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IN THE INDUSTRIAL RELATIONS COMMISSION  
OF NEW SOUTH WALES

CHIEF COMMISSIONER KITE

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PARRAMATTA: WEDNESDAY 30 JANUARY 2019

**2019/00031652 - CORRECTIVE SERVICES NSW AND PUBLIC SERVICE  
ASSOCIATION AND PROFESSIONAL OFFICERS' ASSOCIATION  
AMALGAMATED UNION OF NEW SOUTH WALES**

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Notification of a dispute under section 130 of the Industrial Relations Act

**COMPULSORY CONFERENCE**

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Mr Powell for Corrective Services NSW with Ms C Hellams  
Mr D McCauley for Public Service Association with Mr D Bartle

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POWELL: Commissioner, for the applicant, Powell, and also appearing with me today is Hellams. I also have the attendance of Assistance Commissioner of Custodian Corrections Kevin Corcoran and Assistance Commissioner Carlos Cosserra from Governance and Continuous Improvement.

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MCCAULEY: McCauley for the Public Service Association of New South Wales. With me is D Bartle. Also in the room are delegates from the MRRC and Ms Jess, the Chair of the Prison Officer Vocational Branch.

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POWELL: Can I first extend my gratitude to the IRC for hearing this matter at such short notice. I don't propose to go over the dispute notification if you have read the content.

HIS HONOUR: I have.

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POWELL: So, Commissioner, we have approximately 154 staff that have worked out as of approximately 10am today. The reason for seeking the assistance of the commission is that we believe that the association has not complied with the dispute resolution procedures of the Correctional Officers Award. If I can hand up some copies.

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HIS HONOUR: I just note for the record you have provided me with an extract from the Crown Employees Correctional Officers Award sch A.

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POWELL: The pertinent provision, Commissioner, is on the third page under cl 5 general procedures and that clause at 5.5 reads that, "No industrial action...heard and determined." There are several other provisions in that award that requires the association to notify us of potential industrial action. The one above at 5.4 says that as least three clear working days' notice shall be provided. We submit that we have not been provided with any notice that

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this industrial action would be taken. We did receive an email from the association, which we have been made aware of this morning, on 15 January 2019 which is outlining some of the issues that are concerning the association. I only have the one copy but I'll read the - you have a copy.

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MFI #1 EMAIL FROM MR MCCAULEY DATED 15/01/19 AT 11.05AM TO GLEN SKULLS AND NICOLE JESS AND COPIED TO OTHER OFFICERS, THE SUBJECT OF SUSPENDED CORRECTIONAL OFFICERS

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I just draw your attention to the last paragraph of that email which states that the POVB feel that this matter is unacceptable and the PSA requests an urgent investigation into these operations and they note that if a positive response is not received by close business Friday 25 January 2019 that they will be seeking the assistance of the Industrial Relation Courtroom. It's out view that no assistance has been sought from the association in accordance with the dispute resolution procedures under the award and today we are now in a situation where the officers at the MRRC have engaged in industrial action in breach of the award.

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Obviously, our concern as Corrective Services is that we have not been afforded an opportunity to meet with the association as required under the award to address these issues and that today has led to critical shutdown of services at the MRRC. The inmates are locked down at the moment and we also have construction works which have been halted which were for the expansion of the MRRC at the MRRC complex. With each day that that shutdown continues we are looking at \$29,000 in lost productivity and penalty payments. We are hoping today that we would receive some strong recommendations from yourself that the members from the MRRC will return to work but in the absence of those officers returning to work we are not willing to engage with the PSA about the substantial matters at hand. Provided the association members return to work we are happy to engage in what we hope will be fruitful discussions to resolve this matter. In the absence of those officers returning to work we have also prepared some draft orders but we'll get to that, if necessary.

