

## Report into misconduct risks in WA prisons

26 October 2018



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## **Corruption and Crime Commission**

<b>Postal Address</b>	PO Box 330 Northbridge Post Shop WA 6865	<b>Email</b>	<a href="mailto:info@ccc.wa.gov.au">info@ccc.wa.gov.au</a>
		<b>Website</b>	<a href="http://www.ccc.wa.gov.au">www.ccc.wa.gov.au</a>
<b>Telephone</b>	(08) 9215 4888 1800 809 000 (toll free for callers outside the Perth metropolitan area)	<b>Twitter</b>	@CCCWestAus
		<b>Office Hours</b>	8.30 am to 5.00 pm, Monday to Friday
<b>Facsimile</b>	(08) 9215 4884		

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# CHAPTER ONE

## Introduction

- [1] An aspect of the serious misconduct function is to help public authorities prevent serious misconduct.
- [2] For more than a year, the Commission has been working with the Department of Justice (DoJ) to identify misconduct risks and to investigate allegations of serious misconduct (the joint investigation).
- [3] By their nature, prisons can be at high risk of corruptive behaviour unless appropriate safeguards and policies are in place.
- [4] The Commission tabled five reports into misconduct within DoJ Corrective Services in 2018. This report brings together lessons from those reports and from misconduct agencies across Australia, as well as recent reports by the Office of the Auditor General (OAG).
- [5] The Commission received evidence in private examination from the Commissioner of Corrective Services, Mr Tony Hassall, Deputy Commissioner of Adult and Youth Justice Services, Mr Shayne Maines, and Acting Deputy Commissioner of Regulation and Operational Services, Mr Richard Elderfield.
- [6] Each gave evidence frankly and openly. The Commission thanks them for their considerable assistance and expertise.
- [7] The Commission also received responses from the Director General, Dr Adam Tomison.
- [8] The issues confronting Corrective Services are longstanding. Some are beyond the capacity of Corrective Services' control, such as the rapid growth in prison population and increasingly stringent budget pressures.
- [9] The solution to many issues will not solely be the resolve of the Director General and Commissioner of Corrective Services.
- [10] The solutions will require wholesale change of culture, improvement in technology, simplification of policies and procedures, and a commitment at all levels, not just the top, to address and reduce serious misconduct risks in prisons.
- [11] The Commission will make a series of recommendations in this report. It will report on the implementation of those recommendations in one year.

- [12] The Commission has identified a number of areas where DoJ's identification and management of serious misconduct risk is inadequate. If this situation persists, it will detrimentally impact the safety and security of the prison environment and the broader community.

## **The Commission's recent interaction with the Department of Justice**

- [13] Complaints relating to Corrective Services make up only seven per cent of all complaints received by the Commission. Despite this, the Commission investigates more matters relating to Corrective Services than any other agency. The Commission also oversees and reviews more matters relating to Corrective Services than it does any other agency, with the exception of the WA Police Force, over which it has a wider jurisdiction.
- [14] Since August 2016, there have been 23 matters relating to Corrective Services' officers that have been sufficiently serious to warrant active oversight by the Commission. These involved allegations that officers were:
- a) using excessive force against prisoners;
  - b) maintaining inappropriate relationships with prisoners;
  - c) trafficking contraband into prisons;
  - d) falsifying records;
  - e) failing to report serious incidents; and
  - f) engaging in corrupt conduct.

## **Scope and purpose of this report**

- [15] The joint investigation into corruption within WA prisons has focused on contraband entering prisons and inappropriate associations between prison staff and prisoners.
- [16] Multiple incidences of serious misconduct and corruption were uncovered resulting, to date, in two Commission reports. However, given the serious misconduct risks identified within prisons, the number of further incidences is unknown.
- [17] The joint investigation identified a number of factors which increase the serious misconduct risks within Corrective Services, specifically prisons,

and which raise serious questions about DoJ's ability to identify and manage serious misconduct risks.

- [18] The joint investigation forms the basis for this report. The report also discusses recent research, intelligence and incidents<sup>1</sup> which highlight areas of concern with the management of serious misconduct risks in WA prisons.
- [19] It should be acknowledged that in the past year since the Machinery of Government changes, there have been many actions taken by the Director General and senior officers to address some of the risks identified in this report.
- [20] Before finalising this report, the Commission gave DoJ an opportunity to comment. DoJ identified a number of paragraphs which, if published, might compromise the security of prisons.
- [21] Some of those paragraphs also contain criticism of DoJ. The Commission has redacted paragraphs relating to security from the report to be tabled in Parliament.
- [22] However, they raise matters which, in the Commission's opinion, need to be addressed. The Commission has therefore given an unredacted report to the Minister for Corrective Services for such action as he sees fit.

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<sup>1</sup> In WA and to a lesser extent, Australia and internationally.

## CHAPTER TWO

### The Department of Justice: Corrective Services

- [23] On 1 July 2017, the Department of Corrective Services (DCS) and Department of the Attorney General amalgamated to form DoJ.
- [24] DoJ is headed by the Director General, Dr Tomison. The Commissioner of Corrective Services is Mr Hassall.
- [25] DoJ custodial operations include 15 Government operated prisons, two contracted services prisons, five work camps and one youth detention centre, as well as over 4,000 community based offenders. The adult prison population is 6,917.<sup>2</sup>
- [26] Corrective Services has approximately 4,423 employees and a budget of approximately \$975m.
- [27] The location of the various prisons spans a vast geographical area of 2.5 million square kilometres, from Derby in the State's north, Kalgoorlie in the east and Albany in the far south.
- [28] Prisons differ greatly from each other in size, security classification, environment, population, isolation and operation. The differences are greater in more remote areas.
- [29] This diversity presents both common and unique challenges.
- [30] Ongoing challenges include managing cultural diversity, the prevalence of drug use within the prison community and the management of Outlaw Motor Cycle Gang (OMCG) members, particularly in the larger prisons.<sup>3</sup> The misconduct risks associated with these challenges are detailed later in this report.
- [31] The State's prison population has increased 11 per cent between the 2015/2017 and 2016/2017 financial years. This has exacerbated problems with overcrowding, understaffing and stretched resources.

### Challenges common to corrective services environments

- [32] In November 2017, the Independent Broad-based Anti-corruption Commission (IBAC) published a report<sup>4</sup> into corruption risks associated

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<sup>2</sup> As at 1 May 2018.

<sup>3</sup> Department of Corrective Services, *Final Report 2016-2017* (2017).

<sup>4</sup> Victoria, Independent Broad-based Anti-corruption Commission, *Corruption risks associated with the corrections sector* (2017).



with the corrections sector in Victoria. The report identified the supplying of contraband to prisoners and unauthorised disclosure of information by prison officers as significant misconduct risks.

- [33] Other main drivers of corruption identified were:
- a) corrupt procurement activities;
  - b) a workplace culture that tolerates misconduct;
  - c) challenges in attracting suitable employees;
  - d) vulnerabilities to staff grooming;
  - e) the high-volume of recruitment in response to the growth of the prison population;
  - f) workplace dissatisfaction;
  - g) remoteness of some prisons; and
  - h) the corrections system consisting of both public and private prisons.
- [34] Over the past three years, the Crime and Corruption Commission in Queensland (QLD Commission) has reported an increase in allegations about Corrective Services relating to excessive use of force and the misuse of official information.<sup>5</sup> In response, the QLD Commission launched 'Taskforce Flaxton' and held the first phase of public examinations in May 2018 focusing on corruption risks in Queensland's prisons and work camps.
- [35] A number of issues were identified, including:
- a) poor culture;
  - b) improper use of intelligence;
  - c) difficulty in recruiting suitable staff; and
  - d) overcrowding and competition for resources.
- [36] The New South Wales Independent Commission against Corruption (ICAC) also held public examinations in May 2018 into allegations of prison officers using excessive force, colluding by providing false and misleading incident reports and destroying evidence. ICAC have previously investigated allegations concerning the possession and supply of contraband to prisoners by prison officers, prison officers' use of

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<sup>5</sup> Queensland, Crime and Corruption Commission, *Taskforce Flaxton: issues paper and invitation for public submissions* (2018) p 3.

steroids and attendance at work whilst under the influence of prohibited drugs.<sup>6</sup>

- [37] The Chief Inspector of the New Zealand Department of Corrections released a report in October 2016 into the Serco run Mount Eden Corrections Facility.<sup>7</sup> The report stated prison staff were likely to be the primary source of contraband in the prison and contraband was easily obtainable.<sup>8</sup> Associated matters included organised fighting by prisoners, failure to investigate fighting and prisoners being left unsupervised for long periods of time.
- [38] In Canada, the Office of the Correctional Investigator's 2016/2017 Annual Report<sup>9</sup> raised concerns about the controls and safeguards on the use of chemical sprays during use of force incidents and the adequacy and appropriateness of the Correctional Services investigating itself.
- [39] The United Nations Office on Drugs and Crime (UNODC) recently reported corruption was one of the 'main obstacles to the practical application of international standards and norms related to the management of prisons and the treatment of prisoners'.<sup>10</sup> The report cited overcrowding, grooming and inappropriate hiring procedures as key drivers of corruption within prisons.<sup>11</sup>

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<sup>6</sup>New South Wales, Independent Commission Against Corruption, *Investigation into the possession and supply of steroids and other matters involving a corrections officer* (2013); *Investigation into the smuggling of contraband into the Metropolitan Special Programs Centre at the Long Bay Correctional Complex* (2013); *Investigation into the smuggling of contraband into the John Morony Correctional Centre* (2010).

<sup>7</sup> New Zealand, Department of Corrections, *Chief Inspector's Report into the circumstances surrounding organised prisoner on prisoner fighting (Fight Club) and access to cell phones and contraband at Mount Eden Corrections Facility* (2016).

<sup>8</sup> Ibid 3.

<sup>9</sup> Canada, Office of the Correctional Investigator, *Annual Report 2016-2017* (2017).

<sup>10</sup> United Nations Office of Drugs and Crime, The United Nations Convention against Corruption, *Handbook on anti-corruption measures in prisons* (2017) pp 1-2.

<sup>11</sup> Ibid 14-17.

## CHAPTER THREE

### Previous reviews of Corrective Services

#### Commission recommendations

- [40] In 2012, the Commission released a report into a use of force incident inside Hakea Prison in 2008.<sup>12</sup> The report concluded that this incident was indicative of the need for broader systemic improvements by DoJ. A number of recommendations were made. Five relate to the use of tasers by special operation group (SOG) officers and are relevant to this report. These are set out in Annexure A.
- [41] In May 2018, the Commission released a report into inadequate supervision of prisoners in the community on work programs under the *Prisons Act 1981* (Prisons Act) s 95.<sup>13</sup> The report followed an investigation into a Karnet Prison Farm vocational support officer inadequately supervising prisoners during day release rehabilitation programs (Karnet Prison report). The Commission made six recommendations, also outlined in Annexure A. DoJ accepted all six recommendations and will report on progress in May 2019.
- [42] On 14 June 2018, the Commission wrote to DoJ asking what action had been taken in relation to the Commission's recommendations from 2012 and May 2018.
- [43] In his response on 2 July 2018, the Director General outlined work which had been completed in relation to two of the 2012 recommendations.<sup>14</sup> DoJ provided no information in relation to the other 2012 recommendations.
- [44] In relation to the May 2018 recommendations, the Director General informed the Commission<sup>15</sup> that an action plan has been developed to:
- increase searches of prisoners, staff and vehicles returning to prisons following community programs;
  - improve electronic tracking of DoJ vehicles and communication with staff when outside the prisons;

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<sup>12</sup> *Report on the Investigation of Alleged Public Sector Misconduct in Relation to the Use of Taser Weapons by Officers of Western Australia Police and the Department of Corrective Services* (2012)

<sup>13</sup> *Report into inadequate supervision of prisoners whilst in the community* (2018).

