

NORTHERN TERRITORY OF AUSTRALIA

Case No: 9252568

Rel No: 316/92

CORONER'S ACT

FORM OF INQUISITION

Inquest concerning the death of Anthony John Hayward resumed on 22nd April 1994 for the purpose of clarifying prison procedures in relation to the issue of razors to prisoners, both before and after Mr Hayward's death.

THE ADDITIONAL EVIDENCE.

The following evidence was tendered during the resumed inquest:

- (1) Exhibit 9 - a video of K. Block.*
- (2) Exhibit 10 - Superintendents Instructions dated 16th July 1990 relating to razor issue, extracted as follows:*

"1.21 RAZOR ISSUE

An issue of one razor (disposable type) will be made to each prisoner every Tuesday and Friday, in exchange for the old one which will be disposed of. (Prisoner's razors are to be kept on the razor board on Block Control Rooms and issued as required daily. Razor to be returned to Control Room after use.)

- 1.21.1 All prisoners are required to be clean shaven daily, unless exempted by the Superintendent or as requested by the Visiting Medical Officer.*
- 1.21.2 Permission will not be granted for prisoners to grow beards or moustaches until six weeks prior to release. Non Parole*

Period dates are not acceptable, unless a firm parole date is known.

- 1.21.3 *Maximum security prisoners or prisoners secured for their own protection, are not to have razors in their cells. They are to be held in Block Control Rooms and only used under supervision of an officer."*
(appearing on page 125 of the Instructions).

- (3) *Exhibit 11 - disposable razor (without cap) of the type presently issued to prisoners.*
- (4) *Exhibit 12 - Two sets of Instructions dated 31st July 1992, the first appearing on page 28B, and the second on page 36 B. The relevant instructions have been extracted:*

"(H) SHAVING DAILY

All prisoners are required to be clean shaven daily, before reporting on the morning Breakfast muster/roll call. unless exempted by the Superintendent or as requested by the Visiting Medical Officer. This information will be available on IJIS (Paragraphs 55 & 71, Schedule 2, Determination No.1 & Determination No.6, and Circular Instructions 89/21 & 92/8 relate,

- (i) *Block officers will issue razor blades to prisoners through the cell windows at 0730hrs. each day.*
- (a) *When the second officer arrives in the block, the razors will be collected by the officer who issued same, at unlock at 0740hrs., and placed into the razor board and accounted for. "*
(appearing on page 28B of the Instructions).

"(F) RAZOR ISSUE

An issue of a new razor (disposable type) will be made to each prisoner every Tuesday and Friday. Prisoner's razors are to be kept on the razor board in Block

Control Rooms and issued before lock-up at 1700hrs. daily Razors to be collected and returned to the Razor-Board when meal trays are collected by Evening staff."

(appearing on page 36B of the Instructions).

(5) Exhibit 13 - Memorandum dated 26th February 1993, extracted below:

"

MEMORANDUM

To: ALL BLOCKS OFFICERS

Date; 26/2/93

From: SUPERINTENDENT

Ref: DP211.

Subject: ISSUE OF RAZOR BLADES TO PRISONERS.

As from this date, Block Officers will issue razor blades to prisoners through the cell windows at 0730hrs. each day.

When the second officer arrives in the block, the razors will be collected by the officer who issued same, at unlock at 0740hrs. and placed into the razor board accounted for. He will also check to see that each prisoner is clean shaven, unless exempted on medical grounds or has prior approval not to shave, up to 6 weeks before being released.

This instruction supersedes all previous instructions on the matter, and Superintendent's Instruction No. 14(H) on page 28B of the manual, will be amended in due course.

J.H. BOHNING

Chief Superintendent

DARWIN PRISON.

JAW.

Distribution:

B, C, G, H, K, & L Blocks

& the Female section.

C.P.Os (A) & (OPS),

File.

13.1.94

CURRENTLY IN FORCE

ISSUED 26 FEBRUARY 1993."

- (6) Exhibit 14 - Internal Memorandum dated 25th February 1994 the contents of which appear below:

"DEPARTMENT OF CORRECTIONAL SERVICES

MINUTE

DATE: 25 February 1994 FILE REF: PN92/0035
TO: SECRETARY through Director (Custodial Operations)
FROM: SUPERINTENDENT (INVESTIGATIONS AND REVIEW)
SUBJECT: RAZOR ISSUE

As requested I have obtained details of the procedures for issuing razors to prisoners.

