



## CRIME AND CORRUPTION COMMISSION

### TRANSCRIPT OF INVESTIGATIVE HEARING

10 CONDUCTED AT LEVEL 2, NORTH TOWER, 515 ST PAULS TERRACE,  
FORTITUDE VALLEY WITH RESPECT TO

File No: CO-18-0360

TASKFORCE FLAXTON  
HEARING NO: 18/0003

20 DAY 3 – WEDNESDAY 16 MAY 2018  
(DURATION: 1 HR 02 MINS)

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#### LEGEND

30 PO Presiding Officer – ALAN MACSPORRAN QC  
CA Counsel Assisting – GLEN RICE QC  
INST Instructing – AMANDA BRIDGEMAN  
HRO Hearing Room Orderly – ISABELLA PATTON  
W Witness – PETER LYONS  
LR Legal Representative – N/A  
CM CHRISTOPHER MURDOCH, Crown Law (QCS)

- PO Good morning. Yes, Mr RICE.
- CA Good morning, Mr Commissioner. I call Peter LYONS.
- PO Mr LYONS, would you prefer an oath or an affirmation?
- W An oath is fine, thank you.
- 10 HRO Please stand, take the Bible in your right hand and repeat after me.
- W The evidence which I shall give in these proceedings shall be the truth, the whole truth, and nothing but the truth, so help me God.
- CA Is your name Peter Michael LYONS?
- W That's so.
- 20 CA You are a solicitor of the Supreme Court, Mr LYONS?
- W I am.
- CA You have been given a notice to attend this inquiry?
- W That's so.
- CA Can I show you this copy?
- 30 W Certainly.
- CA Is that a copy of the attendance notice you were given?
- W It is.
- CA I tender that.
- PO Exhibit 30.
- 40 ADMITTED AND MARKED EXHIBIT 30
- CA What is your current position, Mr LYONS?
- W I currently hold a position as the Director and Principal Solicitor of the Prisoners Legal Service.
- CA You also have an appointment, I think, as a public interest monitor?
- W That's so. I have held that position for the last three and a half years.
- 50 CA In some of your previous capacities, you have worked as General Manager of Medicolegal Reporting Services of Australia for a time?
- W That's so.
- CA For a number of years, you were Director of Operations of the Queensland Law Society; is that right?

- W That's so.
- CA Further back, you occupied a position as Manager of Legal Investigations also at the Queensland Law Society?
- W That's so.
- 10 CA You have a range of academic qualifications, I believe?
- W A couple.
- CA You may be modest, Mr LYONS. You have a Bachelor of Laws from QUT?
- W I do.
- CA And a range of Masters degrees?
- 20 W That's so.
- CA In law, arts, majoring in justice studies?
- W That's so.
- CA And a third Masters degree in business; is that so?
- W That's right.
- 30 CA On behalf of the Prisoners Legal Service, you have made a submission to this inquiry?
- W That's so.
- CA Can I get you to adopt that submission?
- W Certainly.
- CA Can I show you this?
- 40 W That is the submission that was provided to the Commission.
- CA I tender that.
- PO Exhibit 31.
- ADMITTED AND MARKED EXHIBIT 31
- 50 CA Perhaps you would begin, Mr LYONS, by telling us a little about the history of the Prisoners Legal Service?
- W Certainly. The Prisoners Legal Service was established in 1985. It was originally set up to provide free legal advice and assistance to prisoners and their families whilst incarcerated in correctional institutions in Queensland.

In recent times, the emphasis of the service has changed, in the sense that we now spend the vast majority of our legal time assisting the more vulnerable members of the prison community, and by that I mean people who are Aboriginal and Torres Strait Islanders, people whose first language is not English, people with mental and cognitive mental illnesses. We assist them in all aspects of matters concerning their treatment whilst in correctional institutions. We also assist them in relation to applications for parole and in cases where people are returned back to custody for breaches and suspensions of parole orders.

10

CA The service operates an advice-

W It operates an advice line by telephone.

CA Can you tell us how that operates in practice?

20

W That is a service that is provided in conjunction with the assistance of corrective services. It is a designated phone number that prisoners can contact the service on every Tuesday, Wednesday and Thursday between 10 am and 2 pm to provide them with assistance. We receive, on average, over 700 calls a week from prisoners, so needless to say we don't necessarily address all of their concerns. That's one of our principal sources of contact with prisoners.

The other two sources are correspondence received on a regular occasion, but also regular visits to the major correctional institutions throughout Queensland.

30

CA So far as the operation of the advisory service by phone, are you satisfied that prisoners have ready access to that?

W Yes and no. I think any access is better than no access, of course. The calls that we receive from prisoners are limited to 10 minutes, and therefore prisoners often aren't able to tell us everything they wish in relation to their particular concerns. Those phone calls are not monitored for the purposes of legal professional privilege, which I think is important.

CA So staff can monitor?