<sup>14</sup> Letter from the Director General to Commission, 2 July 2018, pp 3-4.

<sup>15</sup> Letter from the Director General to Commission, 2 July 2018, p 5.

- increase screening of staff involved in s 95 community based programs; and
  - provide grooming awareness training for staff.
- [45] The Commission has been informed that implementation has begun and will seek a further report in May 2019.
- [46] On 26 June 2018, the Commission released its *Report on corrupt custodial officers and the risks of contraband entering prisons*. The report made five recommendations, which are outlined in Annexure A. These broadly relate to improved screening and searching of staff, review of the current drug testing regime and better systems to identify staff posing security risks. DoJ has accepted these and will report on progress in June 2019.
- [47] The Director General informed the Commission that:
- ... all recommendations from CCC reports are now recorded and monitored centrally by the Department's Director, Performance, Assurance and Risk. Progress on all external recommendations will also be examined at the Department's Risk Management and Audit Committee on a quarterly basis.*<sup>16</sup>

#### **Department of Justice's response to recommendations from other agencies**

- [48] A number of agencies have performed recent reviews of Corrective Services and made recommendations of a similar nature. Recommendations have focused on physical security of prisons, security of confidential information, screening of staff, grooming of staff by prisoners, inadequate searching procedures, conflicts of interest and drug testing.
- [49] In June 2016, OAG released an *Information Systems Audit Report* (OAG 2016 report) which included an analysis of the integrity of the Total Offender Management Solution (TOMS) used by DoJ. The report made 20 recommendations which were 'supported' by DoJ.<sup>17</sup> Seven of these are relevant in the context of this report and are set out in Annexure B.
- [50] The Director General informed the Commission that 12 of the 20 recommendations have been implemented, although it is not entirely clear which ones. The remaining eight recommendations are classified by DoJ as 'open'. These include completing a risk assessment of TOMS, producing a business continuity and disaster recovery plan and introducing appropriate controls for managing access to sensitive electronic information.

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<sup>16</sup> Letter from the Director General to Commission, 2 July 2018, p 1.

<sup>17</sup> Letter from the Director General to Commission, 2 July 2018, p 6.

- [51] The results of this action will be reported on by OAG in their 2017/2018 *Information Systems Audit Report* which is due to be released soon.
- [52] In November 2017, OAG published a report on its audit into *Minimising drugs and alcohol in prisons* (OAG 2017 report).<sup>18</sup> The audit assessed whether the strategies in place to minimise drugs and alcohol in WA prisons were effective. OAG observed no centralised and strategic approach to the issue had occurred since 2014. The report concluded a steady flow of illicit drugs into WA prisons had been enabled by 'poorly executed search practices, limited intelligence communications and a shortage of effective screening devices'.<sup>19</sup>
- [53] The OAG 2017 report made 11 recommendations which are set out in Annexure B. The first six were to be completed by June 2018 and the final five by December 2018.
- [54] DoJ accepted the OAG 2017 report's findings and advised that recommendations would be considered within cost and resource parameters, and within the context of drug and alcohol strategies in development.
- [55] The Commission sought an update of the progress of action against the OAG 2017 recommendations. The Director General's response outlined that an action plan has been developed to implement the OAG recommendations, which will be monitored by a 'working group comprising cross-Department senior leadership and custodial management roles'.<sup>20</sup> The Commission has heard evidence that progress has been made in relation to recommendations 1, 2, 4, 6 and 11, relating to reviewing the drug and alcohol strategy and testing and review of gatehouse searching procedures and equipment.<sup>21</sup>
- [56] Before it was dissolved, the WA Police Force Prison Team made 34 public recommendations to DoJ. These are outlined at Annexure C. The Commission requested an update from DoJ on the implementation of these recommendations. A summary of this response is outlined at Annexure D.
- [57] The response states six recommendations have been actioned, 11 are in the process of being actioned and two are 'not supported'. However, in relation to the remaining 15 recommendations, the response either

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<sup>18</sup> Office of the Auditor General, *Minimising Drugs and Alcohol in Prisons*, No 22 (2017).

<sup>19</sup> Ibid.

<sup>20</sup> Letter from the Director General to Commission, 2 July 2018, p 9.

<sup>21</sup> T Hassall transcript, private examination, 17 August 2018, pp 43-47.

states that no records have been found to indicate this recommendation has been addressed or indicates that no action is anticipated.<sup>22</sup>

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<sup>22</sup> Letter from the Director General to Commission, 15 August 2018, p 11.

## CHAPTER FOUR

### Issues identified by the Commission during the joint investigation

- [58] A number of themes and specific serious misconduct risks emerged as a result of the joint investigation.
- [59] Although the response has been positive in some areas, in others, DoJ has failed to sufficiently identify and manage corruption risks. This situation has reached a critical point.

#### No corruption prevention framework

- [60] OAG informed DoJ in 2017 that 'central strategic coordination and oversight is essential in a challenged and dispersed prison system'.<sup>23</sup> Despite this, DoJ still has neither a corruption prevention framework nor a coordinated approach to the management of misconduct risks.
- [61] Mr Hassall told the Commission that "there may be some work [on a corruption prevention framework] in its infancy, but at present there isn't one".<sup>24</sup> Mr Hassall said he had recently delegated this task to Mr Maines and Mr Elderfield.<sup>25</sup>
- [62] Mr Maines told the Commission that little progress had been made on a corruption prevention framework as he had left the area and needed to prioritise his substantive role.<sup>26</sup> Mr Elderfield said he had not been asked to contribute to one.<sup>27</sup>
- [63] Despite the apparent lack of prioritising and resourcing for this project, Mr Hassall told the Commission:

*As I said very early on, you know, I'm committed to making sure that we get this right because it undermines everything that we want to do in prison. So it would be churlish of me not to allocate those resources to do the work, but I don't know the quantum at the moment.*<sup>28</sup>

- [64] The Commission **recommends** DoJ develop a corruption prevention framework as a matter of priority.

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<sup>23</sup> Office of the Auditor General, *Minimising Drugs and Alcohol in Prisons*, No 22 (2017) p 14.

<sup>24</sup> T Hassall transcript, private examination, 17 August 2018, p 31.

<sup>25</sup> Ibid 31-32.

<sup>26</sup> S Maines transcript, private examination, 20 August 2018, p 19.

<sup>27</sup> R Elderfield transcript, private examination, 29 August 2018, p 33.

<sup>28</sup> T Hassall transcript, private examination, 17 August 2018, p 33.

### **Lack of corruption prevention strategies**

- [65] DoJ does not have an adequate identification process for misconduct risks. With respect to very basic misconduct prevention strategies like management of conflicts of interest, secondary employment, gift registers, and identifying individuals with vulnerabilities, there is no coordinated approach to gathering, assessing or managing information. Where information is gathered, there is no evidence it is being sufficiently managed.
- [66] DoJ has acknowledged these deficiencies and are in the process of creating a whole of department gifts/benefits register. DoJ reviewed the Misconduct Assessment Branch which addressed some of these risks.<sup>29</sup> However, as outlined above, recommendations made by the WA Police Force Prison Team to remind staff of their obligations regarding secondary employment and conflicts of interest have not been actioned.
- [67] Current procedures do not identify staff presenting performance based risk, for example, those subject to poor performance action, complaints, or disciplinary action. Mr Maines' evidence on this point was that the investigations area had prepared an early intervention model but it has yet to be implemented.<sup>30</sup>

### **Poor reporting culture**

- [68] 'Australian and international research has shown the most effective protection against corruption is a strong organisational culture that is alert to integrity risks'.<sup>31</sup> Unfortunately, the degree of internal reporting by prison staff is low.
- [69] The culture discourages staff from reporting against their colleagues. This can partly be attributed to a lack of confidence in the confidentiality of reporting and fear of repercussions from other staff, including prison management. During recent investigations,<sup>32</sup> the Commission found numerous examples of prison officers being reluctant to 'dob in mates'. Some investigations also uncovered a lack of support from management where officers had reported misconduct.<sup>33</sup>

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<sup>29</sup> Letter from the Director General to Commission, 2 July 2018, p 11.

<sup>30</sup> S Maines transcript, private examination, 20 August 2018, p 10.

<sup>31</sup> United Kingdom, Centre for the Protection of National Infrastructure, *CPNI Insider data collection study: Report of main findings* (2013).

<sup>32</sup> *Report into inadequate use of force reporting at Hakea Prison on 21 March 2016* (2018); *Report into inadequate use of force reporting at Eastern Goldfields Regional Prison on 27 March 2017 and Bunbury Regional Prison on 14 November 2016* (2018); *Report into inadequate use of force reporting at Eastern Goldfields Regional Prison in May 2017* (2018).

<sup>33</sup> *Report into inadequate use of force reporting at Eastern Goldfields Regional Prison on 27 March 2017 and Bunbury Regional Prison on 14 November 2016* (2018).



- [70] Appropriately responding to reporting on employee integrity contributes to a strong integrity culture and encourages more reporting.<sup>34</sup> Conversely, where staff do not believe their reports will be acted upon, or worse, will not be kept confidential, they will stop reporting and this rich source of information will disappear. For these reasons, addressing the poor reporting culture in a positive way needs to be a priority for DoJ.

### **Inappropriate relationships and grooming**

- [71] Criminals may target and groom prison staff to obtain access to information, systems or contraband.<sup>35</sup> Prison staff have access to information of value to criminals, such as personal identity information and intelligence on how crime is investigated. They also have knowledge of systems, allowing them to avoid detection.<sup>36</sup> Grooming increases the risk of staff facilitating contraband into prisons and providing access to protected information. It can also increase risk to staff due to the nature of associations.
- [72] Factors like emotional instability, lack of confidence in social situations and upheaval caused by health and relationship issues, have been identified as making prison staff more vulnerable to grooming.<sup>37</sup>
- [73] Personality traits such as immaturity, low self-esteem, propensity for unethical behaviour, impulsiveness, lack of conscientiousness and being manipulated can also increase a person's susceptibility to grooming behaviours.<sup>38</sup>
- [74] Lifestyle factors that can contribute to increased vulnerability include serious financial problems, excessive alcohol use, gambling or drug problems, loss of status at work, significant personal injury, death of a family member or close friend, relationship break-ups or loneliness.<sup>39</sup>
- [75] Grooming is a significant risk for prison staff. However, they are not assessed at any point for vulnerabilities that may make them more susceptible to being groomed by prisoners.<sup>40</sup> Nor are they retrained or reminded of the nature and risks of grooming after their initial training. [one sentence redacted]

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<sup>34</sup> Victoria, Independent Broad-based Anti-corruption Commission, *Corruption risks associated with the corrections sector* (2017) p 19.

