



Report into inadequate
use of force reporting
at Eastern Goldfields
Regional Prison on
27 March 2017 and
Bunbury Regional Prison
on 14 November 2016

27 June 2018



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INTRODUCTION

- [1] Every citizen, including a prison officer, is entitled to use reasonable force against another person in certain circumstances. Excessive use of force however may be an offence.
- [2] This report examines the use of force by Senior Prison Officer (SPO) Scott Allan Mortley on two occasions. The principal focus is not the actual use of force but the steps taken to minimise or cover it up afterwards.
- [3] SPO Mortley is an experienced prison officer with more than 10 years' experience with the Department of Justice (DoJ). He has worked in several State prisons.
- [4] In November 2016 and March 2017, SPO Mortley used force against two prisoners in separate incidents, one at Eastern Goldfields Regional Prison (EGRP) and the other at Bunbury Regional Prison (Bunbury).
- [5] The force used by SPO Mortley against the prisoners in both incidents was questionable.
- [6] The Commission's investigation was directed at the inadequacies in the reporting and review of SPO Mortley's use of force in both incidents.
- [7] The incident at EGRP involved inaccurate reporting by prison staff; specifically, the omission of material particulars in reports. This highlighted failings in DoJ's promotion of full and frank reporting in accordance with mandatory reporting requirements under the *Prisons Act 1981* (Prisons Act).
- [8] The investigation uncovered inefficient reporting by senior management and attempts to influence and interfere with the use of force review process. This compromised the objective and independent review conducted by DoJ's internal investigators ultimately favourable to SPO Mortley.
- [9] DoJ's prisoner information database, the Total Offender Management Solution (TOMS), records, amongst other things, all Incident Description Reports (IDRs) of prison officers who witness use of force incidents.
- [10] IDRs can be viewed by anyone who has access to TOMS, a flaw in the system. The Commission investigation revealed this lack of confidentiality led officers to omit matters required to be recorded in their IDRs out of fear of being targeted by their colleagues.
- [11] The force used by SPO Mortley against prisoner A was not fully documented by witnessing prison officers in their IDRs.

- [12] Superintendent (Supt) John Hedges was made aware of two or more concerns regarding SPO Mortley's use of force against prisoner A. He had responsibility to ensure the matter was properly documented and reported. He failed to do so.
- [13] Supt Hedges interfered with the objective and independent review of this matter and failed to make records of the concerns brought to his attention about SPO Mortley's conduct. Records of such critical matters were not made available to internal investigators when they ought to have been.
- [14] The Bunbury incident also involved inaccurate reporting and potential collusion by SPO Mortley and another officer. While these issues were identified and actioned by senior management, SPO Mortley failed to provide any plausible explanation to the Commission justifying his actions.
- [15] In April 2018, SPO Mortley was promoted to Principal Officer.
- [16] To protect the security of some officers, the Commission has anonymised them. For reasons of privacy, the Commission has not identified the prisoners.

CHAPTER ONE

Reporting on Senior Prison Officer Mortley's critical use of force against prisoners

Background

- [17] SPO Mortley has been employed as a prison officer for 10 years and has worked at several of the State's prisons. As a senior officer, he manages units of prisoners and supervises other prison officers.
- [18] The focus of the Commission investigation was on the way that use of force incidents were reported (or not reported) by prison officers.
- [19] As the investigation progressed, it became apparent that the inaccurate reporting of material matters extended to senior management and security staff.
- [20] The Commission examined and interviewed several DoJ staff members, reviewed and analysed CCTV footage and scrutinised reports of officers.
- [21] DoJ's critical training documents, records and manuals were examined, as were Policy Directives (PDs), Operational Instructions, and Adult Custodial Rules.

Incident Description Report writing

- [22] SPO Mortley exhibited sound knowledge of IDR writing. He told the Commission "incident reports are critical to find out what happened in an incident. You provide all the factual evidence that you see are deemed important to that incident".¹
- [23] He stated that IDRs "should be factual only. If that requires a tonne of detail, then that's - you put in a tonne of detail ... you put as much factual evidence in your report as you need, as you can".²
- [24] The Commission heard evidence of a culture within EGRP of officers being ostracised by fellow staff if it became known they were discussing potential misconduct of other prison officers. It was said to encourage a culture whereby "[you] skirt around carrying out the responsibilities of your job".³

¹ S A Mortley transcript, private examination, 7 November 2017, p 2.

² Ibid.

³ Principal Officer transcript, private examination, 30 November 2017, p 40.

CHAPTER TWO

The incident involving prisoner A on 27 March 2017

Background to the incident

- [25] SPO Mortley commenced a secondment as a senior officer at EGRP in February 2017. He was there for approximately six months before transferring back to Bunbury.
- [26] On 27 March 2017, a fire alarm was set off in the cell occupied by the prisoner as a result of his lighting a fire in the toilet bowl.
- [27] There is conjecture as to the exact timeline of events that led to SPO Mortley and other officers attending the prisoner's cell. What is clear, is that all prison officers were aware that a fire alarm had been triggered.
- [28] SPO Mortley knew the prisoner. They had had some interaction earlier in the day. The prisoner displayed non-compliance with officers' orders as he continued to use the prisoner cell call system to make what were deemed to be unnecessary calls.
- [29] Prior to entering the cell, CCTV footage shows SPO Mortley did not attempt to speak with the prisoner or assess the situation through the viewing hatch of the cell door. The Commission was told by an experienced officer that "nowhere in our training do we open a cell, unless life is threatened, for ... an aggressive prisoner".⁴

Senior Prison Officer Mortley's use of force

- [30] SPO Mortley breached the prisoner's cell accompanied by four other prison officers and ordered him to stand against the wall. Without warning, the prisoner struck SPO Mortley to the side of the head with what was later identified as a pair of nail clippers. A metal fragment had to be later removed from SPO Mortley's head as a result of the injury he sustained.
- [31] SPO Mortley was provided a draft copy of this report to provide comment on prior to it being published. In his response he stated that his memory may have affected his recollection of this incident. It is noted though, the day after the incident, SPO Mortley prepared a very detailed, 12 page statement to the Western Australia Police Force.

