we  
51 did on that occasion.



1  
2 How would you do it differently?---It - again, hindsight's  
3 a wonderful thing. Knowing all the facts, I wouldn't have  
4 had meetings with them. They would have been referred to  
5 legal counsel immediately.

6  
7 **THE ACTING COMMISSIONER:** Mr Smith, when the prison officers  
8 came in, they brought with them the stand-down notices.  
9 Those stand-down notices referred to collusion. Didn't that  
10 set any alarm bells ringing about the need to interview  
11 people separately?---The first two had chosen to come in -  
12 yes, in hindsight, I probably should have applied that, but  
13 we didn't know until we saw that paperwork - - -

14  
15 But then the next ones? There had been a collusion  
16 allegation before; it didn't set the alarm bells off?---I -  
17 as I say, in hindsight, I would not - absolutely would not  
18 have done it. Again, it happened very quickly on that  
19 particular day, and I - the first event, I would do - I would  
20 have done it a different way.

21  
22 **PANTANO, MS:** When you say it happened quickly, a number of  
23 these members had rung and made appointments prior to their  
24 arrival, hadn't they?---I think they came in at 10 and  
25 1 - - -

26  
27 Yes?---And I'm exceptionally busy, and they were put in, and  
28 I went ahead with meetings and, as I say, in hindsight, I  
29 would not have done it in that way.

30  
31 But on several occasions they had rung in advance and made  
32 a booking. They had booked a time, they didn't just show up  
33 at the door?---Until they came in, I had no idea, and, as  
34 the Commissioner has pointed out, reading into it, I should  
35 have separated the second two, but in hindsight, and you're  
36 asking me to give my opinion, I would not have even met with  
37 them, in hindsight.

38  
39 Is it because at the time - - -?---But it's hindsight.

40  
41 Yes, I understand. But is it because at the time, Mr Smith,  
42 you weren't interested in keeping things separate, is it  
43 because you were - you wanted to know what everybody was  
44 saying in this instance? Is that the case?---No more than  
45 we asked for the truth and find out what's going on, no more  
46 than that.

47  
48 Because we saw in earlier calls involving you and one of the  
49 individuals at the centre of these allegations that you said,  
50 "I'm going to go off and talk to Paul, because I know he's  
51 been meeting with some of the others, so I can find out some

1 more information". You wanted to know what was going on  
2 with all the others. Isn't that the case?---That's your  
3 interpretation, it's not what I said. I couldn't recall why  
4 I asked him that question.

5  
6 Well, you've recalled quite a lot of other specifics about  
7 two people rocking up together, a male and a female. The  
8 first lot, the male and the female who attended at the first  
9 meeting, you recall that they told you a different story  
10 then the second male and females. You've recalled quite a  
11 lot of specifics, Mr Smith. Why can't you recall why you  
12 were wanting to go talk to Paul about what others had said?--  
13 --I can't recall, and I can't answer that.

14  
15 Is it because it would not be appropriate for you to go and  
16 speak to Mr Ledingham about what other members had told him  
17 about this incident?---No, I've been honest with you in all  
18 of this, and I've been honest with you on that case as - on  
19 that question as well.

20  
21 Mr Smith, have you ever told a union member that PSD are  
22 just fishing, or on a fishing expedition?---No.

23  
24 Or said words to that effect?---No, it's not a phrase I would  
25 use.

26  
27 Or words to that effect?---No. We deal with issues as they  
28 come in. PSD aren't on fishing exercises. We get given  
29 paperwork, and we deal with it, that's it.

30  
31 Right?---So - - -

32  
33 Have you ever told a member that PSD are just trying to  
34 justify having internal investigators up in head office?---  
35 I've made flippant comments on occasions regarding PSD, yeah.

36  
37 Yes? What are those flippant comments that you've made?---  
38 Probably that one.

39  
40 Yes? Why?---I just see the department - I've made the  
41 statement, it's a large department, that's it. That's it,  
42 no more.

