WESTERN AUSTRALIA

CCC | Corruption and Crime Commission

Report into inadequate supervision of prisoners whilst in the community

11 May 2018

ISBN: 978-0-9943035-9-2

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INTRODUCTION

[1] When a prison officer delivering supplies stops off at a Hungry Jacks restaurant to buy ice creams for 'his boys', and allows a prisoner serving a lengthy sentence for drug offences to disappear into the toilet for a few minutes on a pre-arranged visit with an associate, the security risks to the public and the prison system are obvious.

[2] Or they should have been to the Department of Justice (DoJ), which continues without the most basic precautions to allow lone prison officers to be accompanied on deliveries by prisoners.

[3] The incident at Hungry Jacks occurred on 21 February 2018 and was captured by CCTV cameras.

[4] It was the last in a long line of incidents involving Mr David Northing. He retired shortly afterwards.

[5] The extent to which other officers may be acting similarly, is unknown because the security risks are unaddressed.

[6] Mr Northing was a 64 year old DoJ veteran of 18 years when he was targeted and groomed by long term prisoners. The Commission investigation uncovered an ongoing neglect of his duty to supervise prisoners, of which DoJ was aware.

[7] His actions resulted in at least two instances where prisoners were able to meet with associates outside of the prison environment. These instances illustrate significant failures of DoJ's security practices.

[8] Every morning Mr Northing left Karnet Prison Farm (Karnet) in a DoJ vehicle to deliver egg, dairy and meat products produced at Karnet to other DoJ facilities, and to collect goods needed at Karnet. To assist in loading and unloading the vehicle, minimum security prisoners were authorised[1] to leave Karnet in Mr Northing's custody,[2] usually two at a time.

[9] The DoJ CEO has responsibility for the welfare of prisoners.[3] As part of discharging this responsibility, s/he may arrange for the provision of services and programs for the wellbeing and rehabilitation of prisoners[4] outside of prison.[5]

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[1] A prisoner is required to obtain an absence permit under the *Prisons Act 1981* s 83.
[2] They remained in lawful custody: *Prisons Act 1981* s 24.
[3] *Prisons Act 1981* s 7(1).
[4] *Prisons Act 1981* s 95(1).
[5] *Prisons Act 1981* s 95(6).

[10] The rehabilitation program saw prisoners released for the day under the *Prisons Act 1981* s 95. This program was designed to teach prisoners skills to assist in adopting law abiding lifestyles, and to help them reintegrate into the community.[6]

[11] The prisoners who accompanied Mr Northing were, in the main, nearing the end of substantial prison sentences. Many had been convicted of the most serious criminal offences, including wilful murder and child sex offences. These prisoners were subject to a suitability assessment before being allowed to work outside of the prison.

[12] Mr Northing's duties included supervising these prisoners to maintain the security of DoJ facilities and the community. However, despite numerous reports of his failing to adequately do so, DoJ did nothing to improve security.

[6] *Prisons Act 1981* s 95(2).

CHAPTER ONE

Department of Justice operations

[13] In its response to this report, DoJ advised its custodial operations comprises 15 government operated prisons; two contracted services prisons; five work camps; and one youth detention centre in an area of 2.5 million square kilometres.

[14] In 2017, 10,333 adult prisoners entered the prison system and 9986 exited. There were a total of 37,190 adult prisoner movements in that year. Approximately 50% of the adult prison population serve two years imprisonment or less.

[15] On 1 May 2018:

- the adult prison population was 6917;
- 1617 or 24% of adult prisoners were rated at minimum security;
- 610 or 37% of the minimum security prisoners were assessed suitable for s 95 programs; and
- 254 scheduled external movements occurred for s 95 approved activities across the State.

Department of Justice investigations into Mr Northing's conduct

[16] Mr Northing commenced employment with DoJ on 9 July 1999 as a prison officer. He transferred into the role of Vocational Support Officer (VSO) - Transport on 18 July 2007, continuing until 2018.

