

Report

Special Commission of Inquiry into Offending by Former Corrections Officer Wayne Astill at Dillwynia Correctional Centre

The Honourable Peter McClellan AM KC



New South Wales
Australia

ISBN 978-1-922257-82-6

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**Special Commission of Inquiry into Offending by Former Corrections Officer Wayne Astill
at Dillwynia Correctional Centre**

Her Excellency the Honourable Margaret Beazley AC KC
Governor of New South Wales
Office of the Governor
Macquarie Street
SYDNEY NSW 2000

Your Excellency,

**Special Commission of Inquiry into Offending by Former Corrections Officer Wayne Astill at Dillwynia
Correctional Centre**

I was appointed by Letters Patent dated 13 September 2023, issued pursuant to the *Special Commissions of Inquiry Act 1983 (SCOI Act)*, to conduct a Special Commission of Inquiry into offending by former Corrections Officer Wayne Astill at Dillwynia Correctional Centre.

I now present to you the Report of the Special Commission, comprising one volume.

Pursuant to s. 10(3) of the SCOI Act, I respectfully recommend that the whole of the Report be made public.

Yours faithfully,

A handwritten signature in black ink, appearing to read "P. McClellan".

The Honourable Peter McClellan AM KC
Commissioner



New South Wales
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Acknowledgement of Country

The Special Commission of Inquiry into Offending by Former Corrections Officer Wayne Astill at Dillwynia Correctional Centre (the **Special Commission**) acknowledges the Traditional Owners and Custodians of Country throughout Australia.

We pay our respects to Elders past and present.

We acknowledge the Gadigal people, the Traditional Owners and Custodians of the land on which the Special Commission was located.

We recognise Aboriginal and Torres Strait Islander people as the First Peoples of Australia and celebrate their continuing connection to the land, sea, and community.



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Content Warning

This Report contains content which may be confronting or distressing. Many of the offences committed by Wayne Astill were sexual offences. They were committed against women incarcerated at Dillwynia Correctional Centre. Instances of offending, including serious sexual offending, and what was known about that offending are explored in this Report.

The Special Commission has endeavoured to prepare the Report as sensitively as possible. However, the use of offensive language and detailed description of traumatic events, including sexual assault, has at times been necessary for a full and accurate account of what occurred.



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Australia

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Executive Summary

Wayne Astill was a Correctional Officer with Corrective Services NSW (**CSNSW**). Before joining CSNSW in October 1999 he was a serving police officer and for a time was a detective. As his police personnel file reveals, he should never have been employed by CSNSW. His file contained complaints of serious criminal and other misconduct which, apart from raising questions as to why he was not prosecuted, cast doubt on the integrity of CSNSW's employment process. Whether corruption or incompetence (it must have been one or the other) was responsible for his acceptance by CSNSW, I cannot say. It has led to tragic consequences for both prisoners and prison officers.

After serving for a time at Parklea Correctional Centre, Astill was transferred to Dillwynia Correctional Centre (**Dillwynia**), an all-female facility. He was there from February 2009 until his arrest on 20 February 2019. When at Dillwynia, he served as a Senior Correctional Officer and at times acted as Chief Correctional Officer.

I explain in this Report that Dillwynia was not a well-managed facility. Prisoners may not have escaped, but it seems that otherwise the centre failed the inmates' need for a stable, secure, and safe environment. The evidence tells the story of a facility where inmates were treated without respect by many Correctional Officers. Many prison officers, including the Governor, showed disrespect to their colleagues. The lack of respect came from the top and permeated through middle management to the lower levels of management. Foul language used by staff towards prisoners and, on occasions, to each other, was commonplace. Fear of retribution which could take a number of forms made it difficult for inmates to trust the 'system' and have confidence in reporting misconduct. This was also true of Correctional Officers. Complaints were

summarily dismissed, including by the Governor of the gaol at the time, Ms Shari Martin. The gaol was described by one senior officer as a 'viper pit' or a 'very toxic environment'.

The prison was a source of constant rumour about, among other matters, but most importantly for this Report, the conduct of Astill. This is not surprising. A prison is a closed environment where prisoners and officers will inevitably observe the activities of fellow inmates and officers. It will be noticed if an inmate is spending unusual amounts of time with a particular Correctional Officer. It will also be noticed if contrary to protocol the officer is going alone into an inmate's cell at night. It will be noticed if an inmate is receiving contraband from an officer, including clothing, cigarettes, or drugs. And those observations will inevitably lead to gossip. In Astill's case, it led to inmates composing a song which they sang that clearly suggested that Astill was having sex with inmates.

Astill's offending took place over a period of almost five years. He has been convicted of offending against 14 inmates. There may be others. It is impossible to believe that, given the acknowledgment by some Correctional Officers, including the former Manager of Security, Leanne O'Toole, that rumours were abundant, that a majority of Correctional Officers and a great many inmates would not have been aware that Astill may be 'up to no good'. Instead of investigating the rumours, the management of the gaol sought to suppress them at multiple levels. In many cases, the available evidence was more than rumour.

A small number of Correctional Officers were prominent in attempting to have management address the problems but without success. Failure by some senior staff members and management to competently and respectfully deal with complaints made by officers and inmates alike, resulted in many staff concluding that reporting was pointless. Inmates, rightfully, understood that they would not be believed by those in management when making a report of serious misconduct by an officer and feared the consequences of doing so. Astill was a domineering personality in the gaol making it difficult for both inmates and officers to complain about his behaviour. They feared retribution.

There are multiple statutes, regulations and policies that apply to the conduct of Correctional Officers and reporting misconduct. They are complex, overlapping and, at times, contradictory. The evidence makes plain that most officers had little knowledge of them or understanding of how they operate.

This is not to say that some complaints originating from the gaol did not find their way to the appropriate unit internal to CSNSW but outside the gaol. Some did. However, the system for their management was not 'fit for purpose'. And, so it seems, the resources given to, at least, the Investigations Branch (**IB**) were totally inadequate.

The system distinguished reports of misconduct and reports in the nature of intelligence (Intelligence Reports). It is a difficult distinction in the prison context. The former were supposed to go to the Professional Standards Branch (**PSB**) for processing. The latter went initially to the IB. Although CSNSW dispute that this was the correct procedure, Intelligence Reports were analysed by IB and only referred to the PSB or the unit associated with it, the Professional Services Committee (**PSC**), if the manager of IB believed it to be appropriate. It was undoubtedly the case that on occasions, reports concerning misconduct allegations, as opposed to intelligence, were sent to IB rather than PSB. This occurred over a period of years, and it is impossible to conclude otherwise than it was the accepted practice – the product of a system not fit for purpose.

Only one word is appropriate to describe the situation in IB – hopeless. It seems for a period, probably not much less than a year, no Intelligence Report that had been referred to IB was processed at all. Because only one person, who had other responsibilities was available to consider them and he apparently had no available time, nothing happened. In all six Intelligence Reports were sent from Dillwynia to IB prior to Astill's arrest, however, no investigation or referral was initiated. The earliest report was dated 20 October 2016.

IB was managed by Mr Michael Hovey. He deserves criticism for allowing the situation to deteriorate to the point where nothing happened. Even if he lacked adequate resources, he had some. At least a triage process should have been put in place to ensure that serious or urgent matters were referred across to PSB for processing. CSNSW submitted that his failure may be indicative of a lack of integrity on Mr Hovey's part. The evidence before me does not support this conclusion. However, he left me with the impression of a person lacking initiative and energy who inappropriately reconciled himself to a system that was flawed and failing.

Although the problems in the system for managing complaints about the conduct of officers were significant, the fundamental problems began in the management of

Dillwynia. The evidence established that the Governor at the time, Ms Martin, was not capable of successfully managing the gaol. Although officers reporting to her also failed, she carried responsibility for the security and safety of the inmates. Ms Martin reported to an Area Director who in turn reported to Assistant Commissioner Corcoran, who has since been appointed as the Commissioner.

It was Mr Corcoran who approved Ms Martin's appointment to manage Dillwynia. He did this notwithstanding his concerns about her behaviour as a manager. He had counselled her on a number of occasions about her conduct when she was the Governor of a different gaol. At Dillwynia, it became apparent to her Director, Hamish Shearer, that there were problems. He made these known to Mr Corcoran. Mr Corcoran accepted that he knew she was not up to the job. He also disclaimed responsibility for managing her. Instead, he left matters with Mr Shearer. Although Mr Corcoran did not believe that anything would be achieved by it, they agreed to put a Performance Improvement Plan (**PIP**) in place for Ms Martin. Mr Shearer later changed his mind and did not implement the PIP. Mr Corcoran was not aware that this had occurred.

It is difficult to understand why Ms Martin, who was known to have difficulties as a manager, should have been appointed to Dillwynia. It is perhaps more difficult to understand why the Assistant Commissioner, now the Commissioner, to whom she was, through Mr Shearer responsible, had little idea about his power to remedy the situation. Mr Corcoran failed to satisfactorily discharge his function as a senior executive in making the original decision and failing to be aware of the capacity he had to deal with a Governor who was not performing satisfactorily.

Apart from Ms Martin, the Report is critical of the conduct of a number of prison officers. But, in reality, the middle management of the gaol failed to function as it should. I am also critical in a number of respects of the actions of Mr Shearer, to whom Ms Martin was responsible.

As the conclusions in the report make plain, at least in relation to Dillwynia, the culture, practices, and procedures within the gaol, and the performance of a number of correctional officers and their managers, were inadequate and inappropriate. Multiple officers and managers failed to do their duty. The problems were exacerbated by the

failure of multiple levels of managers in CSNSW to ensure that both the management system and the managers who administered it were capable of dealing with the problems that emerged.

I have not determined whether the conduct of individuals would justify a disciplinary response from CSNSW management. However, the normal procedure of the NSW Department of Communities and Justice to respond to these issues should be followed. For reasons explained in the Report, I have not recommended that any matter be referred to the Independent Commission Against Corruption or the NSW Police Force for further investigation. I have concluded that although there is evidence that criminal offences may have been committed, with one exception that evidence is not sufficient to warrant the prosecution of any person. The exception relates to an offence allegedly committed by Astill towards another Correctional Officer. Discretionary factors may weigh against prosecution of that offence. The Report examines those issues.

Finally, a word of caution. Notwithstanding the forensic skills of Counsel Assisting and those assisting them, I cannot be sure that I have uncovered all possible evidence of misdeeds in Dillwynia. Nor having regard to the fact that documents continued to be produced after the hearings ceased, can I be certain that I have received all relevant documents. I am also concerned that given the culture inside Dillwynia, the friendships and determination not to 'dob' mates, together with the desire to avoid criticism, I may not always have been told the truth. Where I can, I have identified those problems, but I doubt that I have been able to reveal all of the detail of the disfunction within the gaol.

I am also concerned that although Senior Counsel for CSNSW participated throughout the hearing, it was not until submissions were made that it was suggested other former officers of CSNSW who had not previously been identified as necessary, could have given relevant evidence and should have been called. If, as may be possible, others of whom I was not aware would have helped the Special Commission, the time to proffer their evidence was before the hearing process was complete. The fact that this was not done is, to say the least, disappointing. I trust that if there is relevant evidence that has not been drawn to my attention it has not been deliberately withheld. If it has, it would constitute serious misconduct. Furthermore, in the course of submissions, Senior Counsel for CSNSW advanced serious allegations against Mr Hovey. Those allegations were never put to him when he gave evidence and for that reason, the submission should never have been made.

Nevertheless, sufficient evidence has been obtained to enable an accurate understanding of the nature of the problems, if not the complete detail of all relevant events. With additional time, it would have been possible to have interviewed and taken evidence from more inmates and officers. However, given the need of government for an early understanding of where the system had failed, I did not believe it to be useful to prolong the Special Commission. Far better that efforts are made as soon as possible to bring about essential reforms. Any extension would have been for a number of months.

The Special Commission has revealed many problems in the management of one correctional centre. But it has also revealed a multiplicity of problems in the reporting and management of misconduct by officers of CSNSW.

In an endeavour to assist in resolving at least some of the problems, I have made a number of recommendations.

I have been tasked with looking at the problems in one correctional centre and I cannot say whether those problems or similar problems exist in other centres. However, it would be wrong to assume that there are not problems elsewhere.

CSNSW has responded to the issues raised by problems at Dillwynia by committing to changes in management structure and process. Although many of these matters remain objectives on paper, it is imperative that change consistent with these objectives occur. That change is required not just at Dillwynia but across the entire CSNSW organisation.

It is apparent that problems in the management structure of CSNSW and the incapacity of some managers have undermined public confidence in CSNSW facilities. Because many problems have been revealed, it will be important that a process of review of the entire institution is undertaken, and appropriate changes implemented. In my opinion, this should not be left to a process internal to CSNSW.

Although I do not urge that there be any further formal inquiry, I believe a small task force reporting to the Secretary of the NSW Department of Communities and Justice charged with overseeing the process of internal review of the structure, management, the performance of staff, and the effectiveness of CSNSW in making necessary changes is required.

Notwithstanding the complexity of the issues raised with the assistance of Mr Lloyd SC and Ms Davidson, we have completed the Special Commission in seven months. Apart from the efforts of both counsel who have my gratitude, this is due to the dedication to our task by Lena Nash, Amber Doyle, Sophie Williams, Stephanie Breen, Amelia Cook, Jennifer Tsui, Kate Lawrence, Luella White and Gabrielle Frost from the Crown Solicitor's Office, as well as Detective Senior Constable Courtney Barron and Detective Senior Constable Elyse Houldin of the New South Wales Police Force. I thank all of them for their contribution to our task and for the cooperative spirit in which they have worked. Each of them functioned at a high level under great pressure.

I am also grateful for the contribution of my associate, Jennifer Masina, whose dedicated assistance and attention to detail has ensured that my task was made considerably easier than it might otherwise have been.



New South Wales
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Recommendations of the Special Commission

1. The CCTV coverage at Dillwynia should be brought up to the standard set out in the Specification as an urgent priority. Regardless of whether it is required by the Specification, CCTV cameras should be installed at Dillwynia in all offices where officers potentially meet alone with inmates and in corridors leading to such offices. Consideration should also be given to CCTV footage in all correctional centres being retained for a minimum of 90 days before being overwritten. Funding should be made available to implement these recommendations.
2. CSNSW should create a standard of required conduct in relation to persons relieving as Intelligence Officers, including a process for Professional Standards and Investigations to conduct probity checks, which should be documented on personnel files.
3. In a manner consistent with the *Government Sector Employment Rules 2014*, a record of any disciplinary process or outcome should be kept on an employee's personnel file so as to be readily accessible by human resources personnel both within CSNSW and within the Department of Communities and Justice more broadly.
4. Section 236Q of the CAS Act should be amended so that to prove the offence against a correctional employee who has engaged in sexual conduct or an intimate relationship with an *inmate*, there is no need to further prove that risk of the kind referred to in s. 236Q(1)(a) or s. 236Q(1)(b) exists. The offence should

remain in its current form in respect of a correctional employee who has engaged in sexual conduct or an intimate relationship with a person who is subject to a community-based order.

5. Clause 253 of the CAS Regulation should be amended to clarify the obligations of CSNSW staff in relation to alleged criminal offending and other misconduct by officers. Consideration should be given to imposing a uniform reporting obligation (not differentiating between more junior and more senior Correctional Officers) and to requiring all reports of allegedly criminal conduct to be made to the Commissioner of CSNSW or their delegate (reflecting the importance of them becoming aware of alleged criminal conduct by CSNSW staff as soon as possible).
6. CSNSW should clarify the reporting requirement for allegations of misconduct, to make clear to staff that:
 - a) reports of alleged misconduct, including criminal conduct, are required to be made in accordance with cl. 253 of the CAS Regulation.
 - b) for any allegations of misconduct that involve alleged criminal conduct, there is an obligation to report also to the CSIU or NSWPF.
 - c) all CSNSW and DCJ communications to staff, training materials, and policy documents should be clear and consistent as to reporting requirements for Correctional Officers in relation to staff misconduct.
7. A direct form or template for reporting misconduct to PSI should be made available on the front page of the CSNSW Intranet, enabling reporting directly to PSI with an option to copy the report to the Governor of the relevant correctional centre, in the case of custodial corrections staff.
8. CSNSW should ensure that all sections of the COPP accurately reflect the current process for reporting allegations of misconduct and any change in process resulting from the implementation of Project Merge.
9. The minimum features of a new PSI model should include:
 - a) clear documentation of processes and outcomes;

- b) expected time standards for the conduct of different types of investigations, with reporting against time standards so that the potential for any backlog to develop is identified early;
 - c) an effective triaging process to ensure that serious complaints are addressed without delay;
 - d) improved communication of both process and outcome of complaints to complainants;
 - e) mandatory, face-to-face training, where possible, for CSNSW staff in relation to the new PSI model;
 - f) regular mandatory refresher training for staff in relation to their reporting obligations;
 - g) clear, auditable measures of PSI performance; and
 - h) a secure process for reporting allegations, including a voicemail facility that enables staff to make reports outside of business hours, with the option of reporting to the officer ultimately responsible for managing the complaint process or their delegate. Although this may occur, it should not be mandatory to report misconduct to any officer below the rank of a Deputy Commissioner.
10. The new PSI case management system should be designed to enable rapid and clear collation by PSI of records concerning CSNSW staff the subject of misconduct allegations (including Intelligence Reports not regarded as indicative of misconduct) and to assist PSI staff in recognising potential patterns of staff conduct. The replacement for the SIU function should be designed to be easy to use and once implemented, all CSNSW staff (not only those who are Intelligence Officers) should be trained in its intended function and how it should be used.
11. A Deputy Commissioner should be responsible for the PSI after Project Merge and they should report regularly to the Secretary, DCJ, or their delegate, at a frequency determined by the Secretary. Reports should include notification of any new allegations of serious misconduct and updates as to the status of ongoing complaints.

12. CSNSW should provide an induction to Chaplains (and any contractors) engaged by correctional centres to provide services to inmates. At this induction, they should be informed that they are to report misconduct consistently with the obligations imposed on Correctional Officers in cl. 253 of the *Crimes (Administration of Sentences) Regulation 2014* (CAS Regulation) and the 2021 DCJ Code of Ethical Conduct to do so. This induction should also emphasise that the 2021 DCJ Code of Ethical Conduct does apply to contractors to eliminate any confusion about its applicability.
13. An assessment of AVL suites should be undertaken to ensure that noise from those suites cannot be heard in adjoining rooms or corridors.
14. Specific training should be provided to staff in relation to which communications are privileged and confidential so that they are not intercepted or otherwise read or listened to by staff.
15. Inmates should, where practicable, be provided with phone access during out-of-cell hours to enable private and confidential phone calls.
16. CSNSW should ensure that adequate information in relation to complaint mechanisms is provided to inmates when they are received into a correctional centre. The processes drawn to the inmates' attention should include the ability to make complaints to external bodies not controlled by CSNSW; the ability to make complaints on a confidential basis; and the ability to raise any concerns in relation to reprisals with external bodies following the making of a complaint. All correctional centres should ensure this information is repeated to inmates on admission, rather than assuming this has occurred in another centre. When an inmate is not fluent in English, so far as is practicable, all correctional centres should ensure that the information is provided in a language the inmate understands.
17. CSNSW should conduct regular audits to ensure that correctional centres are complying with the required process for inducting inmates.

18. CSNSW should ensure all correctional centres have an auditable system that records internal inmate requests and complaints, which can be inspected by CSNSW, the Ombudsman, and the Inspector. The auditable system should record the time taken to resolve a complaint.
19. I make the following recommendations with respect to the Sexual Misconduct Reporting Line:
 - a) that all protocols, procedures and inmate communications regarding the Sexual Misconduct Reporting Line make clear that it is distinct from CSSL and operates in a different manner;
 - b) that CSNSW staff operating the Sexual Misconduct Reporting Line should be required to attend training in responding to disclosures of sexual assault, and in trauma-informed practice, prior to commencing their operation of the Sexual Misconduct Reporting Line; and
 - c) that specialised, culturally appropriate support should be available to Indigenous inmates in accessing the Sexual Misconduct Reporting Line and that CSNSW staff operating the Sexual Misconduct Reporting Line should be trained in culturally appropriate practice for Indigenous inmates.
20. CSNSW should give appropriate consideration to funding an advocacy service for female inmates and, in designing the service, ensure that it maintains confidentiality, maximises its accessibility to female inmates (including in particular its accessibility to Indigenous female inmates) and that its scope extends to advocacy in the making of complaints about misconduct by CSNSW staff (rather than only external issues such as housing and care of children).
21. CSNSW must ensure that timely access to confidential, external, independent, specialised sexual assault trauma counsellors is provided in an ongoing manner to the victims of Astill's offending and other female inmate victims of sexual assault by CSNSW staff via the Uralla Cottage service provider, for so long as it is required (in the view of the specialist counsellors).

22. That CSNSW, should it be technically possible, ensure that any recorded message on the OTS advising inmates that calls will be recorded and monitored is not played on telephone calls to exempt bodies and exempt persons, and that the COPP be amended to reflect this.
23. In urban areas, and where possible in other areas, officers in intimate relationships with each other should not be permitted to work in the same correctional centres. In rural areas, where implementation of such a rule may not be practical, clear and specific instructions accompanied by training in managing conflicts of interest should be mandatory for correctional centre management and officers themselves. There should be a requirement that such training be repeated at regular intervals.
24. The Department of Communities and Justice (DCJ) should consider what legislative amendments (to the GSE Act or otherwise) or other measures could be put in place in order to be able to require Correctional Officers to rotate between correctional centres after a period of 10 years.
25. CSNSW should implement the measures proposed by Ms Snell to reduce contraband in CSNSW facilities. Further sophisticated detection devices for contraband on all persons coming into gaols, including officers, should be utilised. The responsibility for supervision and screening of entrants to the gaol should be assigned to the relevant Correctional Officers on a rotational basis. Alongside this, as occurs in other jurisdictions, a group of Correctional Officers should be tasked with visiting different gaols to undertake the screening process to protect against friendships or familiarity between officers from prejudicing the integrity of the screening process.
26. I recommend that a stand-alone Governor for Dillwynia should be appointed as a priority.
27. Any training program for new recruits should ensure they are made aware of the opportunity to raise concerns or complaints in relation to other CSNSW staff in a safe manner.

28. That training on the following topics be delivered to all CSNSW staff and not limited to induction training for new staff. Such training should be delivered in-person where possible and be required of all staff members, including those at senior and management levels. The topics which should be covered are:
 - a) ethical standards;
 - b) trauma-informed practice;
 - c) identifying behaviour that constitutes misconduct;
 - d) reporting misconduct, including in respect to the reporting obligations in CAS Regulation cl. 253, and specifically that an inmate's consent to a report being made is not relevant to the obligation; and
 - e) communicating with, and supporting, inmates when handling their complaints of misconduct.
29. That a Continuing Professional Development points-based system for training be introduced. It is further recommended that the system mandate that staff be required to obtain a certain number of points from different mandated categories, and that such categories include ethics and the reporting of misconduct.
30. That a Women's Strategy be implemented to oversee strategic and operational issues for female inmates. This should include, as one aspect of a Women's Strategy, the development of a sexual misconduct policy and associated training for CSNSW staff.
31. Every executive of CSNSW should complete the entry-level Correctional Officer training as part of any onboarding for their respective role, and prior to any substantive uptake of the executive position.



New South Wales
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Glossary

Term	Abbreviation
Apprehended Violence Order	AVO
Audio-visual link	AVL
Australian Federal Police	AFP
Closed-circuit television	CCTV
Common Auto Dial List	CADL
Code of Conduct and Ethics for NSW government sector employees on and from 1 November 2022	2022 NSW Code
Commissioner of Corrective Services NSW	Commissioner of CSNSW
Corrections Intelligence Group	CIG
Corrective Services Investigation Unit	CSIU

Term	Abbreviation
Corrective Services NSW	CSNSW
Corrective Services Support Line	CSSL
<i>Crimes (Administration of Sentences) Act 1999</i>	CAS Act
<i>Crimes (Administration of Sentences) Regulation 2014</i>	CAS Regulation
Crown Solicitor's Office	CSO
CSNSW Guide to Conduct and Ethics, operative from 2010 to 2018	2010 Guide
Custodial Operations Policy and Procedures	COPP
DCJ Code of Ethical Conduct, operative from 19 April 2021 to present	2021 DCJ Code of Ethical Conduct
Department of Communities and Justice	DCJ
Department of Justice	DOJ
Dillwynia Correctional Centre	Dillwynia
Director Custodial Operations Metro	Director Metro
DOJ Managing Misconduct Procedure	DOJ Managing Misconduct Procedure

Term	Abbreviation
Former Department of Justice Code of Ethics and Conduct Policy, operative from August 2015 until 2021	2015 DOJ Code
<i>Government Sector Employment Act 2013</i>	GSE Act
<i>Government Sector Employment Rules 2014</i>	GSE Rules
Independent Commission Against Corruption	ICAC
<i>Independent Commission Against Corruption Act 1988</i>	ICAC Act
Inspector of Custodial Services	The Inspector
Integrated Intelligence System	IIS
Investigations Branch	IB
Law Enforcement Conduct Commission	LECC
Manager of Security	MOS
Minister for Corrections	Minister
Misconduct Assessment and Prevention Directorate	MAP Directorate
Misconduct Assessment and Triage Team	MATT

Term	Abbreviation
NSW Police Force	NSWPF
Offender Integrated Management System	OIMS
Offender Telephone System	OTS
<i>Ombudsman Act 1974</i>	Ombudsman Act
Performance Improvement Plan	PIP
Professional Standards and Investigations	PSI
Professional Standards Branch	PSB
Professional Standards Committee	PSC
Services and Programs Officer	SAPO
Special Commission of Inquiry into Offending by Former Corrections Officer Wayne Astill at Dillwynia Women’s Correctional Centre	Special Commission
Special Management Area Placement	SMAP
Special Investigation Unit	SIU
<i>State Records Act 1998</i>	State Records Act
Task Force Themis	Task Force

Term	Abbreviation
The Inspector of Custodial Services	The Inspector
Wirringa Baiya Aboriginal Women’s Legal Centre	Wirringa Baiya
Women’s Legal Service NSW	Women’s Legal Service



New South Wales
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Dramatis Personae

Name	Role/roles
Current and former inmates of Dillwynia	
Elizabeth Cox	Victim Ms Cox is also referred to as Witness II in some documents
Trudy Sheiles	Victim in relation to whom Astill has been convicted of offence(s) Ms Sheiles is also referred to as Witness H in some documents
Sarah Ward	Victim in relation to whom Astill has been convicted of offence(s) Ms Ward is also referred to as Witness K in some documents
Witness B	Victim in relation to whom Astill has been convicted of offence(s)

Witness C	Victim in relation to whom Astill has been convicted of offence(s)
Witness D	Victim in relation to whom Astill has been convicted of offence(s)
Witness E	Victim in relation to whom Astill has been convicted of offence(s)
Witness F	Victim in relation to whom Astill has been convicted of offence(s)
Witness G	Victim in relation to whom Astill has been convicted of offence(s)
Witness I	Victim in relation to whom Astill has been convicted of offence(s)
Witness J	Victim in relation to whom Astill has been convicted of offence(s)
Witness M	Victim in relation to whom Astill has been convicted of offence(s)
Witness N	Victim in relation to whom Astill has been convicted of offence(s)
Witness O	Victim in relation to whom Astill has been convicted of offence(s)
Witness P	Witness in Astill's trial

Witness Q	Witness in Astill's trial
Witness R	Witness in Astill's trial
Witness S	Victim in relation to whom Astill has been convicted of offence(s)
Witness T	Witness in Astill's trial
Witness U	Witness in Astill's trial
Witness V	Witness in Astill's trial
Witness W	Witness in Astill's trial
Witness X	Witness in Astill's trial
Witness Y	Witness in Astill's trial
Witness Z	Witness in Astill's trial
Witness AA	Witness in Astill's trial
Witness BB	Witness in Astill's trial
Witness CC	Witness in Astill's trial
Witness DD	Witness in Astill's trial
Witness EE	Witness in Astill's trial

Witness FF	Witness in Astill's trial
Witness GG	Former/current inmate of Dillwynia
Witness HH	Former/current inmate of Dillwynia
Witness JJ	Former/current inmate of Dillwynia
Witness KK	Former/current inmate of Dillwynia
Witness LL	Former/current inmate of Dillwynia
Witness MM	Former/current inmate of Dillwynia
Current and former Corrective Services NSW employees	
David Alessi	Senior Correctional Officer, Dillwynia
Wayne Astill	Chief Correctional Officer, Dillwynia Senior Correctional Officer, Dillwynia
Catherine Avery	Principal Industries Officer, Dillwynia
Anthony Baker	Overseer, Dillwynia
Fiona Baker	Overseer, Dillwynia
Michael Baldi	Chief Director, Human Resources
Peter Barglik	Correctional Officer, Dillwynia

Cailla Barlow/Hall	Correctional Officer, Dillwynia Overseer, Dillwynia
Judith Barry	Principal Correctional Officer, Dillwynia Chief Correctional Officer, Dillwynia
Brian Bartlett	Manager of Security, Dillwynia
Renee Berry	Senior Correctional Officer, Dillwynia
Jacquelyn Brown	Senior Correctional Officer, Dillwynia
Malcolm Brown	General Manager, State-wide Operation, Security and Custody
Ronald Brown	Correctional Officer, Dillwynia
Ronald Brumwell	Correctional Officer, Dillwynia
John Buckley	Assistant Commissioner, Custody Metro, Security and Custody
Saffron Cartwright	Director of Custodial South Region Governor, Dillwynia Manager of Security, Dillwynia
Sarah Casey	Intelligence Analyst, Investigations Branch

Nicola Chappell	Governor, Dillwynia
Lucy Connolly	Advisor, Support Unit
Kevin Corcoran	Commissioner Assistant Commissioner, Custodial Corrections
Glenn Clark	Correctional Officer, Dillwynia
Jacinta Curtin	Correctional Officer, Dillwynia
Hayley Davis	Correctional Officer, Dillwynia
Jean Dolly	Senior Correctional Officer, Dillwynia Correctional Officer, Dillwynia
Cheryl Douglas	Overseer, Dillwynia
Rae Dukes	Correctional Officer, Dillwynia
Dean Edwards	Senior Assistant Superintendent, Metropolitan Special Programs Centre
Paul Foster	Senior Correctional Officer, Dillwynia
Curtis Gaffney	Correctional Officer, Dillwynia
Karen Garrard	Acting Coordinator, Professional Standards Branch

Deborah Gaynor	Service and Programs Officer, Dillwynia
Westley Giles	Chief Correctional Officer, Dillwynia Senior Correctional Officer
Luke Grant	Deputy Commissioner, Strategy and Governance
Douglas Greaves	Professional Standards Manager, Professional Standards Branch
Belinda Gurney	Advisor, Support Unit
Suryanarayan Hariharan	Acting Manager of Security, Dillwynia Principal Correctional Officer, Dillwynia Casual Correctional Officer
Tania Hockey	Correctional Officer, Dillwynia
Neil Holman	Principal Correctional Officer, Dillwynia Chief Correctional Officer, Dillwynia
Matthew Holyoak	Senior Correctional Officer, Dillwynia
Pam Hotham	Principal Correctional Officer, Dillwynia
Michael Hovey	Director, Investigations Branch

Davey Jeans	Senior Correctional Officer, Dillwynia Correctional Officer, Dillwynia
Suellen Johnson	Chaplain, Dillwynia (contracted through Anglicare)
Steven Karras	Director, Professional Standards Branch
Bernd Kaschubs	Acting Senior Assistant Superintendent, Corrections Intelligence Group
Rajbir Kaur	Overseer, Dillwynia
James Koulouris	Assistant Commissioner, Governance and Continuous Improvement
Pamela Kellett	Principal Correctional Officer, Dillwynia Chief Correctional Officer, Dillwynia
Ian MacRae	Acting Governor, Dillwynia
Shari Martin	Governor, Dillwynia
Anne-Marie Martin	Deputy Commissioner, Security and Custody
Michelle Micallef	Director, Corrective Services Academy
Leasha Michaelson	Acting Coordinator, Professional Standards and Investigations

Julijana Miskov	Senior Correctional Officer, Geoffrey Pearce Correctional Centre Correctional Officer, Dillwynia
Mirza Mohtaj	Senior Correctional Officer, Dillwynia
Fergal Molloy	Business Partner to Infrastructure and Assets Manager of Technical Security
Anne O'Reilly	Senior Correctional Officer, Dillwynia
Leanne O'Toole	Manager of Security
Michael Paddison	Business Manager of Operations, Corrective Services Industries Manager of Security, Mary Wade Correctional Centre Principal Correctional Officer, Dillwynia Chief Correctional Officer, Dillwynia
Patricia Peek	Senior Correctional Officer, Dillwynia
Timothy Peek	State-wide Operations Custodial Operations, Operational Performance and Review Branch Senior Correctional Officer, Dillwynia Correctional Officer, Dillwynia
Erin Porter	Overseer, Dillwynia

Grant Riddle	Senior Correctional Officer, Dillwynia
Mishelle Robinson	Correctional Officer
Peter Robinson	Director, Professional Standards Branch
Darren Rowe	Senior Correctional Officer, Dillwynia Correctional Officer, Dillwynia
Jocelyn Ryan	Correctional Officer
Peter Severin	Commissioner
Carlo Scasserra	Assistant Commissioner, Governance and Continuous Improvement
Adam Schreiber	Acting Governor, Dillwynia Governor, Geoffrey Pearce Correctional Centre
Hamish Shearer	Director, Custodial Operations, Metro and Central West Region
Emma Smith	Director, Custodial Operations, Metro and Central West Region Governor, Dillwynia
Craig Smith	Manager of Security, Wellington Correctional Centre
Andrew Tayler	Intelligence Analyst, Investigations Branch

Leon **Taylor**

Acting Commissioner

Deputy Commissioner, Community, Industry and Capacity

Steve **Thorpe**

Assistant Commissioner, Work and Education

Jeremy **Tucker**

Director, Parliamentary and Executive Services

Stefan **Skopelja**

Legal Officer, Professional Standards and Investigations

Chantal **Snell**

Assistant Commissioner, Delivery, Performance and Culture

Steven **Vella**

Correctional Officer, Dillwynia

Stephen **Virgo**

Principal Correctional Officer, Dillwynia

Senior Assistant Superintendent/Principal Correctional Officer – Intelligence

Scott **Westlake**

Senior Assistant Superintendent, Security and Intelligence

Senior Correctional Officer, Dillwynia

Scott **White**

Senior Overseer, Dillwynia

Anne **Whitehead**

Principal Correctional Officer, Dillwynia

Deborah Wilson	Intelligence Officer, Dillwynia Chief Correctional Officer, Dillwynia
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Kim Wilson	Correctional Officer, Dillwynia
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Mark Wilson	Correctional Officer, Dillwynia
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Joanna Wong	Legal Officer, Professional Standards and Investigations
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Thomas Woods	Acting Governor, Dillwynia Acting Governor, Metropolitan Reception and Remand Centre
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Marilyn Wright	Director, Custodial Corrections, Metropolitan Region
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Michelle Young	Advisor, Support Unit
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Angela Zekanovic	Acting Director, Professional Standards and Investigations
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[Current and former NSW Police Force employees](#)

John Bamford	Detective Inspector, Corrective Services Investigation Unit
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Michael Cambridge	Detective Senior Constable, Corrective Services Investigation Unit
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Robert Hollows	Detective Inspector, Corrective Services Investigation Unit
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Joshua Palmer	Detective Sergeant, Corrective Services Investigation Unit
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[Other persons](#)

Michelle Cole	Former Official Visitor for Dillwynia
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Helen Duggan	Official Visitor for Dillwynia
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Paul Miller	NSW Ombudsman
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Fiona Rafter	Inspector of Custodial Services
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New South Wales
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Background

1.1 Background to the Special Commission

1. Wayne Astill was a Correctional Officer at Dillwynia Correctional Centre (**Dillwynia**), an all-female prison, located in Western Sydney. He commenced employment at Dillwynia in October 1999 and remained there until he was suspended from duty on 22 February 2019.¹
2. On 25 August 2022, a jury convicted Astill of 27 criminal offences, comprising: five counts of aggravated sexual assault without consent; 14 counts of aggravated indecent assault; three counts of aggravated act of indecency; and five counts of misconduct in public office.²

1 Ex. 3, TB 3, Vol. 11, Tab 281, CSNSW.0001.0013.3224_0001; Ex. 3, TB 1, Vol. 4, Tab 2B, AST.002.010.0001_0005.

2 Ex. 3, TB 1, Vol. 4, Tab 2B, AST.002.010.0001_0001.

3. Prior to his trial, Astill had pleaded guilty to seven counts of misconduct in public office.³ All 12 of the misconduct in public office counts of which he was convicted concerned inappropriate personal or sexual relationships between Astill and inmates at Dillwynia.
4. The sentencing judge, Judge O'Rourke SC, further found that the offence of intimidation, which was before the Court on a certificate pursuant to s. 166 of the *Criminal Procedure Act 1986*, had been proved beyond reasonable doubt. That offence concerned conduct of Astill towards an inmate.⁴
5. On 31 March 2023, Astill was sentenced to an aggregate term of 23 years' imprisonment, with a non-parole period of 15 years and four months.⁵
6. The counts on the indictment for which Astill was convicted spanned the period between March 2014 and February 2019,⁶ against 14 victims, all of whom were, at the time of the offending, inmates at Dillwynia.⁷ Those victims were witnesses B, C, F, O, G, M, I, J, E, D, S, N, Trudy Sheiles and Sarah Ward. Astill's offending occurred in various locations inside Dillwynia.
7. On 28 July 2023, the NSW Government announced it had established a special ministerial inquiry (**the Inquiry**) into the circumstances surrounding the offences committed by Astill. The Inquiry was established under s. 82 of the *Government Sector Employment Act 2013 (GSE Act)* at the request of the Minister for Corrections of NSW (**the Minister**).⁸ I was appointed to chair the Inquiry.
8. Shortly after commencing work on the Inquiry, it became apparent to me that there would be difficulties with witnesses seeking to claim legal professional privilege or refusing to provide answers on the ground that doing so may incriminate them. Those same difficulties began to emerge with respect to the production of documents.

3 Ex. 3, TB 1, Vol. 4, Tab 2B, AST.002.010.0001_0001-0002.

4 Ex. 3, TB 1, Vol. 4, Tab 2B, AST.002.010.0001_0029-0030.

5 Ex. 3, TB 1, Vol. 4, Tab 2B, AST.002.010.0001_0051.

6 Ex. 3, TB 1, Vol. 4, Tab 2B, AST.002.010.0001_0001-0023.

7 Ex. 3, TB 1, Vol. 4, Tab 2B, AST.002.010.0001_0002-0029.

8 Terms of Reference, Special Ministerial Inquiry, 13 September 2023.

9. The difficulties arose from the legislation pursuant to which the Inquiry had been constituted. Under the GSE Act witnesses are permitted to refuse to answer questions, and produce documents, if they have a reasonable excuse for doing so. A reasonable excuse would include legal professional privilege or that the answer or document might incriminate them.
10. Accordingly, on 28 August 2023 I wrote to the Minister informing him that I had formed the view that I was unable to inquire into the full terms of reference through the powers then available to me under the GSE Act. For these reasons, I requested that the special powers available under the *Special Commissions of Inquiry Act 1983 (SCOI Act)* or equivalent legislation be made available to me.
11. On 13 September 2023, the Inquiry was reconstituted as a Special Commission of Inquiry (**Special Commission**) pursuant to letters patent issued by her Excellency the Honourable Margaret Beazley AC KC, Governor of the State of NSW, under the SCOI Act.
12. The letters patent authorise me to inquire into, and report on, the circumstances related to the sexual offences committed by Astill at Dillwynia, including:
 - a) *Whether any other employee of Corrective Services NSW had knowledge or reasonable suspicion of the offending and if so, when, and what steps they took in relation to that knowledge or suspicion.*
 - b) *Whether any person engaged in the management of Dillwynia Women's Correctional Centre had knowledge or reasonable suspicion of the offending and, if so, when, and what steps that person took either alone or as a member of the management team in relation to that knowledge or suspicion.*
 - c) *The systems of supervision and oversight that applied in relation to Wayne Astill at Dillwynia Women's Correctional Centre, their adequacy, and how they could be improved to reduce the risk of serious offending.*
 - d) *The policies and procedures available at Dillwynia Correctional Centre for inmates or staff to raise complaints about misconduct, including sexual offending by correctional officers.*

- e) *Whether the circumstances related to Astill's offending and your findings require further consideration of broader site or case specific or Corrective Services wide investigations.*
 - f) *Whether the circumstances related to Astill's offending or any matter revealed by this inquiry, related to Dillwynia Women's Correctional Centre, indicate inadequacies in the policies and procedures for professional oversight and/or the conduct of professional standards investigations that apply in Corrective Services NSW, and whether, in particular, they are sufficiently independent and robust.*
 - g) *Whether any matters arising from the inquiry should be referred to the Independent Commission Against Corruption (ICAC) or the NSW Police Force for further investigation.*
13. The Special Commission was further authorised to make recommendations in relation to issues raised in the course of the Special Commission.

1.2 Approach to fact-finding

14. In reaching my findings, having regard to the nature of the issues requiring resolution, I have applied the civil standard of proof which requires 'reasonable satisfaction' as to the particular fact in question in accordance with the principles discussed by Dixon J in *Briginshaw v Briginshaw* (1938) 60 CLR 336:

It is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the tribunal. But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent likelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to a reasonable satisfaction of the tribunal ... the nature of the issue necessarily affects the process by which reasonable satisfaction is attained.

15. In other words, the more serious the allegation, the higher the degree of probability that was required before I could be reasonably satisfied as to the truth of that allegation. I have also read and considered all the of the submissions filed on behalf of parties with leave to appear.
16. I am mindful of the fact that much of the evidence before the Special Commission comes from inmates of Dillwynia, some who have been convicted of serious crimes. As a consequence, it is necessary to be cautious when considering the credibility of their evidence when it conflicts with the evidence of others. Those conflicts are generally between the evidence of the inmate and that given by Correctional Officers.
17. It is also important to bear in mind that the inmates have no reason to have lied to the Special Commission. They have nothing to gain or lose in this Special Commission, except for a sense that justice has been served by the truth emerging. What is remarkable is that the women's accounts of complaints made to officers about the very bad things happening in the gaol are all complaints about events that truly were happening and happening over a long period of time.
18. I am mindful that some inmates may have committed offences of dishonesty, or may have lied to avoid or minimise their criminal liability. That past behaviour alone does not suggest a motive or propensity to lie about the events that occurred at Dillwynia.
19. Some of the officers who gave evidence, both junior and senior, have left Dillwynia, and others remain. Each of them has an interest in protecting their reputation and, like many people in a similar position, would find it difficult to admit failure, especially when the failure may have been of a fundamental and catastrophic kind. Although a number of officers were frank and admitted where they may have failed, others were not. Where their evidence is in conflict with inmates or other prison officers, I have generally accepted the evidence that is contrary to the evidence of the prison officer who is being criticised.
20. Both the inmates who came forward to give evidence and the officers who gave evidence adverse to their colleagues have demonstrated considerable courage. The possibility of retribution against them was recognised by the Commissioner

of Corrective Services NSW who issued an Instruction on 14 October 2023 cautioning staff that certain types of conduct obstructing the work undertaken by the Special Commission, including actions of any kind against staff or inmates that would be seen as punishment or retribution for having some involvement in the Special Commission, would not be tolerated. The possibility of retribution was a constant concern of inmates and some officers when Astill was offending in the gaol. This makes it most unlikely that any officer or inmate who gave evidence critical of an officer is fabricating their evidence. As I have stated, where there is a conflict, I generally prefer the evidence of the inmate or officer giving the critical evidence, rather than any denial or other exculpatory response of the officer who has been criticised for reasons set out in more detail below in relation to particular conflicts.

21. Evidence given to the Special Commission suggests that cliques had developed among some officers in the gaol. It is self-evident that those in the more powerful cliques would come together to protect each other. I believe that this has occurred. As a consequence, I am not satisfied that I have uncovered all of the problems that existed in the gaol and I believe the current Governor, as she herself acknowledged, has a difficult task in trying to restore effective management and integrity to the conduct of officers. It is to be hoped that this Special Commission will prove to be the point at which all staff come to recognise the need for a significant change in the 'culture' of the gaol, both in their interest and in the interest of those detained within the facility.

1.3 Victims of Astill's offending

22. As stated above, Astill was convicted of 35 criminal offences against 14 female inmates at Dillwynia.⁹
23. When sentencing Astill to 23 years' imprisonment, her Honour Judge O'Rourke SC described Astill's offending as a gross breach of trust to the community and

9

Ex. 3, TB 1, Vol. 4, Tab 2B, AST.002.010.0001_0029-0030, 0047, 0050-0051.

the inmates. Her Honour said that he exploited his public office and position for his own sexual gratification.¹⁰ As her Honour remarked:

*The public generally, and the inmates specifically under his care, are entitled to have confidence in those placed in such positions, who are capable and responsible of wielding great power over how they are to live their daily lives and the conditions in which they lived, that they will be appropriately and lawfully looked after.*¹¹

24. It is now apparent that many of the female inmates attempted to tell Correctional Officers about problems related to Astill. Some were understandably hesitant about taking this step. The prevailing culture in the gaol was that the women were criminals and inherently untrustworthy. This was not the attitude of all Correctional Officers. Some attempted to report and have management address the problem. But, as this Report shows, they were rebuffed and their efforts to address the wrongs often ignored.
25. The offending committed by Astill against his many victims was on any view deplorable. The lasting impact on the victims cannot be overstated. Some of the women who were offended against were in Dillwynia on remand. Others had been sentenced for their crimes. Many of the women had significant histories of abuse and trauma, which were only further exacerbated by the crimes Astill committed against them. All of the women were entitled to serve their time in custody without becoming victims of crime themselves.
26. It was not until Trudy Sheiles came forward and was prepared to talk to the police, that effective action was taken.

10 Ex. 3, TB 1, Vol. 4, Tab 2B, AST.002.010.0001_0032-0033.

11 Ex. 3, TB 1, Vol. 4, Tab 2B, AST.002.010.0001_0033.

27. All of the women who gave evidence against Astill at the criminal trial, and who spoke with the Special Commission, have done so at great cost – the cost of having to relive the trauma of what happened to them while at Dillwynia, but also, for those who remain incarcerated, the cost of speaking up against the very system that is still responsible for their care. They have shown great courage in coming forward.
28. Astill's offending occurred over several years. His conduct was variously degrading, shameful, humiliating, and obscene. As her Honour Judge O'Rourke SC commented, the power disparity between Astill and the victims cannot be overstated or ignored. The victims had nowhere to turn, and when they attempted to seek help they were effectively ignored and dismissed.¹²
29. A regular pattern in Astill's offending was to perform favours for inmates and, in return for those favours, demand that the women perform sexual acts. Astill groomed some victims by performing favours for them or by otherwise assisting them to access services in gaol. Incarcerated people are dependent on custodial staff in every respect for their quality of life; from being able to maintain relationships with their family and children – some of whom may be incarcerated elsewhere, or live far away from the gaol or overseas – to being able to obtain basic items, including clothes, medicine, toiletries, and stationery.¹³ Astill was able to exploit his victims by influencing their access to these amenities.¹⁴ One inmate explained how the culture at the gaol enabled Astill to groom her:

He made out like he did not care about my past and that he liked me, wanted to be my friend and showed caring and understanding. No other officer did that and it felt nice to be treated like a person rather than just an inmate or someone 'sub-human'.

....

Astill gained my trust and made himself appear vulnerable, he confided in me and encouraged me to confide in him.

12 Ex. 3, TB 1, Vol. 4, Tab 2B, AST.002.010.0001_0030.

13 See eg Transcript, 23 October 2023, 599.35-601.3; Ex. 3, TB 1, Vol. 6, Tab 21A, AST.002.013.0029_0004 [22]-[24].

14 Ex. 3, TB 1, Vol. 4, Tab 2B, AST.002.010.0001_0034-0035.

*I dropped my guard and my boundaries: I didn't see the grooming process until it was too late.*¹⁵

30. Astill groomed some inmates by providing them with contraband, such as tobacco, underwear, hair dye, and makeup that was not available in gaol. He would then pressure them into performing sexual acts for him in return for the 'favours' he provided. As one victim described, Astill was 'very conniving and manipulative'.¹⁶
31. One inmate, who was pregnant, made it known that she wanted to speak to her partner but had no credit on her phone.¹⁷ She approached Astill, who gave her free calls to her partner on two occasions. After the second phone call, the inmate began to leave Astill's office when he asked her to do him a favour as he had done her a favour. He walked around behind her and pushed her down onto the desk, pulled her pants down and had sexual intercourse with her. Astill was aware the inmate was pregnant at this time.¹⁸ The inmate said that Astill would pay for what he had done, and that her partner would get him. Astill said that he was an ex-police officer and was affiliated with a motorcycle gang and that no one would find out.¹⁹
32. This inmate was on remand while she was incarcerated at Dillwynia. When she was sentenced, she received non-custodial orders. Her tragedy is profound. She is an Aboriginal woman, a population group that suffers significant disadvantages which are compounded by incarceration. They remain significantly overrepresented in remand populations and, as the Inspector of Custodial Services has noted, may be less likely to be granted bail than non-Aboriginal women.²⁰
33. Some of Astill's offending involved gratuitous cruelty, in combination with conduct clearly intended to degrade and humiliate the victim.

15 Ex. 3, TB 1, Vol. 6, Tab 24A, AST.002.009.0090_0003 [39], [43]-[44].

16 Ex. 3, TB 1, Vol. 5, Tab 6B, AST.002.009.0074_0001 [12].

17 Ex. 3, TB 1, Vol. 4, Tab 2B, AST.002.010.0001_0016-0017 (counts 44-45); Ex. 3, TB 1, Vol. 6, Tab 29, AST.002.002.044_0002-0005.

18 Ex. 3, TB 1, Vol. 6, Tab 29, AST.002.002.0044_0004-0006.

19 Ex. 3, TB 1, Vol. 4, Tab 2B, AST.002.010.0001_0016-0017 (counts 44-45); Ex. 3, TB 1, Vol. 6, Tab 29, AST.002.002.0044_0006.

20 Ex. 45, TB 5, Vol. 26, Tab 10, Annexure Tab K, AST.002.013.0060_0213; Ex. 45, TB 5, Vol. 26, Tab 10, Annexure Tab K, AST.002.013.0060_0231.

34. One inmate who made a complaint to CSNSW staff about Astill's conduct was pursued by Astill after he found out about the complaint (I will return to this complaint later in the Report). Astill began by showing her birthday cards that had been sent to her but then threw them in the rubbish bin.²¹ Subsequently, Astill tried to 'repair' the relationship and summoned her to his office (the Chief Correctional Officer's office in the High Needs area of the gaol) on the pretence of arranging a free lawyer for her to help with her appeal. She attended his office where he touched her hair and face, tried to kiss her and touched her breasts.²² About a week later, the inmate attended Astill's office at his direction and he touched her hair and face and tried to kiss her and touch her breasts before he put his hand inside her pants and touched her vaginal area.²³ A few days after that, Astill again summoned her to his office. She told Astill she had her period and could not do anything. Astill responded that he could wait. A week later, Astill again summoned her to his office and she again said she had her period in the hope that would deter him. Astill pushed her onto the table, took off her pants, separated her legs and checked to see whether she had her period. He called her a liar.²⁴ A few days after that, the inmate again attended Astill's office at his direction and he sexually assaulted her. The inmate described what occurred as feeling 'like a lifetime'.²⁵
35. On another occasion, Astill told the same inmate that a complaint had been made about her behaviour and that she might be moved from Dillwynia. He said that he would try to help her sort it out and she attended his office to discuss the situation. She was menstruating and told him so. Given her previous interactions with Astill, she started taking off her pants and told Astill that he could 'check' that she had her period. Astill responded that he believed that she had her period and forced her to perform oral sex on him. He ejaculated into her mouth. She vomited in the bin.²⁶

21 Ex. 3, TB 1, Vol. 4, Tab 2B, AST.002.010.0001_0010 (count 24); Ex. 3, TB 1, Vol. 5, Tab 17, AST.002.002.0017_0002 [6].

22 Ex. 3, TB 1, Vol. 4, Tab 2B, AST.002.010.0001_0010 (count 25); Ex. 3, TB 1, Vol. 5, Tab 17, AST.002.002.0017_0003-0004 [11].

23 Ex. 3, TB 1, Vol. 4, Tab 2B, AST.002.010.0001_0010-0011 (count 26); Ex. 3, TB 1, Vol. 5, Tab 17, AST.002.002.0017_0004 [12].

24 Ex. 3, TB 1, Vol. 4, Tab 2B, AST.002.010.0001_0011 (count 27); Ex. 3, TB 1, Vol. 5, Tab 17, AST.002.002.0017_0004-0005 [14].

25 Ex. 3, TB 1, Vol. 4, Tab 2B, AST.002.010.0001_0011-0012 (count 28); Ex. 3, TB 1, Vol. 5, Tab 17, AST.002.002.0017_0005-0006 [15].

26 Ex. 3, TB 1, Vol. 4, Tab 2B, AST.002.010.0001_0012 (count 29); Ex. 3, TB 1, Vol. 5, Tab 17, AST.002.002.0017_0007 [18].

36. On another occasion, the same inmate was in Astill's office when he offered her some grapes, which she declined. He took off her pants and proposed to place the grapes in her vagina, which she refused. He said 'we need to add some flavour' to the grapes and put a grape inside her vagina. He removed it with his fingers and then ate it. Immediately after this he had penile vaginal sexual intercourse with her.²⁷
37. Another inmate was summoned to the Chief's office in the High Needs area.²⁸ When she arrived, Astill retrieved a Lebanese cucumber from his lunchbox and requested that she go into the bathroom and insert it into her vagina. She complied and returned to his office, and he touched her vagina and felt the cucumber in her vagina. He told her to 'fuck herself' with the cucumber. She complied. He then told her to eat the cucumber, but she went into the bathroom, removed the cucumber and disposed of it.²⁹
38. Astill's sexual offending in some instances involved threats towards inmates to pressure them into performing sexual acts or to prevent them from reporting his conduct to management. He was found guilty of intimidation by making threats over almost two years to an inmate after she was involved in a meeting with Dillwynia management regarding his behaviour.³⁰ His behaviour included telling her that he was an ex-police officer and a member of a motorcycle gang so could 'get' her friends and family.³¹
39. It is apparent that Astill had little, if any, insight into his offending behaviour.³² He failed to understand the consequence of the gross imbalance of power between Correctional Officers and inmates. He adhered to his position that any sexual acts that were performed were with the consent of the victim.³³ His lack of insight is apparent from his claims that he was 'manipulated' by one victim, that he 'entertained' other victims who were craving male intimacy and that he was

27 Ex. 3, TB 1, Vol. 4, Tab 2B, AST.002.010.0001_0012-0013 (counts 30-31); Ex. 3, TB 1, Vol. 5, Tab 17, AST.002.002.0017_0007 [20].

28 Ex. 3, TB 1, Vol. 5, Tab 3, AST.002.002.0011_0012 [22].

29 Ex. 3, TB 1, Vol. 4, Tab 2B, AST.002.010.0001_0009-0010 (counts 22-23).

30 Ex. 3, TB 1, Vol. 4, Tab 2B, AST.002.010.0001_0029-0030 (sequence 30); Ex. 3, TB 1, Vol. 6, Tab 23, AST.002.002.0029_0002 [9].

31 Ex. 3, TB 1, Vol. 6, Tab 23, AST.002.002.0029_0003 [12].

32 Ex. 3, TB 1, Vol. 4, Tab 2B, AST.002.010.0001_0045.

33 Ex. 3, TB 1, Vol. 4, Tab 2B, AST.002.010.0001_0004.

pressured into performing sexual favours.³⁴ The maintenance of this position in light of the nature of some of the sexual offending is appalling.

40. Much of Astill's offending was brazen. One inmate was called to the reception area where Astill was working, being an open area at Dillwynia, where Astill kissed her directly on the lips with his tongue entering her mouth.³⁵ On another occasion, the same inmate was assaulted by Astill when she was removing items off a truck at the back of the J Unit, being an area of the gaol in full view of others. On this occasion, Astill ran his hand between her legs and touched her vagina. That kind of conduct occurred on more than one occasion.³⁶
41. Another inmate asked Astill to help her to keep her job following a potential internal charge for misconduct within the gaol. Astill offered to shred the paperwork for the internal charge, and then grabbed her bottom as she was walking through the doorway of his office.³⁷ Similar behaviour occurred while she was standing at the reception counter.³⁸
42. It is apparent from the extent and brazenness of some of his offending that Astill held no fear that other staff members, if they witnessed his conduct towards inmates, would report it, or that other inmates would be believed if they reported his conduct.
43. As I have already noted, for the victims to tell their story at Astill's trial and give evidence at this Special Commission required considerable courage. It has required them to revisit traumatic experiences which, for some, have had ongoing and devastating impacts on their lives. The pain and anguish they have endured as a result of Astill's offending cannot be overstated. One victim, in her victim impact statement prepared for Astill's sentencing, described how she 'feel[s] robbed and totally abandoned by the system' and that it 'was the final straw in taking away my faith in humanity'.³⁹ Another victim explained:

34 Ex. 3, TB 1, Vol. 4, Tab 2B, AST.002.010.0001_0045.

35 Ex. 3, TB 1, Vol. 4, Tab 2B, AST.002.010.0001_0005 (count 2).

36 Ex. 3, TB 1, Vol. 4, Tab 2B, AST.002.010.0001_0005-0006 (count 3).

37 Ex. 3, TB 1, Vol. 4, Tab 2B, AST.002.010.0001_0007-0008 (count 8).

38 Ex. 3, TB 1, Vol. 4, Tab 2B, AST.002.010.0001_0008 (count 9).

39 Ex. 3, TB 1, Vol. 5, Tab 6B, AST.002.009.0074_0002 [22], [24].

I was in your care, I should have been protected by you instead I needed protection from you. You used me and abused me, what you did to me was not ok, I do not know how you could ever think that what you did was ok, not to anyone. You have caused so much pain and suffering and permanent damage that cannot be changed and I can never forgive you for the things you have done to me when I was so vulnerable. Even if I live for 100 years I will never be able to forget what has happened to me, it is in me and I cannot accept it.⁴⁰

44. Another inmate described how hard she had worked on herself, and how she was finally starting to feel proud as a mother and a daughter; however, after Astill's conduct towards her she feels that she no longer has purpose or meaning to her life.⁴¹

45. Another inmate who remains incarcerated at Dillwynia described how she felt, and continues to feel, as though she has nowhere to turn to. As she explained:

I felt isolated and alone. It has also isolated me from my family who to this day still do not know what happened as I don't want them to worry any more than they already are. I have lost friendships because of Astill, he was isolating us from each other, we had no support not even between us because of his manipulation and the secrecy or shame we all experienced. I throw away friendships and relationships because I cannot be honest with them, I feel like I am damaged goods and should be placed in the too hard basket.⁴²

46. Another inmate, who has since returned to custody, finds that she often has mental breakdowns and 'goes off' at the officers. As she described, 'I feel like no one understands why or where I'm coming from when that happens. I feel like I've lost some of my dignity and my confidence.'⁴³

40 Ex. 3, TB 1, Vol. 5, Tab 17B, AST.002.009.0005_0012.

41 Ex. 3, TB 1, Vol. 6, Tab 24A, AST.002.009.0090_0004 [68]-[69].

42 Ex. 3, TB 1, Vol. 6, Tab 27A, AST.002.009.0099_0006 [83].

43 Ex. 3, TB 1, Vol. 6, Tab 44A, AST.002.013.0042_0002 [45]-[46].

47. Another inmate explained that every time she discusses the offending to which she was subjected by Astill, she can barely speak through the tears.⁴⁴ She explained: 'It shook me right to my core. To the point where I'm still trying to find myself and put myself back together and it's been 5 years. I thought jail was rough as it is, but this was much worse.'⁴⁵

44 Ex. 3, TB 1, Vol. 6, Tab 29A, AST. 002.009.0110_0001 [15].

45 Ex. 3, TB 1, Vol. 6, Tab 29A, AST. 002.009.0109_0001 [11]-[12].



New South Wales
Australia

2

Corrective Services NSW and Dillwynia Correctional Centre

2.1 Corrective Services NSW

48. Corrective Services NSW (**CSNSW**) operates most correctional centres in NSW, including Dillwynia.
49. The operation of correctional centres is, in part, regulated by the *Crimes (Administration of Sentences) Act 1999* (**CAS Act**).
50. The objects of the CAS Act are set out in s. 2A(1) and are as follows:
- a) *to ensure that those offenders who are required to be held in custody are removed from the general community and placed in a safe, secure and humane environment;*
 - b) *to ensure that other offenders are kept under supervision in a safe, secure and humane manner;*
 - c) *to ensure the safety of persons having the custody or supervision of offenders is not endangered; and*
 - d) *to provide for rehabilitation of offenders with a view to their reintegration into the general community.*⁴⁶
51. Within CSNSW, Correctional Officers are organised in a rank-based hierarchy, in which officers of a more junior rank report to officers of a more senior rank.
52. The Commissioner of Corrective Services (**Commissioner of CSNSW**) sits at the top of the hierarchy.
53. The CAS Act entrusts the Commissioner of CSNSW with the ‘care, direction, control and management of all correctional complexes, correctional centres and residential facilities’ and ‘the care, control and management of all offenders’ who are imprisoned by way of full-time detention.⁴⁷ The exercise of the functions of the Commissioner of CSNSW is subject to the direction and control of the Minister for Corrections of NSW (**the Minister**).⁴⁸

46 CAS Act, s. 2A.

47 CAS Act, s. 232(1).

48 CAS Act, s. 232(2).

54. During the period of Astill's offending, the Commissioner of CSNSW was Peter Severin. The current Commissioner of CSNSW is Kevin Corcoran.
55. During the period of Astill's offending, CSNSW comprised six divisions, each headed by an Assistant Commissioner who reported to the Commissioner of CSNSW.⁴⁹ The six divisions were:
- a) Custodial Corrections;
 - b) Offender Management and Programs;
 - c) Governance and Continuous Improvement;
 - d) Community Corrections;
 - e) Strategy and Policy; and
 - f) Security and Intelligence.⁵⁰
56. Most relevant to matters the subject of this Special Commission were the Custodial Corrections Division, headed by Assistant Commissioner Kevin Corcoran, and the Governance and Continuous Improvement Division, headed by Assistant Commissioner James Koulouris. Assistant Commissioner Koulouris was replaced sometime between July and October 2018 by Assistant Commissioner Carlo Scasserra.⁵¹

2.1.1 Custodial Corrections Division

57. Reporting to Assistant Commissioner Corcoran were a number of Directors of Custodial Operations assigned to different districts or clusters in NSW. Dillwynia was the responsibility of the Director Custodial Operations Metro (**Director Metro**). During the initial period of Astill's offending the Director Metro had responsibility for six correctional centres.⁵² In around 2018, the role expanded to become that of

49 Ex. 58, TB 3, Vol. 9, Tab 105B, CSNSW.0001.0003.0040_0001.

50 Ex. 58, TB 3, Vol. 9, Tab 105B, CSNSW.0001.0003.0040_0001.

51 Ex. 58, TB 3, Vol. 9, Tab 105B, CSNSW.0001.0003.0040_0003; Ex. 3, TB 3, Vol. 17, Tab 540, CSNSW.0002.0024.5175_0002.

52 Ex. 43, TB 2, Vol. 8A, Tab 98, AST.002.013.0061_0001 [4].

Director, Custodial Operations, Metro and Central West Region, and the Director Metro assumed responsibility for four additional correctional centres.⁵³

58. The primary purpose of the role of Director Metro was to lead, manage, develop, and monitor the operational performance indicators and to provide strategic advice and guidance to the senior management and Governors/General Managers of correctional centres on operational matters in respect of all correctional centres falling within a particular district or cluster.⁵⁴
59. During the period of Astill's offending, the role of Director Metro was held, first, by Marilyn Wright, and, upon her retirement in August 2016,⁵⁵ by Hamish Shearer.⁵⁶

2.1.2 Governance and Continuous Improvement Division

60. Sitting within the Governance and Improvement Division were the Professional Standards Branch (**PSB**) and the Investigations Branch (**IB**).⁵⁷
61. PSB was headed by its Director, Peter Robinson.⁵⁸ IB was headed by its Director, Michael Hovey.⁵⁹
62. PSB was responsible for receiving, recording, managing, and assisting in the resolution of reports or allegations in relation to wrongdoing by CSNSW staff. This included allegations of misconduct, criminal conduct, and corrupt conduct.⁶⁰
63. PSB had access to the CSNSW Integrated Intelligence System (**IIS**). IIS was used by PSB to record the details of each matter with which it was dealing. Searches of IIS could be undertaken by PSB to determine whether a person had come to the notice of PSB previously and in what circumstances.⁶¹

53 Ex. 43, TB 2, Vol. 8A, Tab 98, AST.002.013.0061_0001 [5].

54 Ex. 42, TB 2, Vol. 8A, Tab 90, AST.002.013.0046_0001 [7]; Ex. 46, TB 5, Vol. 25, Tab 8, Annexure Tab 2, CSNSW.0001.0044.0047.

55 Ex. 42, TB 2, Vol. 8A, Tab 90, AST.002.013.0046_0001 [5].

56 Ex. 43, TB 2, Vol. 8A, Tab 98, AST.002.013.0061_0001 [4].

57 Ex. 58, TB 3, Vol. 9, Tab 105B, CSNSW.0001.0003.0040_0001-0003.

58 Ex. 35, TB 2, Vol. 8A, Tab 91, AST.002.013.0057_0002-0003 [9].

59 Ex. 32, TB 2, Vol. 8, Tab 86, AST.002.013.0054_0001 [5].

60 Ex. 35, TB 2, Vol. 8A, Tab 91, AST.002.013.0057_0003 [13].

61 Ex. 35, TB 2, Vol. 8A, Tab 91, AST.002.013.0057_0011-0012 [53]-[54].

64. The IIS was also used by the IB and the Corrections Intelligence Group (**CIG**). Partitions existed between the records held on IIS for each of those entities.⁶² However, it was possible for IB and PSB to share information via the IIS.⁶³
65. The function of the IB was to independently investigate such matters as escapes, deaths in custody, and allegations of employee misconduct.⁶⁴
66. The IB was staffed by Investigations Officers and by one, and at times two Intelligence Analysts. During the majority of the period of Astill's offending, the role of Intelligence Analyst was performed by Andrew Tayler and Sarah Casey.⁶⁵
67. Misconduct matters were sent to IB from PSB for investigation when the Professional Standards Committee (**PSC**) determined such an investigation was required. The PSC is discussed further below.
68. The IB also received referrals through the Special Investigation Unit (**SIU**) function on the IIS and, on occasion, referrals made directly to Mr Hovey via a telephone call.⁶⁶
69. The SIU was a sub-branch of the IB.⁶⁷ Intelligence Officers (along with other senior staff members with the required access level to the IIS system)⁶⁸ located within correctional centres were able to send Intelligence Reports to the SIU via the IIS.⁶⁹ This provided them with a means of reporting intelligence regarding other Correctional Officers to a body outside of their particular correctional centre, and in a way that meant that the Intelligence Report was not known to the Governor of the particular correctional centre (unless the author elected to include the

62 Ex. 35, TB 2, Vol. 8A, Tab 91, AST.002.013.0057_0011 [53].

63 Ex. 32, TB 2, Vol. 8, Tab 86, AST.002.013.0054_0005-0006 [33].

64 Ex. 32, TB 2, Vol. 8, Tab 86, AST.002.013.0054_0003 [15].

65 Ex. 58, TB 3, Vol. 9, Tab 105B, CSNSW.0001.0003.0040_0001-0004.

66 Ex. 32, TB 2, Vol. 8, Tab 86, AST.002.013.0054_0003 [19].

67 Transcript, 8 November 2023, 1866.38-39.

68 Ex. 35, TB 2, Vol. 8A, Tab 91, AST.002.013.0057_0013 [61]; Ex. 9, TB 2, Vol. 7, Tab 64A, AST.002.013.0017_0005 [27]; Ex. 18, TB 2, Vol. 7, Tab 49A, AST.002.013.0013_0009 [44]-[46].

69 Ex. 35, TB 2, Vol. 8A, Tab 91, AST.002.013.0057_0013 [61]; Ex. 9, TB 2, Vol. 7, Tab 64A, AST.002.013.0017_0005 [27].

Governor in the dissemination list).⁷⁰ This could include Intelligence Reports concerning inappropriate conduct or possible misconduct by CSNSW employees.

70. If a report or complaint was communicated to IB via an Intelligence Report using the SIU function, the intended procedure was that it would be dealt with first by an Intelligence Analyst in the IB. The practice in the IB during the period of Astill's offending was that the Intelligence Analyst would review the information and determine whether the complaint could be substantiated. The matter could then be referred to the PSC.⁷¹ If the SIU option was not selected the Intelligence Report would ordinarily be disseminated to the Governor and whomever else the maker of the report chose.⁷²

71. If a Correctional Officer received information that may be of intelligence value, the information was to be reported as either an Information Note or Communication Review using a form available on the CSNSW Intranet. This enabled the information to be reported directly to the centre's Intelligence Officer, who was to review the Information Note or Communication Review. The Intelligence Officer could in turn create an Intelligence Report with a local analysis of the information. If the Information Note or Communication Review contained information relating to alleged corrupt behaviour by a staff member, the Intelligence Officer was required to submit an Intelligence Report via the SIU function on the IIS, which went directly to the IB.⁷³

2.1.3 Professional Standards Committee

72. During the period of Astill's offending, the membership of the PSC comprised Assistant Commissioner Koulouris and later Assistant Commissioner Scasserra, Mr Robinson, Mr Hovey, and the NSW Police Force (**NSWPF**) Commander of the Corrective Services Investigation Unit (**CSIU**).⁷⁴

70 Transcript, 25 October 2023, 798.25-33.

71 Ex. 32, TB 2, Vol. 8, Tab 86, AST.002.013.0054_0006 [35].

72 Ex. 9, TB 2, Vol. 7, Tab 64A, AST.002.013.0017_0005 [26]-[27].

73 Ex. 58, TB 3, Vol. 18, Tab 631, CSNSW.0002.0024.3203_1252-1253.

74 Ex. 35, TB 2, Vol. 8A, Tab 91, AST.002.013.0057_0009, 0010 [45], [47].

73. The function of the PSC was to determine what action should be taken in relation to matters referred to PSB. During some of the period of Astill's offending, the PSC would meet weekly for that purpose.⁷⁵
74. The PSC would assess the matter and then task PSB with the next steps. Those steps could include referring the matter to the IB and awaiting its report; referring the matter to Mr Hovey to refer to the CSIU (discussed further below); reporting the matter to the Independent Commission Against Corruption (**ICAC**); and, where the PSC's assessment was that there had been no wrong-doing and no further action was required, informing the reporter of the matter of this outcome.⁷⁶

2.1.4 Recent Developments

75. The management structure of CSNSW has changed since the period in which Astill's offending occurred. The structure now is as follows. Reporting to Commissioner Corcoran are three Deputy Commissioners: Deputy Commissioner, Strategy and Governance (Luke Grant), Deputy Commissioner, Security and Custody (Dr Anne-Marie Martin), and Deputy Commissioner, Community, Industry and Capacity (Leon Taylor).⁷⁷
76. Reporting to Mr Grant are the Assistant Commissioner, Delivery, Performance and Culture, Chantal Snell, and the Assistant Commissioner, Strategy and Policy, Jennifer Galouzis.⁷⁸
77. Reporting to Dr Martin are the Assistant Commissioner, Custodial Metro, John Buckley, and the Assistant Commissioner, Custodial Regional, Craig Smith.⁷⁹
78. The current Director, Custodial Operations Metro West, Emma Smith, reports to Mr Buckley. The current Governor of Dillwynia, Nicola Chappell, reports to Ms Smith.⁸⁰

75 Ex. 35, TB 2, Vol. 8A, Tab 91, AST.002.013.0057_0009 [45].

76 Ex. 35, TB 2, Vol. 8A, Tab 91, AST.002.013.0057_0010-0011 [49].

77 Ex. 3, TB 3, Vol. 9, Tab 105, CSNSW.0001.0022.0125_0001.

78 Ex. 3, TB 3, Vol. 9, Tab 105, CSNSW.0001.0022.0125_0001.

79 Ex. 3, TB 3, Vol. 9, Tab 105, CSNSW.0001.0022.0125_0001.

80 Ex. 3, TB 3, Vol. 9, Tab 105, CSNSW.0001.0022.0125_0001.

79. In February 2023, PSB and IB were formally merged to become Professional Standards and Investigations (**PSI**).⁸¹ PSI is presently headed by an Acting Director, Angela Zekanovic. Ms Zekanovic reports to Ms Snell.⁸²

80. The implementation of the merger, termed ‘Project Merge’, is in its infancy. As part of the merger PSI is developing a new model for the management of misconduct allegations, addressed further below.⁸³

2.1.5 Corrective Services Investigation Unit

81. The CSIU is a unit of the NSWPF and is staffed by a number of NSWPF detectives.

82. The CSIU was, during the relevant period, located in a two-storey building in Malabar, adjacent to the CSNSW Long Bay complex. The CSIU was located on the ground floor and the IB on the first floor.⁸⁴

83. Although co-located with the IB, the CSIU operated, and continues to operate, independently of CSNSW. It is tasked with, among other matters, investigating alleged criminal offending by CSNSW employees.⁸⁵

84. Matters raising issues of potential criminality could be referred from the PSC to the CSIU, whose officers would determine independently whether they would pursue a criminal investigation and, if so, how that investigation would occur.⁸⁶

85. The Director of IB (Mr Hovey) was the ‘secondment manager’ of the CSIU⁸⁷ and was responsible for such matters as fleet management and budgeting. While Mr Hovey could not direct members of the CSIU to undertake particular work, or how to undertake that work, he could refer matters to them.⁸⁸ Mr Hovey also had

81 Ex. 47, TB 5, Vol. 21, Tab 1, CSNSW.0001.0076.0001_0005 [20].

82 Ex. 47, TB 5, Vol. 21, Tab 1, CSNSW.0001.0076.0001_0005 [19].

83 Ex. 47, TB 5, Vol. 21, Tab 1, CSNSW.0001.0076.0001_0005 [20].

84 Ex. 35, TB 2, Vol. 8A, Tab 91, AST.002.013.0057_0006 [27], 0009 [42].

85 Ex. 35, TB 2, Vol. 8A, Tab 91, AST.002.013.0057_0009 [42]-[43].

86 Ex. 35, TB 2, Vol. 8A, Tab 91, AST.002.013.0057_0009 [44].

87 Transcript, 8 November 2023, 1861.30-39.

88 Transcript, 8 November 2023, 1863.1-10.

delegated authority to approve certain NSWPF operations to be undertaken on CSNSW property.⁸⁹

2.1.6 Corrections Intelligence Group

86. During the relevant period, the CIG operated out of the Security and Intelligence Division. Its role was to analyse information and data regarding inmates.⁹⁰
87. Wrongdoing by inmates was recorded in Intelligence Reports on the IIS which were then accessed by CIG. The CIG could also distribute Intelligence Reports to operational units and external agencies.⁹¹
88. Where an Intelligence Report concerning a staff member was incorrectly sent to the CIG, the CIG had capacity to send the matter across to SIU.⁹²

2.2 Dillwynia Correctional Centre

2.2.1 Location and Geography

89. Dillwynia opened in March 2004 and forms part of Francis Greenway Correctional Complex (formerly known as the John Morony Correctional Complex). It is located at Berkshire Park, five kilometres south of Windsor. Presently, Dillwynia has capacity to accommodate 531 inmates, with a staff count of approximately 263.⁹³ Of those 263, 172 are custodial staff.⁹⁴ Dillwynia does not have determined ratios for custodial staff to inmates.⁹⁵
90. In NSW, women are often held in custody in predominantly male correctional centres, in a separate dedicated section. There are only three correctional

89 Transcript, 8 November 2023, 1863.24-34.

90 Transcript, 8 November 2023, 1860.37-41.

91 Ex. 35, TB 2, Vol. 8A, Tab 91, AST.002.013.0057_0013 [60]-[61]; Ex. 9, TB 2, Vol. 7, Tab 64A, AST.002.013.0017_0004 [24].