40

W Staff can't monitor.

CA Can't monitor. I see.

W Prisoners are at liberty to use the phone service with a degree of anonymity or protection in that sense. Greater access would be better, of course. When one thinks that there are nearly 9,000 people in prison, if a large number of those wish to call, we just don't have the capacity, of course, to deal with all of those calls.

50

CA You mention a timing restriction, that there is 10 minutes available.

W That's so.

CA That is one form of limitation. Are you aware of any restriction on getting the use of the phone to contact your service?

- W Of course there are unexpected restrictions which are due to such things as lockdown within the prison itself, prisoners being directed to undertake other duties or other responsibilities, which doesn't give them the opportunity to have access to the phone. As I say, the phone is only accessible for those three days for that limited period of time, so I wouldn't say it is an unfettered access to the phone, by any stretch of the imagination.
- 10 CA Can I be more specific. Are you aware of any discouragement from within centres for prisoners to make use of that service, or are you satisfied that that is readily available to prisoners?
- W It is available to prisoners. I have heard of examples where prisoners have been not allowed to have access to the phone. The motivation for the centre to do that sometimes is deemed perceptually by the prisoners to be a punishment for behaviour.
- CA It could be all kinds of reasons?
- 20 W Could be all sorts of reasons. Perceptually from a prisoner's perspective, they would tend to suggest that limited access is caused through a correctional officer making a decision not to give them access to the phone.
- CA Another service that the Prisoners Legal Service operates bears the title Safe Way Home?
- W Yes.
- 30 CA Can you tell us what that consists of?
- W Safe Way Home was originally developed to respond to a need identified by the Prisoners Legal Service for a lack of services provided to prisoners in relation to the application for parole. Sadly, the demographics of the prison system have changed over the last 10 years and we now find that there are significant numbers of prisoners who, for a number of reasons, aren't able to communicate on such a level that would assist them in relation to their applications for parole. So the prisoners service provides a service whereby we complete parole applications on behalf of prisoners.
- 40 It's also used in relation to finding accommodation, assistance and rehabilitation for prisoners as part of their parole. And it's also used at the back end, in relation to refusals of parole, to review those decisions and, on appropriate occasions, make judicial review applications on behalf of prisoners, and also in relation to prisoners who are returned back from suspension and subsequent cancellation of their parole.
- CA Just to assist this profile of the service, we have extracted a portion of the service's last annual report.
- 50 W Yes.
- CA Can I show you that.
- W Certainly.

CA It might give us some data. Is that an extract, being page 10, from the service's 2016-17 annual report?

W That's so.

CA I tender that, Commissioner.

PO Exhibit 32.

10 ADMITTED AND MARKED EXHIBIT 32

CA It gives, in the bottom right-hand corner, details of the numbers of contacts and means by which prisoners have made contact with you?

W Yes.

CA They being both by telephone and also by letter and fax. Attendance is in person. How do they come about?

20 W That's calculated two ways. There are regular visits that are undertaken by the PLS to the major correctional institutions in South East Queensland up to North Queensland. Generally that would refer to the number of prisoners who have taken the opportunity to speak personally to someone from PLS in relation to those visits.

CA Does someone from your service visit the prisons on any regular basis?

W We do. We regularly visit the prisons at least twice a year.

30 CA For advice purposes?

W For advice purposes but also in relation to any issues that prisoners may wish to discuss with us, to bring forward to us, as PLS is also involved in the monitoring of prison reforms generally but also prison life as such. Sometimes prisoners will come and speak to us in relation to what are potentially complaints against the correctional institution itself, be it guards, other prisoners, things of that nature.

40 CA In addition to the advisory work - we note that there is 4,774 of them; correct?

W Correct.

CA The graph at the top of the page shows the break-up of that. It looks from the two bars on the right-hand side, and also perhaps another, dealing with parole refusal, that the advice is skewed strongly towards matters pertaining to parole?

50 W That's so.

CA The service also conducts some case work?

W That's so.

CA In what areas, Mr LYONS?

