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CORRUPTION AND CRIME COMMISSION

OF WESTERN AUSTRALIA

COMMISSIONER JOHN MCKECHNIE QC

TRANSCRIPT OF PROCEEDINGS

AT PERTH ON TUESDAY, 11 FEBRUARY 2020, AT 9.46 AM

COUNSEL ASSISTING:

MS TSE CHEE LOO

WITNESS:

SHAYNE LESTER MAINES

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THE ASSOCIATE: The Commissioner is conducting a number of examinations for the purposes of an investigation under the Corruption, Crime and Misconduct Act 2003. That investigation has been designated Operation Canopus.

The scope and purpose of the Commission investigation is to examine how the Department of Justice prevents, identifies and deals with serious misconduct including but not limited to implementation of the Corruption and Crime Commission's recommendations and measures to address serious misconduct in the supervision of section 95 contraband entering prisons, inappropriate associations between prison staff and prisoners and the use of force against prisoners and reporting of use of force incidents.

Before your examination begins, it is necessary for you to take an oath. If you could please stand and take the Bible and card in your right hand and read the oath out loud.

MAINES, SHAYNE LESTER SWORN AT 9.47 AM:

THE ASSOCIATE: Thank you, you may be seated.

THE WITNESS: Thank you.

THE COMMISSIONER: Mr Maines, I know you were yesterday so you know the drill?---Thank you.

And as is yesterday, I appoint Ms Tse Chee Loo as counsel assisting. She'll ask questions on my behalf?
---Thank you, Commissioner.

LOO, MS: Please state your full name?---My full name is Shayne Lester Maines.

Now, Mr Maines, you're currently the Executive Director of the Professional Standards Division?---Yes, that's correct.

How long have you been Executive Director?---Since 2 January 2019.

And what did you do before that?---Prior to that, from 2014, I was appointed to the role of deputy commissioner, Adult Justice Services. In 2017 I was given the added responsibility of Youth Custodial Operations. And in 2018, took over full Youth Justice Services. So I was the deputy commissioner for both adult and youth justice services.

Can you give the brief overview of your career before you came to Corrective Services?---Yes, I spent 32 years as a

1 police officer. I spent 28 years in the West Australia
2 Police. I left as an assistant commissioner of Police.
3 And four years in the Northern Territory Police, Fire and
4 Emergency Services, where I was a deputy commissioner of
5 Police.

6

7 When did Professional Standards in its current form begin
8 operating?---On 2 January 2019.

9

10 And why was it created?---It was created off the - um, in
11 response to the Commission's reports in general. But the
12 identification of risk and control failures within the
13 Department, mandated changing the way we actually did
14 business and the Director General committed to establishing
15 Professional Standards Division, which had a direct report
16 to him to manage those risks. I can go through how it was
17 created if you like or - - -

18

19 Certainly?---Yes. So it brought together the - the
20 previous function of investigation services out of
21 Corrective Services. Those services were prior to the
22 Machinery of Government changes in 2017 responsible only
23 for investigating matters within Corrective Services. The
24 Performance Assurance and Risk, which is the Department's
25 internal audit and risk program and we made a conscious
26 decision, listening to comments from the Commission, to a
27 corruption prevention and education directory.

28

29 It might help if we look at the corporate structure of
30 Professional Standards Division. That's exhibit 0064. But
31 I do have a hard-copy for - for you?---Thank you.

32

33 Mr Maines, can you give us an overview of what each
34 business area does?---Yes. As the Executive Director,
35 I have responsibility for the overall management and
36 leadership of Professional Standards Division. There are
37 three pillars to the Division. The Performance, Assurance
38 and Risk is responsible for the agency's internal audit
39 program for conducting audits and for the risk management
40 program within the Department. Integrity and
41 Accountability Directorate is responsible for managing
42 misconduct investigations. There are also two police
43 officers who have been seconded to the Department to work
44 in the Integrity and Accountability Directorate since
45 September 2018. They provide the ability for Professional
46 Standards Division to refer matters which relate to
47 criminality directly to the police. And the Corruption
48 Prevention Directorate is a new iteration within the
49 Department, taking account the requirement to have a - an
50 integrity framework and sort of a- an approach to deal with
51 matters before they manifest into misconduct. So it has an

1 education and a prevention role. I think probably that's
2 the most important section that has been created within the
3 Professional Standards Division. And one that is most
4 likely to have a - an impact in - in changing the culture
5 of the organisation.

6
7 Have all these positions been filled?---I have 51 FTE.
8 I currently have five positions that are vacant. I have
9 three of those within the Corruption Prevention Education
10 as that a - a new area. I thought it important to actually
11 fill the Director's position that was filled late last
12 year. I have one vacant position in the Integrity and
13 Accountability Directorate as a result of one of the
14 principal investigators getting a promotion in another role
15 in another organisation. I have one vacancy in the
16 Director of Performance, Assurance and Risks area.

17
18 The two police officers that are seconded, you said they
19 started in September 2018?---Yes, that's correct.

20
21 And how long is it intended for this secondment to
22 continue?---my discussions with the police will be this is
23 an ongoing arrangement. It's reviewed on an annual basis.
24 The most recent statement agreement was signed in September
25 last year, it would seem. Sorry, November I think it was.

26
27 As the Executive Director, you sit on various groups and
28 committees in the Department, is that correct?---Yes, I do.

29
30 Can you outline these?---I sit on the Corporate Executive.
31 My reporting relationship is directly to the Director
32 General. So the corporate is - or the executive within the
33 Department of Justice. I'm also sitting on the
34 Department's Risk Management and Audit Committee. So
35 I'll go - with - CEC members to that meeting. There is a
36 Director General governance group which was established.
37 And I just need to correct, I think, the Commissioner
38 referred to it in the wrong context yesterday, but the
39 Director General's governance group is a committee chaired
40 by the Director General to ensure a level of governance
41 over the recommendations from the Corruption and Crime
42 Commission. There's also an operations group which
43 consists of the Director General and the Commissioner for
44 Corrective Services, the deputy commissioner for
45 Operational Support and the Director of Integrity and
46 Accountability, Director of intelligence, where we actually
47 discuss current sort of matters of interest to Professional
48 Standards and to the Corrective Services. They're my
49 primary meetings. I do go to a lot of other meetings but
50 they're my primary ones.

51

1 I'm done with that exhibit, Madam Associate. Thank you.

2

3 One of the initiatives of the Professional Standards
4 Division was the creation of the Justice Integrity
5 Framework?---Yes, that's correct.

6

7 Can you tell us about that?---Yes. I have a copy of the
8 document here. I'm happy to provide a copy to the
9 Commission. Duty framework was designed in relation to
10 criticism of the Department not having a corruption
11 prevention framework. I think I'd previously mentioned to
12 the Commission that corruption prevention plan is probably
13 more a tactical operational document. The Justice
14 Integrity framework is a strategic document which sets out
15 the Department's approach to managing misconduct.

16

17 Well, what does implementation of that framework actually
18 involve?---So the document was released in August of last
19 year. The Corruption Prevention and Education Directorate
20 has been delivering prevention education sessions. The
21 JIF, or the Justice Integrity Framework, the code of
22 conduct, matters that are discussed - that with staff.
23 Some 733 employees in the Department of Justice have
24 attended some 27 sessions. It is reinforced with staff
25 about their roles and responsibilities in ensuring the
26 integrity of the agency. And it's not just a matter that
27 it is the mandate of Professional Standards to manage
28 integrity across the agency. It's everyone's
29 responsibility. So it sets out the Department's approach.

30

31 And in - in terms of the education and training, was this
32 delivered in regional prisons as well?---Yeah, I've
33 probably got a list of the - where the - the 27 sessions
34 have been conducted. Can't tell you from the of my head
35 where each of them have. But there is an intention to roll
36 out all of these sessions and to pretty much interact with
37 all departments within the Department of Justice. So of
38 the 733 employees, I can provide to the Commissioner as to
39 where they were held, when they were held and who the
40 participants - we actually do a feedback session at the end
41 of those programs where we actually seek feedback and input
42 from the participants. So it runs through a range of
43 different risk elements for employees, which does include
44 the risks of being groomed for those people who are facing
45 offenders. It goes through how to report misconduct, what
46 is misconduct and what isn't misconduct, what is the role
47 of Professional Standards, what is everyone's individual
48 roles, how to identify misconduct within the workplace. As
49 I indicated, how to report it.

50

51 Just to clarify, you're referring to the content of the

1 justice integrity framework there?---No, the justice
2 integrity framework is a framework which is delivered
3 referring to corruption prevention sort of sessions, which
4 are currently being conducted across the agency, which
5 reinforces the justice integrity framework. What we're
6 very conscious of is that the justice integrity framework,
7 the code of conduct, they're not bits of paper that hang on
8 a wall for people to actually look at or for us to present
9 at, sort of matters or examinations when we're trying to
10 actually - this has to be a living, breathing document,
11 which people actually acknowledge is how we actually
12 approach misconduct in the Department of Justice. So it is
13 very much reinforced. It is available for people and the
14 Director General is very conscious about constantly
15 reinforcing the message about the importance of reporting
16 misconduct.

17
18 And how does the Director General do that?---The
19 Director General does lots of broadcasts. The Director
20 General is - does corporate inductions, he does get out and
21 actually talk to lots of people and he would probably be
22 the greatest champion in the agency at the moment for sort
23 of communicating the benefits of the Integrity Framework,
24 proper conduct and sort of the - the work that's done in
25 Professional Standards.