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MCCAULEY: The association is well aware of the dispute resolution procedures of the award and where possible the association abides by those conditions and in some circumstances though, chief Commissioner, human emotion outweighs the conditions of an award and in this case it is human emotion at location that has led to the action of the officers at the MRRC. As essential as Mr Powell indicated, this matter is predominantly around misconducts and not just misconducts at that location. As the email, which is now MFI 1 indicates, that's just a very brief overview of some of the issues that we are currently facing state wide and when we talk about correctional officers we talk about a family and when a member of your family is bullied, harassed, picked on, as they feel that they are being state wide with the amount of misconducts and the inaction of the department to investigate and have outcomes in these matters in a timely matter, that's where the human emotion comes into it, then they feel that they have to do something to protect their family.

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Now, as you can see in MFI 1 we've got officers that have been suspended since 24 July last year and still have no idea why they are suspended. Now, in those instances those people, they receive no contact from the department. There's no welfare calls. The role of a correctional officer, we've got the  
5 highest rate of PTSD in the world in the profession and when these people are off suspended, as we know, idle hand do the devil's work, these people are stressing, it's contributing to any psychological damage that that job has already caused to them and the department showed total disregard to those people's welfare, total disregard.

10 September, October, October, October, these people have had no contact. Now, when they are suspended, chief Commissioner, the letter that they are suspended on also directs them that they are not to have any contact with any correctional staff other than a governor at their location. Now, most  
15 correctional officers only have correctional officers as their friend base, because of the nature of the work you become very introverted. Now, we're not the high profile emergency service. So those friend bases the department essentially isolate them, again further exacerbating their psychological damage so they're not allowed to have this contact and the department shows total  
20 disregard to their welfare by not investigating these matters in a timely manner.

I've also got a snapshot of some of the other misconducts and suspensions that we are currently dealing with at the moment state wide and again this is that holistic family protection attitude that correctional officers have got and I  
25 will hand that up, if you like, chief Commissioner, and these things have got a commencement date when a lot of these allegations were brought to the attention of our correctional officers and again, you know, that is totally unacceptable, the amount of time that it takes for this department to investigate these staff and leave these staff with a cloud hanging over their  
30 head, whether or not they'll have a future, whether or not they'll have a job and this is where the officers on the ground do the actions that they've engaged in today to try and protect their staff.

The staff at the MRRC. Now, unfortunately I was at Long Bay all this morning  
35 so I don't have a copy of the actual dispute lodged by Corrective Services and I don't have a printed copy of the actual motion from the staff but essentially from what I've gathered over the phone it's in relation to the investigation process and these staff, I think, they've engaged in that action to try and force the department to expedite this process so that their member, at that location,  
40 can actually return to work.

HIS HONOUR: To jump the queue so to speak.

45 MCCAULEY: Again, as I said, this is human beings and their emotions and it's their family. So even though the association agrees, and will always as far as possible, abide by the award conditions, their members are human beings and their members act out in ways that sometime the employer might not agree with.

50 HIS HONOUR: Not only the employer, the commission doesn't agree with it.

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Because it's got an award in front of it, it requires certain actions to be taken to avoid industrial action.

5 MCCAULEY: We agree with that but a lot of those staff, on the ground, they're not conversant with the award.

10 HIS HONOUR: Mr McCauley, I'm more than happy to investigate the issues and deal with the substantive matters but the first thing that needs to be determined is how quickly this stoppage of work can be undone and get these people back to work and resume normal duties. When can that be done?

15 MCCAULEY: These people, in their brief discussions I've had with them, are prepared to meet at 8am tomorrow morning and definitely lift their bans if there is a commitment from the department that they will sit down and consult on how to get this process back on track. Now, if we go back to the Public Sector Appointment and Management Act, before we had the GSE, it was incumbent upon the department to conduct their investigation within a 56 day period. I've got investigations that are going for well over two years and this department, they will find something against those suspended officers so that the premier's memorandum 1996-35 they do not have to pay them compensations for the time that they've had these people suspended and these people are innocent but this department will keep them hanging out so that they don't have to pay any compensations to them.

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25 HIS HONOUR: As I say I'm happy to assist the parties investigate those issues but not while there is a strike going on.