- W Case work can be in relation to prisoner classifications. It can be in relation to refusal to provide appropriate medical assistance to prisoners who require it. The case work is generally within the areas of concerns that prisoners have concerning their treatment in incarceration.
- 10 It can also deal in relation to judicial reviews of parole decisions. It can also deal with a non-ability to transfer prisoners from one correctional institution. So it covers a number of cases where decisions are made by either corrections or the Parole Board which affect a prisoner outside the parole ambit, which is referred to there.
- CA Again, the pie chart would suggest that the case work is also skewed towards matters pertaining to parole?
- W That's correct.
- CA Applications, breaches and consideration of refusals, perhaps?
- 20 W That's so. That graph is probably slightly outdated, in the sense that with the introduction of the new Parole Board of Queensland, the work practices have changed somewhat. The Parole Board has been very active in trying to simplify the process of parole application. Rather than completing a 27-page form, which was the norm in the past, an application for parole is now simply done by completing one form, a one-page form, so that process is a lot easier.
- 30 So PLS spends a lot more of its time now working, hopefully in conjunction with the Parole Board, to assist prisoners in relation to parole applications where there is an initial refusal of parole. The practice generally is that when a person applies for parole, the Parole Board will consider the material relevant and will make a preliminary assessment as to whether that person is suitable to be placed on parole or not.
- 40 In cases where the letter indicates to the prisoner that they are not a suitable candidate for parole, for a number of reasons, including lack of accommodation, lack of completing courses, PLS will generally then make written submissions on behalf of the prisoner, hopefully to assist the Parole Board to address those issues. So a lot of our time now is spent helping those prisoners that I have identified previously, that is, the prisoners I refer to as the most vulnerable prisoners within the system, to assist them to complete those parole applications.
- CA We can see from the volume, particularly in the advice area, that there is certainly high volume, and you have indicated that it is not possible to deal with all of those. In terms of giving priority to the matters that you can attend to, is that informed by the vulnerable groups that you described?
- 50 W It is. In effect, the services provided are direct representation for prisoners who we classify as the most vulnerable. In the prison system, we also provide a number of self-help kits and other such products that can be given to prisoners who we think probably have the capacity to complete the necessary paperwork. We just simply can't, for resourcing issues, address all the concerns of all the prisoners that come in, so there has to be a rather brutal process of assessment and triage as to which prisoners we can act for and which ones we can only provide assistance by way of

those kits.

CA Would there be any group or body within Queensland that has greater interaction with serving prisoners than your service?

10 W There are more specifically targeted services. I think Sisters Inside work very closely in relation to women who are incarcerated both in Brisbane and in Townsville. To answer your question, the answer is probably no. There are a number of private individuals that offer a service to prisoners. They're not legally qualified, and that creates some concerns for the Prisoners Legal Service. But, really, Prisoners Legal Service, in one sense, is unique in the services that it provides. I don't think you will find a similar service in any other jurisdiction.

CA Turning to some of the matters that you have raised in your submission-

W Yes.

20 CA -you raise a number of matters, commencing with the topic of violence in prison, and the first sub-topic is prisoner-on-prisoner assaults. You say that a common complaint is that prisoners inform staff that they're unsafe and that inadequate steps are taken. Could you perhaps give a little more detail of that? How do such complaints arise and who typically would be the first point of information about that by a prisoner to a staff member?

30 W Insofar as the involvement of PLS in such concerns, those usually come to the attention of the Prisoners Legal Service either via the telephone advice line that you have previously referred to; on many occasions, though, the concern is expressed by a family member, who will say that they are concerned about the welfare or safety of their loved one who is in prison.

CA Safety in what sense - physical safety? And what would be the cause of it?

40 W A lot dealing with physical safety - concerns that people visit prison and find that their loved one has clearly suffered some form of physical injury, be it bruising to the face, be it, in one or two cases, people who have clearly had their arm injured. There are a number of quite visible signs to suggest that a person has been a victim of an assault. So it is not the case, for example, where you would say these are unobservable injuries. They are certainly observable by the people that come to visit them and equally by other prisoners and you would think also correctional staff. The concern that is often raised is that a prisoner has been the subject of an assault, be that by another prisoner or by a correctional officer, but, for a number of reasons, those prisoners don't wish to make any formal complaint in relation to the circumstances of the assault.

50 CA Why not?

W The most common basis is, if they make a complaint, in their eyes they will be the subject of further conduct, that they're not confident in the complaints system insofar as bringing those matters to the attention of the corrections officers. There is a belief certainly amongst some prisoners that a number of prisoner-on-prisoner assaults are actually procured by correctional officers.

CA Is that the kind of report that comes to your service?

W That's so. That's so. There are a number of reasons why a prisoner won't make a complaint, as I say - fear of retribution, perceptions that the system isn't really going to take their complaint seriously, or, in some cases, a belief that the purpose of the system is to write the correctional service officer out of any ill-doing. In our experience, those assaults - that is prisoner-on-prisoner assaults - have increased proportionally to the numbers of people who are now being incarcerated within the prisons in Queensland.

CA Your submission is in terms that your service is "deeply concerned about entrenched levels of violence". Could you comment, then, on the degree of regularity with which your service gets reports of that kind?

W We would get reports of that sort of conduct - and by "that sort of conduct", I am referring in a more broad sense to assaults within a prison - weekly. In fact, I received a letter only recently from a prisoner in Townsville, who, whilst wishing to remain anonymous, referred to incidents of assault on prisoners in a Townsville correctional centre by correctional officers and that those assaults regularly take place in areas where there is a lack of monitoring or CCTV in order to be able to see those particular assaults.