43  
44 Commenting on merely the number of investigators within a  
45 department is one thing, if you're commenting on the size,  
46 but saying that to a member, or members, that PSD are just  
47 trying to justify having to have a certain number of  
48 investigators in head office has a different connotation?--  
49 -No, I think we've - as a union, we spent, under the previous  
50 government, years of being told that the prison officers  
51 themselves are corrupt, and in actual fact 2,600

1 prison officers in the majority are doing their jobs, and  
2 we've always stated that, they are just doing their job, and  
3 we always back when people aren't, they are removed from the  
4 job.  
5  
6 How do you - just on that, how do you back when people aren't  
7 doing the right thing, tell me what you do?---I can give you  
8 an occasion where Ken Brown and I have sat in an office with  
9 an officer and asked them - well, on two occasions - to  
10 resign, because they have not been truthful.  
11  
12 Did you do that on this occasion?---We can get to that stage  
13 - we didn't get to that stage.  
14  
15 You did have some conversations, so you had enough - you  
16 were told - I'll rephrase that - you were made aware that  
17 what one officer may have told you may not have been correct  
18 by several others, not just one?---And I've answered that I  
19 told them to tell the truth, and that's the last  
20 conversation. So there was no facts given to us. We didn't  
21 ever see reports, we didn't actually see what they put in,  
22 and we weren't at any point asked or, conversing with them,  
23 to give them advice at that level.  
24  
25 What role do you see Professional Standards playing, in your  
26 opinion?---They're tasked with investigating reports of  
27 misconduct, investigating acts of misconduct, and hopefully  
28 dealing with it in the appropriate manner. I've made enough  
29 comment earlier on today that we don't have sufficient  
30 contact, and I don't believe that the structure is such that  
31 it's conducive to being effective, because it sits outside  
32 of working with the Commissioner and the Commissioner's aim.  
33 However, that's not in my control. I would like to see a  
34 reversion back to the way we used to operate before. I think  
35 it would be more effective, but it's - - -  
36  
37 So are you just saying that the current - is it the current  
38 structure you were saying sits outside the Commissioner's  
39 aim, did you say?---I think the Commissioner should have  
40 more control to ensure that there is the contact between us.  
41 There - it just seems to be disjointed.  
42  
43 Can you just elaborate on that a little bit further for me.  
44 What do you mean by that?---Professional Standards doesn't  
45 sit under the Commissioner.  
46  
47 Right, and why in your opinion do you think it should?---I  
48 think we would have better communications.  
49

1 Why?---Because, effectively, the industrial relations works  
2 well under the Commissioner. I just have faith that there  
3 would be more interaction.

4  
5 **THE ACTING COMMISSIONER:** More influence?---Sorry?

6  
7 More influence?---More?

8  
9 Influence?---Professional Standards having more influence?

10  
11 No, if there was - if Professional Standards sat underneath  
12 the Commissioner, do you think that you would have more  
13 influence?---No, I think there would be a speedier response.  
14 One of our greatest concerns is sometimes officers are  
15 charged, and it can be a year or two years before matters  
16 are dealt - dealt with, and we have - because there's no  
17 conversation, there's no way of ensuring that people's mental  
18 health is respected or dealt with. I think it would just be  
19 more efficient, Commissioner, rather than where it's  
20 currently sitting, where there's no conversation at all. We  
21 used to enjoy - if a case was taking two years, that we would  
22 be able to just discuss that with Professional Standards.  
23 There's no lines of communication at the moment.

24  
25 **PANTANO, MS:** You said that industrial relations seems to  
26 work well under the current Commissioner, why is that?---He  
27 encourages conversation.

28  
29 Between who?---Between the union and individuals within the  
30 department. Where that occurs, we are able to solve problems  
31 quickly.

32  
33 So how does the Commissioner currently encourage  
34 conversation between the union and other members of the  
35 department? How does he do that?---Well, it exists. I'm  
36 not sure what conversations he has locally.

37  
38 Well, just - you said he encourages conversations between  
39 the union and the department - - -?---I believe - I  
40 believe - - -

41  
42 I'm just interested - if you could just let me finish - I'm  
43 just interested to know how you know he encourages those  
44 conversations?---I just believe he's a good leader. It seems  
45 that when we speak - if I speak to the Deputy Commissioner,  
46 he will say, "Tony's asked me to give you a call," - or it's  
47 just effective communication.

48  
49 Do you have much contact with the Commissioner himself?---  
50 Monthly, probably.