[17] The role of the VSO is to 'provide training to prisoners and manage programs aimed at increasing the prisons' self-sufficiency'.[7] The VSO - Transport role held by Mr Northing included 'the delivery, collection of stores, equipment and goods and ensuring 'the safe custody/conveyance of prisoners in accordance with requirement for the good order of the prison'.[8]

[18] In his response to this report, Mr Northing said:

> *Mr Northing was responsible for overseeing a rehabilitation program that was designed to teach prisoners skills to assist in adopting law abiding lifestyles,*

[7] Department of Corrective Services, Government of Western Australia, *Trades and Services* <http://www.correctiveservices.wa.gov.au/careers/opportunities/trades.aspx>.
[8] VSO transport JDF p 1.

and to help them reintegrate into the community, he never received training in how he should be implementing the programs to achieve the specific aims of the program.

For example, he was not trained as to whether he should be speaking to the prisoners differently when they were on day release, or if he should encourage or praise them, or discipline them in different ways.

He used his own life experience and personality traits to try and build rapport and encourage rehabilitation of the prisoners.

[19] Mr Northing has a history of inappropriate contact with prisoners[9] and failing to adequately supervise the prisoners in his charge. These matters were known to DoJ who addressed them by way of local supervision and imposing financial penalties under the *Prisons Act 1981*:

- In 2003, it was substantiated that Mr Northing had an improper association with a former prisoner. Mr Northing had contact with him over the telephone, at Mr Northing's residential address and had lent him $50. Mr Northing was charged under the *Prisons Act 1981* and fined $400.

- Following an investigation in 2006, Mr Northing was charged under the *Prisons Act 1981* after he had commissioned a prisoner to paint a portrait for him, giving the prisoner art supplies as payment. DoJ lists the outcome as supported, and disciplinary outcome as not applicable.

- On 21 March 2007, Mr Northing was found to have breached his duty and responsibility. The disciplinary outcome was recorded as 'Penalty imposed'. There is no information to indicate what the penalty or the breach was.

- On 11 December 2007, DoJ found that Mr Northing attended a shopping complex in Forrestdale and went inside for approximately 20 minutes, leaving two prisoners unsupervised in the DoJ vehicle. Mr Northing was charged under the *Prisons Act 1981* and verbally cautioned for this conduct.

- In April 2008, DoJ received a security report alleging Mr Northing regularly stopped at the Mundijong Store during the course of his delivery rounds to visit with an ex-prisoner, taking the prisoners assisting him into the store and staying a considerable amount of time. Despite Commission requests for information, DoJ has been unable to clarify whether or not this allegation was substantiated.

[9] Contrary to Adult Custodial Rule 4(1)-(4).

- In July 2010, during a search of the DoJ vehicle driven by Mr Northing, a white tablet with 'Bruphen' stamped on it was located inside the passenger cabin. Mr Northing suggested that the tablet was a mint and attempted to throw it away. The tablet was later identified as being a 400 mg Bruphen tablet which one of the prisoners had been issued. When questioned about his actions, Mr Northing said 'sorry, I didn't know you wanted it'. This allegation was investigated and substantiated. The disciplinary outcome is recorded as 'Local Improvement Action Taken, matter finalised. No record to specify type of improvement action'.

- In January 2013, DoJ received a security report alleging Mr Northing was using a DoJ vehicle to deliver pallets of grain to the mother of another Karnet employee during work hours. This allegation was substantiated and the superintendent took responsibility for correcting Mr Northing's behaviour. However, despite Commission requests for information, DoJ has been unable to clarify what action, if any, was taken in relation to this incident. The disciplinary outcome is recorded as 'No recorded confirmation that local management had been undertaken as requested'.

- On 3 February 2016, Mr Northing attended Bandyup Women's Prison accompanied by two prisoners. It was alleged and later substantiated that Mr Northing neglected his duty by not supervising s 95 prisoners appropriately.

- On the same day, instead of checking-in his mobile phone at security as required, Mr Northing told staff that he was not in possession of a mobile phone. Shortly after Mr Northing departed, Security Officers from Bandyup Women's Prison telephoned his mobile number. The call was answered by Mr Northing, proving he had a mobile phone with him and he had brought it into the prison contrary to DoJ policy. The disciplinary outcome is recorded as 'Imposition of penalty letter … reduction in remuneration'.