<sup>35</sup> Victoria, Independent Broad-based Anti-corruption Commission, *Organised crime group cultivation of public sector employees*, Intelligence Report 1 (2015) p 4.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid 6.

<sup>38</sup> United Kingdom, Centre for the Protection of National Infrastructure, *CPNI Insider data collection study: Report of main findings* (2013) pp 11-12.

<sup>39</sup> Ibid.

<sup>40</sup> Letter from the Director General to Commission, 2 July 2018, p 12.

- [76] In the Commission's view, there is insufficient attention given to reducing the risk of serious misconduct through grooming behaviours. Contributing factors include: no standardised process for rotating staff to minimise development of relationships between staff and prisoners and the inconsistent management and investigation of allegations. This situation persists despite numbers of allegations of inappropriate associations being consistently high.
- [77] Former custodial officers, Mr Jason Hughes and Mr William Hutton are examples of officers who had obvious vulnerabilities. Mr Hughes was the subject of numerous security reports from both prisoners and fellow prison officers. Their vulnerabilities were not managed. Mr Hughes and Mr Hutton were groomed by, and developed inappropriate relationships with prisoners, ultimately leading to serious misconduct.<sup>41</sup>
- [78] The impact on staff involved in this type of misconduct can include physical harm, threats, loss of employment, damage to professional reputation and penalties associated with criminal activity.<sup>42</sup> Several prison officers have had their employment terminated as a result of the Commission's recent investigations or subsequent police investigations. An agency can face reputational damage, financial loss, breaches of physical security and violence towards employees.
- [79] Where agencies lack prevention and detection measures to address corruption, staff involved in that behaviour can continue undetected, sometimes for extended periods, amplifying the harm.
- [80] The importance of this is not lost on Mr Hassall, who told the Commission "anybody that comes into a prison that either trafficks, compromises the security of the prison, undermines the ability of the prison to do that, actually compromises public safety".<sup>43</sup>
- [81] Mr Elderfield gave evidence that more resources are being dedicated to analysing security reports, which is a positive step.<sup>44</sup> However, processes need to be improved to better identify and manage grooming behaviour and the risk it poses to public safety.
- [82] As one step, the Commission **recommends** introducing a 'tenure' system where staff are rotated to avoid inappropriate relationships forming, especially in areas where 'high risk' prisoners are housed.

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<sup>41</sup> *Report on corrupt custodial officers and the risks of contraband entering prisons* (2018).

<sup>42</sup> Victoria, Independent Broad-based Anti-corruption Commission, *Organised crime group cultivation of public sector employees*, Intelligence Report 1 (2015) p 4.

<sup>43</sup> T Hassall transcript, private examination, 17 August 2018, pp 4-5.

<sup>44</sup> R Elderfield transcript, private examination, 29 August 2018, p 24.

### **Triage, behavioural risk identification and monitoring of outcomes**

- [83] Allegations against staff are often referred to the relevant prison for local investigation. However, the local investigation is often unsatisfactory and is not sufficiently overseen by the investigations unit.
- [84] Little training or guidance is provided to staff responsible for conducting local investigations. There is no structured system for reviewing the outcomes of local investigations, nor any mechanism for questioning disciplinary or remedial action instigated as a result of them.
- [85] Until recently, the process of 'triaging' allegations has had no proactive focus on identifying and managing staff that present a significant risk based on performance, complaints, or sustained disciplinary action. By way of comparison, the WA Police Force has a risk assessment unit which monitors officers presenting a risk due to the number, nature and regularity of complaints.
- [86] Former Vocational Support Officer, Mr David Northing, is an example of these inadequate systems failing to identify serious misconduct risks, despite it being clearly identifiable from past conduct.<sup>45</sup> The Superintendent of Karnet Prison recommended Mr Northing's dismissal as a result of a 2016 investigation. This did not occur, allowing Mr Northing to continue to jeopardise the safety and security of the prison environment until his early retirement in 2018. Due to poor record keeping, records relating to the conduct and outcome of numerous local investigations into Mr Northing's conduct were incomplete.
- [87] Mr Maines told the Commission that DoJ are taking proactive steps to improve the assessment process.<sup>46</sup>
- [88] An internal report on the Misconduct Assessment Branch has been provided to the Commission which recommends, inter alia, that the Misconduct Assessment Branch be the one area responsible for assessing all allegations of misconduct and that relevant policies and procedures be immediately updated.
- [89] The Commission understands these recommendations are currently being implemented and the triage process has been remodeled to help address the risks.<sup>47</sup>

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<sup>45</sup> *Report into inadequate supervision of prisoners whilst in the community* (2018).

<sup>46</sup> S Maines transcript, private examination, 20 August 2018, pp 9-10.

<sup>47</sup> R Elderfield transcript, private examination, 29 August 2018, pp 13, 16.

## CHAPTER FIVE

### The capacity of the Department of Justice to investigate misconduct

#### The Commission's recent oversight experiences

- [90] Since August 2016, the Commission has referred 23 matters to DoJ for investigation, pursuant to the *Corruption, Crime and Misconduct Act 2003* (CCM Act) ss 33(1)(c) and 37. The Commission also chose to actively oversee these matters with regular meetings. DoJ is required to provide the Commission with a detailed report of the action taken in relation to each matter.<sup>48</sup>
- [91] DoJ's engagement with the Commission has been, at times, disappointing. The Commission has received inaccurate and inconsistent information from DoJ and there have been significant unexplained delays in investigations. Although DoJ's engagement with the Commission has improved in recent months, the Commission remains concerned about its internal management and ability to investigate allegations of serious misconduct.

#### Structure, capability and capacity of investigations and intelligence units

- [92] Deficiencies in resourcing, staffing and leadership within the investigations unit limit DoJ's ability to effectively address serious misconduct risks.
- [93] In response to recent Commission reports, Mr Maines was tasked by Mr Hassall with overseeing the investigations and intelligence units from 12 March to 25 June 2018 and to report on how operations could be improved. This report was provided to Mr Hassall in August 2018 (Maines report).
- [94] The structure, size and experience of DoJ's investigations unit is insufficient to provide an effective investigation service. According to the Maines report, the investigations services area has 21 FTEs.<sup>49</sup> Nine of these correspond to investigator positions. However, Mr Elderfield told the Commission that currently there are only four investigators.<sup>50</sup>

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<sup>48</sup> CCM Act ss 40-41.

<sup>49</sup> Maines report, p 8.

<sup>50</sup> R Elderfield transcript, private examination, 29 August 2018, p 14.

[95] In Mr Maines' view, 'the staffing could be adequate if all positions are substantively filled'.<sup>51</sup> In March 2018, nine of the 21 positions were vacant. Disappointingly, none of the department witnesses were able to tell the Commission exactly how many positions are currently filled.

[96] During 2016 and 2017, there was a substantial reduction in staffing levels within the investigations unit resulting in what Mr Hassall described as "significant issues in that area around resourcing and process".<sup>52</sup>

[97] Mr Hassall agreed that "the Investigations area and the Intelligence area has really fallen apart in the last couple of years"<sup>53</sup> adding:

*Look, I think historically ... I think we've taken our eye off the ball.*

*... there's some systemic issues which haven't been addressed for many, many years. There's been a culture that's crept in, that's been difficult to manage and tackle .... there's been too many people acting ...*<sup>54</sup>

[98] Before the Commission, Mr Maines outlined some of the 'gaps' he found in the structure, function supervision, management and focus in the investigations unit:

*When I arrived there was a theme ... that there were insufficient staff ... there appeared to be little effort to fill vacant positions, there didn't appear to be a surge capability plan or a function to deal with increased workload. There was a lack of role clarity particularly with external stakeholders on the function of investigation services ... Investigations themselves took too long, there were no key performance indicators, there was no assigned budget. There appeared to be a lack of direct leadership in monitoring of investigations, there didn't seem to be a level of urgency in sort of completing things. They were unable to actually tell me exactly how many investigations had in place. The reporting they provided was inconclusive ...*<sup>55</sup>

[99] The Maines report sets out possible ways forward. It is being considered by the Executive.

[100] The support of the Director General and the Commission were noted to be 'integral to the success of this process'.<sup>56</sup> Importantly, Mr Hassall told the Commission (**emphasis added**):

*... what I've agreed with the Director-General is, we do want to consult with the Commission and we want to consult with a couple of other public sector bodies,*

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<sup>51</sup> Maines report, p 8.

<sup>52</sup> T Hassall transcript, private examination, 17 August 2018, p 11.

<sup>53</sup> T Hassall transcript, private examination, 17 August 2018, p 14.

<sup>54</sup> Ibid 15.

<sup>55</sup> S Maines transcript, private examination, 20 August 2018, pp 4-5.

<sup>56</sup> Maines report, p 15.

*but we are both committed to moving to a professional standards unit over a very short period of time, that will be resourced.*<sup>57</sup>

- [101] Mr Hassall's evidence was that he expects the consultation phase to last no more than 12 weeks, and that it was his desire for the implementation to be completed within a "a very, very short period of time".<sup>58</sup>
- [102] However, despite being responsible for this area, at the time of his examination, Mr Elderfield had not been officially informed of any decision, could not give an idea of a timeframe for implementation and seemed to be unable to implement desired changes until this decision was finalised.<sup>59</sup>
- [103] For example, despite filling vacancies in the investigations and intelligence units being a priority for Mr Hassall<sup>60</sup> and "top of the list"<sup>61</sup> for Mr Elderfield, Mr Elderfield's evidence was that he would not be filling positions until an official decision was communicated regarding the future structure of the area, and whether it would remain under his control.<sup>62</sup>
- [104] In the interim, DoJ is seconding a WA Police Force Detective and a Detective Sergeant to assist in the investigation and management of allegations. Mr Hassall assured the Commission that this arrangement would remain in place as long as necessary and would be funded by DoJ.<sup>63</sup>
- [105] The staff in the investigations unit have been acting in supervisory positions for extended periods. In some cases, staff would have benefited from further training, increased supervision and mentoring to effectively fulfill the higher roles.
- [106] Although they acknowledge that long term acting arrangements are part of the problem, DoJ Executive has declined requests to substantively fill the Director Investigation Services position.<sup>64</sup> This situation persists despite DoJ being advised that prolonged instability in leadership positions 'can contribute to inconsistency and increased operational risk'.<sup>65</sup>
- [107] In 2017, OAG observed there were no standard operating procedures or formal training for intelligence staff. Without this, DoJ cannot evaluate

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<sup>57</sup> T Hassall transcript, private examination, 17 August 2018, p 26.

<sup>58</sup> T Hassall transcript, private examination, 17 August 2018, p 28.

<sup>59</sup> R Elderfield transcript, private examination, 29 August 2018, p 35.

<sup>60</sup> T Hassall transcript, private examination, 17 August 2018, p 16.

<sup>61</sup> R Elderfield transcript, private examination, 29 August 2018, p 49.

<sup>62</sup> Ibid 10.

<sup>63</sup> T Hassall transcript, private examination, 17 August 2018, p 14.