92 Transcript, 8 November 2023, 1911.20-42.

93 Ex. 46, TB 5, Vol. 25, Tab 8, CSNSW.0001.0175.0001_0006 [16].

94 Ex. 46, TB 5, Vol. 25, Tab 8, CSNSW.0001.0175.0001_0020 [103].

95 Ex. 46, TB 5, Vol. 25, Tab 8, CSNSW.0001.0175.0001_0020 [104].

centres that are designated women's correctional centres: Silverwater Women's Correctional Centre, Emu Plains Correctional Centre (**Emu Plains**) and Dillwynia.⁹⁶

91. Dillwynia was significantly expanded (by 248 beds) in 2020, after the period of Astill's offending. It is now split into three areas,⁹⁷ and other changes to the function of some of the spaces where Astill's offending occurred have been made. Since its expansion, Dillwynia has been the largest correctional centre for women in NSW.⁹⁸
92. Area 1 is a new area of Dillwynia which opened in 2020. Area 3 is the Independent Living Unit, which sits outside the Dillwynia perimeter.⁹⁹ These areas have no relevance to the task before the Special Commission.
93. Area 2 is the older area of the gaol. Astill offended against all his victims in various locations within Area 2. Area 2 includes the gatehouse, the administration block, the Behavioural Intervention Unit, the visits centre and the chapel.¹⁰⁰ Despite previously being used to house inmates (at the time of Astill's offending), the Behavioural Intervention Unit is now subject to a direction by the Governor that it not be used to accommodate inmates.¹⁰¹
94. Located within Area 2 are the accommodation units, and related offices, for High, Medium and Low Needs inmates.¹⁰² Inmate placement in each of these areas is determined by matters such as an inmate's security classification, whether there are any behavioural issues, and whether there is a management plan in place for that inmate.¹⁰³
95. The High Needs areas are subject to greater supervision and restrictions than Medium Needs areas. For example, in High Needs inmates are locked into their cells at night, whereas in Medium Needs they are locked into the units but not their cells.¹⁰⁴

96 Ex. 60, TB 6, Tab 24, AST.003.024.0093_0008.

97 Ex. 46, TB 5, Vol. 25B, Tab 8, Annexure Tab 146, CSNSW.0001.0009.0001.

98 Ex. 60, TB 6, Tab 24, AST.002.013.0093_0008.

99 Ex. 46, TB 5, Vol. 25B, Tab 8, Annexure Tab 146, CSNSW.0001.0009.0001.

100 Ex. 46, TB 5, Vol. 25B, Tab 8, Annexure Tab 146, CSNSW.0001.0009.0001.

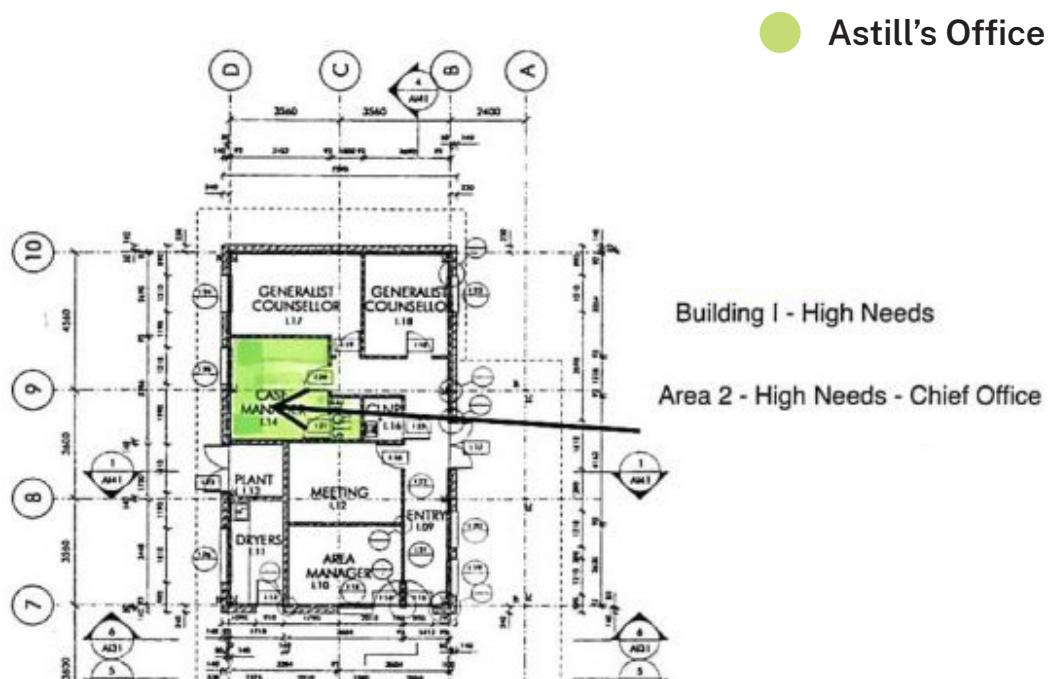
101 Ex. 60, Tab 24, AST.002.013.0093_0102.

102 Ex. 46, TB 5, Vol. 25B, Tab 8, Annexure Tab 146, CSNSW.0001.0009.0001.

103 Ex. 18, TB 2, Vol. 7, Tab 49A, AST.002.013.0013_0015 [86].

104 Ex. 18, TB 2, Vol. 7, Tab 48, AST.002.002.0055_0014 [70].

96. The High Needs accommodation units are, and were, located in Buildings J and K. These were often referred to by witnesses as 'J Unit' and 'K Unit'. The High Needs Office was located in Building I. Buildings I, J and K are, and relevantly were, located in a separately fenced area within Area 2.¹⁰⁵ The purpose of the fencing was to keep the High Needs inmates separate from the remainder of the inmate population.
97. Building I is split into two with an open walkway between the two sections of the building.¹⁰⁶ One of the sections of Building I comprised a series of offices located along an L-shaped corridor. This is shown in the figure below.¹⁰⁷

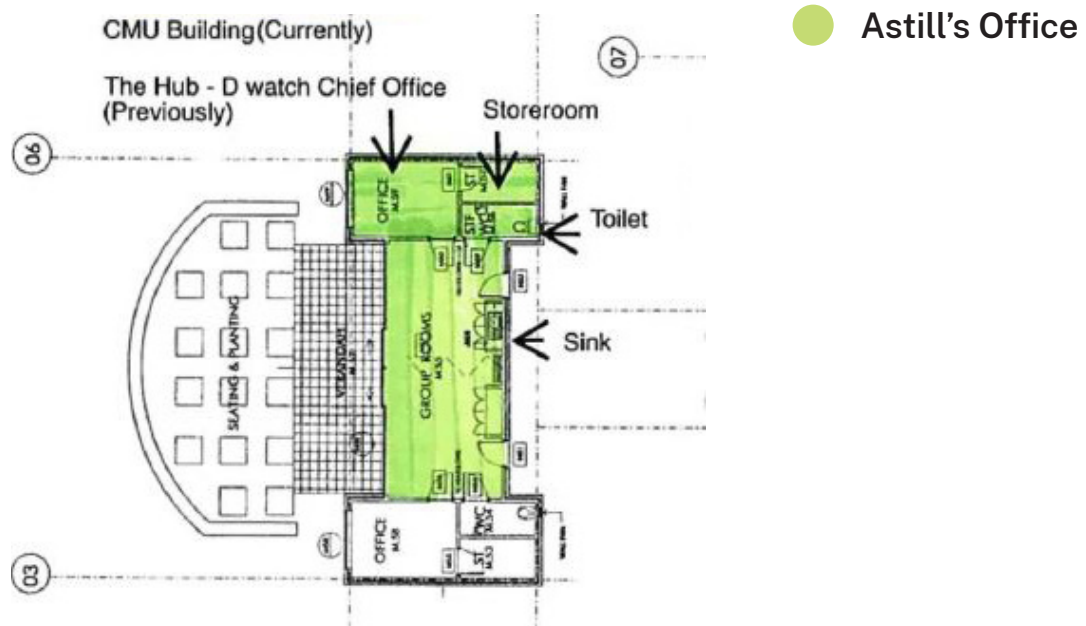


105 Ex. 46, TB 5, Vol. 25B, Tab 8, Annexure Tab 146, CSNSW.0001.0009.0001; Ex. 46, TB 5, Vol. 25, Tab 8, CSNSW.0001.0175.0001_0021 [113].

106 Ex. 46, TB 5, Vol. 25B, Tab 8, Annexure Tab 146, CSNSW.0001.0009.0003.

107 Ex. 46, TB 5, Vol. 25B, Tab 8, Annexure Tab 146, CSNSW.0001.0009.0003.

98. Located at the end of the 'L' was the High Needs Chief's Office (labelled above as 'Case Manager'), which was used on occasion by Astill. Being at the end of the L-shaped corridor, passers-by would have little visibility of the goings on in the High Needs Chief's Office.
99. In relation to Medium Needs, inmates were accommodated in Buildings L and M. Sitting adjacent to Building M was a separate building housing what is now known as the Case Management Unit (**CMU**). This area was previously the D Watch Chief's Office and was known as 'the Hub'.¹⁰⁸
100. The Hub comprised a large room in the centre with offices on either side. The central area and office on one side were used on occasion by Astill.¹⁰⁹ The CMU or 'the Hub' is depicted in the figure below.¹¹⁰

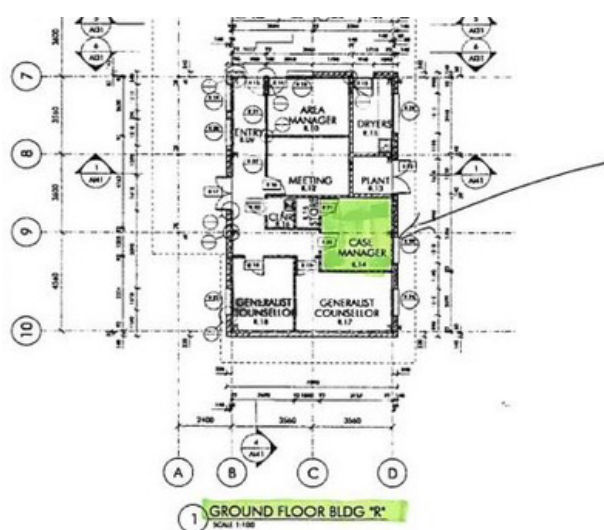


108 Ex. 46, TB 5, Vol. 25B, Tab 8, Annexure Tab 146, CSNSW.0001.0009.0001; Ex. 46, TB 5, Vol. 25B, Tab 8, Annexure Tab 146, CSNSW.0001.0009.0006; Ex. 46, TB 5, Vol. 25, Tab 8, CSNSW.0001.0175.0001_0022 [113].

109 Ex. 46, TB 5, Vol. 25, Tab 8, CSNSW.0001.0175.0001_0022 [113].

110 Ex. 46, TB 5, Vol. 25B, Tab 8, Annexure Tab 146, CSNSW.0001.0009.0006.

101. Accommodation for Low Needs inmates was located in Buildings N and O. The Low Needs area also contained an office block, Building R.¹¹¹ Like Building I, Building R was divided into two with one section containing a number of offices located along an L-shaped corridor. An office, marked on the figure below¹¹² as belonging to the ‘Case Manager’, was used on occasion by Astill.¹¹³



● Likely the Low Needs Managers Office

102. Area 2 is an open campus with single-storey cottage-style inmate accommodation and an expansive grassed outdoor area for walking and exercise. Inmates, aside from those in High Needs, have freedom to move between various services without escort. Those in High Needs, particularly those designated Special Management Area Placement (**SMAP**) cannot mix with other women at Dillwynia. The Inspector of Custodial Services (**the Inspector**), in her 2023 report, observed there to be significant constraints on those inmates’ access to all services and activities, including employment, education, health services and recreational activities.¹¹⁴

111 Ex. 46, TB 5, Vol. 25B, Tab 8, Annexure Tab 146, CSNSW.0001.0009.0001.

112 Ex. 46, TB 5, Vol. 25B, Tab 8, Annexure Tab 146, CSNSW.0001.0009.0005.

113 Ex. 46, TB 5, Vol. 25, Tab 8, CSNSW.0001.0175.0001_0022 [113].

114 Ex. 60, TB 6, Tab 24, AST.002.013.0093_0010; Ex. 60, TB 6, Tab 24, AST.002.013.0093_0073.

2.2.2 Staffing at Dillwynia

103. As noted above, Correctional Officers at Dillwynia (in common with other correctional centres) were organised in a hierarchical structure.
104. In 2018, staffing reforms, known as ‘benchmarking’, were implemented at Dillwynia. This had the effect of changing certain staff roles, the number of watches per day and staff numbers.
105. Benchmarking was a component of the ‘Better Prisons Reform’, which was designed to ‘deliver an expanded prison system that operates more efficiently, has a greater focus on inmate rehabilitation, maintains safety and security and increases accountability’.¹¹⁵

2.2.2.1 Governor

106. The most senior position at Dillwynia was that of Governor, also known as the General Manager, including during some of the period of Astill’s offending. For the purposes of this Report this position will be referred to as the Governor. The Governor reported to the Director Metro, being Ms Wright and later Mr Shearer. The Director Metro reported to Mr Corcoran in his role as Assistant Commissioner, Custodial Corrections.
107. The Governor of Dillwynia was (and presently still is) jointly the Governor of Emu Plains.
108. Shari Martin held the role of Governor of Dillwynia and Emu Plains from approximately 2006 to 2012 and again from 14 July 2014 to 21 December 2018.¹¹⁶ Following Ms Martin’s departure, Adam Schreiber assumed the role of Acting Governor.¹¹⁷

115 Ex. 59, TB 5, Vol. 22, Tab 4, CSNSW.0001.0087.0001_0010 [42].

116 Ex. 38, TB 2, Vol. 7, Tab 59, AST.002.002.0071_0002 [5]; Ex. 3, TB 3, Vol. 9, Tab 107, CSNSW.0001.0014.0001_0001.

117 Ex. 57, TB 2, Vol. 7, Tab 57A, AST.002.013.0031_0002 [7].

109. During the period of Astill's offending, Thomas Woods and Ian MacRae acted in the role of Governor for periods when Ms Martin was absent.¹¹⁸

110. As stated above, the current Governor of Dillwynia and Emu Plains is Nicola Chappell.

111. The primary purpose of the role of Governor is to:

*Provide leadership and direction for the effective and accountability based management of all aspects of a correctional centre, including the safety and security of employees, inmates and visitors and other visiting persons in compliance with the policy, duty of care requirements, defined service standards, key performance indicators and Management Agreements.*¹¹⁹

112. Ms Martin told the Special Commission that while she made attempts to share her time equally between Dillwynia and Emu Plains, that was, at times, not possible.¹²⁰

113. Ms Chappell told the Special Commission that she thought the role should be decoupled and agreed that running both correctional centres was too much for one person.¹²¹

114. A briefing note has been submitted by CSNSW seeking executive approval for the Governor of Dillwynia to be a standalone position and no longer jointly responsible for Emu Plains.¹²²

115. Although not identifiable as a cause of the failure of governance in relation to Astill at Dillwynia, I am in no doubt that this would be an appropriate course to take. As the evidence makes plain, the complexity of responsibilities in effectively governing Dillwynia may diminish the capacity to effectively govern Emu Plains. This issue is further discussed, and a recommendation made, in Chapter 7.

118 Ex. 3, TB 3, Vol. 9, Tab 107, CSNSW.0001.0014.0001_0001-0002; Ex. 34, TB 2, Vol. 8A, Tab 97, AST.002.013.0058_0001 [4].

119 Ex. 50, TB 5, Vol. 27, Tab 11, Annexure Tab 2, CSNSW.0001.0003.0032.

120 Ex. 38, TB 2, Vol. 7, Tab 59A, AST.002.013.0059_0005 [25].

121 Transcript, 22 November 2023, 2931.36-48.

122 Ex. 50, TB 5, Vol. 27, Tab 11, CSNSW.0001.0261.0001_0005 [15].

2.2.2.2 Manager of Security

116. The Manager of Security (**MOS**) is the second in command of Dillwynia and reports to the Governor.

117. The primary purpose of the MOS is to

*provide leadership and direction for the operational management of the correctional centre ... including the coordination of the structured day, effective provision of security, inmate related services and for ensuring the maintenance of staff discipline and good order.*¹²³

118. Following the implementation of the benchmarking reforms at Dillwynia in late 2018, the role of MOS was removed at Dillwynia; however, on 31 January 2019 the MOS role was re-established.¹²⁴

119. During the period of Astill's offending the role of MOS was initially performed by Leanne O'Toole. Ms O'Toole went on sick leave in October 2016 and her employment was terminated on medical grounds in February 2017.¹²⁵ Brian Bartlett performed this role between December 2016 and June 2017, although he too was on sick leave for part of that time.¹²⁶ Suryanarayan Hariharan also acted in the role.¹²⁷

2.2.2.3 Principal Correctional Officers and Functional Managers

120. Prior to benchmarking, the next most senior Correctional Officer rank at Dillwynia was Principal Correctional Officer. Principal Correctional Officer was elsewhere in CSNSW termed Senior Assistant Superintendent.

123 Ex. 46, TB 5, Vol. 25B, Tab 8, Annexure Tab 153, CSNSW.0001.0030.0097.

124 Ex. 46, TB 5, Vol. 25, Tab 8, CSNSW.0001.0175.0001_0008 [27].

125 Ex. 30, TB 2, Vol. 8A, Tab 88, AST.002.013.0044_0003 [27].

126 Ex. 20, TB 2, Vol. 8, Tab 65, AST.002.002.0079_0001 [3].

127 Ex. 58, TB 3, Vol. 9, Tab 105A, CSNSW.0001.0002.0001_0003.

121. The ranking structure at Dillwynia differed from most other correctional centres due to the applicable industrial award in place, the relevant award being the *Crown Employees (Correctional Officers, Corrective Services NSW) Award 2007 for Kempsey, Dillwynia and Wellington Correctional Centres*, and, from 2018, the *Crown Employees (Correctional Officers, Corrective Services NSW) Award 2007 for Kempsey, Dillwynia, Wellington and John Morony Correctional Centre*. This award was colloquially known as the 'Island' award.¹²⁸
122. Primarily, the role of Principal Correctional Officers was to manage a functional area in a correctional centre such as inmate accommodation or security-related infrastructure. Principal Correctional Officers reported to the MOS or, in the absence of the MOS, the Governor.¹²⁹
123. When benchmarking was implemented in 2018, together with the initial removal of the role of MOS, four Chief Correctional Officer roles were replaced with six Principal Correctional Officer roles. The role of Principal Correctional Officer became known as Functional Manager.¹³⁰
124. Functional Managers at Dillwynia were split across five areas and staff rotated between them. Those five areas were:
- a) Purposeful Day – rosters, leave and staff movements;
 - b) Classification Case Management – oversight and management of the Case Management Units and staff responsible for developing and supporting inmates to achieve their case plan goals and for inmate classification reviews;
 - c) Security – matters related to the security of the correctional centre;
 - d) Accommodation – oversight of operation of the accommodation areas, including management of inmates and staff; and

128 Ex. 59, TB 5, Vol. 22, Tab 4, CSNSW.0001.0087.0001_0014-0015, [65].

129 Ex. 58, TB 3, Vol. 9, Tab 115A, CSNSW.0001.0003.0080_0003.

130 Ex. 46, TB 5, Vol. 25, Tab 8, CSNSW.0001.0175.0001_0008 [27].

e) Intelligence – obtaining, reviewing and incorporating intelligence from internal and external sources to support the security and good governance of the correctional centre.¹³¹

125. During the period of Astill's offending, the following persons performed the role of Principal Correctional Officer/Functional Manager in either a substantive or acting capacity: Suryanarayan Hariharan, Stephen Virgo, Neil Holman, Michael Paddison, Pam Hotham, Pamela Kellett, Judith Barry, and Anne Whitehead.¹³²

2.2.2.4 Chief Correctional Officers

126. Chief Correctional Officers were known as Assistant Superintendents in correctional centres not governed by the 'Island' award.¹³³

127. The primary function of a Chief Correctional Officer was to coordinate the management, security, safety and supervision of inmates, and staff administration, to contribute to the overall welfare, security, development, and rehabilitation of offenders in accordance with CSNSW policies and procedures. The Chief Correctional Officer's tasks included controlling the structured day routines for inmates, the conduct of musters, and coordinating the urinalysis program.¹³⁴

128. Correctional Officers reported to Senior Correctional Officers.¹³⁵ Senior Correctional Officers reported to Chief Correctional Officers.¹³⁶ Chief Correctional Officers reported to Principal Correctional Officers.¹³⁷

129. The implementation of benchmarking at Dillwynia in 2018 had the effect that the role of Chief Correctional Officer ceased to exist at that correctional centre.¹³⁸

131 Ex. 46, TB 5, Vol. 25, Tab 8, CSNSW.0001.0175.0001_0008 [28].

132 Ex. 9, TB 2, Vol. 7, Tab 64A, AST.002.013.0017_0002 [10]; Ex. 58, TB 3, Vol. 9, Tab 105A, CSNSW.0001.0002.0001_0001-0004.

133 Ex. 59, TB 5, Vol. 22, Tab 4, CSNSW.0001.0087.0001_0014-0015, [65].

134 Ex. 46, TB 5, Vol. 25B, Tab 8, Annexure Tab 149, CSNSW.0001.0030.0092.

135 Ex. 46, TB 5, Vol. 25B, Tab 8, Annexure Tab 148, CSNSW.0001.0030.0016.

136 Ex. 46, TB 5, Vol. 25B, Tab 8, Annexure Tab 149, CSNSW.0001.0030.0093.

137 Ex. 46, TB 5, Vol. 25B, Tab 8, Annexure Tab 149, CSNSW.0001.0030.0093.

138 Ex. 46, TB 5, Vol. 25, Tab 8, CSNSW.0001.0175.0001_0008 [27].

130. During the period of Astill's offending, the persons performing the role of Chief Correctional Officer included Judith Barry, Michael Paddison, Pamela Kellett, and Neil Holman. Westley Giles and Astill acted in the role of Chief Correctional Officer,¹³⁹ with Astill acting as Chief Correctional Officer between 26 September 2016¹⁴⁰ and 1 October 2018.¹⁴¹

2.2.2.5 Intelligence Officers

131. The role of the Intelligence Officer at Dillwynia (in common with other correctional centres) was to gather, report on, and disseminate intelligence.¹⁴²
132. Intelligence Officers performed tasks such as monitoring inmates, facilitating targeted urine samples, reviewing CCTV footage, monitoring for contraband, and monitoring of inmate phone calls and mail.¹⁴³
133. Prior to benchmarking, the Intelligence Officer at Dillwynia held the rank of Chief Correctional Officer and the role was performed by Deborah Wilson.¹⁴⁴
134. From 3 September 2018 Mr Virgo performed the role, which was then known as Senior Assistant Superintendent/Principal Correctional Officer – Intelligence.¹⁴⁵
135. Astill was approved to relieve in the position of Intelligence Officer and did so from time to time. This is discussed further below as it is relevant to his capacity to offend.

139 Ex. 58, TB 3, Vol. 9, Tab 105A, CSNSW.0001.0002.0001_0001-0004.

140 Ex. 3, TB 3, Vol. 10, Tab 229, CSNSW.0001.0013.2808_0001.

141 Ex. 3, TB 3, Vol. 12, Tab 402, CSNSW.0001.0013.3113_0001.

142 Ex. 29, TB 2, Vol. 8, Tab 83, AST.002.013.0035_0003 [16].

143 Ex. 9, TB 2, Vol. 7, Tab 64A, AST.002.013.0017_0004 [23]-[24].

144 Ex. 29, TB 2, Vol. 8, Tab 83, AST.002.013.0035_0002 [7].

145 Ex. 9, TB 2, Vol. 7, Tab 64A, AST.002.013.0017_0001 [5].

2.2.3 Watches at Dillwynia

136. Dillwynia used, and continues to use, a system of eight-hour watches or shifts.¹⁴⁶
137. During the initial period of Astill's offending, before the introduction of benchmarking, Dillwynia had a system of four watches:
- a) A Watch – Day shift commencing at either 6:30am, 8:00am or 9:00am, and concluding at 2:30pm, 4:00pm or 5:00pm;
 - b) B Watch – Night shift commencing at 10:30pm and concluding at 6:30am;
 - c) C Watch – Afternoon shift commencing at 2:30pm and concluding at 10:30pm; and
 - d) D Watch – Day shift commencing at 10:30am and concluding at 6:30pm.¹⁴⁷
138. Astill frequently worked C and D Watch as a Chief Correctional Officer.¹⁴⁸
139. After benchmarking was implemented the following watch structure was adopted:
- a) A Watch – Day shift commencing at 6:00am, 7:00am, 8:00am or 9:00am and concluding at 2:00pm, 3:00pm, 4:00pm or 5:00pm;
 - b) B Watch – Night shift commencing at 10:00pm and concluding at 6:00am; and
 - c) C Watch – Afternoon shift commencing at 2:00pm and concluding at 10:00pm.¹⁴⁹
140. Staff were allocated to each watch, divided across areas of Dillwynia, and tasked with supervising the areas allocated to them.¹⁵⁰ During the period of Astill's offending, the Dillwynia Roster Support Officer (also known as the Scheduling Clerk) and the Operations Scheduling Unit Scheduling Supervisor were responsible for preparing the monthly roster and daily schedule in conjunction with the MOS and/or the Governor.¹⁵¹

146 Ex. 46, TB 5, Vol. 25, Tab 8, CSNSW.0001.0175.0001_0018 [96].

147 Ex. 46, TB 5, Vol. 25, Tab 8, CSNSW.0001.0175.0001_0018-0019 [98].

148 Transcript, 17 November 2023, 2611.4-21; Transcript, 3 November 2023, 1652.1-2; Transcript, 27 October 2023, 1111.38-40.

149 Ex. 46, TB 5, Vol. 25, Tab 8, CSNSW.0001.0175.0001_0019 [99].

150 Ex. 46, TB 5, Vol. 25, Tab 8, CSNSW.0001.0175.0001_0019 [100].

151 Ex. 46, TB 5, Vol. 25, Tab 8, CSNSW.0001.0175.0001_0017 [85].

2.2.4 CCTV

141. Astill's offending took place in various locations on the Dillwynia complex. There is no evidence that any of the offending was captured on closed-circuit television (**CCTV**).
142. The standards currently applicable to the use of CCTV in CSNSW correctional centres are set out in CSNSW's 'Electronic Security Systems Functional Performance Specification' (**the Specification**).¹⁵²
143. The Specification states that the objectives sought to be achieved by CCTV include 'identifying and tracking individuals throughout the Centre to support an investigation or prosecution if required', 'post-event assessment and investigation' and 'provision of evidence and use as forensic evidence'.¹⁵³
144. Fergal Molloy, CSNSW Business Partner to Infrastructure and Assets Manager of Technical Security, gave evidence that he had looked at materials indicating the number and location of CCTV cameras at Dillwynia in the period up to February 2019 and had formed the view that they were inadequate and did not meet the functional performance specifications.¹⁵⁴ Mr Molloy estimated that shortfall to be around four to five hundred cameras.¹⁵⁵
145. Mr Molloy gave evidence that the CCTV coverage at Dillwynia remains inadequate and does not meet the standard set in the Specification.¹⁵⁶
146. As noted above, Dillwynia has a new section and an older section, and it was in the older section that Astill's offending occurred. There are currently 974 CCTV cameras or images¹⁵⁷ at Dillwynia.¹⁵⁸ Of those 974, only 195 cameras are located in the older section. Of those 195, 77 have been installed since 2014, and

152 Ex. 1, TB 5, Vol. 24, Tab 6, Annexure Tab 1, CSNSW.0001.0046.0014.

153 Ex. 1, TB 5, Vol. 24, Tab 6, Annexure Tab 1, CSNSW.0001.0046.0046.

154 Transcript, 6 October 2023, 142.27-37.

155 Transcript, 6 October 2023, 145.1-16.

156 Transcript, 6 October 2023, 142.47-143.22.

157 A camera may be capable of capturing more than one image.

158 Transcript, 6 October 2023, 142.47-143.6.

around 20 have been installed subsequent to Astill's offending.¹⁵⁹ Very recently, in November 2023, an additional 13 CCTV cameras were installed at Dillwynia.¹⁶⁰

147. Notwithstanding the recent upgrades, Mr Molloy said that the number of cameras in the old section falls short by 'a very significant amount'.¹⁶¹ Mr Molloy gave evidence that additional funding was necessary to bring Dillwynia up to the standard required.¹⁶²
148. Mr Molloy told the Special Commission that the issue of the inadequacy of the CCTV coverage is not unique to Dillwynia and that there is an ongoing process of upgrading the electronic security of CSNSW correctional centres across NSW.¹⁶³ Mr Molloy further said that he did not believe there was presently enough funding to bring all correctional centres into line with the Specification.¹⁶⁴
149. In relation to the issue of the location of CCTV cameras, Mr Molloy agreed that CCTV cameras should be placed in offices where inmates met with Correctional Officers and in hallways leading to such offices.¹⁶⁵ Mr Molloy told the Special Commission 'anywhere we have inmates, we should have cameras'.¹⁶⁶
150. The retention period for CCTV footage as set out in the Specification is a minimum of 30 days.¹⁶⁷ During the period of Astill's offending, CCTV footage was retained for 28 days.¹⁶⁸ At the end of the relevant retention period, new footage is recorded over the old footage.¹⁶⁹ Mr Molloy told the Special Commission that the technology was available to retain footage for longer periods; however, the issue was one of funding.¹⁷⁰

159 Transcript, 6 October 2023, 143.3-4, 144.38-41.
160 Transcript, 22 November 2023, 2947.5-15.
161 Transcript, 6 October 2023, 143.17.
162 Transcript, 6 October 2023, 143.17-20.
163 Transcript, 6 October 2023, 147.8-20.
164 Transcript, 6 October 2023, 147.40-44.
165 Transcript, 6 October 2023, 142.4-25.
166 Transcript, 6 October 2023, 142.8-9.
167 Ex. 1, TB 5, Vol. 24, Tab 6, Annexure Tab 1, CSNSW.0001.0046.0048.
168 Transcript, 6 October 2023, 157.8-13.
169 Transcript, 6 October 2023, 158.14-18.
170 Transcript, 6 October 2023, 159.13-160.3.

151. CSNSW has commenced work to install additional CCTV cameras in key locations at Dillwynia, being areas where Astill committed offences. It is anticipated that 33 additional cameras will be installed by the end of 2023.¹⁷¹ Even with these additional cameras, it follows from the evidence of Mr Molloy that the degree of CCTV coverage at Dillwynia will remain inadequate.
152. The number of CCTV cameras in place at Dillwynia at the time of Astill's offending was significantly inadequate and, despite recent efforts to increase the number of CCTV footage, remains significantly inadequate. As stated in the Specification, CCTV serves an important evidentiary function, and can assist in the proper management of a correctional centre.
153. I am satisfied that the areas covered by CCTV at Dillwynia should be significantly expanded, in particular to include corridors to offices and offices where CSNSW staff routinely meet alone with inmates.
154. As discussed later in this Report, the evidence before the Special Commission demonstrates that it is very challenging for an inmate who is the victim of an offence committed by a Correctional Officer to come forward to report that offence. Fear of retribution in such circumstances is reasonable and to be expected. Accordingly, it might be anticipated that there will be some delay between the time an offence occurs and the time an offence is reported. This would particularly be expected where an inmate was the victim of a sexual offence, where delays in reporting are commonplace.
155. For those reasons, it is important that the retention period for CCTV footage not be too short. Thirty days is not a long enough retention period for CCTV footage in correctional centres, having regard to advances in digital technology which mean that footage is no longer required to be stored on physical tapes.

171

Ex. 55, TB 5, Vol. 28, Tab 12, Annexure CS-1, CSNSW.0001.0263.1558_0021.

156. **RECOMMENDATION:** The CCTV coverage at Dillwynia should be brought up to the standard set out in the Specification as an urgent priority. Regardless of whether it is required by the Specification, CCTV cameras should be installed at Dillwynia in all offices where officers potentially meet alone with inmates and in corridors leading to such offices. Consideration should also be given to CCTV footage in all correctional centres being retained for a minimum of 90 days before being overwritten. Funding should be made available to implement these recommendations.



New South Wales
Australia

3

Wayne Astill

157. Astill was born on 14 September 1956.¹⁷² He married in 1985 and has one biological child and one stepchild. Astill's wife was diagnosed with motor neurone disease in 2005. She attempted suicide in 2011. Following the suicide attempt, Astill moved his wife into a nursing home where she remained for four years until her death.¹⁷³
158. Astill commenced a relationship with Tania Hockey in 2006 which continues to this day. Ms Hockey was a friend of both Astill and his wife and assisted with his wife's care.¹⁷⁴ Ms Hockey has known Astill since around 1991–1992 and acted as a referee for him when he first applied to be a Correctional Officer.¹⁷⁵

172 Ex. 3, TB 1, Vol. 4, Tab 2B, AST.002.010.0001_0001.

173 Ex. 3, TB 1, Vol. 4, Tab 2B, AST.002.010.0001_0037-0038.

174 Ex. 3, TB 1, Vol. 4, Tab 2B, AST.002.010.0001_0038.

175 Ex. 58, TB 3, Vol. 19, Tab 761, AST.002.013.0068_0003.

159. During the period of Astill's offending, Ms Hockey was employed as a Correctional Officer at Dillwynia. She remains employed as a Correctional Officer.¹⁷⁶

3.1 Employment as a Police Officer

160. Prior to his employment at CSNSW, Astill was employed as a Police Officer in the New South Wales Police Force (**NSWPF**), known then as the Police Service of NSW. A statement of service from the Police Service of NSW indicates he was employed from 1 April 1987 to 27 March 1996 and states that 'on resignation from the Service he held the rank of Detective Senior Constable'.¹⁷⁷
161. The evidence before the Special Commission indicates that Astill resigned from the NSWPF in circumstances where there was evidence to support the fact that he had engaged in 'Gross Acts of Misconduct and Neglect of Duty'.¹⁷⁸
162. On 21 November 2018, after reports had been made to NSWPF about Astill's offending, Michael Hovey, Director of the Investigations Branch (**IB**) wrote to the then Commissioner of CSNSW, Peter Severin, as follows:

Regarding the investigation at Dillwynia.

...

I have had the opportunity to read a copy of Astill's NSW Police Professional Standards file. This is a Highly Confidential document.

Astill joined CSNSW in October 1999 after resigning from Police on 27 March 1996. At the time of his resignation he was a Detective Senior Constable and evidence supported he had engaged in Gross Acts of Misconduct and Neglect of Duty. Of note, then Assistant Commissioner of NSW Police Professional Standards, Geoff Schuberg stated 'It is in the public interest and the interest of this Service that the resignation

176 Transcript, 1 November 2023, 1408.11-22.

177 Ex. 3, TB 3, Vol. 10, Tab 190, CSNSW.0001.0013.3775_0014.

178 Ex. 3, TB 3, Vol. 17, Tab 542, CSNSW.0002.0024.7058_0001.

be accepted ... The Detective Senior Constable is not entitled to a satisfactory Certificate of Discharge'.

FYI the following matters appear on Astill's file:-

Theft of \$5000 cash during a house search – complaint received post resignation – allegation remains open.

Complaint that Astill demanded money with menaces from a suspect – Sustained – Dealt with by way of admonishment.

Complaint that Astill was tasked with informing a lady that her brother had been murdered and failed to do so – Counselling.

Complaint that Astill parked a marked car illegally in the middle of Canterbury Road, blocking traffic, to issue parking infringement notices and that Astill abused members of the public during the process – Counselling.

Complaint that Astill was advised that a Person in need of Protection under an DVO [domestic violence order] was being harassed by her Partner and Astill failed to take action, leaving the PINOP [Person in need of Protection] in danger – Counselling.

Complaint by a female prisoner that Astill had harassed her and demanded and received \$3500 cash – Allegation of Solicit/Accept Bribe x 2 – Sustained; Fail to Keep Records – Sustained and Fail to Properly Investigate – Sustained.

The last complaint led to Astill's resignation.

Obviously Astill has been employed for 19 years so there is little we can do regarding the issues around recruiting someone who was allowed to resign before being dismissed from Police over serious misconduct issues.

...

163. Mr Severin replied:

Thanks Mick,

[T]hat is disturbing to read, obviously our systems let people like that slip through at the time.

*Given that the person is on WC, I am ok for the investigation to continue as per current arrangements.*¹⁷⁹

164. Astill's personnel file reveals that when he first applied to CSNSW, an 'Approval for Employment–Trainee Correctional Officer' checklist was completed. That checklist indicates that a criminal record check and reference checks were completed.¹⁸⁰
165. The personnel file also contains documents completed by the persons who interviewed Astill for that role. The notes of one of the interviews include the notation, in answer to the question 'what aspects did/do you like least about your recent/current job': 'Hands became tied. Rules, regulations'.¹⁸¹ It is further recorded that 'This applicant requires a standard conduct + services check'.¹⁸² There is no record in Astill's file indicating that such checks were ever performed. Obviously, they should have been. If they had been, assuming the integrity of the process, the circumstances of Astill's departure from NSWPF would have likely been disclosed.
166. Referee reports were provided by a Ms W Nelson and Ms Hockey.¹⁸³ It is unclear from the report what Ms Nelson's relationship with Astill was, although it is likely, given her name, she was the wife of Retired Detective Sergeant William Nelson who provided a written reference for Astill.¹⁸⁴ Ms Hockey indicated she knew Astill personally.¹⁸⁵
167. In his written reference, Retired Detective Sergeant Nelson stated he had worked with Astill at the Lakemba Detectives Office. Mr Nelson said he found Astill to be dependable, friendly and reliable, and a pleasure to have on staff.¹⁸⁶ It appears that no reference was ever obtained from a serving member of the Police Service of NSW.

179 Ex. 3, TB 3, Vol. 17, Tab 542, CSNSW.0002.0024.7058_0001-0002.

180 Ex. 58, TB 3, Vol. 19, Tab 758, AST.002.013.0066_0001.

181 Ex. 58, TB 3, Vol. 19, Tab 759, AST.002.013.0067_0005.

182 Ex. 58, TB 3, Vol. 19, Tab 759, AST.002.013.0067_0007.

183 Ex. 58, TB 3, Vol. 19, Tab 760, AST.002.013.0068_0001-0004.

184 Ex. 58, TB 3, Vol. 19, Tab 768, AST.002.013.0070_0001.

185 Ex. 58, TB 3, Vol. 19, Tab 760, AST.002.013.0068_0003.

186 Ex. 58, TB 3, Vol. 19, Tab 768, AST.002.013.0070_0001.

168. Commissioner of CSNSW Kevin Corcoran told the Special Commission that the employment of Astill by CSNSW was ‘a huge failure’¹⁸⁷ and that had Astill’s conduct while a police officer been known by CSNSW at the time, he would never have been employed.¹⁸⁸
169. It is impossible to come to any other conclusion. However, why the process of employing Astill failed so badly is, with the lapse of time, impossible to determine.
170. Mr Corcoran told the Special Commission that there is now a ‘very robust’ system in place for checking the suitability of applicants to be Correctional Officers. He said that the bar was now so high that it was difficult to find persons who meet the requirements. Mr Corcoran said that he was confident that the employment of a person with an employment history such as Astill’s would not occur today.¹⁸⁹ I have made no enquiry as to the current process for the employment of Correctional Officers by CSNSW.
171. In around March to April 2002, Astill sought to have his service as a Police Officer recognised for the purposes of calculating his extended leave entitlements. As part of this process, the CSNSW Human Resources Management Branch wrote to the Police Service of NSW seeking, among other information, the reason for Astill’s cessation of duty.¹⁹⁰
172. NSWPF produced to the Special Commission a document from the ‘Police Service Personnel System’ printed on 19 April 2002. That document records the reason for Astill’s termination being ‘RESIGNATION–DISCIPLINARY’.¹⁹¹ Given the date of the letter from CSNSW and the date on the personnel system print-out, it appears that the document was printed in response to the query from CSNSW.
173. On 19 April 2002, a Police Service of NSW Staff Administration Officer from the Personnel Services Branch replied to the letter from CSNSW, stating that the

187 Transcript, 23 November 2023, 3215.22.

188 Transcript, 23 November 2023, 3216.5-10.

189 Transcript, 23 November 2023, 3215.26-32.

190 Ex. 58, TB 3, Vol. 18, Tab 649, NSWPF.012.001.0013_0001.

191 Ex. 58, TB 3, Vol. 18, Tab 650, NSWPF.012.001.0015_0001.

reason for Astill's cessation of duty was 'Resignation'. There is no reference to any disciplinary proceedings or process set out in the letter.¹⁹² This was obviously not an accurate response. It would seem that the integrity of the information passed to CSNSW may have been compromised but there is little to be gained by now pursuing the issue.

174. Following his departure from the Police Service of NSW, Astill was employed as a court security officer at the Downing Centre in 1997.¹⁹³

3.2 Employment as a Correctional Officer

175. Astill commenced employment with CSNSW in October 1999.¹⁹⁴ He was appointed as a First Class Correctional Officer on 28 September 2002¹⁹⁵ and as a Senior Correctional Officer on 6 February 2006.¹⁹⁶
176. Astill was transferred from Parklea Correctional Centre to Dillwynia in February 2009¹⁹⁷ following Parklea's privatisation.¹⁹⁸ Astill remained at Dillwynia until his employment was suspended in February 2019 following his arrest.¹⁹⁹

3.3 Appointment as Chief Correctional Officer

177. On 19 May 2016, Astill applied for the role of 'Assistant Superintendent, 7 days, Metro, North and South regions, ongoing and temporary full time (for a period of up to 12 months)'.²⁰⁰ At the conclusion of the recruitment process, Astill was placed in the Assistant Superintendent talent pool.²⁰¹

192 Ex. 58, TB 3, Vol. 19, Tab 750, AST.002.013.0063_0081.

193 Ex. 3, TB 3, Vol. 10, Tab 190, CSNSW.0001.0013.3775_0006.

194 Ex. 3, TB 1, Vol. 4, Tab 2B, AST.002.010.0001_0005.

195 Ex. 3, TB 3, Vol. 12, Tab 397, CSNSW.0002.0025.9986_0069.

196 Ex. 3, TB 3, Vol. 12, Tab 397, CSNSW.0002.0025.9986_0086.

197 Ex. 3, TB 1, Vol. 4, Tab 2B, AST.002.010.0001_0005; Ex. 3, TB 3, Vol. 12, Tab 397, CSNSW.0002.0025.9986_0088.

198 Ex. 46, TB 5, Vol. 25, Tab 8, CSNSW.0001.0175.0001_0012 [48]-[49].

199 Ex. 3, TB 3, Vol. 11, Tab 281, CSNSW.0001.0013.3224_0001.

200 Ex. 46, TB 5, Vol. 25, Tab 8, CSNSW.0001.0175.0001_0012 [50]; Ex. 46, TB 5, Vol. 25, Tab 8, Annexure Tab 34, CSNSW.0001.0126.0028.

201 Ex. 46, TB 5, Vol. 25, Tab 8, CSNSW.0001.0175.0001_0013 [51]; Ex. 46, TB 5, Vol. 25, Tab 8, Annexure Tab 42, CSNSW.0001.0126.0012.

178. As part of the recruitment process for the Assistant Superintendent position, reference checks were obtained from Leanne O’Toole, then Manager of Security (**MOS**) at Dillwynia, and Ian MacRae, then Acting Governor of Dillwynia. Both Ms O’Toole and Mr MacRae recommended Astill for the position.²⁰²
179. An additional component of the recruitment process was a review of information concerning Astill, recorded on the Integrated Intelligence System (**IIS**). Following the review, the Professional Standards Branch noted that it was ‘not aware of any current information that would preclude the recruitment of’ Astill.²⁰³
180. On 20 September 2016, Mr MacRae emailed CSNSW Human Resources advising that a position of Chief Correctional Officer was vacant at Dillwynia and that Astill, having been accepted into the talent pool, could be placed in that role.²⁰⁴ An email was subsequently sent to Shari Martin requesting her approval to activate the Assistant Superintendent talent pool to enable the filling of the position of Chief Correctional Officer by Astill for a period of up to four months.²⁰⁵ Mr MacRae, in his capacity as Acting Governor, approved the activation.²⁰⁶ Accordingly, Astill was temporarily assigned to the position of Chief Correctional Officer from 26 September 2016 until 22 January 2017.
181. Astill’s temporary assignment to the position of Chief Correctional Officer was subsequently extended multiple times. The initial extension was for a period of one month. In January 2017, Astill signed a letter of offer for the position of Chief Correctional Officer for the period 26 September 2016 to 26 February 2017.²⁰⁷ While it is not clear from the records who approved the further extension, Mr MacRae was copied into the relevant emails sent between Human Resources and Astill.²⁰⁸

202 Ex. 46, TB 5, Vol. 25, Tab 8, CSNSW.0001.0175.0001_0013 [50(c)]; Ex. 46, TB 5, Vol. 25, Tab 8, Annexure Tab 40, CSNSW.0001.0126.0032-0033; Ex. 46, TB 5, Vol. 25, Tab 8, Annexure Tab 41, CSNSW.0001.0126.0034-0035.

203 Ex. 46, TB 5, Vol. 25, Tab 8, CSNSW.0001.0175.0001_0013 [52].

204 Ex. 46, TB 5, Vol. 25, Tab 8, CSNSW.0001.0175.0001_0013 [53]; Ex. 46, TB 5, Vol. 25, Tab 8, Annexure Tab 44, CSNSW.0001.0126.0040.

205 Ex. 46, TB 5, Vol. 25, Tab 8, CSNSW.0001.0175.0001_0013 [55]; Ex. 46, TB 5, Vol. 25, Tab 8, Annexure Tab 44, CSNSW.0001.0126.0039.

206 Ex. 46, TB 5, Vol. 25, Tab 8, CSNSW.0001.0175.0001_0013 [56]; Ex. 46, TB 5, Vol. 25, Tab 8, Annexure Tab 44, CSNSW.0001.0126.0039.

207 Ex. 46, TB 5, Vol. 25, Tab 8, CSNSW.0001.0175.0001_0014 [59]; Ex. 46, TB 5, Vol. 25, Tab 8, Annexure Tab 49, CSNSW.0001.0013.2847.

208 Ex. 3, TB 3, Vol. 11, Tab 242, CSNSW.0001.0013.2846_0001.

182. Astill's temporary assignment was again extended in February 2017. On 27 February 2017, Ms Martin responded by email to a query from Astill about an email he had received concerning a 'position change', stating 'I sent something early last week. Extending you guys until JUL 2017.'²⁰⁹
183. Astill was then temporarily assigned to the position of Chief Correctional Officer on the following occasions:
- a) from 10 July 2017 to 1 October 2017;²¹⁰
 - b) from 2 October 2017 to 24 December 2017;²¹¹ and
 - c) from 25 December 2017 to 10 June 2018.²¹²
184. On each occasion the approver was Ms Martin.
185. In relation to the last of those assignments, the evidence is as follows.
186. On 23 November 2017, the Dillwynia Finance and Administration Manager, Marivic Santos, emailed Ms Martin advising that Astill and Westley Giles' temporary assignments were due to expire on 24 December 2017 and asking whether Ms Martin wished to extend them for a further six months. Ms Martin replied that they could be extended.²¹³
187. The day prior to this email, Ms Martin and Hamish Shearer, Director Custodial Operations Metro, had met with Astill in relation to complaints suggesting that Astill was playing inmates against each other and that inmates were concerned about what they considered to be targeted searches of cells in the Special Management Area Placement (**SMAP**) area (discussed further in Chapter 8).²¹⁴

209 Ex. 3, TB 3, Vol. 11, Tab 244, CSNSW.0002.0022.7407_0001.

210 Ex. 46, TB 5, Vol. 25, Tab 8, CSNSW.0001.0175.0001_0014 [63]; Ex. 46, TB 5, Vol. 25, Tab 8, Annexure Tab 51, CSNSW.0001.0013.2910; Ex. 46, TB 5, Vol. 25, Tab 8, Annexure Tab 52, CSNSW.0001.0013.2911.

211 Ex. 46, TB 5, Vol. 25, Tab 8, CSNSW.0001.0175.0001_0014 [65]; Ex. 46, TB 5, Vol. 25, Tab 8, Annexure Tab 53, CSNSW.0001.0013.2928; Ex. 46, TB 5, Vol. 25, Tab 8, Annexure Tab 54, CSNSW.0001.0013.2929.

212 Ex. 46, TB 5, Vol. 25, Tab 8, CSNSW.0001.0175.0001_0015 [67]; Ex. 46, TB 5, Vol. 25, Tab 8, Annexure Tab 55, CSNSW.0001.0013.2935; Ex. 46, TB 5, Vol. 25, Tab 8, Annexure Tab 56, CSNSW.0001.0013.2936.

213 Ex. 3, TB 3, Vol. 11, Tab 256, CSNSW.0002.0023.1705_0001; Transcript, 14 November 2023, 2305.27-2306.3.

214 Ex. 43, TB 2, Vol. 8A, Tab 98, AST.002.013.0061_0010 [51]; Transcript, 16 November 2023, 2492.39-47.

Ms Martin told the Special Commission that she had ‘no idea why’ in these circumstances she extended Astill’s appointment as Chief Correctional Officer.²¹⁵

188. The decision to approve a further temporary assignment as Chief Correctional Officer is, in the circumstances, inexplicable. Having regard to what Ms Martin knew at that time about Astill’s conduct with inmates, the decision to approve a further temporary assignment should not have been made.
189. On 18 May 2018, the Scheduling Supervisor at Dillwynia, Sarah Browne, emailed Ms Martin and Michael Paddison (then Acting MOS) noting Astill’s temporary assignment was about to expire and asking whether they wished to extend it. Ms Martin then emailed Mr Paddison and an administrative officer at Dillwynia stating ‘I do want to extend these’.²¹⁶
190. On 24 May 2018, a CSNSW Human Resources Officer, Sophia Xie, sent Ms Browne an email, copying in Ms Martin, which stated:

*the temporary assignment without comparative assessment above level beyond 12 months is not GSE [Government Sector Employment] compliant. Both Giles and Astill have been on temporary assignment since Nov 2016. For their extension, you need to seek Director’ [sic] approval.*²¹⁷

191. Later that day, Ms Browne sent an email to Ms Martin, copying in Ms Xie, stating ‘as discussed I have provided the reference numbers to substantiate the Comparative assessment that took place for the Temporary Secondments of both Giles and Astill’.²¹⁸

215 Transcript, 14 November 2023, 2306.5-37.

216 Ex. 3, TB 3, Vol. 11, Tab 265, CSNSW.0002.0023.8692_0002-0003.

217 Ex. 3, TB 3, Vol. 11, Tab 266, CSNSW.0002.0023.8702_0001.

218 Ex. 3, TB 3, Vol. 11, Tab 267, CSNSW.0001.0013.3086_0002.

192. On 28 May 2018, Ms Martin sent an email to Ms Browne approving the extension of Astill's temporary assignment, which commenced on 11 June 2018.²¹⁹ Ms Martin told the Special Commission that she could not defend her decision and was not going to try.²²⁰
193. In relation to the May 2018 extension, former Dillwynia Governor Saffron Cartwright, on behalf of CSNSW, stated that it was her understanding (based on the documents reviewed by CSNSW for the purposes of preparing her statement) that if a candidate has been offered a temporary appointment from a talent pool that is due to expire within 12 months, that staff member is eligible to remain in that temporarily appointed role for up to two years without the need to be reassessed via a comparative or suitability assessment. Ms Cartwright further stated that CSNSW had been unable to locate any records of any extension of the talent pool into which Astill had been placed following his application for Assistant Superintendent.²²¹
194. Accepting that evidence, even if the process operated to permit a further temporary assignment, for the same reasons as set out above in relation to the approval of a temporary assignment commencing 25 December 2017, the decision to approve a further temporary assignment as Chief Correctional Officer in May 2018 should not have been made.
195. On 31 August 2018 at 9:52am, Ms Browne emailed Suryanarayan Hariharan, then the MOS, copying in Ms Martin, noting that temporary assignments for four officers, including Astill and Mr Giles, were due to expire on 30 September 2018 and that she would need confirmation of their position for rostering purposes.²²²
196. At 10:40am, Ms Martin replied stating 'Harry we need to talk about Giles and Astill'. Mr Hariharan replied 'Both of them won't be here for one or two months, by that time we are hoping to implement Bench marking. I can't see any point.'²²³

219 Ex. 3, TB 3, Vol. 11, Tab 267, CSNSW.0001.0013.3086_0001-0002.

220 Transcript, 14 November 2023, 2348.28-2350.10.

221 Ex. 46, TB 5, Vol. 25, Tab 8, CSNSW.0001.0175.0001_0015 [73].

222 Ex. 3, TB 3, Vol. 11, Tab 271, CSNSW.0002.0024.1107_0001.

223 Ex. 3, TB 3, Vol. 11, Tab 271, CSNSW.0002.0024.1107_0001.

As stated above, one of the effects of benchmarking was the removal of the role of Chief Correctional Officer at Dillwynia.

197. Astill returned to his substantive position of Senior Correctional Officer on 1 October 2018.²²⁴

3.4 Appointment as Manager of Security

198. On 31 October 2017 and from 30 to 31 March 2018, Astill was temporarily assigned to the position of MOS.²²⁵

199. Ms Cartwright gave evidence that:

this acting appointment was most likely processed internally at DCC [Dillwynia Correctional Centre] and managed by the Governor and/or the MOS rather than by Human Resources at CSNSW or DCJ [Department of Communities and Justice]. Based on my experience at CSNSW, an officer can 'act up' in a role higher than their current substantive or temporarily appointed rank classification ... for a short period of time ... to fill daily vacancies on the roster ... This 'acting up' on a daily basis does not require an officer to be in a talent pool where a comparative assessment was usually required in order for admission into same.²²⁶

200. Ms Cartwright advised that she, on behalf of CSNSW, was unable to locate any documents regarding Astill's acting appointment as the MOS.²²⁷

201. Given the matters that had been raised with Ms Martin about Astill's conduct by that time (detailed in Chapter 8), the decision to appoint Astill to the second most senior position in the gaol, even for a period of a day or two, is inexplicable. Those appointments should not have occurred.

224 Ex. 3, TB 3, Vol. 12, Tab 402, CSNSW.0001.0013.3133_0001.

225 Ex. 46, TB 5, Vol. 25, Tab 8, CSNSW.0001.0175.0001_0016 [82].

226 Ex. 46, TB 5, Vol. 25, Tab 8, CSNSW.0001.0175.0001_0016-0017 [82]-[83].

227 Ex. 46, TB 5, Vol. 25, Tab 8, CSNSW.0001.0175.0001_0017 [84].

3.5 Appointment as Intelligence Officer

202. Appointment to the position of Intelligence Officer may occur from time to time on a short-term basis to fill the role when the permanent Intelligence Officer is absent.²²⁸ As discussed above, Intelligence Officers are able to access the IIS, inmate mail and inmate telephone calls.
203. Astill completed two days of IIS training on 5 and 6 September 2016 and was cleared by the Corrections Intelligence Group to relieve in the position of Intelligence Officer at Dillwynia on an as-needed basis.²²⁹ Astill first relieved in the position of Intelligence Officer on 24 September 2016.²³⁰
204. Astill subsequently acted as Intelligence Officer for one or two days at a time on multiple occasions up until August 2018.²³¹
205. CSNSW were unable to locate, or produce to the Special Commission, any documents demonstrating the security and probity checks undertaken to ensure Astill was eligible to relieve in the role of Intelligence Officer.²³² It is likely that such checks were never conducted.
206. Appointing Correctional Officers to temporarily relieve in the position of Intelligence Officer is a decision taken locally by the Governor and/or the MOS.²³³ Ms Martin gave evidence that she believed she was on leave when Astill was approved to relieve in the Intelligence Officer role.²³⁴ Ms Martin said she was 'surprised' that Astill had cleared the probity checks required to undertake the role, because by that point there had been 'a couple of incidents' concerning his conduct and he had been 'counselled' about something.²³⁵

228 Ex. 3, TB 3, Vol. 12, Tab 419, AST.500.002.0001_0001; Ex. 46, TB 5, Vol. 25, Tab 8, CSNSW.0001.0175.0001_0016 [76].

229 Ex. 46, TB 5, Vol. 25, Tab 8, CSNSW.0001.0175.0001_0016 [78].

230 Ex. 3, TB 3, Vol. 12, Tab 420, CSNSW.0001.0020.0001_0003.

231 Ex. 3, TB 3, Vol. 12, Tab 420, CSNSW.0001.0020.0001_0003-0006.

232 Ex. 46, TB 5, Vol. 25, Tab 8, CSNSW.0001.0175.0001_0016 [80].

233 Ex. 46, TB 5, Vol. 25, Tab 8, CSNSW.0001.0175.0001_0016 [76].

234 Transcript, 14 November 2023, 2240.10-28.

235 Transcript, 14 November 2023, 2240.32-2241.35.

207. While the identity of the original approver remains unclear, on 24 October 2016, a Master Access Form was completed varying Astill's access to the Offender Integrated Management System, a CSNSW system on which inmate information is stored. The variation was to provide Astill with equivalent access to that of Deborah Wilson, then the permanent Intelligence Officer at Dillwynia. The form indicates the variation was approved by Ms Martin with the comment 'Relieving intell [sic] officer'.²³⁶
208. The appointment and reappointment of Astill to senior positions, and as an Intelligence Officer, throughout the period of his offending had significant consequences. It was exploited by him in various ways to facilitate his offending. Astill offended on numerous occasions in offices allocated to a Chief Correctional Officer.²³⁷ Astill was also able to access inmate correspondence that referred to inappropriate behaviour between himself and inmates (detailed at Chapter 8 of this Report).
209. The evidence before the Special Commission demonstrates that Astill continued to be appointed to positions of seniority long after the Governor had become aware of reports of Astill behaving inappropriately with inmates. The continued reappointment of Astill to positions of seniority, including Intelligence Officer, in circumstances where reports of him behaving inappropriately with inmates had been received by management at Dillwynia should not have occurred.
210. **RECOMMENDATION: CSNSW should create a standard of required conduct in relation to persons relieving as Intelligence Officers, including a process for Professional Standards and Investigations to conduct probity checks, which should be documented on personnel files.**

236 Ex. 3, TB 3, Vol. 10, Tab 238, CSNSW.0002.0022.4552_0001.

237 See eg Ex. 3, TB 1, Vol. 4, Tab 2B, AST.002.010.0001_0005; Ex. 3, TB 1, Vol. 4, Tab 2B, AST.002.010.001.0009-0010; Ex. 3, TB 1, Vol. 5, Tab 9, AST.002.002.0025_0004 [14].

3.6 Astill's suspension and termination

211. Astill was suspended from duty without pay from 22 February 2019.²³⁸ This followed Astill being arrested and charged on 20 February 2019.²³⁹ Astill's employment was terminated on 5 October 2022²⁴⁰ following the conclusion of his trial and the entering of guilty verdicts.
212. Each month, in the period between his suspension and termination, in accordance with the *Government Sector Employment Act 2013*, Astill's suspension was reviewed and he was sent written confirmation that his suspension without pay remained in place.²⁴¹
213. However, from May 2019, Astill was in receipt of paid leave. This arrangement ceased in September 2020, when Astill's leave was exhausted.²⁴²
214. The payment of leave to Astill during the period of his suspension was approved by Mr Corcoran.²⁴³ This followed a formal request from the Public Service Association of NSW to Mr Corcoran that Astill be allowed to access his accrued leave for the period of his suspension up until the leave was exhausted.²⁴⁴ The letter stated:

*There have been past suspensions of Correctional Officers without pay and in those matters the Association has sought the assistance of the Industrial Relations Commission to argue to have the pay reinstated. If that process failed in the Commission, the Commission would recommend to the Department to allow the Officer to access their accrued leave.*²⁴⁵

238 Ex. 3, TB 3, Vol 11, Tab 281, CSNSW.0001.0013.3224_0001.

239 Ex. 3, TB 1, Vol. 4, Tab 2B; AST.002.010.0001_0002.

240 Ex. 3, TB 3, Vol. 12, Tab 388, CSNSW.0001.0013.3873_0001-0002.

241 See eg Ex. 3, TB 3, Vol. 11, Tab 341, CSNSW.0001.0013.3613_0001.

242 Ex. 3, TB 3, Vol. 11, Tab 352, CSNSW.0001.0013.3690_0001.

243 Ex. 3, TB 3, Vol. 11, Tab 291, CSNSW.0001.0013.3295_0001.

244 Ex. 3, TB 3, Vol. 11, Tab 287, CSNSW.0002.0025.0196_0001.

245 Ex. 3, TB 3, Vol. 11, Tab 287, CSNSW.0002.0025.0196_0001.

215. The evidence before the Special Commission indicates that Mr Corcoran was 'usually supportive of these requests'.²⁴⁶

3.7 The composition of Astill's personnel file

216. Astill's personnel file was tendered in its entirety. As discussed above, the following do not appear on the file:
- a) any documents indicating the approver of the first of the extensions of Astill's temporary assignment as Chief Correctional Officer;
 - b) any records concerning Astill's temporary assignments as MOS;
 - c) any document identifying the approver of Astill's assignment as an Intelligence Officer (although related documents suggest it may have been Ms Martin); and
 - d) any record of the security and probity checks undertaken to ensure Astill's suitability to perform the role of Intelligence Officer.
217. Most significantly, there is no record on the personnel file of any report or complaint about Astill's conduct, whether sourced from an inmate or CSNSW staff member. This is despite circumstances in which there is evidence that numerous reports were made, by various means, about Astill during his employment at Dillwynia.
218. Further, other than with respect to Astill's suspension in February 2019 and subsequent termination, Astill's personnel file contains no record of any disciplinary process or outcome, notwithstanding that other documents record Astill had, on at least one occasion, been cautioned in relation to his interactions with inmates.
219. The absence of records referred to above is evidence of a serious deficiency in the record-keeping practices at CSNSW.

246 Ex. 3, TB 3, Vol. 11, Tab 288, CSNSW.0002.0025.0198_0001.

220. **RECOMMENDATION:** In a manner consistent with the *Government Sector Employment Rules 2014*, a record of any disciplinary process or outcome should be kept on an employee's personnel file so as to be readily accessible by human resources personnel both within CSNSW and within the Department of Communities and Justice more broadly.



New South Wales
Australia

4

Relevant law
and policies
related to
reporting and
general conduct

4.1 Framework governing the behaviour of Corrective Services NSW employees

221. There are multiple statutes, regulations and policies which apply to the conduct of Correctional Officers. These are complex, overlapping, and at times contradictory. The evidence makes plain that most officers had little knowledge of them or understanding of how they operate.²⁴⁷
222. There is a need to rationalise these documents with the purpose of ensuring there is a capacity for Correctional Officers to understand their obligations and follow them. It is plain from the discussion later in this Report that multiple officers failed to discharge their obligations which either a statute, regulation, policy, or Code of Conduct imposed on them. However, as I explain in Chapter 8, I did not believe it necessary to analyse the conduct of every Correctional Officer against the complex regulatory structure of which most of them were almost certainly unaware.
223. The key statutes and regulations that govern the conduct of CSNSW employees are:
- a) *Crimes (Administration of Sentences) Act 1999* (**CAS Act**);
 - b) *Crimes (Administration of Sentences) Regulation 2014* (**CAS Regulation**); and
 - c) *Government Sector Employment Act 2013* (**GSE Act**).
224. In addition to positive obligations imposed by statute or regulation, a failure to act may, in some circumstances, constitute an offence.

4.1.1 *Crimes (Administration of Sentences) Act 1999*

225. The objects of the CAS Act are:

247 See eg Transcript, 29 September 2023, 112.42-113.39; Transcript, 25 October 2023, 750.1-7; Transcript, 25 October 2023, 860.42-861.42; Transcript, 26 October 2023, 961.35-963.23; Transcript, 27 October 2023, 1128.34-40; Transcript, 27 October 2023, 1144.14-34; Transcript, 30 October 2023, 1181.25-30; Transcript, 30 October 2023, 1305.17-25; Transcript, 1 November 2023, 1371.40-1372.16; Transcript, 1 November 2023, 1410.1-46.

- a) to ensure that those offenders who are required to be held in custody are removed from the general community and placed in a safe, secure and humane environment;
- b) to ensure that other offenders are kept under supervision in a safe, secure and humane manner;
- c) to ensure that the safety of persons having the custody or supervision of offenders is not endangered; and
- d) to provide for the rehabilitation of offenders with a view to their reintegration into the general community.²⁴⁸

226. The Commissioner of Corrective Services (**Commissioner of CSNSW**) has the care, direction, control and management of all correctional complexes, correctional centres and residential facilities, and the offenders who are held in custody by way of full-time detention or intensive correction in the community.²⁴⁹ The Governor of a correctional centre has the care, direction, control and management of that centre.²⁵⁰ The functions of the various ranks and classes of Correctional Officers are to be as determined from time to time by the Commissioner of CSNSW. These functions must be exercised in accordance with the directions of the Commissioner.²⁵¹ The CAS Act confers various powers on Correctional Officers.²⁵²

4.1.2 Crimes (Administration of Sentences) Regulation 2014

227. The CAS Regulation imposes a range of obligations on Correctional Officers, departmental officers, or casual employees, some of which are discussed further below.

248 CAS Act, s. 2A(1).

249 CAS Act, s. 232(1).

250 CAS Act, s. 233(1).

251 CAS Act, s. 235(1)-(2).

252 See, in particular, CAS Act, pt. 13A.

228. Clause 254 of the CAS Regulation provides that a Correctional Officer, departmental officer or casual employee who contravenes a provision of the Regulation is not guilty of an offence but the contravention may be dealt with under s. 69 of the GSE Act as misconduct, or any other applicable provision of that Act.

4.1.3 Government Sector Employment Act 2013

229. Section 68 of the GSE Act relates to unsatisfactory performance of government sector employees, which includes CSNSW employees.²⁵³ If the employer determines that the employee's performance has been unsatisfactory, they may take any of the various disciplinary measures outlined in s. 68(2), which are to:

- a) terminate the employment of the employee (after giving the employee an opportunity to resign);
- b) reduce the remuneration payable to the employee;
- c) reduce the classification or grade of the employee; and/or
- d) assign the employee to a different role.

230. Rule 36 of the *Government Sector Employment (General) Rules 2014 (GSE Rules)* imposes obligations on the employer in exercising the measures under s. 68 of the GSE Act. It provides that the employer may not take any action under s. 68(2) in relation to an employee, unless:

- a) the employee's performance is determined by the employer to be unsatisfactory in accordance with the agency's performance management system;
- b) reasonable steps have been taken to advise the employee that the employee's performance is unsatisfactory and the basis on which it is unsatisfactory;
- c) the employee is notified that the employer is proposing to take specified action under s. 68 (2) of the GSE Act in respect of the employee;

²⁵³ Section 231 of the CAS Act makes clear that the Commissioner of CSNSW, Governors of correctional centres, Correctional Officers and other staff as necessary for the purposes of the CAS Act are to be employed in the Public Service under the GSE Act. Further, 'government sector agency' is defined by s. 3(1) of the GSE Act to include a 'Public Service agency', which is defined to include a department. The departments are listed in sch 1 pt 1 to the GSE Act and include the DCJ, under which CSNSW employees are employed.

- d) the employee is given a reasonable opportunity to respond to the notice; and
- e) the employer has taken any such response into consideration.

231. The Public Service Commission published a Personnel Handbook in August 1999 which was updated in September 2013 to include a guideline for dealing with unsatisfactory performance.²⁵⁴ The guideline indicates that unsatisfactory performance is when there is no reasonable or satisfactory reason for the employee's unsatisfactory performance and includes, but is not limited to:

- a) agreed goals and targets consistent with any relevant written documentation, including work plans, position descriptions or duty statements, that are not achieved within a reasonable or agreed time;
- b) set tasks consistent with any relevant written documentation including work plans, position descriptions or duty statements, which are not performed, or not performed within a reasonable or agreed time, or not performed to the required standard; and
- c) identified skills required are not demonstrated within a reasonable or agreed time.²⁵⁵

232. The guideline indicates that, generally, unsatisfactory performance means not meeting agreed tasks, timeframes, or standards of work. It provides that the agreed standards can be in a work plan or in any other documentation, and that any standard that is applied must be relevant to the officer's position description or duty statement.²⁵⁶

233. Section 69 of the GSE Act relates to misconduct by employees of government sector agencies, which includes CSNSW employees.²⁵⁷ If the employer finds that there has been misconduct, the employer may take any of the various disciplinary measures outlined in s. 69(4), which are to:

254 Ex. 59, TB 5, Vol. 22B, Tab 4, Annexure G, Tab 57, CSNSW.0001.0064.0001_0197.

255 Ex. 59, TB 5, Vol. 22A, Tab 4, Annexure G, Tab 57, CSNSW.0001.0064.0001_0225.

256 Ex. 59, TB 5, Vol. 22A, Tab 4, Annexure G, Tab 57, CSNSW.0001.0064.0001_0225.

257 Section 231 of the CAS Act makes clear that the Commissioner of CSNSW, Governors of correctional centres, Correctional Officers and other staff as necessary for the purposes of the CAS Act are to be employed in the Public Service under the GSE Act. Further, 'government sector agency' is defined by s 3(1) of the GSE Act to include a 'Public Service agency', which is defined to include a Department. The Departments are listed in sch 1 pt 1 to the GSE Act and include the DCJ, under which CSNSW employees are employed.

- a) terminate the employment of the employee (without giving the employee an opportunity to resign);
- b) terminate the employment of the employee (after giving the employee an opportunity to resign);
- c) impose a fine on the employee (which may be deducted from the remuneration payable to the employee);
- d) reduce the remuneration payable to the employee;
- e) reduce the classification or grade of the employee;
- f) assign the employee to a different role; and/or
- g) caution or reprimand the employee.

234. 'Misconduct' is defined non-exhaustively in s. 69(1) of the GSE Act and extends to a conviction or finding of guilt for a serious offence. 'Serious offence' is described in s. 69(1), relevantly, as an offence punishable by imprisonment for 12 months or more.

235. The following is a non-exhaustive list of conduct by CSNSW employees which is capable of constituting misconduct for the purpose of s. 69 of the GSE Act:

- a) contraventions of the CAS Act or CAS Regulation;²⁵⁸
- b) non-compliance with Commissioner's instructions and Governor's directions;²⁵⁹
- c) non-compliance with any code of ethics and conduct adopted pursuant to s. 8A of the GSE Act;²⁶⁰ and
- d) non-compliance with CSNSW's policies, codes of conduct, and procedures,²⁶¹ including:

258 CAS Regulation, cl. 254.

259 CAS Regulation, cl. 242(2), (3).

260 GSE Act, s. 8A(3).

261 See eg *Holland v Industrial Relations Secretary on behalf of the Department of Communities and Justice* [2022] NSWIRComm 1106 [7]-[9].

- (i) non-compliance with the Department of Communities and Justice (**DCJ**) Code of Ethical Conduct;²⁶² and
- (ii) non-compliance with the Custodial Operations Policy and Procedures (**COPP**).²⁶³

236. Whether a contravention of a policy, code of conduct, or legislative instrument is capable of constituting misconduct for the purpose of s. 69 will depend on the level of seriousness of the breach.²⁶⁴

237. Rule 38 of the GSE Rules sets out the way in which allegations of misconduct are to be initially managed. Rule 38(2) specifies that after making an initial assessment of the allegation of misconduct, the employer may decide not to proceed with the matter if the employer is satisfied that the allegation is vexatious or trivial, the incident or conduct concerned does not amount to misconduct, or there is likely to be difficulty in establishing the facts of the matter. If, after making an initial assessment, the employer decides to proceed with the matter, the subject of the allegation is to be advised of the details of the allegation and of the action that may be taken under s. 69(4) against them, following which the employee is to be given a reasonable opportunity to make a statement. After receiving a statement from the employee, the employer may decide to proceed to make findings of misconduct and take any of the measures in s. 69(4), or may decide not to proceed any further with the matter.²⁶⁵ Specific obligations under these instruments that relate to reporting inappropriate behaviour, treatment of inmates and treatment of other staff are outlined in more detail below.

262 See eg *Eastwood v Industrial Relations Secretary on behalf of the Department of Communities and Justice (Corrective Services NSW)* [2021] NSWIRComm 1014.

263 See eg *Wattie v Industrial Relations Secretary on behalf of the Secretary of the Department of Justice (No 2)* [2018] NSWCA 124; *Gallagher, Ma'a and Premutico v Industrial Relations Secretary on behalf of the Secretary, Department of Communities and Justice (Corrective Services)* [2019] NSWIRComm 1069.

264 *Holland v Industrial Relations Secretary on behalf of the Department of Communities and Justice* [2022] NSWIRComm 1106, [9].

265 GSE Rules, r. 38(5).

4.1.4 Criminal offences

238. At common law, the offence of misconduct in public office is committed where a public official in the course of, or in connection with, their public office wilfully misconducts themselves by act or omission (for example, by wilfully neglecting or failing to perform their duty) without reasonable excuse or justification, and that misconduct is serious and merits criminal punishment having regard to the responsibilities of the office and the officeholder, the importance of the public objects which they serve, and the nature and extent of the departure from those objects.²⁶⁶
239. Justice Beech-Jones has stated that ‘the essence of the offence concerns a breach of trust in the form of a deliberate or reckless breach of a duty owed by a public official to the public’.²⁶⁷ The Court of Criminal Appeal NSW (**CCA**) has endorsed²⁶⁸ Chief Justice Doyle’s description of the rationale for the offence in *Question of Law Reserved (No. 2 of 1996)* (1996) 67 SASR 63 at 66:

It is clear, I consider, that the ... offence ... strikes at the public officer who deliberately acts contrary to the duties of the public office in a manner which is an abuse of the trust placed in the office holder and which, to put it differently, involves an element of corruption. It may be that the mere deliberate misuse of information is sufficient to give rise to an offence, but the further allegation of an intent to receive a benefit clearly, in my opinion, brings the matter within the ambit of the common law offence.

240. More recently, the CCA has quoted with approval²⁶⁹ Lord Millett NPJ’s description of the rationale for the offence in *Hong Kong Special Administrative Region v Wong Lin Kay* (2012) 15 HKCFAR 185 at [45]:

Every such power, duty, discretion or responsibility is granted for the benefit of the public and for a public purpose. For the person having such

266 *Obeid v R* (2015) 91 NSWLR 226, [133], quoting *R v Quach* (2010) 201 A Crim R 522, [46]. See also *Blackstock v R* [2013] NSWCCA 172, [13]-[14]; *Maitland v R*; *Macdonald v R* (2019) 99 NSWLR 376, [67].