⁴ Ibid p 8.

- [32] A struggle took place between the five officers and the prisoner while attempting to restrain him. Once the prisoner had been held down by four officers, SPO Mortley walked towards the entrance of the cell and then swiftly turned around and walked back into the cell.
- [33] Based on the CCTV footage and the witness accounts, the prisoner had been sufficiently restrained by the four other officers.
- [34] SPO Mortley has given differing accounts why he re-entered the cell. During examination he said he went back in to stabilise the prisoner's head after noticing that the prisoner was bleeding. In SPO Mortley's response to the draft report, he stated that he re-entered the cell because his training recommends four officers are required to restrain a prisoner in these circumstances. He said he only observed three officers restraining the prisoner at that time.
- [35] The CCTV footage shows SPO Mortley stood on one of the beds in the cell, take a step down to his right, and then stand back onto the bed.
- [36] The Commission received evidence from three prison officers that SPO Mortley stood forcefully on the prisoner's back while he was being held on the ground by the other officers.
- [37] SPO Mortley told the Commission he did not know what he stood on. When shown the CCTV footage, he said he was looking to see if handcuffs had been placed on the prisoner.⁵ SPO Mortley did not mention this in his IDR or police statement. The CCTV footage and the evidence of other officers is inconsistent with SPO Mortley's account.
- [38] The CCTV footage shows SPO Mortley then went to the back of the cell and crouched near the prisoner's head. His right shoulder and arm made short, sharp movements towards the prisoner's head. The Commission was told by other prison officers that what the CCTV footage showed was SPO Mortley dropping his knee onto the prisoner's head, striking him and forcibly holding the prisoner's head to the ground using 'excessive force'.
- [39] SPO Mortley's explanation that he was moving his hand away from the prisoner's attempts to bite him is not corroborated by any other prison officer. The Commission heard no other evidence consistent with SPO Mortley's statement that the prisoner attempted to bite him despite other officers being in close proximity to the events.
- [40] In SPO Mortley's response to the draft report, he stated that he held his knee on the prisoner's back to help restrain him. This is the first time he provides this information. In his evidence to the Commission,

⁵ S A Mortley transcript, private examination, 27 November 2017, p 25.

SPO Mortley stated that he put his knee on the prisoner's head to stop it from coming back and biting him.⁶

[41] A witnessing officer expressed concern to the Commission about the exchange between SPO Mortley and the prisoner:

*Can you explain to the commission why it bothered you?---I think the thing that concerned me the most was that, for example, just as an example, if ... Prisoner [A] ... **for him to be physically restrained and unable to defend himself, that bothered me considerably.***⁷

(Emphasis added)

[42] One witness told the Commission that after the incident, he said to SPO Mortley "I looked at the CCTV footage boss and it doesn't look too good."⁸ He went on to tell the Commission:

*I was referring to the actions that SO Mortley took during the incident. This raised concerns with me because I **had seen SO Mortley's hand forcibly holding the prisoner's head into the floor and from the CCTV footage, I believed there might have been some excessive force used in some way.***⁹

(Emphasis added)

[43] Another witnessing officer described his observations of the incident:

Did you see him [SPO Mortley] pushing his [prisoner A's] face to the side at that point?---Yeah.

Was that necessary in order to restrain him, in your opinion?---Probably not, no.

Why?---There was enough people there that could have done it.

...

Would you say the situation was under control without the assistance of Mr Mortley?---Yes.

...

Do you think Mr Mortley dropped his knee onto [prisoner A] on purpose?---My opinion?

Yes?---Yes.

*Was it necessary in order to restrain [prisoner A]?---No.*¹⁰

⁶ Ibid p 26.

⁷ Prison Officer transcript, private examination, 7 November 2017, p 10.

⁸ Prison Officer signed statement, 17 November 2017, p 3.

⁹ Ibid p 3.

¹⁰ Prison Officer transcript, private examination, 7 November 2017, pp 8-9.

- [44] Another witnessing officer described SPO Mortley's actions of going back into the cell once the prisoner had been restrained as one of "revenge"¹¹ to get back at the prisoner for striking him.
- [45] Whether SPO Mortley was justified in using force against the prisoner, whether he was sufficiently provoked to do so, whether the force used was excessive are questions properly for a court. The Commission does not pass judgment.
- [46] The actions which followed the use of force meant there was no possibility a court would ever consider these questions.