<sup>64</sup> S Maines transcript, private examination, 20 August 2018, pp 16-17.

<sup>65</sup> Maines report, p 6.

the effectiveness of intelligence methods or ensure its staff have the necessary skills to provide an acceptable standard of analysis.<sup>66</sup>

- [108] Mr Hassall told the Commission that in the context of an incredibly tight operating budget "... a lot of our resources gets sucked into frontline stuff, and historically, there's been very little investment in, those support type services, you know, the prevention stuff - staff training".<sup>67</sup>
- [109] These issues culminated in the Commission having to undertake almost all of the intelligence and analytical responsibilities during the joint investigation. This was despite a large percentage of the intelligence being gathered from DoJ's own intelligence systems.
- [110] On top of capacity issues, DoJ investigators are further limited by the absence of powers to covertly gather intelligence. Accordingly, their ability to conduct covert investigations is limited and they must rely heavily on assistance from the Commission and WA Police Force.
- [111] The Commission **recommends** DoJ finalise and fill the new investigations structure as a matter of priority.

### **Prison management and governance structure**

- [112] Each prison is run by a separate Superintendent with autonomy to run their prison within the bounds of DoJ policy and procedure. Mr Hassall told the Commission "there's been a significant lack of development of prison superintendents over a number of years".<sup>68</sup>
- [113] Despite this, Superintendents are expected to navigate a maze of prison standards, adult custodial rules, procedures, custodial instructions, Assistant Commissioner notices, standing orders, local orders and policy directives (PDs) which are highly confusing and, in parts, contradictory.<sup>69</sup>
- [114] Mr Hassall told the Commission he understands the need for "a clear set of rules and guidance for staff ... and the management ..." <sup>70</sup> He assured the Commission he was addressing this situation as a priority. The project budget for the Prison Rules Base Transformation Project is in the order of \$1.5m. This amount includes all staff costs for the project.<sup>71</sup>
- [115] However, given the breadth of the work required, Mr Hassall estimated that it would take at least two years to work through and rewrite the

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<sup>66</sup> Office of the Auditor General, *Minimising Drugs and Alcohol in Prisons*, No 22 (2017) p 7.

<sup>67</sup> T Hassall transcript, private examination, 17 August 2018, p 20.

<sup>68</sup> T Hassall transcript, private examination, 17 August 2018, p 6.

<sup>69</sup> Ibid 6-8.

<sup>70</sup> T Hassall transcript, private examination, 17 August 2018, p 6.

<sup>71</sup> Letter from the Director General to Commission, 12 October 2018.

nearly 2,000 pieces of instruction currently in place.<sup>72</sup> His evidence was that there was a priority list of policies, including searching and use of force reporting, which would be tackled first.<sup>73</sup>

- [116] Mr Elderfield said PD26, in relation to searching, had been substantially rewritten and was "probably 95% complete".<sup>74</sup>

### **Failure to appropriately share information**

- [117] The intelligence unit is responsible for collation and management of information and the development of intelligence products arising from the prisons. Communication and sharing of information between the investigations and intelligence units has been limited and the Commission has observed little effective interaction between the two.
- [118] The Commission's experience has been that obtaining useful information from the intelligence unit is extremely difficult. However, to its credit, during the joint investigation, DoJ gave the Commission full access to its systems.
- [119] A consolidated approach to management of misconduct risks by the investigations and intelligence units would be more effective. Likewise, an improved and centralised system of information sharing within DoJ's administration and between prison sites, would enhance the assessment of serious misconduct risks, and facilitate a more integrated and streamlined approach.
- [120] For example, until recently, nine of the State's 17 prisons did not have access to DoJ's main intelligence system. This resulted in key information about prisoner and staff risks being inadequately communicated.<sup>75</sup> This type of source information is critical to assessment and management of risks associated with prisoners.
- [121] Mr Hassall acknowledged the historical poor communication between the investigations and intelligence units, stating significant contributing factors were difficulties between former senior staff members and culture.<sup>76</sup> Of the current situation, he said "It's better; it's not ideal at the moment. It's much better than it was ..."<sup>77</sup>

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<sup>72</sup> T Hassall transcript, private examination, 17 August 2018, p 7.

<sup>73</sup> Ibid 10.

<sup>74</sup> R Elderfield transcript, private examination, 29 August 2018, p 42.

<sup>75</sup> Office of the Auditor General, *Minimising Drugs and Alcohol in Prisons*, No 22 (2017) p 7.

<sup>76</sup> T Hassall transcript, private examination, 17 August 2018, pp 17-18.

<sup>77</sup> Ibid 19.



[122] Mr Elderfield told the Commission:

*I think what's important and is a real strength is that the relationships beneath the senior level are quite open and strong, so I think the real exchange of information and ideas and, transfer of knowledge and so on, and sharing information sharing needs to happen at that foundation level.*

*... But I certainly see the early, green shoots of a strong communication and trust in those relationships.<sup>78</sup>*

[123] The Commission considers communication between these two areas to be integral to the management of serious misconduct risks.

#### **Failure to effectively utilise available information**

[124] The Prisoner Telephone System (PTS) is a rich source of information and intelligence. [two sentences redacted]

[125] [Paragraph redacted]

[126] The Director General wrote to the Commission advising that DoJ is 'aware of the shortcomings in the system and are exploring solutions'.<sup>79</sup> [one sentence redacted]

[127] The process of using the PTS system for intelligence is made more difficult by a lack of functionality to enable analysis of data within the system. There is no built-in function to enable reporting or analysis for intelligence purposes. The data must be exported into another system for analysis.<sup>80</sup>

[128] DoJ's investigation case management database houses a plethora of information which could be used more effectively to identify problem officers. At present, when a prison officer has multiple complaints of a similar nature, there is no process in place to trigger a risk assessment or identify a need for more training, supervision or other early intervention. Likewise, there is no efficient method within the system to identify multiple security reports about an officer submitted by their colleagues. This restricts the ability of DoJ to be proactive or implement an early intervention approach as outlined above.

[129] For example, DoJ is only now investigating two alleged assaults by the same prison officer which allegedly occurred 18 months ago. This officer had 39 previous complaints made against him, mostly relating to alleged assaults or use of force. The Commission is overseeing this investigation.

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<sup>78</sup> R Elderfield transcript, private examination, 29 August 2018, p 31.

<sup>79</sup> Ibid.

<sup>80</sup> Letter from the Director General to Commission, 2 July 2018, p 13.

[130] The Commission **recommends** DoJ consider ways to better utilise information that has been gathered to develop risk profiles.

## CHAPTER SIX

### Information technology

#### Lack of access to information

- [131] Information technology systems do not allow investigators sufficient access to information necessary for them to effectively assess and manage serious misconduct risks. Critical information of value to effective oversight is not available to investigators unless requested from another business area or the relevant prison. Examples of information not readily available include: audits of TOMS, prison plans, prison CCTV footage and daily sign on sheets.
- [132] This deficiency makes conducting covert investigations almost impossible. For example, if the Commission wanted access to CCTV footage of an alleged incident, the request would go to the investigations unit who would need to ask the relevant prison, having to tell them the date, time and area in which the incident occurred. There is no way of verifying whether the CCTV footage provided is complete and whether or not it has been edited.
- [133] Until very recently, Acacia Prison could not access DoJ's intelligence database, so had no information about prisoners coming from elsewhere. Most information pertaining to OMCG prisoners is stored in the intelligence database. Despite housing approximately 19.79 per cent of OMCG prisoners, Acacia Prison was unable to access this information.

#### Total Offender Management Solution database

- [134] The TOMS database is managed by a business area separate from the investigations unit.
- [135] Proactive and random auditing of information systems is one of the most effective means of identifying incidents of organised crime cultivation.<sup>81</sup> It is not routinely carried out through TOMS.<sup>82</sup>
- [136] An audit request must be formally requested through the appropriate management chain, they are performed only on a predetermined weekly cycle. Investigators have no capacity to covertly view audits or set 'alerts' in TOMS.

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<sup>81</sup> Victoria, Independent Broad-based Anti-corruption Commission, *Organised crime group cultivation of public sector employees*, Intelligence Report 1 (2015) p 10.

<sup>82</sup> Letter from the Director General to Commission, 2 July 2018, p 12.

- [137] Audit documents are poorly suited to explaining officer behaviour without further interrogation and knowledge of TOMS. For example, in the standardised audit documents, there is no distinction between an officer viewing a record or editing a record. This distinction can have a significant impact on any investigation into that officer's conduct.
- [138] TOMS is poorly suited for intelligence purposes. For example, gang affiliations can only be registered as part of the 'reception' process. Alternatively, an officer can enter an 'alert', but there is no way to find or extract these for intelligence purposes. A better functionality for capturing and maintaining records of gang and other relationships would allow data to be kept current and used holistically, not just viewed on an individual basis.
- [139] The Commission **recommends** DoJ improve the investigations unit's access to information in TOMS.

#### **Accuracy of information in Total Offender Management Solution**

- [140] TOMS holds more than 88,000 prisoner records, 43,000 drug test results and more than 1 million security search results<sup>83</sup> as well as records of 10,000 young people in detention and 500,000 visitors.<sup>84</sup>
- [141] These records include sensitive information relating to personal identification, sentence details, health and counselling information.<sup>85</sup> Unfortunately, this information is not always complete or accurate. For example, 642 drug tests completed during the 2017 OAG audit period did not have results entered, and 2,863 test results were entered without a date when the result was received.<sup>86</sup>
- [142] The OAG 2016 report included an analysis of the integrity of TOMS which concluded, in part, that:
- ... several manual processes cause data integrity issues that require continuous correction by DCS ... In addition, we identified a number of system and database vulnerabilities that increase the risk of unauthorised access to electronic information relating to prisoners and young offenders.*<sup>87</sup>
- [143] Errors such as those relating to medical, behavioural and mental health information can increase the risk to DoJ staff and offenders. Accordingly, it is paramount that the main system for recording prisoner related data

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<sup>83</sup> Office of the Auditor General, *Minimising Drugs and Alcohol in Prisons*, No 22 (2017) p 6.

<sup>84</sup> Office of the Auditor General, *Information Systems Audit Report*, No 11 (2016) p 14.

<sup>85</sup> Ibid.

<sup>86</sup> Office of the Auditor General, *Minimising Drugs and Alcohol in Prisons*, No 22 (2017) p 14.

<sup>87</sup> Office of the Auditor General, *Information Systems Audit Report*, No 11 (2016) p 15.

is of the highest integrity and that access to it is strictly controlled, monitored and audited.