267 *R v Obeid* (No 12) [2016] NSWSC 1815t, [79].

268 *Blackstock v R* [2013] NSWCCA 172, [14].

269 *Maitland v R*; *MacDonald v R* (2019) 99 NSWLR 376, [70].

a power, duty or responsibility to exercise it or refrain from exercising it for his or her own private purposes, whether out of malice, revenge, friendship or hostility, or for pecuniary advantage is an abuse of power and amounts to the offence of misconduct in public office.

241. The offence covers a very wide range of ‘serious misconduct ... determined [by] having regard to the responsibilities of the office and the office holder, the importance of the public objects which they serve and the nature and extent of the departure from those responsibilities.’²⁷⁰ The CCA has explained that it is unhelpful to attempt to divide the offence into ‘artificial sub-categories’ given the likely variance in the particular circumstances of a given offence and a given offender.²⁷¹ That said, ‘[t]he more senior the public official the greater the level of public trust in their position and the more onerous the duty that is imposed.’²⁷²
242. The term ‘public official’ has not been exhaustively defined. However, employees of CSNSW fall comfortably within the scope of the term ‘public official’.²⁷³
243. Courts have declined to delineate or exhaustively define what might constitute ‘misconduct’ for the purposes of the offence of misconduct in public office,²⁷⁴ but it includes nonfeasance.
244. In *R v Dytham*,²⁷⁵ a police officer who was on duty and in uniform was found guilty of misconduct in public office arising from his failure to intervene in a violent assault to which he was a witness. An issue arose as to whether some improper or corrupt or dishonest motive was required. The UK Court of Appeal found that, although prior judgments showed that many misconduct in public office cases did involve a dishonest motive,

the misconduct asserted involved some corrupt taint; but this appears to have been an accident of circumstance and not a necessary incident of

270 *Shum Kwok Sher v HKSAR* (2002) 5 HKCFAR 381, 817-818 [84]-[86].

271 *Jansen v R* [2013] NSWCCA 301, [64].

272 *R v Obeid (No 12)* [2016] NSWSC 1815, [79].

273 Noting that Astill was found guilty of misconduct in public office as an employee of CSNSW.

274 *Obeid v R* (2015) 91 NSWLR 226, [69].

275 (1979) 69 Cr App R 387.

*the offence. Misconduct in a public office is more vividly exhibited where dishonesty is revealed as part of the dereliction of duty. Indeed in some cases the conduct impugned cannot be shown to have been misconduct unless it was done with a corrupt or oblique motive.*²⁷⁶

245. The UK Court of Appeal stated that the key test was whether ‘the misconduct impugned is calculated to injure the public interest so as to call for condemnation and punishment’.²⁷⁷
246. The mental element of the misconduct in public office offence was considered by the CCA in *Maitland v R; MacDonald v R* (2019) 99 NSWLR 376 (***Maitland v R***). The Court held that a person could only be found to have committed the offence (subject to the other elements being made out) if the power in question would not have been exercised, save for the illegitimate purpose.²⁷⁸ In other words, a ‘but for’ test applies: but for the improper purpose, would the action have been taken (or would the inaction have occurred)?²⁷⁹
247. In the course of its consideration, the CCA in *Maitland v R* quoted with apparent approval²⁸⁰ the Supreme Court of Canada’s analysis in *Boulanger v The Queen*²⁸¹ of the mental element of the offence in s. 122 of the Canadian *Criminal Code*, RSC 1985, c C-46 (by reference to common law authorities concerning misconduct in public office), as follows:

In the early common law cases, the mental element of misfeasance in public office was imprecise and varied from case to case. However, common law judges consistently insisted on the presence of some variant of nefarious or dishonest intent. This was described using different terms: dishonesty, corruption, partiality and oppression. All reflected a central concern: that public officials, entrusted with duties for the benefit of the

276 *R v Dytham* (1979) 69 Cr App R 387, 393.

277 *R v Dytham* (1979) 69 Cr App R 387, 394.

278 *Maitland v R; MacDonald v R* (2019) 99 NSWLR 376, [84].

279 *Maitland v R; MacDonald v R* (2019) 99 NSWLR 376, [87].

280 *Maitland v R; MacDonald v R* (2019) 99 NSWLR 376, [77].

281 *Boulanger v The Queen* (2006) 2 SCR 49, [55]-[56].

public, carry out those duties honestly and for the benefit of the public, and that they not abuse their offices for corrupt or improper purposes.

... In principle, the mens rea of the offence lies in the intention to use one's public office for purposes other than the benefit of the public. In practice, this has been associated historically with using one's public office for a dishonest, partial, corrupt or oppressive purpose, each of which embodies the non-public purpose with which the offence is concerned.

248. As indicated in the above passage, the misconduct must have been wilful – that is, done with knowledge of the obligation not to use the officer's position in the manner that it was used, or with knowledge of the possibility of an obligation not to use the officer's position in that way but choosing to do so anyway.²⁸²
249. There are a number of other offences that are applicable to CSNSW staff in their professional capacity, discussed below.

4.2 Reporting misconduct or inappropriate behaviour

250. Correctional Officers are obliged to report criminal conduct or misconduct by other Correctional Officers in certain circumstances, under various legislation, regulations and policies. I am satisfied that these obligations were, at least at the time of Astill's offending, very poorly understood by officers, including officers at senior levels. It is apparent that knowledge of the obligations was haphazard at best.

4.2.1 Crimes Act 1900

251. CSNSW employees may be criminally liable for concealing a serious indictable offence under s. 316(1) of the *Crimes Act 1900* (**Crimes Act**). The elements of this offence are that:
- a) the accused was an adult;

282 See, *Maitland v R*; *MacDonald v R* (2019) 99 NSWLR 376, [13] (setting out directions at trial on this element).

- b) the accused knew or believed that a person had committed a serious indictable offence;
- c) the accused had information which might have been of material assistance:
 - (i) in securing the apprehension of that person; or
 - (ii) in the prosecution or conviction of that person for the offence; and
- d) the accused failed, without reasonable excuse, to bring that information to the attention of a member of the NSW Police Force (**NSWPF**) or other appropriate authority.

252. A serious indictable offence, for the purposes of s. 316, is an indictable offence carrying a term of life imprisonment or a maximum penalty of five years or more. The prosecution does not need to prove that the accused knew that the offence was a serious indictable offence.²⁸³ Most of the offences of which Astill was convicted were serious indictable offences.

253. The elements of the s. 316(1) offence were the same throughout the period of Astill's employment at Dillwynia, although the maximum penalty was increased in November 2018.

254. The maximum penalty for contravention of s.316 is currently two years if the maximum penalty for the serious indictable offence is not more than 10 years' imprisonment, three years if the maximum penalty for the serious indictable offence is more than 10 but not more than 20 years' imprisonment, and five years if the maximum penalty for the serious indictable offence is more than 20 years' imprisonment.²⁸⁴

255. This offence gives rise to an obligation on a person with the knowledge or belief that another person has committed a serious indictable offence to report relevant information 'to a member of the NSW Police Force or other appropriate authority'.²⁸⁵ Although the phrase 'other appropriate authority' is not defined, an employee who has reported the information in accordance with departmental

283 Crimes Act, s. 313.

284 Crimes Act, s. 316(1).

285 Crimes Act, s. 316(1)(c).

policies may be able to assert that they have reported to an ‘appropriate authority’ or otherwise argue that the failure to report to an appropriate authority was not ‘without reasonable excuse’.

256. The accused bears the onus on the balance of probabilities of establishing a reasonable excuse for the purposes of the s. 316 offence. A variety of circumstances may be relevant to what constitutes a reasonable excuse, with one being the magnitude of the concealed offence. Section 316(1A) of the Crimes Act (which commenced in September 2020, so after the period of Astill’s offending) provides that a person has a reasonable excuse for failing to bring information to the attention of a member of the NSWPF or other appropriate authority if:
- a) the information relates to a sexual offence or a domestic violence offence against a person (the alleged victim);
 - b) the alleged victim was an adult at the time the information was obtained by the person; and
 - c) the person believes on reasonable grounds that the alleged victim does not wish for the information to be reported to police or another appropriate authority.

4.2.2 Crimes (Administration of Sentences) Regulation 2014

4.2.2.1 Clause 253

257. Clause 253(1) of the CAS Regulation provides that if:
- a) an allegation is made to a Correctional Officer that another Correctional Officer has, while carrying out his or her duties as a Correctional Officer, engaged in conduct that, in the opinion of the officer to whom the allegation is made, constitutes a criminal offence or other misconduct; or
 - b) a Correctional Officer sincerely believes that another Correctional Officer has engaged in conduct of that kind, the Correctional Officer must report

the conduct, or alleged conduct, to a Correctional Officer who is more senior in rank than the officer making the report.²⁸⁶

258. The obligation in cl. 253(1)(a) is triggered by the making of an allegation by one Correctional Officer to another Correctional Officer that is, 'in the opinion of' the receiving Correctional Officer, of a particular kind. The officer's opinion about the veracity of the allegation is irrelevant. The obligation in cl. 253(1)(b) is triggered by the formation of a 'sincere belief' that a Correctional Officer has engaged in conduct of that kind. In contrast to cl. 253(1)(a), cl. 253(1)(b) requires the officer to believe that the conduct, in fact, occurred.
259. Clause 253(2) of the CAS Regulation then requires the senior Correctional Officer to report the conduct, or alleged conduct, promptly to the Commissioner of CSNSW if the senior Correctional Officer believes that it:
- a) constitutes, or would constitute, a criminal offence by the Correctional Officer; or
 - b) would provide sufficient grounds for taking proceedings or action under s. 69 of the GSE Act against the Correctional Officer.
260. Clause 253(2) operates in relation to a belief (that is, a state of mind held by the more senior Correctional Officer) about either the alleged conduct or the actual conduct reported by the more junior Correctional Officer under cl. 253(1). The use of the word 'believes' by itself is different from the requirement for the formation of a 'sincere belief' in cl. 253(1)(b), although it is unclear that there is any practical difference between these standards. In relation to alleged conduct, the senior Correctional Officer is obliged under cl. 253(2) to report the matter if the officer believes that it 'would constitute' either a criminal offence or misconduct for the purpose of s 69 of the GSE Act. In other words, as in cl. 253(1)(a), the senior Correctional Officer is not required to form a belief as to the veracity of the allegation.

286 *Crimes (Administration of Sentences) Regulation 2008*, the predecessor to the CAS Regulation, imposed substantially the same obligation on Correctional Officers in cl. 262.

261. The obligation in cl. 253(2) to report to the Commissioner of CSNSW was not the subject of any delegation during the period of Astill's offending.²⁸⁷
262. There are exceptions to the reporting obligation provided by cl. 253(1). Clause 253(3) provides that there is no obligation to report conduct or alleged conduct that:
- a) has been made the subject of any proceedings or action under s. 69 of the GSE Act;
 - b) has been made the subject of evidence or other material given, or submissions made, in the course of criminal proceedings; or
 - c) has already been reported to a more senior Correctional Officer.
263. The effect of cl. 253(3)(c) is that a Correctional Officer is not bound by the obligation under cl. 253(1) to report if the alleged conduct has already been the subject of a report in accordance with cl. 253(1), regardless of whether the senior Correctional Officer knew it had already been reported. I will expand on how cl. 253(3)(c) operates in different factual circumstances later in this Report.
264. 'Correctional Officer' is not defined in the CAS Regulation, but s. 3 of the CAS Act defines the term as 'a person who is employed within Corrective Services NSW as a correctional officer, as referred to in section 231'.²⁸⁸ Section 231 of the CAS Act provides that Correctional Officers (among others) are to be employed in the Public Service under the GSE Act. Section 234 of the CAS Act provides that there are two classifications of Correctional Officers: commissioned and non-commissioned. Commissioned Correctional Officers are Correctional Officers of or above the rank of Assistant Superintendent. Clause 316(1) of the CAS Regulation provides the order of ranking of Correctional Officers (working from the Deputy Commissioner of CSNSW down to a Casual Correctional Officer, in descending order of seniority).

287 Transcript, 22 November 2023, 3051.36-3053.38; Transcript, 20 November 2023 2784.43-2785.25.

288 In accordance with *Interpretation Act 1987* s. 11, words that occur in an instrument – here the CAS Regulation – have the same meanings as they have in the Act – here the CAS Act – under which the instrument is made.

265. The use of the definite article in cl. 253(2) '[t]he senior correctional officer' indicates that the senior Correctional Officer referred to is the one to whom a report has been made pursuant to cl. 253(1).

266. Correctional Officers are protected from retaliation for reporting other officers by cl. 253. Clause 253(4) of the CAS Regulation provides that a Correctional Officer must not, in relation to any other Correctional Officer:

- a) fail to approve or recommend the promotion of the other officer;
- b) take, approve or recommend disciplinary action against the other officer;
- c) direct, approve or recommend the transfer of the other officer to another position in CSNSW;
- d) make, approve or recommend a decision which detrimentally affects the benefits or awards of the other officer;
- e) fail to approve or recommend that the other officer receive education or training which could reasonably be expected to improve the officer's opportunities for promotion or to confer some other advantage on the officer;
- f) change, or approve or recommend a change to, the duties of the other officer so that they are not appropriate to the officer's salary or position; or
- g) otherwise act to the detriment of the other officer,

in retaliation against the other officer because he or she has acted in accordance with this clause or has disclosed information relating to conduct contrary to law to any other Correctional Officer.

267. Contraventions by a Correctional Officer, departmental officer or casual employee of a provision of the CAS Regulation are not offences but may be dealt with under s. 69 of the GSE Act (as misconduct) or any other applicable provision of that Act.²⁸⁹

289 CAS Regulation, cl. 254.

4.2.2.2 Clauses 174 and 251

268. Clause 174(1)(a) of the CAS Regulation provides that the Governor of a correctional centre must take all reasonable steps to preserve from interference any place within the centre where a serious indictable offence has been, or appears to have been, committed, or where an incident involving serious personal injury or major property damage has, or appears to have, occurred for so long as is necessary to enable any investigation into the circumstances of the offence or incident to be carried out by police officers or other persons authorised to conduct an investigation.
269. Further, cl. 251 of the CAS Regulation provides that a Correctional Officer must at all times be honest and truthful and must not destroy or mutilate, or alter, or erase any entry in an official document.

4.2.3 Independent Commission Against Corruption Act 1988

270. The *Independent Commission Against Corruption Act 1988 (ICAC Act)* imposes obligations on the Commissioner of CSNSW to report corrupt conduct. The Independent Commission Against Corruption (**ICAC**) is responsible for investigating and inquiring into corruption involving or affecting public authorities and public officials. CSNSW employees are public officials who fall within the purview of ICAC.²⁹⁰
271. Under s. 11 of the ICAC Act, the NSW Ombudsman, the Commissioner of the NSWPF, the principal officer of a public authority, an officer who constitutes a public authority and a Minister of the Crown are under ‘a duty to report to the Commission any matter that the person suspects on reasonable grounds concerns or may concern corrupt conduct’. The Commissioner of CSNSW is the principal officer of CSNSW for the purposes of this section.²⁹¹

290 ICAC Act, s. 3(1) (meaning of ‘public official’). CSNSW employees are public officials because they are employed by a Public Service agency, namely the Department of Communities and Justice, for the purpose of s. 3(1) of the GSE Act; CAS Act s. 231.

291 *Independent Commission Against Corruption Regulation 2017*, cl. 20(2)(e).

272. Although the ICAC Act does not explicitly impose the duty referred to in s. 11 on other CSNSW employees, the then Commissioner of CSNSW, Peter Severin, issued a Commissioner's Instruction (No. 10/2013) on 21 August 2013 which provided that employees have a duty to report suspected corrupt conduct and should report it in writing to their supervisor, manager, Branch Head or Divisional Head, or to the Director, Professional Standards Branch (**PSB**), Assistant Commissioner, Governance and Continuous Improvement, or to the Commissioner of CSNSW.²⁹²
273. Corrupt conduct is defined by ss. 7, 8 and 9 of the ICAC Act. Under s. 8(1) of the ICAC Act, corrupt conduct is:
- a) any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority; or
 - b) any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions; or
 - c) any conduct of a public official or former public official that constitutes or involves a breach of public trust; or
 - d) any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.
274. Pursuant to s. 8(2) of the ICAC Act, corrupt conduct is also conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, whether directly or indirectly, the exercise of official functions by any public official, any group or body of public officials or any public authority, and which could involve matters such as official misconduct, blackmail, fraud, perverting the course of justice or harbouring criminals.

292 Ex. 3, TB 3, Vol. 9, Tab 146, CSNSW.0001.0032.0338_0001-0002.

275. Conduct does not amount to corrupt conduct unless it could constitute or involve a criminal offence, a disciplinary offence, or reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of a public official by s. 9(1). 'Disciplinary offence' is defined in s. 9(3) as 'any misconduct, irregularity, neglect of duty, breach of discipline or other matter that constitutes or may constitute grounds for disciplinary action under any law'.

4.2.4 State Records Act 1998

276. The *State Records Act 1998* (**State Records Act**) prescribes certain requirements with respect to state records, which are defined as records made or received by a person:

- a) in the course of exercising official functions in a public office;
- b) for a purpose of a public office; or
- c) for the use of a public office.²⁹³

277. Public office is defined as including a department or agency exercising a function of a branch of Government of the State of NSW,²⁹⁴ so it would include CSNSW. Accordingly, records made by Correctional Officers in the course of their duties, such as making entries on the Offender Integrated Management System with respect to an inmate, or an officer report in respect to an incident within the gaol, would constitute state records. Inmate request or inmate application forms received by an officer would also constitute state records.

278. Section 21(1) of the State Records Act makes it an offence for a person to abandon, dispose of, damage or alter a state record (among other things). The maximum penalty for this offence is 100 penalty units.²⁹⁵

279. There are a number of exceptions to the offence, including if the action was taken in accordance with normal administrative practice in public office.²⁹⁶

293 State Records Act, s. 3(1) (meaning of 'state record').

294 State Records Act, s. 3(1) (meaning of 'public office').

295 State Records Act, s. 21(1).

296 State Records Act, s. 21(2).

Something is considered to be done in accordance with normal administrative practice in a public office if it is done in accordance with the normal practices and procedures for the exercise of functions in the public office.²⁹⁷ This provision expressly excludes things done corruptly or fraudulently, or done for the purpose of concealing evidence of wrongdoing, or done for any other improper purpose.²⁹⁸

280. It is a defence to a prosecution of this offence if the defendant can establish that they did not know and had no reasonable cause to suspect that the record was a state record.²⁹⁹

4.2.5 Department of Communities and Justice Code of Ethical Conduct

281. The DCJ requires its employees, including CSNSW employees, to comply with the current version of the DCJ Code of Ethical Conduct, which came into effect on 19 April 2021 (**2021 DCJ Code of Ethical Conduct**).³⁰⁰
282. The former Department of Justice (**DOJ**) Code of Ethics and Conduct Policy, which was operative from August 2015 until it was superseded by the current version (**2015 DOJ Code**),³⁰¹ provided that:

*If an employee witnesses wrong-doing or suspected wrong-doing they should discuss the matter with their supervisor or manager. If an employee witnesses wrong-doing or suspected wrong-doing of a serious nature, they may be required to complete a Summary of an Allegation or Complaint Against an Employee Form, which should be discussed with, and provided to, their manager for referral to the relevant Director, HR Business Partner.*³⁰²

297 State Records Act, s. 22(1).

298 State Records Act, s. 22(2)(a).

299 State Records Act, s. 21(5).

300 Ex. 3, TB 3, Vol. 13, Tab 421, CSNSW.0001.0001.0079_0025.

301 Transcript, 28 September 2023, 66.40-67.25.

302 Ex. 3, TB 3, Vol. 9, Tab 147, CSNSW.0001.0034.0122_0021.

283. The 2015 DOJ Code also imposed on employees a ‘public duty to report any corrupt conduct, maladministration and serious and substantial waste of public resources’.³⁰³ Maladministration was defined in the 2015 DOJ Code to be conduct or proposed conduct in the exercise of a function involving action or inaction of a serious nature that is contrary to law, unreasonable, unjust, oppressive or improperly discriminatory, or based on improper motives.³⁰⁴
284. Further, s. 4.2 of the 2015 DOJ Code required employees to report breaches of the 2015 DOJ Code by their colleagues to their supervisor or manager but provided that breaches should be reported to the next line manager if the breach was by their supervisor or manager.³⁰⁵
285. The current 2021 DCJ Code of Ethical Conduct includes a section entitled ‘Reporting suspected wrongdoing’ which contains information regarding unlawful or criminal conduct, corruption, maladministration, fraud, and serious and substantial waste of public resources. However, it provides little guidance on what types of conduct should be reported and to whom.³⁰⁶
286. The 2021 DCJ Code of Ethical Conduct still requires employees to report breaches as per the former 2015 DOJ Code, but is worded differently such that:
- a) employees are required to report suspected breaches of the code of conduct;
 - b) these are to be reported to a manager or supervisor, meaning employees are not obliged to report it to their own direct manager or supervisor; and
 - c) where the manager or supervisor may be implicated in the suspected breach, it must be reported to another manager or supervisor (not necessarily the next line manager) and/or Professional Standards and Investigations (**PSI**).³⁰⁷

303 Ex. 3, TB 3, Vol. 9, Tab 147, CSNSW.0001.0034.0122_0022.

304 Ex. 3, TB 3, Vol. 9, Tab 147, CSNSW.0001.0034.0122_0022.

305 Ex. 3, TB 3, Vol. 9, Tab 147, CSNSW.0001.0034.0122_0006.

306 The only clearly articulated requirement is for employees to notify their supervisor or manager if they are charged by police, receive a court attendance notice in relation to a serious offence, or are declared bankrupt: Ex. 3, TB 3, Vol. 13, Tab 421, CSNSW.0001.0001.0079_0016.

307 Ex. 3, TB 3, Vol. 13, Tab 421, CSNSW.0001.0001.0079_0017.

287. Between 2013 and 2016, a Workplace Ethics Module training staff on ethical conduct was available, but not mandatory, for all CSNSW employees to complete.³⁰⁸ In January 2016, this module became part of the mandatory CSNSW Integrated Induction Program and from 2019 included training in relation to the 2015 DOJ Code.³⁰⁹ All CSNSW employees were required as of March 2020 to complete this module every two years to refresh their understanding of their obligations under the 2015 DOJ Code,³¹⁰ and in 2021 changes were made to the module to reflect the updated version of the 2021 DCJ Code of Ethical Conduct.³¹¹

4.2.6 CSNSW Guide to Conduct and Ethics (2010 Edition)

288. From 2010 to 2018, CSNSW employees were also required to comply with the CSNSW Guide to Conduct and Ethics (**2010 Guide**).³¹² Section 3.1 of the 2010 Guide, which is entitled ‘Reporting Misconduct, including Corrupt Conduct’, provided that CSNSW employees had a duty to disclose alleged misconduct of other colleagues regardless of their position. This included criminal offences, corrupt or unethical conduct, serious mismanagement, and substantial waste of public resources. The 2010 Guide also encouraged employees to challenge inappropriate and unprofessional behaviour.³¹³

289. The 2010 Guide provided that misconduct could be reported either verbally or in writing to any employee of a more senior rank or grade, or to any of the contacts as listed in Appendix A, which included the Ethics Officers in the Corruption Prevention Unit of CSNSW, or the Executive Director of the PSB.³¹⁴ It also provided that:

308 Ex. 59, TB 5, Vol. 24, Tab 7, AST.002.013.0085_0005 [24].

309 Ex. 59, TB 5, Vol. 24, Tab 7, AST.002.013.0085_0005-0006 [24]-[26].

310 Ex. 47, TB 5, Vol. 21, Tab 1, CSNSW.0001.0076.0001_0015 [50].

311 Ex. 59, TB 5, Vol. 24, Tab 7, AST.002.013.0085_0006 [26(b)].

312 Ex. 3, TB 3, Vol. 9, Tab 143, CSNSW.0001.0034.0090. On 19 February 2011, the then Commissioner of CSNSW issued Commissioner’s Instruction No. 01/2011, requiring all CSNSW employees to acknowledge that they had read and understood this 2010 Guide and to agree to comply with it: Ex. 3, TB 3, Vol. 9, Tab 144, CSNSW.0001.0034.0067. See also Ex. 47, TB 5, Vol. 21, Tab 1, CSNSW.0001.0076.0001_0012 [40(c)] where Angela Zekanovic, the Acting Director of PSI, states that the 2010 Guide was in effect from approximately 2010 to 2018.

313 Ex. 3, TB 3, Vol. 9, Tab 143, CSNSW.0001.0034.0090_0025.

314 Ex. 3, TB 3, Vol. 9, Tab 143, CSNSW.0001.0034.0090_0026-0027.

Whilst it is preferable for the matter to be reported internally in the first instance, an employee can report corrupt conduct directly to the Independent Commission Against Corruption (ICAC), maladministration may be reported to the Ombudsman, matters involving serious and substantial waste of public money can be reported directly to the Auditor-General and any failure to comply with [the Government Information (Public Access)] Act 2009 may be reported to the Information Commissioner. Criminal matters such as theft or assault can be reported directly to the Police.³¹⁵

290. The 2010 Guide further specified that all information gained in the course of official duties should be treated with respect and confidentiality to protect the privacy and safety of others and for the proper security of the operations of CSNSW. Confidential information should only be disclosed to others on a ‘need to know’ basis.³¹⁶

4.2.7 The Custodial Operations Policy and Procedures (formerly the CSNSW Operations Procedure Manual)

291. The COPP was introduced in December 2017 and is a collection of policies in respect of CSNSW staff’s reporting obligations (among numerous other things). The Operations Procedure Manual preceded the operation of the COPP and was operative during some of the period of Astill’s offending.³¹⁷
292. In addition to the general obligation to report misconduct imposed by legislation and other policy documents, the COPP, and, prior to this, the Operations Procedure Manual, imposes obligations on Correctional Officers to:
- a) report allegations of an assault by a staff member on an inmate;³¹⁸ and

315 Ex. 3, TB 3, Vol. 9, Tab 143, CSNSW.0001.0034.0090_0026.

316 Ex. 3, TB 3, Vol. 9, Tab 143, CSNSW.0001.0034.0090_0023.

317 Ex. 47, TB 5, Vol. 21, Tab 1, CSNSW.0001.0076.0001_0012-0013 [40(d)].

318 Ex. 3, TB 3, Vol. 10, Tab 164, CSNSW.0001.0027.0305_0001; Ex. 58, TB 3, Vol. 18, Tab 631, CSNSW.0002.0024.3203_1249.

- b) record and pass on information likely to adversely affect the safety, security or the good order and discipline of a correctional centre.³¹⁹
293. Section 13.4 of the Operations Procedure Manual provided that allegations of assault by staff on an inmate were not to be reported to local police but instead ‘must be reported in writing to the Professional Standards Branch as soon as possible’. It noted that ‘if a response is required the Commander, NSW Police Force CSNSW Investigations is to be contacted immediately’.³²⁰ The Operations Procedure Manual did not identify a different response depending upon the type of assault.
294. Chapter 13.4 of the COPP is titled Assaults.³²¹ It deals differently with different types of assaults. Relevantly, it sets out distinct procedures for ‘Common assault and fighting’ (Part 3), ‘Serious assault’ (Part 4), and ‘Allegation of assault on an inmate by staff’ (Part 13).
295. Part 3 of Chapter 13.4 of the COPP specifies that an assault may be considered a common assault ‘if there is no actual physical injury to the victim.’ Common assaults must be reported to the police as soon as practicable if the victim requests police action, or there is video evidence of the assault being committed.³²²
296. Part 4 of Chapter 13.4 of the COPP defines a serious assault to include an assault causing injury or death, an assault of a sexual nature, and an assault on a law enforcement officer (which includes an assault on a Correctional Office while in the execution of the officer’s duty).³²³ Part 4 states that ‘[a] serious assault must be reported to police’. If the assault is sexual in nature, additional procedures for responding to the assault are set out in Part 6. These relate to matter such as the provision of health services and the preservation of forensic evidence.
297. Nothing in the wording of Parts 3 or 4 of Chapter 13.4 excludes their operation in circumstances where an assault on an inmate has allegedly been committed by a

319 Ex. 58, TB 3, Vol. 18, Tab 621, CSNSW.0002.0020.8009_0008; Ex. 58, TB 3, Vol. 18, Tab 626, CSNSW.0002.0024.2078_0579.

320 Ex. 58, TB 3, Vol. 18, Tab 625, CSNSW.0002.0020.8214_0013.

321 Ex. 3, TB 3, Vol. 10, Tab 164, CSNSW.0001.0027.0305.

322 Ex. 3, TB 3, Vol. 10, Tab 164, CSNSW.0001.0027.0305_0009.

323 Ex. 3, TB 3, Vol. 10, Tab 164, CSNSW.0001.0027.0305_0010.

Correctional Officer. However, Part 9 of Chapter 13.4, which concerns the reporting of both common assaults and serious assaults to the police, contains the following:

Note: *Allegations of assault on an inmate by a staff member are not to be reported to local police. (Refer to section **13 Allegation of assault on an inmate by staff** of this policy for reporting requirements).*³²⁴

298. Part 13 of Chapter 13.4 provides that allegations of an assault by a staff member on an inmate must be referred to PSB as soon as possible. It also provides that an allegation that an inmate was assaulted by a staff member must not be reported to a local police station. Instead, the Governor or the officer in charge in the absence of the Governor must report the alleged assault to the Director, CSNSW Investigations, who will notify the Commander, Corrective Services Investigation Unit (**CSIU**), State Crime Command NSWPF.³²⁵ By setting out a specific procedure for the reporting of assaults by Correctional Officers on inmates to police, it is clear that Parts 3 and 4 of Chapter 13.4 are not intended to apply in these circumstances.
299. The effect of this is that while assaults that are allegedly committed by inmates may, in many circumstances, be reported straight to NSWPF by the Governor or officer in charge, assaults allegedly committed by Correctional Officers must be reported to the Director, CSNSW Investigations and PSB. While the intent of the policy appears to be that such reports make their way to the CSIU, which is a NSWPF unit, the policy introduces the prospect that the Director, CSNSW Investigations may decline or neglect to make that report. Also, were an inmate to request that an assault by a Correctional Officer they had experienced be reported to local police, rather than the CSIU, Part 13 would preclude the reporting Correctional Officer from complying with that request.
300. It is unclear whether the procedures that apply to sexual assaults, set out in Part 6 of Chapter 13.4, are intended to apply when the alleged sexual assault is perpetrated by a Correctional Officer on an inmate. Given that the procedures concern matters such as access to health services and preservation of forensic evidence, there is

324 Ex. 3, TB 3, Vol. 10, Tab 164, CSNSW.0001.0027.0305_0020..

325 Ex. 3, TB 3, Vol. 10, Tab 164, CSNSW.0001.0027.0305_0023-0024.

no obvious reason they should not apply, however they are not cross-referenced in Part 13. The Chapter as a whole is difficult to navigate, and requires officers to refer to multiple parts of the 27 page document to understand their obligations. There is obvious potential for the policy to be misunderstood or misapplied.

301. Section 12.1 of the Operations Procedure Manual, titled 'General matters affecting the safety, security, good order and discipline of a correctional centre', came into force in July 2007.³²⁶ It provided that '[a]ll officers of CSNSW are obliged to record and pass onto the Manager Security (**MOS**), or in the manager's absence, the next most senior officer on duty, any information which is likely to adversely affect safety, security, or the good order and discipline of a correctional centre, including information which may affect an inmate's placement or classification'.³²⁷ The officer was also obliged to make a written report and forward it to the MOS.³²⁸ Upon assessment, the MOS or the next most senior officer on duty must immediately report any issue that cannot be quickly resolved or any extraordinary issue to the General Manager, and matters of a criminal nature to the police and the General Manager.³²⁹
302. The COPP contains similar obligations. Chapter 16.2 provides that when an officer receives any information, the officer should conduct an 'immediate assessment' of it and take immediate steps to prevent or minimise any threat to the security, good order and discipline of the correctional centre or the safety of any person if necessary.³³⁰ After assessing the information and taking any necessary action, the officer must then complete an incident report of the information and action taken to the MOS, Functional Manager Security or the next most senior officer on duty. The MOS or delegated officer must assess the information, and 'any matters that cannot be quickly resolved or any extraordinary matters and matters of a criminal or corrupt nature must be reported to police and the governor immediately'.³³¹

326 Ex. 58, TB 3, Vol. 18, Tab 621, CSNSW.0002.0020.8009_0050.

327 Ex. 58, TB 3, Vol. 18, Tab 626, CSNSW.0002.0024.2078_0579. See also Ex. 58, TB 3, Vol. 18, Tab 621, CSNSW.0002.0020.8009_0008 which is in the same terms.

328 Ex. 58, TB 3, Vol. 18, Tab 626, CSNSW.0002.0024.2078_0579. See also Ex. 58, TB 3, Vol. 18, Tab 621, CSNSW.0002.0020.8009_0008 which is in the same terms.

329 Ex. 58, TB 3, Vol. 18, Tab 626, CSNSW.0002.0024.2078_0579.

330 Ex. 58, TB 3, Vol. 18, Tab 631, CSNSW.0002.0024.3203_1252.

331 Ex. 58, TB 3, Vol. 18, Tab 631, CSNSW.0002.0024.3203_1252.

303. Chapter 16.2 of the COPP also provides that if a Correctional Officer receives information that may be of ‘intelligence value’, the information must be reported as either an Information Note or Communication Review using a form available on the CSNSW Intranet. This enables the information to be reported directly to the centre’s Intelligence Officer, who is to review the Information Note or Communication Review. The types of information that are to be submitted via an Intelligence Note include something overheard, something observed, a certain item found or information that is considered likely to affect the security, safety or the good order and discipline of the centre. The Intelligence Officer may in turn create an Intelligence Report with a local analysis of the information. If the Information Note or Communication Review contains information relating to alleged corrupt behaviour by a staff member, the Intelligence Officer is required to submit an Intelligence Report via the SIU function on the Integrated Intelligence System (**IIS**) which goes directly to the Investigations Branch (**IB**).³³²
304. The Operations Procedure Manual also noted that if an inmate had provided any information to personnel that ‘relates to a criminal matter, an issue of serious staff misconduct, or an inmate volunteers information of moderate or high value that information must be sent to the [Governor]’.³³³ The Governor was to then inform the relevant Director, Custodial Corrections, who was to determine the most appropriate course of action.³³⁴ It is unclear from the Operations Procedure Manual but it appears that if staff received information otherwise than from an inmate which related to criminal conduct, they were to report it in writing to the MOS, who was then to report it to the Governor and the NSWPF simultaneously.³³⁵ The equivalent section of the COPP, titled ‘Inmate informants’, similarly provides that information received from an inmate that ‘relates to a potential criminal matter, serious staff misconduct or corruption ... must be sent to the [G]overnor’, who will then ‘inform the CSNSW Director, Investigations and the relevant Director, Custodial Corrections who will determine the most appropriate course of action’.³³⁶

332 Ex. 58, TB 3, Vol. 18, Tab 631, CSNSW.0002.0024.3203_1252-1253.

333 Ex. 58, TB 3, Vol. 18, Tab 626, CSNSW.0002.0024.2078_0580. See also Ex. 58, TB 3, Vol. 18, Tab 621, CSNSW.0002.0020.8009_0008 which is in the same terms.

334 Ex. 58, TB 3, Vol. 18, Tab 626, CSNSW.0002.0024.2078_0580. See also Ex. 58, TB 3, Vol. 18, Tab 621, CSNSW.0002.0020.8009_0008.

335 Ex. 58, TB 3, Vol. 18, Tab 626, CSNSW.0002.0024.2078_0579. See also Ex. 58, TB 3, Vol. 18, Tab 621, CSNSW.0002.0020.8009_0008 which is in the same terms.

336 Ex. 58, TB 3, Vol. 18, Tab 633, CSNSW.0002.0024.3203_1347.

305. The Operations Procedure Manual provided that original reports were to be retained on a confidential file in a secure cabinet in the office of the MOS or Intelligence Officer, or some other secure place with controlled access.³³⁷ This obligation is largely replicated in the COPP.³³⁸ However, by way of contrast, the COPP does not permit the confidential file to be stored in ‘some other place with controlled access’. It instead states, ‘[r]eports must be retained on a confidential file in a secure cabinet in the office of the MOS/delegated officer or the intelligence manager ensuring controlled access’.³³⁹ If a report contains intelligence, the MOS is to ensure a report was recorded on the IIS of the Corrections Intelligence Group (**CIG**).³⁴⁰
306. The Operations Procedure Manual, Chapter 12.1, also provided that if CIG received information that was likely to threaten the security of a correctional centre, CIG was to analyse that information together with all other relevant intelligence and prepare an Intelligence Report, make direct contact with the Governor of the correctional centre and forward to the Governor a copy of the Intelligence Report.³⁴¹

4.2.8 DOJ Managing Misconduct Procedure

307. The DOJ Managing Misconduct Procedure was introduced in February 2016 and was intended to supersede the policy entitled ‘Management of Professional Conduct in the Department of Corrective Services’ dated September 2002.³⁴² The DOJ Managing Misconduct Procedure applies to all employees and divisions of DOJ (now DCJ), including CSNSW, and remains in effect.³⁴³
308. Chapter 5 of the DOJ Managing Misconduct Procedure sets out the procedure for reporting misconduct. It prescribes that all allegations of misconduct are to be reported to the Strategic Human Resources Business Partner or the Divisional

337 Ex. 58, TB 3, Vol. 18, Tab 626, CSNSW.0002.0024.2078_0579.

338 Ex. 58, TB 3, Vol. 18, Tab 631, CSNSW.0002.0024.3203_1252.

339 Ex. 58, TB 3, Vol. 18, Tab 631, CSNSW.0002.0024.3203_1252.

340 Ex. 58, TB 3, Vol. 18, Tab 626, CSNSW.0002.0024.2078_0579. See also Ex. 58, TB 3, Vol. 18, Tab 621, CSNSW.0002.0020.8009_0008.

341 Ex. 58, TB 3, Vol. 18, Tab 626, CSNSW.0002.0024.2078_0579.

342 Ex. 47, TB 5, Vol. 21B, Tab 3, CSNSW.0001.0253.0001_0017-0018 [45]-[47].

343 Ex. 3, TB 3, Vol. 9, Tab 149, CSNSW.0001.0034.0043_0001; Ex. 47, TB 5, Vol. 21, Tab 1, CSNSW.0001.0076.0001_0017 [58].

Professional Standards Unit in the first instance.³⁴⁴ It notes that any evidentiary material, such as file notes and closed-circuit television (**CCTV**) footage, that will assist with the initial assessment process must be provided to the Strategic Human Resources Business Partner or the Divisional Professional Standards Unit as soon as possible. The purpose of the initial assessment is to determine whether or not the matter needs to be treated as an allegation of misconduct under s. 69 of the GSE Act. The DOJ Managing Misconduct Procedure notes that in some instances further inquiries may be necessary, such as obtaining statements or reports from relevant parties, which may be conducted with the assistance of an external investigator.³⁴⁵

4.2.9 The Code of Ethics and Conduct for NSW government sector employees

309. On 19 August 2022, the NSW Public Service Commissioner issued a direction to the head of each government sector agency to implement the Code of Conduct and Ethics for NSW government sector employees on and from 1 November 2022 (**2022 NSW Code**), and to require employees of each agency to comply with the 2022 NSW Code.³⁴⁶ This direction replaced a direction made by the former Public Service Commissioner on 20 April 2015, which required the implementation of an older version of the 2022 NSW Code.³⁴⁷ The older version of the 2022 NSW Code was incorporated into the 2015 DOJ Code (see above).
310. The 2022 NSW Code applies to all employees acting in the course of, or in connection with, NSW government sector employment.³⁴⁸ It notes that departments and agencies may supplement the 2022 NSW Code with requirements and advice specific to their organisation's operating environment and business risks, but they are not permitted to alter or subtract from it.³⁴⁹

344 Ex. 3, TB 3, Vol. 9, Tab 149, CSNSW.0001.0034.0043_0007.

345 See also Transcript, 28 September 2023, 67:27-68:23.

346 Ex. 47, TB 5, Vol. 21, Tab 1, Annexure 1D, Annexure Tab 5, CSNSW.0001.0063.0002.

347 Ex. 47, TB 5, Vol. 21, Tab 1, Annexure 1D, Annexure Tab 5, CSNSW.0001.0063.0002.

348 Ex. 47, TB 5, Vol. 21, Tab 1, Annexure 1D, Annexure Tab 5, CSNSW.0001.0063.0004.

349 Ex. 47, TB 5, Vol. 21, Tab 1, Annexure 1D, Annexure Tab 5, CSNSW.0001.0063.0004.

311. The 2022 NSW Code imposes a duty on all government sector employees to '[r]eport possible breaches of the *Ethical framework for the government sector* to relevant officers' and all managers and executives to '[a]ct promptly and with due process to prevent and address any breaches of the *Ethical framework for the government sector*'.³⁵⁰ The Ethical Framework is established by Part 2 of the GSE Act and comprises a set of core values that all government sector employees are expected to uphold, including:
- a) Acting professionally with honesty, consistency and impartiality;
 - b) placing the public interest over personal interest; and
 - c) upholding the law.³⁵¹
312. The 2022 NSW Code specifies that if a staff member sees another staff member act in a way that is contrary to the 2022 NSW Code, they should, in the first instance, discuss the issue with their immediate supervisor or manager, or any member of the agency's executive.³⁵² If the staff member believes that the behaviour is 'not just unethical' but may also be corrupt, a serious and substantial waste of government resources, maladministration, or a breach of government information and privacy rights, they are to report their concerns to the agency's Public Interest Disclosures Coordinator or Disclosures Officer, the head of the agency, or the relevant investigation authority such as ICAC or the Ombudsman. This differs from the 2015 DOJ Code, which had incorporated the preceding NSW government-wide code, which provided that serious misconduct was to be reported to the Human Resources Business Partner.³⁵³

4.3 Obligations towards inmates

313. CSNSW employees have a range of obligations towards inmates, including with respect to their general treatment of inmates or assistance that they are expected to proffer to inmates.

350 Ex. 47, TB 5, Vol. 21, Tab 1, Annexure 1D, Annexure Tab 5, CSNSW.0001.0063.0007.

351 GSE Act, s. 7.

352 Ex. 47, TB 5, Vol. 21, Tab 1, Annexure 1D, Annexure Tab 5, CSNSW.0001.0063.0011.

353 Ex. 3, TB 3, Vol. 9, Tab 147, CSNSW.0001.0034.0122_0021.

4.3.1 Intimate and sexual relationships with inmates

314. Since 22 November 2018, it has been an offence for Correctional Officers to engage in sexual conduct or an intimate relationship with inmates if that conduct or relationship has particular effects. Section 236Q(1) of the CAS Act provides that it is a criminal offence if a Correctional Officer engages in sexual conduct or an intimate relationship with an inmate or a person who is on a community-based order and the conduct or relationship:
- a) causes a risk or potential risk to the safety or security of a correctional centre or correctional complex or to good order and discipline within a correctional centre or complex; or
 - b) compromises the proper administration of a sentence.
315. The offence carries a maximum penalty of 20 penalty units and/or imprisonment for two years.
316. On 16 November 2018, the Commissioner of CSNSW Peter Severin circulated a Commissioner’s Memorandum informing staff of the passage of the legislation which introduced this offence.³⁵⁴ The Memorandum stated that ‘[s]exual and intimate relationships between staff members and offenders compromise the safety, security, good order and discipline of correctional facilities and result in the improper administration of sentences, both in custody and in the community. These amendments ensure that there are serious consequences for this type of misconduct.’³⁵⁵
317. As already noted, the provision commenced on 22 November 2018. The then Minister for Corrections (**the Minister**), David Elliott, in the second reading speech for the Bill introducing the offence, explained that this offence was enacted in response to ‘community concerns about the small minority of staff within the correctional system who engage in inappropriate relationships with offenders.’³⁵⁶ That reference was explained in the Legislative Assembly debate

354 Ex. 3, TB 3, Vol. 9, Tab 151, CSNSW.0001.0034.0184.0001-0002.

355 Ex. 3, TB 3, Vol. 9, Tab 151, CSNSW.0001.0034.0184_0001.

356 New South Wales, *Parliamentary Debates*, Legislative Assembly, 13 November 2018, 999 (David Elliott, Minister for Corrections).

on the Bill, in which it was noted that in late July 2018 there were a number of media reports about sexual and other inappropriate relationships between CSNSW employees and offenders at the Mid North Coast, Long Bay, Lithgow and Silverwater Correctional Complexes.³⁵⁷ There was reference in the debate to newspaper coverage of an allegation that a female officer had ‘had an affair with a convicted cop killer’ and to the then Minister having ‘put his job on the line over the issue, vowing that he would change the laws’.³⁵⁸

318. The introduction of the offence was described by the then Minister in his second reading speech as increasing ‘opportunities for successful detection and prosecution because it is not limited to sexual conduct and includes intimate relationships. An intimate relationship can be a precursor to sexual conduct as it can, for example, include physical expressions of affection.’³⁵⁹
319. The offence is framed so that there is a need to prove the conduct/relationship *and* the existence of risk of the kind referred to in s. 236Q(1)(a) or a compromise of the proper administration of a sentence or community-based order. It is not clear what the policy rationale was for requiring such effects to be proven in order for sexual contact or an intimate relationship with an inmate to constitute an offence. The then Minister stated in his second reading speech that ‘sexual conduct between a correctional employee and an inmate that occurs while an inmate is in custody would always—I repeat, always— be seen to result in a risk or a potential risk to the safety, security or good order and discipline of a correctional facility and as such would be covered under this [B]ill’.³⁶⁰
320. I share the Minister’s view of intimate relations between officers and inmates. The introduction of a requirement to assess the impact of any conduct or relationship before a criminal offence can be committed, to my mind, makes little sense. The section should be amended so that all sexual conduct between an officer and an inmate is prohibited without qualification.

357 New South Wales, *Parliamentary Debates*, Legislative Assembly, 13 November 2018, 1003 (Melanie Gibbons).

358 New South Wales, *Parliamentary Debates*, Legislative Assembly, 13 November 2018, 1003 (Ron Hoenig).

359 New South Wales, *Parliamentary Debates*, Legislative Assembly, 13 November 2018, 999 (David Elliott, Minister for Corrections).

360 NSW, *Parliamentary Debates*, Legislative Assembly, 13 November 2018, 999 (David Elliott, Minister for Corrections).

321. **RECOMMENDATION: Section 236Q of the CAS Act should be amended so that to prove the offence against a correctional employee who has engaged in sexual conduct or an intimate relationship with an inmate, there is no need to further prove that risk of the kind referred to in s. 236Q(1)(a) or s. 236Q(1)(b) exists. The offence should remain in its current form in respect of a correctional employee who has engaged in sexual conduct or an intimate relationship with a person who is subject to a community-based order.**

4.3.2 Duty of care

322. CSNSW owes a duty of care towards inmates to prevent injury arising from, among other things, self-harm and assaults.
323. Section 8.27 of the Operations Procedures Manual, operative from 2005 to 2017,³⁶¹ provided that all staff needed to be aware of the term ‘duty of care’ and their responsibility to maintain this duty towards inmates, other employees and visitors.³⁶² This section of the Operations Procedures Manual provided staff with information regarding negligence and noted that disciplinary action may be taken against CSNSW officers who were in breach of their duty of care towards inmates and fellow employees.³⁶³ It noted that while it was difficult to provide ‘more than general guidance and the general principles from which a duty of care arises’, staff should have regard to their obligation to:
- a) comply with all relevant legislative, industrial or administrative requirements;
 - b) accurately notate inmates’ records;
 - c) be familiar with all relevant material relating to inmates, with particular reference to their disabilities and inclinations to self-harm;
 - d) keep up to date with advances and changes in their areas of employment;
 - e) document and maintain records affecting important decisions made in relation to inmates and other members of staff; and

361 Ex. 47, TB 5, Vol. 21, Tab 1, CSNSW.0001.0076.0001_0012-0013 [40(d)].

362 Ex. 58, TB 3, Vol. 18, Tab 622, CSNSW.0002.0024.2078_0340-0341.

363 Ex. 58, TB 3, Vol. 18, Tab 622, CSNSW.0002.0024.2078_0342.

- f) ensure that information gained during the course of employment is only used for proper and appropriate purposes.³⁶⁴

4.3.3 Treating inmates with dignity and respect

- 324. The CAS Regulation, 2021 DCJ Code of Ethical Conduct and 2010 Guide each impose various obligations on CSNSW employees as to how they should treat inmates.
- 325. Clause 46(1) of the CAS Regulation provides that a Correctional Officer may, at the direction of the Governor or as the officer considers appropriate, search an inmate (including by way of strip-search) and their cell and property. It states that except in the case of an emergency, an inmate must not be strip-searched by or in the presence of a person of the opposite sex.³⁶⁵ It further provides that the searching of an inmate and the inmate's cell must be conducted with due regard to dignity and self-respect and in as seemly a way as is consistent with the conduct of an effective search.³⁶⁶
- 326. Clause 129(2) provides that a Correctional Officer must endeavour to control inmates by showing them example [sic] and leadership and by enlisting their willing co-operation. It states that at all times, inmates are to be treated in a way that encourages self-respect and a sense of personal responsibility.³⁶⁷
- 327. Clause 249 of the CAS Regulation provides that a Correctional Officer, departmental officer, medical officer or nursing officer must not:
 - a) use insulting or abusive language to any other officer, to any inmate or to any person visiting a correctional centre;
 - b) say or do anything that is calculated to undermine discipline at a correctional centre or to prejudice the efficiency of, or to bring discredit on, CSNSW; or
 - c) act deliberately in a way calculated to provoke an inmate.

364 Ex. 58, TB 3, Vol. 18, Tab 622, CSNSW.0002.0024.2078_0342.

365 CAS Regulation, cl. 46(2).

366 CAS Regulation, cl. 46(3).

367 CAS Regulation, cl. 129(3).

328. The 2021 DCJ Code of Ethical Conduct similarly imposes obligations on staff in their interactions with inmates. Section 7 requires employees to remain ‘fair and impartial at all times and ... [to] demonstrate respect and courtesy towards inmates, offenders and detainees, even in difficult and challenging circumstances’ and stresses that ‘[a]cts of intimidation, harassment, insults or abuse towards any Departmental client is [sic] a serious breach of this Code which may result in misconduct action.’³⁶⁸ Section 8.12 provides that employees must ensure that personal or sensitive information about clients (being inmates in the case of CSNSW) or colleagues remains confidential and private.³⁶⁹ Staff are to exercise caution and sound judgement in discussing, searching or accessing the personal information of others.
329. Annexure A to the 2021 DCJ Code of Ethical Conduct prescribes additional obligations for employees of CSNSW. Within this annexure, s. 18.1 notes that all people have the right to be treated fairly and that the treatment of offenders must encourage their self-respect, sense of personal responsibility and pro-social behaviour.³⁷⁰ Also within this annexure, s. 18.2 prohibits employees from using ‘insulting, abusive, obscene or sexualised language to any colleague, offender or visitor to a CSNSW workplace’ and requires employees who witness such language or behaviour to report it.³⁷¹ The 2021 DCJ Code of Ethical Conduct recognises that offensive language towards offenders is unacceptable as it ‘normalises and reinforces such behaviour and it could provoke conflict and retaliation.’³⁷² It further notes that the use of such language by a senior officer to a subordinate is particularly unacceptable.³⁷³ Section 18.3 prescribes that the decisions and actions of employees must be reasonable, fair, justifiable and appropriate to the circumstances and employees must create and keep relevant records and be able to communicate their decisions clearly to those impacted.³⁷⁴

368 Ex. 3, TB 3, Vol. 13, Tab 421, CSNSW.0001.0001.0079_0009.

369 Ex. 3, TB 3, Vol. 13, Tab 421, CSNSW.0001.0001.0079_0013.

370 Ex. 3, TB 3, Vol. 13, Tab 421, CSNSW.0001.0001.0079_0020.

371 Ex. 3, TB 3, Vol. 13, Tab 421, CSNSW.0001.0001.0079_0021.

372 Ex. 3, TB 3, Vol. 13, Tab 421, CSNSW.0001.0001.0079_0021.

373 Ex. 3, TB 3, Vol. 13, Tab 421, CSNSW.0001.0001.0079_0021.

374 Ex. 3, TB 3, Vol. 13, Tab 421, CSNSW.0001.0001.0079_0021.

330. Prior to this, the 2015 DOJ Code included similar requirements; however, it did not contain an express provision detailing that acts of intimidation, harassment, insults or abuse towards inmates were a serious breach which could result in misconduct action, as contained in s. 7 of 2021 DCJ Code of Ethical Conduct.³⁷⁵
331. The 2010 Guide also required employees who work with offenders to be accountable, impartial, consistent and fair in their contact with offenders and to act with integrity and compassion.³⁷⁶ The 2010 Guide noted that the treatment of offenders should encourage their self-respect and a sense of personal responsibility.³⁷⁷

4.3.4 Maintaining professional boundaries and managing conflicts of interest

332. CSNSW employees are required to maintain professional boundaries with inmates by disclosing conflicts of interest and not crossing appropriate boundaries, which would include engaging in sexual conduct or intimate relationships with inmates.
333. The 2021 DCJ Code of Ethical Conduct requires departmental employees to recognise and disclose any actual, potential or perceived conflict of interest to their supervisor/manager or, where appropriate, a more senior manager.³⁷⁸ The 2021 DCJ Code of Ethical Conduct also notes ‘departmental employees must never derive any personal benefit from the skills or labour of the Department’s clients’ and that this is ‘particularly important in relation to inmates, offenders and juvenile detainees’.³⁷⁹ The 2021 DCJ Code of Ethical Conduct also prohibits employees from seeking personal benefit or reward for the work they undertake or making improper use of their work, status, power or authority to gain personal benefit.³⁸⁰
334. Annexure A to the 2021 DCJ Code of Ethical Conduct imposes additional obligations on CSNSW employees with respect to their interactions with

375 Ex. 3, TB 3, Vol. 9, Tab 147, CSNSW.0001.0034.0122_0011.

376 Ex. 3, TB 3, Vol. 9, Tab 143, CSNSW.0001.0034.0090_0016.

377 Ex. 3, TB 3, Vol. 9, Tab 143, CSNSW.0001.0034.0090_0016.

378 Ex. 3, TB 3, Vol. 13, Tab 421, CSNSW.0001.0001.0079_0010.

379 Ex. 3, TB 3, Vol. 13, Tab 421, CSNSW.0001.0001.0079_0010.

380 Ex. 3, TB 3, Vol. 13, Tab 421, CSNSW.0001.0001.0079_0010.

offenders. It requires that CSNSW employees maintain professional boundaries with offenders, by:

- a) being impartial, consistent and fair in their contact and interaction with offenders;
- b) acting with integrity and compassion towards offenders, without bias, prejudice or discrimination; and
- c) being professional and transparent at all times and not overstepping boundaries established for the performance of their role.³⁸¹

335. Annexure A to the 2021 DCJ Code of Ethical Conduct requires CSNSW staff to disclose to their supervisor or manager all current and former personal relationships and social or off-duty contact with offenders.³⁸² It notes that '[t]his prevents incorrect assumptions about the nature of the contact and it allows any actual, potential or perceived risks to be managed'.³⁸³ It provides that any failure to report such contact, or misrepresenting its nature, may give rise to a presumption of misconduct, leading to further investigation and possible disciplinary action.³⁸⁴ Annexure A notes that the DCJ Conflicts of Interest Policy and Procedure describes the obligation of employees when they have an actual conflict of interest.³⁸⁵ However, due to the special role of CSNSW employees, they must also report potential and perceived conflicts of interest, which could include:

- a) social or personal contact with, or a family connection to, an offender;
- b) offers or receipt of gifts or other benefits; and
- c) offers to buy items from offenders or sell items to them.

336. The 2010 Guide also required employees who worked with offenders to be professional and transparent at all times and to not overstep boundaries established for the performance of their role.³⁸⁶ It provided that such conflict must

381 Ex. 3, TB 3, Vol. 13, Tab 421, CSNSW.0001.0001.0079_0020.

382 Ex. 3, TB 3, Vol. 13, Tab 421, CSNSW.0001.0001.0079_0024.

383 Ex. 3, TB 3, Vol. 13, Tab 421, CSNSW.0001.0001.0079_0024.

384 Ex. 3, TB 3, Vol. 13, Tab 421, CSNSW.0001.0001.0079_0024.

385 Ex. 3, TB 3, Vol. 13, Tab 421, CSNSW.0001.0001.0079_0023.

386 Ex. 3, TB 3, Vol. 9, Tab 143, CSNSW.0001.0034.0090_0016.

be reported in writing to the employees' manager.³⁸⁷ The 2015 DOJ Code similarly required employees to report conflicts to their supervisor, and additionally specified that it was both real and perceived conflicts that were to be reported.³⁸⁸

337. The CSNSW Contact with Offender Policy (**Contact with Offender Policy**), issued in May 2010, only required employees to report 'significant' off-duty or social contact with offenders and did not require the reporting of casual or unintentional meetings, such as in the local supermarket, 'regardless of their frequency'. Such meetings were noted to be possibly a regular occurrence in country locations.³⁸⁹ The Contact with Offender Policy prescribed that staff were to report contact with offenders via the Contact with Offender Declaration form, which was to be provided to their manager.³⁹⁰
338. The Contact with Offender Policy noted that with respect to contact with offenders, misconduct included failing to identify or declare any personal involvement, relationship or significant social or off-duty contact with an offender and failing to comply with any agreed-upon strategy to manage contact with any offenders.³⁹¹ The Contact with Offender Policy noted that staff needed to keep in mind the perception of improper conduct or existence of an improper relationship that could arise if routines, regulations and other protocols were not strictly and consistently followed.³⁹² It further stated that employees needed to be aware that inappropriate contact with offenders could leave them open to exploitation and manipulation and that appropriate action would be taken against any employee who left themselves vulnerable in this way.³⁹³
339. It is unclear from the evidence when the Contact with Offender Policy ceased to be operative.³⁹⁴

387 Ex. 3, TB 3, Vol. 9, Tab 143, CSNSW.0001.0034.0090_0011.

388 Ex. 3, TB 3, Vol. 9, Tab 147, CSNSW.0001.0034.0122_0008-0009.

389 Ex. 59, TB 5, Vol. 22A, Tab 4, Annexure G, Annexure Tab 56, CSNSW.0001.0034.0060_0004-0005.

390 Ex. 59, TB 5, Vol. 22A, Tab 4, Annexure G, Annexure Tab 56, CSNSW.0001.0034.0060_0004.

391 Ex. 59, TB 5, Vol. 22A, Tab 4, Annexure G, Annexure Tab 56, CSNSW.0001.0034.0060_0003.

392 Ex. 59, TB 5, Vol. 22A, Tab 4, Annexure G, Annexure Tab 56, CSNSW.0001.0034.0060_0005.

393 Ex. 59, TB 5, Vol. 22A, Tab 4, Annexure G, Annexure Tab 56, CSNSW.0001.0034.0060_0006.

394 Ex. 59, TB 5, Vol. 22, Tab 4, CSNSW.0001.0087.0001_0016 [71(a)].

4.3.5 Staff contact with inmates

340. There are a number of CSNSW policies and procedure documents that prescribe the number of staff required to be present with inmates in different circumstances.
341. On 30 August 2016, Dillwynia Acting Governor Ian MacRae issued a local order prohibiting staff members at Dillwynia from entering inmate accommodation areas alone, unless all inmates had been locked out of the area (**the Local Order**). The Local Order prescribed that should a staff member need to enter an accommodation area, such as to intercept contraband or intervene in the event of aggressive behaviour, radio assistance should be called and responded to prior to entry.³⁹⁵ In the event of a duress alarm, any staff member was permitted to enter the accommodation area during the daily operations for the possible preservation of life, with the expectation that the second officer would attend within seconds.³⁹⁶ The Local Order required male staff to announce they were entering the unit so inmates could ensure they were appropriately attired.³⁹⁷ In the event of accommodation being searched with inmates present, the order required that a female staff member be part of the search and that body searches be completed by a female staff member unless in an emergency and with the approval of the General Manager or MOS.³⁹⁸
342. The Local Order was introduced after several instances where staff had entered an accommodation unit, which resulted in disturbances between inmates, or allegations being made involving staff.³⁹⁹ Most notable of these instances was a report made in May 2016 regarding allegations that, among other things, an officer was providing inmates with cigarettes in return for ‘head jobs’, that two inmates were pregnant by officers and that a group of inmates had sexually assaulted another inmate.⁴⁰⁰ Mr MacRae noted in an email to the Director of the IB, Michael Hovey, that the unit where the conduct was said to have occurred

395 Ex. 3, TB 3, Vol. 14, Tab 448, CSNSW.0001.0032.0110_0001.

396 Ex. 3, TB 3, Vol. 14, Tab 448, CSNSW.0001.0032.0110_0001.

397 Ex. 3, TB 3, Vol. 14, Tab 448, CSNSW.0001.0032.0110_0001.

398 Ex. 3, TB 3, Vol. 14, Tab 448, CSNSW.0001.0032.0110_0001.

399 Ex. 3, TB 3, Vol. 14, Tab 448, CSNSW.0001.0032.0110_0001.

400 Ex. 3, TB 3, Vol. 14, Tab 444, CSNSW.0001.0032.0098_0002.

was not covered by CCTV.⁴⁰¹ It appears that the Local Order duplicated one previously given by Mr MacRae at Emu Plains Correctional Centre, as a way to mitigate the risk of staff attending accommodation units alone, something that emerged as an issue due to the lack of CCTV.⁴⁰²

343. Chapter 5.5 of the COPP, 'Cell Security and Alarm Calls', was introduced on 16 December 2017 and prescribes that when responding to a cell call alarm while inmates are locked-in, two officers must be present to open a cell door, including in the event of an emergency.⁴⁰³

344. On 5 November 2019 (that is, after Astill had been arrested and charged), Chapter 15.1 of the COPP, 'Safe Work Practices', was amended with the addition of the Sight or Sound principle.⁴⁰⁴ The Sight or Sound principle applies in maximum security correctional centres and requires that an officer always be either within sight or within earshot of another officer when dealing with inmates, or in an area that, at that time, is accessible to inmates.⁴⁰⁵ This principle applies to centres which house inmates of maximum security and other classifications, including Dillwynia, and applies throughout the centre and is not limited to where maximum security inmates are housed.⁴⁰⁶

345. Director, Custodial South Region and former Dillwynia Governor, Saffron Cartwright, gave evidence that it was her practice to never speak with an inmate or staff member by herself and explained that the Sight or Sound principle increased accountability, transparency, and safe work practices. Her evidence was that the Sight or Sound principle was a way of mitigating the risks involved for staff when responding to incidents and was a way to manage allegations.⁴⁰⁷ In her view, it underpinned most interactions between officers and inmates.⁴⁰⁸

401 Ex. 3, TB 3, Vol. 14, Tab 447, CSNSW.0001.0032.0108_0001.

402 Ex. 3, TB 3, Vol. 14, Tab 447, CSNSW.0001.0032.0108_0001; Ex. 3, TB 3, Vol. 14, Tab 449, CSNSW.0001.0032.0111_0001.

403 Ex. 46, TB 5, Vol. 25A, Tab 8, Annexure Tab 140, CSNSW.0001.0027.1615-1617; Ex. 46, TB 5, Vol. 25A, Tab 8, Annexure Tab 140, CSNSW.0001.0027.1623.

404 Ex. 46, TB 5, Vol. 25B, Tab 8, Annexure Tab 141, CSNSW.0001.0027.0571.

405 Ex. 46, TB 5, Vol. 25B, Tab 8, Annexure Tab 141, CSNSW.0001.0027.0562.

406 Transcript, 20 November 2023, 2751.14-42.

407 Transcript, 20 November 2023, 2751.14-42.

408 Ex. 46, TB 5, Vol. 25, Tab 8, CSNSW.0001.0175.0001_0020 [106].

4.3.6 Facilitating inmates' access to external services

346. On 7 October 2020, a Local Operating Procedure was introduced at Dillwynia relating to the reception, screening and induction of inmates. Among other things, its purpose is to ensure that inmates are informed of their rights and responsibilities upon transfer to Dillwynia.⁴⁰⁹ It prescribes that a Services and Programs Officer is responsible for coordinating an orientation meeting for all inmates within 72 hours of arriving to the centre.⁴¹⁰
347. The CAS Regulation prescribes a number of services to which staff are to facilitate inmates' access and the way in which such access is to be facilitated.
348. Clause 113 of the CAS Regulation provides that, upon receiving from an inmate any letter or parcel addressed to an exempt body or exempt person, an officer must post the letter or parcel to the addressee, as soon as practicable, without opening, inspecting or reading it. Likewise, cl. 113(2) imposes the same obligation on officers who receive letters and parcels from an exempt body or exempt person addressed to an inmate. Additional requirements apply in relation to Category 5 female inmates (among others).⁴¹¹
349. Clause 119B of the CAS Regulation provides that a telephone call made or received by an inmate may be monitored or recorded unless the telephone call is with an exempt body or exempt person.
350. The exempt bodies and persons are defined in cl. 3 of the CAS Regulation and include the NSW and Commonwealth Ombudsmen, the Inspector of Custodial Services, ICAC, Legal Aid NSW, legal practitioners and NSWPF officers.
351. Clauses 165 to 167 of the CAS Regulation prescribe requirements in respect of inmates' access to the Official Visitor. I refer to the Official Visitor further in Chapter 6, but briefly the Official Visitor is assigned to a specific correctional facility which they must visit at least once a month for the purpose of speaking

409 Ex. 46, TB 5, Vol. 25B, Tab 8, Annexure Tab 185, CSNSW.0001.0111.0004.

410 Ex. 46, TB 5, Vol. 25B, Tab 8, Annexure Tab 185, CSNSW.0001.0111.0005.

411 CAS Regulation, cl. 113(5), 115. Category 5 is the strictest classification applicable to female inmates, cl. 13 CAS Regulation.

to inmates and staff and to examine the facility. The Official Visitor is required to report to the Inspector of Custodial Services and the Minister at least once every six months to provide an independent view of, among other things, the types of issues that are of concern to inmates.⁴¹²

352. Clause 168 of the CAS Regulation provides that a Correctional Officer to whom an oral or written request by an inmate for permission to speak with the Governor is addressed or delivered must, without unreasonable delay, convey it to the Governor. In turn, the Governor must give the inmate an opportunity to speak with them on the day in which the request was conveyed or made, or as soon as practicable after that day. The Governor must consider what the inmate has to say and, having done so, must orally inform the inmate of any action that they have taken or propose to take, or inform the inmate that they do not propose to take any action.
353. Clause 169 imposes similar obligations on Correctional Officers who receive a request from an inmate to speak with the Minister, the Commissioner of CSNSW or the Official Visitor. Such a request is to be provided to the Governor for consideration. The Governor must dispose of the matter as soon as practicable by taking the action they consider appropriate and making a written record of the action taken.
354. The ICAC Act also imposes obligations on the Governor of a correctional centre if an inmate wishes to make a complaint to ICAC. Section 10(4) of the ICAC Act provides that if an inmate informs the Governor that they wish to make a complaint to ICAC, the Governor must take all steps necessary to facilitate the making of the complaint and send immediately to ICAC, unopened, any written matter addressed to ICAC.

412 Transcript, 17 November 2023, 2653.33-45; Ex. 45, TB 5, Vol. 25, Tab 10, AST.002.013.0060_0015-0016 [83]-[86].

4.4 Obligations of CSNSW staff towards other staff

4.4.1 Treating other Correctional Officers with respect and dignity

355. The CAS Regulation imposes a requirement as to how Correctional Officers are to act towards each other. Clause 249(1) provides that a Correctional Officer must not, among other things use insulting or abusive language to any officer.
356. The 2010 Guide noted that the use of coarse, obscene, insulting or abusive language to a colleague, offender or visitor to a CSNSW workplace was inappropriate, as was sexual banter and suggestive behaviour.⁴¹³ The 2010 Guide noted that such behaviour may constitute harassment.⁴¹⁴ It specified that the use of such language by a senior officer to a subordinate was particularly unacceptable as senior officers have a duty to promote professional conduct in the workplace and to eradicate unacceptable behaviour.⁴¹⁵ It also provided that employees were to relate professionally and respectfully with colleagues and to act with courtesy and fairness.⁴¹⁶
357. The 2010 Guide also provided that employees should understand the importance of managing issues consistently, promptly and fairly.⁴¹⁷ This involved dealing with matters in accordance with approved procedures, in a non-discriminatory manner, and consistently with the rules of natural justice.⁴¹⁸ It specifically noted that acts of unfairness involving favouritism, inconsistency or discrimination adversely affected morale and good working relationships.⁴¹⁹ With respect to recruitment, it also noted that employees were required to comply with

413 Ex. 3, TB 3, Vol. 9, Tab 143, CSNSW.0001.0034.0090_0019.

414 Ex. 3, TB 3, Vol. 9, Tab 143, CSNSW.0001.0034.0090_0019.

415 Ex. 3, TB 3, Vol. 9, Tab 143, CSNSW.0001.0034.0090_0019 (citing Commissioner's Memorandum 02/2007: Use of Inappropriate Language and Sexual Banter in the Workplace (*Crimes (Administration of Sentences) Regulation 2008*, cl. 258)).

416 Ex. 3, TB 3, Vol. 9, Tab 143, CSNSW.0001.0034.0090_0018.

417 Ex. 3, TB 3, Vol. 9, Tab 143, CSNSW.0001.0034.0090_0018.

418 Ex. 3, TB 3, Vol. 9, Tab 143, CSNSW.0001.0034.0090_0018.

419 Ex. 3, TB 3, Vol. 9, Tab 143, CSNSW.0001.0034.0090_0018.

established procedures for recruitment, selection, promotion and conditions of employment, which are based on equal employment opportunity and anti-discrimination legislation.⁴²⁰

358. Section 7 of the 2021 DCJ Code of Ethical Conduct provides that discrimination, bullying, harassment and other inappropriate behaviour will not be tolerated in any form and may constitute misconduct.⁴²¹ Among other things, it provides that employees must use courteous, respectful and appropriate language at all times and not discriminate against, bully or harass any person in their dealings with them.⁴²²
359. Section 18.2 of Annexure A to the 2021 DCJ Code of Ethical Conduct (which prescribes additional obligations on employees of CSNSW) titled 'Respectful language in the workplace' replicates the requirements with respect to language towards other officers contained in the 2010 Guide described above.⁴²³

4.4.2 Managerial obligations towards other staff members

360. Section 5 of the 2021 DCJ Code of Ethical Conduct provides that managers and supervisors are required to provide advice and guidance to employees on issues relating to the 2021 DCJ Code of Ethical Conduct, and to ensure compliance with the code by all employees, including by taking appropriate action in relation to suspected breaches by prompt consultation with Senior Executives or PSI.⁴²⁴ Section 5.2 requires managers to model acceptable standards of behaviour and demonstrate high ethical standards at all times.⁴²⁵
361. Section 5.3 indicates that senior executives are required to ensure all employees are aware of, and understand, their obligations in relation to the 2021 DCJ Code of Ethical Conduct, model acceptable standards of behaviour, demonstrate high ethical standards at all times, and refer suspected non-compliance to PSI.⁴²⁶

420 Ex. 3, TB 3, Vol. 9, Tab 143, CSNSW.0001.0034.0090_0018.

421 Ex. 3, TB 3, Vol. 13, Tab 421, CSNSW.0001.0001.0079_0009.

422 Ex. 3, TB 3, Vol. 13, Tab 421, CSNSW.0001.0001.0079_0009.

423 Ex. 3, TB 3, Vol. 13, Tab 421, CSNSW.0001.0001.0079_0021.

424 Ex. 3, TB 3, Vol. 13, Tab 421, CSNSW.0001.0001.0079_0007.

425 Ex. 3, TB 3, Vol. 13, Tab 421, CSNSW.0001.0001.0079_0007.

426 Ex. 3, TB 3, Vol. 13, Tab 421, CSNSW.0001.0001.0079_0008.

362. Section 18.4 of Annexure A to the 2021 DCJ Code of Ethical Conduct provides that managers must:⁴²⁷
- a) ensure that their employees clearly understand the duties and responsibilities of their positions;
 - b) periodically review their employees' work performance; and
 - c) provide their employees with constructive feedback.
363. Section 18.4 further notes that employees must comply with every direction or instruction they receive from their superiors that is lawful and reasonable, and that failure to do so may result in sanctions, including termination of employment.⁴²⁸ Employees are also prohibited from preventing, obstructing or hindering another employee's performance of their duties, or doing anything that will distract them in the performance of their duties.⁴²⁹

427 Ex. 3, TB 3, Vol. 13, Tab 421, CSNSW.0001.0001.0079_0021.

428 Ex. 3, TB 3, Vol. 13, Tab 421, CSNSW.0001.0001.0079_0021.

429 Ex. 3, TB 3, Vol. 13, Tab 421, CSNSW.0001.0001.0079_0022.



New South Wales
Australia

5

Managing misconduct allegations

5.1 Overview

364. Fundamental to any large organisation's ability to manage its staff is the existence of a proper process or system for managing reports of staff misconduct. That system must be properly organised, consistent with relevant law and policy, and clearly communicated to all staff.
365. The evidence before the Special Commission establishes that during the period of Astill's offending CSNSW did not have a system with those characteristics in place. For reasons discussed further below, I am satisfied that this significantly contributed to Astill being able to offend over a period of years.
366. Multiple reports about Astill's conduct were made to persons occupying positions of management. They were made by both inmates and other officers. The detail of these reports is discussed in Chapter 8.

367. The fact that Intelligence Reports concerning Astill were made to the Special Investigation Unit (**SIU**) on at least six occasions prior to Astill's arrest but were not actioned in a timely manner, if at all, indicates that the responsibility for the failure does not lie solely with the then Governor, Shari Martin.⁴³⁰ Given the extent of the reporting that made its way outside of Dillwynia, and the nature of the conduct disclosed in those reports, the fact that no misconduct process was initiated, or even contemplated, before Trudy Sheiles made her disclosure to NSWPF reflects a fundamental failure of the CSNSW systems.
368. As will be discussed in this Chapter, for much of the period in which Astill offended, there was no single policy specific to CSNSW for managing misconduct allegations. This meant that there was no single document a CSNSW staff member could turn to for the purposes of understanding what conduct should be reported and to whom the report should be made. The reporting obligations that were in place were derived from multiple sources and were confusing and contradictory.
369. Most significantly, there was, and still is, a potential inconsistency between the obligation under cl. 253 of the *Crimes (Administration of Sentences) Regulation 2014 (CAS Regulation)* and the obligation under cl. 5.1 of the Department of Justice (**DOJ**) Managing Misconduct Procedure. While it is possible to comply with both obligations, the fact that they require reporting of allegations to different places, and in doing so fail to acknowledge one another, is unwieldy and apt to cause confusion. The operation of these instruments is discussed further below.
370. While the evidence establishes that, in relation to many of the reports concerning Astill, neither obligation was complied with, the fact that these two instruments were operating at the same time, and that the obligations in the DOJ Managing Misconduct Procedure had the effect of potentially encouraging a reporting process that was contrary to law, is highly problematic. Both cl. 253 of the CAS Regulation and cl. 5.1 of the Managing Misconduct Procedure are still in effect.