Reporting and notification of the incident

- [47] There is evidence that SPO Mortley stomped on the prisoner's back and then dropped his knee onto the prisoner's head several times, while he was restrained and unable to defend himself. The Commission was also told that SPO Mortley's open hand was on the back of the prisoner's neck, forcibly holding his head to the ground and that he struck the prisoner.
- [48] Several officers raised concerns with senior prison management about writing their IDRs. They were concerned that writing the truth would get SPO Mortley into trouble.
- [49] Prison officers do not generally name officers in a report in TOMS if they believe the officer has done something wrong. The Commission was told this is because everyone in DoJ has access to those reports. This level of access is a shortfall of TOMS and is a disincentive for prison officers to accurately report matters that involve misconduct.
- [50] DoJ has a misconduct reporting portal on its intranet where all staff can raise concerns. Only Internal Investigation staff have authorisation to access, process and investigate the confidential submissions posted on the portal.
- [51] Some officers raised concerns about SPO Mortley's conduct higher up the chain of command, to a member or members of senior management at EGRP.
- [52] Supt Hedges was told by senior management at EGRP that at least two, and possibly three, prison officers had raised concerns about SPO Mortley's actions towards the prisoner.
- [53] Supt Hedges told the Commission he only recalled one prison officer raising his concerns about SPO Mortley's conduct. Supt Hedges recalled being told that SPO Mortley had allegedly assaulted the prisoner once he

¹¹ Principal Officer transcript, private examination, 30 November 2017, p 26.

had been restrained. Supt Hedges was provided with a draft copy of the report and invited to respond to it prior to it being published. In his response he stated that he was also advised by the Principal Officer that other prison officers had raised concerns about SPO Mortley's conduct.¹² Despite the seriousness of the allegation against a senior officer at EGRP, Supt Hedges made no record of this information.

- [54] SPO Mortley had dinner with Supt Hedges a couple of days after the incident. He told the Commission he discussed the "rumour mill" that had begun circulating regarding his actions towards the prisoner with Supt Hedges at dinner.¹³ SPO Mortley told Supt Hedges that another senior officer from EGRP had told him there were rumours circulating that SPO Mortley had "started pounding the crap out of his [the prisoner's] head".¹⁴ In his response to the draft report, Supt Hedges told the Commission that he did not recall this conversation with SPO Mortley.
- [55] When SPO Mortley was asked during the Commission examination if Supt Hedges raised any concerns he had about the incident with SPO Mortley, he replied "No".¹⁵
- [56] The Commission heard evidence that Supt Hedges expressed his own concerns about SPO Mortley's actions towards the prisoner after viewing the CCTV footage of the incident.
- [57] Supt Hedges gave evidence that after viewing the CCTV footage, he remembered:

*Thinking that it was probably over the top; if he was actually punching the prisoner it was probably over the top, because the guy was already on the ground ... the only thing that really stood out was the punching, the seemingly - the alleged punching of the prisoner. You can't actually see it on the videotape, you can just see arm movements.*¹⁶

- [58] Supt Hedges assured relevant staff that he would deal with the incident.
- [59] Supt Hedges was under an obligation to refer the incident to the Director Investigation Services for investigation.¹⁷
- [60] It is essential and mandatory that when an incident has been referred to internal investigators, all information at hand is collected and made available to them.¹⁸ Failing to do so gives rise to an inference of

¹² J L Hedges, submissions on draft report, 30 May 2018 [81].

¹³ S A Mortley transcript, private examination, 27 November 2017, p 30.

¹⁴ Ibid p 30.

¹⁵ Ibid p 31.

¹⁶ J L Hedges transcript private examination, 1 December 2017, p 59.

¹⁷ *Policy Directive 5, Appendix 7 [1.14].*

¹⁸ Ibid.

concealment and inhibits the internal investigators from conducting a proper inquiry.

- [61] Supt Hedges told the Commission he had a conversation with the then Director Internal Investigations about the incident. Supt Hedges said the Director had requested a memo outlining the facts of the incident involving SPO Mortley and the prisoner.¹⁹ Supt Hedges said he informed the Director about the incident and that at least one other officer who witnessed the incident had seen SPO Mortley strike the prisoner.²⁰
- [62] During examination, Supt Hedges stated that despite advising the Director that at least one officer had witnessed SPO Mortley strike the prisoner, the Director told him "it was in the heat of the moment. The guy had steel in his head, he's probably concussed, doesn't know what he's really doing".²¹ This conversation took place before the Director had received any records about the incident and before receiving the CCTV footage.
- [63] Supt Hedges did not keep a record of his critical conversation with the Director. However, he relied upon the conversation when making decisions about how to deal with the matter. In his response to the draft report, Supt Hedges said that he regrets he did not keep records of such information. He said that he 'now maintains a record of such events and conversations.'²²
- [64] The Director's recollection of the same conversation is different. The Director told the Commission that during the "brief" conversation with Supt Hedges he was advised:

"the actions of the officer in the circumstances, as far as he could see were fine."

"he told me he was reasonably satisfied with what had happened. I said yep cool, no dramas, send it through to [...] and we'll go through the process."

*"he certainly didn't say anything about wanting to suspend the officer. In fact he was very supportive of the officer."*²³
- [65] When the Director was asked whether Supt Hedges had at any stage discussed concerns raised by other staff involved in the incident he replied "No, no I think I would remember that, I definitely don't recall that."²⁴

¹⁹ D V Shilton transcript, private examination, 30 November 2017, p 26.

²⁰ J L Hedges transcript, private examination, 1 December 2017, p 58.

²¹ Ibid p 58.

²² J L Hedges, submissions on draft report, 30 May 2018 [58].

²³ Director interview, 9 March 2018.

²⁴ Ibid.