### **Technical vulnerabilities**

- [144] In 2016, OAG performed a vulnerability assessment and database security check on the TOMS application and the supporting IT environment. The following weaknesses were identified in the OAG 2016 report:
- a) Software updates were not applied which could allow attackers to exploit known vulnerabilities and gain access to systems and information.
  - b) Servers running operating systems that the vendor no longer provides security updates for, or supports, increasing the risk of systems and information being compromised.
  - c) DoJ does not perform vulnerability assessments so cannot know whether software updates are applied correctly.
  - d) A highly privileged database administrator account was shared by 15 different people, including 12 contactors, reducing individual accountability.
  - e) Database passwords were not set to expire, meaning people who are no longer authorised to access systems could still do so.
  - f) DoJ had not established database logging and auditing, meaning changes to the database could not be traced back to individuals and any suspicious modification or access to data would go unnoticed.
  - g) TOMS backups were stored on tapes that were collected and managed by a third party contractor and not encrypted, creating a risk of unauthorised access.<sup>88</sup>
- [145] The day to day functioning of DoJ is entirely reliant on TOMS. If it failed, DoJ would be required to use paper records to manage crucial functions. Despite this, the 2016 OAG audit found that if TOMS did fail, DoJ may be unable to recover it in a timely manner, or indeed at all.<sup>89</sup>
- [146] The information held on TOMS is of significant value to criminals, OMCG members and staff wishing to engage in corrupt behaviour. For that reason, staff should generally only access records of prisoners in the prison facility in which they work. However, TOMS does not have an 'audit' facility built in, so the system does not identify if a prison officer

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<sup>88</sup> Office of the Auditor General, *Information Systems Audit Report*, No 11 (2016) p 17.

<sup>89</sup> Ibid 18.

looks at a prisoner in a different facility, accesses the records of a family member or makes any other suspicious access. These checks are not manually conducted by integrity staff unless a question is raised about the officer's access.<sup>90</sup>

- [147] By comparison, WA Police Force entities are flagged and the system itself identifies if/when a member accesses themselves or their families. In addition, WA Police Force routinely audit the accesses of members when they graduate or get promoted.
- [148] The OAG 2017 report noted that many of the IT issues encountered in 2017 were reported on in the OAG 2016 report.<sup>91</sup>
- [149] Efforts are being made to improve data accuracy which will hopefully be reflected in the upcoming 2017/2018 OAG survey.

## Email records

- [150] Currently email archiving is done only via nightly backup.[three sentences redacted]
- [151] DoJ is in the process of migrating to Microsoft Office 365 which will solve this issue. However, migration is not scheduled to be completed until 2019.<sup>92</sup>

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<sup>90</sup> Letter from the Director General to Commission, 2 July 2018, p 12.

<sup>91</sup> Office of the Auditor General, *Minimising Drugs and Alcohol in Prisons*, No 22 (2017) p 14.

<sup>92</sup> Letter from the Director General to Commission, 2 July 2018, p 14.

## CHAPTER SEVEN

### Physical security of the prison environment

#### Pre-employment screening

- [152] Within Corrective Services, 42 per cent of staff are employed as custodial officers having direct contact with prisoners. Custodial staff are usually offered permanency at the conclusion of their probation. Ninety one per cent of Corrective Services' employees are permanent.
- [153] It is imperative that custodial officers are of the highest integrity and, amongst other things, show no propensity for criminal activity, criminal association or misconduct. The practices adopted by DoJ for screening staff prior to employment are not sufficiently robust to ensure its staff meet this standard.
- [154] DoJ requires new employees to complete an 'integrity declaration' consisting of a series of questions regarding their associations, conduct and complaint history; effectively, a self-declaration. A criminal history check is conducted and DoJ has access to some WA Police Force databases for screening purposes.
- [155] Custodial officers are screened when they are first employed. However, it is not uncommon for an applicant to sit in a pool for nine to 12 months before commencing training. Despite this, they are not rescreened until they complete their probation. There is no process for regular screening reviews unless the employee changes position.<sup>93</sup>
- [156] As the majority of staff have permanency, many are long term employees whose screening may be years, or even decades old. Employees' access to information, trust and influence within a public body will generally become greater the longer they have been employed, increasing their potential value to criminals.<sup>94</sup> Accordingly, the absence of any screening review process and the lack of a robust initial screening process, present overwhelming misconduct risks to DoJ.
- [157] Mr Hassall acknowledged the current screening process was insufficient<sup>95</sup> and saw a benefit in more regular screening for all employees who go into prisons.<sup>96</sup> However, he was frank about the realities of resourcing, telling

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<sup>93</sup> Letter from the Director General to Commission, 2 July 2018, p 15.

<sup>94</sup> Victoria, Independent Broad-based Anti-corruption Commission, *Organised crime group cultivation of public sector employees*, Intelligence Report 1 (2015) p 9.

<sup>95</sup> T Hassall transcript, private examination, 17 August 2018, p 36.

<sup>96</sup> T Hassall transcript, private examination, 17 August 2018, p 37.

the Commission "Look, I mean, we are under-resourced in that area and it's inadequate, but it's a risk for us".<sup>97</sup>

- [158] As an enhancement to the current screening requirements, WA Police Force has recommended that officers working with 'high risk' prisoners be subject to negative security vetting. Mr Hassall's evidence was that he did not support blanket negative vetting but it may be appropriate for some positions.<sup>98</sup> The Commission understands that DoJ considered this option and originally accepted the WA Police Force recommendation. However, it was later found to be cost prohibitive.<sup>99</sup>
- [159] Criminals are known to exploit pre-existing relationships like family relationships, intimate partnerships, friendships and cultural links to gain access to information. Group loyalties and social bonds like these can be enduring and powerful.<sup>100</sup>
- [160] As outlined above, certain personality traits and lifestyle factors<sup>101</sup> can contribute to increased vulnerability to grooming. These things should be known about officers who routinely work with large numbers of OMCG and other high risk prisoners. They may be identified through a formal security vetting process.
- [161] Accordingly, the Commission supports the recommendation by WA Police Force for negative security vetting, especially for officers working in areas holding a large number of high risk prisoners. However, the Commission acknowledges that DoJ is operating in a resource challenged environment and has many competing priorities to manage.
- [162] Robust security screening and periodic reviews are valuable methods of managing serious misconduct risks and promoting early intervention.<sup>102</sup> However, even enhanced security screening processes may not be enough to identify vulnerabilities like personality factors, lifestyle changes, or workplace behaviours.<sup>103</sup> Therefore, screening must be combined with clear guidelines and processes around declaration and management of conflicts of interest.

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<sup>97</sup> Ibid.

<sup>98</sup> Letter from the Director General to Commission, 12 October 2018 p 2.

<sup>99</sup> Letter from the Director General to Commission, 15 August 2018, p 3.

<sup>100</sup> Committee on the Office of the Ombudsman and the Police Integrity Commission, Parliament of New South Wales, *Report on an inquiry into improper associations in the NSW Police Force* (2010).

<sup>101</sup> United Kingdom, Centre for the Protection of National Infrastructure, *CPNI Insider data collection study: Report of main findings* (2013) pp 11-12.

<sup>102</sup> Victoria, Independent Broad-based Anti-corruption Commission, *Organised crime group cultivation of public sector employees*, Intelligence Report 1 (2015) p 9.

<sup>103</sup> United Kingdom, Centre for the Protection of National Infrastructure, *CPNI Insider data collection study: Report of main findings* (2013) p 15.



## **Communication of screening information between Serco and Department of Justice**

- [163] If screening information is not communicated effectively between private and public run prisons, there is a risk of employing people who have proved themselves to be unsuitable in a previous custodial role. Where this information is communicated between the private prisons and DoJ, a system should bring information to the attention of those involved in recruitment.
- [164] An example of the shortcomings of the current vetting system occurred in 2013 when a person's application for a position as a DoJ custodial officer was screened and accepted in February 2013 and the applicant placed in a pool.
- [165] In September 2013, the applicant commenced employment as a Serco custodial officer through a separate recruitment. On 14 September 2013, information was received by Serco that this officer lived with a person who was dealing prohibited drugs. The officer was interviewed and initially lied about their associations. Further enquiries resulted in the officer's employment with Serco being terminated on 17 October 2013.
- [166] This was not identified by DoJ recruiters, and on 6 February 2014, this person commenced training as a prison officer with DoJ. The officer was not rescreened until the end of their six month probationary period on 20 November 2014, at which point the dismissal from Serco was identified. On 4 March 2015, it was decided that the officer would be retained under strict conditions given the resources invested in their training. This was ultimately a poor decision.
- [167] Serco had determined that this person was not suitable to be a custodial officer due to lifestyle and integrity issues. Although Serco provided this information to DoJ, there was no system in place to identify its significance and make it available to selectors when determining suitability for employment. It is likely that had the information been known by selectors, this person would not have been employed.

## **Gatehouse screening**

- [168] The OAG 2017 report and the Commission's investigation found current front gate screening practices, screening devices, inspection processes and methodology to be insufficient. DoJ cannot reliably detect drugs and other contraband entering prisons either by visitors, staff or mail delivery, using the current systems and technology.

- [169] Prisoners and staff are aware of these deficiencies, creating opportunities for corrupt activities. Prison staff may be a significant channel for smuggling drugs into prisons. The Commission's investigation confirmed staff know the likelihood of being caught doing so is low.<sup>104</sup>
- [170] For example, former prison officer, Mr Hughes, told the Commission that he had "no difficulty whatsoever" bringing drugs into Acacia Prison and that despite the potential for 'pat searches' and drug detection dogs, he was not concerned that he may be caught doing so.<sup>105</sup> This sentiment was echoed by other officers interviewed by the Commission. The vulnerabilities are not confined to Acacia and apply to every prison.
- [171] Even where intelligence suggests prison staff or visitors are bringing contraband into the prison, current search procedures may not detect it. For example, where drug detection dogs or devices give a positive indication on a visitor or officer, prison security staff do not routinely strip search that person, performing 'rub down' searches instead.<sup>106</sup> A strip search may be authorised by the Superintendent when a 'rub down' search has located contraband, but does not have to be.<sup>107</sup>
- [172] Although it is not a requirement of the Prisons Act, DoJ policy requires strip searches of staff to be authorised by the Superintendent, or to be carried out by police.<sup>108</sup> Superintendents have broad powers to require staff to undergo strip searches or face disciplinary action<sup>109</sup> and to detain staff where contraband is located.<sup>110</sup> However, the Commission is aware that Superintendents are reluctant to authorise strip searches of staff<sup>111</sup> and that the WA Prison Officers Union is resistant to strip searching.
- [173] Despite this resistance, the Director General informed the Commission 'A review of the Department's searching procedures is currently underway to clarify and simplify search procedures'.<sup>112</sup> Mr Hassall told the Commission that making changes to the strip searching procedure was "top of the list".<sup>113</sup>
- [174] The 2017 OAG report identified that limited access to reliable searching devices and poorly executed search practices contributed to DoJ's failure

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<sup>104</sup> J M Hughes transcript, private examination, 7 December 2017, pp 9-10.

<sup>105</sup> Ibid.

<sup>106</sup> DoJ PD26 searches of visitors s 6.2.

<sup>107</sup> DoJ PD26 searches of visitors s 8.9.

<sup>108</sup> DoJ PD26 searches of staff s 9.2.

<sup>109</sup> *Prisons Act 1981* s 49, DoJ PD26 searches of staff s 10.

<sup>110</sup> DoJ PD26 searches of staff s 12.1.

<sup>111</sup> Letter from the Director General to Commission, 2 July 2018, p 15;

<sup>112</sup> Letter from the Director General to Commission, 2 July 2018, p 15.