Darwin Prison

Procedures are recorded in Superintendents Instructions and in chronological order are as follows:

1. Superintendents Instructions which were introduced on 16 July 1990 contained details of razor issues on page 125 at point 1.21. Page 34 of the transcript has this section recorded as Exhibit 8. This instruction was in force at the time of Hayward's death on 21 December 1992. Attachment "A" refers.
2. A local instruction signed by Chief Superintendent Bohning was introduced on 26 February 1993. Attachment "B" refers.
3. Superintendent Instructions were amended on 21 October 1993 incorporating the local instruction mentioned at 2. Attachments "C",

"C1" and "C2" refer. On page 36B(F) the instruction on razor issues (C1) conflicts with another instruction on page 28(H) regarding daily shaving (C2). The procedure in force at this time is 28B(H) the "C2" attachment. I have requested Superintendent Howden to remove or alter the instruction on page 36B(F).

Page 38 of the Transcript records the razor issue instruction from page 36B(F) of the Superintendents Instructions which probably added to the confusion. Attachment "D" refers.

Alice Springs

Procedures are recorded in internal or local instructions, as follows:

1. Internal Instruction dated 27 December 1990. Attachment "E" refers.
2. An Instruction dated 10 May 1993 which is currently in force. Attachment "F" refers."

(7) **Exhibit 15** - Instruction issued 7th April 1994 extracted as follows:

"DEPARTMENT OF CORRECTIONAL SERVICES

MINUTE

DATE: 7 APRIL 1994 FILE REF: 93/0028; PN92/0035
TO: SUPERINTENDENT DARWIN PRISON
FROM: DIRECTOR CUSTODIAL OPERATIONS
SUBJECT: **RAZOR ISSUES - DARWIN PRISON**

I am informed that you have had discussions with Superintendent Willard regarding the above mentioned subject and the outcome of a recent Coronial Inquiry.

Would you now please issue a comprehensive up to date staff instruction dealing with every aspect of issue and retrieval of disposable razors.

Would you also ensure that the Darwin Prison Superintendents Instructions reflect the latest procedure and that anything contrary is repealed eg 25(F) on page 36B.

The Secretary has requested a copy of the new staff instruction for Department files and I suggest you forward the completed and updated instruction to the Superintendent (Investigations and Review) who can inform the Secretary which should conclude the "razor" episode.

BARRIE BARRIER"

(8) Exhibit 16 - Superintendents Local Instruction 37/94 dated 8th April 1994, the contents of which appear below:

"DEPARTMENT OF CORRECTIONAL SERVICES
MINUTE

SUPERINTENDENTS LOCAL INSTRUCTION 37/94

DATE: 8 APRIL 1994 FILE REF:
TO: ALL STAFF
FROM: SUPERINTENDENT, DARWIN PRISON
SUBJECT; RAZOR ISSUE

There appears to be a contradiction in the Superintendent's Instruction, issued 31 July 1992, on razor issue. The procedure explained in Section (H) SAVING DAILY, on page 28 B is the procedure that will apply. That is:-

"(H) SHAVING DAILY

All prisoners are required to be clean shaven daily, before reporting on the morning breakfast muster/roll call, unless exempt by the Superintendent or as requested by the visiting medical officer. This information will be available on IJIS (paragraphs 55 and 71, schedule 2, Determination No.1 and Determination No.6 and Circular Instruction 89/21 and 92/8 relate,

(i) *Block officers will issue razor blades to prisoners through the cell window at 0730 hours each day.*

(a) *When the second officer arrives in the block, the razors will be collected by the officer who issued the same, at unlock at 0740 hours, and placed in the razor board and accounted for "(Sup Instructions P28 B).*

The instruction layed out in Section (F) page 36 B is rescinded and no longer relevant.

Razors will be delivered to Blocks and Tuesday and Friday.

G. HOWDEN
SUPERINTENDENT
DARWIN PRISON"

(9) *Exhibit 17 - Amendment to Superintendents Local Instruction 37/94 dated 21st April 1994 extracted as follows:*

"DEPARTMENT OF CORRECTIONAL SERVICES

MINUTE

SUPERINTENDENTS LOCAL INSTRUCTION 37/94

DATE: 21 APRIL 1994 FILE REF:
TO: ALL STAFF
FROM: SUPERINTENDENT, DARWIN PRISON
SUBJECT: RAZOR ISSUE, TO REPLACE 37/94 ISSUED 8.4.94

There appears to be a contradiction in the Superintendent's Instruction, issued 31 July 1992, on razor issue. The procedure explained in Section (H) SHAVING DAILY, on page 28 B is the procedure that will apply. That is:-

"(H) SHAVING DAILY

All prisoners are required to be clean shaven daily, before reporting on the morning breakfast muster/roll call, unless exempt by the Superintendent or as requested by the visiting medical officer. This information will be available on IJIS (paragraphs 55 and 71, schedule 2, Determination No.1 and Determination No.6, and Circular Instruction 89/21 and 92/8 relate,

(i) Block officers will issue disposable razors to prisoners through the cell window at 0730 hours each day.