- [66] The Director informed the Commission that he did not request a memo from Supt Hedges. He expected that the matter would be referred to internal investigators for review.
- [67] The Director had the impression from this telephone conversation that Supt Hedges had already discussed matters with witnessing officers at length and/or had seen the CCTV footage. The Director assumed Supt Hedges was of the view there was provocation and the officer had done the best in the circumstances.
- [68] The Director discerned from his conversation with Supt Hedges that they may have had questions around the use of force. The Director also understood that while Supt Hedges thought "there was enough there for it to be reviewed", he had also rung to tell the Director his view that the officer involved had done a good job.²⁵
- [69] The Director told the Commission that a superintendent's view is important. Great weight is placed on what a superintendent says. The Director stated that Supt Hedges did not request advice and he would not expect to give him advice. He explained that Supt Hedges is very experienced and had been around for a very long time.
- [70] Following Supt Hedges' conversation with the Director, Supt Hedges requested a memorandum from Mr Shilton, the Security Manager, detailing the incident.
- [71] Mr Shilton told the Commission that this was the only memorandum he had prepared after a critical incident.²⁶ When questioned further, the following exchange occurred "what was your understanding of what this memo was supposed to achieve? ... I was asked to write off the incident, no further action to be taken".²⁷ In Supt Hedges' response to the draft report, he said that it was not a Superintendent's call to "write something off"; however, he did not dispute making this comment.²⁸
- [72] The memorandum prepared by Mr Shilton was not balanced and he accepted that it was "a one sided" memorandum when he gave evidence before the Commission.²⁹
- [73] Mr Shilton's memorandum to Supt Hedges did not articulate the possibility of SPO Mortley's actions being consistent with striking the prisoner. It stated 'Mr Mortley's shoulders can be seen to make short,

²⁵ Ibid.

²⁶ D V Shilton transcript, private examination, 30 November 2017, p 35.

²⁷ Ibid.

²⁸ J L Hedges, submissions on draft report, 30 May 2018 [65].

²⁹ D V Shilton, transcript, private examination, 30 November 2017, pp 29, 32.

sharp movements consistent with withdrawing his hand from biting attempts'.³⁰ This gave SPO Mortley's uncorroborated version of events greater weight.

- [74] Mr Shilton told the Commission that his draft memorandum originally stated SPO Mortley's actions were consistent with him striking the prisoner. After conversations with Supt Hedges, Mr Shilton replaced that explanation in his memo with SPO Mortley's version that he was moving his hand away to avoid being bitten.
- [75] Mr Shilton said that Supt Hedges told him he was happy with SPO Mortley's account of what had happened and that it was consistent with the CCTV footage.³¹ In his response to the draft report, Supt Hedges said that he could not recall saying this.
- [76] Mr Shilton told the Commission that "Mr Hedges explained how he wanted it done and the last little bit, 'Scott saying this', you could put that into your memo".³²
- [77] Mr Shilton said he was aware of rumours that another senior officer at EGRP, who had reportedly seen the CCTV footage of the incident, had told SPO Mortley "You're effed. You're going to lose your job".³³
- [78] Despite having concerns about SPO Mortley's actions after viewing the CCTV footage and being aware of rumours circulating regarding a possible assault by SPO Mortley, Mr Shilton did not make further inquiries.
- [79] Mr Shilton had an obligation to report any potential misconduct or criminal behaviour. He neglected his obligation by not making a record of his concerns regarding SPO Mortley's conduct.
- [80] At the conclusion of his memorandum to Supt Hedges, Mr Shilton stated that, 'I believe the actions of SPO Mortley and his staff during this incident was instinctive behaviour performed under extreme duress following a serious assault'.³⁴
- [81] When asked why he did not include the possibility of SPO Mortley striking the prisoner, despite his concerns from viewing the CCTV footage, Mr Shilton replied "I can't comment. I don't know".³⁵

³⁰ Internal Memorandum from D V Shilton to J L Hedges, 30 March 2017.

³¹ D V Shilton transcript, private examination, 30 November 2017, p 30.

³² Ibid p 30.

³³ Ibid p 28.

³⁴ Internal Memorandum from D V Shilton to J L Hedges, 30 March 2017.

³⁵ D V Shilton transcript, private examination, 30 November 2017, p 34

[82] Supt Hedges may have influenced Mr Shilton in preparing his memorandum. Mr Shilton initially held a view that SPO Mortley's actions were consistent with him striking the prisoner. After a conversation with Supt Hedges, Mr Shilton altered his view in favour of SPO Mortley's version of events.

[83] Following receipt of the memorandum from Mr Shilton, Supt Hedges prepared a memorandum to the Director Internal Investigations. Consistent with Mr Shilton's memorandum, Supt Hedges recommended that 'no further action is taken by [DoJ] in relation to this incident'.³⁶

[84] In his response to the draft report, Supt Hedges said that he made the comment that "no further action is taken by DCS" because Western Australia Police were involved. He said that when an incident had been reported to WA Police, DoJ would wait for their outcome before taking any action.³⁷

[85] Supt Hedges' memo does not reflect that reasoning. In his response to the draft report, Supt Hedges said that his memorandum 'was limited and poorly worded about the incident...'.³⁸

[86] Supt Hedges concluded that the 'actions of SPO Mortley and his staff were as a result of extreme provocation and performed under extreme duress following a serious assault'.³⁹

[87] Despite Supt Hedges' awareness of the concerns raised by other officers about SPO Mortley's actions towards the prisoner and the potential use of excessive force by a senior prison officer towards a prisoner, these details were not included in his memorandum to the Director. Nor were they included in the memorandum from Mr Shilton to Supt Hedges, or in any other written record made available to the Commission.