It is common knowledge within the prisoners at the Wolston Park Correctional Centre - they are also of the belief that there are places where prisoners are taken where they can be assaulted, and, again, there is no recording of those particular incidents.

CA By other prisoners?

W Both by other prisoners and by correctional officers.

CA Places that are not, for example, covered by CCTV?

W That's so.

CA You describe this in terms that the reports that come back are that prisoners have informed staff that they are unsafe and that steps are not taken. What reports of that kind do you get?

W Generally those reports are - sorry, I should backtrack. In many cases when there are significant incidences of an assault, the general practice that is observed in most correctional institutions is that one of the antagonists is separated from the general prison population, and they are generally placed in more secure premises.

Those people are generally regarded by the correctional officer as the instigator of the particular incident. Those people will often seek to make complaint to a more senior officer within the correctional institution itself. Those complaints ultimately are to go to the general manager, and the general manager is to action that investigation.

In many cases, the information that PLS receives from prisoners is that the information goes no further than the correctional officer to which the

original complaint is made. That is the general practice that we have observed that prisoners often complain about, and that's a practice which seems to be widespread through most correctional institutions.

CA Are you speaking of the prisoners who, by then, are in segregation?

W That's so.

CA In detention units and the like?

10

W That's so. I think it is important to understand that in the case of most prisoners, they really are, in a sense, isolated in the sense that they don't have really an independent method by which they can complain, save for the matters that I have referred to that we do or to complain to family members who may come to visit them.

20

The general perception within the wider prison community is a lack of trust insofar as the reporting of matters to correctional officers, a general lack of trust in relation to lodging complaints with, say, an organisation like the Official Visitor, and the reason for that, rightly or wrongly, is the perception that the Official Visitor office is part of corrections. So notwithstanding the independent nature of those people who do that particular function, from a perceptual issue there are concerns.

CA Let's talk about the area of complaints, then. You have just mentioned the opportunity that prisoners have to make complaints to the Official Visitor. There are disincentives to doing that, from what you say?

W That's so.

30

CA Through a perceived lack of independence?

W That's so.

CA Rightly or wrongly?

W As I say, it's a perception. But the perception is a reality, yes, I believe that's so.

40

CA There are other avenues of complaint. One is the "blue letter" system. Do you get any feedback from prisoners about the integrity of that process, whether it is reliable, confidential, and so forth?

W The "blue letter" system was introduced to provide a confidential method by which prisoners could make complaints. The essence of the system, really, is a complaint made, which is put in a blue envelope. It is deemed to be confidential in relation to who can access that particular document for the purposes of a complaint.

50

PLS regularly receives advice from prisoners that suggests, in their minds, anyway, that on some occasions those letters are actually intercepted before they leave the correctional institution and are read by other correctional officers. The basis for that generally is that something happens to that prisoner shortly after the letter is authored. That, in the mind of the prisoner, suggests that there is some form of retribution or payback, or comment, even. It can be along the lines that the complaint

has not maintained its confidential nature as it should.

CA What about accessibility to that particular complaint mechanism in terms of anonymous availability of the envelope and the opportunity to make complaint by that means, do you have any information about that?

10 W No. Again, there are occasions where prisoners have said that the letters have been intercepted and never actually gone out and they have never received any third party contact in relation to their complaint. It is a perceptual issue, I accept. But, again, an issue that I think prisoners have raised on many occasions is a lack of confidential impartiality in relation to complaint mechanisms generally.

20 As I say, there are a number of organisations that one can refer to, be it the Ombudsman, be it the official solicitor, who have some jurisdiction in relation to these matters. The difficulty faced, I think, is that the current systems, albeit by the nature of a written complaint or otherwise, or perception of independence, just don't appear to be working to the level that they should.

CA The Ombudsman is an external person or body to whom complaint can be made. How does that opportunity for complaint suffer in terms of the reports that you get?

30 W One of the difficulties with complaints to the Ombudsman is that, in many cases, the practice is that the complaint has to first be reviewed by the general manager in order to determine if there is any substance to the complaint. Generally in the prison system, the prison will then either investigate or deem that the complaint has been unsubstantiated. That process has to be gone through before the matter goes to the Ombudsman. That, I don't think from my experience of investigations, is the most appropriate way of doing it.

The Ombudsman doesn't have, as I understand - but I stand to be corrected - a very proactive methodology in relation to complaints within the prison system. By that, I mean I don't think it regularly attends the prison to view complaints.

40 The unique nature of a prison environment means, I think, the first thing you have to do is whoever investigates complaints has to have a degree of, not connection, but empathy to the prison audience, and by that I mean the integrity of the investigation unit has to be such that the prisoners have trust or faith in those people conducting a transparent and independent investigation.

50 If I can give an instance of that, I recently looked at a complaint made by a prisoner of excessive force. Part of what was shown to me was a video of the incident, albeit not a great-quality video, which showed an altercation between a prisoner and about six prison officers. The prisoner made an allegation of excessive force. The difficulty with a video, of course, is that there is no sound, so you don't hear what is being said, so it is very difficult to understand independently what happens. That matter was investigated and ultimately it was determined that excessive force was not used.