<sup>113</sup> T Hassall transcript, private examination, 17 August 2018, p 44.

to minimise drugs and alcohol in prisons.<sup>114</sup> The audit found x-ray machines were active in only half of the State's 17 prisons, ion scanners for detecting drug residue were used in only six<sup>115</sup> and only 10 prisons had walkthrough metal detectors.<sup>116</sup> Regional prisons were reported to have less access to electronic barriers and five of the eight regional prisons do not have regular access to drug detection dogs.<sup>117</sup>

- [175] The OAG 2017 report concluded that non-targeted searching is ineffective as a control mechanism. This, it said, was because the current policy requires only a small percentage of staff and visitors be searched, and those numbers are not always met. When searches are conducted, the system allows for them to be easily avoided.<sup>118</sup> Further, compliance with the gatehouse screening policy is not internally monitored.<sup>119</sup> Recent experience of Commission officers entering prisons was that the policy is not being followed.
- [176] A contributing factor to ineffective searching has been the expectation for staff to search other staff. This is understandably an uncomfortable situation for them, often resulting in a failure to comply with searching policies and less thorough searches.<sup>120</sup>
- [177] Information provided to the Commission by a number of prison officers from different prisons, suggests that contraband is smuggled into prisons by officers secreting items down the front of their underpants and in their shoes.
- [178] When asked whether the current screening methodology would detect contraband smuggled into a prison in this way, Mr Hassall acknowledged it would not.<sup>121</sup>
- [179] Mr Hassall told the Commission, DoJ is addressing this problem via a new drugs and contraband mitigation strategies action plan which was approved on 8 March 2018. The plan sets out an integrated combination of physical, procedural and dynamic security measures for implementation.
- [180] The Commission was provided with the plan as well as a progress update as at 27 June 2018. The plan sets out 24 actions to be taken, who is responsible and expected completion dates. However, despite most of

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<sup>114</sup> Office of the Auditor General, *Minimising Drugs and Alcohol in Prisons*, No 22 (2017) pp 6-7.

<sup>115</sup> Ibid 7-8.

<sup>116</sup> Ibid 16.

<sup>117</sup> Ibid 8.

<sup>118</sup> Ibid 7.

<sup>119</sup> Ibid 15.

<sup>120</sup> Ibid 7-8, 15.

<sup>121</sup> T Hassall transcript, private examination, 17 August 2018, p 43.

the expected completion dates having passed, only six of the 24 actions had been completed at that time. Although significant progress has been made against some of the actions, there does not appear to have been any progress against others.

- [181] When asked how he was going to improve security in prisons, Mr Hassall said:

*You know, my view is a gate house should be like going through an airport, and the operators don't exercise any discretion. The more discretion that they have, the more people naturally try and push those boundaries.*<sup>122</sup>

- [182] DoJ has advised that a briefing note was provided to the Minister as to the powers available under current legislation to search and dry test prisoners, staff and visitors to prisons.

- [183] The briefing note highlighted the limitations of current legislation and DoJ is currently considering what amendments may be needed.<sup>123</sup>

- [184] In relation to technology, Mr Hassall was frank about the limits of the current funding environment, stating (**emphasis added**):

*... **we haven't invested in technology at all really in those operations.** If you look at Queensland, some of the prisons in Queensland, the newer jails in particular have far more use of biometric equipment, centralised databases for visitors and screening like that. Now, we're quite - we're a long way from that. **There's going to be years where we've just got to make do with the infrastructure that we've got.***<sup>124</sup>

- [185] Some improvements have been made. For example, the capacity of SOG has been increased, allowing for a greater number of searches of both staff and prisoners.<sup>125</sup> There are also a number of trials of new technology underway which is mentioned later in this report.

- [186] The Commission has conducted investigations into information that drugs are also entering the prisons through the food transport vehicles which move food between prisons.<sup>126</sup> Given the lax security procedures around this process, it cannot be discounted that drugs, possibly substantial amounts, are moving into and around prisons regularly and are not being detected. This is a risk that applies to every prison that receives supplies in this way.

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<sup>122</sup> T Hassall transcript, private examination, 17 August 2018, p 44.

<sup>123</sup> Letter from the Director General to Commission, 12 October 2018.

<sup>124</sup> T Hassall transcript, private examination, 17 August 2018 p 45.

<sup>125</sup> Ibid 46.

<sup>126</sup> *Report into inadequate supervision of prisoners whilst in the community* (2018).

## Drugs and alcohol detection strategies

- [187] The 2017 OAG report found that DoJ relies on the Drug Prevalence Testing (DPT) program to establish the level of drug and alcohol use in prison. However, DPT does not test for all drugs known to be a problem in prisons and ultimately 'provides a narrow view of drug use, which does not reflect the full extent of the problem'.<sup>127</sup> From 2015 to April 2017, DoJ did not check participation in the program and the auditors found results to be inaccurate.<sup>128</sup>
- [188] Procedures for drug testing staff (random and targeted) were introduced in May 2016. Very few positive tests were returned, contributing to a decision to cease random drug testing for a period of time. Mr Hassall's evidence before the Commission was that some random testing is being carried out at present.<sup>129</sup>
- [189] Oral swab testing rather than urine testing is used for the random tests. Oral testing only tests for a small percentage of drugs. By comparison, urine testing is much broader.
- [190] Importantly, legislation authorising drug testing does not extend to approximately one third of DoJ's staff as they do not perform a 'full custodial role'.<sup>130</sup> This is a significant serious misconduct risk, as some of these staff still have high levels of contact with prisoners.
- [191] Mr Hassall's evidence on this point was, "I think everyone should be tested from me down".<sup>131</sup>
- [192] Recent Commission investigations have revealed a number of prison staff use recreational drugs while on days off or extended leave, and cease use in advance of their return to work to avoid returning positive drug tests.<sup>132</sup>
- [193] Processes for who will be searched are predictable, making it easy to anticipate who will be searched and when. This, along with the lack of apparent confidentiality prior to scheduled tests, means that officers may have been able to avoid searches and tests with little or no repercussions.<sup>133</sup>

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<sup>127</sup> Office of the Auditor General, *Minimising Drugs and Alcohol in Prisons*, No 22 (2017) p 6.

<sup>128</sup> Ibid 13.

<sup>129</sup> T Hassall transcript, private examination, 17 August 2018, p 50.

<sup>130</sup> *Prisons (Prison Officers Drug and Alcohol Testing) Regulations 2016* s 4.

<sup>131</sup> T Hassall transcript, private examination, 17 August 2018, p 51.

<sup>132</sup> J M Hughes transcript, private examination, 7 December 2017, pp 27, 30.

<sup>133</sup> J M Hughes transcript, private examination, 7 December 2017, p 3; Office of the Auditor General, *Minimising Drugs and Alcohol in Prisons*, No 22 (2017) p 15.

- [194] The Commission's investigation determined that the drug testing regime is not an effective deterrent to drug use.<sup>134</sup>
- [195] The OAG 2017 report identified that centrally controlled intelligence and broader drug testing systems are needed within DoJ to provide more accurate insights into drugs in prisons and inform development of new strategies.<sup>135</sup>
- [196] There are no measures to assess the effectiveness of intelligence approaches to reducing the supply of drugs and alcohol in prisons. Likewise, DoJ does not measure whether treatment, sanctions or incentives are effective deterrents.<sup>136</sup> Without knowing what is working, DoJ cannot appropriately channel resources to reduce drugs and alcohol, and indirectly, corruption, in prisons.
- [197] DoJ does not have a comprehensive understanding of the extent of drug and alcohol use across the prison system<sup>137</sup> and there is little evidence to show that the drug testing regime for staff is effective in deterring or detecting drug use.
- [198] Drugs and alcohol in prisons are a major driver of corrupt activity. The current system is not effective in combatting their prevalence. A combination of targeted and non-targeted tests, driven in part by intelligence and involving routine testing for a wider range of drugs, would be more effective and should be considered. A number of measures relating to the hybrid collection model were considered by the DoJ Corrective Security and Intelligence Committee in January 2018. A commitment was made for annual recurrent funding for ongoing drug and alcohol testing which includes random, intelligence targeted and post-incident testing.<sup>138</sup>

### **Risks associated with community based rehabilitation programs**

- [199] Minimum security prisoners who are coming close to the completion of their sentences, and have satisfied a number of other requirements, can be assigned to perform work or training outside of the prison environment, pursuant to the Prisons Act s 95. The purpose of this is 'rehabilitation, reintegration, recreation and reparation'.<sup>139</sup>

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<sup>134</sup> J M Hughes transcript, 7 December 2017, pp 27, 30.

<sup>135</sup> Office of the Auditor General, *Minimising Drugs and Alcohol in Prisons*, No 22 (2017) p 6.

<sup>136</sup> Ibid 14. This is intended as part of the new action plan.

<sup>137</sup> Ibid 6.

<sup>138</sup> Letter from the Director General to Commission, 12 October 2018.

<sup>139</sup> Prison Procedure 301 - External Activities, Clause 1.1.1.

- [200] These programs can take many different forms and are supervised by at least one vocational support officer to every eight prisoners.<sup>140</sup>
- [201] Each prisoner is subject to an individual risk assessment prior to being eligible for placement in such a program.<sup>141</sup> The 'risk assessment' process is quite involved, and 'the designated Superintendent must be satisfied the prisoner is suitable to participate in external activities and the risks associated with the placement are adequately addressed'.<sup>142</sup>
- [202] Consideration is given to the safety of the community, staff and prisoners participating in the program<sup>143</sup> and whether the proposed activity places any individual or the public at risk.<sup>144</sup>
- [203] However, the risk assessment does not sufficiently address the risk associated with the activity such as travel to and from.
- [204] For example, where a s 95 program involves prisoners moving between different prisons and private businesses under relatively low supervision, as discussed in the Karnet Prison report, an opportunity exists for contraband to be transferred into and between the different prison facilities.
- [205] DoJ has taken swift action in response to the Commission's recommendations in the Karnet Prison report which the Commission hopes will prevent a similar incident occurring in the future.
- [206] However, when asked whether he was satisfied that a situation like what happened in the Karnet Prison report would not happen in the current environment, Mr Hassall said:
- ... until we can have that, you know, the system where we can rotate people around, we get the training right, we get the prevention mechanisms right. I can't sit here and tell the Commission that there isn't something there now and it won't happen again.*<sup>145</sup>
- [207] Mr Hassall continued that the training and prevention mechanisms were "not happening, but we've got as part of the corruption prevention plan, obviously we'll have to look at that".<sup>146</sup>
- [208] Mr Hassall told the Commission he would like to implement a 'tenure' system for some officers, whereby they are rotated after a certain length

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<sup>140</sup> Prison Procedure 301 - External Activities, Clause 11.1.1.

<sup>141</sup> Prison Procedure 301 - External Activities, Clause 9.

<sup>142</sup> Prison Procedure 301 - External Activities, Clause 9.7.

<sup>143</sup> Prison Procedure 301 - External Activities, Clause 6.6.

<sup>144</sup> Prison Procedure 301 - External Activities, Clause 6.9.

<sup>145</sup> T Hassall transcript, private examination, 17 August 2018, p 48.

<sup>146</sup> Ibid.

of time to avoid inappropriate relationships and grooming of staff. However, there were some challenges to overcome particularly regarding industrial relations.<sup>147</sup>

- [209] The Commission **recommends** the implementation of such a system as well as better risk assessment for external activities and the supervising staff.