(a) When the second officer arrives in the block, the razors will be collected by the officer who issued the same, at unlock at 0740 hours, and placed in the razor board and accounted for "(Supt Instructions P28 B).

The instruction layed out in Section (F) page 36 B is rescinded and no longer relevant.

Razors will be delivered to Blocks on Tuesday and Friday.

G. HOWDEN

SUPERINTENDENT

DARWIN PRISON"

(10) Exhibit 18 - Chief Prison Officers Minute dated 21st April 1994 which reads as follows:

*"DEPARTMENT OF CORRECTIONAL SERVICES
MINUTE*

*DATED: 21 APRIL 1994 FILE REF:
TO: SUPERINTENDENT, INVESTIGATION AND REVIEW
FROM: C.P.O. HOLT
SUBJECT: RAZOR ISSUE*

On 20 April 1994 I sighted all Superintendent's instructions issued in all accommodation blocks in Darwin Prison.

I deleted paragraph F on page 36 B, I then placed a note on top of this paragraph indicating that Superintendent's Local Instruction 37/94 superseded this paragraph.

E. HOLT

CHIEF PRISON OFFICER

DARWIN PRISON"

(11) Exhibit 19 - Facsimile dated 13th January 1994 from Barry Barrier (bearing his handwritten note) the relevant parts of which have been extracted:

"(F) RAZOR ISSUE

An issue of a new razor (disposable type) will be made to each prisoner every Tuesday and Friday. Prisoner's razors are to kept on the razor board in Block Control Rooms and issued before lock-up at 1700hrs daily. Razors to be collected and returned to the Razor Board when meal trays are collected by Evening staff.

TOBACCO AND SWEETS ISSUES

Tobacco/sweets are issued to prisoners twice weekly (Tuesday and Fridays). Prisoners will make their preference on reception. One change only is allowed. (see Circular Instruction 80/17)

(F) superseded number 1993. Razors will be individually issued between 0700 and retrieved at 0800 on a daily basis.

B BARRIER

D.C.P. "

(Mr Barrier's handwritten notation has been underlined).

(12) Exhibit 20 - Letter dated 22nd April 1994 from D K Owston to the Coroner, extracted below:

"DEPARTMENT OF CORRECTIONAL SERVICES

Your reference

Secretary

In reply please quote:

GPO Box 3196

Darwin NT 0801

22 April 1994

Mr J Lowndes SM

Coroner's Chambers

Nichols Place

Cnr Cavenagh & Bennett Streets

DARWIN NT 0800

Dear Mr Lowndes

I am advised that a hand-written notation signed by the Director of Custodial Operations and faxed direct to the Coroner's Office on 13 January 1994, has caused some concerns. Attached copy refers.

I confirm:

- 1. The notation was never officially incorporated into Darwin Prison Superintendents Instructions, and*
- 2. There is no record to indicate that there was any alteration to instructions dealing with razor procedures in November 1993. I can only assume that the author of the proposed amendment meant February 1993.*

I confirm that the issue of disposable razors to prisoners at 0730 hours each day and retrieval at 0740 hours each day has been an operational procedure at Darwin Prison since 26 february 1993. Attached memorandum signed by Chief Superintendent Bohning refers.

I further confirm that the latest instruction regarding disposable razor issues at Darwin Prison dated 21 April 1994 adheres strictly to the same timeframes ie 0730 issue, 0740 collection and was only issued to rescind the contradicting Section (F) on page 36 B.

I trust this clarifies the situation.

Yours sincerely

D K OWSTON"

The following oral evidence was given by Mr Reginald Anthony Willard, the Superintendent of Investigation and Review.

This witness told the Court that since January 1994 he had been the Superintendent of Investigations & Review, responsible for reporting directly to the Chief Executive Officer of the Department of Correctional Services.

Mr Willard said that shortly after the introduction of the new Prisons (Correctional Services) Act in 1980, a set of instructions called Superintendent's Instructions were issued. Prior to that instructions were known as Local or Prison Instructions, and those instructions were generally loose-leaved.

The witness first referred to Exhibit 10 which was the Instruction relating to razor issue, issued on 16th July 1990.

Mr Willard stated that Exhibit 11 which was a disposable razor (without cap) was of the type currently issued to prisoners. It was the same type of razor as shown in the video, Exhibit 9. Explaining why the razors did not have caps the witness said:

"The razors are to be exchanged on the, I think Tuesdays and Fridays, and in the past when disposing of razors, some prisoners would attempt to remove the blade and put the cap back on, and throw it in the rubbish bin under the

supervision of the officer, but the officer couldn't see that there was no blade in there. Since that was discovered, when they're issued, they're issued without the cap, and the cap is destroyed, so no - none of the razors after issue have a cap on them any more."