CA By the correctional officer?

- W By the prison guards. Interestingly, though, where the assault took place, there were two women standing in a kitchen area less than 3 metres away from the incident, who clearly would have heard what happened and would have had an independent view of what happened. Neither of those women were interviewed. In many cases, our experience shows that the investigation is done to, effectively, write out the prison guard or the correctional officer from any form of blame.
- 10 CA In this area, are you speaking of complaints that might find their way to the Ethical Standards Unit?
- W In the majority of cases, yes.
- CA But also more widely?
- W We often will receive information about complaints, which we will examine as best we can. We certainly don't have access to the full suite of the evidence that, say, ethical standards would have. The difficulty is that from a PLS perspective, that in itself is a hindrance because there is a degree of reluctance in some cases to recognise PLS's role or assistance it could provide in relation to the review of that particular investigation.
- 20
- W The other issue that we have is that many prisoners really are unable to articulate or put forward in any great persuasive manner the circumstances of their complaint. By that, I mean recently a person whose first language was not English, whose wife was concerned about injuries suffered by him, was interviewed by an ethical standards officer in circumstances where English wasn't that person's first language, but no translator was provided. Needless to say, the net benefit of the evidence that that person could give was poor, to say the least.
- 30
- W Part of the issue that PLS has, and I think what prisoners have, is the perceived independence and integrity of the particular investigative process. That is, it is a process that is thorough, is transparent and doesn't go in with preconceived ideas about what's going on. Very often, you will see reports written in relation to allegations of excessive force where one of the findings often given is something along the lines of, "It has been determined that it is not appropriate to charge the prisoner with any further offences arising from the incident", which, in itself, is very strange because PLS-
- 40
- CA It is a complaint about a correctional officer?
- W That's right.
- CA But the response is that there will be no further charges against the prisoner?
- 50 W That's so.
- CA That's the outcome?
- W Exactly. I have seen it in recent times, where a prisoner was assaulted in a cell. There was CCTV of the particular incident, and, from my experience, it looked like an incident that did have some degree of

excessive force utilised in it. The investigation was undertaken by ethical standards, and when the report was finished, the conclusion basically was along the lines that - the first conclusion was that the prisoner shouldn't be charged with any further offences as a result of his conduct on the day, and that there was insufficient evidence to show any level of excessive force, words to that effect. I would argue the point, of course, in relation to those particular findings.

10 I think the difficulty generally is that prisoners, as I say, are generally perceptually concerned that in investigations of that nature, the nature of the investigation undertaken by the Ethical Standards Unit in particular is more focused upon excusing the conduct of the officers.

Now, please don't get me wrong. I'm not suggesting that correctional officers don't have a hard job, and there are many occasions where allegations that are made against correctional officers are shown at a very early stage to be false. So I am not naive enough to suggest that every allegation of excessive force that is brought forward is of concern.

20 What I am saying from my 30-odd years in the criminal justice system is that there are examples I've seen in the last three and a half years whilst I've been at the PLS which raise my concerns about the level of violence that is occurring in prison, to start with, and then, secondly, the lack of what I perceive to be an independent process of complaint handling.

CA In the case of the Ethical Standards Unit, do you have any suggestion how that could be improved?

30 W The difficulty with the Ethical Standards Unit, if I can use it by analogy - if we go back many years, when this Commission was formed and there was the argument about police investigating police, the Commission became the creature by which, I think, politicians tried to address the concerns of that perception of transparency and integrity of the investigation.

40 I think the role of the Ethical Standards Unit needs to be looked at for the purposes of: is there a better way of providing that particular model of investigative services independently from the umbrella, generally speaking, of corrective services. I know that is difficult to do, but, again, I think you are talking about people who are in a disproportionate power arrangement, between, say, correctional officers and prisoners, who are generally less educated, more vulnerable and perceptually have no faith, generally speaking, in relation to how their complaints are investigated.

50 The difficulty then arises that people don't make complaints because they don't believe that they are going to be truly and independently examined. And I think that is the important part. A prisoner, to make a complaint, has to believe that that complaint is going to be, initially, anyway, confidential to the level it should be, and investigated without preconceived determinations of what the result is going to be; it needs to be independent and it needs to be transparent. Also, I think, in many cases, the reporting back to the prisoner has to explain the basis, from a transparent perspective, as to why the complaint has been substantiated or hasn't been substantiated.

CA Does that at least perception of diminished trust flow across to another

mechanism of complaint, to the Official Visitor?

W It does. As I say, I think the role of the Official Visitor is important, because it is, again, an independent person being able to come and give prisoners the opportunity to raise issues of concern. I think the difficulty is - and, again, I stand to be corrected - I doubt there is very much training that goes into the selection of Official Visitors, from what I can see. It seems to be something that people do for a short period of time and then move on to other things.