  Mr Northing's explanation:

  > *Mr Northing … asked for leave for a ''special purpose day'' to attend to personal matters but it wasn't granted. Whilst on duty at Hakea, he made some personal phone calls that day from his mobile phone that related to his mother-in-law who was hospitalised overseas, and he booked surgery for his ill dog. He understands that making the personal phone calls while he was supervising prisoners was neglecting his duty.*
  >
  > *Further, he believed that he has left his mobile at Hakea when he was asked to drive to Bandyup. It was his honest belief that his phone was at Hakea*

when he was asked to declare his phone at Bandyup. He says this was an honest mistake.

Commission investigation

[20] On 22 May 2017, the Commission commenced a cooperative investigation into Mr Northing's conduct with DoJ and the WA Police Force. The investigation identified that Mr Northing was in telephone contact with ex-prisoners. The investigation also identified during the time he was under surveillance, numerous failings in Mr Northing's supervision of prisoners, including making many unauthorised stops. For example:

- Mr Northing often stopped at the Southern River Shopping Centre to purchase lottery tickets for himself and ice creams for the prisoners, who either accompanied him into the centre or remained unsupervised in the car park. The Commission investigation established that during the time he was under surveillance, Mr Northing stopped at the Southern River Shopping Centre:
    - at about 11.35 am on 30 May 2017;
    - at about 11.35 am on 6 June 2017;
    - at about midday on 25 August 2017; and
    - at about 11.55 am on 29 August 2017.
- Mr Northing often stopped the DoJ vehicle at his residential address and transferred items, either from the vehicle to his house or vice versa. Sometimes the prisoners remained unsupervised in the truck; other times they assisted Mr Northing. The Commission investigation established that during the time he was under surveillance, Mr Northing stopped the DoJ vehicle at his address:
    - at about 1.15 pm on 11 August 2017;
    - at about 11.28 am on 21 August 2017;
    - at about 11.50 am on 11 September 2017; and
    - at about 12.21 pm on 15 September 2017.

    In his interview, Mr Northing denied having driven the DoJ vehicle to his residential address in the last 12 months. The Commission considers this is a lie.

In his response to this report:

> *Mr Northing says that he did not keep track of the days and times that he stopped the DoJ vehicle at his residential premises. He accepts that he must have stopped the DoJ vehicle at his address in the last 12 months and did not deliberately lie.*
>
> *…*
>
> *When the DoJ vehicle was stopped at his address it was to unload old pallets of wood that were going to be discarded by the prison. He would chop up the pallets and give them to his neighbour for firewood. Further, he would load empty milk crates he obtained onto the truck that he used for purchasing "bird apples" (misshapen apples used for feeding wild birds) from a farm near Karnet.*

- Mr Northing would often stop at the Hungry Jacks restaurant in Mundaring. Sometimes the prisoners went into the restaurant with Mr Northing. Other times, Mr Northing left them unsupervised in the car park area while he went inside and purchased ice creams and drinks for them. He also purchased lottery tickets. The Commission investigation established that while under surveillance, Mr Northing stopped at Hungry Jacks in Mundaring:
    - at about 12.35 pm on 31 May 2017;
    - on 7 June 2017;
    - on 14 June 2017;
    - on 21 June 2017;
    - at about 1.00 pm on 9 August 2017; and
    - at about 11.50 am on 21 February 2018.

[21] The unauthorised stops made by Mr Northing were often at the same locations around the same times. Mr Northing in his response explains:

> *… that he would occasionally purchase cool drinks or ice creams for "his boys" when they had been really efficient, or if they'd had a good day. He made these purchases from his own funds. He knows this wrong and explains that he just wanted them to have a taste of what it was like to live in the community. He believed it was his job to help to rehabilitate them. The lotto tickets referred to were purchased for himself from his own funds.*

[22] Once the prisoners became familiar with the routine, they could make plans to take advantage of the lack of adequate supervision during these stops. It is unknown how many times this occurred over the course of Mr Northing's career. However, the Commission investigation identified two recent instances which clearly illustrate the failure of Mr Northing to fulfil his duties and the inadequacy of DoJ security procedures.

[23] Three prisoners were involved in these incidents. A consideration of the process by which they were deemed suitable for external activities is informative.