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<sup>147</sup> Ibid 48-49.



## CHAPTER EIGHT

### Recent prison initiatives to address serious misconduct risks

#### Acacia Prison

- [210] With over 1,500 prisoners, the Serco run Acacia Prison is the largest prison in WA. Unlike State prisons, private companies must satisfy performance measures in relation to corruption prevention. Accordingly, Acacia Prison takes a proactive approach to corruption prevention and targeting 'at risk' staff.
- [211] In response to feedback from the Commission and the OAG's 2017 report, Acacia Prison management implemented several initiatives to address corruption risk.
- [212] Acacia Prison has established a corruption prevention committee, consisting of Managers, Directors, Assistant Directors and Intelligence Managers. They meet monthly to discuss corruption risks, intelligence, investigations and other matters relevant to the security and safety of the prison environment. Importantly, this committee is currently drafting an anti-corruption strategy which the Commission strongly encourages.
- [213] Acacia Prison has implemented simulation tests aimed to test critical risk areas, including entry screening. Monthly tests are being performed with staff given no information about when or where the test will occur. Recently, a night time 'fence line attack' simulation test and two 'penetration tests' were conducted during which staff attempted to bring mobile phones into the prison. All attempts were successfully thwarted.
- [214] On each shift, certain staff members are assigned the role of 'response officer.' These officers respond to any significant incident that occurs in the prison. They are issued with individual cameras worn on the front of their body which record in high definition (audio and video).
- [215] Acacia Prison has introduced a new confidential security reporting process for staff to report concerns about their colleagues. Indications from Acacia Prison management suggest staff are becoming confident in the level of anonymity and confidentiality surrounding this process. Acacia Prison has told the Commission that reports have increased since it was implemented late last year, resulting in a number of staff being dismissed or counselled for inappropriate associations or behaviours.
- [216] Acacia Prison has also improved contraband detection capability by commencing a trial of a full body scanner and increasing detection dog numbers by four, two of which are trained to detect lithium batteries.

- [217] Acacia Prison has improved monitoring and record keeping of staff searches, including introducing a log of concerns or issues. They have also improved record keeping in relation to any staff members of concern.
- [218] The Commission is aware that Acacia Prison is working to improve intelligence sharing with DoJ.

### State prisons

- [219] Measures of corruption prevention performance do not currently exist in relation to State prisons. Mr Hassall told the Commission "our performance measurement at prisons is wanting at the moment",<sup>148</sup> in particular "we've had no strategic approach to how we manage security in the State jails at all for a number of years, so we've got to address that".<sup>149</sup>
- [220] Mr Hassall's evidence was that the Acacia Prison initiatives were not currently planned in the public prisons. When asked why this was, Mr Hassall explained that some of it was funding related (**emphasis added**):

*Well, we're overspending in corrections. So we overspent last year ... You know, I've set out the challenging environment that we're in in terms of our fiscal environment, with the having to reduce the numbers of prison officers, controls of overtimes and stuff like that. **A lot of our capital money historically that we'd have done this type of thing was spent to put beds into prisons.***<sup>150</sup>

- [221] According to the DoJ Chief Financial Officer, Corrective Services, the projected overspend figure for Corrective Services in 2018/19 is \$20.7m.<sup>151</sup>

- [222] However, Mr Hassall was clear that:

*I am absolutely committed to working with you to make a fair system. My whole career has been about transforming prisons and rehabilitation, and as I've said, you can't do that when you have this type of [corrupt] behaviour ...*<sup>152</sup>

- [223] Despite the difficult fiscal environment, DoJ has initiated a number of positive changes in the State prisons. For example:

- a) Officers who are undertaking s 95 activities have been screened.<sup>153</sup>

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<sup>148</sup> T Hassall transcript, private examination, 17 August 2018, p 52.

<sup>149</sup> Ibid 53.

<sup>150</sup> Ibid 53-54.

<sup>151</sup> Letter from the Director General to Commission, 12 October 2018.

<sup>152</sup> T Hassall transcript, private examination, 17 August 2018, p 56.

<sup>153</sup> Letter from the Director General to Commission, 2 July 2018, p 6.

- b) DoJ has issued a standing order that:
- i) s 95 prisoners returning from external activities be routinely searched and/or drug tested;
  - ii) prisons regularly review the eligibility of s 95 prisoners;
  - iii) prisoners involved in what is determined to be a high risk external s 95 activity be rotated after a set period of time;
  - iv) section 95 prisoners be randomly interviewed for any issues or concerns;
  - v) vehicles involved in external s 95 activities be searched on return to the prison;
  - vi) regular attendance by the drug detection unit to conduct searches of s 95 prisoners and vehicles be initiated;
  - vii) a principal officer or member of the security team or senior management team must conduct checks on s 95 activity locations;
  - viii) prisons conduct regular liaison visits with community organisations that participate in s 95 activities to ensure the integrity of the activity is maintained and to address any issues or concerns; and
  - ix) prisons conduct regular checks on s 95 activity locations and regular liaison with involved community organisations.<sup>154</sup>
- c) State prisons will be trialing new ion scanning technology at gatehouse entries to detect drug residue on visitors and staff.<sup>155</sup>
- d) DoJ will monitor the success of the full body scanner at Acacia Prison and consideration will be given to introducing this technology in all prisons, if appropriate.<sup>156</sup>
- e) A new drug mitigation manager position has been created and filled to oversee drug testing and use of drug detection dogs in State prisons.<sup>157</sup>
- f) DoJ has commenced a policy, procedures and rules review process aimed at streamlining and simplifying instructions to staff. Priority

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<sup>154</sup> Ibid 5; DoJ Enhanced Security Associated with s 95 - External Activities Action Plan, 9 May 2018.

<sup>155</sup> T Hassall transcript, private examination, 17 August 2018, p 53.

<sup>156</sup> Ibid 44.

<sup>157</sup> Ibid 50.

is being given to policies around searching, use of force reporting and emergency management.<sup>158</sup>

- g) DoJ has implemented a central electronic point for rosters to be stored to allow ease of access for investigators.
- h) DoJ has increased the number of approved persons who may perform drug and alcohol testing on staff.<sup>159</sup>
- i) DoJ has increased the number of searches of both staff and prisoners.<sup>160</sup>
- j) DoJ is currently in the process of:
  - i) procuring tracking devices for trucks which routinely leave the prisons for s 95 activities;<sup>161</sup>
  - ii) increasing anti-grooming training in all prisons;<sup>162</sup>
  - iii) creating and recruiting against a chief custodial type role to develop a security framework for the State;<sup>163</sup>
  - iv) remodeling and refining the triage and assessment process;
  - v) restructuring the investigations and intelligence units;<sup>164</sup> and
  - vi) implementing a new 'drugs and contraband mitigation strategies action plan'.<sup>165</sup>

[224] The Commission accepts that if the resolve continues and significant resources are applied, the misconduct risks across State prisons will be mitigated.

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<sup>158</sup> Letter from the Director General to Commission, 2 July 2018, p 9.

<sup>159</sup> T Hassall transcript, private examination, 17 August 2018, pp 45-46.

<sup>160</sup> Letter from the Director General to Commission, 2 July 2018, pp 8-9.

<sup>161</sup> Ibid 6.

<sup>162</sup> Ibid.

<sup>163</sup> T Hassall transcript, private examination, 17 August 2018, p 54.

<sup>164</sup> Letter from the Director General to Commission, 2 July 2018, p 11.

<sup>165</sup> Ibid 8-9.

## CHAPTER NINE

### Recommendations

[225] The Commission recommends that DoJ:

- a) develop and implement a corruption prevention framework as a matter of priority;
- b) consider creating a board of management to oversee corruption prevention strategies across DoJ;
- c) finalise and implement the new structure for the investigations and intelligence units as a priority;
- d) recruit appropriate staff to substantively fill available FTEs in the investigations and intelligence units, particularly in the roles of Director Investigations and Director Intelligence;
- e) review policies and procedures, orders and directions, giving priority to PDs 26 and 41;
- f) continue to remodel and refine the triage and assessment process, giving consideration to implementing a corruption prevention early intervention model for 'at risk' staff;
- g) increase record keeping and reporting requirements for matters dealt with by local intervention to improve the investigation unit's oversight;
- h) continue to review the current search and screening procedures used on entry to prisons, assess compliance and measure effectiveness of those systems and trial, assess and implement new technologies where appropriate;
- i) implement recommendations from the OAG 2017/2018 *Information Systems Audit Report* when it is released;
- j) facilitate sharing of key information from all relevant systems to the investigations unit and the respective prisons, including but not limited to, CCTV footage, drug testing, PTS, TOMS audit and intelligence databases;
- k) review DoJ's drug testing regime and implement performance measures to gauge impact and effectiveness over time;

- l) improve security screening processes for current and potential new employees, giving consideration to more regular screening of staff and better sharing of screening information;
- m) reconsider implementing negative vetting security screening for persons routinely working with high risk prisoners;
- n) consider implementing a 'tenure' system whereby front line staff are regularly rotated to avoid relationships developing with prisoners;
- o) regularly review CCTV footage in all prisons to support observations of staff conduct, to identify potential 'at risk' behaviours, allow early intervention and be a deterrent for corrupt or improper activity;
- p) review CCTV facilities to identify 'black spots' in all prisons and increase CCTV cameras wherever possible, with priority to higher risk areas like drug distribution areas;
- q) consider centralised access to CCTV products by the investigations unit;
- r) address all outstanding recommendations outlined in reports from the Commission, WA Police Force, OAG and Public Sector Commission;
- s) consider pursuing legislative change to expand the drug testing program to all staff who have consistent contact with prisoners; and
- t) introduce a system to track and measure the effectiveness of serious misconduct strategies that can be used for high level and operational reporting, to measure staff performance and compliance, to inform staff training and to identify where early intervention is needed to fill knowledge or security gaps and measure effectiveness of policies and procedures.

## CHAPTER TEN

### Conclusion

- [226] The Commission does not doubt the resolve of the Director General, Dr Tomison, the Commissioner of Corrective Services, Mr Hassall, and other senior officers such as Mr Maines and Mr Elderfield.
- [227] However, the misconduct risks in Corrective Services are longstanding and will take more than firm resolve to mitigate.
- [228] Previous reports, including reports of the OAG, have identified the issues.
- [229] The Commission acknowledges that while its focus is on serious misconduct and associated risks, DoJ has a range of other urgent issues to deal with continuously in straitened financial circumstances.
- [230] The Commission makes this report to Parliament, not to criticise the current leadership, but to identify a misconduct vulnerability which may affect the whole community.
- [231] Time is passing. Action is overdue.

## ANNEXURE A

### Previous Commission recommendations

The following recommendations were made in relation to DCS in the Commission's *Report on the Investigation of Alleged Public Sector Misconduct in Relation to the Use of Taser Weapons by Officers of the Western Australia Police and the Department of Corrective Services* dated 16 April 2012:

- **Recommendation 5** - that DCS review the shortcomings outlined in this report regarding video recording and reporting of incidents involving the use of force by ESG officers, and undertake appropriate action to address those shortcomings to ensure compliance with the requirements of *Prisons Policy Directive 5 - Use of Force* (PD5) in relation to the use of force and *Superintendent's Official Instruction A19 - Deployment of Taser* ("Instruction A19") in relation to the deployment of a Taser weapon by ESG and other authorised officers ...