26
27 Yesterday you would have heard some discussion about the
28 challenges of the geography of the custodial estate. So
29 how do you ensure that a prison officer at the Eastern
30 Goldfields Regional Prison is aware of the Justice
31 Integrity Framework but also applies it in his or her
32 everyday work?---Again, the framework is not going to
33 necessarily prevent someone from committing misconduct so
34 the prevention and education program which has really, as
35 I said has delivered to 733 personnel in an agency with
36 some 7,000. It is intended to get out and speak to more
37 people and to constantly reinforce and educate people's
38 personal responsibilities. The Integrity Framework is a
39 guide to people; it's available, it's online. The
40 complexities of delivering services across an area of
41 2.5 million square kilometres, which I think's the largest
42 single jurisdiction in the world, is difficult but we are
43 committed to actually doing it. I've had a director since
44 December that is - the director is coming up with a forward
45 program and getting it - and it's not just to prisons. And
46 the Professional Standards Division is a Justice resource,
47 it is for all of the Department of Justice and Corrective
48 Services is just one customer in that - in that group. And
49 the commitment by the Department to establish a prevention
50 and education capability within the Department, I don't
51 think is available in any other public sector agency.

1 We're committed to having nine FTE in that, with a director
2 who has a direct report to myself and to the
3 Director General. So getting that message out is part of
4 how we are actually going to drive cultural change.

5
6 Can you tell us - - -

7
8 **THE COMMISSIONER:** The - - -

9
10 **LOO, MS:** Sorry.

11
12 **THE COMMISSIONER:** I well understand the challenges of the
13 State. Broadly speaking, what does the Department of
14 Justice cover? We know it covers Corrective Services.
15 What are the other sort of main areas?--The second-largest
16 area is Court and Tribunal Services, so it covers the court
17 and tribunal services. The Public Advocate. Births,
18 Deaths and Marriages. State Solicitor's Office. There are
19 a range of agencies that formerly sat in the former
20 Department of the Attorney General, so it's quite wide.
21 There's been a significant uptake by particularly Court and
22 Tribunal Services on having the sessions delivered within
23 their sort of area of responsibility and I probably should
24 mention we are intending to move to a technology based
25 system where we can actually put messages out, with perhaps
26 videos potentially to the Director General. I haven't sort
27 of discussed that entirely with him yet, but about
28 reinforcing that message.

29
30 **LOO, MS:** So in addition to the education and training
31 program, what else does the Corruption Prevention and
32 Education directorate do?---It's also responsible for the
33 agency's screening and the intention when it's fully
34 staffed is to start looking at at-risk staff, so
35 identifying staff that are at risk and being involved in
36 early intervention. We actually want to prevent people
37 from going down the path of misconduct, we don't want them
38 to actually go down that path. Whilst we have a reactive
39 function in integrity and accountability, we're trying to
40 move to a more proactive approach to preventing misconduct
41 occurring.

42
43 And tell us more about that?---The - one of the key
44 criticisms I think of the past reports around the
45 operations of Investigations and intelligence in Corrective
46 Services was the lack of interface between intelligence and
47 Investigations. I'm very pleased that within our current
48 structure we've built an intelligence capability into the
49 Integrity and Accountability directorate. I have three
50 personnel who are highly experienced in intelligence
51 functions. We have a good working relationship with

1 Corrective Services intelligence and court intel, and the
2 intel people that I have have access to all of the intel
3 holdings anyway so we're able to get hold of that
4 information and then identify people who are at risk, look
5 at themes and trends, people who may be presenting or
6 manifesting themselves in a series of complaints and then
7 developing a program about how we engage with them.
8 Another criticism from the Commission previously was around
9 officers who had a long history of complaints with what
10 seemed to be very little action so - at a point, working
11 out where we'll actively intervene and we are in the early
12 stages of that but certainly identifying at-risk officers
13 is something that has been going on since the commencement
14 of Professional Standards Division. The taking a different
15 approach rather than a punitive approach and taking a more
16 preventative approach is something that we will mature at
17 over the coming year.

18
19 So how do you actually identify officers at risk?---We
20 receive a large amount of information and intelligence
21 about the conduct of officers. There are generally themes
22 and trends about their behaviour and performance. We look
23 at whether they appear in intelligence reports or security
24 reports, which may suggest that they are involved in a
25 relationship with a prisoner or that they are actively
26 involved in some level of misconduct and then we determine
27 what action we take. We have a fairly comprehensive triage
28 system, we'll look at whether the matter is sent for
29 further development of the particular officer or we'll
30 actually determine whether we're going to actually
31 intervene early and go and have a conversation with the
32 person.

33
34 And what database is this information stored on?---We
35 operate on a shared database across the agency so the court
36 intelligence, the intelligence services in Corrective
37 Services and Professional Standards all use a system called
38 iBase.

39
40 In 2018 you carried out a review of intelligence services
41 and prepared a report, and in that report you identified
42 that iBase was not suitable for its purpose. Are there any
43 plans in the Department to move to a different database?
44 ---If I may correct, my primary role was I actually worked
45 as the Director of both Investigations and intelligence.
46 My primary focus at that time was actually trying to get
47 the investigations right, because intelligence wasn't in
48 the same level of need. Yes, I did say that iBase was in -
49 not an adequate case management system. However, since
50 starting my priority has not really been on the case
51 management system. We've done some work to try and

1 streamline the fields required. Case management systems
2 across all integrity agencies and law enforcement agencies
3 in my experience have been very perplexing and confusing
4 issues about what is the best system to go to. I think
5 there's probably an opportunity for a whole of government
6 approach in coming up with a case management system which
7 would enable us to do reports to the various reporting
8 agencies and oversight agencies we have. That's probably a
9 little bit of aspirational thinking at the moment. My -
10 the focus for Professional Standards has been to work out
11 what are the deficiencies within iBase, how do we actually
12 work within the existing system and prioritise actually
13 getting the investigations, the intel, the audit functions
14 correct. The iBase is functional, we can actually now
15 interrogate it and pull records out of it. We've
16 streamlined some of the reporting fields. It is not a
17 perfect system but it's functional at the moment and at
18 some point the Department may need to look at it but
19 I would like to think that that's something that we don't
20 do in isolation, it's something that all government
21 agencies should be looking at, all government agencies have
22 a requirement to have some form of integrity function and
23 whether there is some utility in going forward with a joint
24 submission for a case management system.

25
26 You referred earlier to an interface between the
27 Professional Standards intelligence team and the Corrective
28 Services intelligence. What did you mean by that?---There
29 are conversations that go between intel at the fortnightly
30 operations meeting. We report back on intel that's been
31 provided by Corrective Services intelligence to the
32 Commissioner, the Director and the deputy commissioner as
33 what we've actually done with that information. We
34 actually are able to get that information anyway, but it
35 demonstrates that there's a sharing of information between
36 the two respective areas. In the past there were
37 complexities around personalities and operations and the
38 sharing of information. I'm confident that that doesn't
39 exist now.

40
41 What makes you confident that doesn't exist now?---Because
42 I would be having conversations with my counterparts in
43 Corrective Services. I'm confident we actually have access
44 to the information anyway, that where there are issues they
45 can be escalated. I meet fortnightly with the
46 Director General and the Commissioner and the deputy
47 commissioner. As I indicated, where we have issues they
48 are raised at that particular point. I've not had to
49 escalate matters, we're able to share intelligence and as
50 I said we have access to that information now. Having the
51 capability within Professional Standards makes it a lot

1 easier for us to actually access intelligence and so
2 I believe that there's a fairly strong collaboration
3 between the two now.

4
5 And what is the difference in the kind of intelligence
6 that's collected by the different capabilities?---Within
7 Corrective Services it's primarily security focused.
8 Within Professional Standards it's integrity focused.

9
10 Do Professional Standards intelligence officers have access
11 to external databases, such as IAPro?---IAPro's a discrete
12 unit of WAPOL but we have very good information-sharing
13 relationships with most law enforcement agencies. The term
14 IAPro has been brought up in the past. Again, it's a
15 discrete system for managing misconduct. I think it's a
16 really good system, I've seen it operate in two agencies
17 that I've worked in. At some point in time that may be a
18 system to consider but currently we need to work with -
19 within the framework that we've got, get Professional
20 Standards fully operational then look at the sort of
21 technology needs. There will always be a requirement to
22 improve our technology but I'm comfortable that the utility
23 of iBase will enable us to operate at the moment.

24
25 Now, you've discussed sharing information between the
26 different intelligence functions. What about sharing
27 intelligence with the prisons?---The intelligence function
28 sits within Corrective Services so the sharing of
29 security-related intelligence would be the mandate of the
30 Corrective Services intelligence area sitting in
31 Operational Support. If there is information that would go
32 to the security or safety of a prison, then we have a
33 requirement to actually report that to the Commissioner and
34 the Director General and that actually happens now. There
35 are matters that go on within Professional Standards,
36 sometimes which we are precluded from talking in great
37 detail but we've made it very clear that where there is an
38 issue around security and safety we'll bring it to the
39 attention of the people that's required to know. There
40 will always be an issue around people receiving their right
41 amount of information. What I think sometimes is confusing
42 is that the information that prisons talk about not getting
43 from intel is actually information they'd provided to intel
44 which is then repackaged and given back to them. So the
45 intel is generally known by - by a prison; it's been
46 generated, the information comes from the prison.
47 It's only if the information comes externally or it's not
48 from the location. It's the complexities of understanding
49 what the information is and what the intelligence is, what
50 relevance it has to the particular business area and how
51 it's used.

1
2 Now, you mentioned screening. Can you tell us the process
3 for screening new employees of the Department of
4 Justice?---Yes, we have a - we've been through a fairly
5 significant re-engineering of our screening process, we're
6 in the early stages of looking at going to an outside
7 service provider, consistent with the Department of
8 Education, WA Police, to provide the initial interface for
9 providing that information electronically. To get the
10 first stage checks a person's required to fill in an
11 application form, they're required to make declarations as
12 to any issues that they may have had, any criminal history,
13 any involvement - particularly if they're applying for a
14 Corrective Services job, whether they've visited prisoners,
15 whether they know people within prisons. It's quite an
16 intrusive questionnaire. We have access to other
17 information sources, including WA Police, which enables us
18 to do a fairly comprehensive check on a person's
19 credentials before they apply.