Mr Willard then identified Exhibit 12, consisting of two sets of instructions. He said that after he first became aware of the two instructions in about February 1994, he requested that Darwin Prison remove the second instruction because it was inconsistent with the first.

Mr Willard said that both sets of instructions had become operational on the same day namely 31st July 1992. He said that was the day the instructions were signed and issued by the Superintendent. When asked how he specifically knew that the instructions commenced on 31st July 1992 Mr Willard said:

"Because they haven't been amended; if I could just take you to the page marked 36 B. If you look over on the left hand side, there's - that 's the second amendment of '93, and it's on 36 B and there's a typographical error there. It's got nothing to do with razor issue. It's got to do with the "B" at the top, Damage Recorded, and there's an index in the front of this that says there's been two amendments to this document since it was issued, neither of those amendments effected 28 B or 36 B in the areas that we're looking at."

The witness agreed there were two conflicting procedures as to razor issue in the Superintendent's Instructions dated 31st July 1992. He told the Court that a retired Chief Prison Officer was responsible for drafting the instructions of 16th July 1990, and also the two sets of instructions issued on 31st July 1992. Attempting to explain the conflicting instructions Mr Willard said:

"A chief prison officer who is now retired drafted the one that was prior to the - this one as an exhibit.

---And this one, that was dated 31 July 1992, and whilst it is no excuse in any way, I think that he just perpetuated a mistake. He's taken the shaving component out of personal hygiene in the 1990 version and the razor issue out of the 1990 version, and as he had other duties at the time and there's a considerable difference between the two specially in the 1990 version, he's duplicated or perpetuated the mistake by adding to what existed in 1990."

When asked to offer a reason why the inconsistency was not discovered in periodic general reviews of instructions the witness stated:

"I'm sure operationally many of the staff were aware of it because they tried to - or appeared to have tried to adopt a procedure that sort of satisfied both."

Mr Willard said that as a result of his investigations, to his knowledge the conflict between the two sets of instructions had not been reported to anyone in authority. However, he acknowledged that the matter may have at some time been scheduled for something to be done about it. He added: "Best information that I can receive is that there were - they tried a number of different arrangements."

Mr Willard made the following comments in relation to the indexing system relating to the instructions:

"I'm sure the person that designed the indexing system knew what it was all about but I think to - to others it's very - it's extremely difficult to follow....."

"Yes, I think Superintendents Instructions need to be totally simplified; this is far too unwieldy a document for an officer who works through rotational aspects of a prison - go through evening shift, night shift and day shift, and all the segments of - that this effects to be able to fully understand. It's too complex, far too complex, and I'm afraid that's how this inconsistency's occurred."

The witness was then asked whether there was a procedure in place for removing provisions that had been amended. He replied as follows;

"Yes, on - on the amendment sheet to the Superintendents Instructions and this is the last one, that was the second amendment of 1993, and that's dated 21/10/1993 and it - it's been perpetuated again from the old document. The old pages are to be extracted and destroyed and replaced by the new amendments. The idea behind that is that the instructions shouldn't fall into the wrong hands, that they should be kept together as one unit. What that actually does, in the absence of a master plan, makes it very - made it very difficult for me to trace backwards into history and find out the history behind all of this because other than I managed to fathom out the index system and I've also picked up some mistakes in it, some typographical errors in there, I found it very difficult."

Turning to the actual procedure for the issue of razors that was in place mid 1992 to late 1992 Mr Willard stated:

"The best understanding I've got and I've interviewed a number of officers that actually worked in those particular blocks at that time, and they assure me that the razors were issued around about 1700 hours and they were collected the next morning at unlock, other than for those prisoners who were excused from shaving for whatever reason or weren't allowed to have a razor."

Mr Willard acknowledged that the effect of that practice was that prisoners had razors overnight in their cells. It was his opinion that the practice represented "an attempt to satisfy both of the conflicting instructions."

At page 8 of the transcript the witness agreed that it was not acceptable to have conflicting razor distribution procedures in place at the same time. However, he said that had now been rectified.

Explaining the shaving procedures that applied to Mr Hayward prior to his death on 21st December 1992 Mr Willard stated:

"He was one of those prisoners that was under restriction and had to be given a razor and shave in front of an officer and then hand the razor back, so the - the razor was - he was never permitted to have the razor in his cell at any time other than when he was shaving, and that was under supervision."

Mr Willard was then referred to Exhibit 13 which has been extracted above. It was noted by the witness that while the memorandum superseded Superintendent's Instruction no 14 (H) on page 28 B of the manual, and foreshadowed an amendment in due course; the instruction on page 36 B received no attention, and continued to be operative.

Exhibit 14 was an internal memorandum which Mr Willard had caused to come into existence. This memorandum was directed at curing the inconsistency between the instruction on page 28 (B) (amended in accordance with the memorandum 26th February 1993) and the instruction on 36 B of the manual by the removal of the latter instruction.