430 Ex. 3, TB 3, Vol. 10, Tab 169, CSNSW.0001.0021.1153_0001-0014; Ex. 3, TB 3, Vol. 10, Tab 170, CSNSW.0001.0021.1167_0001-0005; Ex. 3, TB 3, Vol. 10, Tab 171, CSNSW.0001.0021.1172_0001-0009; Ex. 3, TB 3, Vol. 10, Tab 173, CSNSW.0001.0021.1181_0001-0006; Ex. 3, TB3, Vol. 10, Tab 176, CSNSW.0001.0021.1187_0001-0004; Ex. 3, TB 3, Vol. 10, Tab 177, CSNSW.0001.0021.1191_0001-0004.

371. Even more concerningly, the evidence before me suggests that prior to it being drawn to the attention of CSNSW during the course of this Special Commission, CSNSW had either not identified this particular inconsistency or, if it had, had not put in place a policy or process to attempt to cure it. A delegation is now in place whereby the Director of Professional Standards and Investigations (**PSI**) is a delegate of the Commissioner for the purposes of receiving allegations pursuant to cl. 253 of the CAS Regulation. For reasons discussed further below, while that delegation goes some way to resolving the contradiction, I am not satisfied that the delegation is sufficient to deal with all of the concerns I have with the operation of cl. 253, which, in my view, needs reform.
372. The need for careful consideration of the misconduct management system is not limited to aspects concerning the making of a report of misconduct. The entire CSNSW system for managing misconduct requires further consideration.
373. It is important that all CSNSW employees understand, whether they make a report or are the subject of one, how that report will be dealt with. Further, clarity of the system for managing misconduct allegations is necessary to ensure that all those involved in that system understand how their role fits into the system as a whole and impacts upon its effective operation.
374. The evidence before me establishes that this system was not well understood during the period Astill offended. For example, Professional Standards Manager, Professional Standards Branch (**PSB**), Douglas Greaves did not know of the SIU function on the Integrated Intelligence System (**IIS**), which was being used by persons at Dillwynia to submit reports about Astill's conduct directly to the Special Investigation Unit (**SIU**), a sub-branch of the Investigations Branch (**IB**). Such a situation cannot be allowed to occur going forward.
375. I am conscious that CSNSW is in the process of reforming its processes for managing misconduct allegations, including by restructuring PSI (**'Project Merge'**). Given that project remains in its early stages there is limited detail available to me to understand what that system will ultimately look like. Accordingly, I can make little comment other than to draw attention to matters I consider need thoughtful consideration.

376. Based on the evidence of the failures before me in relation to Astill, and the evidence discussed below in relation to the potential scope of the misconduct problem within CSNSW, I am satisfied that the system for managing misconduct needs greater rigour and its operation requires closer scrutiny by senior management. The system requires ultimate oversight external to CSNSW. As discussed further below, it is for those reasons that I recommend an enhanced role for a Deputy Commissioner in the misconduct management process with a responsibility to report to the Secretary, Department of Communities and Justice (**DCJ**) or their delegate.

5.2 Reporting allegations of misconduct and other inappropriate behaviour

377. The management of any misconduct or disciplinary process commences with a report. The issue of who reports should be made to, and about what type of conduct, was the subject of evidence before the Special Commission, some of which was contested.

378. The reporting obligations applicable at the time of Astill's offending are summarised in the table below:

Conduct to be reported	To be reported to	Source	When in effect
Criminal offence or other misconduct by a Correctional Officer	Correctional Officer more senior in rank	CAS Regulation, cl. 253(1)	From 2014
Report of criminal offence or other misconduct by a Correctional Officer received from a more junior officer	Commissioner of CSNSW	CAS Regulation, cl. 253(2)	From 2014

Conduct to be reported	To be reported to	Source	When in effect
Corrupt conduct	Supervisor, manager, Branch Head, Divisional Head, Director PSB, Assistant Commissioner, Governance & Continuous Improvement, Commissioner	Commissioner's Instruction No. 10/2013	From 2013
Wrong-doing or suspected wrong-doing	Supervisor or Manager	DOJ Code of Ethics and Conduct Policy (the 2015 Code)	August 2015 to April 2021
Wrong-doing or suspected wrong-doing of a serious nature	Discussed with Manager for referral to relevant Director, Human Resources Business Partner	2015 Code	August 2015 to April 2021
Misconduct	Managers to report to Strategic Human Resources Business Partner or Divisional Professional Standards Unit	DOJ Managing Misconduct Procedure	From February 2016
Breaches of the 2015 Code	Supervisors or Managers or if breach is by supervisor or manager to next line manager	2015 Code	August 2015 to April 2021

Conduct to be reported	To be reported to	Source	When in effect
Misconduct including criminal offences, corrupt or unethical conduct, serious mismanagement	Any employee of a more senior rank or grade, Ethics Officer in the Corruption Prevention Unit, or Executive Director PSB	CSNSW Guide to Conduct and Ethics (2010 Guide)	2010 to approximately 2018
Assault by staff on inmate	PSB (noted not to report to local police)	Operations Procedure Manual, s. 13.4	June 1998 – December 2017
Assault by staff on inmate	PSB, and Governor to report to Director Custodial Operations and Director, CSNSW Investigations to then notify Corrective Services Investigation Unit (CSIU)	Custodial Operations Policy and Procedures (COPP), ch. 13.4.	From December 2017
Any information likely to adversely affect the safety, security or good order and discipline of a correctional centre	Manager of Security (MOS) or in absence of MOS next most senior officer on duty	Operations Procedure Manual, s. 12.1	July 2007 – December 2017
Report from an inmate of criminal matter or serious staff misconduct	General Manager with General Manager to inform Assistant Commissioner, Security and Intelligence	Operations Procedure Manual, s. 12.1	July 2007 – December 2017

Conduct to be reported	To be reported to	Source	When in effect
Any information likely to adversely affect the safety, security or good order and discipline of a correctional centre	MOS or in absence of MOS next most senior officer on duty	COPP, ch. 16.2, s. 2.1	From December 2017
Report from an inmate of criminal matter or serious staff misconduct	General Manager with General Manager to inform the relevant Director, Custodial Corrections, and Director, IB	COPP, ch. 16.12	From December 2017

380. Mr Greaves described the position this way:

*Several overlapping policy documents provided instructions and encouragement to CSNSW staff on their obligations to report misconduct and on other issues relating to ethics and governance. However, these documents were amended from time to time and they were not always comprehensive, clearly expressed, or completely consistent with one another.*⁴³¹

381. Mr Greaves' characterisation of the various reporting obligations is accurate, even if something of an understatement. The conduct that was to be reported, and to whom, was unclear, confusing and contradictory. On Mr Greaves' evidence, PSB staff attempted to provide guidance to staff wishing to report allegations of misconduct, but this involved PSB staff attempting to 'figure out the "line of best fit" through these policies', including because PSB did not 'own' or issue any of the relevant documents after CSNSW ceased to be a separate department.⁴³²

431 Ex. 35, TB 2, Vol. 8A, Tab 91, AST.002.013.0057_0014 [69].

432 Ex. 35, TB 2, Vol. 8A, Tab 91, AST.002.013.0057_0014-0015 [70]-[71].

382. The result of this confused situation was that it was not clear ‘precisely what frontline staff should actually do’.⁴³³ The obvious risk was that frontline Correctional Officers might find the array of policy documents and regulatory requirements impenetrable and either do nothing or rely on their own understanding – which may not have been correct – based on whatever form of instruction or training may have been given to them in relation to reporting misconduct.
383. The evidence indicates that most Correctional Officers had very limited, if any, training in this area. Assistant Commissioner Custodial Metro, John Buckley told the Special Commission he could not recall any mandatory training that was in place prior to 2020.⁴³⁴ The risk of non-compliance with the law and policy in relation to the reporting of misconduct was borne out by the evidence regarding reports of Astill’s conduct.
384. Among the multiple contradictory reporting obligations set out in the table above, most concerning is the relationship between cl. 253 of the CAS Regulation and cl. 5.1 of the DOJ Managing Misconduct Procedure.
385. Clause 253 of the CAS Regulation imposes an obligation on Correctional Officers. If a Correctional Officer receives an allegation that another Correctional Officer has engaged in conduct that constitutes a ‘criminal offence’ or ‘other misconduct’ or a Correctional Officer ‘sincerely believes’ another Correctional Officer has engaged in conduct of that kind, they must report the conduct, or alleged conduct, to a more senior officer. The senior officer is then obliged to report the conduct to the Commissioner of CSNSW if they believe the conduct constitutes a criminal offence or would provide sufficient grounds for the taking of misconduct proceedings under s. 69 of the *Government Sector Employment Act 2013 (GSE Act)*. The clear objective of cl. 253 is to ensure the Commissioner of CSNSW is made aware of allegations of criminal offending or other misconduct by Correctional Officers.

433 Ex. 35, TB 2, Vol. 8A, Tab 91, AST.002.013.0057_0014 [69].

434 Transcript, 29 September 2023, 112.44–113.15. See also, Ex. 47, TB 5, Vol. 21, Tab 1, CSNSW.0001.0076.0001_0015 [50].

386. Clause 5.1 of the DOJ Managing Misconduct Procedure does not have the force of law. It provides that '[a]ll allegations of misconduct are to be reported to the Strategic Human Resources Business Partner or the Divisional Professional Standards Unit in the first instance'.⁴³⁵ For the purposes of CSNSW, the 'Divisional Professional Standards Unit' was the PSB.

387. Clause 5.1 should be understood in the context in which it appears. The DOJ Managing Misconduct Procedure states that its purpose is to provide 'guidance for Decision Makers and practitioners in handling and case managing matters of misconduct consistent with best practice'.⁴³⁶ Under the section of the policy entitled 'Roles and responsibilities' there are five subsections, each imposing roles and responsibilities on certain persons or entities. These are: Ethics, Safety, and Industrial Relations, Strategic Human Resources; Strategic Human Resource Business Partners; Divisional Professional Standards Unit; Managers; and Decision-maker.

388. In the subclause setting out the roles and responsibilities of managers, cl. 3.4, states:

*Managers across all Divisions must action any concerns regarding an employee's conduct as soon as it is identified or raised according to relevant Department of Justice policy and/or procedure. Serious concerns regarding the conduct of an employee involving alleged misconduct or any criminal offences must be reported to the Strategic Human Resources Business Partner or relevant Professional Standards Unit in the first instance to enable assessment and further action as may be appropriate to be taken.*⁴³⁷

389. Having regard to the similarity of the language in cl. 3.4, directed to managers, and cl. 5.1, and the purpose and context of the DOJ Managing Misconduct Procedure as set out above, it would seem that the obligation imposed by cl. 5.1 applies only to Governors/General Managers and those above them in the chain of command. Those persons are required to act in accordance with cl. 5.1. If this

435 Ex. 3, TB 3, Vol. 9, Tab 149, CSNSW.0001.0034.0043_0007.

436 Ex. 3, TB 3, Vol. 9, Tab 149, CSNSW.0001.0034.0043_0003.

437 Ex. 3, TB 3, Vol. 9, Tab 149, CSNSW.0001.0034.0043_0004.

is not correct, the contradictory reporting requirement referred to above is even more problematic, because cl. 5.1 would apply to a larger number of officers.

390. Accordingly, if a Correctional Officer makes a report to a Governor of an allegation of misconduct by another Correctional Officer, cl. 253(2) requires the Governor to report the conduct, or alleged conduct, to the Commissioner of CSNSW, and cl. 5.1 of the DOJ Managing Misconduct Procedure requires that a report be made to Strategic Human Resources Business Partner or the relevant Professional Standards Unit. The Governor is required to make the same report to two different entities.
391. While it is possible for a Governor to do so, this situation is, for obvious reasons, problematic. The DOJ Managing Misconduct Procedure encourages managers to report misconduct allegations to an entity distinct from the entity to which the Regulation requires reports, without cross-referring to the Regulation.
392. I accept that it is entirely sensible that where a Professional Standards Unit exists, all reports of misconduct should be made to it to allow consideration of whether further action, including misconduct proceedings, is necessary. However, where different reporting obligations exist in instruments that do not, in their terms, have regard to one another, this is apt to mislead and risks inadvertently encouraging reporting in a manner contrary to law.
393. The issue of the joint operation of both cl. 253 and the DOJ Managing Misconduct Procedure, and whether, in any event, cl. 253 should be amended is considered later in this chapter.
394. There is one further policy obligation which may also have contributed to some confusion. In relation to allegations of misconduct made by inmates, Chapter 16.12 of the COPP, 'Inmate informants', which commenced on 16 December 2017, provides that if a CSNSW staff member is given information by an inmate that relates to a potential criminal matter, serious misconduct or corruption, the CSNSW staff member must submit an Incident Report to the MOS, Functional Manager Intelligence or delegated officer within the gaol. The MOS or Functional Manager must then immediately inform the Governor and submit an Intelligence

Report to the Corrections Intelligence Group (**CIG**) via the IIS.⁴³⁸ It is the Governor's responsibility to inform the Corrective Services Director, Investigations, and the relevant Director, Custodial Corrections, so that they can determine the most appropriate course of action.⁴³⁹ The approver of this chapter of the COPP was Commissioner of CSNSW, Kevin Corcoran.

395. This chapter of the COPP, which is a CSNSW-specific policy, contains no reference to either cl. 253 of the CAS Regulation nor cl. 5.1 of the DOJ Managing Misconduct Procedure and provides for a process of reporting allegations of criminal conduct and misconduct sourced from inmates that is different from the obligations set out in both those instruments. While it is unsurprising that a DOJ-wide policy may not have express regard to a regulation expressed to bind only Correctional Officers, it is somewhat more surprising that a CSNSW-specific policy would not do so.
396. Considerations of reform to the COPP for the purposes of managing misconduct allegations are set out later in this chapter.

5.3 Consequences of the various reporting obligations

397. The lack of clarity with respect to where reports of allegations of misconduct should be made had real significance for the management of complaints made about Astill.
398. The evidence before the Special Commission indicates that during the period of Astill's offending the Governor, Ms Martin, received a number of complaints about his conduct. These included complaints that he was behaving inappropriately with, and assaulting, inmates. The evidence further establishes that PSB was not directly apprised of any complaints concerning Astill until around the time

438 Ex. 58, TB 3, Vol. 18, Tab 633, CSNSW.0002.0024.3203_1347.

439 Ex. 58, TB 3, Vol. 18, Tab 633, CSNSW.0002.0024.3203_1347. See also, Ex. 58, TB 3, Vol. 18, Tab 621, CSNSW.0002.0020.8009_0008, the superseded Corrective Services Operations Procedures Manual, which required reports of this nature to be made to the General Manager and for the General Manager to inform the Assistant Commissioner, Security and Intelligence.

Ms Sheiles made her report to Stephen Virgo, then Senior Assistant Superintendent – Intelligence, in October 2018.

399. A number of witnesses who hold, or had held, senior positions within CSNSW gave evidence about how they understood misconduct allegations should be reported and to whom.
400. Ms Martin’s evidence was that if she became aware of misconduct on the part of one of her officers, she would go to her Director, Custodial Operations, Metro and Central West Region (**Director Metro**) Hamish Shearer, or ensure an Intelligence Report was filled out and sent to the IB.⁴⁴⁰ Ms Martin said she could recall one occasion on which she rang Mr Shearer directly, and reported concerns about Astill.⁴⁴¹
401. Ms Martin further said that she would not review the Intelligence Reports she instructed be sent, as they were sent by the Intelligence Officer using the SIU function. This had the effect of sending the report outside the gaol and directly to the IB.⁴⁴²
402. When asked by Counsel Assisting whether, in circumstances where an allegation of serious misconduct came to her attention, it was for her to refer the matter to the IB or PSB, or cause one of her staff members to do that, Ms Martin said:

*No. If it was a serious misconduct, I would have the report transcribed into an intelligence report, and they would send it off to the Investigations Unit.*⁴⁴³

403. To the extent Ms Martin was referring to reports of misconduct that were sourced from inmates the approach she indicated she took bears some resemblance to that set out in Chapter 16.12 of the COPP in that she directed the Intelligence Officer to submit an Intelligence Report. Ms Martin’s general process was not, however, compliant with cl. 253 of the CAS Regulation or the DOJ Managing

440 Transcript, 13 November 2023, 2182.24-2183.8.

441 Transcript, 13 November 2023, 2184.17-37.

442 Transcript, 13 November 2023, 2183.15-39.

443 Transcript, 13 November 2023, 2185.41-2186.3.

Misconduct Procedure, which required reports to the Commissioner, and the Strategic Human Resources Business Partner or PSB respectively.

404. The submissions in reply on behalf of Ms Martin adopt and support the submission made by CSNSW that the emphasis on the perceived failings of Ms Martin, in Counsel Assisting's submissions, tends to obscure the failings within the IB and PSB. Further, the submissions in reply adopt the following portion of CSNSW's submissions:

Ms. [Marilyn] Wright's evidence supports the system as understood by Ms. Martin, not whatever Mr. Greaves considered it to be. No doubt it would have been helpful for Ms. Martin to deal directly with the PSB but the system at the time did not require that. What was required was for the IB, through Mr. [Michael] Hovey, to attend to the task once it received a referral from the PSB which manifestly did not occur for reasons which are unexplained and warrant an investigation by an appropriate agency.⁴⁴⁴

405. There are a number of problems with this submission. First, evidence is not cited in support of any of the propositions within it, either in the CSNSW submissions or Ms Martin's submissions in reply. Secondly, as discussed below, the evidence of Ms Wright, former Director Metro, does not support the system as understood by Ms Martin. Ms Wright's evidence was that she understood Governors to be reporting to PSB. Ms Martin's evidence was that she favoured the practice of directing an Intelligence Report to the IB. Thirdly, it is not correct to say that the system 'did not require' reporting to the PSB. That is precisely what the DOJ Managing Misconduct Procedure required (with the alternative of a report to the Strategic Human Resources Business Partner). Finally, it is submitted that what was required was for Mr Hovey, the Director of IB, to 'attend to the task once it received a referral from the PSB which manifestly did not occur.' This submission is misguided. There is no evidence to establish that PSB ever referred a matter concerning Astill to the IB prior to Ms Sheiles' report to NSWPF in October 2018. This highlights the significance of Ms Martin's failure to 'deal directly' with the PSB. Mr Hovey's role in relation to the information the IB did receive about Astill is considered in detail later in this Chapter.

444 Submissions in reply on behalf of Shari Martin, 30 January 2023, AST.002.013.0120_0002 [8].

406. Furthermore, the evidence before me clearly establishes there were failings, both individual and systemic, in the management of Dillwynia as well as in the entire disciplinary system. No one area or person bears complete responsibility. It was a failure at a corporate and individual level.
407. It is regrettable that a Governor with the experience of Ms Martin, did not fully understand her obligations with respect to fundamental aspects of the management of misconduct by staff, and hence of staff management overall. Essential to her task of managing her correctional centres safely and securely was the capacity to deal properly with inappropriate behaviour by her staff. This included a comprehensive understanding of how to report misconduct in accordance with all the relevant reporting obligations.
408. Ms Wright gave evidence that, when performing the role of Director Metro prior to her retirement in August 2016, she had received reports from Governors concerning officer misconduct and that they would tell her they had sent those reports to PSB. Ms Wright said there was seldom cause for her to discuss misconduct allegations with Mr Corcoran because the allegations had gone to PSB to be dealt with there. In due course, decisions would be communicated back down the line, and it would be her job to speak to the relevant officer in relation to the findings that had been made.⁴⁴⁵ Ms Wright said it was open for a Governor to contact PSB directly to report an allegation, or they might raise it with their Director and then go to PSB.⁴⁴⁶
409. Mr Shearer, who replaced Ms Wright as Director Metro, said that his understanding was that reports of misconduct were to be forwarded to PSB.⁴⁴⁷ Mr Shearer said that he was in the job for some time before he came to fully understand how the misconduct process worked, including an understanding of the relationship between PSB and IB.
410. Mr Corcoran's evidence was that the DOJ Managing Misconduct Procedure was the prevailing policy that set out where misconduct allegations were reported

445 Transcript, 16 November 2023, 2427.20-34.

446 Transcript, 16 November 2023, 2441.39-44.

447 Transcript, 16 November 2023, 2464.30-36.

to.⁴⁴⁸ With respect to that procedure, Mr Corcoran understood its effect to be that an employee could report to either the Strategic Human Resources Business Partner or relevant Professional Standards Unit in the first instance.⁴⁴⁹

411. Mr Corcoran further stated that this policy was still in place in CSNSW and that employees were still able to make complaints to the Strategic Human Resources Business Partner rather than to PSI.⁴⁵⁰ He said:

*So there was two routes, you know, for people to report serious misconduct, either to the business partner – HR Business Partner or to Professional Standards. Now, if it's a PID [Public Interest Disclosure], it would definitely have to go to the HR Business Partner.*⁴⁵¹

412. Mr Corcoran's evidence was that, one way or the other, allegations should have been brought to the attention of PSB at an early stage.⁴⁵²

413. Mr Corcoran said it was a 'a big problem' that both Mr Hovey and Mr Greaves had told the Special Commission their understanding was that 'misconduct' allegations should always be reported to PSB at first instance and did not know that reports could also be made at first instance to the Strategic Human Resources Business Partner.⁴⁵³

414. Former Commissioner of CSNSW Peter Severin gave evidence that the main way that he was apprised of allegations of misconduct was through the Assistant Commissioner, Governance and Continuous Improvement, who would regularly update him on the matters under consideration or being investigated.⁴⁵⁴

415. The Assistant Commissioner, Governance and Continuous Improvement was the line manager of the Directors of PSB and the IB. Mr Severin said that other

448 Transcript, 22 November 2023, 2985.5-16.

449 Transcript, 22 November 2023, 2983.30-2984.14.

450 Transcript, 22 November 2023, 2995.18-27.

451 Transcript, 22 November 2023, 3011.17-20.

452 Transcript, 22 November 2023, 2986.10-15.

453 Transcript, 22 November 2023, 2995.23-2996.28.

454 Transcript, 20 November 2023, 2671.7-18.

Assistant Commissioners brought matters to him from time to time which were then channelled through the established processes.⁴⁵⁵ Generally, if another Assistant Commissioner brought a matter to him they would have already notified PSB and were just updating him in the course of their weekly meetings.⁴⁵⁶ In the event he received an allegation directly, he would refer it to PSB via the Assistant Commissioner, Governance and Continuous Improvement. The line Assistant Commissioner would also be advised.⁴⁵⁷

416. Mr Severin's understanding was that PSB was notified of an allegation either before or at the same time as IB. PSB might determine that that matter required investigation and refer it to IB for that purpose, with the matter then returned to PSB once the investigation was concluded.⁴⁵⁸ It was a critical feature of the system that PSB would become aware of every serious allegation.⁴⁵⁹

417. When asked whether he had any rules around what type of issues he wanted reported to him, Mr Severin said:

*They were rules that were not necessarily kept very black and white, but there were rules—anything criminal that was not just the result of an incident like an assault, for example, but anything criminal relating to, for example, misconduct would automatically be reported to me, in either a formal way or informally through the regular communication I had with the Assistant Commissioner of Governance and Continuous Improvement.*⁴⁶⁰

418. Mr Severin's expectations were not reduced to writing but, rather, left as a matter of 'professional judgment'.⁴⁶¹

419. The evidence before the Special Commission establishes that CSNSW staff, including very senior staff, had quite different understandings about to whom,

455 Transcript, 20 November 2023, 2671.20-29.

456 Transcript, 20 November 2023, 2672.35-44.

457 Transcript, 20 November 2023, 2673.1-9.

458 Transcript, 20 November 2023, 2673.11-32.

459 Transcript, 20 November 2023, 2673.34-38.

460 Transcript, 20 November 2023, 2671.31-40.

461 Transcript, 20 November 2023, 2672.4-11.

and how, reports of misconduct were to be made. This is unsurprising in circumstances where there were various reporting obligations in place at the same time and those obligations required reports to different entities. The effect of the multiple sources of reporting obligations, which were not consolidated in a single policy or document, created confusion amongst CSNSW staff, including among the senior management.

5.4 The 12 September 2017 email policy

420. On 11 September 2017, a meeting of the Custodial Corrections Executive Committee was held. That meeting was chaired by Mr Corcoran, with Mr Shearer and other Directors in the Division in attendance.⁴⁶² At that meeting the Custodial Corrections Executive Committee agreed to affect an alteration to the process for staff reporting misconduct allegations in the Custodial Corrections Division. This alteration occurred at the request of Mr Corcoran.⁴⁶³

421. The minutes of that meeting record:

*An instruction, issued by Director, North was issued to all his Governors stating that no more referrals were to be made to the PCMC [Professional Conduct Management Committee] without being forwarded to him in the first instance. Mr Scholes stated that there were probably only 5% that were worthy of being forwarded to the PCMC for action or further investigation. The other referrals are dealt with at a local level. AC Corcoran requested all Directors adopt this approach within their regions.*⁴⁶⁴

422. On 12 September 2017, Mr Shearer sent an email to managers of the correctional centres in his district (**12 September 2017 Email Policy**). The recipients included Ms Martin and the then MOS at Mary Wade Correctional Centre (**Mary Wade**), Michael Paddison. The email was as follows:

462 Ex. 58, TB 3, Vol. 19, Tab 725, CSNSW.0001.0229.1967.

463 Transcript, 16 November 2023, 2475.29-2476.11; Transcript, 17 November 2023, 2551.1-6; Transcript, 22 November 2023, 3023.21-3024.8.

464 Ex. 58, TB 3, Vol. 19, Tab 725, CSNSW.0001.0229.1969.

The AC and Directors of Custodial Corrections are changing our approach with regard to referrals direct to PSB for investigation. This decision has been taken to enable Directors to better manage disciplinary and performance issues within their Districts, to provide greater transparency of key issues, and to not overburden the resources of PSB and its investigative staffing. Some matters referred to PSB may be more effectively managed under performance management.

In future any incidents of a disciplinary or performance nature that warrant elevation are in the first instance to be raised with me and we will decide whether a performance or disciplinary investigative [sic] is most appropriate.⁴⁶⁵

423. Mr Greaves told the Special Commission that he had seen a similar email from a Director of a different district.⁴⁶⁶
424. Mr Shearer said that he sent this email at Mr Corcoran's direction following the meeting of the Custodial Corrections Executive Committee.⁴⁶⁷ That is consistent with the notation in the minutes that Mr Corcoran requested all Directors in the Division adopt the approach taken by the Director, North.⁴⁶⁸
425. One effect of this change was that the Custodial Corrections Division would operate differently to the other divisions in CSNSW, in that there would be a filtering of matters that would be sent to PSB at the Director level.⁴⁶⁹
426. Mr Corcoran gave evidence that the effect of the email was to say:

We're changing our approach with – in relation to referrals. So instead of the Governor referring directly to PSB, they would advise the Director first that something was going on in the Centre. I think what you've got to understand is once that – if that Governor didn't tell a Director of a

465 Ex. 25, TB 2, Vol. 8, Tab 84, Annexure Tab K, AST.002.013.0055_0033-0034.

466 Transcript, 10 November 2023, 2112.46-2113.1.

467 Transcript, 16 November 2023, 2475.39-.2476.3.

468 Ex. 58, TB 3, Vol. 19, Tab 725, CSNSW.0001.0229.1969.

469 Transcript, 10 November 2023, 2111.18-22.

*referral, that Governor would never know about the – sorry, that Director would never know about the referral.*⁴⁷⁰

427. Mr Corcoran accepted that this reflected a change in approach with respect to referrals going directly to PSB.⁴⁷¹ However, he said that he expected that everything that needed to go to PSB would go to PSB, and this ensured that the Director would know that the referral had gone to PSB.⁴⁷²
428. If that was all that Mr Corcoran wished to accomplish, it could have been achieved by an instruction to the effect that the Director be copied into any report of misconduct allegations to the PSB.
429. It was put to Mr Corcoran the effect of the email was to make the Director a decision-maker. The following exchange occurred:

MR CORCORAN: *No, it doesn't. It doesn't make them a decision-maker.*

COMMISSIONER: *Well, the words are clear:*

'...raised with me, and we will decide whether a performance or disciplinary investigation is most appropriate.'

That's making a decision, isn't it?

MR CORCORAN: *It – it makes a decision on which pathway to go down.*

COMMISSIONER: *No, it doesn't. Just whether a performance or disciplinary investigation – it should be – is most appropriate. That's what it is saying.*

MR CORCORAN: *It makes – they are making a decision about which pathway to go down, human resources or referral to Professional Standards. If, indeed, it is a Professional Standards matter that's referred to human resources, then the strategic business partner would then*

470 Transcript, 22 November 2023, 3024.4-42.

471 Transcript, 22 November 2023, 3025.14-18.

472 Transcript, 22 November 2023, 3025.20-28.

*make sure that went through the – as I mentioned before, make sure it went through the appropriate pathway.*⁴⁷³

430. When asked about whether he saw a conflict between the requirement in the DOJ Managing Misconduct Procedure to report to the Strategic Human Resources Business Partner or PSB in the first instance, and the direction in the 12 September 2017 Email Policy to report all disciplinary or performance incidents first to the regional Director, Mr Corcoran said:

*So it does not prevent anything going through to Professional Standards, and what we're – we're in a situation where anything going to Professional Standards in this era would not be then revealed to operational people – Directors, Assistant Commissioners. In many instances, we would find out about quite serious misconduct that had been reported through at a lower level to Professional Standards 12 months, 18 months later when a document appeared on our desk as a decision-maker.*⁴⁷⁴

431. It was submitted on behalf of Mr Corcoran that the 12 September 2017 email policy did 'not preclude or curtail the reporting of matters by staff direct to PSB. The most that can be said of it is that Governors (only Governors) are to decide together with the Director whether to report to HR or PSB.'⁴⁷⁵
432. The email from Mr Shearer conveying the 12 September 2017 email policy was not only sent to Governors. It was addressed to other senior officers, including Mr Paddison who, at that time, was MOS at Mary Wade.
433. Further, Mr Corcoran's request to the Custodial Corrections Executive (which resulted in the direction in the email from Mr Shearer) did potentially preclude matters being reported to PSB. Its effect was to place an additional step between the person reporting misconduct from a correctional centre and PSB. Reports would no longer be made to the Strategic Human Resources Business Partner or PSB 'in the first instance', which was contrary to the express language of the

473 Transcript, 22 November 2023, 3027.45-3028.20.

474 Transcript, 22 November 2023, 3029.1-13.

475 Submissions on behalf of Kevin Corcoran, 14 December 2023, AST.002.013.0108_0005 [21].

DOJ Managing Misconduct Procedure.⁴⁷⁶ The ‘we will decide’ language of the instruction made clear that the regional Director (potentially in conjunction with the Governor or MOS of a gaol) would now determine whether the report made its way to PSB. It made the Director a decision-maker in relation to whether a report would be made. The purpose was to reduce the number of matters being reported to PSB.

434. In relation to the 12 September 2017 Email Policy, Mr Shearer said that he understood that its effect was to significantly alter the way misconduct complaints were to be managed.⁴⁷⁷ Mr Shearer’s evidence was that he did not understand there was any policy or protocol set down in writing to govern how this new process was to work, and that he thought that was odd.⁴⁷⁸ Mr Shearer said he was not aware whether any efforts were made to inform PSB and IB of the change in process.⁴⁷⁹
435. Mr Shearer said that he did not consider that he had the resources, knowledge or training to be the first port of call for management in relation to referrals of this kind.⁴⁸⁰ Mr Shearer said he felt that that the effect of the email was to create some confusion on the part of Governors and others in management with respect to what they were supposed to do with misconduct complaints.⁴⁸¹ Mr Shearer said he thought the direction that all matters go through the Director was a mistake,⁴⁸² albeit he did not object to the proposal at the Custodial Corrections Executive meeting.⁴⁸³
436. Mr Hovey gave evidence that he was unaware that this change in process occurred. He considered it to be ‘significant’ and ‘fraught with danger’.⁴⁸⁴ Mr Hovey agreed that there would now be a level of triage before the matter

476 See, Ex. 3, TB 3, Vol. 9, Tab 149, CSNSW.0001.0034.0043_0007.

477 Transcript, 16 November 2023, 2476.13-17.

478 Transcript, 16 November 2023, 2476.19-27.

479 Transcript, 16 November 2023, 2476.29-33.

480 Transcript, 16 November 2023, 2477.45-2478.1.

481 Transcript, 16 November 2023, 2478.44-2479.1.

482 Transcript, 17 November 2023, 2524.36-43.

483 Transcript, 17 November 2023, 2524.45-2525.3, 2525.32-36.

484 Transcript, 8 November 2023, 1936.16-25.

reached the Professional Standards Committee (**PSC**) and that the process would now be less transparent.⁴⁸⁵

437. Mr Greaves gave evidence that PSB became aware of the change sometime in 2017 or 2018. Mr Greaves was ‘very confident’ that PSB was not consulted about the change in process because ‘it would have rung all sorts of alarm bells’ if it had.⁴⁸⁶ Mr Greaves’ concerns with the new process are discussed further below.
438. Mr Severin gave evidence that he was not initially aware that Mr Corcoran had instituted such a change and that he became aware of it after the event through the Assistant Commissioner, Governance and Continuous Improvement. He said that he ‘was never included in it because it was clearly a complete breach with the singular way of dealing with complaints, wherever they came from, through the Professional Standards Committee’.⁴⁸⁷
439. Mr Severin gave evidence that he understood the motivation for the change was workload-based but that what was proposed was ‘completely inconsistent with proper processes and procedures as they were at the time’. Mr Severin accepted that the new system represented a ‘complete failure of corporate governance’ that had the effect of concentrating decision-making in the hands of one person.⁴⁸⁸
440. Mr Severin said that what was proposed was not sanctioned by official CSNSW policy and that the Custodial Corrections Executive Committee was not a governance body that was in a position to determine or change how disciplinary matters would be dealt with.⁴⁸⁹
441. I am satisfied that Mr Corcoran as the most senior member of the Custodial Corrections Executive Committee should not have condoned or permitted the alteration of a process of such significance to the proper management of CSNSW staff, with potential consequences for the safety of correctional centres

485 Transcript, 8 November 2023, 1936.27-38, 1937.14-19.

486 Transcript, 10 November 2023, 2110.29-41.

487 Transcript, 20 November 2023, 2702.28-35.

488 Transcript, 20 November 2023, 2703.8-21.

489 Transcript, 20 November 2023, 2704.8-24.

and of inmates if misconduct allegations were not passed on to PSB. That he did so without consulting any person in PSB or IB, or Mr Severin, reflects poorly on his contribution to the management of CSNSW.

442. Mr Greaves identified several problems with the new process. First, that the change made the process less, rather than more, transparent.⁴⁹⁰ Secondly, that there needed to be a central repository of all misconduct matters, and that if matters were dealt with at a local level, PSB, as that central repository would no longer hold all misconduct information. This was concerning given that officers will often move between correctional centres and because PSB had the function of performing conduct and service checks for the purposes of promotions and transfers.⁴⁹¹ Mr Greaves' concerns in relation to the need for central knowledge and oversight of misconduct matters were valid, demonstrating the serious potential implications of the process change.

443. Thirdly, Mr Greaves perceived there to be a potential legal issue with the change of process. He told the Special Commission:

Misconduct and unsatisfactory performance are different concepts under the GSE Act, sections 68 and 69 respectively, and the GSE Rules, part 7 and part 8, spell out different processes for those two things.

I believe this email was actually proposing to do something that is contrary to the legislation. Specifically, section 38(2) of the GSE Rules in part 8 say that after making an initial assessment of an allegation, the employer may decide not to proceed with the matter if the employer is satisfied that it's vexatious or trivial, it doesn't amount to misconduct, or there's likely to be difficulty in establishing the facts.

It doesn't say that the employer may decide not to proceed for any reason. And nor is there a part D saying the employer may decide not to proceed with the matter if there's a big backlog of work. So, from my perspective, that would have been a significant legal issue to address before issuing

490 Transcript, 10 November 2023, 2111.41-2112-2.

491 Transcript, 10 November 2023, 2113.31-2114.6.

*an instruction like that, and I'm very confident PSB wasn't consulted because we would certainly have raised that issue.*⁴⁹²

444. That there was no opportunity, as a result of the lack of consultation, for concerns of the kind identified by Mr Greaves to be raised and grappled with in advance of the process change, together with the concentration of power inevitably resulting from the change, leads to the conclusion that, as Mr Severin acknowledged, the process change represented a failure of corporate governance.

445. The direction had the effect of causing confusion as to what was reportable to PSB. On 27 November 2017, then Governor of Silverwater Correctional Centre Tracey Mannix emailed Mr Greaves as follows:

Just wondering if you are able to provide a list of matters that are required to [be] sent through to the PSB.

*There seems to be a bit of confusion around of [sic] what is reportable to the PSB.*⁴⁹³

446. The timing of this email and the substance of the advice sought from Mr Greaves indicates that it was likely a response to the process change requested by Mr Corcoran following the September 2017 meeting of the Custodial Corrections Executive.

447. Mr Severin's evidence was that the matter was brought to his attention by the Assistant Commissioner, Governance and Continuous Improvement, James Koulouris, and that subsequently that Assistant Commissioner spoke with Mr Corcoran and told him that the new process would not be implemented. Mr Severin's understanding was that the process did not change.⁴⁹⁴

448. He said that he was 'quite sure' the proposed process was not implemented and that he had had every expectation that the altered process would have been rescinded in the proper way. He said he could not recall whether he had given

492 Transcript, 13 November 2023, 2116.27-47.

493 Ex. 58, TB 3, Vol. 18, Tab 636, CSNSW.0002.0068.2986_0003.

494 Transcript, 20 November 2023, 2703.31-39.

a direction to Mr Corcoran to ensure that it was understood that the change was not supported and should be rescinded but he did recall speaking to Mr Koulouris and asking him to address it with Mr Corcoran.⁴⁹⁵

449. Mr Corcoran gave evidence that he was not aware that the direction given in the September 2017 email was ever rescinded and that Mr Koulouris never spoke to him about it.⁴⁹⁶
450. The Special Commission issued a summons to CSNSW seeking any communication rescinding or revoking Mr Corcoran's September 2017 direction.⁴⁹⁷ No documents were produced by CSNSW responsive to this request.
451. Mr Corcoran said that he did not know if it remained the process that misconduct matters were to first be reported to the regional Director, but he expected that it would be as it was 'the most appropriate course of action'.⁴⁹⁸
452. This evidence is irreconcilable with the oral and documentary evidence of Acting Director PSI, Angela Zekanovic, that misconduct matters are to be reported to PSI, including by managers who should be referring allegations of misconduct to PSI 'in a timely manner'.⁴⁹⁹
453. There should be no ambiguity about the reporting process for misconduct among the senior leadership of CSNSW. In particular, as Commissioner of CSNSW it would be expected that Mr Corcoran would be familiar with the expectations of officers as to where, in the first instance, they should report allegations of misconduct.
454. Mr Corcoran was unaware at the time of his oral evidence that the policy introduced in September 2017 – and which, according to him, remains in place today – is contrary to the understanding of each of the current and former PSB, IB and PSI staff who gave evidence to the Special Commission.

495 Transcript, 20 November 2023, 2705.12-18.

496 Transcript, 22 November 2023, 3034.17-47.

497 Ex. 60, TB 6, Tab 2, AST.002.006.0087_0001-0002.

498 Transcript, 22 November 2023, 3035.12-23.

499 Ex. 47, TB 5, Vol. 21, Tab 1, CSNSW.0001.0076.0001_0009 [31]; Transcript, 28 September 2023, 52.40-53.7; Transcript, 21 November 2023, 2821.31-43.

455. However, it is also apparent that whatever the potential problems in reporting created by the September 2017 Email Policy, they do not seem to have affected the situation at Dillwynia. Ms Martin did not consistently inform Mr Shearer of misconduct matters that came to her attention. Mr Shearer made plain that he was still passing at least some reports that did come to him to PSB⁵⁰⁰ and, as a consequence, the September 2017 Email policy does not seem to have brought any substantive change. Whether this is true of other Directors is unknown. The situation needs to be addressed urgently.

5.5 Processing of reports of misconduct

5.5.1 Legislative and policy framework

456. As discussed above, misconduct allegations made against CSNSW staff are dealt with in accordance with s. 69 of the GSE Act. Section 69 is supplemented by rr. 38 (Initial stage for dealing with allegations of misconduct), 39 (Inquiries) and 40 (Findings by Employer) of the *Government Sector Employment (General) Rules 2014 (GSE Rules)*. The rules set out what an employer can and cannot do in dealing with an allegation and various procedural requirements so as to ensure the subject of the allegation is treated fairly.

457. Further guidance is provided by the DOJ Managing Misconduct Procedure.

458. Clause 5.1 of the DOJ Managing Misconduct Procedure supplements r. 38 and deals with matters such as where allegations are reported to, the material that can be considered at this stage, and the options available to the Decision-maker (for the purposes of s. 69).

459. Clause 5.2 deals with undertaking inquiries into allegations of misconduct and supplements r. 39. Clause 5.2 deals with matters such as the notification requirements for the employee the subject of the allegation and the opportunity for them to be heard.

500 Transcript, 16 November 2023, 24775-6.

460. Clause 5.3 deals with findings by the Decision-maker and supplements r. 40. Clause 5.3 deals with matters such as the provision of the advice to the Decision-maker, documents that may be considered, notification requirements and the submissions process.
461. In relation to the identity of the ‘Decision-maker’ for the purposes of misconduct proceedings, during the period of Astill’s offending the DOJ Secretary had, for matters concerning CSNSW, delegated that role to the Commissioner of CSNSW. The Commissioner of CSNSW had, in turn, delegated that role to each of the six Assistant Commissioners. The Assistant Commissioner for Custodial Corrections had delegated that role to the Directors of each region under his command.⁵⁰¹

5.5.2 The CSNSW process for managing misconduct during the Astill period

462. Prior to February 2016, CSNSW had in place its own policy for managing misconduct allegations, entitled the ‘Management of Professional Conduct in the Department of Corrective Services’ policy. The policy was issued in September 2002⁵⁰² and ceased to have effect when the DOJ Managing Misconduct Procedure was introduced in February 2016.
463. In 2015, CSNSW created the ‘Corrective Services NSW Misconduct Policy’; however, this policy was never implemented.⁵⁰³
464. No further CSNSW-specific policies concerning the management of misconduct were introduced until the ‘PSC Referral Process’ document was issued in around 2019 (the evidence is no more precise as to the date of this document) and the Investigators Manual was issued in 2021.⁵⁰⁴ Each of those documents served different purposes and operated in conjunction with the DOJ Managing Misconduct Procedure.

501 Ex. 35, TB 2, Vol. 8A, Tab 91, AST.002.013.0057_0007-0008 [34].

502 Ex. 47, TB 5, Vol. 21, Tab 1, CSNSW.0001.0076.0001_0013-0014 [43]; Ex. 47, TB 5, Vol. 21B, CSNSW.0001.0253.0001_0017 [45]-[46].

503 Ex. 47, TB 5, Vol. 21, Tab 1, CSNSW.0001.0076.0001_0015 [48].

504 Ex. 47, TB 5, Vol. 21, Tab 1, CSNSW.0001.0076.0001_0030 [88]; Ex. 47, TB 5, Vol. 21, Tab 1, CSNSW.0001.0076.0001_0018 [60].

465. The Special Commission heard evidence of how, generally speaking, allegations of misconduct were managed during the period of Astill's offending. That process primarily involved the PSB, the IB and the PSC.

466. Mr Hovey described the process in this way:

*Professional Standards Branch ran the triage process for these complaints. If you had a complaint that could not be dealt with via policy, you would do a referral to the Professional Standards Committee. The committee was set up to triage all officer misconduct reports and establish how the complaint should be actioned.*⁵⁰⁵

467. That is, PSB would receive the initial report of misconduct and prepare the matter for consideration by the PSC, including drafting a proposed recommendation as to the next course of action.

468. The PSC is an integral part of the CSNSW misconduct process. It is intended to provide a degree of independence with respect to determining whether a matter should proceed as a misconduct matter and, if so, what steps are necessary in that process. It also provides for an opportunity for persons from different areas of the organisation to have input into how each matter should be dealt with. That power is not concentrated in a single individual.

469. Evidence before the Special Commission suggests that for at least some of the period of Astill's offending and before 2018, the PSC operated more informally than it had in the past and than it does presently. An annexure to Ms Zekanovic's first statement describing the current process for managing misconduct contains the annotation, 'Prior to PSC being reinstated in 2018 there was a form of informal PSC that received papers for noting'.⁵⁰⁶ It is unclear how the 'informal PSC' process operated.

470. The PSC had a range of options available to it including determining a matter was not misconduct, referring the matter for local management, or requesting

505 Ex. 32, TB 2, Vol. 8, Tab 86, AST.002.013.0054_0003 [16].

506 Ex. 47, TB 5, Vol. 21, Tab 1D, Annexure Tab 23, CSNSW.0001.0070.0001.

a submission be prepared by PSB to go to the Decision-maker to consider disciplinary options.

471. The PSC could also determine to assign the matter to the IB to undertake an investigation.⁵⁰⁷
472. The IB undertook two forms of investigations.
473. The first was fact-finding inquiries, which were used to obtain or clarify information to assist PSB during its assessment of complaints. This could involve gathering information from CSNSW and also clarification of the information at hand by canvassing witnesses for better particulars.⁵⁰⁸
474. Secondly, misconduct investigations could be initiated to determine whether misconduct had occurred. If an investigation of this sort occurred, formal notice of the investigation was given to the subject officer. Inquiries would be undertaken, and a report submitted detailing the inquiries conducted, the evidence collated, the investigator's view on the balance of probabilities whether the officer had engaged in misconduct and/or failed to comply with a policy or procedure, and any deficiency in existing policies or procedures identified during the course of the investigation.⁵⁰⁹
475. Once the investigation was complete the investigation report would be forwarded to PSB.⁵¹⁰
476. Once received by PSB, the investigation report would be reviewed to identify any deficiencies, such as lines of inquiry not pursued or opinion being presented as fact.⁵¹¹ A decision would then be made by PSB whether, even with the identified deficiencies, there was enough material to ground a submission to the relevant Director (as the Decision-maker), or whether it needed to go back to IB.⁵¹²

507 Transcript, 10 November 2023, 2001.19-24.

508 Ex. 3, TB 3, Vol. 13, Tab 422, CSNSW.0001.0008.0014.

509 Ex. 3, TB 3, Vol. 13, Tab 422, CSNSW.0001.0008.0014.

510 Transcript, 10 November 2023, 2001.19-24.

511 Transcript, 13 November 2023, 2122.28-38.

512 Transcript, 13 November 2023, 2123.1-6.

477. If the matter was to move forward, a lawyer within PSB would prepare a submission to go to the relevant Director, who, for the purposes of the Custodial Corrections Division was Director Metro, attaching the investigation report.⁵¹³
478. The Decision-maker would then determine whether to exercise any of the disciplinary options available in s. 69(4) of the GSE Act.
479. However, despite the evidence as to how the system was supposed to operate, the extent to which it did so, particularly in relation to Astill, is unclear and the evidence about this confused.
480. The evidence set out above, suggests that during the period of Astill's offending, it was not intended, as a matter of procedure, that the IB directly receive reports of misconduct. Those reports typically would be received by PSB, who would refer them to the PSC for consideration. The IB could then be designated certain tasks as part of the misconduct process.
481. It is clear, however, that the SIU function on the IIS served as a mechanism for allegations about CSNSW staff to be reported outside the relevant gaol and directly to the IB. That mechanism was used to make reports about Astill. It is important to remember that during this period the IB and the PSB were entirely separate entities.
482. The submissions on behalf of CSNSW are themselves confused about this issue. CSNSW submitted that:

*forwarding an Intelligence Report to the SIU was the fundamental and appropriate way to report allegations of misconduct. This is because that was the way such allegations were required to be made to the PSB and then the PSC.*⁵¹⁴

513 Transcript, 13 November 2023, 2123.12-14.

514 Closing Submissions of Corrective Services NSW, 20 December 2023, AST.002.013.0114_0044 [108].

483. However, it is further submitted — in relation to a submission of Counsel Assisting that the practice of reporting misconduct via an Intelligence Report to the IB was fundamentally flawed — that

*there is a mistaken assumption within this submission that the practice of reporting misconduct via an Intelligence Report to the IB was an agreed way of dealing with misconduct. It was not. It was a policy and/or practice that seems to have been implemented by Mr Hovey.*⁵¹⁵

484. These two submissions are at odds as to the proper process. In relation to the second submission, as discussed above, ch. 16.12 of the COPP provided that reports of misconduct sourced from inmates were to be reported by an Intelligence Report on the IIS. Chapter 16.12 did not, however, provide any further guidance on what was to occur after that.

485. This appears to have been a lacuna. I have not been made aware of any policy setting out what was to occur once an Intelligence Report raising a concern in relation to staff misconduct was received by the IB.

486. Mr Hovey was of the view that Intelligence Reports were to be ‘test[ed]’ by the analyst/s in the IB, and then forwarded to PSB only if the information could be substantiated or there was direct evidence of misconduct. If the Intelligence Report raised only ‘suspicions’ it was considered to be an intelligence matter and not referred to PSB.⁵¹⁶ CSNSW, in its submissions, disputes that this was the proper process.⁵¹⁷ Those submissions, however, do not cite any policy document indicating what the proper process in fact was.

487. I accept that it would have been beneficial and appropriate for the process to require any Intelligence Report in which the issue of staff misconduct was raised to be referred to PSB immediately. However, that requirement does not appear to have been set down in writing. To the extent that the DOJ Managing Misconduct

515 Closing Submissions of Corrective Services NSW, 20 December 2023, AST.002.013.0114_0045 [116].

516 Transcript, 8 November 2023, 1867.33–1868.10; Ex. 32, TB 2, Vol. 8, Tab 86, AST.002.013.0054_0006 [35].

517 See Closing Submissions of Corrective Services NSW, 20 December 2023, AST.002.013.0114_0007 [17(d)]; Closing Submissions of Corrective Services NSW, 20 December 2023, AST.002.013.0114_0045 [113]; Closing Submissions of Corrective Services, 20 December 2023, AST.002.013.0114_0049 [149]; Closing Submissions of Corrective Services, 20 December 2023, AST.002.013.0114_0052 [173].

Procedure could be said to have required forwarding of the Intelligence Report to PSB, first, that Procedure contemplated the Strategic Human Resources Business Partner as an alternative to PSB. Secondly, that Procedure, in terms required reporting to PSB *in the first instance*, implying that a direct report to IB would itself be inconsistent with that policy. Thirdly, Mr Corcoran altered the operation of the Procedure via the direction that reports be made first to the regional Director.

488. Exactly what was reported to the IB and what, if any, action was taken in relation to those reports is discussed below.

5.5.3 Reports of misconduct made about Astill

489. As discussed elsewhere in this Report, reports about Astill's conduct with inmates did make their way outside Dillwynia via Intelligence Reports submitted using the SIU function.
490. As explained in Chapter 2, Intelligence Officers were able to send Intelligence Reports to the SIU via the IIS system.⁵¹⁸ This provided them with a means of reporting intelligence regarding other Correctional Officers to a body outside of their particular correctional centre, and in a way that meant that the Intelligence Report was not known to the Governor of the particular correctional centre (unless the author elected to include the Governor in the dissemination list).⁵¹⁹
491. Six Intelligence Reports concerning Astill submitted to the SIU prior to his arrest in February 2019 were produced to the Special Commission.
492. In addition, in the period prior to Astill's arrest, there were three Information Notes submitted. Information Notes were a mechanism through which intelligence could be uploaded to the IIS. The evidence is unclear as to precisely who Information Notes were disseminated to, or if they were at all, and who, if anyone, read them.⁵²⁰

518 Ex. 35, TB 2, Vol. 8A, Tab 91, AST.002.013.0057_0013 [61]; Ex. 9, TB 2, Vol. 7, Tab 64A, AST.002.013.0017_0005 [27].

519 Transcript, 25 October 2023, 798.25-33.

520 Ex. 3, TB 3, Vol. 10, Tab 172, CSNSW.0001.0022.0015_0001-0008; Ex. 3, TB 3, Vol. 10, Tab 174, CSNSW.0001.0022.0023_0001-0002; Ex. 3, TB 3, Vol. 10, Tab 175, CSNSW.0001.0022.0025_0001-0003.

493. Senior Correctional Officer Renee Berry submitted two of the Information Notes. In her statement to the Special Commission, she explained that only certain staff members, such as Intelligence Officers, have the required access on the IIS system to submit Intelligence Reports, whereas all staff members have the required access to submit an Information Note or Communication Review. She explained that Information Notes and Communication Reviews were not seen by the correctional centre but were instead disseminated to the SIU. She also gave evidence that officers who had submitted an Information Note or Communication Review could be instructed by Corrections Intelligence Group (**CIG**) to complete an Intelligence Report, when CIG reviewed the Information Note or Communication Review.⁵²¹ It is unclear whether Information Notes are disseminated to the SIU as Ms Berry suggested. The SIU formed part of the IB and was separate from CIG.
494. Ms Berry's evidence about the Intelligence Note process differed from the evidence given by Intelligence Officer Deborah Wilson who submitted the third Information Note in this period.
495. In her statement to the Special Commission, Ms Wilson said that as an Intelligence Officer she was able to submit Intelligence Reports using the IIS. She, along with all officers, was also able to submit Information Notes which are submitted to CIG for information purposes only. Ms Wilson said that any officer with access to the system could add information to the Information Note and the information would come to her, or whoever the Intelligence Officer was at the time. She said that Information Notes which were submitted online were only introduced in 2016 or 2017 and that many staff were reluctant to use them and so would instead write a report and hand it to her.⁵²²
496. Chapter 16.2 of the COPP provides that if a Correctional Officer receives information that may be of intelligence value, the information must be reported as either an Information Note or Communication Review using a form available on the CSNSW Intranet. This enables the information to be reported directly

521 Ex. 18, TB 2, Vol. 7, Tab 49A, AST.002.013.0013_0009 [44]-[46].

522 Ex. 29, TB 2, Vol. 8, Tab 83, AST.002.013.0035_0004-0005 [29]-[36].

to the centre's Intelligence Officer, who is to review the Information Note or Communication Review. The Intelligence Officer may in turn create an Intelligence Report with a local analysis of the information. If the Information Note or Communication Review contains information relating to alleged corrupt behaviour by a staff member, the Intelligence Officer is required to submit an Intelligence Report via the SIU function on the IIS which goes directly to the IB.⁵²³

497. Unlike Intelligence Reports, which on their face provide an indication of when, and by whom, they are analysed, this information is not visible on the Information Note itself.
498. Subsequent to Astill's arrest, seven further Intelligence Reports were submitted to SIU regarding Astill,⁵²⁴ and four further Information Notes were prepared.⁵²⁵
499. Each of the Intelligence Reports and Information Notes concerning Astill is set out below.

5.5.3.1 Intelligence Reports submitted to SIU prior to Astill's arrest

5.5.3.1.1 Intelligence Report 16-2783

500. Intelligence Report IR-16-2783 detailed allegations made by Witness P in a letter to Witness HH which was intercepted on 20 October 2016.⁵²⁶ The Intelligence Report was prepared by Intelligence Officer Pamela Kellett and submitted to SIU on 9 November 2016. The report noted that Witness P was housed at Dillwynia and that Witness HH was a former inmate of Dillwynia who had been released to parole. The letter is annexed to the Intelligence Report and reads, in part:

523 Ex. 58, TB 3, Vol. 18, Tab 631, CSNSW.0002.0024.3203_1252-1253.

524 Ex. 3, TB 3, Vol. 10, Tab 181, CSNSW.0001.0022.0040_0001-0005; Ex. 3, TB 3, Vol. 10, Tab 182, CSNSW.0001.0021.1203_0001-0005; Ex. 3, TB 3, Vol. 10, Tab 184, CSNSW.0001.0022.0054_0001-0004; Ex. 3, TB 3, Vol. 10, Tab 186, CSNSW.0001.0022.0058_0001-0009; Ex. 3, TB 3, Vol. 10, Tab 187, CSNSW.0001.0021.1195_0001-0004; Ex. 3, TB 3, Vol. 10, Tab 188, CSNSW.0001.0021.1199_0001-0004; Ex. 3, TB 3, Vol. 10, Tab 189, CSNSW.0001.0022.0067_0001-0012.

525 Ex. 3, TB 3, Vol. 10, Tab 178, CSNSW.0001.0022.0028_0001-0002; Ex. 3, TB 3, Vol. 10, Tab 179, CSNSW.0001.0022.0030_0001-0005; Ex. 3, TB 3, Vol. 10, Tab 180, CSNSW.0001.0022.0035_0001-0003; Ex. 3, TB 3, Vol. 10, Tab 185, CSNSW.0001.0022.0038_0001-0002.

526 Ex. 3, TB 3, Vol. 10, Tab 169, CSNSW.0001.0021.1153_0003-0004.

Hehe well as for [Witness C] I hate her fucken guts, she's a dead set screw lovin dog!!! Always running to them, snitching on girls!!! Bad fucken dogg [Witness HH]! Still up to her same old tricks that cunt she's even having a fling with one of the male officers here, the dirty slut!!! Getting him to bring stuff in for her, sending her mail, special phone calls! You name it! I promise you! I've seen it with my own eyes, his wife/girlfriend works here too, she's been pulled up before about it! Im [sic] serious!!!

501. Under the heading 'CI Analysis', the Intelligence Report noted that further information was gathered during a phone conversation with Ms Kellett, including that at the time the letter was sent Ms Wilson and Ms Kellett were both on leave, which meant that Astill was acting as Intelligence Officer.
502. Astill saw Witness P's letter in the MOS office and identified himself as the officer referred to in the letter. He then took the letter to Ms Martin, who provided the letter to Ms Wright, who the Intelligence Report noted had since retired, and both Ms Wright and Ms Martin spoke to Astill and gave him a warning and a caution. According to the Intelligence Report, the letter was then returned to the Intelligence Officer by Ms Martin with an instruction to 'raise an IR so that the matter was transparent'. The Intelligence Report further indicated that Witness HH, who was released to parole on 27 March 2014, was a police officer prior to her arrest and that 'Staff at Dillwynia have felt that Astill and [Witness HH] were too close at times but that there was never anything improper. Astill had been spoken to about this and had modified his behaviour'.
503. As recorded in the Intelligence Report, it was automatically disseminated to Astill (given he was acting in the Intelligence Officer position), MOS Leanne O'Toole, Ms Martin, Ms Wilson, Ms Kellett and Mr Shearer. The Intelligence Report records Andrew Tayler as the allocated Intelligence Analyst from SIU with the 'Date Analysed' listed as 11 November 2016. Mr Hovey is listed as having reviewed the report on 14 November 2016.
504. There is no information recorded under the headings 'CI Intelligence Gaps', 'CI Additional Information', 'CI Actions', 'Automatic Dissemination on Finalisation', 'Dissemination – Notification on Finalisation', 'Dissemination – Notification for Action on Finalisation' and 'External Dissemination'. The relevant inference is

that there was no further action taken, or dissemination of the report, after it was reviewed by Mr Hovey. This Intelligence Report is discussed in detail later in this Report.

5.5.3.1.2 Intelligence Report 17-2051

505. On or about 30 July 2017, Ms Kellett submitted an Intelligence Report to SIU concerning disclosures made by Witnesses V and R (IR-17-2051), identified in the Intelligence Report as HS-1 and HS-2 (Human Source 1 and 2).⁵²⁷ The subject matter of IR-17-2051 concerned, among other matters, reports of offending against Witness M which are discussed in detail in Chapter 8 of this Report.
506. The Intelligence Report is based upon an Incident Report prepared by Chief Correctional Officer Neil Holman concerning a meeting held on 20 July 2017. It details the following:

Chief Holman was asked to attend the Manager Of Security Office to assist in questioning and note taking whilst HS2 was disclosing information regarding a staff member.

HS2 stated that she had heard that ... Astill has been approached by HS1 in regards to issues that HS2 thought she might have with Chief Astill and that Chief Astill refused to talk to HS1. At this stage HS1 was called to the office so the information could be verified directly from that inmate.

HS1 went on to say that she had heard from various inmates around the centre that she should look out for herself as there was rumour on the compound that HS1 has labelled Chief Astill as a 'Kiddie fiddler'. HS1 denied that she had made any comment would be made to such content. HS1 was questioned as to why such a comment would be made by other inmates. HS1 stated that she had cautioned other inmates not to be alone with Chief Astill.

527 Ex. 3, TB 3, Vol. 10, Tab 170, CSNSW.0001.0021.1167_0001-0005.

HS1 was asked why she made statements to that affect and HS1 stated that she has been told by [Witness M] that Chief Astill has attempted to kiss her at one time, that he would frequently rub his hand up and down her arm and that he was always asking for her to the Chiefs office. At this point HS2 stated that she had seen Chief Astill directly rub his hand on [Witness M's] arm. HS1 stated [Witness M] has informed her of these events in the company of HS2, [Witness B] and [Witness W].

It was around or slightly previous to this time that Governor Martin was asked to attend the room in regards to the matter.

HS2 stated to staff present that she had correspondence with [Witness M] who was going to contact [Witness M's] mother regarding the issue and that legal advice would be sought over the allege [sic] incident.⁵²⁸

507. Further, the Intelligence Report included a reference to a second Incident Report prepared by Mr Holman which recounted threatening behaviour by Astill towards Witness V.
508. Under the heading 'Local Intelligence Gaps', the report states 'It is unknown if [Astill] attempted to kiss or touch [Witness M]'.⁵²⁹
509. The Intelligence Report was reviewed by Mr Tayler in his capacity as SIU Intelligence Analyst on 26 September 2017 and was reviewed by Mr Hovey on 27 September 2017. The analysis inserted by Mr Tayler states:

This IR [Intelligence Report] is related to IR-16-2783 [the report with respect to the allegations made by Witness P about Astill] ... [Astill] is accused of improper conduct with inmates held at DILLWYNIA CC. However, the same problem arises with this IR as did in the first, namely that the reliability of the sources cannot be assessed and the validity of the information cannot be judged. A lot of the accusations made are at least second hand, ie the person making the accusation is reporting

528 Ex. 3, TB 3, Vol. 10, Tab 170, CSNSW.0001.0021.1167_0002.

529 Ex. 3, TB 3, Vol. 10, Tab 170, CSNSW.0001.0021.1167_0003.

*that some other person has made an accusation. As such no reliable conclusions can be drawn from the information at hand.*⁵³⁰

510. There is no information recorded under the headings ‘CI Intelligence Gaps’, ‘CI Additional Information’, ‘CI Actions’, ‘Automatic Dissemination on Finalisation’, ‘Dissemination – Notification on Finalisation’, ‘Dissemination – Notification for Action on Finalisation’ and ‘External Dissemination’. Again, the relevant inference is that there was no further action taken, or dissemination of the report, after it was reviewed by Mr Hovey.

5.5.3.1.3 Intelligence Report 18-1378

511. On or about 6 June 2018, Ms Wilson submitted Intelligence Report IR-18-1378 to SIU concerning disclosures made by Dillwynia inmate Elizabeth Cox.⁵³¹
512. IR-18-1378 relevantly recorded:

On 27/04/2018 a report was submitted by Chief Wayne ASTILL stating the following:

‘At about 11:45am on Friday 27/04/2018 inmate [redacted] COX, Elizabeth came to the Chiefs office in Medium Needs asking if she could speak to me. Cox sat down with tears in her eyes and said I’ll cut to the chase, I’ve got 2 dirty urines coming my way, I want you to do something for me, make them go away I know you can do it you did it for [Witness JJ] with her gabapentin’. I said ‘I don’t know [sic] where you got this idea from, urinalysis is sent to another location and done there and the results are sent back there. No one from the gaols handle the samples after they leave the centre;. Cox then said ‘you go overseas and stay with her mother’. I said ‘I have met [Witness JJ]’s mother about 3 times in the processing area when she has come to visit her and I went overseas prior to ever meeting her mother, so I don’t know who has fed this rubbish to you’. Cox said ‘three inmates have put application in to ICAC [Independent

530 Ex. 3, TB 3, Vol. 10, Tab 170, CSNSW.0001.0021.1167_0004.

531 Ex. 3, TB 3, Vol. 10, Tab 171, CSNSW.0001.0021.1172_0001-0009.

Commission Against Corruption] about it anyway so what do I have to do to get something done, sell officer's home addresses or something'. I said 'best you leave now'. Cox got up and walked out of the office. It was obvious that Cox was making threats as to where staff live with the intent to intimidate me to do something for her. I know she knows exactly where officers Curtin and Barling live and most likely where my son and family live in my old house in [redacted] as Cox did live in the street behind me in the past.'

On 22/05/2018 Chief Kellett submitted a report stating the following:

'HS-[redacted] approached myself asking if she could talk to me about a [sic] officer. HS went on to say that she had heard on the compound from other inmates that Chief Astill had been doing favours from bringing in tobacco to sexual act with the [redacted] inmates. Because of what she had heard on the compound she decided to put the rumours to the test as she is currently the main hygiene cleaner for the Chief's and Principal area which is located within the medium needs area. HS made an agreement with Chief Astill that if she done [sic] a good job in cleaning the Chief's office that he would give her a lollypop that she had spotted on the desk in his office. On the completion of cleaning the office Officer Astill handed HS the lollypop from the desk. HS went on to say that if I would like to confirm the rumours within the centre I should speak to [redacted] COX Elizabeth. I would like to highlight that there is a number of reports submitted by officer Astill regarding his interaction with inmate COX asking Chief Astill for favours regarding her pending urine (make them go away) as she feels that they will return with a positive indication to her drug use within the centre. COX also has made alleged allegation regarding his interaction with the inmates. I believe that this interaction with HS has been partly fuelled by COX and Chief Astill's reluctance to make COX's urine disappear or go away. It can also be said that both these inmates are known to associate on the compound and reside in the same until [sic] at this time, are associates on the outside and are currently colluding to conspire against Chief Astill.'

COX later handed General Manager Martin some paperwork stating the following: Points of Interest;

- *'Entering [redacted] cell after lock-in, alone to boast & high five for a job well done ie: placing me on boxes. Approx 3.12.17 & witnessed by several inmates including [Witness X] who was in [redacted] cell with her.*
- *Tampering/altering urinalysis results to suit.*
- *Showing my personal information to [redacted] by way of computer in Chiefs office including my current phone numbers listed ie: family, friends, legal. Fully aware threats [sic] had been made.*
- *Request I assault [sic] another inmate [redacted] stating I've got more go in me & someone has to shut her up (witnessed [sic] by [Witness X]).*
- *Informing myself & other inmates of who has 'dogged' on fellow inmates, when & what they said.*
- *Informing me that Intel officer D. Wilson is gunning for me & is trying to 'fuck him up the arse hard'. He is just byding [sic] his time until retirement.*
- *Booked visits for [Witness JJ] and [redacted] after lines closed on Fri/Sat 3pm for Sun 1pm session around either.*
- *Openly divulges [sic] discussions between inmate informers & Intel officer Wilson. As well as character assassinations on both Wilson & Chief Khellet [sic].*
- *Facilitating inmate moves in at least Med needs to inmates whom he talks dirty, touches with obvious sexual overtones [sic] & that of their friends.*
- *Did not act on information given regarding [Witness JJ] selling bupe on the compound. [Witness JJ] told him herself & that it was for tobacco & gold jewellery. I believe, according to [Witness JJ], Mr A even ensured some gold items where [sic] placed on [Witness JJ]'s property card. [Witness JJ] even offered to have him do the same for friends including myself; however my jewellery is already entered as I was received into SWCC with the items. Items stolen from buy ups were found in [Witness JJ]'s cell. Inmate responsible no in DCC.*

- *Filling [sic] false & misleading reports to GM [General Manager] to invoke negative consequences [sic] & to silence [sic] or discredit these accusations. Pre-emptive strike or thought I had already reported to GM or ICAC.*
- *Ignored information given by myself that [redacted] had asked me to introduce drugs into the gaol on her behalf & and when told NO went on to organise one of her visitors to visit someone else as her husband is band [sic] from visiting. Her explanation for Mr R ban was that he had assaulted officers previously.*
- *Ignored intel [redacted] was using stand over tactics to ensure her 'drop' was taken & in turn handed over to her.*
- *4/5/18 told inmate, when asked to print off hi min photo, he can't do anything shifty atm because a certain inmate has red-lighted him to the GM.*
- *Was heard to mumble 'game on' as I walked past. When on muster stares me down with smirk displayed.*
- *Told my m8 he can do anything shifty right now because a certain inmate has red lighted him with the GM & put him under the microscope. 5/5*
- *Told [redacted] girl shes racked up a big tick bill; she'll have to pay soon. Xmas 2017 or Australia day 18.*
- *Had [Witness JJ's] mother [redacted] property hunting overseas for cheap or flipable [sic] houses to lease to keep income flowing post retirement.*
- *Was planning overseas possibly with Hocky [sic] & Michelle was to accommodate to assist [sic] in cost cutting said holiday. (check hols).*
- *Was informed certain inmate was onselling prescribed Gabapantons to [Witness JJ] and [Witness JJ] was to incur [sic] a positive urine test for these specific pills. Neither inmate was halted for this illegal practice. Hence [Witness JJ] maraculouse [sic] negative results.*

- *Innappropriately discussed venereal [sic] diseases with 20 & under inmates.*
- *Innappropriate [sic] sexual comments to young girls coupled with touching & fantasy-like desires.*
- *Threats of payback & pre-emptive strikes on inmates who will inform on his indescressions [sic].*
- *6.5.18 knew I was at visits as I walked past him & Mr Riddles. Apon [sic] letting another inmate into the unit he said hello to & asked how another inmate was before enquiring 'where's Cox?' The inmate & others present thought this strange.*
- *Threatening inmate [redacted] being abusive and aggressive.*
- *Talk on compound that he is bringing tobacco into the centre for inmates.*
- *I have observed certain inmates attending 'the hub'. On closer inspection all lights are off, office door shut & hub door locked.*
- *Pay the piper comment - tick bill.*
- *Asked an inmate 'what's Coxys drug of choice'.*
- *Comments Mon 14th May to [redacted] reliable source informed me he borrowed a reasonable sum of \$\$\$ from [redacted] for the purpose of paying off his new car.*

On 02/06/2018 it is reported that COX approached staff wanting to place an AVO [Apprehended Violence Order] on Chief Astill. COX was then moved to BIU [Behavioural Intervention Unit] to eliminate any contact with Chief Astill and General Manager Martin was informed of situation. Chief Astill was then advised that he is to limit all contact with COX and that any formal matters requiring interaction with COX to be undertaken by other executive staff. COX was then interviewed regarding the issue. COX stated that she no longer wanted an AVO and provided application #060/18 stating that she could associate with Chief Astill but requested that all formal dealings with her be conducted by other executive staff.

COX was then returned to her unit in high needs where she is on a management plan to address her drug seeking behaviour.

A further report has been submitted recommending a change of placement for COX.

Local Analysis

...

Since her incarceration this episode, COX has received 3 positive urinalysis including the two previously discussed.

COX is well known to local intelligence for drug activity and is also known within Corrections Intelligence Group (GIC) [sic] holdings, also for illicit drug activity.

... [Witness JJ] is well known to local intelligence for diversion of her prescribed Buprenorphine and also for selling Gabapentin and is also known within intelligence holdings. [Witness HH] was named in an anonymous note in February 2018 also stating she has Buprenorphine and 'Gabbas'. On 02/03/2018 intercepted mail addressed to [Witness JJ] from an ex inmate stated 'when you get this letter plz put my phone number on your runter straight away get Mr A to do it so it gets done ASAP'. The reference to 'Mr A' is likely Chief Astill and it is not uncommon for executive staff to assist in this way.

All information received in relation to [Witness JJ] was dealt with by staff and given the urinalysis process, results cannot be altered.

The information in relation to [Witness JJ]'s mother cannot be confirmed, however is annotated on OIMS [Offender Integrated Management System] that she was a regular visitor and it is also noted that Chief Astill also worked as a Senior Correctional Officer (SCO) in visits processing.

It is confirmed that COX has knowledge of at least two staff members addresses, living in the same area whilst on Parole. It is unknown whether COX has knowledge of any further information on staff.

It is probable that COX was attempting to have her urinalysis results altered as her child is on the care of Family and Community Services.

HS-[redacted] is well known within intelligence holdings and local intelligence. Prior to information given by HS, there has been no known recorded information on Chief Astill in relation to 'doing favours bringing in tobacco and sexual acts with [redacted] inmates', however, there have been previous reports in relation to Chief Astill's interactions with inmates.

It cannot be confirmed whether HS was in fact given a lollipop by Chief Astill or whether it had been taken by HS.

In relation to the points of interest submitted by COX, the following is provided:

...

It cannot be substantiated that Chief Astill entered a cell after lock in alone, no other witnesses have come forward.

Urinalysis is completed by an independent laboratory.

Cannot be substantiated if personal information of one inmate was shown to another inmate however, it is known that [redacted] was questioning whether COX had her husbands telephone number on her account as she claimed COX was calling him.

Cannot be substantiated if COX was asked to assault another inmate.

Cannot be substantiated that information was given on fellow inmates.

The information in relation to intel officer (author) is incorrect.

It is not unusual for an executive officer to have a visit booked after hours dependant [sic] on circumstances.

Discussing information given by informers is part of the intelligence role.

It is not unusual for an executive officer to co-ordinate inmate moves dependant [sic] on circumstances.

It cannot be substantiated whether discussions evolve around sex.

Information regarding [Witness JJ] was commonly known amongst staff with regular searches conducted.

It has been confirmed that [Witness JJ] has had jewellery confiscated which was not on her property card and there has been a report submitted in relation to this.

It is confirmed that [Witness JJ] was found in possession of a pair of shoes which had been stolen from the buy up shop by [redacted] suspected as being for payment of illicit drugs (reports submitted by Principal Industries Officer Avery).

Filing false and misleading reports to General Manager cannot be substantiated.

Both COX and [redacted] were known to staff for suspected drug introduction and that [redacted] was also a 'standover'.

The comment in relation to borrowing a reasonable sum of money to pay off his new car are unsubstantiated, also, the cars are reportedly second hand.

The remainder of information cannot be substantiated.

Prior to this information there has been nothing to suggest tobacco being introduced illegally by any staff member.

The majority of information supplied cannot be proven as it relies on hearsay and given COX's history and previous interactions with staff, it is probably [sic] she is being vindictive towards Chief Astill as he would not be corrupted. There is however, previous reports in relation to Chief Astill's interactions with inmates.

...

Summary:

[redacted] Elizabeth COX approached CSNSW staff member Wayne ASTILL requesting they tamper with urinalysis in order to make the non prescribed ones go away and when refused, COX then stated to ASTILL 'so what do I have to do to get something done, sell officer's home addresses'. COX has also submitted a number of allegations against Mr ASTILL.⁵³²

513. The Intelligence Report was reviewed by Sarah Casey in her capacity as SIU Intelligence Analyst on 12 April 2019 (some 10 months after it was submitted by Ms Wilson, and subsequent to Astill's arrest in February 2019) and was reviewed by Mr Hovey on 28 May 2019.
514. There is no further information inputted into the report as part of Ms Casey's or Mr Hovey's analysis and review of the report, aside from the fact that it was 'referred as part of CASE-19-0108'. The matters the subject of this Intelligence Report are discussed in further detail in Chapter 8 in this Report..