30 MCCAULEY: And, chief Commissioner, I do not want to see any correctional officers lose pay but as far as the members at that location they said that they will lift their bans at 8am tomorrow morning when they return to work.

HIS HONOUR: Is there a strike and bans?

35 MCCAULEY: The industrial action.

HIS HONOUR: The industrial action is 24 hours, isn't it?

MCCAULEY: To remove their labour for 24 hours.

40 HIS HONOUR: So, they're not agreeing to do anything other than what they've already committed themselves to.

45 MCCAULEY: What the delegates have committed to me is that they will put it to their members tomorrow morning that they should return to work due to whatever has transpired in the Industrial Relations Commission today. Now, again, that is a group of people talking to a group of people and trying to influence them to lift their bans and return to work. Now, unfortunately if those people tell those delegates, and myself, because I will definitely be in attendance at that location, and I will definitely advocate strongly to have those people lift their industrial action so that we can engage in meaningful

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consultation with the department in regards to this unacceptable situation that is currently underway with the misconduct investigation process with New South Wales Corrective Services.

5 HIS HONOUR: What time is the next shift due to start?

MCCAULEY: 2pm but 4pm at that location, I think.

10 HIS HONOUR: Why can't they return to work at 2pm?

MCCAULEY: They've probably all been informed that they are currently in 24 hours industrial action. Now, whether or not those people have taken the liberty to unavailable themselves of a telephone or may have thought, well, this is an opportunity to go and have a game of golf, I don't know. The last time we engaged in industrial action was Friday 13 April 2018 and that situation arose where, I think, orders were issued from Commissioner Murphy and some people were definitely unavailable to attend work on that next available shift.

20 HIS HONOUR: What time was this motion passed?

MCCAULEY: I don't have a copy of the motion in front of me, chief Commissioner.

25 HIS HONOUR: 9.30, quarter to 10 this morning.

MCCAULEY: And they would have been in a meeting from 8 o'clock this morning.

30 HIS HONOUR: And all staff have been advised since they're not required because they're on strike for 24 hours?

MCCAULEY: That is the protocol. The staff that would have attended for what we call the C watch would have been informed not to attend that location. Because of the distance that they travelled, some may come from  
35 Campbelltown, some may come from the Blue Mountains, so instead of them coming all the way, rocking up at the gate and then being told, "Unfortunately we're on strike so off you go."

40 HIS HONOUR: Mr Powell, what do you say?

POWELL: Commissioner, I think we would find that an extremely unpalatable solution. We would be seeking recommendations that the association take whatever efforts they can do to ensure that their staff return to work to do their scheduled roster.

45 HIS HONOUR: Mr McCauley, assuming that I'm prepared to spend time with you today and tomorrow and the next day, if required, addressing the substantive issues why wouldn't a recommendation of the kind Mr Powell has just suggested be accepted?  
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5 MCCAULEY: I'm not saying, chief Commissioner, that it wouldn't be acceptable. I'm just saying that the logistics of trying to conduct all of our staff and have those staff available. As I said the association abides by the award as far as possible and if the commission makes a recommendation, we take those recommendations very seriously and we would attempt, where possible, to consult with our staff to get them to abide by that recommendation but again that's me, again advocating on behalf of the commission to do what the commission recommends.

10 HIS HONOUR: Assume I'm prepared to make that recommendation, Mr Powell, are you able to assist the PSA to contact staff and advise them? We should proceed on the basis that that's my recommendation. That staff should resume work, as soon as possible, their normal shifts and if there are some who are unavailable, for some good reason, then we can deal with that as time moves on, but given that the resolution was passed this morning at 15 9.30 or something, quarter to 10, and it's now five to one, it seems to be a speedy method of communication to the members available and I suspect that if that recommendation was conveyed to your members that it would be either accepted or rejected rather than unable be complied with.