The next document referred to the witness was Exhibit 15, a minute directed at ensuring that the Prison Superintendent's Instructions reflected the latest procedure, and that the anything contrary was repealed ie. the instruction on page 36 B.

Exhibit 16, which was identified by Mr Willard, was the direct result of the minute dated 7th April 1994 (Exhibit 15). It stated that the procedure set out in Section H "Shaving Daily" on page 28 B of the manual was the current procedure, and that the instruction set out in Section F on page 36 B was rescinded and no longer operative.

The next document referred to the witness was Exhibit 17, being an amendment to the Superintendent's Instruction 37/94. According to Mr Willard the amendment was necessary because the original instruction referred to the issue of razor blades, when the issue of blades had been discontinued for some years. The current practice was to issue safety disposable razors. The witness stated that the amendment reflected the current practice.

Mr Willard explained the existence of Exhibit 18 in the following terms:

"The chief prison officer I referred to earlier, Chief Prison Officer Holt, he made sure that the procedures were in place regarding the issue of razors and then he made sure eventually that the form of words came out which reflected those procedures, and I asked him to physically go around and delete those sections in every Superintendents Instructions he could find in the accommodation blocks at Darwin Prison so rather than rely on somebody else doing it, so he didn't make a number of phone calls - he physically went around and did it himself, and this is just to me, to confirm that he's done that."

At page 13 of the transcript the witness passed the following comments in relation to the difficulties in containing the use in prison of blades from disposable razors:

"I don't think any system can be 100 percent secure. You - you - you aim for optimum, but you can never get total perfection. The razors that are removed are disposed of in a Hannon's bin outside: prisoners, very minimum security prisoners take garbage out - it would be possible for them to I'm sure get past a search or something like that, so the answer to the question has to be no."

Mr Willard went on to say that the present system in relation to razor issue was "as tight and as good as it could be."

Exhibit 19 was the facsimile dated 13th January 1994 from Barry Barrier bearing his handwritten note in the form of a further instruction purporting to supersede the instruction on page 36 B of the manual. The notation read as follows:

"F (referring to 36 B Instruction) superseded November 1993. Razors will be individually issued between 0700 and retrieved at 0800 on a daily basis."

Mr Willard stated that Mr Barrier's notation had not in any shape or form found its way into the Superintendent's Instructions. In that regard he gave the following evidence:

"I spoke to the Acting Superintendent Hughie Colwood and I read out the handwritten notes on the bottom of that document and I asked him if he had ever seen them, and he said no, he hadn't. I asked him if they were contained in any instructions in the prison and he said, not to his knowledge. He had never - he said it was a sheer impossibility because it was 0700 and there was no-one on duty at the time and, as I said earlier, I think Mr Barrier did mention it to me at one stage in a generality, that first thing in the morning and retrieved before breakfast, but I've never seen that document."

During cross-examination the witness gave the following evidence:

Mr Willard acknowledged that the instruction on page 36 B of the manual was in total conflict with the instruction on page 28 B. He said that the actual practice followed at the time of Mr Hayward's death was "--- a combination of the two - cross between 36 B and 28 B". The result was that prisoners had their razors overnight. He then made the following comment: "Yes, there was a - from the best knowledge available to me and speaking to a numbers of officers they tried at one stage collecting them with the evening trays and dispensed with that in order to try and satisfy the two."

The witness agreed that both the 28 B and 36 B instructions were in force at the time of Mr Hayward's death, but neither instruction was being complied with.

Mr Willard also conceded that if the 28 B instruction was being followed before Mr Hayward died, the likelihood of Mr Hayward gaining access to a razor, and being able to take his life in the way he did would have been reduced because of the short period of time (ie ten minutes) between the issue of razors to prisoners and the collection of those razors.

Mr Willard acknowledged that there was an 18 month to 2 year period during which time no-one formally recorded the contradiction between the two sets of instructions (ie. 28 B and 36 B).

The witness said that the state of the instructions prior to the action he instigated in the matter was unsatisfactory.

During re-examination Mr Willard gave the following evidence as to the space between cell 7 and cell 8.

"It's one and a half besser blocks, and when I had occasion to cause that video to be made yesterday, I actually went into cell 7 and I got another officer to go in cell 8 and I could comfortably shake his hand. Even more difficult than that, of course, prisoners for a long time, you're looking at two cells that are side by side so that they are opposites, one's a left handed and the other's right handed cell. If you try and get something from a - the cell 8 to cell 9 there's a far greater distance, but they can still do that, if they can rip up a piece of sheet or something like that, tie something on it and swing it and that's been done many times."

In response to questions put to him by the Coroner Mr Willard gave the following evidence.