5.5.3.1.4 Intelligence Report 18-1983

515. Intelligence Report IR-18-1983 was submitted to SIU by Ms Wilson on 15 August 2018 and details reports received from three staff members in relation to suspected illegal activity regarding contraband jewellery involving Witness JJ and Astill.⁵³³
516. In summary, a total of five sets of earrings had been confiscated from Witness JJ in the period December 2017 to February 2018. With respect to one of the pairs of earrings, Witness JJ believed that the pair was recorded on her property card as she had them while housed at Mulawa Correctional Centre. The confiscating officer, First Class Correctional Officer Jacinta Curtin, spoke to Astill regarding the earrings who said he would deal with the issue as 'Mulawa always fuck up and don't register shit'. He subsequently said that the earrings 'had been thrown out in a clean up', but 'the studs are a quick fix, they are only a cheap pair from Big W, I will have to talk to her'.⁵³⁴
517. A subsequent report was submitted by Ms Berry after two further pairs of earrings were confiscated from Witness JJ, which Ms Curtin confirmed were not the earrings she had initially confiscated.
518. The 'Local Analysis' in the Intelligence Report stated, among other things, that:

533 Ex. 3, TB 3, Vol. 10, Tab 173, CSNSW.0001.0021.1181_0001-0006.

534 Ex. 3, TB 3, Vol. 10, Tab 173, CSNSW.0001.0021.1181_0002.

It is of concern that staff are raising the issue of inappropriate behaviour by a staff member and of even more concern is that it is only the one person that is mentioned. Staff were questioned as to why these reports have taken the time period to be reported and they state that they felt intimidated by Chief Astill previously however, more staff are coming forward and this inappropriate behaviour needs to be reported.

...

Wayne Astill has been of interest to local intel for a period of time however, this has escalated in the past six months with a number of staff making assumptions [sic] on their suspicions with his interactions with inmates. Inmates have also recently starting calling Wayne Astill 'poppy', which is inappropriate. A number of reports have recently been submitted through SIU in relation to Wayne Astill and also introduction of tobacco/illicit drugs by a staff member and given the information coming forward, it cannot be discounted that this is the one person, if in fact, it is.⁵³⁵

519. Under the heading 'Local Intelligence Gaps', it records:

Although there is a lot of hearsay on this matter, it cannot be proven Chief Astill has colluded and provided the items for [Witness JJ] or other inmates.

The origin of the jewellery and whether it was introduced or came from other inmates given [Witness JJ's] involvement in illicit drug activity.⁵³⁶

520. Under the heading 'Local Actions' it states '1. Continued Monitoring 2. General Manager informed'.⁵³⁷

521. As discussed later in this Report, Ms Casey opened this Intelligence Report and took some steps in relation to it, including communicating with Ms Wilson, the day after it was submitted. This information is not contained in the Intelligence Report. The Intelligence Report states that it was reviewed by Ms Casey in her

535 Ex. 3, TB 3, Vol. 10, Tab 173, CSNSW.0001.0021.1181_0004.

536 Ex. 3, TB 3, Vol. 10, Tab 173, CSNSW.0001.0021.1181_0005.

537 Ex. 3, TB 3, Vol. 10, Tab 173, CSNSW.0001.0021.1181_0005.

capacity as SIU Intelligence Analyst on 12 April 2019 (some seven months after it was submitted by Ms Wilson, and subsequent to Astill's arrest in February 2019). It was reviewed by Mr Hovey on 28 May 2019.

522. There is no further information inputted into the report as part of Ms Casey's or Mr Hovey's analysis and review of the report, aside from the fact that it was 'referred as part of CASE-19-0108'. This Intelligence Report is discussed in further detail in Chapter 8 of this Report.

5.5.3.1.5 Intelligence Report 18-2610

523. Intelligence Report IR-18-2610 was submitted to SIU by Mr Virgo on 9 October 2018 and details allegations made by then Dillwynia inmate Ms Sheiles.⁵³⁸ Ms Sheiles' disclosures to Mr Virgo and what followed are dealt with in detail elsewhere in this Report.

524. The information recorded by Mr Virgo as part of the Intelligence Report was as follows:

Whilst performing my duties I attended the BIU area to perform checks of the segregation/ Protection inmates in the unit.

I was informed by CO [Correctional Officer] Glenn Clark that inmate [redacted] Trudy Jane SHEILES would like to speak to me confidentially.

I directed officer Clark to remove SHEILES from her cell and escort her to the BIU [Behavioural Intervention Unit] interview room.

Upon interview inmate SHEILES stated to the author that she has information that she wishes to divulge about an officer, however she would not give full disclosure or go into further detail until she was transferred to another Centre as she had fears of retribution from staff.

I attempted to question inmate SHEILES to ascertain the content of her information, SHEILES stated 'I will not go into it until I'm moved, but its about ASTILL'.

538 Ex. 3, TB 3, Vol. 10, Tab 176, CSNSW.0001.0021.1187_0001-0004.

I then informed SHEILES that I would return to discuss this matter further when I return to duty, SHEILES informed me that she will discuss further if she feels comfortable on Monday or Tuesday.

Upon commencing duty today 09/10/2018 I attended the BIU to attempt to gain further information from inmate SHEILES only to discovered [sic] that she has been transferred to Silverwater Women's Correctional Centre on the 6th October 2018.⁵³⁹

525. Under the heading 'Local Actions', it was recorded that the Governor was informed of the situation.
526. The Intelligence Report was reviewed by Ms Casey in her capacity as SIU Intelligence Analyst on 12 April 2019 (some six months after it was submitted by Mr Virgo and subsequent to Astill's arrest in February 2019). It was reviewed by Mr Hovey on 28 May 2019.
527. There is no further information inputted into the report as part of Ms Casey's or Mr Hovey's analysis and review of the report, aside from the fact that it was 'referred as part of CASE-19-0108'.
528. Ms Sheiles' disclosures to Mr Virgo, and then to NSWPF, and what followed are discussed in Chapter 8 of this Report.

5.5.3.1.6 Intelligence Report 18-2892

529. Intelligence Report IR-18-2892 was submitted to SIU by Mr Virgo on 5 November 2018 and details a report made by Senior Correctional Officer Paul Foster containing allegations of inappropriate conduct by Astill towards Witness Q.⁵⁴⁰ The information reported by Mr Virgo was as follows:

Report submitted by Senior Correctional Officer Paul FOSTER states that SCO FOSTER interviewed [Witness Q] during interview [Witness Q] was

539 Ex. 3, TB 3, Vol. 10, Tab 176, CSNSW.0001.0021.1187_0002.

540 Ex. 3, TB 3, Vol. 10, Tab 177, CSNSW.0001.0021.1191_0001-0004.

prompted by Officer FOSTER for information in regards to an incident that he had heard of that involved an Officer at Dillwynia CC.

[Witness Q] then alleged that an incident took place in her work location some time ago involving Senior Correctional Officer Wayne ASTILL. (See attached report from SCO FOSTER).⁵⁴¹

530. The version of the Intelligence Report produced to the Special Commission did not include the report from Mr Foster. Mr Foster's report was, however, annexed to his first witness statement.
531. The Intelligence Report was reviewed by Ms Casey in her capacity as SIU Intelligence Analyst on 12 April 2019 (some five months after it was submitted by Mr Virgo and subsequent to Astill's arrest in February 2019) and was reviewed by Mr Hovey on 28 May 2019.
532. There is no further information inputted into the report as part of Ms Casey's or Mr Hovey's analysis and review of the report, aside from the fact that it was 'referred as part of CASE-19-0108'.

5.5.3.2 Information Notes submitted prior to Astill's arrest

5.5.3.2.1 Information Note 18-0727

533. On 24 July 2018, Ms Wilson submitted Information Note IN-18-0727 after she received an email regarding a letter that had been intercepted at Metropolitan Special Programs Centre which made reference to Astill.⁵⁴² The Information Note included the following excerpt from the letter:

Gets her kids to sneak her earrings in every fukn week. The only person I've seen get away with it, everyone else gets fukn done, she's probably another one of Mr Astell's girls, sucking a screw's cock, that's the lowest you could possibly go.

541 Ex. 3, TB 3, Vol. 10, Tab 177, CSNSW.0001.0021.1191_0002.

542 Ex. 3, TB 3, Vol. 10, Tab 172, CSNSW.0001.0022.0015_0001-0008.

534. The inmate referred to in the letter was identified to be an inmate housed at Dillwynia.

535. According to the Information Note, Ms Wilson proceeded to interview the inmate who authored the letter that included allegations of possible corruption. The inmate stated that at around 3pm one day, she went to buy cigarettes from Witness N who told the inmate to come back in the morning as she did not have any cigarettes available that day. At around 3.30pm, the inmate saw Witness N walking away from the Chief's Office with Astill for muster and lock-in. Shortly after this, the inmate said that Witness N's unit was let go for the afternoon and Witness N passed cigarettes under the inmate's door for her. The inmate said that if Witness N's property was checked, there would be a lot of items not recorded on her property card. The inmate also said that she saw Witness GG with a pouch that she suspected also came from Astill as she was 'one of his girls'.⁵⁴³

536. Under the heading 'Information Category', it states that the 'primary' categories are 'contraband' and 'matters of interest' and the 'secondary' categories are 'smoking related' and 'suspicious activity'. Under the heading 'Intelligence Gaps', Ms Wilson recorded the following:

*There has recently been rumours and hearsay in relation to an officer introducing contraband into Dillwynia CC in particular, tobacco however at this stage it cannot be confirmed.*⁵⁴⁴

537. No information regarding the dissemination of the Information Note is contained in it.

538. Ms Wilson was asked why she submitted this information via an Information Note as opposed to an Intelligence Report. She explained:

MS D. WILSON: *When I had a snippet of information, I would do an information note as compared to an intelligence report where I had*

543 Ex. 3, TB 3, Vol. 10, Tab 172, CSNSW.0001.0022.0015_0002.

544 Ex. 3, TB 3, Vol. 10, Tab 172, CSNSW.0001.0022.0015_0003.

more information. If I had further information later on in relation to this, I could then put it into an IR [Intelligence Report].

MR LLOYD: *Could I ask this: Where does the information note go when that's created?*

MS D. WILSON: *CIG.*

MR LLOYD: *So this is a report that you submit but to the CIG, not to the SIU?*

MS D. WILSON: *Yes, I believe so.*

MR LLOYD: *And you just worked out for yourself when it was appropriate to do an information note to the CIG as opposed to an intelligence report to the CSIU [sic]; is that right?*

MS D. WILSON: *Yes. Yes. Yes, sorry.*⁵⁴⁵

539. Ms Wilson's evidence as to where her Information Note was disseminated to is contrary to the procedure prescribed by Chapter 16.2 of the COPP which indicates that Information Notes are submitted to the centre's Intelligence Manager (i.e., herself) and if the information relates to alleged corrupt behaviour by a staff member (as this information plainly did), the centre Intelligence Manager is required to submit an Intelligence Report to the SIU. Although not questioned about it, it is possible (and maybe not surprising) that she was mistaken as to how the IIS worked.

5.5.3.2.2 Information Note 18-0936

540. On 29 August 2018, Ms Berry submitted Information Note IN-18-0936 in relation to inappropriate behaviour she observed by Astill towards Dillwynia inmate Sarah Ward.⁵⁴⁶ Ms Berry recorded the following:

545 Transcript, 7 November 2023, 1777.40-1778.14.

546 Ex. 3, TB 3, Vol. 10, Tab 174, CSNSW.0001.0022.0023_0001-0002.

I entered the Reception office to see Chief Astill quickly placing an item in to his top left pocket. In the room was inmate WARD, the Reception sweeper. Chief Astill immediately left the area and headed back to where he was posted in the BIU [Behavioural Intervention Unit]. At no time did he afford myself the opportunity to see what he had been showing the sweeper and putting back into his pocket. When he left I spoke to inmate WARD as she has previously stated she does feel comfortable with him, but didn't want me saying anything due to his repercussions that she has seen other inmates endure. I asked inmate WARD what she had been shown and WARD stated 'a photo of him in his police uniform when he was 31', she then continued to say 'I don't know what he wants he must be going through a mid life crisis, he just wants to hear how handsome he is'. I found this strange as previously stated he did not show me (an officer) the photo of him in police uniform but made a point of showing and inmate and obviously hiding this from me.⁵⁴⁷

541. No information regarding the dissemination of the Information Note is contained in it, though under the heading 'Information Category', it states that the 'primary' category is SIU and the 'secondary' category is 'inappropriate association'.
542. Ms Berry was asked whether this was an Information Note that she submitted to SIU and Ms Berry agreed that she thought that it was.⁵⁴⁸
543. The evidence is unclear whether this, or any other Intelligence Note, was received by the SIU.

5.5.3.2.3 Information Note 18-0937

544. On 29 August 2018, Ms Berry submitted Information Note IN-18-0937.⁵⁴⁹ Ms Berry recorded the following:

547 Ex. 3, TB 3, Vol. 10, Tab 174, CSNSW.0001.0022.0023_0002.

548 Transcript, 30 October 2023, 1311.9-14.

549 Ex. 3, TB 3, Vol. 10, Tab 175, CSNSW.0001.0022.0025_0001-0003.

Inmate WARDS observations and concerns. Inmate WARD stated to me that [Witness N] has to always go to the High Needs area for the stores etc, she is adamant about attending High Needs.

WARD said she really makes a point of having to go every Tuesday and Thursday. WARD stated she always gets let into the High Needs area by Chief Astill. WARD then stated that when [Witness N] comes back to the Medium Needs area to their unit she hands out tobacco to the other girls. Inmate WARD and [Witness N] live in the same accommodation unit. They have nil issues and have completed a lot of gaol time together.⁵⁵⁰

545. No information regarding the dissemination of the Information Note is contained in it. In contrast to the other Information Note Ms Berry submitted that day, under the heading 'Information Category' it states that the 'primary' category is 'contraband' (as opposed to SIU) and the 'secondary' category is 'smoking related'.
546. Ms Berry said that this was also an Information Note she submitted to the SIU. She was asked what occurred after she submitted the Information Note. Ms Berry gave the following evidence:

MR SHELLER: *And then if you have a look over the page-I'm sorry I don't have it in front of me. But whereas SIU appeared under the word 'primary' in the first intelligence note of that day, do you notice that under the word 'primary' for the second document the word 'contraband' appears?*

MS BERRY: *Yep.*

MR SHELLER: *Do you understand what that means or why that word is used -*

MS BERRY: *That shouldn't -shouldn't be there. You're only -you are only given two selections, general or SIU.*

MR SHELLER: *Right.*

MS BERRY: So - but in regards to - because the first one was in regards to the police photo that day, which I submitted straightaway. The second one was in regards to contraband that Mr Astill was bringing to the centre, and I did raise concerns that the inmate, Sarah Ward, and myself had been punished because someone knew about this. So there's either a problem with the system, but that was an SIU report. That was never supposed to go to Shari Martin. Because I ended up having to do that search.

MR SHELLER: So what you think has happened - for some reason, the document - the intelligence note that you intended to put through to SIU like you had with the other intelligence note on that day somehow ended up remaining within Dillwynia under that word 'contraband'?

MS BERRY: Yes, it did.

MR SHELLER: And was there some consequence in relation to that intelligence note for you at Dillwynia?

MS BERRY: Yep.

MR SHELLER: What was that consequence?

MS BERRY: I was - that was made on 29 August. I was made to do that search on 30 September. I was brought out of reception, which is not a normal practice. There was the SCO [Senior Correctional Officer] at reception. There was an SCO - Grant Riddle was SCO, David Alessi and First Class Jo Pearson up in that unit. I was tasked with doing the actual search on that actual inmate that was named in there with Jo Pearson. I was then tasked to the follow-up investigation on the contraband that was found in there because it wasn't items from the Correctional facility.⁵⁵¹

547. As is consistent with Chapter 16.2 of the COPP, it appears based on Ms Berry's evidence that the Information Note, rather than being disseminated directly to SIU, was disseminated internally within Dillwynia.

548. It remains unclear whether any of the three Information Notes submitted by Ms Wilson and Ms Berry were disseminated to the SIU, although it appears that at least Ms Berry's Information Note regarding allegations that Witness N was supplying contraband to other inmates was not.

5.5.3.3 Intelligence Reports submitted following Astill's arrest

549. On 23 November 2019, an Assistant Superintendent at CIG submitted Intelligence Report IR-19-3679 to SIU after receiving Information Note IN-19-3467 from Hunter Correctional Centre Intelligence Officer Kellie Little on 18 November 2019.⁵⁵² The information in the report concerns a letter sent by Witness I which referenced Astill's inappropriate conduct which had been subject to media attention. Witness I indicates that she was one of the six victims.⁵⁵³ Under the heading 'CI Analysis' the report notes that a review of open source information confirmed that Astill had been charged with 37 offences. Under the heading 'CI Actions' it states that the Intelligence Report was sent to SIU due to the sensitivity of the matter and the persons involved. The report was analysed by a SIU Intelligence Analyst on 28 April 2020 and reviewed by the SIU Director on 28 May 2020. Only the staff serial numbers of the persons occupying those roles is included in the report rather than their names.⁵⁵⁴

550. On 23 June 2020 an unnamed staff member submitted Intelligence Report IR-20-2041 to CIG.⁵⁵⁵ It reports that outgoing mail referenced an inappropriate relationship between an inmate, Astill and Correctional Officer Tania Hockey. The Intelligence Report was analysed by a Senior Correctional Officer at CIG on 15 July 2021 and reviewed by a Senior Assistant Superintendent at CIG (both unnamed in the report) on 16 July 2021. Under the heading 'CI Analysis' it states that no action was taken by CIG and that the report would be sent to the IB for its review and analysis. Under the heading 'Dissemination – Notification for Action

552 Ex. 3, TB 3, Vol. 10, Tab 181, CSNSW.0001.0022.0040_0001-0005; Ex. 3, TB 3, Vol. 10, Tab 180, CSNSW.0001.0022.0035_0001-0003.

553 Ex. 3, TB 3, Vol. 10, Tab 181, CSNSW.0001.0022.0040_0003; Ex. 3, TB 3, Vol. 10, Tab 180, CSNSW.0001.0022.0035_0002.

554 Ex. 3, TB 3, Vol. 10, Tab 181, CSNSW.0001.0022.0040_0003, 0005.

555 Ex. 3, TB 3, Vol. 10, Tab 182, CSNSW.0001.0021.1203_0001-0005.

on Finalisation’, Mr Hovey and Ms Casey’s names are included with a note that the report is provided ‘for SIU review and analysis’.⁵⁵⁶

551. On 26 April 2021 an unnamed Lithgow Correctional Centre Intelligence Officer submitted Intelligence Report IR-21-1080 to SIU.⁵⁵⁷ The report relates to a letter sent by Ms Sheiles to an inmate at Lithgow Correctional Centre in which she states that she, along with other inmates, had been raped by Astill and that he had been charged with 48 offences. The report was analysed by an SIU Intelligence Officer the same day and on 6 July 2021 it was reviewed by the SIU Director. Under the heading ‘CI Actions’, it notes that the report would be forwarded to the NSWPF Officer in Charge of the investigation. Only the staff serial numbers of the persons occupying the SIU roles is included in the report rather than their names.
552. On 16 February 2022, an unnamed staff member at Junee Correctional Centre submitted Intelligence Report 22-0442 to CIG regarding a letter from Witness N which was intercepted at Junee Correctional Centre.⁵⁵⁸ The letter detailed Witness N’s denial of having engaged in sexual activities with a staff member in gaol and included in the envelope was paperwork which detailed that the alleged staff member was Astill.⁵⁵⁹ The report was analysed and reviewed by unnamed CIG staff members on 21 April 2022 and 3 May 2022. Under the heading ‘CI Analysis’ it states that no action was taken by CIG and the report was sent to the IB for its review and analysis.⁵⁶⁰ Under the heading ‘Dissemination – Notification on Finalisation’, Mr Hovey and Ms Casey’s names are included, along with the name of Intelligence Officer Connor McLellan with a note that the report is provided ‘for SIU review and analysis’.⁵⁶¹
553. On 6 June 2022, an unnamed staff member at Dillwynia submitted Intelligence Report IR-19-0807 to SIU regarding an inmate application form that had been received from an inmate containing allegations of inappropriate behaviour by

556 Ex. 3, TB 3, Vol. 10, Tab 182, CSNSW.0001.0021.1203_0004.

557 Ex. 3, TB 3, Vol. 10, Tab 184, CSNSW.0001.0022.0054_0001-0004.

558 Ex. 3, TB 3, Vol. 10, Tab 186, CSNSW.0001.0022.0058_0001-0009.

559 Ex. 3, TB 3, Vol. 10, Tab 186, CSNSW.0001.0022.0058_0002.

560 Ex. 3, TB 3, Vol. 10, Tab 186, CSNSW.0001.0022.0058_0004.

561 Ex. 3, TB 3, Vol. 10, Tab 186, CSNSW.0001.0022.0058_0005.

Astill.⁵⁶² Under the heading ‘Local Analysis’ it states ‘SCO Astill was recently arrested for having inappropriate relationships with inmates at Dillwynia Correctional Centre. It is possible [redacted] is making an allegation against Senior Correctional Officer Astill as a means to manipulate placement.’⁵⁶³ The report was analysed on 6 June 2022 and reviewed on 8 June 2022 by unnamed persons at SIU.

554. Also on 6 June 2022, Intelligence Report IR-19-2181 was submitted by an unnamed staff member at Mary Wade to SIU relating to an intercepted letter from Ms Sheiles referencing the sexual abuse perpetrated against her by Astill.⁵⁶⁴ The report was analysed on 6 June 2022 and reviewed on 8 June 2022 by unnamed persons.⁵⁶⁵ Under the heading ‘CI Additional Information’ it notes that the detective in charge of the investigation into Astill, Detective Sergeant Tesoriero, was advised of its contents.⁵⁶⁶

555. On 13 June 2022, an unnamed staff member at Metropolitan Special Programs Centre submitted Intelligence Report IR-22-1710 to SIU regarding an intercepted letter from Ms Sheiles which makes reference to her participation in Astill’s court proceedings as a victim.⁵⁶⁷ The report was analysed and reviewed on 21 June 2022 by unnamed persons at SIU.⁵⁶⁸ Extensive information is contained under the heading ‘CI Additional Information’ gathered from a search of the OIMS and IIS in respect to Ms Sheiles.⁵⁶⁹

5.5.3.4 Information Notes submitted following Astill’s arrest

556. On 19 March 2019, Fairfield Community Corrections Officer Lauren Alnaser submitted Information Note IN-19-0851 following an interview with an offender

562 Ex. 3, TB 3, Vol. 10, Tab 187, CSNSW.0001.0021.1195_0001-0004.

563 Ex. 3, TB 3, Vol. 10, Tab 187, CSNSW.0001.0021.1195_0002.

564 Ex. 3, TB 3, Vol. 10, Tab 188, CSNSW.0001.0021.1199_0001-0004.

565 Ex. 3, TB 3, Vol. 10, Tab 188, CSNSW.0001.0021.1199_0004.

566 Ex. 3, TB 3, Vol. 10, Tab 188, CSNSW.0001.0021.1199_0003.

567 Ex. 3, TB 3, Vol. 10, Tab 189, CSNSW.0001.0022.0067_0001-0012.

568 Ex. 3, TB 3, Vol. 10, Tab 189, CSNSW.0001.0022.0067_0005.

569 Ex. 3, TB 3, Vol. 10, Tab 189, CSNSW.0001.0022.0067_0003-0004.

on a community-based order who said they were assaulted in custody by Astill. No dissemination information is contained in the note.⁵⁷⁰

557. On 30 July 2019, Mr Virgo submitted Information Note IN-19-2307 regarding a report by Correctional Officer Cailla Hall/Barlow that Astill approached her while at a licensed establishment in Richmond and attempted to engage her in conversation. Ms Hall refused to speak to Astill and said it was a conflict of interest. No dissemination information is contained in the note.⁵⁷¹
558. On 18 November 2019, Ms Little submitted Information Note IN-19-3467 the contents of which is summarised in Intelligence Report 19-3679 referred to above.⁵⁷²
559. On 15 July 2021, Fairfield Community Corrections Officer Sia Fainuu submitted Information Note IN-21-1372 following an interview with Witness I who reported that she was sexually assaulted and groomed by an officer at Dillwynia. The officer was identified by Witness I's Transitional Corrections Officer who previously worked at Dillwynia, and was present during the interview with Witness I, to be Astill. No dissemination information is contained in the note.⁵⁷³
560. The evidence before the Special Commission establishes that the IB did receive misconduct allegations directly, via the SIU function on the IIS, that were not reported to the PSB by the IB. A number of the Intelligence Reports received by the IB about Astill were not analysed until after his arrest in February 2019. The failure to refer these matters to PSB and, in relation to a subset of them, to analyse them in a timely manner prolonged the period Astill was able to offend at Dillwynia.

570 Ex. 3, TB 3, Vol. 10, Tab 178, CSNSW.0001.0022.0028_0001-0002.

571 Ex. 3, TB 3, Vol. 10, Tab 179, CSNSW.0001.0022.0030_0001-0005.

572 Ex. 3, TB 3, Vol. 10, Tab 180, CSNSW.0001.0022.0035_0001-0003.

573 Ex. 3, TB 3, Vol. 10, Tab 185, CSNSW.0001.0022.0038_0001-0002.

5.5.4 Mr Hovey's evidence about the SIU and the Intelligence Reports concerning Astill

561. As discussed above, in relation to allegations about an officer being communicated via an Intelligence Report to the SIU, Mr Hovey said that, in circumstances where an Intelligence Report did not disclose direct information or direct evidence of misconduct, but rather something that might be considered suspicious, then it would form an intelligence matter rather than evidence of misconduct that would otherwise be referred to the PSB.⁵⁷⁴
562. Accordingly, if the Intelligence Analyst in the SIU did not consider the Intelligence Report to disclose direct evidence of misconduct or was unable to review the Intelligence Report because of competing priorities, the Intelligence Report would not be referred to PSB to then be forwarded to the PSC for consideration. Mr Hovey agreed that this system was problematic.⁵⁷⁵
563. Plainly, the system represented a very significant risk given Mr Hovey's evidence as to the competing priorities for the person filling the role of Intelligence Analyst during 2017 and 2018. Mr Hovey's evidence was that the analyst tasked with reviewing the Intelligence Reports was also tasked with the screening of all new officers into the organisation. That screening was required to be completed before an officer was permitted to start their training at the Brush Farm Academy. Accordingly, screening for the purposes of recruitment was prioritised, which, in turn, impacted the number of Intelligence Reports that could be read.⁵⁷⁶
564. As discussed above, a number of Intelligence Reports that had been made about Astill were not 'analysed' by an Intelligence Analyst until after Astill's arrest. These include IR-18-1378, submitted on 6 June 2018 and analysed on 12 April 2019⁵⁷⁷ and IR-18-2610, submitted on 9 October 2018 and analysed on 12 April 2019.⁵⁷⁸

574 Transcript, 8 November 2023, 1867.33-41.

575 Transcript, 8 November 2023, 1867.33-41; Transcript, 8 November 2023, 1872.1-12.

576 Transcript, 8 November 2023, 1871.3-17.

577 Ex. 3, TB 3, Vol. 10, Tab 171, CSNSW.0001.0021.1172_0001-0009.

578 Ex. 3, TB 3, Vol. 10, Tab 176, CSNSW.0001.0021.1187_0001-0004.

565. Mr Hovey was asked about the delay in analysing the Intelligence Reports concerning Astill. His evidence was as follows in relation to IR-18-1378:

MR LLOYD: *The report itself was submitted ... on 6 June 2018.*

MR HOVEY: *Yes.*

MR LLOYD: *That's a gap – I mean we can easily do the mathematics – of a little over 10 months.*

MR HOVEY: *Yes.*

MR LLOYD: *That is a serious – whatever the reason, resourcing or otherwise, that's a serious problem in terms of the delay?*

MR HOVEY: *It – it – it was at the time, yes.*

MR LLOYD: *And in circumstances where the review was not done until a time after you knew that Astill had been arrested; is that right?*

MR HOVEY: *I would suggest in this particular instance, sir, that I'm aware from – providing my statement that there's a number of reports similarly dated, and all referred to a particular case number. I would suggest that these information reports have been supplied following a request – following the arrest of Astill.*

MR LLOYD: *Let me just understand what you're saying about that. You say 'supplied'. You don't doubt that they were submitted by, in this case, Deborah Wilson –*

MR HOVEY: *Yes.*

MR LLOYD: *-on or about ... 6 June 2018?*

MR HOVEY: *I'm not disputing that at all.*

MR LLOYD: *And they were submitted in a way which was capable of coming to the attention of an intel analyst within your branch?*

MR HOVEY: *If we'd had one, they would have come to the attention of an intel analyst.*

MR LLOYD: *What you're telling us is that no one from the Investigations Branch reviewed this until the date in April of 2019?*

MR HOVEY: Yes, that's right.

MR LLOYD: And that review came about in a block?

MR HOVEY: I'm suggesting that catalyst for that was a request for intelligence holdings in relation to Astill.

MR LLOYD: But it came about in a block with some others that I'll show you?

MR HOVEY: I believe so, yes.

MR LLOYD: And as a result of some sort of a request being made from what intelligence holdings the investigations had?

MR HOVEY: That's – that's how I'm interpreting.

MR LLOYD: This may be a difficult question for you to answer, but do you take it from that that if there had not been that kind of request that came in as a result of Astill's arrest that this intelligence report may have sat in the Investigations Branch capable of being reviewed but never actually been, forever?

MR HOVEY: I would say that given the changes that had been made post 2019 to the Intelligence Unit that it would have been looked at, but certainly not as, not as early as it was. We're talking those 10 months. I – with respect, I suggest that it would be a longer period of time.

MR LLOYD: Sorry, I just don't understand. Can you explain?

MR HOVEY: So at the moment, we've produced that some 10 months later at a request. I'm suggesting that we would have looked – if that request hadn't been made, we would have looked at that report, but it would have been some time down the track. It wouldn't have been longer than 10 months.

MR LLOYD: Obviously after 10 months?

MR HOVEY: Yes, Yes.

MR LLOYD: That's just completely unacceptable, isn't it, in terms of the time – we'll come to the reasons, but do you agree with me –

MR HOVEY: Yes.

MR LLOYD: *-that an agency charged with the things that the Investigations Branch was charged with, for there to be no review of an intelligence report for 10 or more months is completely unacceptable, isn't it?*

MR HOVEY: *I agree.*

MR LLOYD: *And I think you're telling us that, or about to, that for part of that 10 month period, there was no intel analyst employed; is that right?*

MR HOVEY: *That's right.*⁵⁷⁹

566. Mr Hovey accepted the possibility that, had Mr Virgo not telephoned him to alert him to the Intelligence Report that had been, or would shortly be, submitted regarding Astill in October 2018, it may have joined the backlog of unreviewed Intelligence Reports.⁵⁸⁰
567. When action was finally taken, Mr Hovey requested that the backlog of Intelligence Reports be reviewed from the most recent report backwards – that is, the reports that had remained unreviewed for the longest would be reviewed last. His explanation for this was the most recent Intelligence Reports contained intelligence that ‘was live and relevant’.⁵⁸¹ Reviewing the reports in this way exacerbated the risk presented by the backlog, that serious misconduct would go unidentified for even longer than would have been the case if the oldest SIU reports in the backlog had been reviewed first.
568. Mr Severin said that he was not made aware of this resourcing issue in that level of detail. He did, however, have an understanding of the onerous nature of the background checks the Intelligence Analysts were required to conduct for new recruits and was aware that there was significant workload pressure on people in the IB.⁵⁸²
569. It is plain that the practice of reporting misconduct via an Intelligence Report to the IB was, at least during the period of Astill’s offending, fundamentally flawed.

579 Transcript, 8 November 2023, 1947.43-1949.42.

580 Transcript, 8 November 2023, 1958.18-26.

581 Transcript, 8 November 2023, 1871.16 -20.

582 Transcript, 20 November 2023, 2675.37-2676.10.

There were insufficient staff to analyse those reports in a timely manner and, significantly, at least some PSB staff, such as Mr Greaves, were unaware this practice was occurring.

570. It is of note also that an Intelligence Analyst reviewing an Intelligence Report necessarily relies on the quality of the information and analysis performed locally. That information forms the basis of any analysis conducted by an Intelligence Analyst outside of the gaol.
571. Accordingly, the quality of the intelligence transmitted from an Intelligence Officer in a gaol assumes some significance.
572. Ms Wilson, who performed the role of Intelligence Officer at Dillwynia, gave evidence that she was not required to do any course or training prior to taking up that role. She said that she ‘just winged it and, yeah, learned it–learned it myself’.⁵⁸³ When the IIS system was introduced she undertook a two-day training course.⁵⁸⁴
573. Ms Wilson was asked about IR-18-1378, in which, in the Local Analysis section, she used the language ‘cannot be substantiated’ in relation to a number of aspects of Ms Cox’s account, and concluded ‘[t]he majority of information supplied cannot be proven as it relies on hearsay and given COX’s history and previous interactions with staff, it is probable she is being vindictive towards Chief Astill as he would not be corrupted’.⁵⁸⁵ The following exchange occurred:

COMMISSIONER: *Now, Mr Lloyd has already asked you about the use of the word ‘substantiated’. That description, as I think you agreed with him, is not correct because nothing had been done to attempt to substantiate any of those allegations, had it?*

MS D WILSON: *No, there’s–yeah that’s correct.*

583 Transcript, 7 November 2023, 1729.34-39.

584 Transcript, 7 November 2023, 1730.23-31.

585 Ex. 3, TB 3, Vol. 10, Tab 171, CSNSW.0001.0021.1172_0007.

COMMISSIONER: *But then in your last paragraph, after the dot points, you go from saying something cannot be substantiated to say that the majority of information supplied cannot be proven. Do you see that?*

MS D WILSON: *Yes, I do.*

COMMISSIONER: *Now, that's a conclusion that wasn't open to you because nothing had been done to investigate the matters, had it?*

MS D WILSON: *At that stage, no. No.*

COMMISSIONER: *So to say that they weren't proven was a complete misdescription –*

MS D WILSON: *Well, not –*

COMMISSIONER: *–of what you were reporting; correct?*

MS D WILSON: *That's the way we reported.*

COMMISSIONER: *Well, maybe that's the way you reported, but the fact of the matter is its meaningless when you hadn't done anything to see whether or not the primary allegations could be substantiated, isn't it?*

MS D WILSON: *Yes.*

COMMISSIONER: *But, furthermore, what you go on to say is:*

'It cannot be proven as it relies on hearsay'.

And then you bring into the equation Cox's history and previous interactions with staff. Do you see that?

MS D WILSON: *Yes, I do.*

COMMISSIONER: *And then you say:*

'It is probable that she is being vindictive towards Astill as he would not be corrupted'.

Now, that on your part is complete speculation, isn't it?

MS D WILSON: *Yes, it is.*

COMMISSIONER: *And it's totally wrong, isn't it?*

MS D WILSON: *Looking back and knowing what I know now, yes.*

COMMISSIONER: *Yes. In fact, it was not open to you as a conscientious Intelligence Officer to draw a conclusion like that when you had absolutely nothing to substantiate it; correct?*

MS D WILSON: *Correct.*⁵⁸⁶

574. In circumstances where an Intelligence Analyst is making an assessment which is reliant upon the analysis undertaken at the local level it is important that Intelligence Officers understand the implications of the language that they use. Words such as ‘substantiated’ and ‘proven’ hold real significance and can inform the reader’s assessment of the significance of the information imparted, and the extent of any ongoing risk.
575. Such language is similarly seen in the analysis of Intelligence Reports by Intelligence Analysts at SIU set out above, in which issues of ‘reliability’ and ‘validity’ are discussed as reasons for why no conclusions can be drawn from allegations, prior to any investigation being initiated. Real care should be taken in relation to the use of such language.
576. Issues with the adequacy of the skills and training of Intelligence Analysts arose in the evidence before me. In the course of questioning regarding IR-17-2051, in which the ‘CI Analysis’ field had been completed by Intelligence Analyst Mr Tayler, Mr Hovey gave the following evidence:

MR LLOYD: *However, the same problem arises with this IR [Intelligence Report] as did in the first, namely:*

‘The reliability of the sources cannot be assessed, and the validity of the information cannot be judged.’

Do you see that?

MR HOVEY: *I do.*

MR LLOYD: *Just dealing with the first aspect of those words. It's suggested there that there was a problem with the earlier IR in that the reliability of the sources could not be assessed, and the validity of information in that report could not be judged. Do you agree?*

MR HOVEY: *Yes.*

MR LLOYD: *That statement, in the absence of any investigation by the Investigations Branch or anyone else, was false, wasn't it?*

MR HOVEY: *Certainly misleading.*

MR LLOYD: *And the related assertion here that there was the same problem with this IR, that is, reliability of sources couldn't be assessed and validity of information couldn't be judged, that was also false, wasn't it?*

MR HOVEY: *Could have been worded better, for sure, yes.*

MR LLOYD: *In terms of - it's not just a wording issue, though, is it? That is, in substance, an entirely wrong way to characterise the situation as at the time that those words were put, to your knowledge, on the page, 26 September twenty -*

MR HOVEY: *The validity of the information wasn't tested.*

MR LLOYD: *The person who wrote those words didn't know about whether the information could be tested or not.*

MR HOVEY: *That would be the case. With all due respect to Mr Tayler, he was a teacher. He wasn't a trained intelligence analyst.⁵⁸⁷*

577. As this exchange makes plain, the quality of the analysis in the Intelligence Reports in evidence before me casts real doubt on the quality of the assessments made when the Intelligence Reports were received by the IB. Apart from lacking resources it would seem that there was a serious lack of trained analysts capable of discerning when information should be further investigated. As the failures in this case make plain, received intelligence can be the starting point for identifying serious problems. Although 'hearsay' material may not be

admissible in a court it can, and often is, a valuable source of information for a trained analyst or investigator.

5.5.5 The conduct of Mr Hovey

578. Before his retirement, Mr Hovey was the Director of IB. He had previously held different roles in CSNSW, including as a Correctional Officer, and moved to the IB in January 2014.
579. He gave evidence about the culture in CSNSW, identifying that before about 2021, there was a reluctance amongst prison officers to report misbehaviour by colleagues. He said that this had changed by 2021 and more reports were being received. His evidence is consistent with others who variously talk about not papering or ‘dobbing’ on colleagues. He rejected the idea that there was a reluctance within his agency to pursue allegations against officers.⁵⁸⁸
580. As previously stated, Mr Hovey said that his primary responsibility was for the IB, but he also had an administrative oversight role for the CSIU. He was responsible for its budget but had no oversight over its investigations.⁵⁸⁹
581. With respect to allegations of misconduct by an officer, Mr Hovey indicated that his understanding of the procedures was that they should go to the PSB, which ran a triage process for them. Then the PSB would refer the matter to the PSC, which would assess it.⁵⁹⁰ The IB could be tasked with an investigation following that process.⁵⁹¹
582. Apart from reports of allegations which were supposed to be referred to PSB, CSNSW procedures also provided for the generation of Intelligence Reports about officer misconduct. These reports were required (as Mr Hovey understood it) to go to the SIU, a part of the IB.⁵⁹²

588 Transcript, 8 November 2023, 1859.9-43.

589 Transcript, 8 November 2023, 1861.30-39; Transcript, 8 November 2023, 1863.1-10; Transcript 8 November 2023, 1863.24-34.

590 Ex. 32, TB 2, Vol. 8, Tab 86, AST.002.013.0054_0003 [16].

591 Transcript, 10 November 2023, 2000.4-2001.17.

592 Transcript, 8 November 2023, 1866.19-45.

583. Mr Hovey explained that for a period of time when he was Director, there was only one Intelligence Analyst in the SIU. The Unit was apparently required to perform functions beyond staff misconduct, including the security assessment of new officers.⁵⁹³
584. Mr Hovey said that the role of the IB was to assess the information in an Intelligence Report and if it did not rise beyond suspicious conduct, it would form an 'intelligence matter' rather than be assessed as evidence of misconduct.⁵⁹⁴ As a consequence, as I understand Mr Hovey's evidence, the matter would stay with IB and not be referred to PSB or the PSC.
585. Mr Hovey painted a dismal picture of the operation of this procedure. He accepted that it had its problems and, no doubt, was not aided by what he claimed was a significant lack of resources. A backlog in the processing of Intelligence Reports developed with the consequence that he said some reports may never have been processed.
586. In their submissions to the Special Commission, Senior and Junior Counsel for CSNSW were critical of Mr Hovey's conduct and trailed suspicion about the integrity of his evidence. It was suggested that rather than a lack of resources, Mr Hovey's difficulties may have been a result of his laziness, the development of a practice whereby intelligence stopped with the IB rather than going to PSC contrary to the CSNSW's policies, some 'physical or non-physical condition which prevented [him] from fulfilling his job', wanton disregard for his employment or covering up potential investigations.⁵⁹⁵
587. Counsel for Mr Hovey, in his submissions in reply, submitted as follows:

CSNSW submits ... that the failures of IB and the PSB are 'puzzling'. There was nothing puzzling about them. CSNSW had, and perhaps still has, a system of governance which is not fit for purpose: the structure was overcomplicated – involving multiple units and departments (including IB, SIU, PSC, PSB, CSIU) with confused areas of responsibility; the SIU which

593 Transcript, 8 November 2023, 1867.5-15; Transcript, 10 November 2023, 1987.5-30.

594 Transcript, 8 November 2023, 1867.33-41.

595 Closing Submissions of Corrective Services NSW, 20 December 2023, AST.002.013.0114_0053-0054 [180].

was responsible for receiving and reviewing reports of misconduct was a unit in name only – comprising Mr Hovey and one or at most two others; the leader of the IB/SIU was performing multiple roles – Mr Hovey was both the Director of the IB and the Investigations Manager.

Rather than acknowledge its failures and take constructive measures to address their root cause, CSNSW is attempting to scape-goat Mr Hovey. Despite CSNSW having had authority and responsibility to investigate the systemic failures which permitted Mr Astill's offending to continue for as long as they did, it has the temerity to criticise the investigation conducted by the Special Commission of Inquiry as being incomplete. If, as CSNSW submits, there are matters left unexplained at this late juncture, it should look inward for sources of revelation.⁵⁹⁶

588. When Mr Hovey gave evidence, apart from highlighting the fact that the process he followed meant that matters were not forwarded by his office to PSB with respect to Astill, none of the assertions raised in the submission were put to him by Senior Counsel for CSNSW. Mr Hovey accepted that he made some inappropriate decisions but emphasised that he was handicapped by inadequate resources. In the circumstances, the criticisms in the submissions should never have been made.
589. In particular, the possibility that Mr Hovey may have been covering up potential investigations, raised by CSNSW in submissions, was not explored or developed with Mr Hovey by Senior Counsel for CSNSW during his evidence. While the number of reports regarding Astill which went nowhere on their face gives rise to some suspicion he was being protected, the evidence does not enable me to make such a finding against any individual, including Mr Hovey. As noted in Chapter 8 in relation to Ms Martin, I am satisfied that the culture within CSNSW where officers are reluctant to 'dob' on each other is one where favouritism or 'protection' in some form is likely to exist.

596 Submissions in reply on behalf of Michael Hovey, 25 January 2024, AST.002.013.0118_0004-0005 [17]-[18].

590. CSNSW also submitted that the Special Commission should have heard evidence from Assistant Commissioner Koulouris (former Assistant Commissioner, Governance and Continuous Improvement), Assistant Commissioner Carlo Scasserra (former Assistant Commissioner, Governance and Continuous Improvement who succeeded Mr Kolouris) and Peter Robinson (former Director, PSB). Despite participating fully in the Special Commission, Counsel for CSNSW or their solicitor never suggested to Counsel Assisting or submitted to me that they should be called. Inquiries were made of the solicitors assisting the Special Commission as to whether Mr Koulouris, and others who were not called, would be called. When told that it was not intended that they would be, the solicitor for CSNSW made no request or suggestion that they should be.
591. Given that the Special Commission was initiated in order to gain a better understanding of the failures within CSNSW, it was incumbent on those representing CSNSW to assist the Special Commission by ensuring that it was informed if CSNSW had information or there were witnesses who should be called. If, at any time during the hearing, an application was made that additional witnesses should be called, the application would have been considered and, if I thought it to be appropriate, the relevant person would have been called.
592. As it happens, the evidence of Mr Hovey was not relevantly challenged by CSNSW. I considered his explanation for his failures to be satisfactory. I accept that his resources were inadequate but also understand that at the relevant time there were constraints on moneys which may have been generally available to government, including CSNSW. I considered but could see no reason to extend or delay the Special Commission by seeking evidence from witnesses which CSNSW had not, until submissions, suggested should be obtained. Even then I have not been told whether they could give relevant or useful evidence.
593. It was submitted on behalf of Mr Hovey that it would be unnecessary and unfair to criticise him personally, but rather that I should focus on the structural, systemic, and human factors affecting the work of the IB.⁵⁹⁷ There very clearly were structural and systemic issues that contributed to the failures in the IB.

597 Closing Submissions on behalf of Michael Hovey, 14 December 2023, AST.002.013.0111_0002 [6].

594. However, Mr Hovey readily admitted that on more than one occasion he had failed. Those admissions are discussed in Chapter 8 of this Report. Those admissions sit comfortably with a finding that I should accept his explanation for the events that occurred within his area of responsibility. The possibility he knowingly or for some unidentified but sinister purpose defied the proper procedure for assessing intelligence, as is implicit in CSNSW submissions, is not supported by any of the evidence.

595. I see no reason to consider reporting his failures for investigation by another body.

5.5.6 Changes in the process for reviewing Intelligence Reports

596. CSNSW has recently realised some of the problems with its procedures, including for reviewing Intelligence Reports, and changes are proposed. They have been grouped together as ‘Project Merge’, which basically seeks to bring PSB and IB together as one effective unit. That is a welcome change.

597. The intelligence function previously undertaken by staff in the IB will sit within PSI. Intelligence Analysts located in PSI access and analyse Intelligence Reports submitted via the SIU function. That intelligence is now regarded as a complaint submitted to PSI for consideration and is captured on PSI’s case management system.⁵⁹⁸

5.6 Current process for managing reports of misconduct

598. In about 2018, CSNSW also came to appreciate that the misconduct procedures may not be working effectively. At around this time the PSC process was made more formal.⁵⁹⁹

598 Ex. 47, TB 5, Vol. 21B, Tab 3, CSNSW.0001.0253.0001_0003 [13].

599 Ex. 47, TB 5, Vol. 21, Tab 1D, Annexure Tab 23, CSNSW.0001.0070.0001.

599. More recently, changes have resulted from the implementation of Project Merge, which, as I have indicated, involved the merger of the IB and the PSB into a single entity, known as PSI.

600. The current process for managing misconduct allegations is as follows:

- a) an allegation is received by PSI, usually via the PSI Mailbox or directly from a Director or Executive;
- b) the matter is allocated to PSI staff to gather information and recommend a particular course of action for the PSC. PSI staff may discuss with Human Resources staff and seek the input of staff wellbeing support. This latter aspect of the process commenced in May 2023;
- c) the matter is reviewed by the Director, PSI before going to PSC;
- d) PSC considers the matter and determines the next steps;
- e) five options are available to the PSC:
 - (i) allocate the matter to an investigator;
 - (ii) allocate the matter to a legal officer in PSI to commence misconduct proceedings;
 - (iii) refer the matter to CSIU;
 - (iv) determine that no further action is to be taken;
 - (v) determine that no misconduct action or investigation is required but send to the local manager to resolve using non-GSE actions (coaching, mentoring, letter of warning, training, counselling, Performance Improvement Plan (**PIP**), mediation, culture and wellbeing workshop);
- f) if the matter is allocated to an investigator, the investigation would be undertaken, and the report provided to the Director, PSI to determine whether misconduct action should be taken. The Director allocates the matter to a legal officer for the purposes of commencing misconduct proceedings;
- g) a submission is then prepared for the consideration of the Decision-maker (under the GSE Act); and

h) the Decision-maker would then determine what action should be taken under the GSE Act (termination, fine, reduction in remuneration, reduction in classification or grade, assign to different role, monitoring, caution/reprimand).⁶⁰⁰

601. The PSC meets weekly and all CSNSW Assistant Commissioners, representatives from DCJ Human Resources as well as DCJ Conduct and Professional Standards are invited to attend the meetings.⁶⁰¹

602. Ms Zekanovic told the Special Commission that she has recently taken steps to invite a representative from CSIU to join future meetings.⁶⁰²

603. In relation to what is presently communicated to staff about the misconduct process, the CSNSW Intranet provides some information. That information is located on the PSI Intranet page (**PSI Intranet**). The following information is provided:

CSNSW is committed to establishing and maintaining appropriate standards of conduct in accordance with NSW Government legislative requirements and ethical framework. Professional Standards and Investigations (PSI) manages staff compliance with those standards and ensures that allegations of misconduct are dealt with in a fair, transparent and consistent manner. The Professional Standards Committee (PSC) oversees staff misconduct. The PSI acts as the secretariat for the PSC.

The PSC oversees the management of professional conduct within CSNSW. It makes recommendations to PSI as to how allegations of misconduct should be processed. Allegations of misconduct are managed in accordance with the Government Sector Employment Act 2013 and the Government Sector Employment Rules 2014.

...

600 Ex. 47, TB 5, Vol. 21, Tab 1, Annexure AZ-3, Annexure Tab 23, CSNSW.0001.0070.0001.

601 Ex. 47, TB 5, Vol. 21B, Tab 3, CSNSW.0001.0253.0001_0009 [22].

602 Ex. 47, TB 5, Vol. 21B, Tab 3, CSNSW.0001.0253.0001_0009 [22]; Transcript, 21 November 2023, 2901.1-13.

Allegations involving criminal conduct are referred to in the Corrective Services Investigation Unit (CSIU), a NSW Police Unit attached to CSNSW. Complex factual enquiries are referred to the Investigations Team. It is usual but not mandatory for CSNSW to await the outcome of the criminal proceedings before initiating misconduct action.

PSI is responsible for ensuring CSNSW meets its reporting obligations to oversight bodies such as the NSW Ombudsman and the Independent Commission Against Corruption (ICAC). The Commissioner of CSNSW is required to report corrupt conduct to the ICAC.⁶⁰³

604. The PSI Intranet also instructs staff as to what should be reported and to whom. It provides:

Any allegation regarding conduct by CSNSW employees, that is outside the policy and procedure, direction or the law must be reported to Professional Standards and Investigations (PSI).⁶⁰⁴

605. Examples of misconduct identified on the PSI Intranet include: sexual harassment; bullying, violence or intimidating behaviour; excessive use of force; corrupt conduct; falsification of records; and, access to or misuse of confidential information.⁶⁰⁵

606. While the instruction seems clear, in that it expressly states that staff *must* report to PSI, this message becomes somewhat confused by what follows:

Allegations of misconduct can be reported directly to PSI by any CSNSW staff member. Staff are encouraged to report misconduct to their line manager in the first instance. All reports by managers should be referred to PSI in a timely manner. Delays in reporting and failure to report may also result in misconduct action.

...

603 Ex. 47, TB 5, Vol. 21, Tab 1, CSNSW.0001.0076.0001_0007-0008 [30].

604 Ex. 47, TB 5, Vol. 21, Tab 1, CSNSW.0001.0076.0001_0008 [31].

605 Ex. 47, TB 5, Vol. 21, Tab 1, CSNSW.0001.0076.0001_0008 [31].

*Any incidents or allegations involving possible misconduct must be reported via the PSI referral form ...*⁶⁰⁶

607. The shift from the word 'must' to the word 'can' appears to convert what was first stated as a requirement to report to PSI to an option. Staff are also now encouraged to report to their line manager in the first instance, and the duty of reporting to PSI is now seemingly upon 'managers'.
608. The encouragement to report to a line manager in the first instance introduces unnecessary confusion into the process and the messaging. Further, its effect is problematic, insofar as it suggests a discretion on the part of the line manager as to whether to pass on the report to PSI (and does not refer at all to cl. 253 of the CAS Regulation). Where a specialist unit exists to manage misconduct, all allegations should be reported to that unit directly.
609. The requirement to report to a line manager in the first instance may result in a situation in which a misconduct allegation does not leave the relevant correctional centre or does not otherwise make its way to PSI. There are multiple examples of that occurring in relation to Astill. It creates an unnecessary dependency of the reporter on the knowledge and professionalism of the person they report to. Evidence before the Special Commission, detailed elsewhere in this Report, indicates that the knowledge and professionalism of CSNSW line managers cannot always be relied upon.
610. Furthermore, as the evidence before me makes plain it is to be expected that some staff may be reluctant to report an allegation if concerned about retribution. In those circumstances, encouraging staff to report first to their line manager may discourage the making of that report. The staff member may, rightly or wrongly, not trust that that allegations will be dealt with in a way that protects them from retribution. They may perceive that their line manager or managers have certain loyalties. They may perceive that reporting internally is futile due to how allegations have previously been managed. The Special Commission heard evidence from

606 Ex. 47, TB 5, Vol. 21, Tab 1, CSNSW.0001.0076.0001_0009 [31].

CSNSW staff of holding all of these types of concerns in relation to reporting Astill's conduct. This evidence is discussed in detail elsewhere in this Report.

611. In circumstances where it is open to PSI to communicate to a Governor or MOS about an allegation that has been made against one of their staff, so as to ensure that allegation is appropriately dealt with in the short-term, and that any perceived risks (for example, to inmates or to the security of a correctional centre) are managed, there does not appear to be any particular reason why reporting an allegation of misconduct to a line manager at first instance should be encouraged. While it should remain open to report to a line manager at the same time as a report is made to PSI, a report should be made to PSI in the first instance. This requirement should be clearly communicated.

5.6.1 Consideration of Clause 253

612. As noted above, cl. 253(2) of the CAS Regulation requires a senior Correctional Officer who has received a report of a criminal offence or other misconduct from a junior officer and believes that the conduct constitutes or would constitute either a criminal offence or would provide sufficient grounds for taking action under s. 69 of the GSE Act, to report that to the Commissioner of CSNSW.
613. On the first occasion she gave evidence to the Special Commission, Ms Zekanovic was asked about how compliance with cl. 253 was achieved. She could not answer how it was that reports made their way to the Commissioner of CSNSW but noted that they were received by PSI.⁶⁰⁷
614. Ms Zekanovic subsequently told the Special Commission that, with respect to cl. 253 of the CAS Regulation, a delegation by the Commissioner of CSNSW had now been put in place enabling misconduct reports to be received by the PSI Director and other members of the Executive.⁶⁰⁸

607 Transcript, 28 September 2023, 50.29-51.43.

608 Transcript, 20 November 2023, 2784.46-2785.8.

615. The granting of a delegation by the Commissioner of CSNSW in relation to cl. 253(2) goes some way to resolving some of the issues concerning the multiplicity of reporting obligations. With the delegation in effect, a single report to PSI at first instance would result in compliance with both cl. 253 and the DOJ Managing Misconduct Procedure. It does not resolve the difficulties with the operation of cl. 253 of the CAS Regulation. The evidence makes plain that CSNSW officers from the Commissioner down were apparently unaware of its requirements. The current drafting and intended operation of that clause is also unclear. For example, Correctional Officers are able to discharge their reporting obligations under the clause by reporting to a more senior officer, but the more senior officer is only required to take action if he or she forms a belief of the kind referred to in cl. 253(2). The senior Correctional Officer may claim that they had no obligation to report another officer's conduct because they simply did not turn their mind to the issues in cl. 253(2)(a) and (b). It is also entirely conceivable that the more senior Correctional Officer for the purposes of cl. 253(2) would not be of sufficient rank to be expected to properly understand whether the relevant allegation 'would provide sufficient grounds for taking procedures or action under section 69' of the GSE Act.
616. Further, the obligation is imposed only on 'correctional officers', as defined in the CAS Act,⁶⁰⁹ excluding 'staff' such as chaplains who may be employed by external agencies but are likely to receive allegations of criminal conduct.
617. **RECOMMENDATION: Clause 253 of the CAS Regulation should be amended to clarify the obligations of CSNSW staff in relation to alleged criminal offending and other misconduct by officers. Consideration should be given to imposing a uniform reporting obligation (not differentiating between more junior and more senior Correctional Officers) and to requiring all reports of allegedly criminal conduct to be made to the Commissioner of CSNSW or their delegate (reflecting the importance of them becoming aware of alleged criminal conduct by CSNSW staff as soon as possible).**

609 CAS Act, ss. 3(1) and 231.

618. **RECOMMENDATION: CSNSW should clarify the reporting requirement for allegations of misconduct, to make clear to staff that:**
- a) **reports of alleged misconduct, including criminal conduct, are required to be made in accordance with cl. 253 of the CAS Regulation.**
 - b) **for any allegations of misconduct that involve alleged criminal conduct, there is an obligation to report also to the CSIU or NSWPF.**
 - c) **all CSNSW and DCJ communications to staff, training materials, and policy documents should be clear and consistent as to reporting requirements for Correctional Officers in relation to staff misconduct.**
619. Mr Greaves suggested that reporting of misconduct would be significantly improved if a direct link were placed somewhere on the front page of the CSNSW Intranet, which would lead staff to the relevant PSI intranet page where the methods for reporting misconduct would be outlined.⁶¹⁰ I agree with this suggestion.
620. **RECOMMENDATION: A direct form or template for reporting misconduct to PSI should be made available on the front page of the CSNSW Intranet, enabling reporting directly to PSI with an option to copy the report to the Governor of the relevant correctional centre, in the case of custodial corrections staff.**

5.6.2 Consideration of the COPP

621. Given the IB is now located within PSI, it appears the process set out in Chapter 16.12 of the COPP would result in PSI receiving the allegation, even though there is no reference to PSI or PSB in the relevant section of the COPP. However, this chapter of the COPP, as presently drafted, does not appear to contemplate bypassing a Governor when sending a report outside the correctional centre, and appears to require the Governor or MOS to be notified of the report and it then being for them to facilitate the Intelligence Report. As discussed above, there are good reasons it would be advantageous for a report to be made by a Correctional Officer to PSI directly. The evidence before me indicates that this is essential.

610 Ex. 35, TB 2, Vol. 8A, Tab 91, AST.002.013.0057_0014 [66].

622. **RECOMMENDATION: CSNSW should ensure that all sections of the COPP accurately reflect the current process for reporting allegations of misconduct and any change in process resulting from the implementation of Project Merge.**

5.6.3 Reporting to NSWPF

623. Astill engaged in sexual offending on multiple occasions while employed at Dillwynia. There is a question as to whether reports of misconduct that would constitute a criminal offence should be made directly to NSWPF and, if so, whether it is sufficient or preferable that such a report be made to the CSIU. As noted above, one of the functions of the CSIU is to investigate alleged criminal conduct by CSNSW staff.
624. Ms Zekanovic told the Special Commission that if the alleged criminal conduct concerned the sexual assault of an inmate, it would be expected that the police would be notified immediately by CSNSW officers, in addition to a referral to PSI.⁶¹¹
625. Ms Zekanovic conceded, however, that that course of action was not set out in any policy document, nor were CSNSW staff trained to that effect.⁶¹² This would appear to be an unrealistic expectation on Ms Zekanovic's part, given the content of Chapter 13.4 of the COPP, entitled 'Assaults'.
626. Chapter 13.4 of the COPP, which is presently in force, expressly states that an allegation of an assault of an inmate by a staff member 'must not be reported to a local police station. The Governor or Officer in Charge must report the alleged assault to the Director, CSNSW Investigations who will notify the Commander, CSIU.'⁶¹³
627. Mr Greaves told the Special Commission that during his time, if PSB became aware of an alleged criminal offence, then that would be placed on the agenda of the PSC as soon as possible. If the matter was very serious or time-sensitive,

611 Transcript, 28 September 2023, 77.45-78.10.

612 Transcript, 28 September 2023, 78.12-25.

613 Ex. 3, TB 3, Vol. 10, Tab 164, CSNSW.0001.0027.0305_0023-0024.

the PSB would directly refer the matter to Mr Hovey, with a view to Mr Hovey deploying CSIU.⁶¹⁴

628. The Special Commission has not heard evidence from NSWPF officers concerning the benefits (or otherwise) of referrals to the NSWPF in relation to alleged criminal conduct within correctional centres being made by CSNSW directly to specialised police units, such as sex crimes in relation to sexual offending, or to relevant Local Area Commands, rather than all being directed to the Commander of CSIU in the first instance.
629. The evidence is that CSIU officers, although serving police officers, are effectively ‘embedded’ within CSNSW. As a consequence, there is a possibility that they may be more influenced by the views of CSNSW officers than other ‘external’ police. Mr Corcoran and CSNSW Assistant Commissioner Delivery, Performance and Culture, Chantal Snell accepted there may be advantages (in terms of independence) for allegations of criminal conduct by CSNSW staff being assessed by police who are completely external to CSNSW.⁶¹⁵
630. The possibility of making this change was not explored in depth during the hearing. It is opposed by NSWPF on a number of bases. NSWPF submitted that:
- a) It would be ‘unfair, prejudicial and without foundation’ to suggest that CSIU officers were more likely to be influenced by the views of CSNSW staff than other ‘external police’, in circumstances where:
 - (i) the Special Commission did not hear any evidence regarding CSIU officers not being completely independent, concerning any alleged failures of CSIU officers, or to the effect that CSIU officers are ‘conceivably more likely to be influenced by the views of CSNSW’ or the benefits of matters being handled by “external” police’;
 - (ii) such a suggestion has the ‘capacity to do real and serious reputational damage to identifiable police officers who work or have worked within

614 Transcript, 13 November 2023, 2123.27-46; Transcript, 13 November 2023, 2124.11-15.

615 Transcript, 23 November 2023, 3134.11-3135.16; Transcript, 24 November 2023, 3257.17-3258.18.

- the CSIU in circumstances where those officers have not been afforded procedural fairness'; and
- (iii) would constitute a denial of natural justice, including because the CSIU officers against whom such a suggestion was made, ought to have been called to give evidence and the allegations concerning their partiality and lack of independence ought to have been put to them.⁶¹⁶
- b) Should the absence of evidence be insufficient, there was 'ample' evidence to suggest that there were no failures to investigate complaints or allegations by CSIU officers, including that:
- (i) 'it was, in part, the diligent and independent work of the CSIU in investigating Astill that led to his conviction';
 - (ii) no member of the CSIU was involved in any failure to report Astill's conduct; and
 - (iii) when a report was made to the NSWPF it was swiftly investigated by the CSIU.⁶¹⁷
- c) The manner in which the NSWPF investigate criminal offences is a matter which falls outside the Terms of Reference for this Special Commission, which focuses on the conduct of CSNSW.⁶¹⁸
- d) On 24 November 2023, the solicitors for the Commissioner of NSWPF wrote to the Special Commission and sought an opportunity to be heard if the Special Commission was proposing to consider matters of the kind explored in Mr Corcoran's evidence above, and no response to that letter was received;⁶¹⁹ and
- e) The contention that CSIU officers are 'effectively embedded' within CSNSW is inappropriate as CSIU operates independently of CSNSW. The independence of CSIU officers is recognised by the statutory mechanism

616 Submissions on behalf of NSW Commissioner of Police, 14 December 2023, AST.002.013.0110_0002 [4.2]-[5]; Submissions on behalf of NSW Commissioner of Police, 14 December 2023, AST.002.013.0110_0006 [33].

617 Submissions on behalf of NSW Commissioner of Police, 14 December 2023, AST.002.013.0110_0005 [28].

618 Submissions on behalf of NSW Commissioner of Police, 14 December 2023, AST.002.013.0110_0002 [7].

619 Submissions on behalf of NSW Commissioner of Police, 14 December 2023, AST.002.013.0110_0003 [9]-[10].

which permits the establishment of units such as the CSIU. Section 95A of the *Police Act 1990* contemplates that CSIU retain the statutory and common law obligations and powers conferred upon police officers. NSWPF submitted that as a result the duties of CSIU officers were not different in any way to a member of the NSWPF (who have a statutory and common law duty and obligation to detect and prevent crime).⁶²⁰

631. Although Mr Corcoran and Ms Snell suggested there may be advantages in changing the process,⁶²¹ NSWPF is correct in submitting that the issue was not fully explored and for that reason I would not recommend any change. I do, however, note the anomaly that Chapter 13.4 of the COPP provides that assaults on inmates by inmates may be reported to the local police station but expressly prohibits assaults by CSNSW staff on inmates, including sexual assaults, from being reported to local police. The COPP directs those reports to be made to the CSIU. I can only comment that I am not aware why this distinction has been created.

5.7 The size and scope of the misconduct problem at CSNSW

632. In the course of conducting the Special Commission I received evidence touching upon not just the sexual misconduct, and criminal conduct, committed by Astill at Dillwynia, but evidence suggestive of a larger and broader misconduct problem within CSNSW. Particularly concerning was the evidence received about sexual misconduct committed by staff against both inmates and other CSNSW staff. This evidence was provided to the Special Commission from various sources including:
- a) copies of commissioned reports concerning allegations of sexual misconduct or other inappropriate behaviour by CSNSW staff, specifically the Themis Report and the Seymour Review;
 - b) correspondence produced to the Special Commission giving a flavour of the number and content of complaints concerning the conduct of CSNSW staff;

620 Submissions on behalf of NSW Commissioner of Police, 14 December 2023, AST.002.013.0110_0003-0005 [12]-[23].

621 Transcript, 23 November 2023, 3134.11-3135.16; Transcript, 24 November 2023, 3257.17-3258.18.

- c) a PSB Caseload summary report produced to the Special Commission for the month of April 2020;
- d) copies of reports made to Independent Commission Against Corruption (ICAC) concerning potential corrupt conduct by CSNSW staff; and
- e) statistics provided by Ms Zekanovic to the Special Commission about the age, volume and content of complaints made to PSB/PSI.

What each of these sources of evidence reveal about the scope of the problem is as follows.

5.7.1 Task Force Themis

633. In 2018, Task Force Themis (**the Task Force**) was established to examine instances of inappropriate relationships between CSNSW staff and offenders. The Task Force was led by Mark Murdoch, former Assistant Commissioner, NSWPF.⁶²²
634. CSNSW provided the Task Force with 343 files recording allegations of inappropriate relationships going back 10 years. Once duplicate and out of scope files were excluded, 322 files were considered by the Task Force. These files comprised 96 allegations of employees not declaring offender associations, 93 allegations of non-physical and non-intimate relationships and 52 allegations of sexual relationships.⁶²³
635. Of the 322 cases examined, a quarter were found to be substantiated. Those substantiated cases comprised:
- a) 14 sexual relationships;
 - b) 9 non-physical and intimate relationships;
 - c) 17 non-physical and non-intimate relationships;
 - d) 24 undeclared offender associations; and

622 Ex. 3, TB 3, Vol. 10, Tab 154, CSNSW.0001.0024.0753_0001.

623 Ex. 3, TB 3, Vol. 10, Tab 154, CSNSW.0001.0024.0753_0001.

e) 17 other breaches of policy.⁶²⁴

636. The Task Force closely analysed 180 files to determine compliance with legislation, policy, quality of record keeping and investigative practice. It found:

- a) staff from all levels of experience and length of service can be susceptible;
- b) 60 per cent of allegations involved men and 40 per cent women;
- c) staff subject to allegations are likely to be aged 40–50 years old;
- d) of the assessed files, 58 per cent were from Custodial Corrections, 22 per cent from Community Corrections and 16 per cent from Offender Management and Programs, which accords broadly with the makeup of the workforce;
- e) in 74 per cent of cases the findings made were considered appropriate; and
- f) in 86 per cent of cases the Task Force agreed with the proposed disciplinary action.⁶²⁵

637. Task Force Themis found that the best defence to inappropriate staff relationships ‘is a strong, supportive work culture, which provides training, skills and competencies needed for the job’.⁶²⁶ Thirty-nine recommendations were made in the areas of ‘managing misconduct’, ‘culture and wellbeing’, ‘staff engagement’ and ‘strengthening expectations and consequences’. CSNSW state that the ‘vast majority’ of those recommendations have been accepted.⁶²⁷

5.7.2 Seymour Review

638. In March 2022, the Minister and Mr Corcoran determined that a review should be conducted into allegations that inappropriate sexual conduct towards female staff had been ongoing at Bathurst and Kirkconnell Correctional Centres for 10 years, and that management was aware of, but did not address the allegations. Barrister Jane Seymour was engaged to conduct the Review (**the Seymour**

624 Ex. 3, TB 3, Vol. 10, Tab 154, CSNSW.0001.0024.0753_0001.

625 Ex. 3, TB 3, Vol. 10, Tab 154, CSNSW.0001.0024.0753_0001.

626 Ex. 3, TB 3, Vol. 10, Tab 154, CSNSW.0001.0024.0753_0001.

627 Ex. 3, TB 3, Vol. 10, Tab 154, CSNSW.0001.0024.0753_0002.

Review). Law firm Kingston Reid was engaged to provide legal advice to DCJ and CSNSW concerning the Seymour Review.⁶²⁸

639. In her Preliminary Inquiry Advice in response to Phase 1 of the Seymour Review, Ms Seymour reported she had received 16 submissions, four of which were ‘in scope’, 10 of which were ‘out of scope’ and in two of which the complainant had not provided details of the complaint. Ms Seymour advised there was a *prima facie* case to answer with respect to two of the ‘in scope’ complaints.⁶²⁹ Ms Seymour advised that the managers who initially received those two complaints had relevant responsibilities under CSNSW and DCJ policies that were not complied with, including the obligation to escalate, report or otherwise manage alleged incidents of potential sexual harassment or assault. Ms Seymour advised this potentially constituted misconduct.⁶³⁰

640. In her Supplementary Advice, Ms Seymour identified the following systemic themes in relation to the prevalence, reporting and management of complaints on inappropriate sexual conduct identified during the Review:

- a) poor workplace culture: complainants variously described their experience of CSNSW’s workplaces as ‘undesirable’, ‘stressful’, ‘toxic’, ‘unprofessional and abusive’, ‘belittling’, and ‘a terrible system in desperate need of change’. Management was perceived, at best, to ignore inappropriate conduct, and at worst, to condone/participate in it and protect those who engage in it;⁶³¹
- b) lack of confidence in CSNSW management: perception of local management was particularly poor. Multiple complainants described a ‘club’ or ‘boys club’ of officers who were seen as ‘protective’ members of their club against complainants. This lack of confidence extended to the executive level. There was a perception that statements/announcements were periodically made but action was not taken;⁶³²

628 Ex. 60, TB 6, Tab 15, CSNSW.0001.0050.0001_0001.

629 The other two ‘in scope’ complaints were not progressed for different reasons. See Ex. 60, TB 6, Tab 15, CSNSW.0001.0050.0001_0002.

630 Ex. 60, TB 6, Tab 15, CSNSW.0001.0050.0001_0002-0003.

631 Ex. 60, TB 6, Tab 15, CSNSW.0001.0050.0001_0003.

632 Ex. 60, TB 6, Tab 15, CSNSW.0001.0050.0001_0003.

- c) reluctance to raise concerns of sexual assault for reasons that are common to victims of such conduct, such as that they will not be believed;⁶³³
- d) lack of knowledge about where to go/absence of process outside local management: Ms Seymour advised that, at the relevant times, there was no clear alternative pathway to raise a concern outside local management. If there was, complainants did not appear to know it existed;⁶³⁴
- e) lack of confidence in internal investigations, i.e., those conducted by the PSB and IB;⁶³⁵
- f) lack of confidence in CSNSW taking action arising from the Seymour Review;⁶³⁶
- g) other unlawful discrimination and workplace culture: some complainants raised concerns about conduct that did not constitute sexual harassment or assault, but would constitute another form of unlawful discrimination;⁶³⁷ and
- h) nature of workplace: the nature of the correctives environment requires staff to work in numerous discrete secure areas, to contain inmates and promote the security of staff. This is unique and the physical nature of the workplace is a factor to be taken into account in CSNSW identifying and managing health and safety risks to staff.⁶³⁸

5.7.3 Correspondence produced to the Special Commission

641. A summons to produce was issued to Mr Corcoran on 22 September 2023 seeking, among other information, ‘all documents referring to, reporting on, or analysing the level or number of reports of misconduct, including but not limited to bullying, harassment and intimidation, or criminal conduct by any CSNSW employee towards any inmate for the period 1 March 2014’.

633 Ex. 60, TB 6, Tab 15, CSNSW.0001.0050.0001_0003.

634 Ex. 60, TB 6, Tab 15, CSNSW.0001.0050.0001_0003.

635 Ex. 60, TB 6, Tab 15, CSNSW.0001.0050.0001_0003.

636 Ex. 60, TB 6, Tab 15, CSNSW.0001.0050.0001_0003.

637 Ex. 60, TB 6, Tab 15, CSNSW.0001.0050.0001_0004.

638 Ex. 60, TB 6, Tab 15, CSNSW.0001.0050.0001_0004.

642. Despite the documents required to be produced by this summons, the material available to the Special Commission to assess the scope of misconduct issues at CSNSW remains piecemeal and limited. What was produced provides an indication of the scope of the problem facing CSNSW.
643. On 6 May 2016, Senior Correspondence Officer, Executive Services Unit, DOJ, Megan Coughran wrote to the then Acting Director of PSB, Peter Robinson regarding a Question on Notice as to ‘how many Prison Officers are currently suspended or under investigation by the Department?’. PSB Project Officer Workplace Behaviour, Leigh Costa wrote to Mr Robinson in relation to a suggested response. She stated that 19 Correctional Officers were currently suspended from duty, and 12 were under formal investigation. She noted that this answer excluded ongoing criminal investigations by the CSIU (10), ongoing NSWPF criminal prosecutions in the courts (17), ongoing ‘fact finding’ inquiries (17), Apprehended Violence Orders (**AVO**) matters reported to PSB (2) and misconduct proceedings either following ‘fact finding’ investigations or ‘direct to 38(3)/‘show cause’ letter’ (81).⁶³⁹ The figures also excluded suspended officers who were not Correctional Officers, any investigation that did not relate to custodial and ‘S&I’ officers, and officers who were recently suspended but whose employment had since been terminated.⁶⁴⁰
644. On 17 December 2018, Mr Greaves (then Manager of PSB) wrote to Detective Inspector Robert Hollows of the CSIU. Mr Greaves noted that PSB had 324 active cases recorded in IIS at that time. He noted that 18 cases were recorded as having been referred only to the CSIU (not jointly to both IB and CSIU). He sought an update on the status of those cases, noting ‘we’re a bit worried that some of these may have “fallen through the cracks”, in the sense that PSB believes that you are working on then [sic], when perhaps you never did, or perhaps you have completed your work but nobody told PSB’.⁶⁴¹ No response to this email was produced to the Special Commission.

