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## **Public examinations into how culture enables serious misconduct in Hakea and other prisons in Western Australia**

### **Transcript - Opening Address by Counsel Assisting, Ms Nadia Pantano**

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

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

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

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

The Commission is aware that the underreporting and cover up of use of force incidents within WA Prisons has been occurring for some time. The Commission has previously reported on this issue. However, despite the Commission's extensive reporting, the issue remains live and recent investigations have illustrated that a closed door culture continues to the present day.

The influence of culture has been reported widely, extending to all corners of the globe.

The Mollen Report, which followed an investigation into allegations of police corruption within the New York Police Department, observed that corruption had flourished within the NYPD, not only because of opportunity and greed, but because of a police culture that exalted loyalty over integrity; because of the silence of officers who feared the consequences of 'ratting' on another cop, ... because of wilfully blind supervisors who feared consequences of a corruption scandal more than corruption itself; because of the demise of the principle of accountability that makes all commanders responsible for fighting corruption in their commands; and the abandonment of responsibility to ensure the integrity of its members.

The Commission acknowledges the challenging environment within which prison officers operate, at times performing a thankless task by providing offenders with the skills they require

to address their offending, committed to breaking the cycle of crime and reducing the number of prisoners who reoffend and return to custody.

However, it is because of their role in maintaining the security of offenders and the imbalance of power that ensues between officers and inmates that necessitates that prison officers operate with the utmost integrity and accountability when performing their duties.

Prisons are closed environments that cannot be easily scrutinised by the public, which is what makes internal use of force protocols so important. It is this feature of prisons that also makes a toxic culture of underreporting so problematic. Often, no one but the prisoner involved and other prison officers witness the use of force take place. Therefore, no one else is in a position to stand up for the prisoner. While prisoners are being held for a reason, it is fundamental to our values as Western Australians that they should also be treated with a level of respect. And, when there is unjustified or excessive use of force by a prison officer towards a prisoner, all prisoners have a fundamental human right to have it dealt with fairly and transparently.

The Commission has previously reported on the poor reporting culture within the Department of Justice in its 2018 Report into misconduct risks in WA Prisons. The Commission identified that a culture existed which discouraged staff from reporting against their colleagues, attributed in part, to a lack of confidence in the confidentiality of reporting and fear of repercussions from other staff, including prison management.

Following public examinations earlier this year, the Commission heard from Department representatives of the many changes it was making to the policy landscape. It provided hope and reassurance of a Department committed to change for the better.

To provide clear guidance on the Department's expectations of staff professionalism and integrity, it released a Justice Integrity Framework, anti-fraud and corruption plan and revised code of conduct, reformed employee screening and vetting processes.

While the Commission acknowledges the efforts of the Department in acting on many of the Commission's recommendations following the 2018 parliamentary report, current investigations have uncovered a toxic culture that has been slow to change.

In a Department that manages almost 7,000 adults at 16 public prisons and 1 private prison, culture plays a pivotal role. Australian and international research has shown the most effective protection against corruption is a strong organisational culture that is alert to integrity risks.

The Kennedy Royal Commission report highlighted a number of observations from the various reports on corruption throughout history. It identified a consistent analysis of the causes of corruption and the prescription for the measures for the control of it. It stated that the "rotten apple" theory is long gone and there is now no room for doubt that culture and poor management are principal factors in allowing corruption to continue unimpeded.

The Commission's investigations into the Department of Justice have highlighted that these are not one off incidents.

The Commission has witnessed the steps involved in the cultural indoctrination of various levels within WA Prisons, whether from the ground up or the top down, all the way to the influence of the Western Australia Prison Officers Union.

As is often the case in Commission investigations, the initial report appears seemingly innocuous. This was the case in the current investigation.

The Commission's investigation team worked collaboratively with the Department in its attempt to uncover what it suspects has been a deliberate and calculated attempt to cover up an assault of a prisoner by a prison officer. The officers involved, having been entrusted to support and protect those very prisoners.

Throughout the Commission's investigation into the alleged assault and cover up, it utilised various surveillance techniques and heard from numerous witnesses in private examinations and the messages remained consistent:

- 1) Prison Officers live and die by their Incident Description Reports, which are the reports that prison officers are required to write after being involved in a use of force incident;
- 2) Prison Officers stick with their reports even when they are not correct;
- 3) A culture exists within the prisons whereby officers cover for each other even when an officer has engaged in criminal conduct;
- 4) A culture exists of sticking by your colleagues even when that loyalty could result in the commission of a criminal offence; and
- 5) The Western Australia Prison Officers Union together with senior prison officers are contributing to a toxic culture which undermines the disciplinary process...

...thereby breeding corruption.

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

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

The flow on effect is the disruption of the disciplinary processes with the Department and beyond.

The purpose built Professional Standards Division attempts to hold to account those officers who fail to uphold the integrity and accountability expected of public officers within the Department. However, their processes, together with the Commission's processes, are frustrated by the efforts of individuals who deliberately and actively undermine these accountability measures.

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

The Commission acknowledges the cooperation of many individuals who have assisted the investigation and provided frank and candid accounts of how culture is affecting the way in which the Department is effectively able to deal with serious misconduct. The Commission is cognisant of their privacy and their reputations and will not be calling them to give evidence in a public forum.

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

The first witness to be called is Andrew Smith.