As to the nature of Superintendent's Instructions, he stated as follows:

"The - the way they were developed, Your worship, but under the principal legislation, the Prisons (Correctional Services) Act, some determinations were made by the Director of Correctional Services at the time and one of those directions has an instruction to the superintendent to ensure that all of his staff are informed of their duties. Superintendents Instructions were promulgated and issued in - in written words that stay rather than the superintendent getting each new officer in and saying - and - and reading all of this out, so the superintendent caused them to be in a written format and they're loose-leaf so the pages can be interchanged as they are amended, so these are the Superintendents Instructions to the officers on how they will perform their duty, or how they should perform their duty, and there's a - a rider I think in the front of them that say if - you know, that you can't cover every contingency."

It was put to the witness that if Mr Barry Barrier had decided that there should be an amendment to the instructions the amended instructions would not be operational until it had actually been signed by the Superintendent. Mr Willard stated as follows:

"The Director of Custodial Operations Mr Barrier would have sent a minute to the respective superintendent saying, "I want you to amend your instructions to reflect this."

The witness went on to say that if Mr Barrier had minuted the proposed amendment, the superintendent would then be required to carry the amendment into effect.

Mr Willard was called upon to offer any suggestions he might have in relation to the formatting of the Superintendents Instruction to remove any conflict or confusion over instructions of the kind experienced in the present case.

His evidence was as follows:

Well, I think the instructions as I've said previously, are far too long and unwieldy. I think they should be prepared at leisure rather than at haste: the person who was charged with the responsibility of preparing these did it as a part of another function and would perhaps work on it for a day and then get three days where he had to do other things and then come back onto it. I believe that we should have the luxury of sitting down with a group of people and going through it in finite detail against an index that's prepared separately of all of the issues that these instructions are to address, and a tick and flick form, so that you've - you've addressed this point and people can raise considerations. I would involve people like the visiting medical officer, health professionals, and various staff associations - a round table, set aside a number of days to discuss the draft document in comparison with what existed previously, and what the draft actually says and what is hoped to achieved."

Finally, it was put to the witness whether there were ever any briefing sessions at the prison in relation to Superintendents Instructions to explain the meaning and effect of particular instructions, and to overcome any difficulties that prison officers might have with the interpretation and implementation of a particular instruction. Mr Willard gave the following evidence:

"I think the answer to your question is no, that when a full set of instructions are finally approved and issued, every officer signs for a copy and they are then expected to go away and read and digest everything that's contained therein. With the - with one particular item I would sort of anticipate that an officer would write a report to the superintendent saying that 'This particular section causes me some Concern', and he would then record those concerns and the superintendent would then, if they were - they were valid, occasion the amendments to be made and issue everybody with amendments, and probably call the individual officer concerned in, and say, 'Look, I've addressed this problem and this is how I've addressed it'."

FINDINGS AND CRITICAL OBSERVATIONS

I make the following findings:

- (1) That at the time Mr Hayward took his own life there was in force two contradictory prison instructions in relating to the issue of razors to prisoners.*
- (2) That neither of these contradictory instructions were being followed at the time of the incident which resulted in Mr Hayward's death.*
- (3) That prison officers at the Berrimah Gaol took it upon themselves to effect a compromise between the conflicting sets of instructions.*
- (4) That on any commonsense view the purported compromise was no compromise at all, effectively introducing a third de facto instruction in relation to the issue of razors.*

These findings, both individually and collectively, invite a number of critical observations.

The fact that there were two conflicting sets of instructions in force at the same time reflects poorly upon the efficiency of the administrative sphere of the Prison's operations; and also upon those persons charged with the responsibility for formalising Superintendents Instructions.

That neither of the contradictory instructions were being followed amounts to an aggravation of an already unsatisfactory state of affairs. It reflects badly upon the day to day running of the gaol, and upon the competence of its servants and agents, from the ranks of prison officers up to the office of Superintendent of the Prison.

That prison officers, with or without the knowledge of the Superintendent, (the evidence being inconclusive on this matter) saw fit to put in place what they believed to be a compromise between contradictory instructions is a further manifestation of the worrying degree of mismanagement that prevailed at the prison prior to Mr Hayward's death. That the purported compromise was no compromise at all, but in effect a third de facto instruction in relation to razor issue is further self incriminating.

The level of mismanagement that prevailed at the Prison prior to Mr Hayward's death bears a significant relationship to the circumstances surrounding his death.

I accept that special shaving arrangements were made for Mr Hayward, namely that he was to shave in the presence of a prison officer each day. This arrangement, which was entirely appropriate in the circumstances, aimed to ensure that Mr Hayward was not left alone in the possession of a razor. However, as it transpired that preventive measure did not prevent Mr Hayward gaining access to a razor-blade, the evidence being that one was passed to Mr Hayward by a fellow prisoner.