[88] Supt Hedges gave evidence that if the Director had told him that SPO Mortley's actions were "unacceptable", then he would have "gone down the line of asking those officers to put it in writing to me and disclosing that information to the [the Director]".⁴⁰

[89] This justification by Supt Hedges is questionable for several reasons:

- Based on the Director's account of the same conversation, Supt Hedges did not advise him of the concerns of other prison officers regarding SPO Mortley's actions towards the prisoner.

³⁶ Internal Memorandum from J L Hedges to the Director, 12 April 2017.

³⁷ J L Hedges, submissions on draft report, 30 May 2018 [65].

³⁸ Ibid [65].

³⁹ Internal Memorandum from J L Hedges to the Director, 12 April 2017.

⁴⁰ J L Hedges transcript, private examination, 1 December 2017, p 60.

- The Director states that Supt Hedges did not raise any concerns with SPO Mortley's conduct; rather he emphasised SPO Mortley's injuries and his support for him.
- Supt Hedges was under an obligation to report any matters of suspected misconduct or potential criminal conduct by staff to internal investigators together with all information at hand to enable them to conduct an independent review.⁴¹
- No records were provided to internal investigators regarding concerns raised by officers about SPO Mortley's behaviour towards the prisoner, despite Supt Hedges being aware that information existed. Had this information been provided to internal investigators, a proper investigation could have taken place.

[90] Procedure was followed to the extent that the PD-5 (Designated Superintendent's Report) and PD-41 (Critical Incident Brief) were prepared.

[91] The PD-5 was not forwarded to the Coordination Centre, the Superintendent Operations (Use of Force Review Committee) or internal investigators as required. Supt Hedges said this was an oversight.⁴²

[92] Supt Hedges told the Commission he didn't mention the alleged assault in his memorandum to the Director Internal Investigations because that information would have been in the PD-5 and PD-41.

[93] These two documents were prepared but neither recorded the officers' concerns about SPO Mortley's actions towards the prisoner.

[94] Supt Hedges should have been aware the PD-5 and PD-41 contained all relevant information and whether these documents had been forwarded to the relevant sections of DoJ for independent scrutiny. Supt Hedges advised the Commission in his response to the draft report that he has since implemented an Excel database system that records and tracks the Use of Force incidents to ensure the correct procedures, documentation and protocols are carried out in a timely manner.⁴³

[95] These documents concerned a critical incident involving an assault on a prison officer and a potential assault on a prisoner. Therefore, greater care and attention should have been afforded by Supt Hedges in relation to such critical information.

⁴¹ *Policy Directive 5*, Appendix 7 [1.14].

⁴² J L Hedges transcript, private examination, 1 December 2017, p 72.

⁴³ J L Hedges, submissions on draft report, 30 May 2018 [93].

[96] On or about 12 April 2018, SPO Mortley was promoted from Senior Prison Officer at Bunbury to a Principal Officer at EGRP. Supt Hedges advised the Commission in his response to the draft report that prior to SPO Mortley being appointed, he sought advice from the Director, Human Resources. They advised that a promotion process is run independently from an incomplete disciplinary process. He advised that SPO Mortley's appointment was approved by the Deputy Commissioner as the delegated authority.

Conclusion

[97] The incident exposed serious misconduct risks in the reporting and management of use of force incidents within DoJ. If these are typical examples, the Commission has little confidence in the investigation and management of critical use of force incidents especially in a culture where fear may lead officers to minimise their accounts of other officer's conduct.

[98] The Commission has no record from any prison officer or senior manager detailing the concerns raised by prison officers about SPO Mortley's behaviour and conduct during the incident. There are no procedures in place to ensure prison staff, including senior management, keep records of such serious issues.

[99] There appears to be a limited awareness of confidential mechanisms for staff to report potential criminal activity and misconduct. The mechanisms that existed were not promoted by the Superintendent or other senior managers, even when concerns were brought to their attention for actioning.

[100] Mr Shilton did not conduct a balanced and thorough assessment of the incident nor did he make any record of his concerns regarding SPO Mortley's conduct.

[101] As the Security Manager of a large regional prison, Mr Shilton must ensure all matters of potential serious misconduct and criminal behaviour are accurately recorded and reported. He neglected his duties in relation to this critical incident. Supt Hedges advised the Commission in his response to the draft report, that since December 2017, Mr Shilton has attended an Investigations Course run by DoJ.⁴⁴

⁴⁴ Ibid [92].

[102] Supt Hedges may have influenced Mr Shilton's memorandum to make matters appear more favourable to SPO Mortley. If so, this contributed to:

- concealing genuine concerns of other prison officers about SPO Mortley's conduct during the incident that were raised with senior management, including Supt Hedges; and
- decreasing the prospect of an independent internal inquiry into the incident.

[103] Supt Hedges failed to record his and others' concerns regarding SPO Mortley's conduct. It is inexcusable that he did not make a written record of these matters. Supt Hedges advised the Commission in his response to the draft report, that he now maintains a diary to record his version of events and conversations.⁴⁵

[104] Failure to maintain complete and accurate records of critical incidents presents a serious misconduct risk within the prison system.

[105] Supt Hedges' failure to provide internal investigators with differing accounts of witnessing officers is significant. However, it is difficult for the Commission to assess the ultimate impact this had on internal investigators' assessment of the matter.

[106] The perceived lack of confidentiality within the prison system appears to have led to a failure to report matters of serious concern which increases the serious misconduct risk within State prisons.