20
21 And is there a requirement for the screening process to be
22 completed before a person is appointed to a
23 position?---There will sometimes be a request to get an
24 exemption in certain circumstances where the appointment is
25 required, sometimes get them from court and tribunal
26 services where the person has previously been employed.
27 It is open to the head of the business area to seek an
28 exemption. Unless there is something known about the
29 person, then an exemption can be given to that particular
30 process. That doesn't stop the process from occurring, it
31 still continues on. Our screening is very robust, it takes
32 into account people's - from particular categories of
33 people their spent convictions, takes into account what
34 might be known by other agencies. We have to be sort of
35 judicious in the way that that's communicated but we do ask
36 a lot of very probing questions. We will occasionally miss
37 some things. The system is not infallible but I can say
38 that we've had a recent matter last year where we had
39 information provided to us by another agency which enabled
40 us to go back and review a selection process and the
41 recruitment process and determine that the person hadn't
42 been truthful and the person was subject to a summary
43 dismissal.

44
45 What about in the private prisons, does Professional
46 Standards screen employees for private prisons?---All of
47 the screening comes through the screening process, yes.

48
49 Is there a requirement to staff to be screened again after
50 working for a particular period?---There is a requirement.
51 When you changed locations there's a requirement to actual

1 screen, keeping up with it. What I can say is our
2 screening policy is outdated, there is some significant
3 work going on updating the screening policy. What we
4 didn't want to do was introduce a new screening policy
5 before we actually look at our third-level service provider
6 to - to enable us to actually go electronically to - so
7 we're able to record them electronically. There's a lot -
8 there was a lot of paper manual work involved, we actually
9 still use fax machines to actually receive documents.
10 We've actually streamlined a lot of that process, it's more
11 online. We were sending people letters in the post which
12 generally took a long time to come back, particularly if we
13 were asking more questions and so we've moved into the
14 electronic age a little bit better. There was a fairly
15 significant change in business processes. I'd like to
16 acknowledge the screening team who had probably been locked
17 into a particular way of doing things for a long period of
18 time. It's very challenging to actually consider their
19 processes and unpick them and then redo them but they've
20 done a great job and I think that we've actually seen a
21 significant reduction in the backlog of matters that are
22 being screening. I think for the size of the unit it does
23 a really good job.

24
25 Who's responsible for the changes to the screening
26 policy?---Corruption Prevention and Education directorate,
27 he's currently got it. I think it's probably due about
28 March, we'll actually have the screening policy to go out
29 for discussion with the corporate executive. It is a
30 little bit dependent on getting this electronic solution
31 with another service provider, which really brings us just
32 into line with other government agencies.

33
34 **THE COMMISSIONER:** You are obviously familiar with
35 negative vetting?---Yes, I am, sir.

36
37 I take it that is not the standard necessary or required
38 for Department of Justice, or is it for some officers?
39 ---It is for some officers. So it depends on your - who
40 you're required to interact with. Negative vetting is a
41 fairly intrusive process, it's generally required for
42 engagement with the Commonwealth. We don't have a
43 information classification system within the Department of
44 Justice. That said, I've seen people with NV1, NV2 systems
45 go and actually commit - it's not a panacea to the issue.

46
47 No?---It's certainly a tool for senior officers or people
48 that are required to engage with external agencies and it's
49 something that a number of our external partners would
50 expect that if you're coming to meetings that you would
51 have at least an NV1 clearance.

1
2 I was just thinking more in the intelligence area and so
3 forth where there's close interaction with the Commission,
4 with police?---Yeah, I think the intel staff generally sort
5 of go through that classification. I certainly know the
6 Director does, and the Assistant Director. I think
7 Mr Elderfield would probably be able to give you more
8 information on intel.

9
10 Carry on, Ms Loo.

11
12 **LOO, MS:** Who created the training materials?---For the
13 Corruption Prevention and Education?

14
15 Yes?---It's been developed in-house. It's taken into
16 account lessons learnt, information that's provided,
17 previous experience in other agencies, taken into account
18 material from the CCC, the Public Sector Commission.
19 It brings together a range of information that's relevant
20 and tailored for people who work within the Department of
21 Justice. But there are - there are good guides to how you
22 actually develop and sort of deliver that sort of training.

23
24 And how do you measure the effectiveness of the training
25 that's delivered?---Currently we don't have a quantitative
26 measure, other than the fact of how many sessions we
27 deliver. But we do do a questionnaire at the end of it, to
28 do a satisfaction survey of any suggestions people have
29 about how we might improve the process. Early stages yet.
30 Measuring it currently is probably - is a rudimentary
31 process, when we can we'd like to move that onto iBase as
32 well so as a way of actually having a comprehensive
33 database of where we've delivered and who we've delivered
34 it to.

35
36 And how is that information currently managed or stored?
37 ---It's currently managed through Corruption Prevention and
38 Education. It's stored within their drives, so.

39
40 Have you sat through some of the training sessions?
41 ---I've actually delivered some of the training.

42
43 One of the Commission's recommendations in its sixth report
44 was that the Department introduce measures to track and
45 measure the success, the effectiveness of serious
46 misconduct strategies. What are the measures that the
47 Department has introduced in that regard?---Currently we're
48 in the process of developing performance indicators for
49 Professional Standards. Part of the measure will be the
50 number of matters that are reported. I did note in the
51 Commission's most recent report that the Department of

1 Justice has decreased in its proportion of public sector
2 allegations from 7.82 per cent to 4.96 per cent, so that's
3 a - that's a measure of how we're actually going. There
4 were 792 matters of serious - or misconduct reported to
5 Professional Standards last year, that was up from the
6 previous year. It's that confidence in sort of people
7 being prepared to come forward and actually report matters,
8 they are matters that the Corruption Prevention and
9 Education division will work on to - to develop measures.
10 I think part of it's anecdotal; I get a lot of anecdotal
11 feedback now. I have a superintendent provide feedback,
12 the director of integrity and accountability, that we've
13 now put the "Professional" into Professional Standards
14 again. We're very much engaged in ensuring that we
15 communicate who we are, what we do and how we do our
16 business. That's somewhere I think we're probably not
17 mature on yet.

18
19 Can you be more specific about how you communicate who you
20 are what you do?---Certainly. In the past, there was a -
21 when we were investigating matters we would just send an
22 allegation letter to the various managers, and sort of say,
23 "Here's the allegation letter, can you serve it"? I insist
24 on personal service now. Investigators go out, they'll
25 actually go and meet the superintendent or the manger, or
26 the director of the particular area. They'll explain where
27 we've got to in the process. They'll be present when the
28 letter is served, so they'll do the service of an
29 allegation letter on someone. We engage at meetings with
30 senior managers, we provide them with the background of
31 what it is that we do. We have regular interface where
32 people have matters, or are seeking advice about how they
33 might deal with things. I made it really clear that, if
34 we're not the right part of the Department to deal with it,
35 that we should be upfront and try and actually help the
36 person, or the people, to go to the right part of the
37 agency. There are a range of different matters in which
38 you can make complaints, we're one element of it. One of
39 the things that the Director General and I have been
40 discussing is whether we have a centralised area for any
41 complaint that comes into the agency, whether it's a
42 grievance or it's a bullying matter, or whether it's an EOC
43 matter, should there be a central area that records all of
44 those matters, so we can actually determine where it's best
45 set, but the communication as to how we do our business,
46 what we're doing in our business, and then taking on board
47 the feedback.

48
49 What complaints do PSD deal with?---We deal with matters
50 that meet the threshold of minor or serious misconduct.
51 We then have reporting obligations to either the Commission

1 or the CCC. We also deal with matters that come through as
2 criminality, and refer to the WA Police. That generally
3 breaches the code of conduct, we follow the provisions of
4 Part 5 of the Public Sector Management Act. There was in
5 the past a propensity to over-complicate the nature of the
6 things that we do. We do primarily administrative
7 investigations. We receive complaints around people using
8 illicit drugs. We have people who commit assaults. We
9 have people who are just rude to one another, and it's then
10 determining where that matter actually sits, or how it
11 might be best dealt with. We've got a fairly mature
12 assessment and investigation process. We took a fair
13 amount of time reducing what was a volume of documents into
14 something that mirrors the assessment of matters, and
15 probably it's a relatively similar model to the one used by
16 the Commission, probably indicative of the person who was
17 involved in developing it, that we have an assessment
18 process and an investigation procedure which follows the
19 provisions of - of Part 5. So instead of us reinventing
20 things, we use the provisions of the Act which we follow.
21 Within Professional Standards we also have the option to
22 use loss of confidence provisions for custodial officers;
23 so that's a power that's only used by the WA Police, but we
24 also have provisions which are similar to the loss of
25 confidence provisions in the WA Police.

26
27 Tell us more about that assessment process. So what
28 happens when PSD receives an allegation?---The matter comes
29 into the misconduct assessment unit. The assessment unit
30 will review the matter. We'll go through our base, look at
31 who the allegations are made by, who the allegations are
32 made against, to determine whether we have any previous
33 holdings or information. Once that's done, there will be a
34 triage meeting where the assessment will be examined. The
35 assistant director and the director will make a
36 determination as to whether there is further inquiry to be
37 made. Prior to actually assigning it to investigations, it
38 will be prioritised and then it will go to the
39 investigations area, or in fact it may go back to a local
40 area for management. In the past, there has been a
41 criticism of us not knowing what matters have gone back.
42 If we send a matter back for inquiry or if it's best
43 managed as management issue, we generally allocate the
44 particular area 14 days to provide us with a response.
45 They come back with a response and we enter that into our
46 base.