It is accepted that it can be difficult to stop prisoners lending or passing an object to another prisoner, for example a razor. However, as I observed in my initial findings handed down on 28th January 1994, the potentiality for a prisoner passing a razor to Mr Hayward depended upon the restrictions that were placed on the issue of razors to prisoners, and the upon retention of razors by prisoners.

The failure to follow the 28B Instruction coupled with the practice of allowing prisoners overnight access to razors, in my opinion had a dual effect. Firstly it increased the potentiality for Mr Hayward gaining access to a razor-blade. I am mindful of the short distance between cells, and the capacity of one prisoner in one cell to pass an object to a prisoner in another cell. Secondly, it effectively

counteracted the special shaving arrangements put in place for Mr Hayward's safety. Had the instruction set out on page 28B of the manual been followed to the exclusion of the instruction set out on page 36B, in lieu of the actual procedure being followed at the material time, the likelihood of Mr Hayward gaining access to a razor would have been dramatically reduced. That likelihood would have been further reduced if Mr Hayward had been made to shave in the presence of a prison officer whilst the razors were being issued to prisoners and collected in accordance with the 28B Instruction.

In my opinion, as a result of a series of administrative failures within the prison system, there was a general failure to take all reasonable steps to minimise the risk of Mr Hayward taking his own life by the specific means of cutting his veins with the blade of a disposable razor. Such a conclusion underscores an urgent need to address the type of administrative failures that occurred in the present case to avert the occurrence of similar deaths in custody in the future.

It is acknowledged that steps were taken to change the practice that prevailed at the time of Mr Hayward's death. Action was taken in the form of a local instruction signed by Chief Superintendent Bohning on 26th February 1993. (See Exhibit 13). Although this instruction terminated the practice which had developed of allowing prisoners overnight access to razors, the instruction on page 36B of the manual (which was inconsistent with the new instruction) remained in force and co-existed with the new instruction. That state of affairs persisted until February 1994 when the inconsistency between the two instructions was finally detected, and steps taken to repeal the instruction on page 36B of the manual.

By Superintendents' Local Instruction 37/94 the inconsistency between the two instructions was remedied, the instruction set out in Section F on page 36B being rescinded, and no longer operative. However the then current practice required further amendment, because the instruction referred to the issue of razor blades (which was a direct copy from the earlier 28B instruction), and the

practice of issuing blades had been discontinued for some time. Accordingly, an amended instruction was issued on 21st April 1994, substituting "razors" for "razor blades". There was a further aspect of the Instructions that came to light which I consider again reflects poorly upon the administrative sphere of the Prisons operations. I am referring to Mr Barrier's notation on Exhibit 19 to the effect that prior instruction had been superseded by a new instruction. Firstly, this notation had only come to the knowledge of the Coroner's office through its own investigations. Secondly, Mr Willard had no knowledge of the document. Thirdly, he was of the opinion that the document, the purpose of which was to amend a Superintendent's instruction, had no practical application because the Prison had not opened at 7.00am for some years.

Following the conclusion of the evidence given at the inquest the Coroner's office received a letter from Correctional Services which became Exhibit 20. That correspondence explained that the contents of Mr Barrier's notation were never incorporated in the Superintendent's Instructions.

It is patently clear that the inconsistency in the Superintendent's instructions that existed at the time of Mr Hayward's death, and which continued until it was officially recognised in February 1994, and formally remedied in April 1994, was due to an administrative failure within the prison system to accurately record and check changes in the Superintendent's Instructions that occurred from time to time. The unwieldy nature of the manual and its indexing system were major contributory factors. A more careful recording and checking of changes to the Instructions, engendered by a more workable indexing system, and less unwieldily manual would have avoided the inconsistency that arose in the present case.

The very fact that the Superintendent's Instruction, which was issued on 8 April 1994, and intended to rectify the inconsistency in the Superintendent's Instructions referred to the issue of razor blades, (the issue of which had long been abandoned) immediately suggests that the instruction was formulated with

less than proper care. However, on the more positive side, the discrepancy was soon identified and rectified.

It can not be overemphasised that the highest degree of care must be exercised in the formulation of prison Instructions. They must be clear, concise and devoid of any ambiguity or inconsistencies. Any defects in their formulation will inevitably carry over into their implementation, which is precisely what happened in the present case.

It is unclear on the evidence whether the prison officers in fact reported the inconsistency in the Superintendent's Instructions to the Prison's Administrative Section. What is absolutely clear, however, is that rather than remove the inconsistency and have the Superintendent's Instructions clarified, a so-called compromise between the two conflicting instructions was adopted by prison officers with or without the involvement of the Prison's Administrative Section. Quite apart from the totally unsatisfactory nature of that compromise, this entire situation should never have occurred. In the event of there being any inconsistency in the Superintendent's Instructions there should have been in place appropriate procedures for prison officers to report the matter to the Prisons Administrative Section, and for appropriate action to be taken by that Section.