639 Ex. 58, TB 3, Vol. 18, Tab 644, CSNSW.0002.0106.4016_0001-0002.

640 Ex. 58, TB 3, Vol. 18, Tab 644, CSNSW.0002.0106.4016_0001.

641 Ex. 58, TB 3, Vol. 18, Tab 667, CSNSW.0002.0024.7356_0001.

645. On 24 February 2020, the then Assistant Commissioner, Governance and Improvement Division, Mr Scasserra wrote to the then Acting Director of PSB, Melanie Robinson requesting that PSB ‘prepare the number of cases including names and outcomes from those that claimed bullying and harassment’.⁶⁴² On 27 February 2020, Ms Robinson responded that Lisa Miller had prepared a document setting out bullying and harassment matters reported to PSB ‘in the past 5 years’.⁶⁴³ This data included matters that were reported as bullying and harassment but may not have met the threshold for misconduct when considered by the PSC and were therefore referred for local or Strategic Human Resources management.⁶⁴⁴
646. Ms Robinson reported that, as at 27 February 2020, there had been 160 referrals to PSB for alleged bullying between 2015 and 2020. Ms Robinson reported that:
- a) in 2015, PSB received 21 referrals involving allegations of bullying, including conduct which was considered offensive, insulting or otherwise inappropriate. Of these, 13 were substantiated;
 - b) in 2016, PSB received 33 referrals involving allegations of bullying. Of these, 21 were substantiated;
 - c) in 2017, PSB received 22 referrals involving bullying, and six were substantiated;
 - d) in 2018, PSB received 35 referrals involving allegations of bullying, and 14 were substantiated;
 - e) in 2019, PSB received 39 referrals involving allegations of bullying, and eight were substantiated; and
 - f) as at 27 February 2020, 10 referrals involving allegations of bullying were received. One had been referred for local management action, and another to Strategic Human Resources for assessment. Eight remained ongoing at the time of her report.⁶⁴⁵

642 Ex. 58, TB 3, Vol. 18, Tab 637, CSNSW.0002.0025.9902_0001-0002.

643 Ex. 58, TB 3, Vol. 18, Tab 637, CSNSW.0002.0025.9902_0001.

644 Ex. 58, TB 3, Vol. 18, Tab 637, CSNSW.0002.0025.9902_0001.

645 Ex. 58, TB 3, Vol. 18, Tab 638, CSNSW.0002.0025.9904_0001-0002.

647. On 8 June 2021, Steven Dooley, from Corrections Executive Services, DCJ, wrote to senior staff at CSNSW seeking a response to a Question on Notice from the Minister’s Office in relation to employee tenure and misconduct.⁶⁴⁶

648. Natalie Parmeter responded to the question on behalf of PSB on 17 June 2021. She provided the following data concerning allegations of misconduct sourced from the PSB database and IIS:⁶⁴⁷

	Cases	Bullying	Harassment	Sexual Assault
2018	472	27	12	2
2019	507	24	18	4
2020	499	37	20	3

649. This data did not include death in custody matters where no misconduct occurred, civil legal matters, or matters from privatised centres.⁶⁴⁸

5.7.4 PSB Caseload Summary

650. A single PSB Caseload Summary report was produced to the Special Commission. The summary was for the month of April 2020. In that month, 369 active matters were reported.⁶⁴⁹ Of these, 282 were being managed within PSB and 87 were ‘currently outside of PSB’.⁶⁵⁰ Those outside of PSB were variously with external agencies, IB, Strategic Human Resources, CSIU, courts and the Use Of Force Review Committee. Sixty-five new matters had commenced within the month, and 30 had been finalised.⁶⁵¹

646 Ex. 58, TB 3, Vol. 18, Tab 639, CSNSW.0002.0027.8360_0003-0004.

647 Ex. 58, TB 3, Vol. 18, Tab 639, CSNSW.0002.0027.8360_0001.

648 Ex. 58, TB 3, Vol. 18, Tab 639, CSNSW.0002.0027.8360_0001.

649 Ex. 58, TB 3, Vol. 18, Tab 643, CSNSW.0002.0087.3187_0001.

650 Ex. 58, TB 3, Vol. 18, Tab 643, CSNSW.0002.0087.3187_0001.

651 Ex. 58, TB 3, Vol. 18, Tab 643, CSNSW.0002.0087.3187_0001.

5.7.5 Reports to ICAC

651. Ms Zekanovic gave evidence that quarterly reports are prepared to ICAC, pursuant to CSNSW's obligations under s. 11 of the *Independent Commission Against Corruption Act 1988 (ICAC Act)*. These provide some indication of the nature and variety of complaints about staff received by the PSI and its predecessor, PSB. The reports are limited to matters which concern or may concern corrupt conduct, and therefore do not capture all complaints. For the period 1 January 2020 to 30 April 2023, a total of 664 matters were reported to ICAC. 103 of those matters reported involved some kind of sexual misconduct, including sexual harassment.⁶⁵²

5.7.6 Statistical information provided to the Special Commission

652. There are currently 832 open complaints and 1,607 open complaint entries.⁶⁵³ Of the 832 open complaints, 98 are two or more years old. Of the 1,607, open complaint entries, 222 are two or more years old. There are 13 complaints and 50 complaint entries that are over four years old.⁶⁵⁴

653. With respect to the volume of complaints that were, and are, being made, between 1 January 2015 and 13 October 2023, there were 4,851 complaints made by staff, inmates and members of public to the PSI or its predecessor the PSB.⁶⁵⁵

652 See generally, Ex. 58, TB 3, Vol. 19A, Tab 770, CSNSW.0001.0103.0396_0001-0016; Ex. 58, TB 3, Vol. 19A, Tab 771, CSNSW.0001.0103.0421_0001-0013; Ex. 58, TB 3, Vol. 19A, Tab 772, CSNSW.0001.0103.0434_0001-0019; Ex. 58, TB 3, Vol. 19A, Tab 773, CSNSW.0001.0103.0412_0001-0009; Ex. 58, TB 3, Vol. 19A, Tab 774, CSNSW.0001.0103.0466_0001-0019; Ex. 58, TB 3, Vol. 19A, Tab 775, CSNSW.0001.0103.0453_0001-0013; Ex. 58, TB 3, Vol. 19A, Tab 776, CSNSW.0001.0103.0485_0001-0033; Ex. 58, TB 3, Vol. 19A, Tab 777, CSNSW.0001.0103.0544_0001-0027; Ex. 58, TB 3, Vol. 19A, Tab 778, CSNSW.0001.0103.0571_0001-0023; Ex. 58, TB 3, Vol. 19A, Tab 779, CSNSW.0001.0103.0518_0001-0026; Ex. 58, TB 3, Vol. 19A, Tab 780, CSNSW.0001.0103.0625_0001-0030; Ex. 58, TB 3, Vol. 19A, Tab 781, CSNSW.0001.0103.0594_0001-0031; Ex. 58, TB 3, Vol. 19A, Tab 782, CSNSW.0001.0103.0784_0001-0029; Ex. 58, TB 3, Vol. 19A, Tab 783, CSNSW.0001.0103.0748_0001-0036; Ex. 58, TB 3, Vol. 19A, Tab 784, CSNSW.0001.0103.0699_0001-0026; Ex. 58, TB 3, Vol. 19A, Tab 785, CSNSW.0001.0103.0655_0001-0024; Ex. 58, TB 3, Vol. 19A, Tab 786, CSNSW.0001.0103.0679_0001-0020; Ex. 58, TB 3, Vol. 19A, Tab 787, CSNSW.0001.0103.0725_0001-0023; Ex. 58, TB 3, Vol. 19A, Tab 788, CSNSW.0001.0103.0813_0001-0018; Ex. 58, TB 3, Vol. 19A, Tab 789, CSNSW.0001.0103.0862_0001-0018.

653 Ex. 47, TB 5, Vol. 21B, Tab 3, CSNSW.0001.0253.0001_0003 [12].

654 Ex. 47, TB 5, Vol. 21B, Tab 3, CSNSW.0001.0253.0001_0012 [29].

655 Ex. 47, TB 5, Vol. 21B, Tab 3, CSNSW.0001.0253.0001_0003 [12].

654. 7,688 entries were made in the PSI database in relation to these complaints. The number of entries exceeds the number of complaints as complaints usually involve multiple persons of interest.⁶⁵⁶
655. The number of complaints being received by PSI has been increasing year on year. In 2020, 598 complaints were received. In 2021, 721 complaints were received. In 2022, 779 complaints were received.⁶⁵⁷
656. The vast majority of these complaints were referred to PSI/PSB by email, although a number were received via Intelligence Reports submitted to the SIU.⁶⁵⁸
657. In relation to the categories of complaints in the period since 1 January 2015, the five categories with the most complaint entries were: failure to follow policy/procedure (2,186); inappropriate conduct (1,985); bullying/harassment (850); unlawful or excessive use of force (750); and criminal matter (637).⁶⁵⁹ There were 240 complaints concerning sexual harassment and 232 concerning the trafficking of contraband.⁶⁶⁰
658. In relation to the 240 sexual harassment complaint entries reported above, Ms Zekanovic provided the following breakdown:⁶⁶¹

Complaint Type	2015	2016	2017	2018	2019	2020	2021	2022	2023	Total
Staff on staff	4	1	4	12	13	10	56	36	47	183
Staff on inmate	1	1	2	4	1	2	5	16	16	48
Staff on staff (secondary)	0	1	0	1	0	0	1	0	5	8

656 Ex. 47, TB 5, Vol. 21B, Tab 3, CSNSW.0001.0253.0001_0003 [12].

657 Ex. 47, TB 5, Vol. 21A, Tab 2, AST.002.013.0086_0001 [5].

658 Ex. 47, TB 5, Vol. 21B, Tab 3, CSNSW.0001.0253.0001_0003 [13].

659 Ex. 47, TB 5, Vol. 21B, Tab 3, CSNSW.0001.0253.0001_0004 [16].

660 Ex. 47, TB 5, Vol. 21B, Tab 3, CSNSW.0001.0253.0001_0005 [16].

661 Ex. 47, TB 5, Vol. 21B, Tab 3, CSNSW.0001.0253.0001_0014-0015 [35].

Complaint Type	2015	2016	2017	2018	2019	2020	2021	2022	2023	Total
Staff on member of public	0	0	1	0	0	0	0	0	0	1
Total	5	3	7	17	14	12	62	52	68	240

659. In relation to complaints concerning sexual harassment, the numbers have increased significantly over time. In 2015 there were five. In 2023 there were 68. Of those 68, 16 were complaints where a staff member was alleged to have sexually harassed an inmate. The remainder concerned staff-on-staff complaints.⁶⁶²
660. Ms Zekanovic said that her understanding was that 75 per cent of the recorded complaints concerning sexual harassment occurred after 1 January 2021. Ms Zekanovic attributed this, in part, to the establishment in 2021 of the PSB Support Unit, which had the key function of providing training to new recruits and staff about what constitutes misconduct. Ms Zekanovic also offered as an explanation the announcement of the Bathurst and Kirkconnell Review conducted by Ms Seymour, which may have increased awareness of sexual harassment and led to an increase in reporting.⁶⁶³
661. Notwithstanding Ms Zekanovic's evidence to the contrary, it is not clear from the statistics provided within her written statements that all recent complaints of sexual misconduct are being reported to CSIU. According to Ms Zekanovic's statement, PSI received 79 complaints of sexual harassment, in various forms, in 2023.⁶⁶⁴ It is further recorded that PSI referred 25 cases of sexual harassment to CSIU.⁶⁶⁵ Ms Zekanovic told the Special Commission that an explanation for the disparity is that not all types of sexual harassment are referred to CSIU; for example, staff making inappropriate comments to each other would not necessarily be referred.⁶⁶⁶ Ms Zekanovic said that PSI were now referring 'most,

662 Ex. 47, TB 5, Vol. 21B, Tab 3, CSNSW.0001.0253.0001_0015 [35].

663 Ex. 47, TB 5, Vol. 21B, Tab 3, CSNSW.0001.0253.0001_0015 [37].

664 Ex. 47, TB 5, Vol. 21B, Tab 3, Annexure 5, CSNSW.0001.0253.0001_0026.

665 Ex. 47, TB 5, Vol. 21B, Tab 3, CSNSW.0001.0253.0001_0016 [39].

666 Transcript, 20 November 2023, 2789.23-40.

not all, sexual matters to the CSIU' but could not provide an explanation for why that was not reflected in the data.⁶⁶⁷

662. As of 10 November 2023, 96 CSNSW staff were suspended from duty on the basis of misconduct matters. This number has significantly increased from the 44 staff suspended as of 11 November 2022. Ms Zekanovic attributed the disparity to a more proactive approach to suspending staff who might pose a risk if they remained in a CSNSW workplace, including to an inmate. Ms Zekanovic also considered that the disparity may be due to a higher number of complaints being received and processed by PSI.⁶⁶⁸
663. Considered collectively, the evidence above demonstrates that many of the problems identified at Dillwynia throughout the course of the Special Commission are not unique to this centre. They should be viewed in the context of broader cultural and workplace issues across CSNSW. The scope of the challenge which confronts CSNSW in addressing the problems identified in the Special Commission becomes apparent when the broader context is considered.
664. The Special Commission also received evidence that during the period of Astill's offending, the number of reports of misconduct and other inappropriate behaviour was so voluminous that both the PSB and IB struggled to keep on top of them. This had the effect of creating a backlog in the processing of these reports.
665. Ms Zekanovic said that PSI are recruiting more staff to address the backlog.⁶⁶⁹ Assistance has also been sought from the Crown Solicitor's Office (**CSO**) to assist with quantifying and analysing the backlog. The CSO was yet to commence work as at 20 November 2023.⁶⁷⁰ Ms Zekanovic told the Special Commission that a new model for triaging misconduct matters is expected to be implemented early in 2024.⁶⁷¹

667 Transcript, 20 November 2023, 2790.5-17.

668 Ex. 47, TB 5, Vol. 21B, Tab 3, CSNSW.0001.0253.0001_0011 [28].

669 Transcript, 20 November 2023, 2781.32-36.

670 Transcript, 20 November 2023, 2781.9-30.

671 Transcript, 20 November 2023, 2780.17-36.

666. It is common knowledge that, in the general community, sexual offending is significantly underreported. Many of the barriers to disclosure that exist in the general community are even more significant in the custodial environment. In an environment where fear of retribution is high there will be an even greater reluctance to report. It follows that the number of complaints received by PSI in this category is unlikely to accurately reflect the true scale of this problem.
667. In relation to sexual misconduct committed by staff against inmates, CSNSW proposes that be addressed through the conduct of a survey.
668. In 2007, CSNSW approved a research project undertaken by the University of NSW (**UNSW**) titled 'Sexual Health and Attitudes of Australian Prisoners' (**SHAAP1**). This was, at the time, the largest and most comprehensive population-based examination of inmates' sexual health, attitudes and risk behaviours undertaken in Australia.⁶⁷² The report was published in 2008.⁶⁷³
669. In March 2020, Mr Severin approved a further research project on the same topic undertaken by UNSW (**SHAPP2**).⁶⁷⁴ This study remains ongoing and suffered some delay as a result of COVID-19.⁶⁷⁵
670. The aim of SHAPP2 was to identify knowledge gaps in the sexual lives of prisoners to better inform evidence-based policy responses to these needs.⁶⁷⁶
671. On 29 July 2023, Mr Corcoran wrote to the researchers requesting four further questions be added to the inmate survey. Those four questions were:
- a) Have you ever willingly had sex or sexual contact or touching with any prison staff in any prison?
 - b) Have any prison staff ever threatened you with sexual assault in prison?

672 Ex. 55, TB 5, Vol. 28, Tab 12, CSNSW.0001.0263.1558_0012 [53].

673 Ex. 55, TB 5, Vol. 28, Tab 12, CSNSW.0001.0263.1558_0012 [54].

674 Ex. 55, TB 5, Vol. 28, Tab 12, CSNSW.0001.0263.1558_0012 [55].

675 Ex. 55, TB 5, Vol. 28, Tab 12, CSNSW.0001.0263.1558_0012 [56].

676 Ex. 55, TB 5, Vol. 28, Tab 12, CSNSW.0001.0263.1558_0012 [56].

- c) Have any prison staff ever forced or frightened you into doing something sexually that you did not want to do?
- d) Have any prison staff offered you favours or special privileges in exchange for sex or sexual contact?

672. For each question the inmate is also asked whether that scenario occurred in the last 12 months and, if so, whether they reported it.⁶⁷⁷ It is intended that 1,678 male and 301 female inmates in NSW be surveyed as part of SHAAP2.⁶⁷⁸

673. Although outside the scope of the Special Commission I am aware that there may be issues of staff-on-staff sexual misconduct in the prison system. I understand a submission has been sent to the Commissioner of CSNSW proposing a further targeted review into the handling of allegations of CSNSW staff involved in sexual misconduct in 14 CSNSW workplaces.⁶⁷⁹

674. It is proposed the review will cover the last seven years and its scope will be limited to sexual misconduct reported by CSNSW staff. It will not include reports from inmates.⁶⁸⁰

5.8 Project Merge and the new misconduct process

675. Apart from the changes introduced from 2018, Ms Zekanovic gave evidence that CSNSW has now recognised that 'the current system for dealing with referrals around misconduct has needed an entire review of the entire process and all the systems that support it'.⁶⁸¹ It has commenced developing the new process as part of Project Merge.

677 Ex. 55, TB 5, Vol. 28, Tab 12, CSNSW.0001.0263.1558_0012-0013 [57].

678 Ex. 55, TB 5, Vol. 28, Tab 12, CSNSW.0001.0263.1558_0013 [58].

679 Ex. 55, TB 5, Vol. 28, Tab 12, CSNSW.0001.0263.1558_0015 [73].

680 Ex. 55, TB 5, Vol. 28, Tab 12, CSNSW.0001.0263.1558_0015 [74].

681 Transcript, 28 September 2023, 39.35-43.

676. The new misconduct procedure is suggested to have the following overarching principles:
- a) a faster more streamlined approach to managing misconduct;
 - b) an approach that does not compromise procedural fairness and is compliant with the GSE Act and GSE Regulations;
 - c) improving CSNSW culture;
 - d) empowering managers to better support staff to work as 'one team';
 - e) being proactive and focussing on preventing misconduct;
 - f) increasing transparency and awareness about PSI and its role within CSNSW; and
 - g) improving overall staff well-being which will then improve the outcomes for inmates.⁶⁸²
677. A new Assessment and Triage team within PSI will be created which will be multidisciplinary and focus on applying a new triage model to ensure all allegations are assessed against a set criteria.⁶⁸³
678. The proposed PSI operating model creates two new Directorates: the Misconduct Assessment and Prevention Directorate (**MAP Directorate**) and the PSI Directorate.
679. Sitting within the MAP Directorate will be the Misconduct Assessment and Triage Team (**MATT**) and the Prevention, Education and Development Team.⁶⁸⁴
680. It is proposed that the MAP Directorate will support the implementation of:
- a) information on the intranet that provides guidance in relation to responding to suspect misconduct or any workplace issue;
 - b) clear pathways to refer allegations of misconduct via email, an intranet form or telephone to the MAP and then into a new PSI case management system;

682 Ex. 47, TB 5, Vol. 21, Tab 1, CSNSW.0001.0076.0001_0036-0037 [102].

683 Ex. 47, TB 5, Vol. 21, Tab 1, CSNSW.0001.0076.0001_0037 [107].

684 Ex. 55, TB 5, Vol. 28, Tab 12, CSNSW.0001.0263.1558_0006 [30].

- c) a new Prevention, Education and Development Team which will support the training of frontline staff in identifying, referring and managing misconduct matters that may be referred back to them; and
- d) procuring training in targeting areas of misconduct, namely sexual harassment and assault, bullying and harassment, and discrimination.⁶⁸⁵

681. Sitting within the PSI Directorate will be the Complex Cases Team, the Metro Team and the Regional Team.⁶⁸⁶

682. These teams will be focused on managing the assessment and recommended outcomes for Decision-makers concerning serious misconduct. The focus will be on serious misconduct with criminal matters being referred to the CSIU.

683. The Complex Case Team will focus on matters involving corruption, multiple persons of interest, and high priority matters such as sexual assault. The Metro and Regional Teams will manage serious misconduct matters relevant to their geographical areas that fall within their remit.⁶⁸⁷

684. As part of Project Merge, PSI is designing a new training package to teach staff how to manage misconduct effectively. It is proposed that the training incorporate interactive elements drawing on real experiences. Training modules will include, bullying and harassment, sexual harassment, misconduct management and cultural change.⁶⁸⁸

685. CSNSW is also working on a plan to implement the new *Public Interest Disclosure Act 2022*.⁶⁸⁹

686. Much of Project Merge is still at an early stage of development. Certain initiatives are more progressed than others. Ms Zekanovic told the Special Commission that a submission to implement the new model for triaging misconduct matters

685 Ex. 55, TB 5, Vol. 28, Tab 12, CSNSW.0001.0263.1558_0007-0008 [32].

686 Ex. 55, TB 5, Vol. 28, Tab 12, CSNSW.0001.0263.1558_0008 [33].

687 Ex. 55, TB 5, Vol. 28, Tab 12, CSNSW.0001.0263.1558_0008 [34].

688 Ex. 55, TB 5, Vol. 28, Tab 12, Annexure CS-2, CSNSW.0001.0263.1558_0023.

689 Ex. 55, TB 5, Vol. 28, Tab 12, Annexure CS-2, CSNSW.0001.0263.1558_0024-0025.

is with the Executive.⁶⁹⁰ That submission is not in evidence before the Special Commission. The recommendation below in relation to the new PSI operating model is necessarily framed at a high level.

687. One further and fundamental issue is providing a system that has the confidence of both inmates and officers when reporting misconduct. The present system was commonly perceived to lack confidentiality because those who reported often suffered retribution. Whatever be the system going forward, confidence in the fidelity of the process must be developed and maintained.
688. I am unsure how this can best be achieved. However, I have decided that, at least for a time, the new system should be the responsibility of a Deputy Commissioner. Unless a process entirely independent of CSNSW is created, I believe the capacity to file a report for all forms of misconduct directly to PSI should be created. The Deputy Commissioner should maintain close oversight of how they are being managed in order to ensure confidence that allegations are being effectively managed.
689. There should be a requirement for the Director of PSI to report in writing each week identifying the allegations reported and the status of any ongoing investigations. There should be regular meetings between the Director and the Deputy Commissioner.
690. It should be possible to create secure processes that, if appropriately explained — both as to how they operate and how security is to be achieved — maintain the confidence of both officers and inmates.
691. The Inspector of Custodial Services made the following recommendations in relation to PSI:
- a) a PSI phone line or email for staff to raise issues confidentially to alleviate chain of command concerns. The phone line should include a voicemail facility that enables staff to report concerns outside of business hours, given the nature of the shift work undertaken by custodial officers; and

690 Transcript, 20 November 2023, 2780.17-31.

- b) that PSI staff develop effective triaging processes to ensure that serious complaints are addressed without delay, and consideration be given to additional resourcing within Professional Standards.⁶⁹¹

692. **RECOMMENDATION: The minimum features of a new PSI model should include:**

- a) **clear documentation of processes and outcomes;**
- b) **expected time standards for the conduct of different types of investigations, with reporting against time standards so that the potential for any backlog to develop is identified early;**
- c) **an effective triaging process to ensure that serious complaints are addressed without delay;**
- d) **improved communication of both process and outcome of complaints to complainants;**
- e) **mandatory, face-to-face training, where possible, for CSNSW staff in relation to the new PSI model;**
- f) **regular mandatory refresher training for staff in relation to their reporting obligations;**
- g) **clear, auditable measures of PSI performance; and**
- h) **a secure process for reporting allegations, including a voicemail facility that enables staff to make reports outside of business hours, with the option of reporting to the officer ultimately responsible for managing the complaint process or their delegate. Although this may occur, it should not be mandatory to report misconduct to any officer below the rank of a Deputy Commissioner.**

693. A further issue identified by Project Merge is the case management system used by PSI to manage the misconduct process.

694. Mr Greaves' evidence was that in 2014 PSB had no case management system. Accordingly, there was no simple or efficient way to assess the workload of PSB

691 Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0029 [193]; Transcript, 17 November 2023, 2664.40-2665.11.

staff, identify delays or process failures, compile statistics or undertake research. The PSB staff created an internal 'database' using an Excel spreadsheet to support their internal management and reporting functions. That spreadsheet remained in use until at least February 2022. Ms Zekanovic gave evidence that extracting and analysing the spreadsheet is a resource-intensive exercise and not well-suited to performing particular types of statistical analysis.⁶⁹² Ms Zekanovic said that storing the data in this form made it difficult to identify trends.⁶⁹³

695. As part of Project Merge, CSNSW is in the process of developing and implementing a new case management system for complaints. The new case management system will replace the PSI database and enable the SIU function to be deployed by PSI within its system.⁶⁹⁴
696. Ms Zekanovic told the Special Commission that she anticipates the case management system being able to be deployed in 12 to 18 months' time.⁶⁹⁵
697. As an interim solution, PSI have commenced using software that enables better data integrity, analysis and reporting.⁶⁹⁶
698. It will obviously be critical for the new case management system to be carefully designed to provide the maximum assistance to PSI staff in discharging their roles in the misconduct process, and for all CSNSW staff to be quickly trained in the existence and use of the replacement for the current SIU function.
699. **RECOMMENDATION: The new PSI case management system should be designed to enable rapid and clear collation by PSI of records concerning CSNSW staff the subject of misconduct allegations (including Intelligence Reports not regarded as indicative of misconduct) and to assist PSI staff in recognising potential patterns of staff conduct. The replacement for the SIU function should be designed to be easy to use and once implemented, all**

692 Ex. 47, TB 5, Vol. 21B, Tab 3, CSNSW.0001.0253.0001_0002 [7].

693 Transcript, 20 November 2023, 2770.13-22.

694 Ex. 47, TB 5, Vol. 21B, Tab 3, CSNSW.0001.0253.0001_0002 [9], [11]; Transcript, 20 November 2023, 2766.1-17.

695 Transcript, 20 November 2023, 2767.20-23.

696 Ex. 55, TB 5, Vol. 28, Tab 12, Annexure CS-1, CSNSW.0001.0263.1558_0020.

CSNSW staff (not only those who are Intelligence Officers) should be trained in its intended function and how it should be used.

700. The evidence before the Special Commission clearly establishes that the catastrophe that occurred at Dillwynia was not the result of the failures of any single individual. There were multiple failures, both individual and systemic.
701. As discussed in Chapter 7 of this Report, it is apparent that there have been serious problems with CSNSW officers being reluctant to report on other officers. Mr Corcoran gave evidence that those cultural problems persist to this day.⁶⁹⁷ Mr Corcoran's evidence is consistent with evidence the Special Commission heard from officers at Dillwynia. Further, Ms Zekanovic agreed that the reluctance by some officers to speak with PSB was a significant problem in relation to the reporting process.⁶⁹⁸ Mr Corcoran, too, said that there was a culture of not cooperating with PSB when PSB endeavoured to investigate a complaint.⁶⁹⁹
702. The catalogue of failures in relation to Astill, together with the evidence I have received about the potential scale of the misconduct problem at CSNSW, and the ongoing concerns in relation to a reluctance to report misconduct, leads me to consider whether greater oversight is needed of the misconduct management process.
703. The Special Commission did not receive evidence in relation to the potential benefits of independent oversight of CSNSW's misconduct management process by an external body, such as the Law Enforcement Conduct Commission (LECC) or the Ombudsman. It is clear from the fact that Ms Snell has raised the issue of oversight by the LECC that she is concerned that external oversight may be required. The Inspector of Custodial Services similarly recommended that consideration be given to independent oversight of the investigation of serious misconduct through expansion of the existing jurisdiction of the ICAC⁷⁰⁰ or giving this jurisdiction to another independent body such as the LECC.⁷⁰¹ Greater and

697 Transcript, 23 November 2023, 3109.40–3110.1.

698 Transcript, 21 November 2023, 2819.40–44.

699 Transcript, 23 November 2023, 3110.10–14.

700 Transcript, 17 November 2023, 2656.21–2657.1.

701 Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0029 [193]; Transcript, 17 November 2023, 2665.13–30.

in-depth consideration of all possibilities should be undertaken before such a change is made.

704. However, it is clear that in order for there to be confidence in the integrity of the system for managing misconduct, there needs to be greater supervision of that process internally, coupled with some form of external oversight. Having regard to the importance of a properly functioning disciplinary system, I believe it appropriate for PSI to be responsible to a Deputy Commissioner. In addition, the Deputy Commissioner should be required to regularly report to the Secretary, DCJ, or their delegate, about the misconduct matters arising in CSNSW and the progress of their management.
705. **RECOMMENDATION: A Deputy Commissioner should be responsible for the PSI after Project Merge and they should report regularly to the Secretary, DCJ, or their delegate, at a frequency determined by the Secretary. Reports should include notification of any new allegations of serious misconduct and updates as to the status of ongoing complaints.**



New South Wales
Australia

6

Inmate Complaint Mechanisms

6.1 Complaint mechanisms internal to Corrective Services NSW

706. Providing a secure and effective mechanism for inmates to complain of misconduct is likely to always be challenging. The power imbalance and potential lack of trust by inmates in the system are, as the evidence to this Special Commission makes plain, always likely to create difficulties. I do not believe I can authoritatively offer a redesign of the system, but it clearly needs to change. The following discussion may be useful in designing that change.

6.1.1 Inmate Application and Request forms

6.1.1.1 Inmate Application forms

707. An Inmate Application form is an auditable document that can be utilised by inmates to raise significant concerns and issues affecting their incarceration.⁷⁰² Inmate Application forms are not intended to be used for issues that can be resolved locally (in contrast to Inmate Request forms, discussed below). Rather, they are intended to be used for more significant issues that may need reporting outside the correctional centre: for example, requests for police involvement, non-association with other inmates or reporting misconduct incidents that might require escalation, including to the Professional Standards Branch (**PSB**) or Professional Standards and Investigations (**PSI**).⁷⁰³ Functional Managers (as Principal Correctional Officers are called at Dillwynia following benchmarking) are responsible for the management and processing of these forms during normal business hours; otherwise, that obligation falls on the most senior officer on duty.⁷⁰⁴
708. The former CSNSW Operations Procedure Manual described an Inmate Application form as ‘the most important official document used by inmates to raise problems and issues relating to their lives while in custody. Such application forms are only to be used for significant issues affecting the inmate where it is important to record an official process.’⁷⁰⁵
709. Generally, the officer receiving the application from the inmate would take it directly to the Governor.⁷⁰⁶

702 Ex. 3, TB 3, Vol. 10, Tab 156, CSNSW.0001.0024.0201_0001 [3.1.6]; Ex. 59, TB 5, Vol. 23, Tab 5, Annexure B, Annexure Tab 10, CSNSW.0001.0112.0008.

703 Ex. 58, TB 3, Vol. 18, Tab 623, CSNSW.0002.0024.2078_0349-0350; Ex. 17, TB 2, Vol. 7, Tab 62A, AST.002.013.0045_0003 [10]; Ex. 8, TB 2, Vol. 7, Tab 63A, AST.002.013.0022_0002 [15]; Transcript, 1 November 2023, 1348.13-29; Ex. 18, TB 2, Vol. 7, Tab 49A, AST.002.013.0013_0005 [22(a)].

704 Ex. 3, TB 3, Vol. 10, Tab 156, CSNSW.0001.0024.0201_0001 [4.1.2]; Ex. 57, TB 2, Vol. 8, Tab 79, AST.002.013.0038_0009 [64]; Ex. 59, TB 5, Vol. 23, Tab 5, Annexure B, Annexure Tab 10, CSNSW.0001.0112.0008.

705 Ex. 58, TB 3, Vol. 18, Tab 623, CSNSW.0002.0024.2078_0349-0350.

706 Ex. 17, TB 2, Vol. 7, Tab 62A, AST.002.013.0045_0003 [10]; Transcript, 17 November 2023, 2555.38-2556.6; Transcript, 30 October 2023, 1178.27-46. Compare the evidence of Senior Correctional Officer Mirza Mohtaj; Transcript, 25 October 2023, 856.15-46 and the evidence of Senior Correctional Officer Timothy Peek; Transcript, 1 November 2023, 1405.19-1407.5.

710. The current Local Operating Procedure, 'Inmate Requests and Application Forms', requires that when the form is issued to an inmate, it must include the inmate's location on the front of the form and a registration number on the back of the form.⁷⁰⁷ The latter must accord with the number recorded in the Inmate Application Register for the request.⁷⁰⁸ The former Operations Procedures Manual similarly provided that an Inmate Application was 'not valid' until an identifying register number was recorded in the registration block on the back of the form.⁷⁰⁹
711. A copy of the application is required to be filed in a secure filing cabinet at the location where it was issued or saved electronically on the inmate's Case Management File.⁷¹⁰ A copy is to be provided to the inmate 'where possible'.⁷¹¹
712. When an application form is submitted, it must be actioned and resolved within 14 days, if possible.⁷¹² Assuming it is not resolved within 14 days, the Local Operating Procedure requires the progress of the application to be reviewed at 14-day intervals from the date of its submission and the progress to be recorded in the Inmate Application Register.⁷¹³
713. The outcome of the application is to be recorded on the form and returned to the Functional Manager or authorised officer (presumably the one who referred the application in the first place).⁷¹⁴ The inmate must be advised of the outcome and should acknowledge the outcome by signing the form.⁷¹⁵ The original form

707 Ex. 3, TB 3, Vol. 10, Tab 156, CSNSW.0001.0024.0201_0002.

708 Ex. 3, TB 3, Vol. 10, Tab 156, CSNSW.0001.0024.0201_0002; Ex. 58, TB 3, Vol. 18, Tab 623, CSNSW.0002.0024.2078_0349-0350; Ex. 18, TB 2, Vol. 7, Tab 49A, AST.002.013.0013_0005 [22].

709 Ex. 58, TB 3, Vol. 18, Tab 623, CSNSW.0002.0024.2078_0349.

710 Ex. 3, TB 3, Vol. 10, Tab 156, CSNSW.0001.0024.0201_0002; Ex. 17, TB 2, Vol. 7, Tab 62A, AST.002.013.0045_0003 [10]; Ex. 59, TB 5, Vol. 23, Tab 5, Annexure B, Annexure Tab 10, CSNSW.0001.0112.0009. See also the former Operations Procedures Manual: Ex. 58, TB 3, Vol. 18, Tab 623, CSNSW.0002.0024.2078_0350-0351.

711 Ex. 3, TB 3, Vol. 10, Tab 156, CSNSW.0001.0024.0201_0002-0003. See also the former Operations Procedures Manual: Ex. 58, TB 3, Vol. 18, Tab 623, CSNSW.0002.0024.2078_0350.

712 Ex. 3, TB 3, Vol. 10, Tab 156, CSNSW.0001.0024.0201_0003; Ex. 59, TB 5, Vol. 23, Tab 5, Annexure B, Annexure Tab 10, CSNSW.0001.0112.0010.

713 Ex. 3, TB 3, Vol. 10, Tab 156, CSNSW.0001.0024.0201_0003. See also the former Operations Procedures Manual: Ex. 58, TB 3, Vol. 18, Tab 623, CSNSW.0002.0024.2078_0350.

714 Ex. 3, TB 3, Vol. 10, Tab 156, CSNSW.0001.0024.0201_0003. See also the former Operations Procedures Manual: Ex. 58, TB 3, Vol. 18, Tab 623, CSNSW.0002.0024.2078_0351. If the application is a request for protective custody, the recording of the outcome is governed by chapter 3.2 of the Custodial Operations Policy and Procedure (COPP).

715 Ex. 3, TB 3, Vol. 10, Tab 156, CSNSW.0001.0024.0201_0003; Ex. 8, TB 2, Vol. 7, Tab 63A, AST.002.013.0022_0002 [15]. See also the former Operations Procedures Manual: Ex. 58, TB 3, Vol. 18, Tab 623, CSNSW.0002.0024.2078_0351.

is to then be placed on the inmate's Case Management File, either in physical or electronic form depending on whether their file is electronic.⁷¹⁶ The finalised application is then to be stored in the meantime in a secure filing cabinet or saved electronically and at the end of each month will be moved to a separate storage location from that of the office in the relevant accommodation area.⁷¹⁷

714. Functional Managers, who are responsible for managing a functional area within the correctional centre such as Security, Accommodation and Intelligence, are required to audit the Inmate Application Register every week.⁷¹⁸ The relevant Local Operating Procedure provides that two years after an audit, stored applications are forwarded to Silverwater Correctional Complex.⁷¹⁹ However, none of the relevant Custodial Operations Policy and Procedure (**COPP**), Local Operating Procedure or former Operations Procedures Manual set out how this audit is to be conducted or who is responsible for conducting it. It seems unlikely that a correctional centre would forward audited documents to Silverwater Correctional Complex every week (that is, two years after each week that the Inmate Application Register is audited).
715. The then Senior Assistant Superintendent, Stephen Virgo, told the Special Commission that where an inmate wishes to make a complaint about a serious incident, including the commission of a criminal offence, officers are required to fill out an 'incident package'.⁷²⁰ While the policy source of the 'incident package' is not known to the Special Commission, Mr Virgo stated that the package includes 'the Inmate Request form' (which I understand to be a reference to the Inmate Application form, the terms commonly being confused among Correctional Officers), Justice Health forms where applicable, Incident Report forms for officers to complete, and Police Indemnity forms. Mr Virgo stated that when the package is completed, the package is to be escalated to the Manager

716 Ex. 3, TB 3, Vol. 10, Tab 156, CSNSW.0001.0024.0201_0003.

717 Ex. 3, TB 3, Vol. 10, Tab 156, CSNSW.0001.0024.0201_0002-0003; Ex. 59, TB 5, Vol. 23, Tab 5, Annexure B, Annexure Tab 10, CSNSW.0001.0112.0010. See also the former Operations Procedures Manual: Ex. 58, TB 3, Vol. 18, Tab 623, CSNSW.0002.0024.2078_0351.

718 Ex. 3, TB 3, Vol. 10, Tab 156, CSNSW.0001.0024.0201_0005.

719 Ex. 3, TB 3, Vol. 10, Tab 156, CSNSW.0001.0024.0201_0003; Ex. 59, TB 5, Vol. 23, Tab 5, Annexure B, Annexure Tab 10, CSNSW.0001.0112.0010. See also the former Operations Procedures Manual: Ex. 58, TB 3, Vol. 18, Tab 623, CSNSW.0002.0024.2078_0351.

720 Ex. 9, TB 2, Vol. 7, Tab 64A, AST.002.013.0017_0003-0004 [18]; Ex. 21, TB 2, Vol. 8, Tab 73, AST.002.013.0033_0004 [28].

of Security (**MOS**) for review and, where use of force or a serious incident is involved, escalated to the Security Manager (who has the rank of Senior Assistant Superintendent and reports to the MOS) and Governor.⁷²¹ Mr Virgo stated that any officer misconduct reports or serious Incident Reports must be submitted to the Security Manager, who will liaise with the police and the Governor.⁷²² Mr Virgo said that if the incident is not serious enough for escalation and a determination is made that it can be dealt with locally, the complaint is not disseminated externally to the centre.⁷²³ It is unclear on Mr Virgo's evidence who makes such a determination.⁷²⁴

6.1.1.2 Inmate Request forms

716. An Inmate Request form is used specifically for daily issues that are not deemed recordable; that is, issues that do not have a bearing on the inmate's incarceration and that relate to matters internal to the gaol.⁷²⁵ This includes an inmate requesting to meet with the Governor.⁷²⁶ Functional Managers and supervisors are responsible for the management and processing of these forms.⁷²⁷
717. The intended process is that all requests will be recorded in the Inmate Request Register for the relevant accommodation area of the gaol and should be reviewed daily to assess the progress of the request.⁷²⁸ The officer in charge of the area where the Register is maintained is responsible for the registration and action of Inmate Requests.⁷²⁹ Functional Managers are required to audit the Inmate Request Register every week.⁷³⁰ A request should be finalised by

721 Ex. 9, TB 2, Vol. 7, Tab 64A, AST.002.013.0017_0004 [19]. See also Ex. 57, TB 2, Vol. 8, Tab 69, AST.002.013.0011_0003 [14].

722 Ex. 9, TB 2, Vol. 7, Tab 64A, AST.002.013.0017_0004 [20].

723 Ex. 9, TB 2, Vol. 7, Tab 64A, AST.002.013.0017_0008 [45].

724 Ex. 9, TB 2, Vol. 7, Tab 64A, AST.002.013.0017_0008 [45].

725 Ex. 3, TB 3, Vol. 10, Tab 156, CSNSW.0001.0024.0201_0001; Ex. 58, TB 3, Vol. 18, Tab 623, CSNSW.0002.0024.2078_0349-350, 0352; Ex. 17, TB 2, Vol. 7, Tab 62A, AST.002.013.0045_0003 [11]; Ex. 8, TB 2, Vol. 7, Tab 63A, AST.002.013.0022_0002 [14]; Transcript, 25 October 2023, 739.29-45; Ex. 59, TB 5, Vol. 23, Tab 5, Annexure B, Annexure Tab 10, CSNSW.0001.0112.0011.

726 Ex. 16, TB 2, Vol. 8, Tab 77, AST.002.013.0026_0011 [53]; Transcript, 20 October 2023, 500.36-501.4; Transcript, 14 November 2023, 2285.31-37; Ex. 57, TB 2, Vol. 7, Tab 57A, AST.002.013.0031_0005 [21].

727 Ex. 3, TB 3, Vol. 10, Tab 156, CSNSW.0001.0024.0201_0001.

728 Ex. 3, TB 3, Vol. 10, Tab 156, CSNSW.0001.0024.0201_0004; Ex. 58, TB 3, Vol. 18, Tab 623, CSNSW.0002.0024.2078_0351-0352; Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0010-0011 [42]; Ex. 17, TB 2, Vol. 7, Tab 62A, AST.002.013.0045_0003 [12].

729 Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0010-0011 [42]; Ex. 17, TB 2, Vol. 7, Tab 62A, AST.002.013.0045_0003 [11]; Ex. 8, TB 2, Vol. 7, Tab 63A, AST.002.013.0022_0002 [14]; Ex. 18, TB 2, Vol. 7, Tab 49A, AST.002.013.0013_0006 [24].

730 Ex. 58, TB 3, Vol. 18, Tab 623, CSNSW.0002.0024.2078_0352; Ex. 3, TB 3, Vol. 10, Tab 156, CSNSW.0001.0024.0201_0005.

the appropriate person or office within 14 days where possible.⁷³¹ The officer in charge or supervisor where the Inmate Request Register is kept must ensure all requests are actioned and finalised.⁷³²

718. Once the request is actioned, the outcome is to be recorded on the form and the form returned to the officer in charge or other authorised officer.⁷³³ The inmate must be notified of the outcome and the original form must be filed.⁷³⁴
719. Mr Virgo gave evidence that ‘95% of incidents that are reported are dealt with by the Senior Correctional officer on the wing’ by way of an Inmate Request form.⁷³⁵

6.1.1.3 Practical implications of Inmate Application and Request forms

720. Both an Inmate Request form and an Inmate Application form are sometimes referred to as a ‘bluey’.⁷³⁶ However, Correctional Officer Peter Barglik said that he understands a ‘bluey’ to now be a medical form an inmate can use to request to see Justice Health, but that it was previously an Inmate Request form.⁷³⁷ The Inmate Request and Inmate Application forms were often confused with each other in evidence before the Special Commission.⁷³⁸ It seems that no real distinction is made between the two forms and their use is inconsistent and confused. There was similarly confusion among Correctional Officers as to whom they were to take an Inmate Application form to for actioning, and in particular

731 Ex. 3, TB 3, Vol. 10, Tab 156, CSNSW.0001.0024.0201_0004; Ex. 59, TB 5, Vol. 23, Tab 5, Annexure B, Annexure Tab 10, CSNSW.0001.0112.0012.

732 Ex. 3, TB 3, Vol. 10, Tab 156, CSNSW.0001.0024.0201_0005.

733 Ex. 3, TB 3, Vol. 10, Tab 156, CSNSW.0001.0024.0201_0004.

734 Ex. 3, TB 3, Vol. 10, Tab 156, CSNSW.0001.0024.0201_0004-0005; Ex. 59, TB 5, Vol. 23, Tab 5, Annexure B, Annexure Tab 10, CSNSW.0001.0112.0012.

735 Ex. 9, TB 2, Vol. 7, Tab 64A, AST.002.013.0017_0003-0004 [15]-[18].

736 See eg Ex. 9, TB 2, Vol. 7, Tab 64A, AST.002.013.0017_0007 [44]; Ex. 57, TB 2, Vol. 8, Tab 74, AST.002.013.0021_0002 [9]; Transcript, 29 September 2023, 125.37-44; Ex. 57, TB 2, Vol. 7, Tab 57A, AST.002.013.0031_0005 [21]; Ex. 21, TB 2, Vol. 8, Tab 73, AST.002.013.0033_0003 [20]; Ex. 57, TB 2, Vol. 8, Tab 74, AST.002.013.0021_0002 [9]; Ex. 29, TB 2, Vol. 8, Tab 83, AST.002.013.0035_0005 [38]; Ex. 57, TB 2, Vol. 7, Tab 55A, AST.002.013.0016_0004 [20]-[21].

737 Ex. 57, TB 2, Vol. 7, Tab 50A, AST.002.013.0037_0004 [23].

738 Compare Ex. 57, TB 2, Vol. 8, Tab 74, AST.002.013.0021_0002 [9]; Ex. 9, TB 2, Vol. 7, Tab 64A, AST.002.013.0017_0007 [44]; Ex. 29, TB 2, Vol. 8, Tab 83, AST.002.013.0035_0005 [38]; Transcript, 25 October 2023, 739.1-741.15.

whether the application was to be provided directly to the Governor or sent up the chain of command.⁷³⁹

721. Senior Correctional Officer Paul Foster recalled that there was a time at Dillwynia when an Inmate Application form or ‘bluey’ was the only way in which an inmate could make a request or complain in writing.⁷⁴⁰ Mr Foster said that when the Inmate Request form was brought in, the process became simpler.⁷⁴¹ He suggested that with the introduction of the current Official Visitor, Chaplain and Justice Health systems, the situation for inmates has improved:

*It used to be a green line and a blue line, and no one crossed over, you had no grey area to work in. We now address individual needs more, we can find a solution to a unique problem, rather than a black and white yes/no.*⁷⁴²

722. Nevertheless, the evidence confirmed that inmates saw the process for inmates making complaints at Dillwynia to be convoluted. Inmates were burdened by fear and mistrust about the process.
723. Witnesses B and C gave evidence that they knew to make a complaint by filling out an Inmate Request form but that it would go through the Wing Officer, which is the officer responsible for the particular unit the inmate is housed in, and then to the Wing Manager, even though they may be the person who is the subject of the complaint.⁷⁴³ Further, the fact that the Wing Officer could make their own determination about what to do with the request form was concerning for inmates. Witness B stated that on some occasions when she had requested that her complaint go to the Governor, this was refused, and that Wing Officers would want to know what it was about before they would do anything with the request.⁷⁴⁴

739 Compare Transcript, 25 October 2023, 856.20-46; Transcript, 30 October 2023, 1178.35-46; Transcript, 1 November 2023, 1406.26-1407.5; Transcript, 17 November 2023, 2555.38-2556.6; Ex. 18, TB 2, Vol. 7, Tab 49A, AST.002.013.0013_0005 [22]; Ex. 21, TB 2, Vol. 8, Tab 73, AST.002.013.0033_0003 [18]-[19]; Ex. 13, TB 2, Vol. 7, Tab 56A, AST.002.013.0032_0009 [53].

740 Ex. 13, TB 2, Vol. 7, Tab 56A, AST.002.013.0032_0009 [59].

741 Ex. 13, TB 2, Vol. 7, Tab 56A, AST.002.013.0032_0009 [59].

742 Ex. 13, TB 2, Vol. 7, Tab 56A, AST.002.013.0032_0009 [59].

743 Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0010 [39]; Ex. 3, TB 1, Vol. 6, Tab 23A, AST.002.013.0030_0011 [56].

744 Ex. 3, TB 1, Vol. 6, Tab 23A, AST.002.013.0030_0011 [56].

724. Witness C said that:

The inmate request form has a number on it, but you do not get a copy or ever get it back, so you never really knew if management higher up was aware of the complaint.

Once you hand your request in, you have no oversight as to what happens with it. If your request is denied, you are asked to sign off on it, but otherwise, you don't see it again and you are not given a copy. I have no idea whether Governor Martin received my forms. I did not hand them to her directly.⁷⁴⁵

725. Witness W gave evidence that she did not know of any other method for making a complaint other than the Inmate Request form, which she knew an inmate could fill out and, in the Medium Needs Area, place in a box in the office.⁷⁴⁶

726. Correctional Officer Glenn Clark gave evidence that at the time rumours were circulating about Astill, he did not feel like he could raise an inmate's complaint about Astill with management without the inmate putting it in writing.⁷⁴⁷ Mr Clark believed if he had put in a report unsupported by something in writing from the inmate, he would be 'targeted'.⁷⁴⁸ Mr Clark feared Astill because Astill had acted in an intimidating manner towards him. On more than one occasion, he approached him in the carpark and stood over him to intimidate him, and mentioned to Mr Clark that he used to be a policeman and knew the late Roger Rogerson.⁷⁴⁹ Mr Clark also feared for the complaining inmate's safety.⁷⁵⁰

727. Principal Correctional Officer Neil Holman told the Special Commission that although the proper process was to prepare an Inmate Application, in the event that a verbal complaint made by an inmate needed to be escalated, if the complaint involved a serious allegation about a staff member and the inmate felt

745 Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0010 [39]-[40].

746 Ex. 3, TB 1, Vol. 6, Tab 22A, AST.002.013.0008_0008 [42]; Transcript, 18 October 2023, 332.9-38.

747 Ex. 8, TB 2, Vol. 7, Tab 63A, AST.002.013.0022_0003 [22]; Transcript, 25 October 2023, 749.1-36.

748 Ex. 8, TB 2, Vol. 7, Tab 63A, AST.002.013.0022_0003-0004 [22]-[23]; Transcript, 25 October 2023, 749.1-36.

749 Ex. 8, TB 2, Vol. 7, Tab 63A, AST.002.013.0022_0003-0004 [22]-[23]; Transcript, 25 October 2023, 749.28-36, 750.25-38.

750 Transcript, 25 October 2023, 749.28-36, 750.25-38.

uncomfortable or did not wish to write down their complaint, he would not press them to do so.⁷⁵¹ Instead, he would furnish a report to the Governor himself.⁷⁵²

728. The Inspector of Custodial Services (**the Inspector**), Fiona Rafter, gave evidence that as recently as 2022 at Dillwynia, Inmate Application forms were still being processed on paper and were being placed into ‘big plastic tubs that were not secured’ and were left in the yards for a few hours each day.⁷⁵³ The Inspector was not confident that there was an appropriate system in place to record and audit internal requests and complaints,⁷⁵⁴ and in her 2023 report recommended urgent review of the process to ensure it provided a safe, secure and confidential means by which women can submit request forms.⁷⁵⁵ The Inspector also observed that similarly concerning practices were utilised with respect to the inmate self-referral forms for health services, which did not protect the personal health information of women, which Justice Health had since taken steps to ameliorate by ordering secure boxes to be installed in each accommodation unit so self-referral forms could be deposited.⁷⁵⁶ The Inspector recommended that CSNSW review the Inmate Request form process in Area 1 of Dillwynia to ensure forms can be submitted securely and confidentially. I agree with the Inspector. The need for inmate application and request forms to be confidential is obvious.

6.1.1.4 Astill’s misuse of Inmate Application and Request forms

729. It is important that one of the common reasons for inmates frequently attending Astill’s office (other than being summoned there by him) was that the Chief Correctional Officer, the position Astill filled in an acting capacity for much of the period of his offending, was at that time the officer to whom inmates would be referred to submit an Inmate Request, either orally or in writing.⁷⁵⁷ In her statement

751 Ex. 28, TB 2, Vol. 8, Tab 80, AST.002.013.0053_0003-0004 [10]; Transcript, 3 November 2023, 1683.36-1684.12.

752 Ex. 28, TB 2, Vol. 8, Tab 80, AST.002.013.0053_0003-0004 [10].

753 Transcript, 17 November 2023, 2662.32-46; Ex. 60, TB 6, Tab 24, AST.002.013.0093_0076.

754 Transcript, 17 November 2023, 2662.32-46.

755 Ex. 60, Tab 24, AST.002.013.0093_0076.

756 Ex. 60, Tab 24, AST.002.013.0093_0093.

757 Ex. 3, TB 1, Vol. 6, Tab 21, AST.002.002.0028_0002-0003 [5]; Ex. 3, TB 1, Vol. 6, Tab 21A, AST.002.013.0029_0001-0002 [7]; Ex. 3, TB 1, Vol. 6, Tab 19, AST.002.002.0006_0001 [4]; Ex. 3, TB 1, Vol. 5, Tab 9, AST.002.002.0025_0002-0004 [5], [8], [15]; Ex. 3, TB 1, Vol. 5, Tab 7, AST.002.002.0002_0003 [6]; Ex. 3, TB 1, Vol. 6, Tab 34, AST.002.002.0047_0001 [5]; Ex. 3, TB 1, Vol. 6, Tab 41, AST.002.002.0007_0001-0002 [4]; Ex. 3, TB 1, Vol. 6, Tab 46, AST.002.013.0009_0005-0006 [32]; Ex. 18, TB 2, Vol. 7, Tab 48, AST.002.002.0055_0012 [63].

to the Special Commission, Witness N recalled an occasion when Astill was holding a pile of Inmate Request forms that he said other inmates had written about him. Astill was very angry and shredded the documents in front of Witness N.⁷⁵⁸

730. Senior Correctional Officer Renee Berry also gave evidence about a number of occasions when Astill went ‘beyond his managerial role’ and ‘[took] it personally to facilitate’ certain inmates’ requests on Inmate Request forms, despite the fact that it was contrary to policy or inappropriate to do so.⁷⁵⁹ On one occasion Astill sought to assist an inmate with a request for copies of her identification, presenting her form to Ms Berry. When Ms Berry informed Astill that inmates were not allowed to be provided with copies of their identification, he became aggressive. Astill would later follow up with Ms Berry as to the status of approving the request. Ms Berry considered that Astill was attempting to bully her into doing something she was uncomfortable with and which she considered to be against policy.⁷⁶⁰

6.1.2 Local complaints to staff within Dillwynia

731. The CSNSW ‘Avenues for Inmate Inquiries and Complaints’ Fact Sheet (**the Fact Sheet**) outlines information regarding the avenues for inmates to make inquiries and complaints. The Fact Sheet was designed to provide CSNSW staff, rather than inmates, with this information.⁷⁶¹ The Special Commission was provided with various iterations of this document, the most relevant being the version issued in August 2016, which was applicable during most of the period in which Astill offended. The other historical (2009 and 2011) and current (2020) iterations of the document are identical in relation to the methods outlined for inmates to raise a concern.⁷⁶²

758 Ex. 3, TB 1, Vol. 6, Tab 32A, AST.002.013.0004_0004 [18].

759 Ex. 18, TB 2, Vol. 7, Tab 48, AST.002.002.0055_0006, 0007, 0014-0015 [29]-[32], [37], [75]-[76].

760 Ex. 18, TB 2, Vol. 7, Tab 48, AST.002.002.0055_0006 [29]-[32], [39].

761 Ex. 59, TB 5, Vol. 28, Tab 14, AST.002.013.0082_0006 [24].

762 Ex. 59, TB 5, Vol. 28, Tab 14, AST.002.013.0082_0006-0008 [26]-[29].

732. Generally, the Fact Sheet is provided to the Governor, who may then distribute it to staff through their administrative staff.⁷⁶³ Otherwise, the Fact Sheet is available on the CSNSW Intranet for CSNSW staff to read.⁷⁶⁴ The Fact Sheet was not previously available to inmates but has now been added to all tablets which are provided to inmates for use in their cells.⁷⁶⁵
733. The 2016 version states that inmates could make complaints or raise issues of concern by directly raising a query with correctional centre staff, which may include their Wing or Case Officer or the Senior Assistant Superintendent or Principal Correctional Officer.⁷⁶⁶ Wing Officers are, as described above, officers responsible for a particular wing, while Case Officers are officers that case manage inmates who are assigned to them by checking on the inmate and completing case notes regarding their day-to-day issues.⁷⁶⁷ The Inmate Request form and Inmate Application form were listed in the Fact Sheet as options that inmates can use to raise an inquiry or complaint with correctional staff. The Fact Sheet stipulated that this internal avenue should be explored by inmates ‘in the first instance’.⁷⁶⁸
734. Ms Berry gave evidence that an inmate could make a report to someone they trusted and who was high ranking, being in the position of Chief Correctional Officer or above.⁷⁶⁹ If inmates did not wish to put the complaint in writing – for example, by way of an Inmate Application form – they could orally request to meet with the Governor, a practice considered by Ms Berry as ‘standard’.⁷⁷⁰
735. Correctional Officer Kim Wilson gave evidence that an inmate could speak to their Case Officer, who would have been assigned three or four inmates to case manage and speak with periodically.⁷⁷¹

763 Ex. 59, TB 5, Vol. 28, Tab 14, AST.002.013.0082_0008 [30].

764 Ex. 59, TB 5, Vol. 28, Tab 14, AST.002.013.0082_0008 [31].

765 Ex. 59, TB 5, Vol. 28, Tab 14, AST.002.013.0082_0008 [32].

766 Ex. 59, TB 5, Vol. 28, Tab 14, Annexure Tab 3, CSNSW.0001.0108.0007.

767 Ex. 22, TB 2, Vol. 8, Tab 71, AST.002.013.0018_0004 [29]; Ex. 57, TB 2, Vol. 8A, Tab 87, AST.002.013.0034_0007 [62].

768 Ex. 59, TB 5, Vol. 28, Tab 14, Annexure Tab 3, CSNSW.0001.0108.0007. See also the evidence of Acting Director of Professional Standards and Investigations Angela Zekanovic: Transcript, 28 September 2023, 74.10-43.

769 Ex. 18, TB 2, Vol. 7, Tab 49A, AST.002.013.0013_0005 [22].

770 Ex. 18, TB 2, Vol. 7, Tab 49A, AST.002.013.0013_0005 [22].

771 Ex. 22, TB 2, Vol. 8, Tab 71, AST.002.013.0018_0004 [29].

736. Senior Correctional Officer Jean Dolly stated that if an inmate came to a Correctional Officer to report an incident, it was the officer's responsibility to speak to their senior or submit an Incident Report to management.⁷⁷² If the issue was minor, officers would try to resolve the issue themselves or encourage the inmate to speak with the Functional Manager (previously, the Principal Correctional Officer) directly.⁷⁷³
737. However, the Special Commission heard evidence that the choice of which officer to approach to raise an issue with was difficult for an inmate.⁷⁷⁴
738. Witness C told the Special Commission that when making a complaint, if she did not go to her Wing Officer first, she would be considered to be 'officer shopping'.⁷⁷⁵ When she did go to the High Needs Manager, Westley Giles, he would brush her off, so she would approach Mr Giles' manager. This is detailed further in Chapter 7 of this Report.
739. The Special Commission was also told that inmates would not achieve the desired result if they made a verbal complaint. Witness C gave evidence that she was regularly told that she was 'not special' and to 'go away' and that sometimes she was laughed at when trying to raise an issue verbally with an officer, and the complaint process would stop there.⁷⁷⁶

6.1.2.1 Services and Programs Officer

740. The role of the Services and Programs Officer (**SAPO**) is to 'provide services of assessment, case planning, case plan implementation and individual crisis and fundamental support interventions for offenders and remandees to facilitate their safe, secure, and humane management in a correctional centre and to reduce re-offending'. They also provide offenders with access to accredited or approved

772 Ex. 16, TB 2, Vol. 8, Tab 77, AST.002.013.0026_0011 [52].

773 Ex. 16, TB 2, Vol. 8, Tab 77, AST.002.013.0026_0011 [52]; Ex. 28, TB 2, Vol. 8, Tab 80, AST.002.013.0053_0003-0004 [15].

774 See eg Ex. 3, TB 1, Vol. 5, Tab 17A, AST.002.013.0028_0007-0008 [41].

775 Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0009-0010 [37].

776 Ex. 3, TB1, Vol. 5, Tab 8A, AST.002.013.0001_0010 [41].

programs.⁷⁷⁷ The SAPO role is seen as a welfare option for inmates to utilise.⁷⁷⁸ A SAPO is expected to see a new inmate to Dillwynia within the first 24 hours of them arriving at the gaol.⁷⁷⁹ SAPOs are rotated throughout the gaol into different areas, allowing them to work with different inmates on their different needs.⁷⁸⁰

741. When an inmate wanted to speak with a SAPO, they would write down their details and a brief description of why they needed to see the SAPO, and the Wing Officer would enter a request in the Offender Integrated Management System (**OIMS**) for the SAPO's attention.⁷⁸¹ Mr Barglik told the Special Commission that, in his view, a request for an inmate to see a SAPO was 'always actioned'.⁷⁸²
742. Governor of Geoffrey Pearce Correctional Centre and former Acting Governor of Dillwynia Adam Schreiber gave evidence that the SAPO would report to the Manager Offender Services and Programs or the Governor, and, depending on the substance of the report they wished to pass on from an inmate, they would generally ask for a meeting to discuss the report.⁷⁸³ The Governor would then determine whether the report needed to be documented and/or referred to PSB/PSI.⁷⁸⁴
743. Deborah Gaynor was a SAPO at Dillwynia from 2005 and throughout the period during which Astill offended. She noticed that after the rumours about Astill being 'too nice' to the inmates started, inmates were not going to the SAPOs for assistance as often and would tell her in the compound that they had meant to put in a request to see her but had not.⁷⁸⁵ Ms Gaynor believed that they may have been too afraid to go to the SAPO office because it was opposite Astill's office, and he might assume that they were telling the SAPOs what he was doing to them.⁷⁸⁶

777 Ex. 3, TB 3, Vol. 9, Tab 129, CSNSW.0001.0025.0151_00001.

778 Ex. 22, TB 2, Vol. 8, Tab 71, AST.002.013.0018_0003 [27].

779 Ex. 14, TB 2, Vol. 7, Tab 58A, AST.002.013.0040_0001 [7]; Transcript, 26 October 2023, 1003.31-47.

780 Transcript, 26 October 2023, 986.21-32.

781 Ex. 57, TB 2, Vol. 7, Tab 50A, AST.002.013.0037_0004 [28]; Ex. 22, TB 2, Vol. 8, Tab 71, AST.002.013.0018_0003, 0005 [27], [41].

782 Ex. 57, TB 2, Vol. 7, Tab 50A, AST.002.013.0037_0005 [33].

783 Ex. 57, TB 2, Vol. 7, Tab 57A, AST.002.013.0031_0006 [26].

784 Ex. 57, TB 2, Vol. 7, Tab 57A, AST.002.013.0031_0006 [26].

785 Ex. 14, TB 2, Vol. 7, Tab 58A, AST.002.013.0040_0008 [46]-[47].

786 Ex. 14, TB 2, Vol. 7, Tab 58A, AST.002.013.0040_0008 [46]-[47].

744. It is apparent that the practice of an inmate having to explain to the Wing Officer why they wished to see a SAPO deterred inmates from making a request.⁷⁸⁷ Another difficulty was that the inmate had to trust that their Wing Officer would pass their request on, and that it would remain confidential.⁷⁸⁸ Witness C gave evidence that she made requests to speak to a SAPO but when she asked that SAPO why she had not heard anything from them, the SAPO did not know that she had requested to see them.⁷⁸⁹
745. Both inmate Elizabeth Cox's and Witness C's experience was that often when inmates did speak to SAPOs, the response they received was that they could not help the inmate with their particular issue because it was considered not to be part of the SAPO's role.⁷⁹⁰ This led to inmates lacking confidence in the SAPOs and the role being viewed as weak, invisible and hard to engage with. Ms Cox also told the Special Commission that now that the SAPOs are all ex-officers, rather than psychologists, counsellors or welfare officers, the inmates do not trust them.⁷⁹¹ This is an unacceptable situation. The perceived lack of expertise in providing emotional support to the inmates is particularly concerning in circumstances where SAPOs were expected to play a welfare role for inmates.
746. The role description for a SAPO lists, as an essential requirement, 'relevant tertiary qualifications in social work, psychology, mental-health or other human service fields; and/or demonstrated relevant equivalent experience working with family, social and/or drug and alcohol related issues'.⁷⁹² This statement of essential requirements leaves open the possibility of hiring a person who has no relevant tertiary qualifications but has demonstrated the 'relevant equivalent experience'. It is unclear how recruiters have approached this issue but it would be unsatisfactory in my view if a candidate was deemed to have satisfied the requirements merely on the basis that they had worked as a Correctional Officer. The lack of SAPOs with appropriate qualifications is inconsistent with the object

787 Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0014 [55].

788 Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0014 [55]; Ex. 3, TB 1, Vol. 6, Tab 22A, AST.002.013.0008_0008 [45].

789 Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0014 [55].

790 Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0014 [55]; Ex. 3, TB 1, Vol. 6, Tab 46, AST.002.013.0009_0010 [61].

791 Ex. 3, TB 1, Vol. 6, Tab 46, AST.002.013.0009_0010 [61].

792 Ex. 3, TB 3, Vol. 9, Tab 129, CSNSW.0001.0025.0151_0003.

of the *Crimes (Administration of Sentences) Act 1999 (CAS Act)* to ‘provide for the rehabilitation of offenders with a view to their reintegration into the general community’.⁷⁹³ In my view, it would be highly preferable for a SAPO to have relevant tertiary qualifications or training to allow them to provide meaningful support to inmates.

6.1.2.2 The Chaplain

747. In her 2023 report, the Inspector noted that the Anglican and Catholic chaplains were available full time at Dillwynia and the Buddhist and Muslim chaplains attended one to two days per week. She stated that in addition to providing inmates with one-on-one pastoral care and emotional support, the chaplains facilitated a number of structured group programs, including peer-based loss and grief education programs (Seasons for Growth and Seasons for Healing), and the Positive Lifestyle Program aimed at supporting the development of increased self-awareness and positive decision-making.⁷⁹⁴
748. Suellen Johnson was the Anglican Chaplain at Dillwynia between 2013 and 2018, contracted through Anglicare.⁷⁹⁵ Ms Johnson’s role as Chaplain was to offer support to both inmates and CSNSW staff.⁷⁹⁶ However, Ms Johnson told the Special Commission that she ‘had to walk a very fine line’ because she would be approached by both inmates and officers to debrief, or would sit in the lunchroom with the officers and observe their conversations and behaviours, but still be expected to remain neutral and maintain confidentiality.⁷⁹⁷ Ms Johnson said:

*My role was extremely difficult. It was like watching a game of chess, white against black, and wondering who was going to make the next move. You were watching it, but you couldn’t do anything about it.*⁷⁹⁸

793 CAS Act, s. 2A(1)(d).

794 Ex. 60, Tab 24, AST.002.0013.0093_0098.

795 Ex. 19, TB 2, Vol. 7, Tab 47, AST.002.002.0070_0001 [3]; Transcript, 30 October 2023, 1280.3-30.

796 Ex. 19, TB 2, Vol. 7, Tab 47A, AST.002.013.0047_0002 [10].

797 Ex. 19, TB 2, Vol. 7, Tab 47A, AST.002.013.0047_0002, 0006, 0010 [10]-[11], [33], [53]; Transcript, 30 October 2023, 1281.23-1282.11; Transcript, 30 October 2023, 1283.37-1286.27.

798 Ex. 19, TB 2, Vol. 7, Tab 47A, AST.002.013.0047_0011 [57].

749. Correctional Officer Paul Foster told the Special Commission that the role of Chaplain was an important one. He said:

*The chaplain is a resource. The chaplain can discuss matters that a male can't; can also be a confidential source, the person can share an inner feeling with. So if you can break down a barrier and put a person in front of a chaplain, that can be a solution to that problem, at least open doors to other ways. Insofar as doing too much for people, chaplains have a habit of working hard.*⁷⁹⁹

750. Witness C gave evidence that the chaplain services at Dillwynia were excellent, stating that Ms Johnson was 'unbelievable' and 'constantly pushed back on our [inmates'] behalf'.⁸⁰⁰

751. Ms Johnson was available to inmates and staff five days a week at Dillwynia.⁸⁰¹ Ms Johnson told the Special Commission that when she first commenced in her role she operated under an open-door policy, but that from approximately 2016 she was inundated with so many requests from inmates to speak with her that she had to implement an appointment system.⁸⁰²

752. Ms Johnson gave evidence that in 2017 and 2018 a number of inmates approached her to make disclosures about Astill that were 'intimidating and sexual in nature' (discussed in Chapter 8 of this Report).⁸⁰³ She was later requested to be part of a mediation between Astill and Witnesses P, V and B (also discussed in Chapter 8).⁸⁰⁴

753. Ms Johnson gave evidence about her understanding of her obligations as Chaplain. Although she was of the view that she must provide confidentiality to the inmates, she would warn them that if they spoke about certain offences, particularly an offence against a child or offences they had committed that were not already

799 Transcript, 26 October 2023, 948.33-38.

800 Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0014 [57].

801 Ex. 19, TB 2, Vol. 7, Tab 47A, AST.002.013.0047_0003 [13].

802 Ex. 19, TB 2 Vol. 7, Tab 47A, AST.002.013.0047_0003 [13]; Transcript, 30 October 2023, 1280.32-41; Ex. 19, TB 2, Vol. 7, Tab 47A, AST.002.013.0047_0001 [6].

803 Ex. 19, TB 2, Vol. 7, Tab 47, AST.002.002.0070_0001 [4]-[5]; Ex. 19, TB 2, Vol. 7, Tab 47A, AST.002.013.0047_0004, 0009 [26], [47]-[48].

804 Ex. 19, TB 2, Vol. 7, Tab 47, AST.002.002.0070_0001-0002 [7]; Ex. 19, TB 2, Vol. 7, Tab 47A, AST.002.013.0047_0006-0008 [32]-[42].

known to law enforcement, she would be required to disclose this.⁸⁰⁵ However, Ms Johnson stated that she never took it upon herself to read the inmates' files, so unless she knew about their cases from the news or from others speaking about the subject, she generally was not aware of an inmate's convictions.⁸⁰⁶

754. When questioned about the Chaplain's role in reporting information brought to her by inmates about crimes perpetrated against them while they were in gaol, Ms Johnson said that she would tell the inmates that they needed to report what they had told her, and trusted that they would.⁸⁰⁷ Her evidence was that she would approach inmate reports to her in this way for a number of reasons: because the inmates would ask her not to tell anyone due to their fear of retribution and reprisal; because she was worried about the inmates' safety and putting them in danger; and because it did not occur to her to go to someone outside of Dillwynia to report what she was hearing.⁸⁰⁸ Ms Johnson clarified that in the specific case of Witnesses B and V, she suspected that they had reported the incident that they came to her about and it was being dealt with by gaol management as a series of mediations had been organised. Ms Johnson stated that she did not feel the need to report it herself.⁸⁰⁹ She had trusted that when the inmates said they would report it, they would do so, and they had.⁸¹⁰

755. Section 7.8 of the former DOJ Code of Ethics and Conduct Policy, operative from August 2015 (**2015 DOJ Code**), provided that chaplains, among others not directly employed by CSNSW, must be aware of the Code and act in line with the conduct described in it.⁸¹¹ Where their contract or agreement refers to the 2015 DOJ Code, the Code applied.⁸¹² The 2015 DOJ Code provided that, among other things, if an employee witnessed or suspected wrong-doing of a serious nature, they should discuss the matter with their manager and might be required to

805 Ex. 19, TB 2, Vol. 7, Tab 47A, AST.002.013.0047_0002 [11]; Transcript, 30 October 2023, 1283.42-1284.41.

806 Ex. 19, TB 2, Vol. 7, Tab 47A, AST.002.013.0047_0002 [11]; Transcript, 30 October 2023, 1284.38-41.

807 Transcript, 30 October 2023, 1284.43-1286.38; Transcript, 30 October 2023, 1285.31-44. See also Ex. 19, TB 2, Vol. 7, Tab 47A, AST.002.013.0047_0005 [31].

808 Transcript, 30 October 2023, 1285.31-1287.33.

809 Transcript, 30 October 2023, 1286.29-1287.33; T1290.451290.15; Ex. 19, TB 2, Vol 7, Tab 47A, AST.002.013.0047_0005-0006 [31]-[32].

810 Transcript, 30 October 2023, 1286.29-1287.33.

811 Ex. 3, TB 3, Vol. 9, Tab 147, CSNSW.0001.0034.0122_0019.

812 Ex. 3, TB 3, Vol. 9, Tab 147, CSNSW.0001.0034.0122_0019.

complete a Summary of an Allegation or Complaint against an Employee Form, which would be referred to the relevant Director, Human Resources Business Partner.⁸¹³ Section 3 of the current Department of Communities and Justice (DCJ) Code of Ethical Conduct, which came into effect on 19 April 2021 (**2021 DCJ Code of Ethical Conduct**), similarly states that, among others, contractors must be made aware of the Code and the requirement for those persons to act in accordance with it for the period of their engagement.⁸¹⁴

756. Ms Johnson does not appear to have been aware of the 2015 DOJ Code and she proceeded on her own understanding of the correct approach to reporting. This represented another missed opportunity for Astill's offending to be detected. This was, perhaps, unsurprising, as the 2015 DOJ Code stated on the one hand that chaplains must act in line with the conduct described in the Code, but provided on the other hand that the Code applied where the contract or agreement refers to it, implying that it only applies as provided by the contract. It is unclear from the evidence that she was ever provided an induction at Dillwynia and informed of her responsibilities under the various codes and policy documents.
757. Ms Johnson gave evidence recommending that chaplains should be informed of the ways in which they can make a complaint about conduct occurring inside a correctional centre. Apart from the internal processes, her view was that this should include the possibility of reporting back to the employer by whom they are contracted, such as Anglicare, so that a report can be escalated externally, such as to the Independent Commission Against Corruption (ICAC).⁸¹⁵
758. **RECOMMENDATION: CSNSW should provide an induction to Chaplains (and any contractors) engaged by correctional centres to provide services to inmates. At this induction, they should be informed that they are to report misconduct consistently with the obligations imposed on Correctional Officers in cl. 253 of the Crimes (Administration of Sentences) Regulation 2014 (CAS Regulation) and the 2021 DCJ Code of Ethical Conduct to do so. This induction**

813 Ex. 3, TB 3, Vol. 9, Tab 147, CSNSW.0001.0034.0122_0021.

814 Ex. 3, TB 3, Vol. 13, Tab 421, CSNSW.0001.0001.0079_0005.

815 Transcript, 30 October 2023, 1306.1-17.

should also emphasise that the 2021 DCJ Code of Ethical Conduct does apply to contractors to eliminate any confusion about its applicability.

6.1.3 Inmate Delegate Committee

759. The Inmate Delegate Committee is a representative body within a correctional centre comprising inmate delegates, including an Aboriginal delegate, who meet with correctional centre management once a month to discuss programs, services and activities.⁸¹⁶ One Inmate Delegate from each accommodation unit is elected by their peers.⁸¹⁷ The Inmate Delegate is able to consult directly with CSNSW staff in relation to issues that inmates are facing or grievances the inmates may have.⁸¹⁸ The Inmate Delegate Committee at Dillwynia meets once a month with the Governor, MOS, Functional Managers, Justice Health representatives, Offender Services and Programs representatives (including the psychologist), CSNSW Industry (including Education), administration and the Chaplains.⁸¹⁹
760. Witness B is currently a delegate on the Inmate Delegate Committee at Dillwynia. Although the meetings of the Inmate Delegate Committee are intended to provide a space for inmates to raise issues for the Commissioner of CSNSW to consider, Witness B gave evidence that it was clear to her that the minutes that were provided to the Inmate Delegate Committee had been amended after the Governor had reviewed them, such that when passed onto the Commissioner of CSNSW they had effectively been ‘sterilised’.⁸²⁰
761. Nicola Chappell told the Special Commission that since she became Governor at Dillwynia there has been a renewed focus on the Inmate Delegate Committee meetings to allow inmates to provide input on issues affecting them and to assist in building trust between inmates and CSNSW staff.⁸²¹ Ms Chappell also said

816 Ex. 59, TB 5, Vol. 28, Tab 14, AST.002.013.0082_0008 [33]; Ex. 3, TB 1, Vol. 6, Tab 32A, AST.002.013.0004_0007 [31]; Ex. 3, TB 1, Vol. 6, Tab 23A, AST.002.013.0030_0011 [59].