47
48 What's the threshold? How do you determine which matters
49 are referred back for local management?---There -
50 sometimes, there is a conflation of issues. Sometimes a
51 matter come - will come which will have some conduct and

1 behaviour issues, which may be minor or serious misconduct,
2 but then a whole range of systemic leadership and
3 management supervision issues. It's trying now to actually
4 dissect about the individual's behaviour, and then what are
5 systemic issues about leadership, management and
6 supervision. So the process is relatively robust in
7 actually determining whether it doesn't - if it doesn't
8 meet the threshold for minor misconduct, it can go back for
9 local management issues. There are some matters that can't
10 be dealt with at a local level and, as a result, we will
11 help in sort of bringing the matter to a resolution.

12
13 Are these factors set out in operating procedures or
14 guidelines?---I think there's the assessment and
15 investigations standard operating procedures that sets out
16 how we will actually assess a matter. The Commissioner had
17 been and actually sat through our assessment process, how
18 we actually assess and then sort of refer matters.

19
20 How many people are responsible for assessing?---There's a
21 principal assessment officer and three sort of assessment
22 officers. We actually have a person on loan, so it's four.

23
24 How often do you hold a triage meeting?---Triage meeting,
25 will be dependent on the nature of matters that come in.
26 We could hold a triage meeting generally twice a week, but
27 if - again, there will be a priority. If a matter becomes
28 a priority, then it can be escalated and it can be triaged
29 immediately.

30
31 And what matters tend to become priority matters?---Matters
32 which require urgent attention by Professional Standards,
33 so we're regularly requested to go and review matters that
34 have occurred. We go to deaths in custody, where - we've
35 had some matters in Hakea, where we were asked to go and
36 review those matters. We had an escape from Broome, where
37 we sent investigators to review that particular matter.
38 So that was deemed to be a high priority. Again, it's a
39 little - it will depend on the nature and the requirement
40 for an immediate attendance.

41
42 And you referred to the assessing officer looking at iBase.
43 What other resources do they have in assessing a matter?
44 ---We also have the resources of PSD intelligence, which
45 can actually probe intelligence backgrounds for that
46 information; so they'll go through and look at -
47 particularly if the person has come to our notice in the
48 past, whether there is any other reports, security reports,
49 intelligence reports, that sort of indicate that the person
50 may have been involved in misconduct. And if it reaches a
51 threshold for criminality, we have the option of referring

1 it directly to the police, but we use all of the
2 information that we can actually access to make a
3 determination. Then there's a priority sort of put on it,
4 and it will be either assigned to an investigation, or it
5 may in fact sit in assessments and be monitored. It may
6 actually sit in assessments for some further work to be
7 done.

8
9 And is there a requirement for the assessment to be
10 completed within a certain timeframe?---Well, I've put a
11 bit of an ambit claim to try and complete all matters
12 within 60 days. That's probably a stretch target at the
13 moment, but there are some matters that will take longer.
14 We actually have a 100-day meeting where we review matters
15 if they've reached a hundred days. Sometimes, there's
16 complexities if a matter is subject to an investigation,
17 we're waiting for responses from people. I'd like to see
18 us actually move through more quickly, but I'm mindful
19 that - despite what should be uncomplicated matters
20 sometimes become complicated sometimes become complicated,
21 regardless, and waiting for responses from people mean that
22 sometimes the timeframes blow out.

23
24 Is there anything else you would like to raise before the
25 Commission in relation to improvement to the triaging
26 process?---I think we can always continue to improve.
27 I've - regrettably, I think the team gave me access to the
28 misconduct assessment inbox, so I regularly will go through
29 and actually review matters myself, and then I'll discuss
30 them with the director of integrity and accountability, or
31 the assistant director, just as another line of assurance
32 that we're covering off on matters. We have regular
33 meetings - I meet with my team every day. We go through,
34 we discuss current contemporary matters. I have confidence
35 in the people in the integrity and accountability
36 directorate and the PAR and the corruption prevention
37 education, that they are very much aware of what their
38 roles and responsibilities are. I try not to be too
39 intrusive as the executive director, but I do take a
40 genuine interest in where we're going with the work and,
41 as I said, there will be matters which I will raise, and
42 I will then seek some clarification as to where the matter
43 is going or - and I generally get the right level of
44 assurance that it's being managed.

45
46 You refer to an inbox?---It's a - - -

47
48 Is that the predominant way in which you receive
49 allegations?---Yes, so you can - if you go online there's a
50 "How to Report Misconduct". There's an online form, you
51 report the matter through - that's one mechanism. You can

1 actually also ring the misconduct assessment unit, so we
2 get - we would prefer that it comes through an electronic
3 format. I'll sometimes get direct referrals from executive
4 members who will come to me directly. I ensure that
5 whatever information I have is then referred to the
6 misconduct assessment unit so they can assess it, but we're
7 not overly selective in how we receive the information.
8 If it comes in, we'll try and actually make it work.
9 Telling everyone to go away and fill in a sort of an email
10 all the time may not necessarily be the best level of
11 customer service, so if information is provided, I
12 generally have the misconduct assessment unit follow up,
13 ask questions and sort of clarify what action needs to be
14 taken.

15
16 And how do you keep track of the timeframes?---We actually
17 have a regular meeting with the director and assistant
18 director of integrity and accountability track and manage
19 how long an investigation has been - how long a matter has
20 been either in assessment or investigations. As I indicated
21 earlier, we introduced the 100-day case file. I've gone to
22 some of those meetings and witnessed how they go through,
23 what are the impediments to currently progressing the
24 investigation, where is it currently at? We look at what
25 are the next stages, and then both the director and the
26 assistant director will determine whether there needs to be
27 any remedial action, or a reprioritisation of resources to
28 actually progress the matter.

29
30 Once a matter has been assessed as appropriate for
31 investigation, what happens then?---Well, it's assigned to
32 an investigator. The investigator works through a plan of
33 investigation and then conducts an investigation. Part of
34 it is actually about engaging - the primary allegations and
35 stuff have been made through the assessment process. The
36 investigator then looks at the number of witnesses, who
37 needs to be interviewed. Some people may have already been
38 interviewed, some people may have already provided
39 information. They conduct an investigation, and it
40 ultimately would lead to an interview or a discussion with
41 the person of interest.

42
43 And what powers and tools are available to investigators?
44 ---Well, powers and tools are vested in the Public Sector
45 Management Act for us to actually conduct an investigation
46 in accordance with the disciplinary procedures. So that's
47 how we operate. As I said, if the matter manifests itself
48 into a criminal matter, we'll refer that to the WA Police.
49 If it's a matter that requires assistance from the CCC,
50 we've referred matters to the CCC.

51

1 Does PSD play a role in prosecutions under the Prisons
2 Act?---No. It was part of the old - there was an old
3 disciplinary process which was superseded when employees
4 of - prison officers came under the Public Sector
5 Management Act. So there was a transitioning, I think,
6 about 2015, 16, where prison officers came across out of
7 that disciplinary process and became public sector
8 management employees.

9
10 Historically, misconduct investigations involved quite long
11 delays, sometimes in excess of 12 months. Does PSD set
12 timeframes for actions to be taken on investigations?

13 ---Yes. As I said, I'd like to think that we could turn
14 most of the investigation around in 60 days. It's somewhat
15 optimistic. 12 months is probably understating it. There
16 were matters that were outstanding for two years. There
17 was a rigorous system for checking and managing
18 investigations. I'm satisfied that we actually have that
19 now. There are still delays. They are still frustrating,
20 but the requirement to follow a procedural fairness model
21 of giving people an opportunity to respond, and then people
22 asking for extensions in responses, considering responses,
23 taking the responses to the delegated officer to consider,
24 writing back again, it's - it's a bit of a paper war at
25 times in exchanging letters. That's the nature of
26 administrative investigations. That said, we do review
27 matters that get to a hundred days, and work out whether we
28 can actually expedite them.

29
30 **THE COMMISSIONER:** Would you say overall that things have
31 improved since the Commission looked at it a year or two
32 ago?---I can categorically tell you, Commissioner, they
33 have improved. In my review in 2018, we had investigation
34 files sitting in tubs. We don't have investigation files
35 sitting in tubs. I have two very intrusive supervisors in
36 the director and assistant director, who are constantly
37 reviewing and asking questions about where people are at
38 with their investigations. I'm very comfortable that - we
39 will still have delays, but that we're across matters that
40 we're investigating, and we're prioritising. I think,
41 probably in January we had something like 207 legacy files.
42 We were down to about 61 earlier this month. Those files,
43 where little action has actually been taken - so we do try
44 and actually move through it. I'm very conscious of the
45 impact that an internal investigation can have on an
46 employee. There is no really nice way of actually bringing
47 about an internal inquiry. We try and do it
48 professionally, but you're challenging a person's integrity
49 in most cases, and we try and actually keep the complainant
50 advised, the person of interest advised, about how long
51 it's going to take, and we have very much taken to

1 providing like a personal office scheme. "This is the
2 person who's responsible for our investigation. You can
3 ring them." We will still have matters that will see
4 inordinate delays, there will still be matters that
5 frustrate us, but it's the nature of administrative
6 investigations, it doesn't move very fast.

7
8 Thank you.

9
10 **LOO, MS:** In your review in 2018 you noted that the
11 conduct of discipline investigations was not well
12 understood or communicated through the Department, and you
13 said that clarity, communication and demystifying the
14 process should be a priority. So what has PSD done in
15 relation to that?---A part of that was actually about not
16 understanding it was in the investigations area, so without
17 demeaning the people that were there, there was a level of
18 complexity applied to how we conduct investigations.
19 Internally, it's about reinforcing, and I have a role now
20 which we intend to start reinforcing and training in
21 administrative investigations, so reinforcement training
22 about how to conduct them, but when the investigators go
23 out, it's very much about communicating what is their role
24 and function, and how they're doing it. I've been told in
25 the past that, on a number of matters where we've deployed
26 investigators, that no one will talk to them. It's not
27 been our experience. Most - the people that - we've gone
28 out - have been cooperative and actually been prepared to
29 speak to them. I don't think we've actually had anyone
30 turn away, say that they didn't want to actually speak to
31 the investigators. So it's explaining what their role and
32 their function is, how the process will work, what does it
33 mean for them, giving them the opportunity to ask questions
34 and, as I indicated earlier, when the matter is finalised
35 and it moves to an allegation, that investigators will
36 actually go and meet with the person of interest and
37 actually explain to them what the allegations are and how
38 they would respond, and who they can contact if they've got
39 any queries about the process.