The Commission is concerned that, if proper care and attention is not given to the preparation for deployment of Taser weapons and the subsequent accurate reporting of incidents involving the use of Taser weapons, the need to comply with relevant processes and procedures will in time be ignored.

It is recommended that DCS undertake appropriate action, including a system review of current applicable process and procedures, to ensure compliance with the requirements of PD5 and Instruction A19.

- **Recommendation 6** - that DCS reconsider the timeline for review, by the Standards and Review Branch, of incidents involving the use of Taser weapons where circumstances prevent the review from occurring "within one week of the incident" as presently described by Notice No. 48/2010. DSC should, however, in all circumstances, ensure that the review process allows the reviewer to critically evaluate any written reports and Video footage and, if necessary, interview individual officers in relation to the use of force incidents, and prepare a review report.

Nonetheless, the review process should be both effective and efficient, including being completed without delay in order to ensure that the review is contemporaneous.

- **Recommendation 7** - that DCS give consideration to amending *Prisons Policy Directive 5 - Use of Force* to make it mandatory for officers to issue orders or instructions to the prisoner(s) concerned, allowing sufficient time for them to comply with the orders or instructions, use negotiation and conflict resolution techniques and issue a warning to the prisoner(s) that force may be used prior to the use of force against the prisoner(s).



- **Recommendation 8** - it is recommended that DCS review the period of time that officers can be attached to the ESG and give consideration to the introduction of a tenure period for officers attached to the ESG.
- **Recommendation 9** - that DCS review internal processes and procedures relating to the operation of the Infirmary within the Casuarina Prison Health Centre, and infirmaries within other prisons, with respect to the assessment of a patient's medical condition and the provision and availability of services or avenues for investigation that would assist with the timely and accurate determination of the cause(s) of a patient's complaints, thereby facilitating the provision of appropriate and adequate nursing and medical care.

The following recommendations were made in the Commission's *Report into inadequate supervision of prisoners whilst in the community* dated 11 May 2018:

- **Recommendation 1** - DoJ implements mechanisms to improve driver safety when s 95 prisoners are present.
- **Recommendation 2** - DoJ implements mechanisms to improve the ability to track and monitor its vehicles.
- **Recommendation 3** - DoJ provides relevant staff with specific training on supervising prisoners outside of prisons.
- **Recommendation 4** - Given the obvious risks associated with s 95 prisoners spending time outside of prison, DoJ carefully consider the disciplinary record of staff appointed to these duties. Where failure of supervisory duties is identified, consideration should be given to the offending staff member/s being removed from high risk duties.
- **Recommendation 5** - DoJ consider rotating s 95 prisoners through placements to avoid staff spending long periods of time alone with the same prisoners.
- **Recommendation 6** - Random searches of DoJ vehicles after delivery runs be initiated.

The following recommendations were made in the Commission's *Report on corrupt custodial officers and the risks of contraband entering prisons* dated 26 June 2018:

- **Recommendation 1** - The current search and screening procedures used on entry to prisons be reviewed to assess compliance and measure effectiveness of those systems, policies and procedures in preventing the entry of drugs into the prison environment.
- **Recommendation 2** - Officers receive better education and training about the illegality of steroids and their deleterious effects on the body.

- **Recommendation 3** - DoJ's drug testing regime be reviewed and its effectiveness in deterring drug use in prisons and amongst prison staff be measured.
- **Recommendation 4** - Periodic professional review of frontline prison staff be provided to identify vulnerabilities with a view to providing support and managing risk.
- **Recommendation 5** - Processes for identifying common themes within security reports about a particular officer be reviewed to:
  - i) identify potential at risk behaviours;
  - ii) allow for early intervention; and
  - iii) deter corrupt or improper activity.

## **ANNEXURE B**

### **Previous recommendations of the Office of the Auditor General**

In its *Information Systems Audit Report* dated 22 June 2016, the Office of the Auditor General made the following recommendations in relation to (the then) DCS:

By August 2016 the Department of Corrective Services should:

1. undertake a risk assessment of TOMS to identify risks associated with information handled within TOMS and related business processes. This should inform the corporate risk register for senior management to consider;
2. ensure that appropriate controls are in place to protect the information stored in databases and systems to prevent exposures that could lead to the compromise of information. This should include a process to identify and apply software updates to all information systems in a timely manner. Consideration should be given to risks with outdated and unsupported operating environments; and
3. ensure sensitive hard copy information is adequately secured.

By December 2016 the Department of Corrective Services should:

4. ensure all data entry processes have appropriate controls to ensure the accuracy and integrity of information;
5. review the existing data integrity issues within TOMS to ensure accuracy and completeness. This can also be used to identify the source of errors; and
6. produce a business continuity plan for head office and a disaster recovery plan to ensure the ongoing operations of key applications and IT services. These plans should be tested to ensure they will operate effectively.

By June 2017 the Department of Corrective Services should:

7. appropriately control sensitive electronic information. These controls should ensure that the information is appropriately stored and access is restricted to authorised users only. As part of an overall information security strategy, DCS should implement good access control practices that include all users and roles.

The Office of the Auditor General made the following recommendations in respect of DoJ in its report on *Minimising Drugs and Alcohol in Prisons* dated November 2017:

By the end of June 2018, the Department should:

1. develop a new drug and alcohol strategy that includes targets and measures of success;
2. review the DPT program, to ensure that it gives a more accurate and complete view of drug and alcohol use in prisons;
3. consider other information it collects, such as security reports, incident reports, and search results to present a more holistic view of drug use in prisons;
4. review gatehouse searching requirements, and ensure that all prisons have processes in place to select targets in a non-predictable way;
5. review prison compliance with key supply reduction procedures to ensure they are carried out consistently and correctly; and
6. formalise processes and standard operation procedures for all areas, including its intelligence team, ensure that staff are suitably trained, and prisons have timely access to intelligence information.

By the end of December 2018, the Department should:

7. review current treatment approaches to demand and harm reduction, to ensure they are up-to-date and able to meet the diverse needs of prisoners;
8. review current treatment programs, and establish measures to allow their effectiveness to be assessed;
9. establish methods to assess the effectiveness of incentives and sanctions on reducing drug and alcohol use by prisoners to inform ongoing improvements in strategy;
10. compile a data dictionary for TOMS, and review controls in critical data systems to improve data accuracy and reliability; and
11. assess whether prisons have access to the security devices they need to reduce the entry of drugs and alcohol into prisons.

## **ANNEXURE C**

### **Previous recommendations of the WA Police Force Prison Team**

The Prison Team of the WA Police Force was housed within the Organised Crime Squad. Between January 2016 and April 2017 the Prison Team made the following recommendations to (the then) DCS regarding corruption mitigation strategies:

1. Prison visitors who are reasonably suspected on intelligence grounds (not necessarily found to be) smuggling contraband into prisons should receive a state wide ban from making further prison visits, in the first instance of 6 months and 12 months for every other subsequent breach.
2. Consideration should be given to appealing decisions of courts of summary jurisdiction when giving lenient sentences to prisoners convicted of committing criminal and/or aggravated prison offences whilst incarcerated.
3. Update standard operating procedures concerning the seizure, handling and extraction of information from mobile telephones to ensure best evidence capture and practice.
4. Standard Operating Procedures need to be revised with the view of providing for a more stringent and appropriate method of handling drugs.
5. DCS Investigators to utilise coercive powers when conducting investigations.
6. A tenure policy be implemented to assist preventing over familiarity between officers and prisoners so as to reduce the incident of them becoming complacent or complicit in criminal enterprises.
7. Security guards working with 'high risk prisoners' be subject to negative security vetting.
8. Restrictions applied to who can access 'Statements of Material Facts' (SMF) where the accused is a prison officer and the SMF discloses investigation methodology (special projects).
9. Means need to be explored so as to improve the security of information contained in the 'TOMS' system, particularly that concerning 'prisoners at risk'.
10. CCTV blackspots in prisons need to be identified and steps taken to improve coverage.
11. Security scanning machines need to be capable of scanning an area from ground to ceiling to ensure full coverage of an area.

12. Greater scrutiny needs to be applied to what items prison officers can bring into a prison.
13. A higher regard needs to be given to supervision in ensuring the searching of prison staff when security detectors have been activated.
14. Ensure that full screening of staff occurs at whatever time of the day they enter a prison.
15. Provide a higher degree of supervision to cell searches to ensure they are carried out in a methodical and appropriate manner.
16. Legal representatives should be required to validate their position and purpose of visit before being granted access to a prisoner.
17. Greater degree of detail is required in the recording and management of staff details.
18. A central repository for the keeping of standardised proposed and actual worked rosters needs to be created and maintained.
19. Awareness of staff needs to be heightened in the requirement to apply for or declare secondary employment.
20. Staff on long term sick leave need to be regularly engaged, monitored and reviewed.
- ...
25. Officers working with 'high risk prisoners' be subject to negative security vetting.
26. Review computer access guidelines and implement reconciliation register.
- ...
31. A review of all Memorandums of Understanding held with police concerning the exchange of information needs to be conducted and where necessary, be brought up to date.
32. Exit interviews be conducted with all terminating staff with the view of obtaining information of criminal methodology of other staff members suspected of being engaged in a corrupt or inappropriate conduct.
33. DCS drug testing policy needs to be updated to ensure 'all' DCS employees are captured.

34. Sufficient number of accredited personnel needs to be maintained to provide an ability to conduct random or targeted drug testing in both metropolitan and regional Western Australia.
35. All persons, including legal representatives and their belongings need to be subject to search when visiting prisoners.
36. All 'Prisoner Telephone System' calls, including those alleged to be with legal representatives should be recorded and stored by DCS for legal review so as to avoid criminal misconduct being allowed to flourish under the guise of privilege.
37. Procedures in furtherance to self-reporting need to be put in place to capture detail of DCS staff being convicted of criminal misconduct.
38. Operational security needs to be heightened to ensure that only relevant staff are briefed on current and proposed investigations.
39. DCS staff should not be permitted to refuse interview when requested under the confines of the Public Sector Management Act, and if they do, they should be subject to an appropriate sanction.
40. Awareness through education of 'inappropriate associations' need to be heightened with staff and where such occurs, appropriate sanctions need to be enforced.
41. There needs to be a heightened awareness of staff on what is a 'conflict of interest' and the reporting of such.
42. 'Secondary Employment' applications and reporting needs to be enforced.

## **ANNEXURE D**

### **Response to recommendations of the WA Police Force Prison Team**

The Director General's letter dated 2 July 2018 informed the Commission that:

1. Recommendations 1, 8, 18, 20, 32 and 34 have been actioned.
2. Recommendations 38 and 39 are 'not supported'.
3. Recommendations 2, 3, 4, 5, 12, 13, 14, 15, 31, 33 and 35 are in the process of being actioned.
4. In relation to recommendations 6, 7, 9, 10, 11, 16, 17, 19, 25, 26, 36, 37, 40, 41 and 42 'no records have been found to indicate this recommendation has been addressed' or the response indicates that no action is anticipated.