The approval process for participation in external activities

[24] In its response to this report, DoJ sees s 95 activities as a vital part of prisoner rehabilitation and reintegration activities. Prisoners are rigorously assessed prior to being allowed to participate in s 95 activities.

[25] Prisoners seeking to be included in a *Prisons Act 1981* s 95 program must be deemed suitable and approved for participation in external activities. Their suitability is reviewed at six monthly intervals. This process is governed by Policy Directive (PD) 53 and Prison Procedures 301 and 302.

[26] Prisoner A was serving a three year sentence for armed robbery and drug offences. He was approved for participation in external activities by Superintendent (Supt) Rowley on 4 January 2018. His status of 'suitable' was suspended pending investigation of the incident on 21 February 2018. It has since been reinstated.[10]

[27] Prisoner B's authorisation for participation in external activities was revoked on 27 October 2017 due to an incident. However, it was reinstated on 9 November 2017 after a review of the incident.[11]

[28] Corrective Services Intelligence Division (CSID) provided the following information as part of prisoner B's suitability review (**emphasis added**):

> *The Security Portal rates the prisoner as a low risk of escape during movement and a **moderate risk of external assistance**. Other intelligence related information **links the prisoner to significant OMCG activity** which includes other associations between rival OMCG's, drug activity and possible threats to other prisoners. Of further note, the prisoner has recently been removed from accessing the S95 program.*[12]

[29] A number of active 'alerts' from the Total Offender Management System (TOMS) were recorded in prisoner B's review. Of note, was one for 'escape' from 24 July 2015 and one for 'security threat group - street gang' from 9 April 2015.[13]

[30] Prisoner B was further approved for participation in external activities, on 14 December 2017 by Supt Rowley.

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[10] DoJ 'Suitability for External Activities or Work Camps' prisoner A Version 7 dated 9 April 2017, p 7.
[11] DoJ 'Suitability for External Activities or Work Camps' prisoner B Version 7 dated 21 November 2017, p 3.
[12] DoJ 'Suitability for External Activities or Work Camps' prisoner B Version 7 dated 21 November 2017, p 5.
[13] DoJ 'Suitability for External Activities or Work Camps' prisoner B Version 7 dated 21 November 2017, p 6.

[31] Prisoner C was imprisoned after being convicted of murder in Queensland in 2002. Prisoner C's criminal history in WA includes property and drug offences as well as threats to injure. Prisoner C has since been released on parole.

[32] Despite the fact that he was serving a life sentence, prisoner C was authorised to participate in external activities as part of a resocialisation program.[14]

[33] Prisoner C's suitability for a Re-socialisation Program (RSP) pursuant to *Sentence Administration Act 2003* s 13 was endorsed by the then Assistant Commissioner Custodial Operations on 29 August 2016. The RSP was to be conducted in three stages over 12 months. Each stage required the completion of a number of prescribed activities.

[34] The DoJ response states that in stage 1 of the RSP, which comprised six activities, activity two required prisoner C to: 'Participate in external activities under section 95 of the *Prisons Act 1981* after the initial month'. Having been fully assessed and approved for s 95 activities, prisoner C was no different to many other prisoners who have committed significant crimes but have transitioned to minimum security. In prisoner C's circumstances, approval to participate in the RSP required endorsement by senior management in Corrective Services, the Prisoner Review Board, the Attorney General and final approval by the Governor.

[35] CSID provided the following information for prisoner C's review (**emphasis added**):

> *From previous s 95 application completed on the 21/07/2017. CSinet security and intelligence portal rates the prisoner as a* ***moderate risk of escape*** *during movement. Security Reports ACAC2013100051 and ACAC201313100055 indicate that the* ***prisoner was identified as being pivotal in an escape plan while incarcerated in Acacia Prison****.* ***Several Security Reports also highlight the prisoner's attempts at drug trafficking into a prison and drug distribution within a prison*** *environment when attempts at trafficking have been successful. As a result, since his sentence start date the prisoner has several prison charges related to the possession/use of illicit drugs and items not lawfully issued. While the attempted escape plan was never realised by those prisoners involved it does demonstrate the prisoner's willingness to engage in escape related activity and contravene prison routine in relation to his prison charges centred upon drug activity.*[15]

[14] DoJ 'Suitability for External Activities or Work Camps' prisoner C Version 6 dated 3 August 2017, p 2.
[15] DoJ 'Suitability for External Activities or Work Camps' prisoner C Version 6 dated 3 August 2017, p 5.