40
41 In the regional prisons, there's going to be additional
42 costs associated with flying an investigator out. How do
43 you ensure that the matters in regional areas are
44 effectively investigated?---I've been flying investigators
45 out, so - there's been no impediment in sort of attending
46 matters that are sitting with Professional Standards in
47 sending investigators to go and actually do service. In
48 fact, the director went and did a personal service himself
49 in Albany. I remind them it's very important that we go
50 and actually interface with the people that we're
51 investigating. So yes, it's difficult, but it's something

1 that we're committed to actually doing, and where we've
2 been involved in an investigation, I want the investigators
3 to maintain contact and actually be involved. We have to
4 go to regional locations for particular reasons. We can do
5 other work when we're there, but it is about that personal
6 interface.

7
8 And does that personal interface extend to superintendents
9 as well as the people involved in the investigation?---Yes.

10
11 What are the possible outcomes of an investigation?---So
12 Part 5 sets out that we can take no action, it can lead to
13 improvement action, a reprimand, a fine, up to dismissal.

14
15 What's improvement action?---Improvement action is where
16 there is a requirement for the officer to undertake -
17 training is used a lot, and I'm not sure training is
18 necessarily the answer, because training is thrown around a
19 fair bit, that that's the answer to everything. Generally,
20 the officer knows what to do, it's about reinforcing their
21 roles and responsibilities, so improvement action may be
22 that they're required to report to the superintendent how
23 they're performing a little bit more intensive performance
24 management, and then a report back on how they're
25 progressing.

26
27 Can you tell us more about the reporting process once
28 you've decided on a disciplinary sanction?---Yes. So if
29 there is an improvement action, the outcome will be
30 delivered to the officer, and then there will be a
31 requirement for the respective manager of that person to
32 report back to Professional Standards about the actions
33 that they've taken to give effect.

34
35 And you referred to the loss of confidence process?---Yes.

36
37 Can you tell us more about that?---The loss of confidence
38 process is contained in the Prisons Act and the Young
39 Offenders Act. It provides the provisions for the Director
40 General to lose confidence in an employee, a custodial
41 officer's ability to actually perform their role, based on
42 performance behaviour and conduct. It is a process that
43 mirrors in some ways the provisions within the WA Police
44 section 8, loss of confidence process, particularly given
45 the nature of the relationship by custodial officers. It
46 was designed to be a more expedient way of dealing with
47 matters around the breach of trust. We exercised it five
48 times since 1 July. We have two matters that are still in
49 training. Three others have actually resigned. One matter
50 we took to finalisation. So a person was dismissed. And a
51 custodial officer was actually dismissed under provisions

1 of the loss of confidence. But however, during the - there
2 is a maintenance period following the dismissal and that
3 officer chose to resign within the maintenance period
4 within the provisions of the Young Offenders Act because it
5 was a Youth Custodial officer, so it's as if the loss of
6 confidence process has never occurred. But that said,
7 we've exercised those provisions. They are effective.
8 They can be used. Provides Professional Standards
9 investigators with the options to conduct further inquiries
10 to use coercive questioning if required. But is does PSD a
11 few more power that are not available in the public sector
12 management.

13
14 And what criteria do you use to determine which process is
15 more appropriate?---It would generally depend on the - the
16 nature of the offending. So if a custodial officer was to
17 be charged with a criminal offence, any PS made
18 disciplinary process would need to be stayed. That is not
19 the same for loss of confidence. So loss of confidence can
20 be run in tandem. There are provisions within the Drug and
21 Alcohol Testing Regulations for both prison officers and
22 youth custodial officers at I think Regulation 38(2) that
23 states that if a person tests positive to a Schedule 1 or 2
24 drug under the Misuse of Drugs Act, Schedule 8 or 9 of the
25 Poisons Act, a masking agent or a - there's another issue
26 around a prescribed drug within the - the Misuse of Drugs
27 Act. But the person can either resigned or we can use loss
28 of confidence. So they're the two provisions that are
29 provided in the Regulations. So it's generally envisaged
30 that if a person commits one of those Misuse of Drugs Act
31 type or drug testing offences, then that's what we would
32 actually use. We've been using loss of confidence
33 primarily for people testing positively for drugs.

34
35 And you said that since it was 1 July 2019 - - -?
36 ---Correct, yes.

37
38 - - - that you've been using these provisions, they've been
39 in place since August of 2015, why were they not used prior
40 to that?---I can't answer the - why they weren't used prior
41 to the time that I got there. There - there'd probably
42 been some of reluctance. There's been some use of the
43 provisions I think in 2016, 2017. They hadn't proved
44 particularly successful. After discussing matters with the
45 Director General, I directed that we used the loss of
46 confidence process. So we've been using it. And - said it
47 does - just gives us another tool in relation to managing a
48 person, particularly if they're subject to criminal
49 investigation.

50
51 In relation to matters that are referred back for local

1 management, does PSD exercise any oversight of that
2 process?---Yes, they do come back to misconduct assessment.
3 So they are required - we actually generally issue -
4 I'm pretty sure it's 14 days for them to provide a response
5 about what - what it is that they're actually doing.

6
7 And beyond that 14 days?---Well, they didn't provide a
8 report back. If there are any issues, then they can
9 escalate them back up to misconduct assessment.

10
11 The Commission understands that the Department is moving
12 all staff drug and alcohol testing to Professional
13 Standards, can you tell us more about that?---I can.
14 Earlier this month, there were conversations between
15 myself, the Director General and the Commission for
16 Corrective Services around the repositioning of what is
17 essentially an integrity function. You know, a security
18 environment, Professional Standards. So there is a
19 requirement for Corrective Services in the operational
20 support area to - to security function. The integrity
21 function should sit with Professional Standards. The
22 Director General approved transition of both the loss of
23 confidence provisions, which also still sits in Corrective
24 Services, and the staff drug and alcohol testing. On
25 5 February he made approval. I think by Friday had a draft
26 transition and implementation plan and we had our first
27 meeting yesterday about transitioning the - the functions
28 to Professional Standards. And effectively, it's about -
29 this is not a security function per se, it's an integrity
30 function. So an integrity function should sit within
31 Professional Standards. There is broad agreement between
32 the Director General, myself and the Commissioner that
33 that's going to happen and that will happen with the target
34 date of 30 August.

35
36 **THE COMMISSIONER:** And how will it work?---30 April.

37
38 Sorry?---30 April.

39
40 April?---Yes.

41
42 Not August?---Not August. My - my - my apologies.

43
44 How will it work - work so it's in your area?---The
45 Director General is given approval for additional positions
46 and we're not derogating the responsibilities or
47 diminishing the capability of the Drug Detection Unit.
48 It will sit within the prevention and education space
49 initially. It will be about identifying people who are at
50 risk. There is a Level 7 principal investigator role that
51 will use the Director General's given authority to recruit

1 a Level 6 and three Level 4s for the testing. The
2 functions will pretty much use the existing rules and
3 procedures. There are some issues with the existing rules
4 and procedures that we've picked up in the operations.
5 Because they're integrity function not security functions
6 which we would seek to change, there is a body of work
7 being done around re-drafting Regulations. We will move
8 quickly. We've already provided a response about some
9 matters that we think probably need to be included in
10 those. And you did make a point yesterday about
11 rehabilitation, Commissioner. Whilst there's a provision
12 within the existing policies and procedures around
13 rehabilitation, it's unclear how that was ever intended to
14 work. So that's something we're going to need to take as a
15 policy position for the Department around what would with a
16 person who came forward. So whilst it loosely talks about
17 referring a person who declares they've got a drug issue to
18 appropriate areas within the agency. It's - there's no
19 real process around how that would follow or how we would
20 actually exercise it. So there's some work that we will
21 do. But by 30 April, which is again a - a stretch target
22 we are - be operating. And from Professional Standards
23 we'll still work with Corrective Services. It still
24 applies to custodial officers. The change from the
25 Regulations are intended to expand the people who can be
26 tested to people working within prisons.

27
28 Who will it include? Because there were - was a lacuna -
29 or there is at the moment as to who can actually be
30 tested?---It is. I - I think the - the general rule will
31 be that anyone who's currently employed and working in a
32 prison will be subject to testing. One of the suggestions
33 that we made, which again is only a suggestion, but it
34 might want to be widened to people who have contact with
35 offenders in the community. That may not be achievable
36 within this time frame, with the Regulations. But if
37 you're having contact with offenders in a community
38 environment, you're probably still at risk. So that's
39 something that I would need to - to explore further with
40 the Director General.

41
42 I imagine it's going to be a challenge to service the
43 regional areas in this?---It still happen - it happens
44 today, Commissioner. So I think the DDU has done a really
45 good job in actually delivering a service, which for
46 reasons which are overly clear, place this function within
47 their mandate. I think they've done a great job in
48 actually setting it up. I think they've done a great job
49 in executing it. But it creates some level of angst for
50 people in that environment to be testing staff that they
51 may work alongside at particular periods of time. Moving

1 it to an integrity function within Professional Standards
2 provides some level of independence. But I guarantee we
3 will still service regional areas. We service regional
4 areas now, send investigators to search operations. We
5 have to mobile. We have to have the ability to go where
6 matters manifest themselves.