20 MCCAULEY: Commissioner, could I seek a short adjournment so that I can consult with my delegates.

25 HIS HONOUR: Of course, I'm happy to give you that time but I would expect, in that time, that you discuss what steps you need to take and how quickly you may take them to convey that recommendation to the members at MRRC and get a resumption of normal work. We can then discuss how we might progress these substantive issues that are a matter of concern. Clearly the way you've outlined the case this matter goes beyond the member or two members, is it, 30 at the MRRC?

MCCAULEY: It's several members, it's more than two but another member, I think, was the straw that broke the camel's back is he's involved in another one of these matters that are in the second document that was handed up from us 35 where he was involved in a criminal matter, as a witness, that that criminal matter was dealt with and then the department called that officer a liar and said that he lied on his report, but the evidence that he reported in his report, was accepted by a criminal court, but this employer would not accept a judgment from a criminal court.

40 HIS HONOUR: I don't think I can descend into particulars of very matter. What I'm more likely to explore with you is the process by which, I'm not sure how many are on this list of matters.

45 MCCAULEY: I think there's in the vicinity of about 57, chief Commissioner.

HIS HONOUR: It certainly looks in the order of 50.

50 MCCAULEY: Yes, it's up the top, just under "current matters," chief Commissioner.

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HIS HONOUR: I see 57, thank you. And MFI 1 lists eight, I think.

MCCAULEY: They're just the officers that have not been informed what they are suspended for.

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HIS HONOUR: Are these all MRRC?

MCCAULEY: No, no, they're not all MRRC, they're all correctional officers, they're all a part of the correctional officer family.

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HIS HONOUR: This stoppage is at the MRRC, isn't it?

MCCAULEY: By correctional officers who are part of the greater correctional officer family, yes.

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HIS HONOUR: Yes, but the stoppage the moment has combined the MRRC?

MCCAULEY: Yes, it's confined to that location

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HIS HONOUR: Where there are officers, in the family, as you say.

MCCAULEY: And the association has worked very hard this morning to prevent other goals going out in support of those people.

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HIS HONOUR: Well, I'm pleased to hear that.

MCCAULEY: Knowing full well that because of this action we would have been in Court today and, yes, there has been a lot of calls, from a lot of locations, to support the action of those members at the MRRC but they were able to avert that action to hopefully get a better hearing in front of yourself.

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HIS HONOUR: I don't know whether you'll get a better hearing but you'll get a hearing and a fair one, I hope, but the point I'm trying to make is that this clearly extends beyond the MRRC from the PSA's point of view. One can understand how officers at the MRRC are particularly concerned about their colleagues but the evidence you're putting before me goes well beyond that and I'm not in a position to decide the priority of these things nor should people think that by not complying with their award obligations they're going to cause priorities to change. Priorities need to be determined according to the merits not according to industrial action. So, I'll grant you that time. How long do you think you'll need?

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MCCAULEY: I don't think will need ten, 15 minutes.

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HIS HONOUR: I'll resume at 1.15.

SHORT ADJOURNMENT

Mr McCauley.

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5 MCCAULEY: Thank you, chief Commissioner. Thank you for that short adjournment. Discussions with the state executive and the local delegates at that location. It is absolutely guaranteed that when they meet tomorrow morning that the industrial action will be lifted but if there is a recommendation from the commission to return to work at the next available shift they obviously won't stand in the way of that recommendation. The main concern that they do have is that if -that is the recommendation from the commission, as we know it will be, whether or not all of those officers that have been rostered for that shift will be contactable. If they're not the staff that do get contacted and do turn up for work, that adequate staff will be at that location to provide a safe working environment for those staff.

15 There is about 30 staff on the C watch, if they can't have all of those 30 staff, then obviously there would be a contingent of the staff that they've got there now stay on to provide that safe working environment for them.

HIS HONOUR: There are staff there now, are there?

20 MCCAULEY: There are staff there now, yes. Whenever any industrial action occurs, whether or not they're union members or non-members or the executive staff, albeit far few executive staff these days because the department have deleted one of their strike breaking rinks but there are staff there to provide the basic needs to incarcerated persons.

25 HIS HONOUR: I understood from the notification that it was executive staff that were carrying out the functions at the prison at the moment.