51

1 And are they sort of set scheduled meetings, or is that just  
2 general - - -?---Sporadic.

3  
4 Right, and are they meetings or conversations over the  
5 phone?---Either. Obviously, if there's something going on,  
6 an issue that needs addressing, a safety issue, I can call  
7 direct. He will then normally get somebody, a Deputy  
8 Commissioner, or someone to call me back.

9  
10 Anything else? What are the other times - what are the other  
11 reasons why you would speak directly to the Commissioner,  
12 either he call you, or you call him?---Mainly on major  
13 issues. If there was a - for instance, on Friday a severe  
14 lack of staff at one of the female institutions, so I would  
15 ring the Commissioner and he got the Deputy Commissioner to  
16 call me back, so anything of a major issue that I can call  
17 - and likewise, if we are causing an issue, or there's an  
18 issue, then the Commissioner has my telephone number to call  
19 me or so.

20  
21 Mr Smith, based on the evidence that's been presented today,  
22 on one view it would appear that the union in this instance  
23 were playing a role in assisting with the cover-up of this  
24 alleged assault. Do you agree with that statement?---No.  
25 You have made that statement.

26  
27 Yes?---I think that I've made an error of judgment on the  
28 first day, and could have managed it in the correct way, but  
29 no, that is not the case.

30  
31 What's your error of judgment that you made?---As I've come  
32 back to, if - hindsight, if I can apply hindsight, I probably  
33 wouldn't have met with them. Even in the way that we  
34 controlled that particular situation, I should have met with  
35 them separately. From that point, we've referred them in  
36 the correct way. A number of internal issues that I've  
37 addressed and put into play, that we will control things  
38 going forward in a much more controlled manner.

39  
40 What are some of those internal things?---I'm rewriting the  
41 - our code of conduct internally and what - which, when I  
42 inherited - there is no code of conduct in written form,  
43 there's nothing.

44  
45 Okay, so you said you're rewriting it, but there wasn't one  
46 to begin with, is there?---Writing - writing.

47  
48 You're writing one? Because the union didn't have a code of  
49 conduct before? Is that correct?---A verbal code of conduct,  
50 and introduction and an induction into the union when you  
51 come to work for them, but it's not - not formalised.

1  
2 What's the - what's the verbal code of conduct? What does  
3 that comprise of?---Like you've touched on before, this is  
4 the way we perform, but it's not a - we - like I say, I would  
5 have handled this one a little bit different, and I intend  
6 to formalise it.  
7  
8 So you're writing the code, what else? Anything else you're  
9 doing?---It isn't - I'm managing, as I normally do, but this  
10 particular instance we will address the way this is managed  
11 and formalised.  
12  
13 You said you were doing - putting a number of things in place  
14 internally, so I'm just trying to ascertain what these things  
15 were?---Nothing that will pertain to this. I'm rewriting  
16 our rules and updating things, there's other internal  
17 administrative things that haven't been done for a long time.  
18  
19 So you're rewriting rules, what rules were in place before?--  
20 --We have a set of rules that's - that is registered, and I  
21 just need to update them, but - - -  
22  
23 Okay?--- - - - it's administrative.  
24  
25 Mr Smith, do you think there is a toxic culture amongst  
26 prison officers?---No. I think the culture of prisons has  
27 changed considerably since I joined in 2004.  
28  
29 In what way?---The way in which prisons and prisoners are  
30 managed has changed considerably since I first started, and  
31 I'm involved with the retired prison officers, so going back  
32 30, 40, 50 years it's changed considerably. It has updated,  
33 but its Corrective Services, it's a fluid environment, and  
34 is always prone to change, and should be changed. It always  
35 has room for improvement.  
36  
37 What role, in your opinion, do you see the union playing in  
38 the culture within Corrective Services, if any?---We have a  
39 major involvement with the mental health of prison officers.  
40 It is an area that the department have totally ignored in  
41 all states for decades, where it's a pressure industry, the  
42 police may arrest an offender and deal with him for an hour.  
43 All prison officers deal with those offenders en masse for  
44 12 hours a day, in close proximity, in an environment that  
45 is under-funded and over-muster - it's - where prisoners are  
46 stacked into a unit designed - or a wing designed for  
47 16 prisoners, there's now 32. It's a high-stress  
48 environment, and the union - we play a very large part in  
49 the mental health of our prison officers. Beyond that, we  
50 represent them wherever we can in industrial matters, which

1 is the majority of our work, and provide assistance with  
2 legal matters or misconduct matters.