7
8 Well, that sounds very nice, but the Commission has
9 information that may not be as robust or as comprehensive
10 in regional areas?---That's probably a - a fair comment,
11 Commissioner. But I'm sure at some point in time I can be
12 held to account for how we deliver it and how we sort of
13 manage it. Our focus will be on staff drug testing. And
14 that will be a - a focus and that will be wherever we have
15 people who fall within the criteria can be tested.

16
17 And this of course will be more than just Corrective
18 Services, across the whole of Justice?---Well, currently,
19 the Regulations only extend to Corrective Services. So
20 they only extend to people who work in prisons. If it was
21 to extend to people who operate in the community, that's
22 something I - I don't think that the Regulations or the
23 changes of Regulations envision at the moment.

24
25 **LOO, MS:** Will the staff in PSD actually be the ones
26 administering the tests?---Yes. So the - the FTE that have
27 approved by the DG will be recruited. We will also train
28 up some other people in the Integrity and Accountability
29 Directorate as a short-term matter. I'm just - we've got a
30 briefing yesterday on the extent of the training that's
31 required, I'm comfortable that we could probably deliver it
32 within the time frame with 30 April. We have still have a
33 very good, close working relationship with Corrective
34 Services. They're actively engaged in the transition
35 phase. So I'm not sure it's one of those things that
36 they'll just cut off and walk away from, but we will keep
37 everyone updated as to how we're progressing.

38
39 And what kind of testing will you do?---The same drug
40 alcohol testing regime that currently exists. There are
41 probably a different a medium that we may consider adding
42 in to the - the process, which is hair. We've had some
43 matters recently where we've sought some advice from
44 toxicologists which indicated that hair samples may be more
45 assistance to providing a - a more definitive result.
46 Currently, it - to test blood, urine, saliva. The process
47 that's been set up I think is relatively robust. There are
48 just some matters that we need to tailor the process of
49 Professional Standards.

50
51 **THE COMMISSIONER:** Is it costly?---The delivery of the

1 program or the testing?

2

3 Not the testing, but the analysis?---Analysis, yeah. The
4 analysis, there's a cost obviously associated with getting
5 it analysed. I can't tell you the - - -

6

7 So - - -?--- - - - actual cost. I can tell you that when
8 we seek additional information that there is a significant
9 cost to getting expert opinions. But that's required for
10 any job that sort of requires an expert opinion on
11 something.

12

13 I'm just thinking that alcohol testing was relatively
14 cheap?---It is.

15

16 But drug testing is relatively expensive?---Yes.

17

18 Something you have to bear?---Yes, sir.

19

20 **LOO, MS:** And what's the threshold that will be applied?
21 So what does a Superintendent need to establish for you to
22 a targeted drug test?---The superintendent doesn't make the
23 decisions. It requires information, intelligence or
24 suspicion. So that's included in the current sort of
25 drug - staff drug and alcohol testing policy. So that's
26 the mandate. The policy and procedure itself is still
27 written for Corrective Services so it doesn't really take
28 into account the creation of Professional Standards.
29 That's something that we will update as well. But it
30 doesn't stop us from actually given effect because
31 Integrity and Accountability is for all intents and
32 purposes investigations. The Director General last year
33 gave myself, the Director of Integrity and Accountability
34 and Assistant Director of Accountability the delegation to
35 approve targeted tests, given that we're more in the
36 integrity space. But the - the current threshold is
37 information, intelligence or suspicion. We then look at
38 matters around the particular persons, where the
39 information, intelligence or suspicion comes from, what
40 weight to put in it. It's a relatively low threshold for a
41 targeted test.

42

43 And what happens when a person returns a positive test?
44 ---A person turns positive for an illicit substance, they -
45 in the first instance they're generally ordered away from
46 the prison. We will then commence an investigation. With
47 the new process now around loss of confidence matters, we
48 issue a - a notice that - or an intention to commence a
49 loss of confidence process, there's provision for them to
50 be suspended under that process. So they are suspended
51 from duty. And then the investigation commences.

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And what is the progress of those Regulations to extend the drug testing to other employees?---My recollection is that target time is probably towards the end of the year.

For the Regulations to - - -?---The Regulations to give effect - - -

- - - come into force?---Well, the Regulations are currently in force. This is amendment to the Regulations.

Sorry, I meant the amendments?---Yeah. So the amendments, at the end of the year. We've only really been in the space actively since 5 February. So I - to be able to provide a bit more information as we progress.

Will you continue to work with a Special Operations Group in doing testing?---The - the Special Operations Group conduct search activities, primarily the drug detection unit, to the testing activities sometime off the back of it. We would like to consider the methodology that we will use in relation to testing. But we will continue to enjoy a very positive and productive working relationship with the Special Operations Group. We regularly send investigators on their search operations in case things are found. So - been conducted by staff.

Yesterday in his evidence, Mr Hassall spoke about different committees that review use of force incidents?---Yes.

And he referred to a local committee as well as a central Department of Justice committee?---Yes.

How long has the Department of Justice had a central committee?---There's been a central committee going from my - well, it's had different iterations. But there was a central Use of Force Committee established, I think, in about 2016 or '17. It's been through different manifestations. In 2018, there were changes to the - the centralised committee. And people from professional - or then Investigation Services would go to the - to the meeting. There - there's meant to be a - a local committee where the superintendent reviews all matters. There is a - a centralised committee which Integrity and Accountability are a member of to go to. And I did follow up on - and got some figures in relation to matters around use of force, which I can provide you if you like. So there are 18 use of matters. Thirteen were referred direct from this - matters that came - Professional Standards. Thirteen were referred direct from business areas, either from prison management or contract provides, including broad spectrum.

1 Five were referred to Professional Standards from the Use
2 of Force Committee. Of the matters from an assessment
3 perspective, eight resulted in no further action. Two were
4 referred to Investigations. One was referred to WA Police.
5 Three were referred for local management. Two were
6 referred to local investigation, these relate to private
7 prison providers. And two resulted in improvement action.
8 And I could, if required, provide the details of where
9 they - those occurred. I think the Commissioner indicated
10 yesterday that there was issue because no matters were
11 reported from Hakea or Bandyup Prison.

12
13 What's the role of PSD on the committee?---PSD provides a
14 conductive - a matter - they look at it from a - a - a
15 legal misconduct perspective as to whether the conduct used
16 in the use of force meets the threshold to be referred for
17 investigation.

18
19 And who's responsible for oversight of how the
20 recommendations from that committee are being implemented?
21 ---Well, I think it's probably important to - to note that
22 there are a number of use of force matters that are
23 considered at a local level and the Use of Force Committee.
24 Very few of them meet any threshold that require some level
25 of investigation or misconduct. So the Prisons Act is
26 quite clear about a prison officer's authority to exercise
27 force. And providing it's authorised, justified and
28 excused by law, there are generally no issues in the
29 matter. So the number of matters referred of 18 is a
30 relatively low number I would think, given the number of
31 incidents that occur within a prison. Professional
32 Standards will look at whether there is misconduct
33 involved. If it's - relates to the exercise of the force
34 it doesn't meet that threshold, then that would sit within
35 Corrective Services to manage.

36
37 What about matters where a prison officer has used force
38 and then created an inaccurate report following that
39 incident?---If the inaccurate report - that would be
40 referred to Professional Standards.

41
42 Have you had any matters along those lines referred to?
43 ---I don't think so from here. But I - I'm - I'm aware of
44 matters that come through. We do - well, the Commission's
45 previous report that it's a - a complex issue about
46 matching up whether the report - it's reliant on having
47 CCTV generally to actually see whether the report reflects
48 the actions of the officer taken. But I'm still a - a
49 little confused as to why we don't allow the officers to
50 actually go through the CCTV to examine what actually
51 occurred before filling in their report.

1
2 It's like we're trying to get a bit of a "Gotcha" moment on
3 the officers. It's generally a - a very stressful
4 situation where an officer exercises a use of force. We're
5 mindful of the - the recommendations that came out of the
6 report writing. We're mindful of the fact that there was a
7 lot of cutting and pasting going on. But there's a
8 supervisory role in ensuring that - that people don't cut
9 and paste.

10
11 I think Mr Elderfield will give evidence in relation to the
12 - the changes that will go into the TOMS module which will
13 ensure that people can't use and cut and paste. But that
14 won't preclude people from discussing what occurred during
15 a use of force matter. It won't necessarily preclude
16 people from colluding. But the majority of people are just
17 trying to do the right thing.

18
19 One of the things that I've tried to reinforce, and we're
20 going to try and reinforce through prevention education is
21 if you make a mistake in the use of force matter, which can
22 occur, then own the mistake and actually put your hand up
23 that you've made a mistake and that you actually got it
24 wrong. And that if you reflected on your actions, you may
25 do - do things differently.

26
27 I also tell people that if you don't have time to give a
28 person a warning, don't write any report that you gave them
29 a warning when you clearly didn't have time to give them a
30 warning. You can use force; it's really well prescribed in
31 the Prisons Act, but everyone feels like they need to
32 follow a policy rather than the legislation.

33
34 The legislation is really clear about what you can actually
35 do in use of force, it's really well prescribed. But in
36 the past, for whatever reason, whether it's a cultural
37 reason, people have felt the need that they had to cover
38 off on some issues in their - in a policy directive rather
39 than what it is that - what actually occurred.

40
41 So that's again a message that we want to get out through
42 Prevention and Education; if you make a mistake you should
43 own the mistake, you should actually reflect on whether you
44 could do things differently. In those circumstances you
45 can deal with a person, because it's quite a stressful
46 situation people will find themselves in.

47
48 We should be under no mistake that when a person is
49 operating in a prison it's a hazardous environment. They
50 are sort of generally at risk, generally outnumbered and
51 sometimes they will - their decision-making will be wrong.

1 What we used to focus on was we should retrain the person
2 by sending them on another use of force course. It's not
3 about their technique because they generally get the
4 technique right, it's the decision-making.