[36] DoJ accepts that it needs to improve its risk mitigation for these activities and the quality of supervision of prisoners. It acknowledges that Mr Northing had performance, behaviour and conduct issues, some of which were not adequately documented.

CHAPTER TWO

Incident on 20 June 2017

[37] On 20 June 2017, Mr Northing left Karnet at 6.05 am and did not return until 1.13 pm. Mr Northing was accompanied by two prisoners, one of whom was prisoner C.

[38] Telecommunication data shows that between 11.31 am and 12.52 pm, numerous calls were made between Mr Northing's mobile phone and a service subscribed to by prisoner C's girlfriend.

[39] At 12.51 pm, the DoJ vehicle driven by Mr Northing made an unscheduled stop at a roadside parking bay on the South Western Highway in Serpentine for approximately eight minutes.

[40] During an interview with Commission investigators, Mr Northing admitted he allowed prisoner C to use his mobile phone to schedule a meeting with his girlfriend, and to meet with her during this unauthorised stop.

[41] Mr Northing stated the meeting was supervised and lasted only two minutes. Mr Northing failed to appreciate the serious risk posed by this incident, telling investigators that he saw it as an 'unimportant thing'.

[42] After Mr Northing completed his working day and had left Karnet, there were two further calls between his mobile phone and the service subscribed to by prisoner C's girlfriend. In interviews, Mr Northing had no explanation for this contact.

[43] In his response to this report:

> *Mr Northing accepts full responsibility for this incident. He says that he was trying, in his own way, to de-escalate a prisoner who was very agitated and making threats. He thought wrongly, that he may be able to assist the prisoner by making calls on his behalf. This was clearly misguided and against DoJ policy. The two further phone calls mentioned relate to Mr Northing telling [prisoner C's] girlfriend to delete his number and not to call it again.*

Incident on 21 February 2018

[44] In January 2018, the Commission obtained information suggesting that prisoner B was planning to meet an associate and obtain contraband while he was working outside Karnet with Mr Northing. In the days leading up to the meeting, prisoner B provided a series of coded instructions to his associate over the Prisoner Telephone System (PTS). At

that time, prisoner B was serving a seven year sentence for serious drug offences. He has links to outlaw motorcycle gangs. Prisoner B has since been released on parole.

[45] Prisoner B put his plan into action on 21 February 2018. What transpired was captured on CCTV cameras. The CCTV footage forms part of this report.

[46] At about 11.50 am, Mr Northing made an unauthorised stop at Hungry Jacks in Mundaring as he often did. Prisoner A and prisoner B accompanied Mr Northing inside the restaurant. As arranged between them over the PTS, prisoner B's associate was already seated in the restaurant when they arrived.

[47] Upon entering Hungry Jacks, Mr Northing went to the counter to place an order. Prisoner B entered a standalone unisex toilet and prisoner A went into the male toilets. Prisoner B's associate joined him in the unisex toilet moments later. Prisoner B remained in the toilet with his associate, without Mr Northing's knowledge for two and a half minutes. It is not known what transpired during that time.

[48] Prisoner B left the unisex toilet and entered the male toilet alone where he remained for a further one minute and 20 seconds. Prisoner B's associate returned to her seat. After receiving the order, Mr Northing and prisoner A, who had since left the male toilets, returned to the DoJ vehicle, leaving prisoner B alone in the restaurant. After leaving the male toilets, prisoner B approached his associate again and handed her a piece of paper before leaving the restaurant. It is not known what, if anything, was written on the paper.

[49] The vehicle and its occupants were intercepted at Karnet. Despite strong indications from the DoJ drug dog at several areas on the vehicle, no contraband was located during the search.

[50] Prisoner B was subjected to a drug test that returned a negative result.