3

4 What's your awareness of the culture when it comes to  
5 prison officers standing by fellow prison officers, even  
6 when they've done the wrong thing?---If there are individuals  
7 that do that, there is no - there is no room for them in the  
8 service. They are individuals, I don't believe that it is  
9 a culture any more. I may have believed that when I first  
10 started the job, but even - and even when I started it had  
11 - it didn't exist, but it had previously, but I - - -

12

13 You're saying, when you began as a prison officer, that  
14 culture didn't exist?---People spoke of a culture, but I  
15 also deal with prison officers that worked at Fremantle,  
16 going back into the 50s; the culture that existed there is  
17 not in place now. Most of our - most of our officers are  
18 under four or five years' experience, so they don't go back  
19 into that culture.

20

21 It's just that - I hear what you say, it may have been more  
22 prevalent with the older generation of prison officers? Is  
23 that what you're saying?---No, that's not what I'm saying.  
24 What I'm saying is that if we go back decades - - -

25

26 Mm hmm?--- - - - it may have been something that existed,  
27 but even people that have been in the job for a long period  
28 of time have changed. We manage prisons in a different way.  
29 We unlock and engage with prisoners now, which didn't happen  
30 at Fremantle.

31

32 I'm talking specifically about standing by fellow officers,  
33 even when they've done the wrong thing. That's what I'm  
34 specifically asking about?---I know.

35

36 Mr Smith, the Commission - you've seen a snapshot of it  
37 today, but what the Commission has uncovered is a very real  
38 culture within the prison system of many officers covering  
39 for each other, even when an officer, or officers, have  
40 engaged in criminal conduct. We've heard that evidence.  
41 And are you tell me, as a union rep, that you've not come  
42 across that in any recent times?---You've asked me for my  
43 opinion.

44

45 Yes?---I don't believe that the culture exists, I believe  
46 there are individuals, and we're dealing with - you are  
47 dealing with an issue at the moment, but I've also - and  
48 I've also been in circumstances where I've witnessed officers  
49 doing exactly what they should have, where an officer has  
50 exerted excessive force, the officers that were present  
51 reported it, and the officer was removed from his employment.

1 So equally, if you ask me for my opinion, there are far more  
2 prison officers that are doing their job safely, in extreme  
3 conditions, and doing the right thing. That is my opinion,  
4 and I firmly stand by that.

5  
6 Would you agree with the assertion that there are certain  
7 units - and I want to just stick with Hakea Prison, because  
8 that's what we're focusing on at the moment, would you agree  
9 that there's certain units within Hakea Prison where this  
10 culture of standing by fellow prison officers is, I guess,  
11 is more rife, as opposed to other units within the prison.  
12 Are you aware of that?---I think that may have been the case  
13 decades ago, but I haven't worked in the - unless you work  
14 in an environment - I'm not aware of it.

15  
16 The Commission is also aware throughout its investigations,  
17 not just this particular one, but over the years, and it's  
18 been highlighted in several of our reports, that officers  
19 feel the threat of being victimised if they stand up and say  
20 something different to what the majority are saying. What  
21 do you have to comment about that?---I can only say an  
22 individual may have that opinion. I've seen a change in  
23 culture, I've seen prison officers that are comfortable  
24 saying exactly what they feel.

25  
26 Because the Commission has witnessed evidence to the  
27 contrary, Mr Smith, and what I'm asking you is, what's your  
28 understanding of that?---I can't comment on cases I haven't  
29 seen, but it's not - not something that I'm involved in  
30 anymore. I haven't worked in the gaols for nine years.

31  
32 But from your experience as a union rep, and often industrial  
33 officer, do you see members coming to you who express a  
34 reluctance to come forward?---I don't. We deal with probably  
35 more bullying cases or fear cases when it's - and this is  
36 true - when it is management and a prison officer than we do  
37 when it is prison officer against prison officer. And there  
38 are processes with the department that deal with that quite  
39 effectively, and when it does come up, we - we refer it.  
40 It's an internal matter; it's not a union matter.