Changes made at Eastern Goldfields Regional Prison

[107] In his response to the draft report, Supt Hedges advised that since December 2017, he has introduced the following changes at EGRP (in addition to those already mentioned above) to ensure full and frank reporting in accordance with mandatory reporting requirements are met:

- two Principal Officer positions operate seven days a week, each completing four, 10 hour shifts per week. Previously, there was only one Principal Officer working four days per week;
- Senior Prison Officers now review the CCTV footage and ensure each prison officers IDRs are accurate prior to completing the Incident Minutes;

⁴⁵ Ibid [96].

- an enhanced management process for dealing with PD-41 and PD-5 reports has been implemented; and
- staff meetings and training sessions are utilised to reinforce the importance of accurate reporting and to remind staff of the mechanisms available for confidential misconduct reporting.⁴⁶

[108] These positive changes should lend to greater accuracy and honesty in reports.

⁴⁶ J L Hedges, submissions on draft report, 30 May 2018, accompanying letter p 2.

CHAPTER THREE

The incident involving prisoner B on 14 November 2016

Background to the incident

- [109] An earlier incident occurred when SPO Mortley was working as a Senior Prison Officer at Bunbury. He was in charge of Unit 2, which housed prisoner B.
- [110] The prisoner was reprimanded by two officers after failing to locate his prisoner identification (ID) card during the unit muster. Prisoners are required to present themselves for muster, be dressed properly and wear their prisoner ID card.
- [111] One of the officers involved in the muster relayed the prisoner's non-compliance to SPO Mortley and recommended that he be counselled over the incident. As a result, the prisoner attended SPO Mortley's office where he was spoken to about his transgression.
- [112] The interaction between SPO Mortley and the prisoner escalated to the point that SPO Mortley instructed officers to handcuff the prisoner. A struggle ensued, which resulted in SPO Mortley physically restraining the prisoner with the assistance of at least one other officer.
- [113] Following the incident, Supt Bishop emailed the Misconduct Assessment Branch (MAB) a comprehensive overview of the incident, including extracts from witness interviews, statements and a copy of the completed PD-5. Supt Bishop was concerned about a number of issues, particularly the content of the IDRs. There was an inference that officers colluded to submit an agreed version of events in their reports.
- [114] Following MAB's assessment, the matter was assigned to DoJ's internal investigators. SPO Mortley and another officer were presented with allegations to which they replied.
- [115] The investigation has been finalised and referred to Professional Conduct and Review for consideration.

Reporting and notification of the incident

Language

- [116] There is some conjecture relating to the manner in which SPO Mortley spoke to the prisoner. SPO Mortley included very detailed descriptions of

the language used by the prisoner in his IDR, including specific phrases and profanities, but did not detail his own language.

- [117] There appears to be a stronger emphasis on including details of what a prisoner said, and less emphasis on the words used by a prison officer. This has the potential to result in reports not accurately representing what occurred.
- [118] The Commission was told by senior management that prison officers are expected to include the actual words spoken to a prisoner when writing their IDRs, even if those words included obscenities.
- [119] SPO Mortley stated that he had never been trained to include details of the words spoken from a prison officer to a prisoner. He said that usually only prisoner to officer phrases are recorded, unless it is particularly pertinent to why the prisoner did something.⁴⁷
- [120] Witnesses described SPO Mortley yelling and swearing loudly for a few minutes, yelling offensive and insulting language to the prisoner.
- [121] SPO Mortley told the Commission that he didn't include a description of his own language in his IDR because he had never done it before and had never been trained to include it.⁴⁸
- [122] However, he acknowledged that including details of the language used by a prison officer towards a prisoner, could be of benefit in the future in explaining why a prisoner may have reacted in a certain way.⁴⁹

Pushing the prisoner

- [123] In his IDR, SPO Mortley stated that the prisoner moved into his personal space which resulted in him 'moving him out of my space'.⁵⁰ This was the extent of the description of his actions towards the prisoner.
- [124] By contrast, he described the prisoner's actions in great detail stating that the prisoner 'began to clench his fists, shake and eyeball myself'.⁵¹
- [125] In his response to the allegations by DoJ investigators, SPO Mortley described using 'a clearance push' to move the prisoner away from him and moving him out of his personal space by 'pushing his chest area'.⁵²

⁴⁷ S A Mortley transcript, private examination, 7 November 2017, p 3.

⁴⁸ Ibid.

⁴⁹ Ibid p 10.

⁵⁰ S A Mortley IDR.

⁵¹ Ibid.

⁵² S A Mortley, Response to Allegations, pp 2-3.

- [126] When asked during examination why he didn't include the fact that he pushed the prisoner out of his space in his IDR, he responded "I can't answer that".⁵³
- [127] SPO Mortley further stated that if a prisoner had pushed him, he would include that in his report. When he was asked if he was trying to downplay his actions towards the prisoner, he responded "no, not - I don't believe so, no".⁵⁴
- [128] When he was asked in hindsight would he have worded that part of his report differently, he replied "in hindsight, probably, yes".⁵⁵

Bumping into another prison officer

- [129] In his IDR, SPO Mortley described the prisoner as turning aggressively into another prison officer as he went to leave SPO Mortley's office at the same time as telling officers to "go fuck yourselves". It was because of these actions that SPO Mortley instructed that the prisoner be handcuffed.⁵⁶
- [130] SPO Mortley described the prisoner's actions to DoJ investigators as:

*... moving swiftly towards [the officer] ... storming at [the officer] ... I perceived he was attempting to assault [the officer] ... he ran at [the officer] ... charging at a staff member ... I perceived the prisoner's actions as an intent to assault or harm [the officer].*⁵⁷
- [131] In contrast, the officer in question, who the prisoner is alleged to have "stormed at", makes no mention of the prisoner coming towards him in the same way that SPO Mortley claims he did. In this officer's IDR, he stated that the prisoner "spun towards" him and said "go fuck yourselves".
- [132] During his examination, SPO Mortley denied trying to paint a different picture of what actually occurred. He denied that he was downplaying his behaviour or exaggerating the behaviour of the prisoner.
- [133] SPO Mortley could not provide any explanation as to why his version of events was so different to the version depicted by the other officer involved.