[51] Both prisoners were offered formal interviews under criminal caution but did not answer questions. Prisoner B made comment that Mr Northing was a 'good bloke' and 'does nothing wrong'. Prisoner B's associate declined to be interviewed. However, she told Commission investigators on 23 February 2018 that she did not supply drugs or contraband to prisoner B and that she had met prisoner B in the toilets at Hungry Jacks where they had sex.

[52] Mr Northing was interviewed by Commission investigators on 21 February 2018. He stated that he stopped at Hungry Jacks as

prisoner B had told him he needed to use the toilet. Mr Northing said he was not aware of the meeting between prisoner B and his associate, but confirmed that he did not supervise prisoner B while he was in the toilet.

[53] Mr Northing admitted that on rare occasions, he would stop and purchase ice creams for the prisoners who he called 'my boys', to acknowledge their hard work.

[54] In his response to this report:

> *Mr Northing accepts full responsibility for this incident occurring. He accepts that his behaviour/relaxation of DoJ rules facilitated what was planned by prisoner. He is adamant that he had no idea of what the prisoner was planning. He says that the prisoner seemed genuine in his need to use the toilet and that is why he stopped for him. It is obvious that Mr Northing was taken advantage of.*

[55] Mr Northing has since retired from DoJ.

CHAPTER THREE

Areas of significant security and serious misconduct risk

[56] The CEO is responsible for the management, control, and security of all prisons and the welfare and safe custody of all prisoners. This duty can be delegated in writing.

[57] Despite the Commission's requests, DoJ has been unable to clarify precisely what authorisations Mr Northing had. In its response to the Commission, DoJ says:

> *This issue could not be clarified prior to providing this response other than Mr Northing's appointment as a VSO occurred under Section 6 (3) Prisons Act and the conditions of a VSO's employment are contained in the current agreement - the Department of Corrective Services Prison Officers' Enterprise Agreement 2016. A document from the former Crown Law Department dated 27 September 2002 regarding "Industrial Officers" (former title of VSO) creates more ambiguity regarding the authority of a VSO to exercise functions pursuant to the Prisons Act 1981.*

[58] Mr Northing was appointed as an officer under the *Prisons Act 1981* s 6(3). As such, he had a duty to comply with the *Prisons Act 1981*, *Prisons Regulations 1982* (Prisons Regulations), rules and standing orders and to maintain the security of the prison where he is carrying out his duties.

[59] Mr Northing was employed to provide prison services. He was authorised to do 'high level security work'. He was authorised to perform some functions of a prison officer and was at least:

- responsible to maintain the security of the prison; and
- liable to answer for the escape of a prisoner placed in his charge.

[60] Mr Northing was deemed to be a prison officer and the regulations relating to the duties of prison officers applied to him. The Commission's investigation established that on many occasions, Mr Northing failed to perform his duties under reg 14 and reg 16 of the Prisons Regulations which provide (**emphasis added**):

> *14. Duty regarding prisoner absent from prison*
>
> *A prison officer in charge or having the supervision of any prisoner absent from a prison shall ensure that the prisoner complies with the provisions, conditions and stipulations of the relevant permit for absence, or order under section 85 of the Act, relating to the prisoner,* ***and shall at all times keep the prisoner under the prison officer's charge or supervision.***

…

16. *Duty to prevent interference with prisoners*

*A prison officer shall **not allow any unauthorised person to interfere in any way with any prisoner in his charge** or under his supervision, or to communicate with, or give or pass anything to, a prisoner.*

[61] The Commission's investigation established that while they were supposed to be supervised by Mr Northing, prisoners took advantage of the lack of security to arrange meetings with associates. How many times this occurred, and what transpired during these clandestine meetings is unknown.

[62] The two examples provided illustrate how prisoners can exploit the systemic weaknesses in DoJ's security procedures. Examination of these weaknesses reveals that this situation could have had terrible consequences.

[63] Between stops, security was totally reliant on Mr Northing. Mr Northing's failure to properly supervise the prisoners meant there were no safeguards against them:

- escaping;
- taking control of the DoJ vehicle;
- attacking Mr Northing or members of the public;
- obtaining drugs, weapons or other contraband;
- introducing drugs, weapons or other contraband into Karnet or other DoJ facilities;
- exchanging information with criminal associates in the community or in other DoJ facilities; or
- committing further offences.