10

As I say, because it is perceived to be within the realms of the organisation of corrective services, again - and this comes back to the point of true independence, the organisation being truly independent - personally I am doubtful whether the Official Visitors achieve all that they could.

CA The Official Visitor function currently sits under the responsibility of the Chief Inspector.

W That's so.

20

CA You would be aware that one recommendation that has been made is that the Chief Inspectorate be established as an independent body, a truly independent body, from the department. If the Official Visitor function continues to be performed within the purview of an established independent inspectorate, would that make some improvement to the scenario that you have explained?

W I think it would. My research shows in other bodies in other jurisdictions, both here but more particularly overseas, where similar concerns have been raised in the past, it has led to the creation of such a body as you referred to, that is, a body that is truly independent from what I can probably call the operational corrective services model. I think that would have some merit in its operation.

30

CA Returning to what you have referred to as the entrenched levels of violence and the implications of that, you have referred in your submission to the lack of legal accountability by QCS.

W That arises generally from our experience in cases of prisoners trying to seek compensation, that is, to make personal injuries claims in relation to assaults that occur within the correctional environment and potential breaches of the duty of care by corrective services in relation to those particular assaults.

40

There are a number of hindrances to that, ranging from prisoners serving sentences of more than three years having to seek the prior approval of the Public Trustee in order to commence those proceedings. The *Corrective Services Act* itself creates a victim trust fund. So if a prisoner did make a successful claim for a personal injuries action against corrective services, those moneys are effectively taken and placed in a fund and are then accessible in relation to other claimants who may have claims against that particular prisoner's funds.

50

The other thing is personal injuries actions of this nature often do rely upon the assistance of lawyers, law firms, in order to do that. Because the award of damages in many of these cases is only going to be minimal, on

the basis that you don't have many of those major heads of damages that one would if a person wasn't in a correctional institution, most law firms aren't very interested from a cost perspective, if I can put it that way, to represent prisoners in relation to that.

You have some legislative and practical problems with it, but I think you also have the overarching matters that you referred to earlier of concerns in relation to potential retribution or consequences of making a personal injuries complaint in the first place.

10

CA Do you see the absence of a meaningful avenue to pursue civil claims as having some bearing on what I think you would call the culture of use of force in prisons?

W I believe so. Common sense would suggest that if you commit those sorts of offences or partake in that sort of activity - and by that, I mean excessive force by prisoners and/or correctional officers - if one looks at it from the world of the prisoner, their two options from a criminal perspective or from a disciplinary perspective are to make a complaint to corrections via the general manager, and I think we have discussed that is fraught with problems; the second way is civilly by way of personal injuries action, and there are concerns there. One could argue that all those things, when you roll them up together, may, in some cases, allow perpetrators of that particular conduct to think that, in many cases, that conduct will go unaccountable.

20

CA You have touched on this already, but in the sequence of your submission you go on to speak about the subject of excessive use of force by correctional officers, with emphasis, I gather, on prisoners who are placed in segregation, detention units and maximum security units. What information does your service get to indicate that that is a problem area in terms of excessive use of force?

30

W The issue of excessive force used for prisoners who are in maximum security units or solitary confinement units is something that we have noticed has exponentially increased in the last five years.

CA What would you attribute that to?

40

W I'm no social scientist. I would think part of the difficulty is that many of those prisoners who find their way to those particular forms of detention are people who suffer from, in some cases, diagnosed medical illnesses but, in many cases, suffer from undiagnosed cognitive or psychosocial-type disabilities. I think what happens is that prisons have a greater number of those sorts of people in the system.

CA Than before? A greater number than in previous years?

50

W Previously. By way of some support to that, a recent report was undertaken by Human Rights Watch in relation to treatment of disabilities within correctional institutions, and they made the observation early in their report that whilst people with cognitive disabilities represent 18 per cent of the population generally, within prisons they represent over 50 per cent. So you are talking about a significant number of people with cognitive illnesses.

In relation to diagnosed medical illnesses, if you look at Torres Strait Islander and Aboriginal people, it is along the lines of 76 per cent for males and almost 82 per cent for females. So you're talking about a prison population, I think, that is reflective, sadly, of high levels of mental illness and of cognitive disabilities.

CA Do I understand correctly that, in your view, a prisoner with that kind of a problem is perhaps over-represented in segregation units?

10 W Oh, very much so. Very much so. That is because if one looks at prisoners with cognitive illnesses, their behaviour may be more indicative of the injuries. If I take, for example, a person with an acquired brain injury, which is significant within the corrections institution, many of those people have not been diagnosed with the particular ABI that they suffer. Their behaviour in relation to conduct towards other prisoners, in relation to prison guards - and by that, I mean conduct that leaves them open to potential further disciplinary action - in many cases is a consequence of the cognitive illness that they suffer rather than total antisocial behaviour.