817 Ex. 50, TB 5, Vol. 27, Tab 11, CSNSW.0001.0261.0001_0010 [17(c)].

818 Ex. 50, TB 5, Vol. 27, Tab 11, CSNSW.0001.0261.0001_0010 [17(c)]; Ex. 57, TB 2, Vol. 7, Tab 57A, AST.002.013.0031_0006 [29]; Ex. 3, TB 3, Vol. 13, Tab 429, CSNSW.0001.0091.0001_0011; Ex. 59, TB 5, Vol. 28, Tab 14, AST.002.013.0082_0008 [33].

819 Ex. 50, TB 5, Vol. 27, Tab 11, CSNSW.0001.0261.0001_0010 [17(c)]; Ex. 3, TB 1, Vol. 6, Tab 32A, AST.002.013.0004_0007 [31].

820 Ex. 3, TB 1, Vol. 6, Tab 23A, AST.002.013.0030_0011 [59].

821 Ex. 50, TB 5, Vol. 27, Tab 11, CSNSW.0001.0261.0001_0010 [17(c)].

that, at her direction, the Inmate Delegate Committee will be reminded of the timing of the Official Visitor's visit and its purpose (see below).⁸²²

762. The Inspector, in her 2023 report following her inspection of Dillwynia in 2022, indicated that inmate representatives reported that agendas and minutes of Inmate Delegate Committee meetings were not reliably made available. The Inspector stated that delegates on the Inmate Delegate Committee need to be able to have input to the meeting agenda, which should be finalised and circulated prior to the meeting. Similarly, minutes should be finalised promptly after the meetings and distributed to delegates.⁸²³

6.1.4 Corrective Services Support Line

763. Another option available to inmates to make a complaint was the Corrective Services Support Line (**CSSL**), which is a free support service available to inmates from Monday to Friday (excluding public holidays) between 9:00am and 3:30pm.⁸²⁴ Calls to the CSSL are not monitored or recorded,⁸²⁵ but it is not external to CSNSW. Its staff are CSNSW staff.
764. The CSSL is meant to be advertised via posters and cards either displayed near the Offender Telephone System (**OTS**) or provided to inmates.⁸²⁶ CSSL representatives also visit correctional centres to meet with staff and members of the Inmate Delegate Committee to provide information on the functions of the CSSL service.⁸²⁷
765. The 'Avenues for Inmate Inquiries and Complaints' Fact Sheet lists the CSSL as an avenue for complaints.⁸²⁸ The Fact Sheet provides that, except in an emergency, an inmate should try to resolve their issue locally before calling the

822 Ex. 50, TB 5, Vol. 27, Tab 11, CSNSW.0001.0261.0001_0024 [70(e)].

823 Ex. 60, Tab 24, AST.002.0013.0093_0088

824 Ex. 59, TB 5, Vol. 28, Tab 14, Annexure Tab 3, CSNSW.0001.0108.0007-0008; Ex. 59, TB 5, Vol. 28, Tab 14, AST.002.013.0082_0004 [18].

825 Ex. 59, TB 5, Vol. 28, Tab 14, AST.002.013.0082_0004 [21].

826 Ex. 47, TB 5, Vol. 21, Tab 1, Annexure 1D, Annexure Tab 17, CSNSW.0001.0027.1967; Ex. 47, TB 5, Vol. 21, Tab 1, Annexure 1D, Annexure Tab 21, CSNSW.0001.0034.0186; Ex. 47, TB 5, Vol. 21, Tab 1, Annexure 1D, Annexure Tab 22, CSNSW.0001.0034.0188.

827 Ex. 47, TB 5, Vol. 21, Tab 1, Annexure 1D, Annexure Tab 17, CSNSW.0001.0027.1967.

828 Ex. 59, TB 5, Vol. 28, Tab 14, AST.002.013.0082_0006 [24]-[27]; Ex. 59, TB 5, Vol. 28, Tab 14, Annexure Tab 3, CSNSW.0001.0108.0007-0008.

CSSL, stating that an inmate will be asked whether they have done this when they call the CSSL.⁸²⁹ The Director of Parliamentary and Executive Services, Corrective Services, Jeremy Tucker, oversees the CSSL Team.⁸³⁰ He told the Special Commission that:

*The CSSL [Corrective Services Support Line] was not intended to field confidential calls from inmates in relation to complaints or concerns about potential misconduct by CSNSW officers. However, it is feasible that such complaints or concerns could be raised by inmates via the CSSL.*⁸³¹

766. It is envisaged that inmates may directly contact the CSSL in exceptional circumstances where the complaint involves, among other things, threats or acts of violence or a security or safety issue.⁸³² In such circumstances, the CSSL is to notify the Governor and Functional Manager of the issue.⁸³³
767. The Fact Sheet provided that upon receipt of a complaint (other than in exceptional circumstances), the CSSL will either provide an immediate answer, where possible, or email the details to staff at a designated email address at the inmate's correctional centre for action.⁸³⁴ The Functional Manager is responsible for ensuring that all referrals sent to the correctional centre are actioned and that the CSSL is advised of the progress of a matter and its resolution.⁸³⁵ The CSSL can also refer matters to other areas, such as Justice Health.⁸³⁶ When a CSSL call is received from an inmate, the details of the call are recorded on the OIMS.⁸³⁷ The Fact Sheet provides that once a matter has been actioned, the inmate should be advised of the outcome by correctional centre staff, or may

829 Ex. 59, TB 5, Vol. 28, Tab 14, Annexure Tab 3, CSNSW.0001.0108.0007-0008; Ex. 47, TB 5, Vol. 21, Tab 1, Annexure 1D, Annexure Tab 17, CSNSW.0001.0027.1967; Ex. 59, TB 5, Vol. 28, Tab 14, AST.002.013.0082_0004 [19].

830 Ex. 59, TB 5, Vol. 28, Tab 14, AST.002.013.0082_0003 [16].

831 Ex. 59, TB 5, Vol. 28, Tab 14, AST.002.013.0082_0003 [16].

832 Ex. 47, TB 5, Vol. 21, Tab 1, Annexure 1D, Annexure Tab 17, CSNSW.0001.0027.1967.

833 Ex. 47, TB 5, Vol. 21, Tab 1, Annexure 1D, Annexure Tab 17, CSNSW.0001.0027.1968.

834 Ex. 59, TB 5, Vol. 28, Tab 14, Annexure Tab 3, CSNSW.0001.0108.0007.

835 Ex. 47, TB 5, Vol. 21, Tab 1, Annexure 1D, Annexure Tab 17, CSNSW.0001.0027.1968.

836 Ex. 59, TB 5, Vol. 28, Tab 14, Annexure Tab 3, CSNSW.0001.0108.0007.

837 Ex. 47, TB 5, Vol. 21, Tab 1, Annexure 1D, Annexure Tab 17, CSNSW.0001.0027.1969; Ex. 59, TB 5, Vol. 28, Tab 14, AST.002.013.0082_0004 [18].

call the CSSL to follow up if they have not heard anything.⁸³⁸ A CSSL report is not to be provided to an inmate, including the inmate making the request; an application under the *Government Information (Public Access) Act 2009* must be made for an inmate to receive a copy of the report.⁸³⁹

768. Inmates can only make a call to the CSSL on behalf of another inmate when that inmate is present when the call is made.⁸⁴⁰ If an inmate experiences any difficulties when using the CSSL, they are to tell either a member of the Inmate Development Committee or the Official Visitor, who will pass on the information to the CSSL Co-ordinator.⁸⁴¹
769. Ms Berry told the Special Commission that it was the Governor's responsibility to make sure that all CSSL complaints were dealt with in a timely manner. She was of the opinion that an inmate would not make a complaint about an officer via the CSSL because 'all officers can read all complaints on OIMS'.⁸⁴²
770. Although the CSSL was available for inmates, the Special Commission heard evidence from the Ombudsman that his staff is often told by inmates that they are unable to get through to the CSSL on the OTS.⁸⁴³ Witness B said that nine times out of 10 the complaint line (understood to be the CSSL phone line) was unmanned and no one answered.⁸⁴⁴ Witness O gave evidence that for the first three weeks after she arrived at Dillwynia, she did not make any calls at all because she did not know how.⁸⁴⁵
771. The 'Avenues for Inmate Inquiries and Complaints' Fact Sheet also lists the Official Visitor (discussed further below) and writing to the Minister for Corrections (**Minister**) or Commissioner of CSNSW as options available to inmates to make a complaint.

838 Ex. 59, TB 5, Vol. 28, Tab 14, Annexure Tab 3, CSNSW.0001.0108.0007.

839 Ex. 47, TB 5, Vol. 21, Tab 1, Annexure 1D, Tab 9, CSNSW.0001.0027.1968.

840 Ex. 59, TB 5, Vol. 28, Tab 14, Annexure Tab 3, CSNSW.0001.0108.0007.

841 Ex. 47, TB 5, Vol. 20, Tab 1, Annexure 1D, Tab 20, CSNSW.0001.0034.0205.

842 Ex. 18, TB 2, Vol. 7, Tab 49A, AST.002.013.0013_0014 [78].

843 See, for example, Ex. 59, TB 5, Vol. 28, Tab 15, AST.002.013.0079_0016 [51].

844 Ex. 3, TB 1, Vol. 6, Tab 23A, AST.002.013.0030_0011 [57].

845 Ex. 3, TB 1, Vol. 5, Tab 17A, AST.002.013.0028_0008 [41].

6.2 Mechanisms external to Corrective Services NSW

6.2.1 The Inspector of Custodial Services

6.2.1.1 The role of the Official Visitor

772. The role of Official Visitor was established in response to recommendations of the Royal Commission into NSW Prisons in 1978.⁸⁴⁶ Since February 2014, following the commencement of the *Inspector of Custodial Services Act 2012* and as a result of the recommendations of the 2009 inquiry into the privatisation of prisons and prison-related services, the Inspector has overseen the Official Visitor Program.⁸⁴⁷ The Official Visitor Program operates in accordance with s. 228 and sch 4 of the CAS Act and the CAS Regulation in respect of adult custodial centres.⁸⁴⁸
773. An Official Visitor is assigned to a specific correctional facility which they must visit at least once a month⁸⁴⁹ — in practice, this tends to be either weekly or fortnightly⁸⁵⁰ — for the purpose of speaking to inmates and staff and to examine the facility.⁸⁵¹
774. The Official Visitor is required to report to the Minister and Inspector at least once every six months to provide an independent view of, among other things, the types of issues that are of concern to inmates, as well as to report quarterly to the Commissioner of CSNSW on the number of complaints and inquiries received from inmates.⁸⁵² Copies of such reports should be provided to the Governor.⁸⁵³ Official Visitors are not authorised to conduct investigations or to carry out audits.⁸⁵⁴

846 Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0015 [82].

847 Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0004, 0015 [15], [82].

848 Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0015 [83].

849 CAS Act, s. 228(5)(a); Ex. 50, TB 5, Vol. 27, Tab 11, CSNSW.0001.0261.0001_0023 [66]; Ex. 45, Tab 10, AST.002.013.0060_0015 [85].

850 Transcript, 17 November 2023, 2653.33-45; Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0016 [87].

851 Ex. 58, TB 3, Vol. 18, Tab 630, CSNSW.0002.0024.3203_0833; Ex. 13, TB 2, Vol. 7, Tab 56A, AST.002.013.0032_0008 [52].

852 Ex. 58, TB 3, Vol. 18, Tab 630, CSNSW.0002.0024.3203_0834; Ex. 9, TB 2, Vol. 7, Tab 64A, AST.002.013.0017_0008, [45]; CAS Act, s. 228(5)(d).

853 Ex. 58, TB 3, Vol. 18, Tab 630, CSNSW.0002.0024.3203_0834.

854 Ex. 58, TB 3, Vol. 18, Tab 630, CSNSW.0002.0024.3203_0834.

6.2.1.2 Inmate complaints to the Official Visitor

775. Part of the function of the Official Visitor is to receive and deal with complaints from inmates.⁸⁵⁵ Posters with a photo of the relevant Official Visitor should be placed in each accommodation unit at a correctional centre.⁸⁵⁶ This is audited when the Inspector undertakes an inspection of a facility.⁸⁵⁷ An inmate can make a request to see the Official Visitor via the OIMS system or by registering in a handwritten book kept in each wing.⁸⁵⁸ The current Governor of Dillwynia, Ms Chappell, told the Special Commission that her practice is to give a direction for inmates to be advised as to when the Official Visitor will visit and, once the Official Visitor is in attendance at the gaol, she makes an announcement over the loudspeaker system.⁸⁵⁹ Ms Chappell also said that details about the Official Visitor are in the Women's Handbook and inmates should be informed of the service in their induction.⁸⁶⁰ When the Official Visitor attends the correctional centre, meetings with inmates are conducted in the wing where the relevant inmate is housed.⁸⁶¹
776. The 'Avenues for Inmate Inquiries and Complaints' Fact Sheet (referred to above) informs officers that inmates can make inquiries and complaints in person to the Official Visitor, if they are not satisfied by the action taken by CSNSW in the first instance. The Fact Sheet indicates that the Official Visitor is independent of CSNSW and discussions with the Official Visitor are confidential. It also indicates that the Official Visitor generally visits the centre fortnightly and inmates may request to register to see the Official Visitor.⁸⁶²
777. The Fact Sheet has been recently updated and is now aimed at providing information directly to inmates.⁸⁶³ The updated version states that an inmate can

855 Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0015-0016 [87]; Ex. 50, TB 5, Vol. 27, Tab 11, CSNSW.0001.0261.0001_0023 [66].

856 Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0020 [122]; Ex. 50, TB 5, Vol. 27, Tab 11, CSNSW.0001.0261.0001_0023 [70(a)].

857 Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0020 [122].

858 Ex. 9, TB 2, Vol. 7, Tab 64A, AST.002.013.0017_0008 [46]; Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0020 [126].

859 Ex. 50, TB 5, Vol. 27, Tab 11, CSNSW.0001.0261.0001_0024 [70(f)].

860 Ex. 50, TB 5, Vol. 27, Tab 11, CSNSW.0001.0261.0001_0024 [70(b)]-[70(c)].

861 Ex. 9, TB 2, Vol. 7, Tab 64A, AST.002.013.0017_0008 [46].

862 Ex. 59, TB 5, Vol. 28, Tab 14, Annexure Tab 3, CSNSW.0001.0108.0007-0008.

863 Ex. 59, TB 5, Vol. 28, Tab 14, AST.002.013.0082_0008 [34].

arrange to speak with the Official Visitor about a complaint, noting that they are external to CSNSW.⁸⁶⁴ However, the updated Fact Sheet does not outline who the inmate should contact to make such an arrangement and does not assure the inmates that the discussion can occur in a private setting if so requested.⁸⁶⁵ It also states that Official Visitors are usually able to manage most complaints locally and that in the event they cannot, they will raise it with the Inspector. The lack of specificity as to what types of complaints are managed locally, as opposed to referred to the Inspector, makes it difficult for inmates to feel assured that their complaint about staff misconduct will not just be referred to the Governor and dealt with internally.

778. CSNSW have indicated that they intend to undertake a comprehensive communication campaign across all correctional centres to ensure all inmates have written information on the complaints process.⁸⁶⁶ The 'Avenue for Inmate Inquiries and Complaints' Factsheet should be included in that campaign.
779. Clause 165 of the CAS Regulation specifies that the Governor must notify all inmates and correctional and departmental officers of the date and time when an Official Visitor will be present at the centre and available for interviews. It further provides that if the Governor is aware that an inmate considers a complaint or inquiry they have made to have not been dealt with satisfactorily by a correctional or departmental officers, the Governor must advise the inmate that they can request an Official Visitor to deal with the complaint or inquiry.⁸⁶⁷
780. The Inspector told the Special Commission that on an inmate's admission to a correctional centre, the Governor must ensure that the inmate is notified of their rights and obligations, including information about the role of the Official Visitor.⁸⁶⁸ However, the Inspector was of the view that this did not always occur, nor was information about the complaints process provided to inmates upon

864 Ex. 59, TB 5, Vol. 28, Tab 14, AST.002.013.0082_0008 [34]; Ex. 59, TB 5, Vol. 28, Tab 14, Annexure Tab 5, CSNSW.0001.0266.0001.

865 Ex. 59, TB 5, Vol. 28, Tab 14, Annexure Tab 5, CSNSW.0001.0266.0001.

866 Closing submissions of Corrective Services NSW, 20 December 2023, AST.002.013.0114_0076.

867 CAS Regulation, s. 165(1).

868 Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0020 [118]. See also CAS Regulation, cl. 5(f).

their introduction to the centre.⁸⁶⁹ In fact, the Inspector informed the Special Commission that in 2017 during one of her inspections, it was clear to her that there was no induction process of any kind occurring at Dillwynia, and that in 2022, it was 'still very weak'.⁸⁷⁰

781. The Inspector also told the Special Commission that if an inmate complaint or inquiry related to general concerns and conditions within the centre, it was important that an inmate was able to speak to the Official Visitor about this in public and without formality.⁸⁷¹ However, if an inmate wished to speak to the Official Visitor in a private space and wanted the nature of the complaint to be kept confidential, the Official Visitor could arrange this.⁸⁷²
782. Clause 166(3) of the CAS Regulation provides that in dealing with a complaint, the Official Visitor must not interfere with the management or discipline of a correctional centre, or give any instructions to, among others, any Correctional Officer, departmental officer or inmate.⁸⁷³ The Official Visitor's role in dealing with complaints or inquiries is limited by the CAS Regulation. Clause 166(2) provides that an Official Visitor must deal with a complaint or inquiry by:
- a) if of the opinion that the complaint or inquiry can be resolved quickly by bringing it to the attention of the general manager – informing the general manager of that fact and attempting to have it resolved at that level, or
 - b) advising:
 - (i) a correctional officer, departmental officer, medical officer or nursing officer, or
 - (ii) the inmate concerned, of any other action that the Official Visitor thinks could be taken in relation to the complaint or inquiry, or

869 Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0020 [119]-[121]. See also CAS Regulation, cl. 5(e).

870 Transcript, 17 November 2023, 2658.30-44.

871 Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0020 [128].

872 Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0021 [129].

873 CAS Regulation, cl. 166(3); Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0016 [92]-[93].

- c) with the consent of the officer or inmate concerned – referring the complaint or inquiry on behalf of the officer or inmate to a person the Official Visitor considers appropriate.⁸⁷⁴

783. If a complaint is serious, an Official Visitor is expected to refer the matter to the appropriate body through the Inspector.⁸⁷⁵

784. The Special Commission heard evidence that Official Visitors generally resolve inmate inquiries or complaints through discussion with staff, including the MOS or Functional Manager.⁸⁷⁶ Various officers who work or worked at Dillwynia said that at the end of the Official Visitor’s visit, they would discuss the matters that had been raised with them with the Governor and between them would work out what complaints could be dismissed or verified and actioned.⁸⁷⁷

785. The Special Commission heard from a number of inmates that they did not feel that they could talk to the Official Visitor because they feared retribution and reprisal and were of the understanding that anything they disclosed to the Official Visitor would be passed on to the Governor (Ms Martin), in whom they had no trust.⁸⁷⁸ The Special Commission did not hear evidence from inmates of the Official Visitor obtaining consent to escalate matters to a person, other than the Governor, that the Official Visitor considered appropriate.⁸⁷⁹ It seems that inmates during the period of Astill’s offending did not understand the Official Visitor to be a means by which they could confidentially report any matter to a person or body outside of Dillwynia. Ms Chappell gave evidence that, in more recent times, the Official Visitor at Dillwynia, Helen Duggan, seeks consent from the inmates as to where and how the information they have provided to her is shared.⁸⁸⁰

874 CAS Regulation, cl. 166(2); Transcript, 17 November 2023, 2647.31-2648.5.

875 Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0021,0022 [136], [143].

876 Ex. 58, TB 3, Vol. 18, Tab 630, CSNSW.0002.0024.3203_0833; Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0017 [97].

877 Ex. 57, TB 2, Vol. 7, Tab 57A, AST.002.013.0031_0005 [24]; Ex. 18, TB 2, Vol. 7, Tab 49A, AST.002.013.0013_0014 [77]; Ex. 57, TB 2, Vol. 7, Tab 50A, AST.002.013.0037_0003-0004 [21]; Transcript, 20 October 2023, 515.33-41.

878 Transcript, 20 October 2023, 515.33-41; Transcript, 24 October 2023, 644.18-44; Transcript, 24 October 2023, 693.28-38; Transcript, 27 October 2023, 1147.27-39; Transcript, 17 November 2023, 2655.39-2656.6.

879 CAS Regulation, cl. 166(2)(c).

880 Ex. 50, TB 5, Vol. 27, Tab 11, CSNSW.0001.0261.0001_0023 [69].

786. The Inspector told the Special Commission that complaints made by or about CSNSW staff must be resolved through CSNSW's internal procedures or through external bodies. They are likely to require investigation, placing them outside the scope of the Official Visitor's powers.⁸⁸¹ Further, these sorts of complaints have the potential to interfere with the discipline of a correctional centre, which, under cl. 166(3) of the CAS Regulation, prevents the Official Visitor from dealing with them (see above).⁸⁸² However, where it is not possible for a complaint to be resolved locally by the end of the quarterly reporting period, an Official Visitor can bring the complaint directly to the attention of the Commissioner of CSNSW.⁸⁸³
787. Even in the period since Ms Martin ceased to be Governor at Dillwynia, the Special Commission heard the Official Visitor has encountered difficulties communicating with Governors at Dillwynia. In the Official Visitor's half-yearly report to the Commissioner of CSNSW, the Minister and the Inspector for the period 1 July to 31 December 2021, the Official Visitor at that time, Michelle Cole, reported that she found it difficult to meet with the Governor or acting Governor during her visits to Dillwynia, which caused difficulties in establishing a professional working and trusting relationship.⁸⁸⁴ Ms Cole's experience was that she was 'fobbed off' by the Governor to other staff, some of whom had complaints lodged against them to the Official Visitor.⁸⁸⁵ Ms Cole found that often in the first instance the response to complaints that she would witness by gaol management was defensive, and if the complaint was about staff, the response would be dismissive and would seek to explain away or excuse the situation.⁸⁸⁶ Ms Cole was told by the Governor that raising the issues inmates had raised with her with the Governor was 'unnecessary double up'.⁸⁸⁷ Ms Cole witnessed resentment about this occurring and a lack of awareness that an

881 Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0016 [94].

882 Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0016 [94]; CAS Regulation, cl. 166(3).

883 Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0017 [99]; Transcript, 17 November 2023, 2653.21-31; Ex. 50, TB 5, Vol. 27, Tab 11, CSNSW.0001.0261.0001_0023 [69].

884 Ex. 45, AST.002.006.0070_0208; Ex. 45, AST.002.006.0070_0217.

885 Ex. 45, AST.002.006.0070_0217.

886 Ex. 45, AST.002.006.0070_0217.

887 Ex. 45, AST.002.006.0070_0217.

inmate's reason for raising a complaint in multiple forums was likely because they felt like they had not been heard.⁸⁸⁸

788. The Director of Custodial South Region, Saffron Cartwright, gave evidence that when the Official Visitor attended Dillwynia while she was Governor, she would ask them to meet with her before they left so that she could hear the context behind what might be written in the Official Visitor's report.⁸⁸⁹ She stated that she would also always ask the Official Visitor when they arrived at Dillwynia to come and see her so that she could make sure the centre was opened up for the Official Visitor.⁸⁹⁰ Ms Cartwright noted that sometimes she did not have the opportunity to meet with the Official Visitor in circumstances where she was not made aware of the visit or if she was working offsite, but that she welcomed what the Official Visitor had to say and appreciated the opportunity to be made aware of what was happening at Dillwynia.⁸⁹¹ Ms Cartwright's process was to forward the Official Visitor's report to the MOS so that they could manage the responses. Ms Cartwright would ask for a report back because she understood there was a tendency for staff to be defensive in their responses.⁸⁹² Similarly, Ms Cartwright did not include the names of any staff who were subject to complaints made by inmates to the Official Visitor in the report that was passed on to the MOS because she wished to 'protect the Official Visitor from any sort of potential reluctance for staff to assist when she came back'.⁸⁹³

6.2.1.3 Inmates' experience with the Official Visitor complaints process

789. Witness C's evidence was that the process with the Official Visitor felt very dismissive and the role was not very well respected among the inmates.⁸⁹⁴ She told the Special Commission that she knew the Official Visitor was someone

888 Ex. 45, AST.002.006.0070_0217.

889 Transcript, 20 November 2023, 2761.14-2762.16.

890 Transcript, 20 November 2023, 2761.41-45.

891 Transcript, 20 November 2023, 2761.44-2762.16.

892 Transcript, 20 November 2023, 2762.12-23.

893 Transcript, 20 November 2023, 2762.18-33.

894 Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0013 [53].

to whom she could make a confidential complaint, but her experience was that when she made such a complaint they never followed anything up or got back to her.⁸⁹⁵ Witness O gave similar evidence, stating that with the Official Visitor, it was ‘talk talk talk’ and the inmates would not hear anything further from them.⁸⁹⁶ Of concern is the evidence of Witness O, who stated that when an inmate met again with the Official Visitor, the Official Visitor would pretend that they did not know them.⁸⁹⁷

790. A number of other inmate witnesses gave evidence that they did not know anything about the Official Visitor or how to make a complaint via that means, or thought their complaint would not, or indeed was not, taken seriously.⁸⁹⁸ Further, for those who were aware of the Official Visitor’s role, their evidence was that no warning about when the Official Visitor was going to visit was given to them, to allow them to make an appointment or arrange their duties around a meeting with the Official Visitor.⁸⁹⁹

791. Witnesses N and C told the Special Commission that they did not feel that they could make a complaint about an officer to the Official Visitor because they would stand in the middle of the compound to speak with the inmate, in earshot of others, causing concerns about confidentiality.⁹⁰⁰ There was a belief among inmates that if they were to speak to the Official Visitor, the subject of their conversation would be passed on to Ms Martin, who they did not trust with their personal information; nor did they believe they would get any traction or help with their complaint from her.⁹⁰¹

792. Witness M told the Special Commission that on one occasion when she observed the Official Visitor walking around the compound at Dillwynia, Astill was walking

895 Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0013 [52]. See also Transcript, 23 October 2023, 603.1-14.

896 Transcript, 24 October 2023, 644.18-44; Ex. 3, TB 1, Vol. 5, Tab 17A, AST.002.013.0028_0008 [43].

897 Ex. 3, TB 1, Vol. 5, Tab 17A, AST.002.013.0028_0008 [43].

898 Ex. 3, TB 1, Vol. 6, Tab 22A, AST.002.013.0008_0008 [43]; Ex. 3, TB 1, Vol. 5, Tab 10A, AST.002.013.0006_0004 [20]; Ex. 3, TB 1, Vol. 6, Tab 21A, AST.002.013.0029_0004 [27].

899 Transcript, 17 October 2023, 254.22-255.17; Transcript, 19 October 2023, 356.46-357.9.

900 Ex. 3, TB 1, Vol. 6, Tab 32A, AST.002.013.0004_0006 [29]; Transcript, 19 October 2023, 357.2-29; Transcript, 19 October 2023, 398.16-399.20. See also Transcript, 17 October 2023, 254.42-255.6.

901 Ex. 3, TB 1, Vol. 5, Tab 14A, AST.002.013.0003_0006 [27]; Ex. 3, TB 1, Vol. 6, Tab 23A, AST.002.013.0030_0011 [58]; Ex. 3, TB 1, Vol. 6, Tab 46, AST.002.013.0009_0009 [56]; Transcript, 18 October 2023, 277.9-278.9.

around with her.⁹⁰² The effect of this was to scare away those inmates who wished to speak with the Official Visitor, especially those wishing to report Astill.

6.2.1.4 Changes relating to the Official Visitor

793. Ms Chappell told the Special Commission that on 16 November 2023 she spoke with the Official Visitor, Ms Duggan, who visits Dillwynia weekly.⁹⁰³ Among other things, Ms Chappell raised the idea of a permanent office space for the Official Visitor to use at Dillwynia, which would provide greater privacy for inmates in circumstances where, currently, Ms Duggan usually has to make use of an interview room in the accommodation areas.⁹⁰⁴ Ms Chappell's evidence was that Ms Duggan was agreeable to this change.⁹⁰⁵ In my view, this is a sensible course which would allow the Official Visitor to have private discussions with inmates where that is preferred⁹⁰⁶ and CSNSW should provide the necessary resources to facilitate this.
794. The Official Visitor did not, during the period of Astill's offending, provide a mechanism independent of CSNSW for inmates to complain about misconduct by officers. The limitations on the Official Visitor's role imposed by the CAS Regulation meant that inevitably any such complaint would need to be referred to CSNSW, and most likely that it would have been raised with the Governor. To the extent that inmates at Dillwynia were aware of the Official Visitor at all, they did not perceive the Official Visitor to be independent of the gaol's management. This compromised the Official Visitors' ability to perform their role and inhibited the making of complaints.
795. The role of the Official Visitor is an important one. An Official Visitor is one of a limited number of persons independent from CSNSW who have regular access to correctional centres and to inmates. It is important that the role functions as effectively as possible. I would encourage the Inspector to consult with the

902 Transcript, 17 October 2023, 254.22-34.

903 Ex. 50, TB 5, Vol. 27, Tab 11, CSNSW.0001.0261.0001_0023 [68].

904 Ex. 50, TB 5, Vol. 27, Tab 11, CSNSW.0001.0261.0001_0023 [68].

905 Ex. 50, TB 5, Vol. 27, Tab 11, CSNSW.0001.0261.0001_0023 [68].

906 Ex. 50, TB 5, Vol. 27, Tab 11, CSNSW.0001.0261.0001_0023 [68].

Minister in relation to potential reform of cl. 166 of the CAS Regulation with a view to improving the ability of the Official Visitor to resolve complaints.

6.2.1.5 The role of the Inspector of Custodial Services

796. Under s. 6 of the *Inspector of Custodial Services Act 2012*, the Inspector is required to inspect each adult custodial centre at least once every five years and report on each inspection to the NSW Parliament. The Inspector seeks to identify and make recommendations on systemic issues, through thematic and individual centre inspections.⁹⁰⁷ The Inspector's reports to the NSW Parliament must include her advice or recommendations as to the efficiency, economy and proper administration of custodial centres and custodial services.⁹⁰⁸
797. The statutory functions of the Inspector do not include the receipt or management of complaints.⁹⁰⁹ The role is focused on seeking to identify and make recommendations on systemic issues observed in custodial centres by way of routine inspections.⁹¹⁰ However, the Inspector receives complaints from inmates or CSNSW staff when an Official Visitor passes them on to her office,⁹¹¹ or directly from inmates by telephone or letter.⁹¹² The Inspector refers any complaints to other appropriate bodies.⁹¹³
798. When the Inspector becomes aware of a complaint by an inmate or CSNSW staff member, the Inspector will generally request that an Official Visitor make contact with the person making the complaint to find out further information or assist in its resolution. Where appropriate, the complaint will be referred to, among others, the ICAC, the Commissioner of CSNSW, the 'Professional Standards Unit' in CSNSW (this is understood to refer to PSB/PSI), or the Ombudsman.⁹¹⁴ The Inspector's evidence was that since 2016 she has made approximately 19

907 Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0007 [34]-[36]; *Inspector of Custodial Services Act (2012)*, s. 6.

908 Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0010 [64].

909 Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0005 [21].

910 Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0007 [36].

911 Ex. 45, TB 5, Vol. 27, Tab 11, CSNSW.0001.0261.0001_0023 [69].

912 Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0005 [24]; Transcript, 17 November 2023, 2664.1-14.

913 Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0005 [22]-[23].

914 Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0005-0006 [26].

referrals to Professional Standards and a number of referrals to the Use of Force Committee via the Commissioner of CSNSW.⁹¹⁵ The Inspector's evidence was that her office's ability to receive individual complaints and refer those complaints on to other bodies for investigation is limited by resources.⁹¹⁶

799. The Inspector told the Special Commission that the volume of complaints relating to Dillwynia has increased significantly in recent years. There were approximately 60 complaints each year in 2018–2020, 449 complaints in 2021 and 378 complaints in 2022.⁹¹⁷ In the Inspector's view, that was not only because of the impact of COVID-19 but also because prior to 2020, CSNSW rather than the Inspector was responsible for training the Official Visitors. At that time, her evidence was that inmates did not have the confidence in the Official Visitor system that they have had more recently.⁹¹⁸
800. Official Visitors are now trained to bring directly to the Inspector complaints that are not appropriate to raise with the Governor, instances where the Official Visitor is concerned that the Governor is not going to act on the issue, or cases where there is an allegation of sexual assault.⁹¹⁹ Since April 2016, only a small number of complaints have been made directly to the Inspector or have been escalated to the Inspector by an Official Visitor, five of which related to allegations of sexual assault of inmates by officers (all of which were brought to the Inspector's attention from 2019 onwards).⁹²⁰
801. The Inspector gave evidence that the activities of her office are constrained by the funding it receives.⁹²¹ The Inspector has sought further funding to complete outstanding inspection reports; undertake several thematic reviews regarding issues across correctional centres, including one with respect to the training of Correctional Officers; support the Official Visitor Coordinator employed by

915 Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0023 [151]; Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0001 [3].

916 Transcript, 17 November 2023, 2657.4-25.

917 Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0006 [31]; Transcript, 17 November 2023, 2648.7-12.

918 Transcript, 17 November 2023, 2648.14-34.

919 Transcript, 17 November 2023, 2652.23-2653.19.

920 Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0007 [32]-[33]; Transcript, 17 November 2023, 2648.36-2649.2.

921 Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0005 [19].

the Inspector; and fund the 2024 Official Visitor Conference.⁹²² The Inspector's evidence was that, ideally, high-risk centres, such as remand and reception centres, or centres that are performing poorly would be inspected more frequently than is currently occurring; however, there are insufficient resources to do so.⁹²³

6.2.1.6 Inspections of Dillwynia

802. As referred to above, the Inspector gave evidence that during her inspection of a number of correctional centres in 2017, which included Dillwynia, she was concerned that the induction or orientation process was 'less than ideal', particularly because women who were entering custody for the first time 'were frequently unaware of the routines and procedures of prison life'.⁹²⁴ At this time, the inspection discovered that there was no handbook being provided to inmates at Dillwynia, nor any other kind of induction process.⁹²⁵
803. While there had been improvements on the induction process by the time of the Inspector's inspection of Dillwynia in 2022, she told the Special Commission that at that time she still observed it to be 'weak'.⁹²⁶ Ms Chappell gave evidence that the Offender Services and Programs team at Dillwynia are currently reviewing the inmate induction process because inmates would benefit from a training session during their induction, exploring information in the Women's Handbook and the complaints process generally.⁹²⁷ At the time of giving this evidence, the Inspector's report of her 2022 inspection of Dillwynia had not yet been tabled in Parliament.⁹²⁸ The report has since been provided to the Special Commission but it does not discuss the induction process, or lack thereof, at Dillwynia.⁹²⁹
804. The Inspector's evidence is consistent with the evidence that the Special Commission heard from a number of inmate witnesses, who said that they did

922 Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0005, [20]; Transcript, 17 November 2023, 2646.6-2647.38.

923 Transcript, 17 November 2023, 2649.4-9.

924 Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0014 [72]-[74].

925 Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0014 [74]; Transcript, 17 November 2023, 2658.30-44.

926 Transcript, 17 November 2023, 2658.41-2659.10.

927 Ex. 50, TB 5, Vol. 27, Tab 11, CSNSW.0001.0261.0001_0025 [78].

928 Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0014 [76].

929 Ex. 60, TB 6, Tab 24, AST.002.013.0093_0001-0112.

not receive much, if any, information about how to make a complaint, in particular about an officer, when they arrived at Dillwynia.⁹³⁰

805. The Inspector was also concerned during the 2017 inspection by the culture of the prison, particularly its punitive nature.⁹³¹

806. The Inspector's suggestions for future improvements of complaint making mechanisms at Dillwynia are addressed below.

6.2.2 The Ombudsman

6.2.2.1 The role of the Ombudsman

807. The NSW Ombudsman is an independent statutory office established under the *Ombudsman Act 1974 (Ombudsman Act)*.⁹³² A core function of the Ombudsman is to receive and handle complaints about the conduct of public authorities and individual officials such as the Commissioner of CSNSW and staff of CSNSW.⁹³³ In relation to custodial services and community corrections, the agencies about which the Ombudsman receives complaints are, in addition to CSNSW, the Justice Health and Forensic Health Network, Youth Justice NSW and private prison providers.⁹³⁴ Both inmates and staff of CSNSW are able to make complaints to the Ombudsman.⁹³⁵ The complainthandling functions of the Ombudsman with respect to custodial services are primarily undertaken by staff in the Detention and Custody Unit, which is within the Complaints and Resolution Branch.⁹³⁶

808. The Ombudsman can only deal with complaints about conduct 'relating to a matter of administration'.⁹³⁷ The Ombudsman considers that sexual harassment

930 Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0002 [8]; Ex. 3, TB 1, Vol. 5, Tab 14A, AST.002.013.0003_0006 [26]; Ex. 3, TB 1, Vol. 5, Tab 11A, AST.002.013.0002_0008-0009 [31]; Ex. 3, TB 1, Vol. 6, Tab 32A, AST.002.013.0004_0006 [28]; Ex. 3, TB 1, Vol. 6, Tab 46, AST.002.013.0009_0009 [56].

931 Transcript, 17 November 2023, 2654.39-2655.3.

932 Ex. 59, TB 5, Vol. 28, Tab 15, AST.002.013.0079_0001 [4].

933 Ex. 59, TB 5, Vol. 28, Tab 15, AST.002.013.0079_0002 [7].

934 Ex. 59, TB 5, Vol. 28, Tab 15, AST.002.013.0079_0002-0003 [11]. The private prison providers include GEO, Serco Australia, MTC and St Vincent's Health.

935 Ex. 59, TB 5, Vol. 28, Tab 15, AST.002.013.0079_0006 [30].

936 Ex. 59, TB 5, Vol. 28, Tab 15, AST.002.013.0079_0003 [16].

937 Ex. 59, TB 5, Vol. 28, Tab 15, AST.002.013.0079_0002 [8].

or sexual assault of an inmate by a Correctional Officer would relate to a matter of administration and is something about which a complaint could be made under the Ombudsman Act.⁹³⁸ Further, the Ombudsman is able to deal with a complaint about the handling by CSNSW of alleged sexual harassment or assault.⁹³⁹

809. The Ombudsman's evidence was that if his staff were to receive a complaint from an inmate disclosing sexual assault by a Correctional Officer, they would first determine whether the matter had been referred to the NSWPF for investigation.⁹⁴⁰ His evidence was that where conduct may constitute both criminal conduct and maladministration (such as the criminal assault of an inmate by a Correctional Officer), it would generally be appropriate for the matter to be investigated by the NSWPF and dealt with as a criminal matter rather than, or at least as a priority over, any administrative investigation. In practice, the Ombudsman's staff will provide the inmate with information about how to make a report to police, and if they do not wish to do so via staff at the correctional centre where they are housed, the Ombudsman's staff are able to contact an alternative at CSNSW to facilitate the report being made.⁹⁴¹ The Ombudsman suggested it may also be appropriate for a referral to be made to another agency, such as the ICAC, if the complaint is about corrupt conduct.⁹⁴²

6.2.2.2 Making a complaint to the Ombudsman

810. CSNSW has a statutory responsibility, pursuant to s.12(3)(a) of the Ombudsman Act, to take all steps necessary to facilitate the making of a complaint by an inmate to the Ombudsman. An inmate should be provided with information regarding access to the Ombudsman and the process for resolving a complaint via that avenue.⁹⁴³ Inmates are meant to be informed about the ability to contact the Ombudsman by way of posters displayed in the gaol and, as the Special Commission heard, less reliably by way of a facility-wide message sent to all inmates about when

938 Ex. 59, TB 5, Vol. 28, Tab 15, AST.002.013.0079_0002 [8].

939 Ex. 59, TB 5, Vol. 28, Tab 15, AST.002.013.0079_0002 [8].

940 Ex. 59, TB 5, Vol. 28, Tab 15, AST.002.013.0079_0002 [9].

941 Ex. 59, TB 5, Vol. 28, Tab 15, AST.002.013.0079_0013 [41].

942 Ex. 59, TB 5, Vol. 28, Tab 15, AST.002.013.0079_0002 [9].

943 Ex. 58, TB 3, Vol. 18, Tab 629, CSNSW.0002.0024.3203_0733; Ex. 58, TB 3, Vol. 18, Tab 630, CSNSW.0002.0024.3203_0835.

the Ombudsman would visit the centre; in the Women's Handbook (in hard copy, although the Special Commission heard evidence that hard copies of this Handbook were scarce,⁹⁴⁴ and now on inmate tablets); and during their induction.⁹⁴⁵ The 'Avenues for Inmate Inquiries and Complaints' Fact Sheet informed officers that inmates can make inquiries and complaints to the Ombudsman if they are not satisfied by the action taken by CSNSW in the first instance.⁹⁴⁶

811. The Fact Sheet has been recently updated and is now aimed at providing information directly to inmates.⁹⁴⁷ The updated version, issued November 2023, lists the Ombudsman as a free, impartial service which an inmate can call to discuss a complaint.⁹⁴⁸
812. An inmate can make a complaint to the Ombudsman in writing, by telephone (although in practice this is difficult at Dillwynia given the Ombudsman's telephone service closes for the day at 4:00pm, as discussed below) or in person when the Ombudsman's staff visit a correctional centre.⁹⁴⁹ An inmate can make a complaint to the Ombudsman regardless of whether the inmate has first attempted to resolve their complaint within the correctional centre.⁹⁵⁰ The Ombudsman can also receive an inmate's complaint by referral from another body, such as the Inspector, the Official Visitor or the Health Care Complaints Commission.⁹⁵¹ The Governor or a delegate must ensure that all inmates that have requested to see the Ombudsman's staff are readily available.⁹⁵²
813. Communications between an inmate and the Ombudsman should not be monitored or read by staff.⁹⁵³ This includes mail addressed to the Ombudsman

944 Transcript, 17 October 2023, 233.38-234.10; Transcript, 18 October 2023, 306.29-307.4.

945 Ex. 50, TB 5, Vol. 27, Tab 11, CSNSW.0001.0261.0001_0024-0025 [75].

946 Ex. 59, TB 5, Vol. 28, Tab 14, Annexure Tab 3, CSNSW.0001.0108.0007.

947 Ex. 59, TB 5, Vol. 28, Tab 14, AST.002.013.0082_0008 [34].

948 Ex. 59, TB 5, Vol. 28, Tab 14, Annexure Tab 5, CSNSW.0001.0266.0002.

949 Ex. 59, TB 5, Vol. 28, Tab 15, AST.002.013.0079_0004-0005, [22]-[24], [28].

950 Ex. 58, TB 3, Vol. 18, Tab 629, CSNSW.0002.0024.3203_0733.

951 Ex. 59, TB 5, Vol. 28, Tab 15, AST.002.013.0079_0006 [29].

952 Ex. 58, TB 3, Vol. 18, Tab 630, CSNSW.0002.0024.3203_0835-0836.

953 Ex. 58, TB 3, Vol. 18, Tab 630, CSNSW.0002.0024.3203_0835.

from an inmate or from the Ombudsman to an inmate, which is not meant to be opened, inspected or read.⁹⁵⁴

814. The Ombudsman's staff will inform the correctional centre in advance of a planned visit to enable staff to have time to display posters informing inmates as to when and how to speak to the Ombudsman.⁹⁵⁵ The Ombudsman's evidence was that inmates can either inform Correctional Officers in advance of the visit that they wish to speak to the Ombudsman's staff or approach the Ombudsman's staff without notice as they move throughout the centre. His evidence was that usually an announcement is made over a loudspeaker that they are available if inmates would like to speak to them. Depending on the layout of the centre and the number of people who want to speak to the Ombudsman's staff, discussions can occur in yards, units, worksites, holding rooms or interview rooms.⁹⁵⁶ Correctional officers are usually in line-of-sight but out of hearing. During the Ombudsman's visit to a centre, the Ombudsman's staff will often try to speak to members of the Inmate Delegate Committee as they have a good understanding of the types of issues at the centre and whether they are being resolved efficiently.⁹⁵⁷
815. The evidence of the Ombudsman was that when inmates make complaints to the Ombudsman's office, usually their name and Master Index Number will be recorded.⁹⁵⁸ If the Ombudsman's staff decide to contact an agency to make preliminary inquiries, they would usually, with the consent of the inmate, inform the agency of the name of the individual who had complained. His evidence was that an inmate is able to remain anonymous; however, in some instances this impacts his staff's ability to handle or resolve the issues, and these implications will be discussed with the person making the complaint.
816. Senior Correctional Officer Jacquelyn Brown told the Special Commission that although other reporting options such as putting in an Inmate Application or an Inmate Request were available, the Ombudsman 'was probably the safest way for them

954 Ex. 58, TB 3, Vol. 18, Tab 629, CSNSW.0002.0024.3203_0733.

955 Ex. 59, TB 5, Vol. 28, Tab 15, AST.002.013.0079_0005 [25].

956 Ex. 59, TB 5, Vol. 28, Tab 15, AST.002.013.0079_0005 [27].

957 Ex. 59, TB 5, Vol. 28, Tab 15, AST.002.013.0079_0005 [26].

958 Ex. 59, TB 5, Vol. 28, Tab 15, AST.002.013.0079_0004 [21].

[inmates] to report something'.⁹⁵⁹ This was 'because [otherwise] if it was in relation to Astill at the time, the inmate wouldn't know if their complaint would get back to Astill, or a report fall into his hands as he worked in the intel role on occasion'.⁹⁶⁰

817. However, Witness N told the Special Commission that she would never call the Ombudsman because of the threats Astill was making toward her if she said anything about him and because he would listen to the inmates' calls.⁹⁶¹ Sarah Ward's evidence was similar.⁹⁶²

818. Witness C gave evidence that if an inmate wished to speak to the Ombudsman, which she did on occasion, inmates had to indicate that fact to staff, and that when the Ombudsman visited, inmates were paraded in front of everyone on the way to or from the appointment.⁹⁶³ In Witness C's experience, when she did speak with the Ombudsman it was clear that the Ombudsman had already been briefed by Governor Martin and was not independent.⁹⁶⁴ Witness C said:

For example, I told the Ombudsman that the inmates would like more employment opportunities. I was cut off and told 'You have already been told by management that there will be more employment roles in 6 weeks' time'.⁹⁶⁵

819. Witness B also gave evidence that reports made to the Ombudsman would go to the Governor and make their way back into the facility.⁹⁶⁶ Inmate Trudy Sheiles said that she felt that if she spoke to the Ombudsman the information would be conveyed to the staff at Dillwynia, as it was not made clear to inmates that the Ombudsman was independent of CSNSW.⁹⁶⁷

959 Ex. 57, TB 2, Vol. 8, Tab 79, AST.002.013.0038_0009 [64].

960 Ex. 57, TB 2, Vol. 8, Tab 79, AST.002.013.0038_0009 [64].

961 Ex. 3, TB 1, Vol. 6, Tab 32A, AST.002.013.0004_0006-0007 [30].

962 Transcript, 18 October 2023, 278.11-279.2, 308.4-33.

963 Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0013-0014 [54].

964 Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0013-0014 [54].

965 Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0013-0014 [54].

966 Ex. 3, TB 1, Vol. 6, Tab 23A, AST.002.013.0030_0011 [58].

967 Ex. 3, TB 1, Vol. 5, Tab 6A, AST.002.013.0005_0011 [70].

820. Witness O gave evidence that she was aware of the role of the Ombudsman and that the phone number was on the call list next to the inmate telephone; however, she stated that although inmates are told that a call to the Ombudsman is confidential, inmates did not believe this and nothing in gaol was considered to be confidential.⁹⁶⁸
821. Witness W said that she knew inmates who had contacted the Ombudsman, but that the substance of their reports was not kept confidential and they were reprimanded by officers for raising the issues they had discussed with the Ombudsman.⁹⁶⁹
822. Ms Cox gave evidence that she contacted the Ombudsman about a complaint she could not recall the substance of, waited three weeks to be sent a complaint form and, once she submitted it, never heard anything further about her complaint.⁹⁷⁰ On another occasion, sometime in 2023, when Ms Cox and two other inmates called the Ombudsman to report an aggressive officer, they were told that the complaint was an 'internal issue' and to call the CSSL.⁹⁷¹ The inmates did not feel comfortable doing this because they believed that the CSSL was internal to CSNSW and did not feel that it was a confidential or independent option.⁹⁷²
823. Other inmates were unaware of the existence of the Ombudsman or their ability to make a complaint to the Ombudsman regarding the conduct of an officer.⁹⁷³
824. Ms Chappell told the Special Commission that inmates are able to contact the Ombudsman through a correctional centre phone or via the in-cell tablets.⁹⁷⁴ Her evidence was that the in-cell tablets provide inmates with the ability to discreetly call the Ombudsman.⁹⁷⁵

968 Ex. 3, TB 1, Vol. 5, Tab 17A, AST.002.013.0028_0008 [42].

969 Ex. 3, TB 1, Vol. 6, Tab 22A, AST.002.013.0008_0008 [44].

970 Ex. 3, TB 1, Vol. 6, Tab 46, AST.002.013.0009_0009 [57].

971 Ex. 3, TB 1, Vol. 6, Tab 46, AST.002.013.0009_0010 [58].

972 Ex. 3, TB 1, Vol. 6, Tab 46, AST.002.013.0009_0010 [58].

973 See eg the evidence of Witness W: Transcript, 18 October 2023, 322.40-323.40 and the evidence of Witness P: Transcript, 23 October 2023, 569.42-44.

974 Ex. 50, TB 5, Vol. 27, Tab 11, CSNSW.0001.0261.0001_0024 [74].

975 See also the evidence of Assistant Commissioner John Buckley: Transcript, 29 September 2023, 125.34-39.

825. The Inspector gave evidence that in circumstances where inmates are often only provided the in-cell tablet after they are locked in their cells, usually at around 3:00pm, they can face difficulties in contacting the Ombudsman, whose telephone contact services finish at 4:00pm, particularly if there are issues at muster or delays with lock-in.⁹⁷⁶

6.2.2.3 Handling of complaints by the Ombudsman

826. The Ombudsman gave evidence regarding his complaint-handling process. In the event of a person making a complaint to the Ombudsman regarding conduct that had not yet been raised directly with the agency involved, the Ombudsman can provide advice about how best to do so and, in some cases, with the person's consent, can directly refer the complaint to the agency.⁹⁷⁷ Where a complaint cannot be resolved directly with the agency, in some cases the Ombudsman will take further steps to assist in seeking a resolution. This may be done by contacting the agency to seek further information or undertaking informal or formal conciliation, including through the use of a professional internal or external mediator. The Ombudsman is empowered to conduct conciliation under s. 13A of the Ombudsman Act but does not do so frequently, primarily due to inadequate resources.⁹⁷⁸

827. After receiving a complaint, the Ombudsman may also make preliminary inquiries in accordance with s. 13AA of the Ombudsman Act for the purpose of determining whether to make particular conduct of a public authority the subject of an investigation. In practice, the Ombudsman explained that preliminary inquiries frequently result in a resolution of the complaint without proceeding to investigation—for example, because the agency is prompted by those inquiries to take appropriate action in response to the complaint, or because the agency provides an explanation for its action or inaction that indicates that an investigation is not warranted.⁹⁷⁹

976 Transcript, 17 November 2023, 2662.1-20.

977 Ex. 59, TB 5, Vol. 28, Tab 15, AST.002.013.0079_0010 [37].

978 Ex. 59, TB 5, Vol. 28, Tab 15, AST.002.013.0079_0012 [37]. For example, only one conciliation was conducted in 2022-23 and it was successful.

979 Ex. 59, TB 5, Vol. 28, Tab 15, AST.002.013.0079_0010 [37].

828. Pursuant to s. 12A of the Ombudsman Act, the Ombudsman is empowered to formally refer a complaint about a public authority to that public authority for it to investigate and report back to the Ombudsman. In so doing, the Ombudsman may make recommendations as to how the public authority investigates or otherwise deals with the complaint.⁹⁸⁰ The Ombudsman gave evidence that after the agency has completed an investigation referred to him, the Ombudsman's staff will advise whether they are satisfied or unsatisfied with the outcome.⁹⁸¹ If the Ombudsman's staff are satisfied, they will monitor any undertakings made.⁹⁸² If they are not satisfied, they can ask for more information or action to be taken, or can themselves decide to take action, such as intervening in the investigation at any point.⁹⁸³ Acting Director of PSI, Angela Zekanovic, gave evidence that most of the reports of misconduct received by PSI from inmates are received via the Ombudsman.⁹⁸⁴
829. Where a complaint received by the Ombudsman appears to relate to conduct under s. 26 of the Ombudsman Act, including conduct that is contrary to law, unreasonable, unjust, oppressive or improperly discriminatory, or based wholly or partly on improper motives (among other things), the Ombudsman is empowered to commence a formal investigation.⁹⁸⁵ The Ombudsman's evidence was that very few of the complaints received result in a formal investigation, and that generally such an investigation will only be commenced where the suspected conduct is very serious or involves a systemic injustice and where the investigation would not duplicate an appropriate alternative avenue for investigation or redress (such as a criminal investigation).⁹⁸⁶
830. The Ombudsman also gave evidence that in accordance with s. 25A of the Ombudsman Act (which commenced in August 2022), the Ombudsman may review

980 Ombudsman Act, s. 12A(3).

981 Ex. 59, TB 5, Vol. 28, Tab 15, AST.002.013.0079_0011 [37].

982 Ex. 59, TB 5, Vol. 28, Tab 15, AST.002.013.0079_0011 [37].

983 Ex. 59, TB 5, Vol. 28, Tab 15, AST.002.013.0079_0011 [37].

984 Transcript, 28 September 2023, 73.31-38, 75.34-39.

985 Ombudsman Act, s. 13(1).

986 Ex. 59, TB 5, Vol. 28, Tab 15, AST.002.013.0079_0012-0013 [37].

the systems of a public authority for handling complaints and, in so doing, may require the head of the authority to provide information about those systems.⁹⁸⁷

831. The Deputy Ombudsman and the Ombudsman's staff attend monthly liaison meetings with executive staff at CSNSW to discuss current issues and recent complaints and to seek further information regarding particular operational or structural changes.⁹⁸⁸ Meetings are also held with the Governor or MOS during each visit to a centre and as required by individual complaints or issues.⁹⁸⁹

832. While the Ombudsman did have statutory power to conduct an investigation into Astill's misconduct, on the Ombudsman's own evidence it is very unlikely that such an investigation would have occurred even had complaints about Astill been brought to the Ombudsman's attention. Such an investigation would likely have been regarded as duplicating other alternative appropriate avenues for investigation. In any event, inmates did not perceive the Ombudsman to be an independent or effective means of resolving complaints. This inhibited the making of complaints.

6.3 Factors inhibiting inmates from making complaints

6.3.1 Overview of factors

833. The inmate witnesses and the Inspector gave evidence as to the factors that they believe inhibited inmates from making complaints.⁹⁹⁰ Various legal centres also made submissions on these factors. This section will explore the following factors in turn and outline some recommendations to address the factors:

- a) challenges faced by women in custody;
- b) reluctance to report to the Governor or Dillwynia management;

987 Ex. 59, TB 5, Vol. 28, Tab 15, AST.002.013.0079_0013 [37].

988 Ex. 59, TB 5, Vol. 28, Tab 15, AST.002.013.0079_0014 [44].

989 Ex. 59, TB 5, Vol. 28, Tab 15, AST.002.013.0079_0014 [44].

990 See the Inspector's evidence: Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0024 [162].

- c) fear of retribution;
- d) lack of privacy and confidentiality; and
- e) a lack of knowledge of and access to complaint mechanisms.

6.3.2 General challenges faced by women in custody

834. Women’s Legal Service NSW (**Women’s Legal Service**), Wirringa Baiya Aboriginal Women’s Legal Centre (**Wirringa Baiya**) and the Community Restorative Centre each provided submissions that identified the vulnerabilities of, and challenges faced by, women (including, specifically, Aboriginal and Torres Strait Islander women) housed in correctional centres that inhibit them from making complaints.
835. The Community Restorative Centre submitted that women in custody experience high levels of homelessness and housing instability and disabilities and cognitive impairments, and, in comparison to women in Australia generally, have lower levels of education, a higher rate of mental health conditions, and are more likely to have experienced abuse and violence throughout their lives.⁹⁹¹ Wirringa Baiya submitted that for First Nations women, who make up 38.8 per cent of women in custody in New South Wales,⁹⁹² these factors are compounded by the institutional and intergenerational trauma stemming from colonisation and coercive government policies.⁹⁹³ As a result, some women in custody choose not to report as they do not trust authorities, believe that their abuse is normal and inevitable, fear retribution, or simply because they do not understand what complaint mechanisms are available or how to utilise them.⁹⁹⁴
836. Women’s Legal Service told the Commission that some women have stated that they will not make a formal report about sexual violence perpetrated against them while incarcerated because they do not believe they are afforded sufficient privacy to report safely and they worry about other inmates or Correctional

991 Ex. 60, TB 6, Tab 25, AST.002.013.0095_0005-0006.

992 Ex. 59, TB 5, Vol. 28, Tab 17, AST.002.013.0077_0005 citing NSW Bureau of Crime Statistics and Research, ‘Aboriginal over-representation in the NSW Criminal Justice System quarterly update June 2023’ (Statistical Report, September 2023) <https://www.bocsar.nsw.gov.au/Pages/bocsar_publication/Pub_Summary/AOR/CJS-Aboriginal-over-representation-quarterly-Jun-2023.aspx>.

993 Ex. 59, TB 5, Vol. 28, Tab 16, AST.002.013.0078_0006 [37].

994 Ex. 60, TB 6, Tab 25, AST.002.013.0095_0006-0007.

Officers hearing them.⁹⁹⁵ Some women have also told the service that they would prefer reporting to a woman in a face-to-face setting, and that they have been warned by Correctional Officers that they may be ‘locked up longer’ if it is determined that they made a false report of sexual assault by an officer.⁹⁹⁶

6.3.3 Reluctance to report to the Governor or Dillwynia management

837. Witness N told the Special Commission that Astill told her that he socialised with Ms Martin and MOS Leanne O’Toole, and they would ‘do as they’re fucking told’.⁹⁹⁷ Ms Ward similarly said that it was not viable to make a complaint about Astill to those in management at Dillwynia, including Ms O’Toole or Ms Martin, as it was clear that they were very close with Astill.⁹⁹⁸ Witness V felt that other Correctional Officers were scared of reporting Astill as he was friends with Ms Martin.⁹⁹⁹
838. Ms Sheiles gave evidence that inmates were told they could write a request to ask the Governor for something, but that ‘Shari Martin was the last person you would talk to at Dillwynia’.¹⁰⁰⁰ Ms Sheiles said that Ms Martin was particularly unhelpful to the inmates living in the Special Management Area Placement (**SMAP**) unit because, in her experience, management at the gaol turned a blind eye to those inmates because of the crimes the SMAP inmates had committed.¹⁰⁰¹ Ms Sheiles gave evidence that on one occasion, when two SMAP inmates had engaged in a fight, she heard a Senior Correctional Officer say that one of the inmates ‘could have done a better job’ on the other inmate, who was a convicted paedophile.¹⁰⁰²

995 Ex. 59, TB 5, Vol. 28, Tab 16, AST.002.013.0078_0004 [17]-[18].

996 Ex. 59, TB 5, Vol. 28, Tab 16, AST.002.013.0078_0004 [19]-[21].

997 Ex. 3, TB 1, Vol. 6, Tab 32A, AST.002.013.0004_0004 [18].

998 Transcript, 18 October 2023, 279.22-44, 289.23-290.9.

999 Ex. 3, TB 1, Vol. 5, Tab 11A, AST.002.013.0002_0006 [23].

1000 Ex. 3, TB 1, Vol. 5, Tab 6A, AST.002.013.0005_0010 [68].

1001 Ex. 3, TB 1, Vol. 5, Tab 6A, AST.002.013.0005_0010 [68].

1002 Ex. 3, TB 1, Vol. 5, Tab 6A, AST.002.013.0005_0010 [69].

6.3.4 Fear of retribution from other inmates

839. Numerous inmates also gave evidence about fear of retribution from other inmates if they came forward with a complaint.
840. For example, Ms Sheiles' evidence was that she was physically assaulted at Berrima Correctional Centre by a person who was aware she had reported Astill's conduct.¹⁰⁰³ The assailant said that Ms Sheiles' had 'sucked Astill's dick' when punching her in the face.¹⁰⁰⁴
841. Witness W recalled an occasion where she informed Officer Wilson that Witness N was selling her monthly medication for buy-up items from other inmates.¹⁰⁰⁵ Shortly after this, Witness N said to a group of inmates that she knew someone in their house had reported her and 'I will find out who it is because you don't realise how much power I have.'¹⁰⁰⁶ Witness N later told Witness W that she knew she reported her. Witness W later heard that Witness N had been saying that whoever bashed Witness W would get buy-ups.¹⁰⁰⁷
842. Witness V gave evidence that she lived in fear every day that she would get bashed and that inmates never went anywhere alone because they feared a great deal for their safety.¹⁰⁰⁸ Witness V said that Chief Correctional Officers would not provide help to inmates when they needed it. Inmates did not feel supported to come forward to any Correctional Officer with a complaint.¹⁰⁰⁹
843. To reduce inmates' fear of reprisal in making a complaint, the Inspector recommended that:¹⁰¹⁰

1003 Transcript, 17 October 2023, 213.18-214.2; Ex. 3, TB 1, Vol. 5, Tab 6A, AST.002.013.0005_0011-0012 [77].

1004 Transcript, 17 October 2023, 213.18-214.2; Ex. 3, TB 1, Vol. 5, Tab 6A, AST.002.013.0005_0011-0012 [77].

1005 Ex. 3, TB 1, Vol. 6, Tab 22A, AST.002.013.0008_0007 [38]. The 'buy-up' process allows inmates to buy certain items available for purchase inside correctional centres.

1006 Ex. 3, TB 1, Vol. 6, Tab 22A, AST.002.013.0008_0007 [39].

1007 Ex. 3, TB 1, Vol. 6, Tab 22A, AST.002.013.0008_0007-0008 [39]-[40].

1008 Ex. 3, TB 1, Vol. 5, Tab 11A, AST.002.013.0002_0007 [27].

1009 Ex. 3, TB 1, Vol. 5, Tab 11A, AST.002.013.0002_0007 [27].

1010 Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0028 [187]. See also Transcript, 17 November 2023, 2663.41-2664.10.

- a) as part of the information provided to inmates during the reception and induction process, inmates be informed about the processes available to them to make complaints. The processes drawn to the inmates' attention should include the ability to make complaints to external bodies not controlled by CSNSW; the ability to make complaints on a confidential basis; and the ability to raise any concerns in relation to reprisals with external bodies following the making of a complaint.
- b) specific training be provided to CSNSW staff concerning the importance of communicating effectively with an inmate when they are making a complaint and avoiding any conduct by way of reprisal in respect of a complaint, informing staff that reprisal action is an offence under s. 20 of the *Inspector of Custodial Services Act*.
- c) strong action be taken against staff who take reprisal action against inmates and other staff.

844. I accept the Inspector's evidence and, where relevant, have incorporated her views into recommendations I make.

845. The Community Restorative Centre suggested that people who make complaints and reports of abuse should be provided 'non-punitive' protections.¹⁰¹¹ Wurringa Baiya outlined an incident where a woman in custody was being threatened by the man who had been convicted of domestic violence offences against her, who was being housed on the men's side of Bathurst Correctional Centre.¹⁰¹² When she reported it to the officers, she was given the option of going into segregation for her 'protection'. I agree that people who make complaints should not be left in a worse position than they were before making the complaint. However, I have not received any evidence which enables me to formulate a recommendation as to what this 'non-punitive' protection should be.

1011 Ex. 60, TB 6, Tab 25, AST.002.013.0095_0008.

1012 Ex. 59, TB 5, Vol. 28, Tab 17, AST.002.013.0077_0007.

6.3.5 Lack of privacy and confidentiality

846. The inmates' fear of retribution is at least partly linked to the issue of perceived lack of privacy and confidentiality, as inmates believe that other inmates or Correctional Officers will find out that they have made a complaint or report of wrongdoing. Wiringa Baiya stated that, at times, their clients are put in a position where they are asked to take their calls in spaces where other women or Correctional Officers are present.¹⁰¹³ Wiringa Baiya recommends that a system be put in place to ensure that all legal phone calls take place in a private area where an inmate cannot be overheard.¹⁰¹⁴
847. In my view, this should equally apply to calls made to the organisations in the Common Auto Dial List (**CADL**), such as the Ombudsman and various legal services, so that inmates are not discouraged from reporting staff misconduct. Ms Sheiles, in her oral evidence, indicated that 'as far as [the inmates] were concerned inside, every phone call was monitored' and 'you are stressed because you think maybe they're recording it, maybe they're listening in'.¹⁰¹⁵ Given there is already concern among inmates regarding the monitoring of telephone calls, they are less likely to make a report if CADL calls cannot be made from a place where they cannot be overheard.
848. On this matter, the Inspector recommended:¹⁰¹⁶
- a) an assessment of audio-visual link (**AVL**) suites be considered to ensure that noise from those suites cannot be heard in adjoining rooms or corridors;
 - b) specific training be provided to staff in relation to which communications are privileged and confidential so that they should not be intercepted or otherwise read or listened to by staff; and
 - c) inmates be provided with phone access during out-of-cell hours to enable private and confidential phone calls.

1013 Ex. 59, TB 5, Vol. 28, Tab 17, AST.002.013.0077_0012.

1014 Ex. 59, TB 5, Vol. 28, Tab 17, AST.002.013.0077_0012.

1015 Transcript, 17 October 2023, 212.19-35.

1016 Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0026 [173]. See also Transcript, 17 November 2023, 2662.32-46.

849. I agree with the Inspector's recommendations set out in the preceding paragraph.
850. **RECOMMENDATION: An assessment of AVL suites should be undertaken to ensure that noise from those suites cannot be heard in adjoining rooms or corridors.**
851. **RECOMMENDATION: Specific training should be provided to staff in relation to which communications are privileged and confidential so that they are not intercepted or otherwise read or listened to by staff.**
852. **RECOMMENDATION: Inmates should, where practicable, be provided with phone access during out-of-cell hours to enable private and confidential phone calls.**

6.3.6 Lack of knowledge of, and access to, complaint mechanisms

853. The Inspector's evidence was that, in her experience, factors including a lack of knowledge of complaint mechanisms impact the ability of inmates to make a complaint about the conduct of CSNSW staff.¹⁰¹⁷ This view is supported by Wirringa Baiya, which told the Special Commission that there is a lack of knowledge among inmates of the services available to assist with complaints, including services such as Wirringa Baiya, and that 'women do not know what they can do or how they can do it'.¹⁰¹⁸
854. The social disadvantage of women in custody makes it particularly difficult for them to access and utilise resources, complaint mechanisms and support services. Women's Legal Service recommended that interpreters be made readily available to people in custody from culturally and linguistically diverse backgrounds for the purposes of reporting acts of violence perpetrated in custody, accessing support, seeking a remedy and/or making a complaint.¹⁰¹⁹ They also suggested that, similarly, the National Relay Service should be readily

1017 Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0024 [162].

1018 Ex. 59, TB 5, Vol. 28, Tab 17, AST.002.013.0077_0006.

1019 Ex. 59, TB 5, Vol. 28, Tab 16, AST.002.013.0078_0007.

available to people in custody who are deaf, hard of hearing or have a speech communication difficulty.

855. Further, Wurringa Baiya submitted that even if information is available on inmate tablets, not all inmates can access this information because they lack literacy and technological literacy.¹⁰²⁰ Wurringa Baiya stated that while smart phones and tablets are commonly used in the wider community, in lower socio-economic groups, such as the inmate population, many women have not had access to this technology in the community.¹⁰²¹ Further, many inmates have limited education, low levels of literacy and high instances of disability and brain injury.¹⁰²²
856. The Inspector stated that inmates' understanding of the complaint mechanisms available to them could be improved by implementing the following:
- a) all correctional centres should ensure that adequate information is provided during reception and induction in relation to complaint mechanisms, in accordance with the requirements of the CAS Regulation, Inspection Standards and the COPP;¹⁰²³
 - b) where an inmate is not fluent in English, all correctional centres should ensure that this information is provided in a language that the inmate understands;¹⁰²⁴
 - c) all correctional centres should ensure that this information is repeated to inmates on admission, rather than assuming that this has occurred at another centre;¹⁰²⁵ and
 - d) CSNSW should conduct regular audits to ensure that correctional centres are complying with these requirements.¹⁰²⁶

1020 Ex. 59, TB 5, Vol. 28, Tab 17, AST.002.013.0077_0006.

1021 Ex. 59, TB 5, Vol. 28, Tab 17, AST.002.013.0077_0006.

1022 Ex. 59, TB 5, Vol. 28, Tab 17, AST.002.013.0077_0006.

1023 Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0024 [165].

1024 Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0024 [167].

1025 Transcript, 17 November 2023, 2660.13-45.

1026 Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0025 [168].

857. I accept the Inspector's evidence and have incorporated her views into the recommendations formulated below regarding the induction process for inmates.
858. **RECOMMENDATION: CSNSW should ensure that adequate information in relation to complaint mechanisms is provided to inmates when they are received into a correctional centre. The processes drawn to the inmates' attention should include the ability to make complaints to external bodies not controlled by CSNSW; the ability to make complaints on a confidential basis; and the ability to raise any concerns in relation to reprisals with external bodies following the making of a complaint. All correctional centres should ensure this information is repeated to inmates on admission, rather than assuming this has occurred in another centre. When an inmate is not fluent in English, so far as is practicable, all correctional centres should ensure that the information is provided in a language the inmate understands.**
859. **RECOMMENDATION: CSNSW should conduct regular audits to ensure that correctional centres are complying with the required process for inducting inmates.**
860. The Inspector also separately recommended that a range of dual-language dictionaries be made available for inmates at Dillwynia that reflects the linguistic diversity of the women.¹⁰²⁷ Aside from English, the top four languages spoken by inmates at Dillwynia were Vietnamese, Chinese, Arabic and Mandarin, with 2.3 per cent of inmates requiring an interpreter (which at the time of the report was nine inmates).¹⁰²⁸
861. In relation to increasing inmates' access to the mechanisms by which they can make a complaint, the Inspector recommended:¹⁰²⁹
- a) that the multiple mechanisms for inmates to make complaints be maintained, enabling complaints to be made in-person, by phone, and by letter to different external organisations.

1027 Ex. 60, Tab 24, AST.002.013.0093_0099.

1028 Ex. 60, Tab 24, AST.002.013.0093_0070.

1029 Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0026 [176]. See also Transcript, 17 November 2023, 2661.13-30; Transcript, 17 November 2023, 2662.1-30.

- b) increasing the frequency of visits by Official Visitors and the Inspector's staff (including additional resources to enable this to occur), which would create more opportunities for inmates to make complaints and raise issues.¹⁰³⁰ The Inspector was of the view that this would enhance the oversight of correctional centres and increase opportunities for inmates to raise issues and concerns about their treatment in custody.
- c) where possible, CSNSW should address the number of partial and full-day lockdowns occurring across correctional centres, because if inmates had more time out of their cells they would have more opportunity to access essential services, including phone calls, AVL appointments with legal representatives, and to engage in conversations with Official Visitors, without risking being overheard in their cells.

862. The Inspector's recommendations in the preceding two paragraphs appear sensible and should be carefully considered by CSNSW.

863. To ensure that inmates believe that their complaints will be handled in an effective and independent manner, the Inspector recommended that:¹⁰³¹

- a) all correctional centres should have an auditable system that records internal inmate requests and complaints, which can be inspected by CSNSW, the Ombudsman and the Inspector; and
- b) the auditable system should record the time taken to resolve a complaint.

864. I agree with the Inspector's recommendations set out in the preceding paragraph. These recommendations are sensible and will have a positive impact.

865. **RECOMMENDATION: CSNSW should ensure all correctional centres have an auditable system that records internal inmate requests and complaints, which can be inspected by CSNSW, the Ombudsman, and the Inspector. The auditable system should record the time taken to resolve a complaint.**

1030 Transcript, 17 November 2023, 2661.32-46.

1031 Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0027 [181]-[182]; Transcript, 17 November 2023, 2663.1-39.

6.4 Complaint making mechanisms made available to inmates at Dillwynia since Astill's offending

6.4.1 Inmate In-Cell Tablets

866. In October 2020, tablets were distributed to inmates at Dillwynia.¹⁰³² The tablets are issued to inmates when they are locked into their cells in the afternoon and they have access to them until approximately 10:00pm.¹⁰³³ The tablets allow inmates to complete electronic forms, such as Inmate Application forms, Inmate Request forms and grievance forms.¹⁰³⁴ The e-forms are processed by staff using the same procedure as for the physical copies of the forms as prescribed by the COPP. Usually, Senior Correctional Officers are responsible for actioning request forms and application forms submitted electronically.¹⁰³⁵ If an Inmate Application form is not resolved within 14 days, then it will be marked as overdue in the portal and it is the responsibility of the Functional Manager to check the overdue documents and take appropriate steps.¹⁰³⁶ Staff are able to advise inmates of the outcome of their application via the platform on the tablet.¹⁰³⁷ Chapter 9.1 of the COPP, 'Inmate applications and requests', prescribes that in facilities where e-form facilities are available, inmates must be directed to use these systems for processes relating to inmate applications and requests.¹⁰³⁸
867. Inmates are able to use the tablets to call family, legal representatives and external agencies such as the Ombudsman.¹⁰³⁹ The tablets also provide inmates access to other information, such as the Women's Handbook.¹⁰⁴⁰

1032 Ex. 59, TB 5, Vol. 27, Tab 11, CSNSW.0001.0261.0001_0009 [17(a)]. See also Ex. 59, TB 5, Vol. 28, Tab 12, CSNSW.0001.0263.1558_0017 [91].

1033 Transcript, 29 September 2023, 126.26-32; Transcript, 25 October 2023, 794.36-40.

1034 Ex. 59, TB 5, Vol. 23, Tab 5, AST.002.013.0087_0004 [20-21].

1035 Ex. 59, TB 5, Vol. 23, Tab 5, AST.002.013.0087_0006-0007 [34].

1036 Ex. 59, TB 5, Vol. 23, Tab 5, AST.002.013.0087_0007 [43].

1037 Ex. 59, TB 5, Vol. 23, Tab 5, Annexure Tab 10, CSNSW.0001.0112.0012.

1038 Ex. 59, TB 5, Vol. 23, Tab 5, Annexure Tab 10, CSNSW.0001.0112.0008.

1039 Transcript, 29 September 2023, 125.23-39; Transcript, 18 October 2023, 304.37-305.4; Ex. 50, TB 5, Vol. 27, Tab 11, CSNSW.0001.0261.0001_0024 [73]-[74].