[64] There were no audit security tags on the vehicle so there was no way of knowing if and when contraband was being loaded on or taken off the vehicle. Neither the DoJ vehicle nor the prisoners were routinely searched when they entered other DoJ facilities or returned to Karnet.[16]

[65] Mr Northing himself was in a precarious position. He was alone in a van with two prisoners, often with violent histories. Mr Northing was not authorised to carry a firearm or other weapon. Prison officers are not authorised to carry firearms unless they are members of the Special

[16] Contrary to Prisons Procedure 301 s 12.1 and Policy Directive 26 s 4.3.

Operations Group. If it was considered necessary to carry a firearm or other weapon on an external activity, the prisoner would be restrained in accordance with Prisons Order No 1/2017 External Escorts Restraints, and where firearms were required subject to High Security Escort Procedures PD-82 Prisoner Movements Appendix 1 B. Prisoners requiring this level of restraint and security would not be undertaking s 95 activities.

[66] He was not provided with a communication device,[17] nor were there any communication devices in the vehicle. There was no GPS tracker or alarms fitted to the vehicle. There was no scheduled timing of stops nor any ability to contact the vehicle between stops.

[67] Essentially, there was nothing stopping the two prisoners overpowering Mr Northing and taking control of the vehicle. If this occurred, there would be no way for Mr Northing to contact anyone. It could be some time before the vehicle's absence was noticed, and no way for it to be electronically located.

[68] The two examples also illustrate how DoJ's procedures made Mr Northing a target for grooming behaviour. The extended periods of time Mr Northing was alone with the same prisoners gave 'his boys' an opportunity to develop a relationship with him and to gain, and later abuse, his trust. This posed a significant serious misconduct risk.

[69] Mr Northing had a history of forming inappropriate friendships with prisoners. He admitted he could be seen as an 'easy mark'. Although agreeing that he was responsible for the people in his custody and for the security of DoJ facilities, Mr Northing described how he routinely failed to properly supervise prisoners, for example, when they went to the toilet; when he was speaking with staff at other DoJ facilities; when he stopped at service stations to put petrol in the vehicle; and when he went to speak with staff at dispatch yards. The Commission's investigation uncovered many such occasions. Mr Northing admitted he had not met his responsibilities in adequately supervising prisoners.

[70] This situation alone posed a significant security and serious misconduct risk. However, it is compounded by the fact that DoJ was well aware of Mr Northing's failure to adequately supervise prisoners. As set out, no less than eight allegations have been substantiated against Mr Northing since 2003, and more have been investigated.

[71] Yet despite the entire security of the prisoners resting on Mr Northing's performance of his supervisory duties, his failure to fulfil them was not

[17] Mr Northing carried a personal mobile phone, which he stated he kept locked up inside the DoJ vehicle.

adequately addressed by DoJ. Serious infractions were dealt with by verbal cautions, small fines and finally a reduction in remuneration. However, no pro-active steps were ever taken to improve security. Mr Northing was not reassigned to other duties, required to be supervised or undergo further training, and he was not relieved of duty during investigations. Essentially, despite Mr Northing's continued behaviour posing an obvious and serious security risk, DoJ did nothing.

[72] Mr Northing's motivations may have been misguided rather than corrupt. He was a naive and trusting person and placed in a position where prisoners could easily abuse that trust. If a corrupt officer was placed in his position, the possibilities for nefarious behaviour would be limited only by the prisoners' imaginations.