20 I think where the difficulty lies, again - and I think it is a difficulty for correctional officers - is training correctional officers to be able to identify that and to deal with it. That partly comes back to a belief that the PLS has that there needs to be a greater method of assessment of prisoners when they go into the correctional institution.

CA Could I ask you on that subject, is the issue one of lack of diagnosis?

30 W In many cases, it is. In many cases, that's understandable because the prisoners themselves may not be understanding of the illness that they have.

CA How does that apply to, say, ATSI prisoners, who are well represented and perhaps over-represented in prisons?

40 W It is very high. It is significantly higher than probably any other demographic, general demographic, you refer to within the prison population. It is very high. The difficulty faced is that mental health services, as they currently exist within correctional services, provide some assistance and treatment to people with mental disabilities but provide really a lack of assessment and treatment in relation to people with cognitive illnesses.

CA What about that proportion, whatever it is, of persons who suffer from cognitive impairment or some other kind of more serious disability, who are actually diagnosed and in relation to whom that fact may be known upon entry to a prison - do you have any view as to whether that information is utilised and given proper account at the correctional officer level within a facility?

50 W I don't think it is necessarily channelled down or attributed to the correctional officer. I think the treatment of prisoners with a diagnosed mental illness is a health issue that is, in effect, isolated by the mental health service. I think there are many prisoners who are the subject of a disciplinary action for behavioural issues which can be attributable to a mental illness or a cognitive illness, which the prison guard is just not

made aware of. Part of the difficulty there is that there is no current service offered, as I understand, which allows all prisoners who are inducted into the correctional system to be assessed.

10 Why it is interesting from the case of - and I know that one of the reasons why that is not done is resourcing and cost. The NDIS provides assistance to people with a cognitive illness. What needs to happen is that a person needs to be assessed, needs to be determined to have, for example, an ABI, and treatment is then given to those people. That treatment exists to people who are in prison. It is not necessarily for people in the outside world, so to speak.

A process whereby prisoners were able to be assessed, and they have to be assessed by a person who has the appropriate qualifications, may lead to mental health services being provided independent of corrections but still treating the behavioural issue rather than it being an antisocial issue.

20 CA There has to be a trigger though, doesn't there, for any assessment to take place?

W It has to be an assessment that is undertaken currently by the individual prisoner, and they don't do that, so PLS, on occasions, have assisted prisoners in relation to making those initial attempts to get assessed for the purposes of the NDIS.

CA When you say that, are you saying that the service itself identifies, in relation to a particular prisoner, that there might be a need?

30 W We do.

CA Which the prisoner himself or herself perhaps has not hitherto recognised?

40 W That's so. The ones that we tend to look at are the people who have had lengthy periods of time in solitary confinement. As I say, quite often prisoners won't assess themselves to suffer a cognitive illness, for example. When a neuropsychiatrist examines those people and asks the appropriate questions, you will often find that there are occasions where, in the case of a female prisoner, for example, subject to significant domestic violence, subject to repeated beatings around the head, subject to terrible violence which has led to the acquired brain injury that she didn't know she had, but then when one looks at that with all the other objective measures of their social interaction, it becomes quite apparent. But in the eyes of that particular lady that I am referring to there, she would never independently come to the view that she was suffering from some form of cognitive illness.

50 CA From what you say, prisoners in segregation would be a ready and identifiable body who might fit the profile for some kind of further assessment?

W I think they're the most obvious. You are talking about, in some cases, prisoners involved in some extremely unusual behaviour.

CA That appears noncompliant and a breach of discipline?

W That appears noncompliant, exactly. Why it is important to have

reference to those particular issues is that an important part of the parole process revolves around the institutional behaviour of a person whilst they're in custody serving a sentence. If a person suffers a undiagnosed mental illness or a cognitive illness which leads to a bad complaints history whilst in prison, that necessarily impacts upon, or potentially upon, their ability to get parole.

10 My point generally is that what you are talking about is a behaviour of the person which is attributable to something which is not being treated whilst in prison. That's the fundamental thing, and a prison service that doesn't currently resource any methodology by which, when people are first inducted into the prison system, those sorts of mental and cognitive illnesses can be determined - because then, if they are determined, of course, treatment can be available to those people.

CA The legal mechanisms by which a prisoner can be segregated involve safety orders?

20 W That's right.

CA Breaches of discipline. Does your service have any view derived from the information you receive about the conduct of the processes involved in breaches and safety orders?

W Our concern in relation to safety orders is the mechanism by which they can be renewed every so often and the potential overuse of those particular orders to keep people in solitary or in a security unit for lengthy periods of time.

30 CA Is that notwithstanding that there is a requirement that a consecutive safety order be reviewed by an Official Visitor?

W That's so.

CA What would you say about the effectiveness of that?