5
6 So it's how do we actually get people to consider their
7 decisions and could they have done things differently.
8 That will be - that will be the measure of change,
9 particularly in use of force. That will be the measure
10 where we get to where a person can actually go, "You know
11 what, I've had the opportunity to consider what I did then
12 and I could have done that better," and just constantly
13 referring to putting someone on another training course
14 about how to do use of force will not change culture, it
15 will not improve things.

16
17 It's getting people to consider their decision-making and
18 that's something that I think we play a part, that also
19 Corrective Services plays a part or in the leadership,
20 management and supervision of people about reinforcing what
21 a person's responsibilities and expectations are when they
22 engage with someone.

23
24 So can you de-escalate the situation? Can you actually -
25 could there have been something you did? And if you can't
26 and you do go straight to force, then that's okay too. But
27 that's something we're probably not mature enough on yet,
28 something that we'll continue to work in and we do need to
29 actually put the fear out there that if you get your use of
30 force wrong that we're going to suddenly come along and
31 want to dismiss you. We've got to - we've got to accept
32 people will make mistakes and we've got to have a threshold
33 for people making mistakes but that requires a level of
34 contrition, insight and honesty that you've made a mistake.

35
36 **THE COMMISSIONER:** From the Commission's point of view,
37 one of our themes is vulnerable people. It may sound odd
38 in relation to some of your clients but prisoners are
39 vulnerable people in the sense that they are in a confined
40 environment and subject to orders and discipline.

41
42 What was disturbing about our investigations last year that
43 we reported on, to me was not so much the level of force
44 because I accept that can be a very subjective matter, the
45 law says it's subjective, the law says you can use force
46 but not excessive force but how you define that can be
47 difficult, particularly as we accept prison officers are
48 often in a highly-stressed environment, aroused emotions,
49 and they won't always make what in hindsight you might say
50 is the correct decision but what seemed to be displayed, to
51 me was a level of cover-up or failure to acknowledge that

1 the force may have been on this occasion excessive in
2 retrospect and that is the disturbing thing and that led to
3 sort of corroborating reports from other officers.

4
5 Now, the question of whether they should prepare reports
6 without viewing the CCTV is obviously a question for you
7 but I would, myself, not see much wrong with it; if the
8 CCTV shows the incident, it's probably the best evidence.
9 We also accept that there may be good reason for having a
10 hot debrief immediately after the incident - lessons
11 learned, what could we have done, could we have de-
12 escalated, which is not collusion but can give rise to the
13 perception later of collusion.

14
15 So from the Commission's point of view we're mindful of all
16 of the issues you've raised. We're not out to crucify
17 individual officers who may in the heat of the moment make
18 a decision which in hindsight turns out to be the wrong
19 decision.

20
21 It is the potential misconduct of people putting their
22 heads together to cover up a decision which was simply a
23 wrong decision and it's the cover-up that converts it into
24 serious misconduct and we recognise the challenge in
25 dealing with that but the culture has to change?---I agree
26 with you wholeheartedly, Commissioner. I don't think it
27 starts out down the misconduct path or the cover-up path.
28 I've had discussions previously with the Union and I've
29 been told that this is a matter of trust, but at some point
30 there needs to be a breach of trust.

31
32 If a person's involved in criminality and corruption, I
33 can't offer much in the way of sort of comfort. But if a
34 person makes a mistake, then we should be able to recognise
35 and learn from the mistakes and it shouldn't be trying to
36 catch people out. After a person's been involved in a
37 fairly sort of stressful incident, there's an expectation
38 that everyone will write a report before they go home and,
39 you know, it puts them probably under a level of pressure
40 to try and come together with a story and sort of get it
41 down correctly.

42
43 I accept that that's part of their role and their
44 responsibility. I don't think it's something that we've
45 explored enough and it's about if - I'd much prefer people
46 sit around and consider that - a hot debrief that could we
47 have done that better. Could we have done it better?
48 Should we have done it better, are there things that we
49 should do next time and write it up in - in that particular
50 way.

1 We insist on pretty much everyone involved in an incident
2 filling in a report, which I'm not sure is always necessary
3 because that does lead to people cutting and pasting. You
4 primarily want the key people that are involved in it, we
5 could have a list of witnesses; but most matters will never
6 manifest itself into misconduct, most matters are an error
7 in judgment or a decision-making that should have been and
8 could, if we become more mature and this is something that
9 our prevention and education area is going to have to work
10 on, if we become more mature it is be accepting that we
11 will make mistakes.

12
13 But it can't be because the person's vulnerable, we do need
14 to actually take extra care and we do need to consider
15 about are we actually - are we escalating something that
16 doesn't need to be escalated, can we take an extra
17 10 minutes to do it? Now, sometimes there will be an
18 operational expediency which will preclude that from
19 occurring but the majority of officers that are going out
20 there and using a force they are doing it because they feel
21 that's the right response at the time.

22
23 It is a responsibility for all of us in Corrective Services
24 and Professional Standards to actually reinforce that if
25 you make a mistake, if you get it wrong you need to own it,
26 we will try and work through it. And I have seen officers
27 not in a use of force base but officers who've been
28 involved in conduct which was very poor, very poor conduct,
29 own - own their - own their mistake, put their hand up that
30 they'd actually done it in various sort of trying and
31 serious conditions but realised that they'd done the wrong
32 thing. And that was quite refreshing and that was in 2019,
33 officers putting their hand up.

34
35 Now, that was reflected in the response that the Department
36 gave to it but it is something that I think we probably
37 need some help to actually develop and getting it right.
38 I think the police have the same issue about where do you
39 actually draw a line as to what is excessive, and in a
40 prison environment there has to be a sort of way for the
41 people to go back and consider it and, I think you're
42 right, to actually reflect on where - whether or how they
43 got to the situation they find themselves.

44
45 It might be that there's been a sort of blame culture that
46 has made it difficult in the past for someone to say,
47 "Look, on this occasion I made a mistake," if they're going
48 to be constantly blamed rather than, "All right. Well,
49 what have you learned from it?" The other thing the
50 Commission has information about is from prison officers on
51 the ground that - and this is the cultural thing I was

1 referring to; that if I don't support you now in your
2 perhaps excessive use of force when other officers are, the
3 next time I'm in a vulnerable situation there may not be
4 much help coming my way from other officers. Now, that's a
5 cultural thing. Whether it's correct or not I have no way
6 of judging, but it is some information that we have been
7 given?---I think you're probably - it's probably correct to
8 a degree, Commissioner, but how do we actually encourage
9 people to do the right thing? So how do you give people
10 confidence? You know, we refer to people who - who have
11 exercised it as whistle-blowers, it's almost sort of
12 demonstrating that they're doblers.

13
14 It's hardly sort of encouraging for someone to want to come
15 forward and actually tell the truth if - the culture has to
16 be that it's okay to tell it how it is. You're not
17 dobbing, you're actually just telling it how it is. And
18 for the other person who may have made the wrong decision
19 to accept that you're right, actually I should have done it
20 differently, that's a level of maturity that I don't think
21 many organisations have reached. That's a level of
22 maturity that will take some time to change.

23
24 I do think there is a general commitment from the
25 Department. I know there's a significant commitment from
26 the Department to changing culture. It will take some time
27 and in some areas it probably won't happen, there will be
28 some people who will always be resistant to the change.
29 But overall, people who go to work in a Corrections
30 environment, 99 per cent of people go to work to do a great
31 job. They work in an environment that is not well
32 appreciated, that people don't sort of actually understand
33 what they do.

34
35 They work within the justice system but are not sort of
36 seen as having a really important role, and I think that's
37 really sad because there are people who are doing an
38 outstanding job in sort of managing those vulnerable people
39 every day. And that's not often recognised and it is a
40 difficult job, but most people don't care what's actually
41 going on within a prison. So the people that work in
42 prisons, the people that work in Community Corrections are
43 doing a great job but don't get the same level of
44 recognition as perhaps other people in the justice system.

45
46 Well, I've been doing this job for five years and if we
47 changed the culture we'd now not have much work. In fact,
48 we're busier than ever so the cultural things extend beyond
49 justice. But it's probably a good time for a 15-minute
50 break.

51

1 (THE WITNESS WITHDREW)

2
3 (Short adjournment)

4
5 **SHAYNE LESTER MAINES RECALLED ON FORMER OATH AT 11.25 AM:**

6
7 **THE COMMISSIONER:** Please be seated.

8
9 **LOO, MS:** Mr Maines, one of the Commission's
10 recommendations was that the Department review its Code of
11 Conduct and Conflicts of Interest and Secondary Employment
12 policies. What has PSD done in that regard?---So, ah, in
13 relation to Code of Conduct, following some queries raised
14 by the WA Prison Officers' Union in relation to lack of
15 consultation on some elements within the Code of Conduct,
16 we conducted a review in June 2019. Some amendments were
17 made to the Code of Conduct around dealing with vulnerable
18 people and the nature of the people that we actually deal
19 with. Um, there's also an intention to review the Code in
20 2020, ah, to go back out for further consultation and
21 probably clarifying some matters, particularly around drug
22 use for - for employees of the Department of Justice, the
23 fact that it's - it's not an acceptable sort of way of - of
24 performing if you work in a - in the Department of Justice
25 but we will be pursuing that issue.

26
27 What changes - sorry?---Sorry. I can't - well, the - the
28 changes will be we'll actually go out to consultation to
29 discuss where the range of stakeholders about what changes
30 that they think are necessary in the code of conduct, we
31 will take on some of learnings from Professional Standards
32 to determine there should be some more explicit sections
33 within the conduct of conduct around expected behaviour.
34 Plus the code of conduct provides a - the broad guiding
35 principles about how you act. They do need to sort of
36 coincide with the obligations under the Public Sector
37 Management Act. But we'll - we'll be actively open to
38 seeking input from a range of stakeholders about whether we
39 can actually improve our code of conduct.