⁵³ S A Mortley transcript, private examination, 7 November 2017, p 11.

⁵⁴ Ibid p 11.

⁵⁵ Ibid p 12.

⁵⁶ S A Mortley IDR.

⁵⁷ S A Mortley, Response to Allegations, pp 3-4.

Restraint of prisoner B

[134] In his IDR, SPO Mortley stated that he took control of the prisoner's right arm and it was at this point, that the prisoner began to struggle and attempted to break free of his grip.

[135] In contrast, SPO Mortley told DOJ investigators that the prisoner was 'throwing himself from side to side and moving his arms so violently that I lost grip of the prisoner's arm'. He said that 'the only area I was able to obtain on the prisoner was the neck area because of how violently he was moving his torso and arms'.⁵⁸

[136] When asked by the Commission why he didn't mention grabbing the prisoner around his neck in his IDR, he said "I'm talking about you grabbing his neck. Is that something that should have been included in your incident report?---I believe it's there in my incident report. Where?---If you're looking for specific words you won't see them, but - - -"⁵⁹

[137] When questioned further on this point, SPO Mortley admitted there was no reference to him grabbing the prisoner's neck in his IDR. When asked why there was no reference to it, he responded "I can't answer that".⁶⁰

[138] SPO Mortley admitted that he grabbed the prisoner around his neck and this should have been included in the IDR. He also told the Commission that it "was a pretty bad report" by him.⁶¹

[139] Further, SPO Mortley stated in his IDR that 'due to the noncompliant actions of the prisoner he was placed on the ground with the minimum amount of force and handcuffs applied'.⁶²

[140] SPO Mortley described the same action to DOJ investigators as 'the only option I had was to hold onto the prisoner and fall backwards [to the ground] wedging me and the prisoner between the office desk and the office wall'.⁶³

[141] SPO Mortley could not explain why he didn't include details of the prisoner falling to the ground with him. He could not explain why he did not accurately describe the way in which the prisoner was ultimately restrained. In his own words, he described his actions towards the prisoner as 'unorthodox'.⁶⁴ He admitted that his IDR was "poor" and

⁵⁸ Ibid p 5.

⁵⁹ S A Mortley transcript, private examination, 7 November 2017, pp 14-15.

⁶⁰ Ibid p 15.

⁶¹ Ibid p 15.

⁶² S A Mortley IDR.

⁶³ S A Mortley, Response to Allegations, p 5.

⁶⁴ Ibid p 5.

"shocking".⁶⁵ In SPO Mortley's response to the draft report he acknowledged that he should have included details in his IDR about how the prisoner was brought to the ground.⁶⁶

- [142] Despite denying several times that he was not trying to downplay his actions in his IDR, or trying to exaggerate the prisoner's actions to justify his own behaviour, SPO Mortley has provided different versions of the same event.
- [143] SPO Mortley was an experienced officer with approximately 10 years' experience at the relevant time. He should have been aware of the level of detail required to accurately report critical incidents.
- [144] Based on the evidence available, the Commission is unable to ascertain which version is correct. However, it is clear that the event has not been reported accurately and material matters were omitted.

Preparation of Incident Description Reports

- [145] SPO Mortley told the Commission that he assisted another prison officer in typing his IDR. He said that the officer dictated what he wanted written in the report and SPO Mortley typed it.
- [146] SPO Mortley's IDR was submitted in TOMS approximately half an hour before the other prison officer's report was submitted.
- [147] The PD-5 completed by Supt Bishop, concludes 'the report submitted by [the prison officer] was very similar in content and description that could appear to be a copy and paste of the description submitted by SO Mortley'.⁶⁷
- [148] During his examination, SPO Mortley was shown a table with his IDR depicted side by side with the IDR of the other prison officer.
- [149] When asked to explain the similarities between the two reports, SPO Mortley responded:

Do you have any comments, Mr Mortley, about those two reports?---I see lots of euphemisms the officers use quite regularly.

Which would be what, which ones? Which are the - - -?

---Most of the highlighted sections, "due to the noncompliant actions of the prisoner, the prisoner is placed on the ground with a minimum amount of force," they're all euphemisms that officers use in almost every single report. Given that they are factual, they should be fairly similar.

⁶⁵ S A Mortley transcript, private examination, 7 November 2017, p 19.

⁶⁶ S A Mortley, submissions on draft report, 29 May 2018 [19].

⁶⁷ *Policy Directive 5*, Designated Superintendent's Report, 28 November 2016, p 6.

Mr Mortley, we've got word-for-word on several occasions, not just a single word but like a whole sentence?---They are euphemisms that officers use quite regularly.

Mr Mortley, the incident reports from other officers submitted in relation to this incident don't have these same kind of similarities. Do you have any comment in relation to the similarities between the two reports?---No, I don't.

...

Can you explain why they're both so similar?---No, I couldn't explain it. Maybe – I couldn't explain it.

You typed it?---Yeah.

Did you not?---But when I type somebody else's report, I try not to think of my report, I just type as I'm told.