40 W I am not sure if it is the most effective method. I have seen some Official Visitors conduct a very robust review of the system, but I've also seen ones where the report of the official solicitor pretty much mirrors the recommendation of corrections in relation to extension of it.

Again, going back to the issues that we raised about mental illness and cognitive illnesses, those issues really are not front of mind of people when they review that. If a person is still abusing a prison guard, is throwing their faeces against the wall, is doing very unusual behaviour, to say the least, I think an Official Visitor, in the majority of cases, would be quite within their rights to accept the recommendation going forward.

50 The difficulty with extended periods of confinement, and certainly in the cases of solitary confinement, is the consequence that the person actually leaves solitary confinement in a worse mental state than when they went in there. In the cases of people with mental illness - and we have seen it at the PLS. People go in with a diagnosed mental illness. In some cases, they are in solitary confinement for months, if not years. The biggest concern the Parole Board has in relation to releasing those people or transitioning them back into the community is that their mental state has

got, in fact, worse.

CA Is there any mechanism you are aware of for persons who may be on consecutive safety orders and are continuing to manifest aberrant behaviour such as you describe, but where the cause of that-

10 W No, I think the thing about safety orders is that they are generally there for the good service order of the correctional institution. It is really a process that is undertaken to treat a behavioural issue by way of a quasi-isolation and punishment. Similarly with solitary confinement. If a person assaults prisoners regularly or assaults prison guards regularly, the way to deal with that currently is to isolate them and, from a behavioural perspective, hope that that conduct will not be replicated when they return back to the prison community.

20 Our concern is that, in many cases, prisoners are staying there far too long, they are not necessarily receiving treatment, or no-one is really looking at the question of the causation or the behavioural issues that caused it, and they are in fact being returned back to the prison population in a dire mental state or a worse mental state than when they went in there.

CA Are the numbers or the proportion of persons who have this kind of disability such that it is not really possible for the correctional system to systematically weed them out and identify the cause of such behaviour but simply to take a responsive approach to it?

30 W I think if you look at the numbers of people that are coming into the correctional system on a yearly basis in recent times, you are talking about a large number of people. Is it possible to independently develop some process that allows for the assessment of each prisoner when they come in? I would think that to start a system from scratch like that would be difficult, but I certainly think there are people who are in solitary confinement, people who are under those sorts of orders that you have referred to - I think those people should be assessed because I think the behavioural issue is being lost in not doing anything. I believe that ultimately corrections should develop a system where any prisoner who is brought in is assessed in relation to those particular issues.

40 CA Have you heard of the so-called HASI screening?

W I have, vaguely, yes.

CA Apparently its full title is Hayes Ability Screening Index. Do you have any experience with the content of that?

W Not really, no.

50 CA Just returning to the subject of breaches, considering the service does so much work in the parole area, could you make some comment on the impact of prisoners being breached to their parole application?

W As I said previously, the current Parole Board's view is, understandably, that the prisoner's institutional behaviour whilst in a correctional institution is a matter that they take seriously and place some weight on in relation to determining aspects of suitability for parole. That's understandable, in the sense that a significant concern the Parole Board

has is the safety of the community upon a person being returned back there. My personal view is that a prisoner, in my experience, that has a significant breach history is less likely to get parole than a prisoner that has an exemplary history whilst inside.

Where it becomes difficult is, in our experience, the breach history for Aboriginal and indigenous people appears to be significantly higher whilst in custody than the average prison population, which is of concern. One has to understand that breaches can be for some very minor things, but part of the parole process is that corrections will provide a report to the Parole Board, which they will review as part of their review, and the institutional behaviour certainly insofar as breaches is concerned is something that is brought to their attention.

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CA Are you able to attribute any reason why the breach history for ATSI prisoners may be proportionately higher, as you describe, than that for other prisoners?

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W No, is the short answer to that question.

CA It is something you observe, nonetheless?

W Observationally I would suggest that it is probably significantly higher in the nature of requests we get from prisoners in relation to parole applications, which show prisoners with, in some cases, quite poor institutional behaviour. Observation - again, if you look at it, you are talking about indigenous prisoners, where, if I can give a snapshot, say a 24-year-old indigenous prisoner has been in and out of prison since they were 12. They have significant periods of time in custody.

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The unfortunate cycle is the offending behaviour, return to the community, the offending behaviour, return back. It is a constant issue. What concerns the Prisoners Legal Service is that if there are behaviour issues that are leading to this constant cycle of incarceration, the current correctional system doesn't address that. It takes that person out of the community for a short period of time but, sadly, returns them back into the community and their return is, sadly, very regular.

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CA Thanks, Mr LYONS.

W Thank you, Mr RICE.

PO Mr MURDOCH?

CM No questions.

PO Mr SMITH?

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AS No questions.

PO Thank you. Thank you, Mr LYONS, you are excused.

END OF SESSION