41  
42 Out of fairness, Mr Smith, I'm going to put some statements  
43 to you for your comment, because this is based on various  
44 sources of information that the Commission has received. The  
45 Commission has got information suggesting that, relating to  
46 this particular incident, that union reps have advised  
47 officers to stick with their reports, even when the actual  
48 events are different than what has been reported. What do  
49 you have to comment about that?---As I've stated before  
50 "union reps" can mean a number of things, but it is certainly  
51 not employees of the union.



1  
2 I'll be more specific, then. The Commission has information  
3 suggesting that relating to this incident union employees  
4 have advised members that Professional Standards can't prove  
5 anything unless someone rolls or changes their story  
6 dramatically?---No.  
7  
8 Further, the Commission has information suggesting that  
9 relating to this incident union employees have advised that  
10 - members that their reports are the sword and that you live  
11 and die by them?---No.  
12  
13 Have you heard that phrase being used?---No.  
14  
15 Never?---It's on movies but it's not in the prison  
16 environment, no. Absolutely not.  
17  
18 Further, the Commission has information indicating that  
19 union employees have advised members that if you stick to  
20 your reports and officers stick together there is nothing  
21 anyone can do to them?---No. Union employees have - have  
22 not to my knowledge ever said that.  
23  
24 Or words to that effect?---Not - no.  
25  
26 And further, that the Commission has information indicating  
27 that union employees have advised that where there is an  
28 investigation for members to offer no additional or  
29 conflicting information beyond what they've said in their  
30 reports?---No.  
31  
32 Mr Smith, how do you feel about knowing that some union  
33 members are making the work life of other union members  
34 difficult or unbearable and that there is a pressure to  
35 maintain a closed shop? How do you feel about that?---It's  
36 one of the reasons we have developed our own mental health  
37 program. I think that's abhorrent and that the workplace  
38 should be as I enjoyed it, a comfortable place to work.  
39  
40 Commissioner, now might be an appropriate time just for a  
41 short 10-minute adjournment.  
42  
43 **THE ACTING COMMISSIONER:** We'll adjourn for 10 minutes.  
44  
45 (THE WITNESS WITHDREW)  
46  
47 (Short adjournment)  
48 (TIMESTAMP) / 11.52.17 AM

1 **SMITH, ANDREW JAMES RECALLED ON FORMER AFFIRMATION AT**  
2 **12.01 PM:**

3  
4 **THE ACTING COMMISSIONER:** Please be seated.

5  
6 **PANTANO, MS:** Commissioner, I have no further questions for  
7 Mr Smith and we also ask that Mr Smith not be released from  
8 his summons.

9  
10 **THE ACTING COMMISSIONER:** Thank you.

11  
12 Ms Stynes, do you have any questions?

13  
14 **STYNES, MS:** No, thank you, Commissioner.

15  
16 **THE ACTING COMMISSIONER:** Thank you.

17  
18 Mr Smith, you're not excused from your summons; nor are you  
19 released from further attendance here. You are to present  
20 yourself to the Commission at a time and date which you will  
21 be informed of.

22  
23 (THE WITNESS WITHDREW)

24  
25 **THE ACTING COMMISSIONER:** We will adjourn until 12.20.

26  
27 AT 12.01 PM THE MATTER WAS ADJOURNED ACCORDINGLY

**Certificate Made Under Section 50A of the  
*Evidence Act 1906***

The transcript of Andrew James Smith heard on Monday,  
16 November 2020

was made in good faith and, subject to any qualification referred to below, is correct, accurate and complete transcription of the contents of the recording;

was produced from recordings that were suitable for making an accurate and complete transcript except where otherwise stated in the body of the transcript. Any "indistinct" or "inaudible" or other notations indicating difficulty with the transcription contained within the transcript refers to those parts of the proceedings that could not be accurately transcribed due to speech clarity, recording quality or other factors impacting word intelligibility.

Certified on this 16th day of November 2020 by: Glenda Judge, Sheila Robbshaw, Joshua Stevenson

Full Name: Glenda Judge  
Sheila Robbshaw  
Joshua Stevenson

Occupation: Transcriber and officer of the Commission under the Corruption, Crime and Misconduct Act 2003 ss 182, 3 who has taken an oath before the Commissioner.

Signature: (Glenda Judge) (Sheila Robbshaw) (Joshua Stevenson)

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