40
41 And you referred to the Union being consulted, which union
42 was that?---That was actually - it was a direct approach by
43 the WA Prison Officers' Union in 2019 in relation to some
44 concerns they had around the nature of people that prison
45 officers are required to deal with. They provided some
46 wording. We went backwards and forwards on how we might
47 amend it. We came to an agreement which actually
48 identified the complexities of dealing with the vulnerable
49 people that we have across the justice spectrum was
50 approved by the - the Director General. And we made an
51 amendment back in June 2019. We were aware that more work

1 would need to be done to - to do this. But that's a - a
2 focus in 2020 for the CPE. In relation to - I'm sorry, the
3 public interest disclosure policies and procedures were
4 updated in 2019. Give some benefits, was that - give some
5 benefits policy was completed in December 2019. We're not
6 moving to an online sort of process for gifts and benefits.
7 There - there was a number of iterations that have gone
8 backwards and forwards in relation to gifts and benefits,
9 but we now have an online form that was signed off in
10 December where the process is the person who enters it
11 online we're able to track better rather than paper-based
12 forms. So that's an improvement in how we actually manage
13 gifts and benefits. Sorry, was that - did I miss another?
14

15 No, that was - you've covered half of my question. You
16 recently developed a fraud and corruption control plan?
17 ---We - we have developed a fraud and corruption control
18 plan. It has actually gone back for some re-work after the
19 Director General requested some changes. Effectively, the
20 fraud and corruption control plan will be the operation and
21 tactical level document which will demonstrate how we're
22 required to actually manage fraud and corruption control at
23 a - sort of an organisational level. It will complement
24 the Justice Integrity framework so it - it will just be
25 another tool within the suite we've got around prevention.
26

27 So will PSD be responsible for implementing that plan?
28 ---Well, PSD will be responsible for launching it. The -
29 the actual plans, rather than a single entity within the
30 Department of Justice being responsible for managing them,
31 whilst we'll be the - the subject matter experts and the
32 policy procedural owners, it's up to the whole of the
33 Department to embrace the documents as a way of actually
34 how we manage our business and what our expectations are.
35 And what we will actually do to manage the potential for
36 fraud and corruption across the agency. But ultimately,
37 yes, Professional Standards will be responsible.
38

39 And is there a process of review of the plan?---With all
40 our plans, yes, there's generally a sort of a- a two-year
41 time frame going back and reviewing the plans.
42

43 The Commission noted in its report that information of
44 value to investigators was not available to them unless
45 they requested it from specific business areas. For
46 example, CCTV footage or audits of TOMS. And the
47 Commission noted that this made conducting covert
48 investigations almost impossible. Has that access
49 changes?---Without going into our investigative
50 methodologies, yes, I can sort of inform the Commission
51 that our access to that type of information has improved

1 markedly and will only get better.

2

3 And you referred to matters that are referred back to
4 prisons for local management and you said there was a
5 14-day sort of time frame when prisons would report back.
6 Does the misconduct assessment branch undergo a critical
7 analysis of the prison's response?---Generally, it will be
8 to give effect to an action. If it's - if it's gone for
9 improvement action, it will be to give effect of what that
10 improvement action - whether it requires the person to
11 engage in some level of training, whether they need to be
12 counselled on their behaviour or their conduct. It doesn't
13 require a great deal of critical analysis. If the matter
14 was probably of a more serious nature, then it would stay
15 with Misconduct Assessment. But we do monitor it. If we
16 were to - if we get a - an officer who may test positive to
17 alcohol, which may require some level of local improvement
18 action and sort of ongoing testing, we maintain contact
19 with that to ensure that the testing has actually been
20 done. But this is generally much lower level matters.
21 That may - may be given effect by providing a counselling,
22 directing a person to undergo some level of training or
23 reinforcement.

24

25 And does PSD provide any level of support to build up the
26 capacity of a prison to manage matters locally?---I suppose
27 it depends who you ask. I'd like to think that we actually
28 have been out there a fair bit trying to actually build up
29 capacity. There is some - sometimes there's a level of
30 resistance about what we've reported to Professional
31 Standards - need to fix it. Some people take their
32 leadership and management responsibilities really seriously
33 and sort of doing a great job at managing their employees'
34 performance. There is still more for us to do in actually
35 being engaged. But we want to be helpful and we want to be
36 able to provide solutions. But not all matters need to
37 actually be dealt with by Professional Standards. And some
38 of it is really about the person's performance, behaviour
39 or conduct which can be dealt with at a local level.

40

41 And what do you hope to achieve in the next five years?
42 ---The next five years? That's a long time. I'm probably
43 going to break it up into sort of year sort of focus. One
44 of the things that we are rolling out through the
45 Corruption, Prevention Education Directorate is taking
46 learning from private prisons. So Acacia run a corruption
47 prevention committee. And we have attended that committee
48 on a number of occasions. And the Assistant Director for
49 Corruption, Prevention and Education has been working to
50 develop a - a local integrity and ethics committee at
51 prisons. So we've rolled out a pilot program at Hakea,

1 where we've had an initial meeting. There's another
2 meeting coming up within the next fortnight, where we send
3 the CPE team to go and discuss with local management about
4 issues they have where they're identifying people who are
5 at risk or who may sort of be moving down a path towards
6 misconduct, providing them strategies about how to deal
7 with it and determining who's best to actually deal with
8 it. But it's putting the focus back on at a local level,
9 rather the Professional Standards sitting behind everyone,
10 looking at what they're doing and then sort of whacking
11 them if they're not doing something correct. So it's about
12 being engaged. There's - the next iterations are likely to
13 be at Bandyup and Bunbury and Melaleuca at a later stage.
14 But the intent and the report I get back is generally well
15 received, that they add value and they provide an interface
16 for the local committee with Professional Standards and not
17 just a when something's gone bad sort of relationship.

18
19 And when do you expect that will be rolled out to all the
20 prisons across the custodial estate?---That will be
21 something that Assistant Director will need to report back
22 to me on. But at this stage, we're going to - it's a trial
23 at the moment. So we've trialled it at Hakea. It's
24 working well. What we'd like to see is embedding it at the
25 other sites, at Bandyup, Bunbury, and eventually Melaleuca
26 and how it works there. And then we'll actually work out
27 how we expand it across the estate. But I don't think it
28 will be entirely focused on prisons. I think it's
29 something we will - we'll move to have across Justice where
30 there are at-risk sort of operations.

31
32 And once these local committees are established, will PSD
33 continue to be involved in them?---Absolutely. Yep.
34 We're committed. We've committed further. So that's
35 probably part of our focus for - for the next 12 months.
36 I think constantly reviewing the way we actually do
37 business, you know, the Commission's made it clear about
38 changing culture. That's the long-term goal, to change
39 culture. But culture is a word for either good or
40 behaviour. It's encouraging, sort of, the good behaviour
41 in people and doing the right thing. And that's something
42 that we'll all end up having to work on. In five years'
43 time, I'd like to think that it's a very healthy
44 organisational culture that respects it will make mistakes,
45 will get things wrong. But overall, we're comfortable
46 reporting misconduct when we see it occur. We're
47 comfortable with the processes that we have in place.
48 We're comfortable with the leadership and management and
49 not necessarily blaming leadership and management all the
50 time for things that are going wrong, accepting and owning
51 responsibility for issues that occur. And just sort of

1 having a - I think I indicated before, having a threshold,
2 the fact that we'll make mistakes.

3

4 Is there anything else you'd like to speak to that you
5 haven't already discussed today?---No, I - I think I've -
6 actually, there is one thing I'd like to say. I've been
7 involved in a number of - number of reviews. I've been
8 reviewed. I've been on reviews. I'd actually like to
9 thank the Commission. My engagement with the oversight
10 team and with my team has been extremely professional.
11 It has been one that has not been premised on running
12 around, trying to find what I term "Gotcha" moments.
13 They've been extremely professional, engaged, helpful,
14 tolerant - although they did make me come back to work just
15 before my holidays finished so I could go to a meeting.
16 But they've been - it's been a - it's been a learning
17 experience. I think it's been a learning experience for
18 both the teams in actually how our Department works. And
19 I personally found it very helpful in actually driving
20 change in our organisation. I think it's been a catalyst
21 for us to actually do things. The mandate of the Director
22 General to actually get on and actually change our business
23 and to accept that we need to move forward, it's been
24 really important. And that couldn't and wouldn't have been
25 achieved with the CCC bringing matters to our attention.
26 But it hasn't been "Well, you've got a problem, it's all
27 yours". It's been a very interactive relationship and
28 I've found it extremely beneficial. So Commissioner, I
29 just wanted to thank you for the commitment of your team
30 and good professionalism that they've displayed.

31

32 **THE COMMISSIONER:** Thank you for those kind words?---Well,
33 they're true, Commissioner. And as I said, I would tell
34 you if I thought it was a different experience. It has
35 been one that has been very easy to work with and again,
36 good guiding principles and - and a good way to actually do
37 business.

38

39 Well, our concern is not actually finding misconduct.
40 It's investigating whether there is. We're quite happy if
41 we find there's none. But we also have a function of
42 helping agencies manage or recognise their misconduct risk.
43 And that's been the process we are now engaging in.

44

45 **LOO, MS:** I have no further questions, Commissioner.

46

47 **THE COMMISSIONER:** So thank you very much for your
48 attendance, Mr Maines.

49

50 And we will adjourn until 9.45 am tomorrow morning.

51

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(THE WITNESS WITHDREW)

AT 11.39 AM THE MATTER WAS ADJOURNED
UNTIL WEDNESDAY, 12 FEBRUARY 2020

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

The transcript of Shayne Lester Maines heard on Tuesday,
11 February 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 11th day of February 2020 by: Glenda Judge
and Sheila Robbshaw

Full Name: Glenda Judge
Sheila Robbshaw

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)

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