Mr Mortley, we've got sentences that are exactly the same. Now is your opportunity, we've given you an opportunity to explain yourself?---And to the best of my knowledge, when I was typing his report, I did not think of my report and I typed what he told me.

...

You're a senior officer, Mr Mortley, and you've got no explanation?---No, I don't.⁶⁸

- [150] During examination SPO Mortley had no explanation why almost half of his report was strikingly similar to the other prison officer's report in respect to material matters, which he admitted to typing out himself. In his response to the draft report, SPO Mortley acknowledged that there were similarities between the two IDRs and that it was a result of him paraphrasing the officer's account of the incident. He admitted that in hindsight this was not appropriate.
- [151] The Commission heard evidence that prison officers, on numerous occasions, copy and paste other officers' IDRs.
- [152] The Commission infers that the two IDRs were not prepared independently. The IDRs were identical in critical areas, including matters that were not accurate and inconsistent with the alleged force used against the prisoner and the manner in which he was dealt with by SPO Mortley.
- [153] SPO Mortley was not only the author of his own report, but he also typed out the other prison officer's report which was strikingly similar to his own.
- [154] SPO Mortley was also the prison officer responsible for actioning all of the IDRs, and, the central officer involved in the use of force in this

⁶⁸ S A Mortley transcript, private examination, 27 November 2017, pp 11-12.

incident. He had a greater level of control and influence over the reporting process in circumstances where he was the primary user of force. This presented a serious misconduct risk within the prison system.

Conclusion

- [155] Although the Commission has not formed opinions of serious misconduct, it has identified several failings in the reporting process.
- [156] SPO Mortley, as the senior officer actioning the IDRs, was incompetent for actioning reports in their current state where they showed striking similarities. SPO Mortley failed to take any responsibility, repeatedly stating that he had no explanation for the similarities between the two reports.
- [157] As a senior officer, SPO Mortley is responsible for not only accurately recording details of events in IDRs, he also bears the added responsibility of actioning his own IDR and the IDRs of other officers.
- [158] Prison officers are aware that those IDRs may be later relied upon in legal and disciplinary proceedings. Accurate and detailed reporting of incidents is paramount in their role as prison officers. Failure to do so, is a breach of a prison officer's duty and has the potential to jeopardise future investigations and, legal or disciplinary proceedings.
- [159] SPO Mortley neglected to discharge his duty to accurately report on matters concerning the security of the prison or the welfare or custody of prisoners as he was required to do under the Prisons Act. He did so with the knowledge that his IDR may be used in legal or administrative proceedings.
- [160] The failure of officers to accurately report on critical incidents must be addressed by DoJ. Critical incidents cannot be adequately dealt with in the absence of accurate reporting.

CHAPTER FOUR

Recommendations

- [161] Amendments to the *Corruption, Crime and Misconduct Act 2003* (CCM Act) operative since 1 July 2015 have created a lacuna.
- [162] The Commission has jurisdiction in respect of serious misconduct. The Public Sector Commission has jurisdiction in respect of minor misconduct.⁶⁹
- [163] As in the present case, the Commission has used its resources including extensive private examinations because there was a reasonable basis to suspect serious misconduct.
- [164] At the conclusion of the investigation, the Commission does not form an opinion of serious misconduct. It reports to parliament however and makes recommendations to DoJ about ways to prevent serious misconduct.
- [165] If the investigation uncovers evidence of minor misconduct, the Commission can refer that evidence to the Public Sector Commission who might choose to conduct its own investigation. This is an unnecessary duplication of effort.
- [166] The lacuna arises because the Commission is unable to form an opinion of minor misconduct or return such a matter to a department to be dealt with.
- [167] Parliament may give consideration to resolving the issue by amendment to the CCM Act.
- [168] In order to reduce the likelihood of serious misconduct occurring at DoJ in relation to reporting use of force incidents, the Commission recommends the Superintendents and senior management teams at prisons:
 - a) Support and regularly promote awareness of confidential mechanisms for staff to report potential criminal activity and misconduct concerning officers using force against prisoners.

⁶⁹ CCM Act s 4(d).

- b) Update PDs to provide clarity on the independent review of use of force incidents by DoJ personnel outside of the prison facility where the incident occurred. The policy should include, but not be limited to:
 - i) identifying a position that is responsible for the review process;
 - ii) identifying who will conduct reviews;
 - iii) establishing a framework for conducting reviews (including a mandatory requirement to review CCTV footage of the incident, where available);
 - iv) providing mechanisms to convey the review results to designated Superintendents; and
 - v) outlining the designated Superintendent's responsibilities when they receive the review results.
- c) Conduct mandatory training for prison officers in relation to independent, accurate and factual reporting of use of force incidents that includes:
 - i) the use which can be made of a prison officer's reports in legal, administrative, disciplinary and prison offence proceedings;
 - ii) the consequences of colluding, making false or inaccurate statements or omitting material matters; and
 - iii) the interrelation between reporting on use of force incidents and a prison officer's duties and oath under the Prisons Act.
- d) Update PDs to provide clarity on who receives notifications about use of force incidents, what responsibilities must be discharged and how DoJ records the notification process.
- e) Update, monitor and audit systems (including TOMS), processes and physical spaces to reduce the opportunity for prison officers to collude about their IDRs or otherwise view or copy the IDRs of others.
- f) Provide an appropriate physical environment for staff to prepare their IDRs independently of each other.

[169] The Commission proposes to report on the implementation of these recommendations in one year.