30 MCCAULEY: I don't know which staff are inside there but there may be union members, there may be non-union members, but we don't know who's inside that location.

35 HIS HONOUR: I think the important thing is to get as many staff there as we can and that's going to be done by getting that recommendation conveyed to the staff as soon as practicable.

40 MCCAULEY: And Ms Jess, the chair of the Prison Officers Vocational Breach has indicated that she will put out a bulletin, she will draft a bulletin to contact the association and have the association send that bulletin out through the normal processes to inform the staff that the recommendation from the commission is the recommendation that you put.

HIS HONOUR: The commission's very strong recommendation is that staff resume work at the next available shift. Mr Power.

45 POWELL: Commissioner, thank you for your recommendation. I just want to say that we find it hard to accept the proposition that the PSA can communicate that there is a strike on but are unable to communicate that the strike is off. I just wanted to further confirm that it is currently executive staff who are manning the MRRC at the moment and we just also confirmed that we can assist calling staff with the help of the OSU.

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5 HIS HONOUR: Thank you. Then you should do that and convey to them the commission's strong recommendation. They're be able to check the union's website and the bulletin for confirmation of the union's view as to that recommendation. What then do we do about the substantive issues of concern to the union? Mr McCauley.

10 MCCAULEY: Obviously, chief Commissioner, what is currently in train with the department is totally acceptable to the association and as indicated by my email of the 15th we sought an adequate explanation or response from the department and there was none forthcoming. So we would like to sit down with the peak officials of the professional standards area and I note that the assistance Commissioner of that area is in the room today, and he's only new in that role, and we've had no meetings or anything with that assistant Commissioner at this stage but we would like to definitely sit down and try to understand why these people have to suffer the way that they're suffering because this department is dragging their feet in regard to their welfare.

15 HIS HONOUR: Well, what I'm inclined to do is to adjourn the matter until, say, 20 2pm, to allow the information to be conveyed to staff as quickly as possible and then the parties can come back and report to me what steps have been taken to advise staff of the recommendation and we can explore in private conference the issues that you've raised.

25 MCCAULEY: Chief Commissioner, the state executive would also like Assistant Commissioner Corcoran to remain so that he could be involved in any discussions we have with the assistant Commissioner in governance because the majority of these persons do come under his carriage as the assistant Commissioner of custodial corrections.

30 HIS HONOUR: What do you say, Mr Powell? Are you content for the matter to be stood down until 2pm to allow that notification process to take place?

POWELL: Yes, courtroom.

35 HIS HONOUR: We'll resume at 2pm in a compulsory conference dealing with the matters of concern to the union.

40 MCCAULEY: Chief Commissioner, just to get that wording of your recommendation. Strong recommendation from the Industrial Relations Commission that the staff at the MRRC return to work--

HIS HONOUR: At the next available shift.

45 MCCAULEY: --at the next available shift.

HIS HONOUR: Or so soon thereafter as they may be able. If they're a bit late starting that's okay. We'll adjourn until 2 o'clock.

50 SHORT ADJOURNMENT

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Who would like to report on the steps taken in the intervening period?  
Mr McCauley?

5 MCCAULEY: Yes, chief Commissioner. Ms Jess has drafted the  
recommendation. It has gone to the association and the association is in the  
process of having that. Obviously it's got to go through the communications  
branch to the general secretary for his approval and then it'll be broadcast on  
the PSA website. It has been signed by the general secretary, chief  
10 Commissioner.

HIS HONOUR: Thank you. Mr Powell?

15 POWELL: Commissioner, yes, we've contacted the OSU and they've  
commenced contacting staff to advise them that they are to attend their  
schedule shifts.

HIS HONOUR: I'll adjourn into private conference unless the parties have any  
other course that they want to advocate and deal with the substantial  
20 questions.

MCCAULEY: We're happy for a private conference.

POWELL: The same, Commissioner.

25 HIS HONOUR: I'll join the parties at the bar table. We'll go off record.

ADJOURNED