[73] Evidence of this naivety is established by his response to the Commission:

> *Mr Northing would like it to be known that he was very happy in his job. He experienced great job satisfaction and believed that he established good rapport with the prisoners under his care "his boys".*
>
> *He believes that his relaxed personality allowed him to communicate in a friendly and non-authoritarian way with the prisoners. He believes this lead the prisoners to respect him, and in turn he was able to fulfil his VSO Transport role efficiently and with as little prisoner conflict as possible.*
>
> *He took the role of VSO seriously. He understood that his role included teaching prisoners skills that would assist them to lead law abiding lifestyles and to help them to reintegrate into the community.*
>
> *On occasions he says that where he gave prisoners some liberties they responded with using manners and appeared to be happy and independent. He accepts that the liberties he took were misguided.*
>
> *He is adamant that he never colluded with any of the prisoners who took advantage of the liberties that he was taking in his role as VSO. Any liberties taken were solely of his choice and making. He perceived some of the liberties to be a common-sense approach to managing daily duties. He was not aware of what the prisoners were planning or doing, for example during the incident at Hungry Jacks on 21 February 2018.*
>
> *His intention at all times was to try and show "the boys" what it was like outside prison, bearing in mind that some of the prisoners had been incarcerated for at least 25 years, so that they might have a better chance at reintegration.*

[74] Because the conclusion that Mr Northing's actions were misguided rather than corrupt is reasonably open, the Commission is unable to form an opinion of serious misconduct.[18]

[18] *Corruption, Crime and Misconduct Act 2003* (CCM Act) s 4(a).

[75] The Commission has no jurisdiction to form an opinion of minor misconduct.[19]

[76] If an enterprising prisoner identified this opportunity, the temptation to bribe, coerce or manipulate an officer into compliance may have proved impossible to resist.

[19] CCM Act s 4(d).

CHAPTER FOUR

Conclusion and recommendations

[77] Both Mr Northing and DoJ were given an opportunity to respond to a draft of this report. Their responses, where appropriate have been incorporated into this final report.

[78] This report has centred on the actions of one public officer.

[79] However, the investigation into that officer exposed serious misconduct risks within DoJ because of lack of controls over the activities of VSO's engaged in transporting prisoners. Safety should be the paramount consideration both for the public and the officers.

[80] Because of the lack of controls, it is impossible to know whether Mr Northing is an isolated example or a common one. Moreover, the risk of contraband entering prisons through regular transport deliveries remains high.

[81] CCTV footage from the Hungry Jacks restaurant can be found at https://www.ccc.wa.gov.au.

[82] The Commission recommends:

a) DoJ implements mechanisms to improve driver safety when s 95 prisoners are present.

b) DoJ implements mechanisms to improve the ability to track and monitor its vehicles.

c) DoJ provides relevant staff with specific training on supervising prisoners outside of prisons.

d) Given the obvious risks associated with s 95 prisoners spending time outside of prison, DoJ carefully consider the disciplinary record of staff appointed to these duties. Where failure of supervisory duties is identified, consideration should be given to the offending staff member/s being removed from high risk duties.

e) DoJ consider rotating s 95 prisoners through placements to avoid staff spending long periods of time alone with the same prisoners.

f) Random searches of DoJ vehicles after delivery runs be initiated.

[83] DoJ has accepted these recommendations.

[84] DoJ advises:

A detailed risk mitigation action plan focused on s95 activities is under development. This will require consultation with the WA Prison Officers' Union. It will include actions such as:

- *Section 95 prisoners returning from external activities to be routinely searched and or drug tested.*
- *Regularly review of the eligibility of Section 95 prisoners. This is already undertaken at site level, however a monitoring and compliance regime is being commenced.*
- *Prisoners involved in what is determined to be a high risk external Section 95 activity to be rotated after a set period of time.*
- *Section 95 prisoners to be randomly interviewed for any issues or concerns.*
- *Vehicles involved in external Section 95 activities to be searched on exit and entry to the prison.*
- *Regular attendance by the Drug Detection Unit to conduct searches of Section 95 prisoners and vehicles.*
- *The conduct of regular/irregular checks on Section 95 activity locations.*
- *Prisons conducting regular liaison visits with community organisations that participate in Section 95 activities to ensure the integrity of the activity is maintained and to address any issues or concerns.*
- *Identification and costing of a suitable vehicle fleet tracking technology for all vehicles involved in external Section 95 activities.*
- *Officers involved in external Section 95 activities to be issued with two way radios and mobile phones in order to communicate with the prison at regular intervals and when arriving/leaving Section 95 activity locations.*
- *Officers regularly involved in what is determined to be an at risk external Section 95 activity to have integrity checks.*

[85] The Commission will seek a report on progress from DoJ in one year.