Finally, the administrative deficiencies which prevailed within the prison system at the time of Mr Hayward's death inevitably form part of the material circumstances surrounding Mr Hayward's death. If there had been no inconsistency in the Superintendent's Instructions, had prison officers not attempted to resolve the inconsistency by adopting a practice which they regarded as a compromise between two conflicting instructions, and had the instruction set out on page 28B of the manual been followed, then the likelihood of Mr Hayward gaining access to a razor through a fellow prisoner would have been dramatically reduced. There was clearly a failure on the part of the prison authorities to take optimal measures to prevent a prisoner in the position of Mr

Hayward from gaining access to a razor.

As observed in my earlier findings the improper use of the intercom system was yet another material circumstance surrounding Mr Hayward's death. This circumstance coexisted with the administrative deficiencies I have outlined. Taken together they played a significant part in Mr Hayward's death. Had the administrative deficiencies not existed, then the opportunity for Mr Hayward to gain access to a razor would have been kept to a minimum. Equally, had the intercom system been reserved for its intended use, then that would have allowed for an optimal response time to the emergency that arose in Mr Hayward's cell. Taking the administrative deficiencies which resulted in prisoners (with the exception of Mr Hayward) having overnight access to razors, in conjunction with the improper use of the intercom system which was sanctioned by the prison authorities, I am affirmatively satisfied that the prison authorities failed to take all reasonable steps to ensure that Mr Hayward, or a prisoner similarly circumstanced, was not in a position to take his own life in the manner in which he in fact ended his life.

FURTHER RECOMMENDATIONS

In addition to the recommendations included in my findings handed down 28 January 1994 I make the following recommendations:

- (1) That all Superintendent's instructions are drafted with precision to accord with the practice that is intended to be put in place.*
- (2) That as and when Superintendent's Instructions are amended the amendments are properly documented and any prior instructions which are intended to be superseded by the new instruction are declared to be expressly rescinded.*

- (3) *That there be a manual setting out the Superintendent's Instructions, preferably in loose-leaf form, and as and when instructions are issued the superseded instructions are physically removed from the manual, so that the manual only contains a current set of instructions.*
- (4) *That the indexing system manual and its indexing system be kept as simple as possible.*
In that respect the suggestions of Superintendent Willard which appear at page 22 of the transcript should be followed up.
- (5) *That a register be kept recording the dates on which a particular Superintendent's Instruction became operative or ceased to be in force. That the register also incorporate the text of both current and repealed instructions.*
- (6) *That only a competent person or persons be allocated to prepare the manual and keep it update.*
- (7) *That only a competent person or persons be allocated to keep the register and maintain it.*
- (8) *That appropriate administrative procedures be put in place to ensure a proper and effective line of communication between the Director of Custodial operations and the Superintendent of Berrimah Gaol, in relation to prison procedures. This recommendation is designed to avoid a repetition of the apparent break down in communication that arose out of Mr Barriers notation purporting to supersede a previous Superintendent's instructions.*
- (9) *If it not already be the practice within the prison:*
(a) That upon induction into the prison system all prison officers be supplied with a copy of the manual.

(b) *That their manual be kept up to date to accord with changes in the Superintendent's Instructions and*

(c) *As and when an instruction is amended or a completely new instruction comes into force a meeting of all prison officers be convened to ensure that all officers become fully acquainted with the change to the Superintendent's Instructions.*

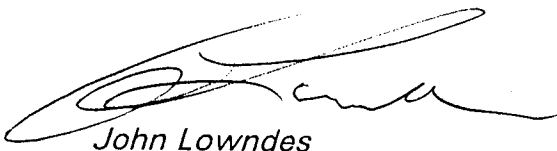
I would add that all prison officers should receive adequate training in relation to all Superintendent's Instructions.

(10) *That a satisfactory prison protocol be established for the prompt reporting by prison staff to the Superintendent of any apparent inconsistencies in the Superintendents Instructions.*

(11) *That the Superintendent give immediate and proper attention to any inconsistency in the instructions reported to him pursuant to the said protocol.*

Finally, it would appear on the evidence before me that the current procedures for issue of razors in the Alice Springs Gaol are different to the procedures that currently apply at Berrimah Gaol. In the absence of persuasive agreements to the contrary, I can see no reason why the procedures should not be uniform throughout the prison system.

GIVEN under my hand this 27th day of May 1994.

A handwritten signature in black ink, appearing to read 'John Lowndes', with a stylized, flowing script.

John Lowndes

Coroner for the Northern Territory.