1040 Ex. 50, TB 5, Vol. 27, Tab 11, CSNSW.0001.0261.0001_0009 [17(a)].

868. Ms Chappell's evidence was that facility-wide messages, and messages specifically to inmate groups, can be sent to inmates using the tablets. Her evidence was that such messages are sent to inmates advising when the Official Visitor is attending Dillwynia.¹⁰⁴¹
869. Mr Tucker and Assistant Commissioner Delivery, Performance and Culture, Chantal Snell gave evidence that an option that would allow inmates to use their in-cell tablet to make a confidential complaint to an external body is being considered.¹⁰⁴²
870. However, the tablets have their drawbacks. Assistant Commissioner, Custody Metro Branch, Security and Custody Sub-Division, John Buckley's evidence was that all staff at a centre with access to the portal regarding Inmate Applications and Requests can see that those documents have been submitted and agreed that it would not be an appropriate mechanism for an inmate to make an allegation regarding serious misconduct.¹⁰⁴³
871. The Inspector gave evidence that when inmates are confined to their cells, they are not able to access phones in units and yards, and they do not have in-cell charging facilities, despite tablets usually being distributed to inmates while they are locked in.¹⁰⁴⁴ Further, the majority of inmates share cells, meaning cellmates can overhear each other's phone conversations.¹⁰⁴⁵

6.4.2 Information contained in the Women's Handbook

872. The Women's Handbook contains details of complaint-making mechanisms (among other things), including how to contact the Ombudsman, ICAC, Health Care Complaints Commission and Official Visitor.¹⁰⁴⁶ The Special Commission had before it three versions of the Women's Handbook, from 2012, 2015 and 2019. Although the Women's Handbook has existed for (at least) a decade, the Special

1041 Ex. 50, TB 5, Vol. 27, Tab 11, CSNSW.0001.0261.0001_0024 [70(d)]. See also Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0020 [123].

1042 Ex. 59, TB 5, Vol. 28, Tab 14, AST.002.013.0082_0009 [35]; Ex. 55, TB 5, Vol. 28, Tab 12, CSNSW.0001.0263.1558_0014 [64].

1043 Transcript, 29 September 2023, 126.7-21.

1044 Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0026 [175]; Transcript, 17 November 2023, 2662.24-26.

1045 Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0025, 0026 [170], [176(d)].

1046 Ex. 50, TB 5, Vol. 27, Tab 11, CSNSW.0001.0261.0001_0024, 0025 [70(b)], [75]-[77]; Transcript, 22 November 2023, 2954.13-30; Transcript, 26 October 2023, 1004.18-38.

Commission heard evidence that inmates at Dillwynia were not provided with the Women's Handbook, nor any other appropriate induction materials, upon their introduction to Dillwynia during the period of Astill's offending.¹⁰⁴⁷

873. Witness V gave evidence that when she first came into custody at Dillwynia, she was not given a handbook of any sort. She said that she first saw the Women's Handbook a few months prior to the Special Commission commencing and is aware that they are now distributed to inmates.¹⁰⁴⁸ Witness V gave evidence that she can access the information from the handbook on her tablet.¹⁰⁴⁹
874. Ms Sheiles' evidence was that the Women's Handbook was 'like hen's teeth'; it was not distributed when inmates entered Dillwynia, and '[y]ou were lucky to see it in your time at all'.¹⁰⁵⁰ She told the Special Commission that she obtained a copy because another inmate was leaving Dillwynia and 'it was like gold, to have that'.¹⁰⁵¹ Her evidence was that much of the information in the handbook was obsolete or not correct, but it was useful as it contained the addresses of other gaols.¹⁰⁵²
875. Witness M similarly gave evidence that she did not receive a handbook, nor participate in an induction session, when she arrived at Dillwynia.¹⁰⁵³
876. Ms Ward's evidence was that she saw copies of the Women's Handbook in her role as sweeper at reception. She informed the Special Commission that she used to try to get copies to give to women in their reception packs, but that it was not easy to get copies of it to do so.¹⁰⁵⁴
877. Ms Chappell's evidence was that a physical copy of the Women's Handbook is now provided to inmates when they are first inducted at Dillwynia or if an inmate requests a copy (albeit noting that Ms Chappell's time as Governor only

1047 Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0002 [8]; Ex. 3, TB 1, Vol. 6, Tab 32A, AST.002.013.0004_0006 [28]; Ex. 3, TB 1, Vol. 5, Tab 11A, AST.002.013.0002_0008-0009 [31]; Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0014 [74].

1048 Ex. 3, TB 1, Vol. 5, Tab 11A, AST.002.013.0002_0008-0009 [31].

1049 Ex. 3, TB 1, Vol. 5, Tab 11A, AST.002.013.0002_0009 [33].

1050 Transcript, 17 October 2023, 233.38-234.10.

1051 Transcript, 17 October 2023, 233.38-46.

1052 Transcript, 17 October 2023, 233.38-234.2.

1053 Transcript, 17 October 2023, 259.40-260.1.

1054 Transcript, 18 October 2023, 306.29-307.4.

commenced in October 2023).¹⁰⁵⁵ She also informed the Special Commission that the handbook is now available to inmates using the in-cell tablets.¹⁰⁵⁶

878. I have observed that the 2019 Women’s Handbook contains a copy of the CADL that notes next to the number for the Ombudsman, ‘for last resort complaints against the Centre’.¹⁰⁵⁷ This is not appropriate as it suggests that the Ombudsman can only be contacted as a last resort, if other options have been exhausted.

6.4.3 Fact sheets and posters

879. The purpose of the previous four versions of the CSNSW Fact Sheet on ‘Avenues for Inmate Inquiries and Complaints’ was to provide information to CSNSW staff about the options available to inmates to make a complaint or inquiry.¹⁰⁵⁸ However, the Special Commission received evidence from Mr Tucker that the document has recently been updated and is now aimed at providing information directly to inmates.¹⁰⁵⁹ The Fact Sheet has been simplified and includes a list comprised of external bodies, and the CSSL, to which inmates can make confidential free calls¹⁰⁶⁰ The new version of the Fact Sheet has been published on inmate tablets, along with a poster setting out how inmates can make a confidential complaint, and at the time of the Special Commission’s hearings, physical copies of these documents were to be distributed to correctional centres imminently.¹⁰⁶¹

880. Ms Snell also gave evidence that a communications campaign had commenced to encourage inmates to report misconduct and to increase awareness about the range of options available for making a complaint. Her evidence was that updated fact sheets and posters were in the process of being distributed to all correctional and transitional centres.¹⁰⁶²

1055 Ex. 50, TB 5, Vol. 27, Tab 11, CSNSW.0001.0261.0001_0024-0025 [75]; Ex. 50, TB 5, Vol. 27, Tab 11, CSNSW.0001.0261.0001_0004 [12].

1056 Ex. 50, TB 5, Vol. 27, Tab 11, CSNSW.0001.0261.0001_0024-0025 [75(a)].

1057 Ex. 3, TB 3, Vol. 13, Tab 431, CSNSW.0001.0091.0131_0106.

1058 Ex. 59, TB 5, Vol. 28, Tab 14, AST.002.013.0082_0006 [24].

1059 Ex. 59, TB 5, Vol. 28, Tab 14, AST.002.013.0082_0008 [34]; Ex. 59, TB 5, Vol. 28, Tab 14, Annexure Tab 5, CSNSW.0001.0266.0001-0002.

1060 Ex. 59, TB 5, Vol. 28, Tab 14, AST.002.013.0082_0008 [34]; Ex. 59, TB 5, Vol. 28, Tab 14, Annexure Tab 5, CSNSW.0001.0266.0001-0002.

1061 Ex. 59, TB 5, Vol. 28, Tab 14, AST.002.013.0082_0008 [34]; Ex. 59, TB 5, Vol. 28, Tab 14, Annexure Tab 5, CSNSW.0001.0266.0001-0002. See also Ex. 50, TB 5, Vol. 27, Tab 11, CSNSW.0001.0261.000_0025 [76].

1062 Ex. 55, TB 5, Vol. 28, Tab 12, CSNSW.0001.0263.1558_0014 [66].

6.4.4 The Corrective Services Support Line and Sexual Misconduct Reporting Line

881. Mr Tucker gave evidence that, from the conclusion of the week commencing 27 November 2023, the hours of the CSSL will be extended to 7:30am to 9:00pm, Monday to Friday, and staffing arrangements expanded accordingly.¹⁰⁶³ This was slightly different from Ms Snell's evidence, which was that the new operating hours of the CSSL will be 7:30am to 10:00pm.¹⁰⁶⁴ The duration of the calls will be 10 minutes (as opposed to six).¹⁰⁶⁵
882. Mr Tucker and Ms Snell told the Special Commission that the scope of the CSSL will also be expanded to include a confidential Sexual Misconduct Reporting Line for inmates to report sexual misconduct by staff that the inmate has experienced or witnessed.¹⁰⁶⁶ Staff receiving calls on the Sexual Misconduct Reporting Line will refer matters directly to the PSI Directorate. The Special Commission heard that protocols and escalation procedures for the new phone line will be developed in due course.¹⁰⁶⁷
883. In view of the evidence as to inmates' difficulties contacting CSSL and perceptions regarding the ineffectiveness of CSSL as a means of making a complaint, it will be critical that inmates perceive the Sexual Misconduct Reporting Line to have a distinct role and method of operation, as compared to CSSL, and that its staff are adequately trained.
884. **RECOMMENDATION: I make the following recommendations with respect to the Sexual Misconduct Reporting Line:**
- a) that all protocols, procedures and inmate communications regarding the Sexual Misconduct Reporting Line make clear that it is distinct from CSSL and operates in a different manner;**

1063 Ex. 59, TB 5, Vol. 28, Tab 14, AST.002.013.0082_0009 [35(a)].

1064 Ex. 55, TB 5, Vol. 28, Tab 12, CSNSW.0001.0263.1558_0013 [64].

1065 Ex. 55, TB 5, Vol. 28, Tab 12, CSNSW.0001.0263.1558_0013 [64].

1066 Ex. 59, TB 5, Vol. 28, Tab 14, AST.002.013.0082_0009 [35(b)]; Ex. 55, TB 5, Vol. 28, Tab 12, CSNSW.0001.0263.1558_0013 [63].

1067 Ex. 59, TB 5, Vol. 28, Tab 14, AST.002.013.0082_0009 [35(b)].

- b) that CSNSW staff operating the Sexual Misconduct Reporting Line should be required to attend training in responding to disclosures of sexual assault, and in trauma-informed practice, prior to commencing their operation of the Sexual Misconduct Reporting Line; and**
- c) that specialised, culturally appropriate support should be available to Indigenous inmates in accessing the Sexual Misconduct Reporting Line and that CSNSW staff operating the Sexual Misconduct Reporting Line should be trained in culturally appropriate practice for Indigenous inmates.**

6.4.5 Advocacy Service

885. Ms Snell gave evidence that CSNSW was, in November 2023, proposing to fund an advocacy service to provide accessible, independent and effective support for women in custody in navigating the systems for inmates to make complaints.¹⁰⁶⁸ Consideration was being given by CSNSW to the service advocating for inmates in relation to a broad range of issues, including the legal system, domestic and family violence, barriers to housing, fines and debt, issues related to the care of their children, access to health care, and other related services.¹⁰⁶⁹ Ms Snell's evidence was that CSNSW had commenced consultations with experienced service delivery agencies with respect to the building and design of the advocacy service and would also engage with female inmates to ensure that the model reflects their expectations and needs.¹⁰⁷⁰

886. The evidence before the Special Commission as to inmates' difficulty in identifying and accessing appropriate complaint making mechanisms (both within and outside CSNSW) in relation to Astill's offending indicates that such an advocacy service could have real benefits for women in custody. It is important that any funding should be ongoing and not time-limited. The service should be as accessible as possible to female inmates and should include advocacy in relation to the making of complaints about misconduct by CSNSW staff (as opposed to only external issues, for example, female inmates' interactions with

1068 Ex. 55, TB 5, Vol. 28, Tab 12, CSNSW.0001.0263.1558_0014 [65].

1069 Ex. 55, TB 5, Vol. 28, Tab 12, CSNSW.0001.0263.1558_0014 [65].

1070 Ex. 55, TB 5, Vol. 28, Tab 12, CSNSW.0001.0263.1558_0014 [65].

government agencies outside CSNSW regarding issues such as housing and care of children).

887. The Special Commission received a submission from Wirringa Baiya indicating that it was extremely unlikely that an Aboriginal woman would make a call to a service such as the Ombudsman and make a disclosure regarding sexual assault in custody in a 10 minute call, noting that the calls on the CADL are limited to 10 minutes.¹⁰⁷¹ They also recommended that Aboriginal women need to have culturally appropriate support to make a call to a service like the Ombudsman and to receive ongoing cultural support and healing in the time following, noting that by the time women are in custody, ‘their trust in systems has been so completely eroded it is unreasonable to suggest that a woman could, with no support, pick up the CADL phone and call the CSSL or the Ombudsman and report sexual assault’.¹⁰⁷²
888. Women’s Legal Service recommended in a similar vein that people in custody should have ‘safe, confidential, and timely access to free face-to-face specialist gendered, culturally safe legal advice in a private and confidential space, including to understand their complaint and reporting options’.¹⁰⁷³ In my view, any such advocacy service should have these characteristics.
889. **RECOMMENDATION: CSNSW should give appropriate consideration to funding an advocacy service for female inmates and, in designing the service, ensure that it maintains confidentiality, maximises its accessibility to female inmates (including in particular its accessibility to Indigenous female inmates) and that its scope extends to advocacy in the making of complaints about misconduct by CSNSW staff (rather than only external issues such as housing and care of children).**

1071 Ex. 59, TB 5, Vol. 28, Tab 17, AST.002.013.0077_0006.

1072 Ex. 59, TB 5, Vol. 28, Tab 17, AST.002.013.0077_0007.

1073 Ex. 59, TB 5, Vol. 28, Tab 16, AST.002.013.0078_0007.

6.4.6 Individual house meetings

890. From November 2023, individual house meetings have been held within each accommodation unit at Dillwynia with the intention of improving communication between senior staff and inmates and improve conditions for inmates.¹⁰⁷⁴ The meetings are to occur monthly and are chaired by either the Functional Manger or the Senior of the relevant area.¹⁰⁷⁵
891. Ms Chappell's evidence was that low-level issues can often be resolved at individual house meetings, allowing the more strategic issues to be focused on at the Inmate Delegate Committee meetings. Her evidence was that the meetings are informal, with the idea that they will foster trust and build positive working relationships.¹⁰⁷⁶ She believes that this model is one way to help create an environment and foster relationships that enable inmates to make complaints about serious misconduct.¹⁰⁷⁷
892. Ms Snell gave evidence that both house meetings and the Inmate Delegate Committee are initiatives that warrant consideration to be implemented at all correctional centres.¹⁰⁷⁸ The concept of 'house meetings' will obviously only be applicable in correctional centres where inmates share living areas.

6.5 Other recommendations

6.5.1 Counselling and other support services

893. The Special Commission heard that inmates who are victims of sexual misconduct perpetrated by CSNSW staff members require counselling options that are independent of CSNSW, and unmonitored by staff within the relevant correctional centre.¹⁰⁷⁹ The Special Commission was told that if a particular

1074 Ex. 50, TB 5, Vol. 27, Tab 11, CSNSW.0001.0261.0001_0010 [17(d)].

1075 Ex. 50, TB 5, Vol. 27, Tab 11, CSNSW.0001.0261.0001_0010 [17(d)].

1076 Transcript, 22 November 2023, 2944.28-2945.13.

1077 Transcript, 22 November 2023, 2945.15-30. See also Transcript, 27 October 2023, 1012.2-32.

1078 Transcript, 24 November 2023, 3266.7-23.

1079 Ex. 3, TB 1, Vol. 6, Tab 23A, AST.002.013.0030_0012 [65]; Ex. 3, TB 1, Vol. 5, Tab 6A, AST.002.013.0005_0011 [72].

counselling arrangement did not work for an inmate, there would be nowhere else for an inmate to get this kind of help.¹⁰⁸⁰

894. This view is echoed in a submission on behalf of the Women's Legal Service, which outlined reports by women that they:

- a) do not know how to access counselling in custody;
- b) are unsure about eligibility criteria;
- c) are made to wait, at times, up to 10 months to speak to a counsellor or psychologist;
- d) have long periods between appointments; and
- e) experience difficulty reconnecting with their counsellor or are put back on the counselling waiting list if they are transferred to another correctional centre or a different area in the same correctional centre.¹⁰⁸¹

895. Further, the Special Commission heard evidence that some of Astill's victims had requested sexual assault counselling, including from Justice Health, but did not receive such counselling in a timely manner, or were advised to talk to an internal psychologist on staff at Dillwynia.¹⁰⁸²

896. Ms Snell gave evidence that access to confidential, external, specialised sexual assault trauma counsellors has been provided to the victims of Astill's offending and other female inmates via the Uralla Cottage service provider and through a newly established Victims Services arrangement.¹⁰⁸³

897. At least some of this access to specialised sexual assault counselling appears to have been facilitated for Astill's victims as a result of the initiation of the Special Commission. It is critical that such access be maintained for Astill's victims after the conclusion of the Special Commission.

1080 Ex. 3, Vol. 6, TB 1, Tab 23A, AST.002.013.0030_0012 [64].

1081 Ex. 59, TB 5, Vol. 28, Tab 16, AST.002.013.0078_0005 [28]-[30].

1082 Ex. 3, TB 1, Vol. 6, Tab 27A, AST.002.009.0099_0008 [89]; Ex. 45, AST.002.006.0070_0192; Transcript, 20 November 2023, 2763.1-22; Ex. 3, TB 1, Vol. 6, Tab 24A, AST.002.009.0090_0004 [56]-[57].

1083 Ex. 5, TB 5, Vol. 28, Tab 12, CSNSW.0001.0263.1558_0014 [68].

898. **RECOMMENDATION: CSNSW must ensure that timely access to confidential, external, independent, specialised sexual assault trauma counsellors is provided in an ongoing manner to the victims of Astill's offending and other female inmate victims of sexual assault by CSNSW staff via the Uralla Cottage service provider, for so long as it is required (in the view of the specialist counsellors).**

6.5.2 The Ombudsman

899. The Special Commission heard from numerous inmates that they should have access to an external telephone line for making complaints about CSNSW staff conduct that is entirely independent from CSNSW and is unreservedly confidential.¹⁰⁸⁴ This sentiment is echoed in submissions by the Community Restorative Centre and the Women's Legal Service, the former of which submitted that an independent agency should be created to receive confidential complaints and reports of abuse from people in custody.¹⁰⁸⁵
900. Given that, at present, the Ombudsman performs the role of an independent body, external to CSNSW, who inmates can contact to make complaints about CSNSW staff conduct, I do not see the need to create a new external telephone line or service for the purpose of receiving complaints. Rather, there is a need to improve the inmates' access to, and trust in, the Ombudsman and the effectiveness of the Ombudsman in dealing with such complaints.
901. The Ombudsman gave evidence that he has received feedback that the fact that there are different bodies overseeing custodial facilities in New South Wales, including both the Ombudsman and Inspector, at times causes confusion for staff and inmates who can find it difficult to distinguish the respective roles of the different agencies.
902. The Ombudsman suggested that the functions of the Ombudsman and Inspector should be merged, or brought closer together, through co-located visits, complaint-handling, and investigation functions. His view was that a merger

1084 See eg Ex. 3, TB 1, Vol. 6, Tab 23A, AST.002.013.0030_0012 [61]; Ex. 3, TB 1, Vol. 5, Tab 14A, AST.002.013.0003_0006-0007 [29], [31]-[32]; Ex. 3, TB 1, Vol. 6, Tab 22A, AST.002.013.0008_0009 [48].

1085 Ex. 60, TB 6, Tab. 25, AST.002.013.0095_0008; Ex. 59, TB 5, Vol. 28, Tab 16, AST.002.013.0078_0007.

would enhance the perceived independence of the Inspector's office, which is currently reliant on DCJ for internal office funding and corporate support, with its staff employed by DCJ.¹⁰⁸⁶

903. The benefits of the proposed merger of the Ombudsman and Inspector are not clear to me, and given the limited evidence received in relation to this issue I do not consider it appropriate to make a recommendation to that effect.

6.5.3 Training and education for women in custody

904. As noted above, Ms Chappell gave evidence that, in her view, female inmates would benefit from an information session during their induction and orientation to a correctional centre which explores the information in the Women's Handbook and the complaints process generally. This would include how inmates can make a complaint to the Ombudsman.¹⁰⁸⁷ Ms Chappell agreed that some inmates cannot read well, and that the first weeks in gaol for an inmate can be a traumatic time. Accordingly, her evidence was that it was critical to have both induction training and a written handbook.¹⁰⁸⁸
905. Ms Chappell also gave evidence that facility-wide messages can be sent to inmates routinely to remind inmates of the avenues available to them to make complaints.¹⁰⁸⁹ This could similarly be done at accommodation meetings or via the Inmate Delegate Committee.¹⁰⁹⁰ She said that at Dillwynia the Offender Services and Programs team had commenced a review of the orientation training.¹⁰⁹¹
906. I agree with Ms Chappell's suggestions and would encourage their implementation at Dillwynia. I consider them worthy of consideration by CSNSW more broadly.

1086 Ex. 59, TB 5, Vol. 28, Tab 15, AST.002.013.0079_00017-0018 [56]-[59].

1087 Transcript, 22 November 2023, 2954.6-2955.4; Ex. 50, TB 5, Vol. 27, Tab 11, CSNSW.0001.0261.0001_0025 [78].

1088 Transcript, 22 November 2023, 2954.6-2955.4.

1089 Ex. 50, TB 5, Vol. 27, Tab 11, CSNSW.0001.0261.0001_0024-0025 [71], [77].

1090 Transcript, 22 November 2023, 2955.6-15.

1091 Ex. 50, TB 5, Vol. 27, Tab 11, CSNSW.0001.0261.0001_0025 [78].

6.5.4 Privacy of incoming and outgoing mail

907. Ms Snell gave evidence that in response to issues raised at the Special Commission, the CSNSW COPP team are reviewing the policy on inmate mail and developing an Inmate Mail Factsheet which will make clear the ability for inmates to send mail to exempt persons, including the Ombudsman and the Inspector, that will not be opened by CSNSW.¹⁰⁹²
908. This reflects the requirement imposed by cl. 113 of the CAS Regulation to post letters or parcels from an inmate that are addressed to an exempt body or exempt person, without opening, inspecting or reading them. Ms Snell also gave evidence that work was underway to allow inmates to use their tablets to safely and securely access the websites of select statutory and external oversight bodies, such as the Ombudsman.¹⁰⁹³
909. I consider this to be a worthwhile initiative and am of the view that the obligation imposed by cl. 113 of the CAS Regulation must be strictly adhered to in order to ensure inmates' trust in the capacity of oversight bodies, such as the Ombudsman, to deal with their complaints. That trust will inevitably break down if they cannot be assured that their correspondence to such bodies will be treated confidentially.

1092 Ex. 55, TB 5, Vol. 28, Tab 12, CSNSW.0001.0263.1558_0019.

1093 Ex. 55, TB 5, Vol. 28, Tab 12, CSNSW.0001.0263.1558_0026.



New South Wales
Australia

7

Culture at Dillwynia

910. The evidence of a number of current and former inmates and officers at Dillwynia raises serious questions about the culture at the centre. The problems do not appear to have been confined to the period of Astill's offending.
911. Dillwynia was described by some inmates as a difficult place, where they were treated terribly.¹⁰⁹⁴ Following an inspection in 2017, the Inspector of Custodial Services, Fiona Rafter (**the Inspector**), described Dillwynia as a place where there are high rates of inmate drug use, coupled with limited work and education opportunities (particularly for women on remand).¹⁰⁹⁵
912. The evidence I received about the treatment of inmates raises serious issues with respect to:

1094 Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0001 [5]; Ex. 3, TB 1, Vol. 6, Tab 27A, AST.002.009.0099_0007 [86].

1095 Ex. 45, TB 5, Vol. 26, Tab 10, Annexure K, AST.002.013.0060_0286, 290, 313.

- a) staff use of information about inmates derived from monitoring their calls and mail;
- b) a lack of confidentiality;
- c) threats of retaliation if inmates make complaints;
- d) favouritism by staff towards some inmates, to the disadvantage of others; and
- e) the use of foul and inappropriate language and harassment of inmates.

913. Likewise, the Special Commission heard evidence raising concerns as to the workplace culture at Dillwynia, including:

- a) inappropriate language towards other staff;
- b) high levels of intimate relationships between staff at the centre;
- c) a 'boys' club' culture; and
- d) rampant rumours and gossiping.

914. The treatment of inmates by staff, and the workplace culture, fed into an environment in which it was very difficult for both inmates and staff at Dillwynia to make complaints of serious misconduct. Factors inhibiting complaints included:

- a) a widespread 'joke' relating to the shredding of documents;
- b) a culture in which staff feared reprisal from other staff and were pressured not to 'dog on' or 'paper' other officers; and
- c) significant and serious shortfalls in the ways in which Correctional Officers and senior management at Dillwynia handled the complaints that were made, by both inmates and staff.

915. These issues are addressed in turn below.

7.1 Treatment of inmates by staff

916. The evidence from inmates at Dillwynia was that they were regularly treated with aggression and disrespect by officers. While some witnesses identified officers who did not treat them this way, these officers were regarded as exceptional. Evidence referred to a culture of ‘us and them’,¹⁰⁹⁶ or ‘blue’ and ‘green’,¹⁰⁹⁷ between officers and inmates. At CSNSW-operated gaols, like Dillwynia, inmates are required to refer to officers as ‘Miss’ or ‘Sir’.¹⁰⁹⁸ I was told that staff look at inmates as ‘trash’¹⁰⁹⁹ and refer to inmates as ‘crims and crooks’.¹¹⁰⁰ In contrast, inmate Trudy Sheiles said that at Clarence Correctional Centre inmates and officers refer to each other using their first names.¹¹⁰¹
917. First Class Correctional Officer Mark Wilson gave evidence relating to the ‘us and them’ culture at Dillwynia. He said that, in his view, inmates were probably intimidated as ‘we’re in uniform’ and as a result inmates were not so trusting of officers.¹¹⁰²
918. Former Dillwynia chaplain Suellen Johnson explained that ‘blue stuck together, and green stuck together’ at Dillwynia. She explained that it was different at Emu Plains Correctional Centre (**Emu Plains**), where she had also worked. There, the line between officers and inmates was not so defined.¹¹⁰³ Services and Programs Officer (**SAPO**) Deborah Gaynor similarly gave evidence that there was a culture that women at Dillwynia were ‘only’ inmates and that inmates were ‘liars’.¹¹⁰⁴ This had consequences when inmates raised complaints about Astill’s conduct.

1096 Transcript, 24 October 2023, 690.4-8.

1097 Transcript, 17 October 2023, 224.22-32; Ex. 19, TB 2, Vol. 7, Tab 47A, AST.002.013.0047_0003 [15].

1098 Ex. 3, TB 1, Vol. 5, Tab 6A, AST.002.013.0005_0012 [79].

1099 Ex. 3, TB 1, Vol. 5, Tab 10B, AST.002.009.0081_0002 [43].

1100 Transcript, 26 October 2023, 920.40-921.7.

1101 Ex. 3, TB 1, Vol. 5, Tab 6A, AST.002.013.0005_0012 [79].

1102 Transcript, 2 November 2023, 1486.36-47.

1103 Ex. 19, TB 2, Vol. 7, Tab 47A, AST.002.013.0047_0003 [15].

1104 Ex. 14, TB 2, Vol. 7, Tab 58A, AST.002.013.0040_0009 [65].

919. Witness B, who has been housed at Dillwynia since 2015,¹¹⁰⁵ explained that inmates at Dillwynia have ‘no protection’. She stated:

*There are so many officers at Dillwynia who continuously do this every single day, degrade inmates, treat them like they are lesser people, treat them like they are just something like cattle. And, unfortunately, this happens across Dillwynia Correctional Centre. And after this Commission has finished ... this is going to continue on. Unless we have something that ... is not attached to Corrective Services, we have no protection.*¹¹⁰⁶

920. Witness B’s evidence was that the officers at Dillwynia who treated inmates like human beings do not seem to last long at the centre.¹¹⁰⁷

921. Ms Sheiles’ evidence was similar. She gave evidence about the reasons she delayed making a formal report about Astill’s conduct toward her. She said:

*Well, my main reason for not coming forward was that I had no intention to until I had left the system. I was terrified. No matter who the officer was at that point, they were in blue, we were in green. I’m a crim, as far as they’re concerned, and why would they believe a crim that this has been happening? And, unfortunately, that’s the culture and the mentality that’s bred in jail.*¹¹⁰⁸

922. Other inmates gave evidence of being screamed at and subjected to aggressive behaviour by staff.¹¹⁰⁹ Witness I, in her victim impact statement for Astill’s trial, described how Astill groomed her and said that Astill was caring and understanding towards her, and that ‘no other officer did that and it felt nice to be treated like a person rather than just an inmate or someone “sub-human”’.¹¹¹⁰ Witness G, in her victim impact statement, stated that she was ‘treated terribly’ at Dillwynia.¹¹¹¹

1105 Ex. 3, TB 1, Vol. 6, Tab 23, AST.002.002.0029_0001 [3].

1106 Transcript, 24 October 2023, 690.18-24.

1107 Ex. 3, TB 1, Vol. 6, Tab 23A, AST.002.013.0030_0010 [54].

1108 Transcript, 17 October 2023, 224.22-32.

1109 Transcript, 19 October 2023, 413.4-6.

1110 Ex. 3, TB 1, Vol. 6, Tab 24A, AST.002.009.0090_0003 [39].

1111 Ex. 3, TB 1, Vol. 6, Tab 27A, AST.002.009.0099_0007 [86].

923. Witness C gave evidence that she was not a favoured inmate as she was considered to be high-profile and was in the protection unit. As a result, she felt she was treated harshly by staff, and particularly so once they perceived she was receiving preferential treatment from Astill.¹¹¹² Her evidence was that '[e]very single day I was singled out, isolated, bullied, abused, hurt, disadvantaged, [my classification was] regressed'.¹¹¹³
924. I am completely satisfied that this evidence should be accepted. In making this finding, I appreciate that each of the inmates has been convicted, in many cases of serious offences. However, the evidence of each of them is so consistent and the risk of ongoing retribution for complaining real, that I am in no doubt that they are telling the truth. Each of them was also a complainant at Astill's trial, with their evidence being accepted beyond reasonable doubt by a jury. Inmates at Dillwynia were consistently treated with disrespect by Correctional Officers, with a 'blue versus green' or 'us and them' mentality among officers likely contributing to this culture.

7.1.1 Monitoring and the use of inmate information

925. Numerous inmates gave evidence about the effect of close monitoring of inmates by staff at Dillwynia. As explained by Witness B, the impact of such monitoring is significant:

*[T]here's nothing today that can protect me from retaliation from officers within Dillwynia Correctional Centre. There is no way. I can't do it by mail. I can't do it by phone. I can't do it by Official Visitor. Everything is monitored. The tablets are monitored. And it says that at the beginning of the agreement you sign, that says that they can monitor everything except your legal calls. There's no – there's no way. And in the Official Visitor, it goes directly to the Governor. It does not leave the system.*¹¹¹⁴

1112 Transcript, 19 October 2023, 394.28-38.

1113 Transcript, 19 October 2023, 394.7-16.

1114 Transcript, 24 October 2023, 693.32-38.

926. Ms Sheiles' evidence was that every call made by inmates was recorded, and that the 'Arunta' system that inmates formerly used to make calls (now known as the Offender Telephone System (**OTS**)) included a pre-recorded message on each call informing inmates of this. Her understanding was that the Corrective Services Support Line (**CSSL**), to which inmates were directed to make complaints, was operated by CSNSW, and consequently she was stressed that the calls to the CSSL may be recorded and that Dillwynia staff may listen to the calls.¹¹¹⁵ Ms Sheiles' evidence was that while inmates were told that their calls to lawyers were not monitored, they didn't trust this.¹¹¹⁶ She described it as 'next level non-trust' and that 'it always comes back to the blue putting you in a position where it's not pleasant'.¹¹¹⁷ Witness C's evidence was similar. It was her understanding from the pre-recorded message on the OTS that all telephone calls, including those to the Ombudsman, were recorded and monitored.¹¹¹⁸ Inmates Sarah Ward and Witness O similarly understood that calls to the Ombudsman were recorded, or monitored by staff.¹¹¹⁹
927. As discussed in Chapter 6, inmate Elizabeth Cox gave evidence that she called the Ombudsman to report an officer who was aggressive and threatened physical harm. She was advised by the Ombudsman that as it was an 'internal issue' she was to ring the CSSL, which Ms Cox understood to be an internal line that was not confidential.¹¹²⁰
928. Ms Ward and Witnesses M, N and R all gave evidence that the monitoring of their calls and mail by staff prevented them from speaking out.¹¹²¹ Some inmates explained that this was due to a fear that the information would be leaked back to Astill.¹¹²²

1115 Transcript, 17 October 2023, 212.24-35.

1116 Transcript, 17 October 2023, 239.26-29.

1117 Transcript, 17 October 2023, 212.24-35.

1118 Transcript, 19 October 2023, 401.5-20.

1119 Transcript, 18 October 2023, 308.24-33; Ex. 3, TB 1, Vol. 5, Tab 17A, AST.002.013.0028_0008 [42].

1120 Ex. 3, TB 1, Vol. 6, Tab 46, AST.002.013.0009_0010 [58].

1121 Transcript, 18 October 2023, 278.38-279.2; Ex. 3, TB 1, Vol. 5, Tab 10A, AST.002.013.0006_0003 [14]-[15].

1122 Transcript, 23 October 2023, 604.22-34; Ex. 3, TB 1, Vol. 5, Tab 14A, AST.002.012.0003_0006-0007 [29]; Ex. 3, TB 1, Vol. 6, Tab 32A, AST.002.013.0004_0006-0007 [30].

929. Version 1.0 of Chapter 8.2 of the Custodial Operations Policy and Procedures (**COPP**) relating to inmate telephone calls which was in effect from December 2017 to December 2018 indicated that calls to exempt bodies and persons (defined in cl. 3 of the *Crimes (Administration of Sentences) Regulation 2014* (**CAS Regulation**) and including the NSW and Commonwealth Ombudsman, the Inspector, the Independent Commission Against Corruption (**ICAC**), Legal Aid NSW, legal practitioners and NSW Police Force (**NSWPF**) officers¹¹²³) were not to be recorded or monitored. However, it also specified that calls to legal representatives might be monitored to establish they were legal-related calls, but that monitoring was required to cease immediately once this was established.¹¹²⁴ The current version of Chapter 8.2 (Version 1.10) no longer states that calls to legal representatives may be monitored for this purpose.
930. Version 1.0 of Chapter 8.2 also provided that a recorded message was to be played at the beginning of each outgoing call to ensure inmates and the people they called on the OTS were aware their telephone conversations were recorded and might be monitored.¹¹²⁵ The policy did not specify that this recorded message was not to be played in outgoing calls to exempt bodies and persons. This is still the case in the current version. I accept Witness C's and Ms Sheiles' evidence that it was played on calls to those persons and bodies as well.
931. Plainly, inmates at the time of Astill's offending received conflicting information about whether their telephone calls to exempt bodies and persons were recorded and I am satisfied that this conflicting information inhibited inmates from reporting serious misconduct.
932. **RECOMMENDATION: That CSNSW, should it be technically possible, ensure that any recorded message on the OTS advising inmates that calls will be recorded and monitored is not played on telephone calls to exempt bodies and exempt persons, and that the COPP be amended to reflect this.**

1123 CAS Regulation, cl. 3.

1124 Ex. 60, TB 6, Tab 30, CSNSW.0002.0024.3203_0530.

1125 Ex. 60, TB 6, Tab 30, CSNSW.0002.0024.3203_0536.

933. Ms Ward gave evidence about an occasion when she was on the phone to her mother, trying to explain why she was upset. About three days later, Astill approached her and said, ‘Your poor mother. What are you ... doing telling you mother what’s going on in the wing. You shouldn’t upset her about that.’¹¹²⁶ Her evidence was that staff intimidated inmates by letting them know that they were listening to their calls.¹¹²⁷ Ms Ward’s evidence was that it was not an option to contact a service like Legal Aid NSW’s Prisoner’s Legal Service to make a complaint about Astill, as she knew that he was listening to her calls – or, if not him, his ‘wife’, Correctional Officer Tania Hockey, or other staff with whom he was friends, who would report the information back to Astill.¹¹²⁸
934. Astill similarly informed Witness N that he was listening to her calls.¹¹²⁹
935. Ms Sheiles gave evidence that inmates could not trust that their mail would get to the intended recipient.¹¹³⁰ Witness C’s evidence was that it was rare for her to receive her legal mail closed, and that officers would speak to her about things written in her mail.¹¹³¹ She recalled that Correctional Officer Ronald Brown would open her mail, including her legal documents, read them and hand them to her.¹¹³² Similarly, Witness B gave evidence that when she was trying to lodge an appeal and collect evidence, her mail would go missing and all that she would receive was an empty envelope. Witness B spoke with then Chief Correctional Officer Judith Barry who advised her to send mail marked as ‘legal’, as Ms Barry was responsible for receiving legal mail for inmates. Witness B’s evidence was that the interference continued, and even when her mail was marked as ‘legal’ all she would receive was an empty envelope.¹¹³³
936. Witness C gave evidence that her visits were heavily monitored and that the supervising officer would stand next to her during the visit, rather than circulate

1126 Ex. 3, TB 1, Vol. 5, Tab 14A, AST.002.012.0003_0006-0007 [29].

1127 Transcript, 18 October 2023, 278.38-279.2; Ex. 3, TB 1, Vol. 5, Tab 14A, AST.002.012.0003_0006-0007 [29].

1128 Ex. 3, TB 1, Vol. 5, Tab 14A, AST.002.013.0003_0007 [31].

1129 Ex. 3, TB 1, Vol. 6, Tab 32A, AST.002.002.0035_0006-0007 [30].

1130 Transcript, 17 October 2023, 212.24-35.

1131 Transcript, 19 October 2023, 359.19-27.

1132 Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0005 [19].

1133 Ex. 3, TB 1, Vol. 6, Tab 23A, AST.002.013.0030_0005 [24].

through the visits area as normal. Afterwards, when the supervising officer was Mr Brown, he would repeat the contents of the visit back to Witness C, making her feel that she could not discuss anything private during the visit. She said it felt like an intimidation tactic.¹¹³⁴

937. The Inspector, in her 2023 report following her inspection of Dillwynia in 2022, detailed her concerns regarding Chapter 8.1 of the COPP as it related to inmate mail. Specifically, she was concerned about an amendment made to the policy in 2020 providing that an inmate may be provided with a photocopy of their mail instead of the original (this amendment was said to have been introduced to prevent contraband coming through the mail during the COVID-19 pandemic). The policy specified that colour photocopies of all mail that is non-privileged, including children's drawings and cards, were to be provided to inmates and the originals were to be destroyed. Following this change, issues concerning the quality of photocopying and the mistaken distribution of mail have been raised consistently by inmates during inspections to Dillwynia by the Inspector. The Inspector also raised concerns that this policy was inconsistent with the available powers under the *Crimes (Administration of Sentences) Act 1999 (CAS Act)* and recommended CSNSW obtain legal advice in relation to the lawfulness of this policy.¹¹³⁵

938. I am satisfied that inmates at Dillwynia believed that each of their calls, mail, visits and use of inmate tablets was monitored, notwithstanding that it was intended to be otherwise in relation to legal calls, legal mail and calls to external exempt agencies. This understanding resulted from them becoming aware that, at least in some cases, the content of the OTS calls and, more recently, the content of calls made on inmate tablets, was obviously known to officers. This led to a serious lack of confidence by inmates in officers and a breakdown in their trust that their conversations were secure. Astill systematically used information gleaned from monitoring inmate calls, visits and letters as a means of intimidation, a practice that appears to have persisted among some officers at Dillwynia subsequent to Astill's arrest.

1134 Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.012.0001_0005-0006 [21].

1135 Ex. 60, TB 6, Tab 24, AST.002.013.0093_0085-0086.

7.1.2 Lack of confidentiality

939. Witnesses C and W both gave evidence that there was no confidentiality for inmates at Dillwynia.¹¹³⁶
940. Witness C's evidence was that officers would talk openly about inmates' health issues, legal issues, and personal issues in front of the muster line, or their reasons for being in prison. Her evidence was that 'without a care in the world', officers would leak details about an inmate's incidents of self-harm or mental health issues.¹¹³⁷ She recalled that staff laughed at inmates who were distressed about upcoming court dates or their children, and that staff would talk loudly and laugh among themselves in earshot of inmates about the inmate's criminal proceedings.¹¹³⁸
941. Witness C gave evidence that officers would leak information from the mail of inmates with whom they had issues to other inmates. They would also read aloud letters that women wrote to men in other gaols and laugh about them in front of other inmates, saying things like 'I heard what you said to your bloke at [L]ong [B]ay you dirty bitch'.¹¹³⁹
942. Witness C felt that she could not trust the Justice Health staff.¹¹⁴⁰ She detailed an occasion on which Justice Health staff conducted a health assessment through her cell window and the nurse spoke about Witness C's personal health information with numerous inmates and an officer in earshot. On other occasions, she was required to participate in a health assessment with an officer standing right next to her.¹¹⁴¹ She recalled that officers would make comments towards inmates, in the presence of other inmates, such as, 'clinic said your heart medication isn't available, maybe that will be enough to get rid of you'.¹¹⁴²

1136 Transcript, 19 October 2023, 358.37; Transcript, 18 October 2023, 332.35-38.

1137 Transcript, 19 October 2023, 432.43-433.20; Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0003 [10].

1138 Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.012.0001_0002-0003 [10]. See also Transcript, 19 October 2023, 358.28-37.

1139 Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.012.0001_0004 [13].

1140 Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0014 [56].

1141 Transcript, 19 October 2023, 401.30-46.

1142 Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0003 [10].

943. Witness W's evidence was that there was similarly no confidentiality when disclosing information to the SAPOs at Dillwynia,¹¹⁴³ who are responsible for providing support and interventions for inmates to facilitate their safe, secure and humane management in gaol.¹¹⁴⁴
944. Numerous inmates gave evidence of their experience that complaints or issues raised with the Ombudsman or Official Visitor were not treated confidentially,¹¹⁴⁵ and that the contents of the complaints would be fed back to the Governor and other staff.¹¹⁴⁶
945. Witness C said that in order to speak with the Ombudsman, inmates were required to inform a staff member and were then paraded in front of the compound to attend the appointment.¹¹⁴⁷ Similarly, Witness C and Witness N gave evidence that the Official Visitor generally spoke to inmates in open areas of the gaol, where officers and inmates could see or hear.¹¹⁴⁸
946. Ms Cox gave evidence of an occasion on which an inmate wrote a letter to the Ombudsman, and an officer left the letter for other inmates to read. She stated that the inmates mentioned in the letter were given copies of the letter, resulting in the inmate who wrote the letter being physically assaulted.¹¹⁴⁹
947. The Inspector gave evidence that the Official Visitor can take a complaint or inquiry from an inmate in public or private, and in either case the complaint can be taken confidentially.¹¹⁵⁰ Her evidence was that it was important that inmates were given options regarding the method of reporting and, in some cases, may wish to speak to the Official Visitor about general concerns and conditions within the centre in public and without formality.¹¹⁵¹ The Inspector's evidence was that

1143 Ex. 3, TB 1, Vol. 6, Tab 22A, AST.002.013.0008_0008 [45].

1144 Ex. 3, TB 3, Vol. 9, Tab 129, CSNSW.0001.0025.0151_0001-0006.

1145 See eg Ex. 3, TB 1, Vol. 6, Tab 22A, AST.002.013.0008_0008 [44].

1146 Transcript, 19 October 2023, 357.11-358.12; Ex. 3, TB 1, Vol. 5, Tab 14A, AST.002.013.0003_0006 [27]; Transcript, 20 October 2023, 515.33-41; Ex. 3, TB 1, Vol. 6, Tab 46, AST.002.013.0009_0009 [56]; Ex. 3, TB 1, Vol. 6, Tab 23A, AST.002.013.0030_0011 [58], 0012 [62].

1147 Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.012.0001_0013-0014 [54]; Transcript, 19 October 2023, 357.36-358.5.

1148 Transcript, 19 October 2023, 357.2-9; Ex. 3, TB 1, Vol. 6, Tab 32A, AST.002.013.0004_0006 [29].

1149 Transcript, 20 October 2023, 515.37-41.

1150 Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0020 [127].

1151 Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0020 [128].

the role of the Official Visitor was limited by the CAS Regulation to resolving complaints by advising the inmate or staff member of what action could be taken, by referring the matter to an appropriate body with the consent or agreement of the person making the complaint, or, if in the opinion of the Official Visitor it could be resolved quickly internally, by bringing it to the attention of the Governor.¹¹⁵²

948. As further detailed in Chapter 6, the evidence of the Ombudsman, Paul Miller, was that depending on the layout of the centre and the number of people who want to speak to the Ombudsman's staff, discussions with inmates can occur in 'yards, units, worksites, holding rooms, or interview rooms'.¹¹⁵³ His evidence was that Correctional Officers are usually in line-of-sight but out of hearing.¹¹⁵⁴ The Ombudsman's evidence was that an inmate's consent is required for the Ombudsman's staff to disclose the inmate's identity to CSNSW; however, in some instances this impacts their ability to handle or resolve the issues raised. These issues are discussed with the inmate making the complaint.¹¹⁵⁵
949. The current Dillwynia Governor Nicola Chappell's evidence was that inmates were informed of the ability to contact the Ombudsman and Official Visitor, including that such contact is confidential and not monitored by CSNSW staff, via information contained in the Women's Handbook on the in-cell tablet,¹¹⁵⁶ the physical copy of that handbook provided when an inmate is first inducted at Dillwynia¹¹⁵⁷ (although the Special Commission heard evidence that hard copies of this Handbook were scarce)¹¹⁵⁸ and on posters at Dillwynia.¹¹⁵⁹

1152 CAS Regulation, cl. 166(2); Transcript, 17 November 2023, 2647.31-2648.5.

1153 Ex. 59, TB 5, Vol. 28, Tab 15, AST.002.013.0079_0005 [27].

1154 Ex. 59, TB 5, Vol. 28, Tab 15, AST.002.013.0079_0005 [27].

1155 Ex. 59, TB 5, Vol. 28, Tab 15, AST.002.013.0079_0004 [21].

1156 Ex. 50, TB 5, Vol. 27, Tab 11, Annexure Tab 9, CSNSW.0001.0213.0010. See also Ex. 55, TB 5, Vol. 28, Tab 12, CSNSW.0001.0263.1558_0013 [60].

1157 Ex. 3, TB 3, Vol. 13, Tab 431, CSNSW.0001.0091.0131_0001-0120.

1158 Transcript, 17 October 2023, 233.38-234.10; Transcript, 18 October 2023, 306.29-307.4.

1159 Ex. 50, TB 5, Vol. 27, Tab 11, Annexure Tab 28, CSNSW.0001.0260.0001. See also Ex. 55, TB 5, Vol. 28, Tab 12, CSNSW.0001.0263.1558_0013 [61]; Ex. 59, TB 5, Vol. 28, Tab 14, Annexure Tab 5, CSNSW.0001.0266.0001-0002.

950. Chapter 9.6 of the COPP relates to inmate complaints to the Ombudsman. It provides that inmates should be advised that any communication between themselves and the Ombudsman is not monitored or read by staff. Section 9.6 specifies that this applies to all inmates.¹¹⁶⁰
951. It is apparent that there has been a departure from the intended processes of the Official Visitor and the Ombudsman and the reality as experienced by some inmates at Dillwynia. The perceived lack of confidentiality of complaints made to those external agencies clearly played a role in inhibiting inmates from reporting serious misconduct and played into the culture at Dillwynia whereby inmates felt that they had nowhere to turn, and no one to trust.
952. The Inspector observed in her 2023 report that there was no confidential space allocated for women to talk with their legal representative via telephone on the day of a court appearance by audio-visual link (**AVL**). The Inspector noted that women were handed cordless telephones inside the holding cells to the AVL area to discuss their private legal matters prior to their court appearance. The Inspector stated that her staff observed 12 women across the two holding cells, which 'were cramped, noisy and without adequate seating for that number of women. It was not an appropriate space in which to facilitate a legal phone call before a court appearance.'¹¹⁶¹
953. The Inspector also stated that psychologists had reported having to conduct triaging with inmates referred to see a psychologist through yard fences and gates because, while women had been unlocked into their yards, custodial staffing shortages had seen the Programs Officer posts stripped and no capacity was allocated for moving women between their units and psychology interview rooms.¹¹⁶²

1160 Ex. 58, TB 3, Vol. 18, Tab 629, CSNSW.0002.0024.3203_0730-0737.

1161 Ex. 60, Tab 24, AST.002.013.0093_0088.

1162 Ex. 60, Tab 24, AST.002.013.0093_0097.

7.1.3 Punishments and transfers

954. Multiple inmates gave evidence about the ways in which officers at Dillwynia would make inmates' lives in gaol more difficult, particularly those inmates who raised issues about the running of the centre.
955. Witness R gave evidence that she saw that inmates' lives were made difficult by officers if they spoke up, even for minor things, such as asking for an extra doona or a pair of tracksuit pants.¹¹⁶³ The responses ranged from small consequences — such as their buy-up sheets not being processed, phone money not going into their account, or visits not being booked — to more serious consequences, such as being 'tipped' out of the gaol (transferred to a different correctional centre) or regressed back to maximum security.¹¹⁶⁴
956. Witness C recalled being sent from the J Unit, where she was housed, to the Behavioural Intervention Unit (which has similar conditions to segregation) on multiple occasions without charge after she had made a complaint or asked for something to be improved.¹¹⁶⁵ She also detailed that inmates would be placed in segregation after making a complaint or raising an issue.¹¹⁶⁶
957. Witness P gave evidence that she was sent to the Behavioural Intervention Unit but was never told the reasons for this. She was later placed on a management plan by Astill who told her, 'if you open your mouth again you'll be back in [the Behavioural Intervention Unit]'.¹¹⁶⁷ Witness S's evidence was that as a Senior Correctional Officer, Astill was able to make inmates' lives 'hell' by putting them in segregation by charging them with 'silly' things. Her evidence was also that Astill was able to regress inmates back to the High Needs area.¹¹⁶⁸
958. Witness C's evidence was that her cell would be searched, or 'ramped', far more regularly than other inmates. Officers would escort her to her visits late so that

1163 Ex. 3, TB 1, Vol. 6, Tab 21A, AST.002.013.0029_0004 [24].

1164 Transcript, 23 October 2023, 600.36-41; Ex. 3, TB 1, Vol. 6, Tab 21A, AST.002.013.0029_0004 [22].

1165 Transcript, 19 October 2023, 397.5-20; Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0007, 0012 [25], [45].

1166 Transcript, 19 October 2023, 355.28-42.

1167 Ex. 3, TB 1, Vol. 5, Tab 12A, AST.002.013.0007_0002-0003 [15]-[16].

1168 Ex. 3, TB 1, Vol. 6, Tab 40, AST.002.002.0039_0001 [6].

she would have less time with her visitors than she was entitled to; they would give out mail to the other inmates, but not to her and tell her that they had seen her mail in the office; and she would be excluded from opportunities such as going to the library.¹¹⁶⁹ Witness C's evidence was that there was 'constant uneven application of punishment'. She recalled an occasion when she was charged for having two pieces of bread in her cell, while her cellmate did not get charged for having two wooden skewers.¹¹⁷⁰

959. Dillwynia is the largest gaol for females in NSW, and one of only two large female gaols in the Sydney metropolitan area (the other being Silverwater Women's Correctional Centre (**Silverwater**, formerly known as Mulawa). Silverwater is the major reception centre for female inmates and is a maximum security facility. For women with children or family members in Sydney, the prospect of being moved from Dillwynia carried with it a risk of either being taken far away from their children and family, or returning to a much more restrictive environment. Understandably, this led some inmates to fear being moved.
960. Witness P's evidence was that in around 2015, she raised a complaint with Shari Martin, the then Governor of Dillwynia, about what Astill had been doing to her and other inmates and was told by Ms Martin that if Witness P 'kept going' and refused to 'mediate', she would be moved from Dillwynia.¹¹⁷¹ Witness V's evidence was similar. She said that Witness B spoke with Ms Martin who told her that if she did not drop her complaints about Astill, she would be 'tipped' out of the gaol and sent to another correctional centre.¹¹⁷² Witness V said she was scared to report Astill because inmates who raised issues were moved.¹¹⁷³ Similarly, Witness M gave evidence that she 'was scared to say anything' about what Astill had done to her because she was aware that other inmates had been transferred out of Dillwynia even though they had not done anything wrong, and Witness M felt she was in a good position at Dillwynia as she had a job, friends and was in a good house.¹¹⁷⁴

1169 Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0009 [35].

1170 Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0009 [35].

1171 Transcript, 23 October 2023, 557:1-38; Transcript, 23 October 2023, 565:37-38; Transcript, 23 October 2023, 573:43-574:5; Ex. 3, TB 1, Vol. 5, Tab 12A, AST.002.013.0007_0004 [30].

1172 Transcript, 20 October 2023, 461:3-35.

1173 Ex. 3, TB 1, Vol. 5, Tab 11A, AST.002.013.0002_0007 [25].

1174 Ex. 3, TB 1, Vol. 5, Tab 10A, AST.002.013.0006_0003 [12]-[13].

961. Ms Sheiles gave evidence that Astill threatened her about speaking up by telling her that he would move her to Wellington Correctional Centre to ‘get her head stomped in’. Her victim impact statement explained that Astill was aware that Ms Sheiles knew there was a group of girls in Wellington Correctional Centre that had a reputation for being aggressive and violent.¹¹⁷⁵
962. Witness C stated that officers regularly threatened to move inmates, including herself, to other correctional centres after they complained, and would threaten country inmates with city gaol, and vice versa.¹¹⁷⁶
963. Ms Ward’s evidence was that as a Category 4 (or maximum security) inmate, she felt unable to complain about Astill as she feared being transferred to another correctional centre. As a maximum security inmate, the only other centre she could be housed in was Silverwater, where she had spent seven years and which she hated. Dillwynia was a comparatively pleasant correctional centre, where inmates lived in houses with trees and grass around.¹¹⁷⁷
964. It is clear that the threat of being moved out of Dillwynia was regularly used by officers at Dillwynia to intimidate inmates and contributed to a culture of fear among inmates, inhibiting them from making requests or complaints.
965. The Inspector in her 2023 report detailed concerns regarding the Women’s Remand Bed Placement policy being used to move women on remand (being 45 per cent of the inmate population at Dillwynia) to another centre without proper consideration of a change of placement. She stressed that transferring women with children who reside in the Sydney area to regional centres simply because there was an empty bed in a regional centre was not acceptable and the practice must cease.¹¹⁷⁸ She made a recommendation to that effect. For the reasons I have set out above as to the way in which officers regularly used the threat of moving inmates from Dillwynia to intimidate inmates and contribute to a culture

1175 Transcript, 17 October 2023, 195.22-196.7; Ex. 3, TB 1, Vol. 5, Tab 6B, AST.002.009.0074_0001 [10].

1176 Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0012 [46]-[47].

1177 Transcript, 18 October 2023, 279.11-20; Ex. 3, TB 1, Vol. 5, Tab 14A, AST.002.013.0003_0005 [22]. See also Transcript, 18 October 2023, 285.15-29.

1178 Ex. 60, Tab 24, AST.002.013.0093_0013.

of fear, I concur with the Inspector's concern that a policy that enables officers to transfer remandees to regional gaols simply because of bed availability, should not continue.

966. The Inspector also detailed in her report that she heard accounts from staff and inmates that items purchased through buy-ups were not consistently recorded on the women's property lists and that this resulted in instances where inmates were left vulnerable to having items that they had legitimately purchased with prior approval, such as doonas, removed from their possession.¹¹⁷⁹

7.1.4 Favouritism

967. Witness C's evidence was that Dillwynia was known to be a place where inmates had to win over staff and fight for their place.¹¹⁸⁰ Ms Sheiles, Witness C and Witness V gave evidence about the favouritism demonstrated by officers to the advantage and disadvantage of certain inmates.
968. Ms Sheiles' evidence was that management at Dillwynia would turn a blind eye to Special Management Area Placement (**SMAP**) inmates because of the seriousness of the crimes some of them had committed, and they would be neglected.¹¹⁸¹ Ms Sheiles recalled an occasion when two SMAP inmates got into a fight when one inmate assaulted Witness Y. Witness Y tried to have the inmate charged but was told that the cameras were broken that day.¹¹⁸²
969. Witness C's evidence was that staff would 'green light' an inmate to physically assault another inmate. She stated that officers would say things such as, 'we'll turn a blind eye, give her a flogging',¹¹⁸³ or 'give her a touch-up, I will give you the green light. She deserves a whack' and that officers would offer to put money in the inmates' buy-up account once they had physically assaulted the inmate.¹¹⁸⁴

1179 Ex. 60, Tab 24, AST.002.013.0093_0081.

1180 Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0002 [8].

1181 Transcript, 17 October 2023, 238.5-10; Ex. 3, TB 1, Vol. 5, Tab 6A, AST.002.013.0005_0010 [68]. See also Transcript, 17 October 2023, 213.9-16.

1182 Ex. 3, TB 1, Vol. 5, Tab 6A, AST.002.013.0005_0010 [69].

1183 Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0003 [12].

1184 Transcript, 19 October 2023, 387.31-388.7.

970. Witness V gave evidence that Astill informed her that he had offered \$100 in buy-ups to the inmate that assaulted her.¹¹⁸⁵
971. Douglas Greaves, former Professional Standards Manager, Professional Standards Branch (**PSB**), gave evidence that it was easy for an officer to harm an inmate's quality of life. He explained that this could be through petty acts, such as refusing to give them toilet paper, tearing up family photographs and letters, or something giving rise to a serious risk of injury, such as telling inmates that one of them is a 'dog' (i.e., an informant). He stated that 'within the prison environment, the term "dog" is a greater insult than any obscenity. Being labelled a "dog" creates real risks to an inmate's safety.'¹¹⁸⁶ Other officers agreed that being labelled a 'dog' in gaol created risks to inmate safety.¹¹⁸⁷
972. Multiple officers gave evidence regarding the favouritism and preferential treatment demonstrated by Astill towards inmates. Correctional Officer Peter Barglik's evidence was that in late 2018, Astill was biased towards some inmates and showed 'extreme favouritism' towards inmates he liked.¹¹⁸⁸ The Special Commission also heard evidence of favouritism shown by Astill to Ms Sheiles by providing her with items such as tracing paper.¹¹⁸⁹ Correctional Officer Kim Wilson's evidence was that she was aware that Astill would bring things in for his 'favourite' inmates, such as colouring books.¹¹⁹⁰ Westley Giles, a Chief Correctional Officer during Astill's offending, also gave evidence that Astill would provide preferential treatment to Witness GG, and would often respond over the radio when Witness GG had failed to present at muster, that Witness GG was on the phone to the Consulate.¹¹⁹¹
973. Correctional Officer Darren Rowe gave evidence to the effect that favouritism towards inmates was similarly demonstrated by those in management, namely Ms Martin. Mr Rowe recalled an occasion where he had confiscated an inmate's

1185 Ex. 3, TB 1, Vol. 5, Tab 11A, AST.002.013.0002_0007 [27].

1186 Ex. 35, TB 2, Vol. 8A, Tab 91, AST.002.013.0057_0031-0032 [149]-[151].

1187 Transcript, 26 October 2023, 881.35-882.7; Transcript, 10 November 2023, 2093.28-2094.27; Transcript, 16 November 2023, 2498.11-31.

1188 Ex. 57, TB 2, Vol. 7, Tab 50, AST.002.002.0060_0002 [6].

1189 Ex. 20, TB 2, Vol. 8, Tab 65, AST.002.002.0079_0007.

1190 Ex. 22, TB 2, Vol. 8, Tab 71, AST.002.013.0018_0006 [49].

1191 Ex. 44, TB 2, Vol. 8, Tab 66A, AST.002.013.0052_0011 [69].

striped socks, which she was not permitted to have. The inmate stated that she would get the socks back, explaining that she was 'like this with your boss, Shari Martin', while crossing her two fingers together. A few days later Mr Rowe saw the inmate wearing the striped socks, who smiled at him and said, 'I told you so'.¹¹⁹²

974. I am satisfied that during the period of Astill's offending, he displayed clear favouritism towards some inmates and disfavoured others. Management at Dillwynia was ineffective insofar as this differential treatment of inmates by a senior officer was allowed to continue. I accept Mr Greaves' evidence as to the ease with which an officer can damage an inmate's quality of life, and also as to the level of insult conveyed by the term 'dog' in the gaol environment and the real risks to inmate safety arising from being labelled a 'dog'. Astill's behaviour to inmates negatively impacted some, and subjected some inmates to the risk of harm associated with being labelled a 'dog'.

7.1.5 Inappropriate language and harassment – inmates

975. As detailed in Chapter 4, cl. 249(1) of the CAS Regulation prohibits a Correctional Officer from using 'insulting or abusive language' to any other officer or to any inmate.¹¹⁹³
976. A number of inmates gave evidence about the use of inappropriate language by officers at Dillwynia which is detailed below.
977. Witness N recalled an occasion in which Astill made inappropriate comments in the presence of another staff member, who merely laughed. Witness N said that Astill said to Correctional Officer Ronald Brumwell that he would like Mr Brumwell to join him while he had sex with Witness E. Witness N recalls that Mr Brumwell laughed, and then left the office.¹¹⁹⁴ Likewise, Ms Ward detailed an incident when she was on the floor cleaning in the Behavioural Intervention Unit. Mr Brumwell was present, and the door was open. Astill came into the room and

1192 Ex. 57, TB 2, Vol. 8A, Tab 96, AST.002.013.0043_0003 [24].

1193 CAS Regulation, cl. 249(1).

1194 Ex. 3, TB 1, Vol. 6, Tab 32A, AST.002.013.0004_0005 [24].

put his crotch in Ms Ward's face and said, 'That's how I like you'. It was a small room, so in Ms Ward's view, she would have thought Mr Brumwell heard what Astill said, yet he did nothing.¹¹⁹⁵ Attempts made to contact Mr Brumwell by a NSWPF investigator attached to the Special Commission were unsuccessful.¹¹⁹⁶

978. Ms Cox gave evidence that Astill would, in public areas such as on the volleyball court, make inappropriate comments about how inmates looked, and how they 'needed a good fuck'.¹¹⁹⁷ Witness N's evidence was that Astill would make inappropriate comments to her about how Witness M looked.¹¹⁹⁸ Witness C's evidence was that Astill would make inappropriate comments towards Ms Sheiles and other women in the unit.¹¹⁹⁹ Witness R similarly gave evidence that Astill would make suggestive comments towards inmates.¹²⁰⁰ Witness I's evidence was that she heard from other inmates that Astill had made inappropriate comments towards them as well.¹²⁰¹
979. Mr Barglik's evidence was that in late 2018, Astill's inappropriate comments about inmates became more frequent and 'were over the top'.¹²⁰²
980. Witnesses C and B's evidence was that officers at Dillwynia routinely, and on an everyday basis, used foul language and referred to inmates derogatorily. Witness C said that some officers would be verbally abusive on a daily basis calling inmates 'whores', 'dogs', 'sluts', 'fucking cunts' and 'mutts'.¹²⁰³
981. Witness C gave evidence that staff would make inappropriate comments when strip searching inmates, such as 'you have put on weight', 'you have lost weight', 'did you get those stretch marks giving birth' or commenting on the inmates'

1195 Transcript, 18 October 2023, 283.4-39; Ex. 3, TB 1, Vol. 5, Tab 14A, AST.002.013.0003_0005 [19].

1196 Ex. 63, AST.002.013.0124_0001-0002.

1197 Ex. 3, TB 1, Vol. 6, Tab 46, AST.002.013.0009_0006 [35].

1198 Ex. 3, TB 1, Vol. 6, Tab 30, AST.002.002.0034_0005-0006 [20].

1199 Ex. 3, TB 1, Vol. 6, Tab 42, AST.002.002.0022_0003 [7].

1200 Ex. 3, TB 1, Vol. 6, Tab 21, AST.002.002.0028_0004 [13].

1201 Ex. 3, TB 1, Vol. 6, Tab 24, AST.002.002.0032_0002 [5].

1202 Ex. 57, TB 2, Vol. 7, Tab 50, AST.002.002.0060_0002 [6].

1203 Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0004 [13]; Transcript, 19 October 2033, 432.40-47; Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.012.0001_0009 [35].

private parts.¹²⁰⁴ She detailed occasions where officers who had strip searched her passed on to Astill details about her body, who would then make inappropriate comments to her, such as that he had heard she did not have any tan lines.¹²⁰⁵

982. In respect to strip searching, it is noted that the Inspector, following her inspection in 2017 of Dillwynia and other correctional centres which house women on remand, recommended that CSNSW review the use of routine strip searches of female inmates and consider a risk-based approach to strip searching utilising technology.¹²⁰⁶ In her 2023 report following her inspection of Dillwynia in 2022, she observed that X-ray body scanners were now regularly used at Dillwynia; however, she remained of the belief that there was inconsistent practice with respect to strip searching and was of the view that a record should be maintained of when and why each strip search had taken place so that compliance with the relevant policy could be maintained.¹²⁰⁷
983. Witness C detailed an occasion on which Ms Martin called her into the office as there was something in the media about Witness C's criminal case and the prospect of an appeal. Witness C recalls that Ms Martin told her, to just 'accept [her] sentence and fucking get on with it'.¹²⁰⁸ She further recalls that Ms Martin told her that she should just give up on her case.¹²⁰⁹
984. Witness C said that a group of officers, including Correctional Officers Renee Berry, Ms Barry, Mr Giles, Mishelle Robinson, Mr Brown, Mr Rowe, Rae Dukes and Curtis Gaffney gave her a 'hard time' when Astill was frequently calling her to his office and harassing her. She said that included officers being verbally abusive towards her and calling her a 'fucking liar', 'fucking stupid' and 'fucking cunt'.¹²¹⁰ Witness C's evidence on this topic was challenged by Counsel who was

1204 Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0004-0005 [16].

1205 Transcript, 19 October 2023, 346.1-24; Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0007 [28].

1206 Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0014 [73(b)].

1207 Ex. 60, TB 6, Tab 24, AST.002.013.0093_0013.

1208 Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.012.0001_0011 [43].

1209 Transcript, 19 October 2023, 379.36-380.2.

1210 Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0009 [35]; Transcript, 19 October 2023, 432.43-45.

then appearing for Mr Giles, Ms Berry and Ms Barry (among other Correctional Officers). Witness C did not resile from her evidence.¹²¹¹ She stated:

WITNESS C: *Besides Robinson, the other Officers I have observed, in my opinion, over many years, shown behaviours that I believe to be inappropriate, to be unhelpful, to be abusive, to be harassing, to hurt people. It was daily. These people don't come and go month in month out. They are in our presence every single day and there's no doubt they have a difficult job but they are also supposed to take care of us and make sure that we are safe and that we are reasonably well and that we're fed correctly and that we have all those basic needs met without abuse or harassment, bullying. That's what I suspect their job is.*

MS GHABRIAL: *And I'm going to suggest to you that those Officers that I've named did that job without harassing, bullying you, intimidating you and treating you poorly in the way that you have described throughout your statement to the Commission. Do you understand that?*

WITNESS C: *You can make that suggestion but you're completely wrong and I do understand that, yep.*¹²¹²

985. She also said that Mr Giles would call any officer who interacted with inmates 'a dog'.¹²¹³ Witness C also said that at the start of the muster, Correctional Officers screamed at the inmates to 'shut the fuck up', or 'get in line' or 'hurry the fuck up'.¹²¹⁴ She recalled another instance when an officer said to an inmate who had a baby the day prior, 'have you had that baby yet or are you just fucking fat?'.¹²¹⁵

986. Witness B's evidence was that officers would scream and swear in inmate's faces and call them names. She said that staff treated inmates like cattle and did not listen to what they said.¹²¹⁶ She recalled an occasion when Astill, in the

1211 Transcript, 19 October 2023, 413.35-45; Transcript, 19 October 2023, 430.11-431.40; Transcript, 19 October 2023, 432.30-433.22.

1212 Transcript, 19 October 2023, 414.15-30.

1213 Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0004 [14].

1214 Transcript, 19 October 2023, 432.6-22.

1215 Transcript, 19 October 2023, 432.43-433.5.

1216 Ex. 3, TB 1, Vol. 6, Tab 23A, AST.002.013.0030_0010 [53].

presence of other officers, including Ms Robinson and a nurse, said that ‘some people should get the lethal injection in this place’ while Astill was staring right at Witness B. Her evidence was that the other staff present laughed.¹²¹⁷

987. Witness B gave evidence about the intimidation faced by inmates who spoke up or that officers otherwise had ‘personal vendettas’ towards those who did.¹²¹⁸ She stated:

*The intimidation is still going on. If an officer takes a dislike to you, they can do anything they want. They can put anything on your case notes. They can intimidate you. And it's still going on today.*¹²¹⁹

988. Witness B said that officers routinely, on an everyday basis, refer to inmates in the presence of other inmates as ‘moles’ and ‘cunts’ or describe them as stupid. Witness B stated that even senior officers, such as Functional Managers, referred to inmates in that way.¹²²⁰ Witness B said:

*There are still regular instances of officers swearing at us. They will scream and swear in our faces. They call us names. I believe that most girls in custody have experienced domestic violence, and then you have a man asserting his authority by screaming in your face. They don't listen to us. They treat us like cattle. This has happened the whole time I have been in Dillwynia and happens to this day.*¹²²¹

989. Witness B's evidence on this topic was unchallenged.
990. Witness O gave evidence of an occasion when she was speaking Arabic with another inmate and Mr Giles yelled ‘shut the fuck up, don't speak Arabic, speak English’. Her evidence was as follows:

1217 Transcript, 24 October 2023, 660.36-661.13; Ex. 3, TB 1, Vol. 6, Tab 23A, AST.002.013.0030_0003 [16].

1218 Transcript, 24 October 2023, 689.6-13.

1219 Transcript, 24 October 2023, 688.44-46.

1220 Transcript, 24 October 2023, 689.25-45.

1221 Ex. 3, TB 1, Vol. 6, Tab 23A, AST.002.013.0030_0010 [53].

One time, I was speaking Arabic with one of the other girls there. In front of everyone, Officer Giles yelled ‘shut the fuck up, don’t speak Arabic, speak English!’ I tried to explain that I don’t know how to speak English, and he kept telling me off, saying ‘No, you need to speak English’. If I had trouble and would try to speak to him about it, he would tell me to ‘suck it up, and deal with it. You are an inmate’. When I said he was being rude or swearing a lot, he would say ‘suck it up, we say things like that in Australia’. Every time I saw Officer Giles from far away, I would get panicked and was terrified of him.¹²²²

991. Witness O’s evidence on this topic was not challenged by Counsel for Mr Giles, though there were challenges to other evidence given by Witness O by his Counsel.¹²²³ Mr Giles gave evidence after Witness O and although represented by Counsel did not give evidence regarding these interactions with Witness O.
992. Various officers similarly gave evidence that other officers would refer to inmates (including in the presence of, and to, inmates) as ‘bitch’¹²²⁴ and ‘cunt’.¹²²⁵ Correctional Officer Jean Dolly gave evidence that this occurred on a daily basis in the High Needs area, including by Mr Giles, who used such language towards officers and inmates.¹²²⁶ Ms Dolly’s evidence on this topic was not challenged by the solicitor for Mr Giles who was present when the evidence was given. Mr Giles’ solicitor said that he had only been briefed two days prior to Ms Dolly’s evidence and indicated he had not yet had the opportunity to obtain instructions and foreshadowed that an application to recall Ms Dolly may be made once instructions had been obtained. No application was ever made.¹²²⁷
993. Other officers denied the use of foul language in a manner that directly targeted inmates, and some officers denied swearing around inmates at all.¹²²⁸ Mr Giles’

1222 Ex. 3, TB 1, Vol. 5, Tab 17A, AST.002.013.0028_0002-0003 [12].

1223 Transcript, 24 October 2023, 6471-650.40.

1224 Transcript, 27 October 2023, 1053.11-14; Transcript, 27 October 2023, 1141.20-29.

1225 Transcript, 27 October 2023, 1141.20-29.

1226 Transcript, 27 October 2023, 1141.46-1142.14.

1227 Transcript, 26 October 2023, 982.15-17; Transcript, 27 October 2023, 1170.28-1171.20.

1228 Transcript, 25 October 2023, 735.6-30; Transcript, 25 October 2023, 855.16-47; Transcript, 26 October 2023, 920.40-921.7; Transcript, 26 October 2023, 950.4-35; Transcript, 17 November 2023, 2581.38-2582.8.

evidence was that although he and other officers used foul language while working at Dillwynia,¹²²⁹ which included swearing around inmates, he did not use words such as ‘cunts’ and ‘sluts’ to refer to inmates, nor when talking to them.¹²³⁰

994. He was asked about evidence from Witness C of staff using foul language towards inmates:

MR LLOYD: *She also told us – and, again, for those at the bar table, particularly your barrister, it’s paragraph 13 of the same document – that some officers would be verbally abusive toward her and other inmates on a daily basis, calling them ‘whores’, ‘dogs’, ‘sluts’, ‘fucking cunts’ and ‘mutts’. What do you say about that?*

MR GILES: *Did you say some staff, Mr Lloyd?*

MR LLOYD: *Yes.*

MR GILES: *I’ve never heard staff speak to inmates like that.*

MR LLOYD: *No staff on any occasion using any of those words?*

MR GILES: *Going into units, did you – going in and calling them – their names directly?*

MR LLOYD: *Just being verbally abusive on a daily basis is what she told us.*

MR GILES: *No, that’s incorrect.*

MR LLOYD: *She said that some officers, including you, would read the mail and then leak information to inmates that you and the other officers knew that the inmate whose mail was being read were not friendly with.*

MR GILES: *That’s incorrect. The mail was read by the night shift.*

MR LLOYD: *She said – and, again, this is paragraph 14 – that on at least one occasion, she heard you say: ‘Don’t fucking help those crims. They are pieces of shit.’ And that you would call any officer who interacted with the inmates ‘a dog’?*

1229 Transcript, 17 November 2023, 2591.1-31.

1230 Transcript, 17 November 2023, 2636.34-2637.15; Transcript, 17 November 2023, 2568.45-2569.17.

MR GILES: *That's incorrect.*¹²³¹

995. Later, he was asked:

COMMISSIONER: *You were asked earlier about bad language used by prison officers.*

MR GILES: *Yes, Commissioner.*

COMMISSIONER: *You know I've got evidence that that was the case, from multiple people?*

MR GILES: *Yes, I understand that, Commissioner.*

COMMISSIONER: *Are you still prepared to tell me that you've never heard an officer swear at an inmate?*

MR GILES: *I didn't — no, I didn't say I've never heard an officer — I'm a swearer, Commissioner. I'm not going to sit here and say I don't swear. What I said is I haven't heard staff go in and berate and call inmates 'cunts', 'whores', 'sluts' — and what was the other one, Mr Lloyd?*

MR LLOYD: *Molls.*

MR GILES: *Molls. I've never heard that, Commissioner. Swearing —*

COMMISSIONER: *You see, you know I've got people telling me this. You just deny it, do you?*

MR GILES: *Yes, I do. Yes.*¹²³²

996. Later still, this exchange occurred:

MR GILES: *The way management — and when I say 'management', from the Manager of Security up to the Governor — spoke to some people; the way they treated some people. Some are like, you know, Ms Barry, you know like Leanne O'Toole treated her terribly.*

1231 Transcript, 17 November 2023, 2568.45-2569.32.

1232 Transcript, 17 November 2023, 2581.28-2582.6.

COMMISSIONER: *Did she swear at her?*

MR GILES: Yes.

COMMISSIONER: *In very foul language?*

MR GILES: *Yes. Yes. There's not too many — and I'm generalising — there's not too many prison officers who can say they don't swear. I haven't — I haven't met one yet.*

COMMISSIONER: *All right. And so they swear at each other, do they?*

MR GILES: *Absolutely.*

COMMISSIONER: *But never at prisoners?*

MR GILES: *I didn't say they don't swear at prisoners, Commissioner. I've never heard them go in and say 'you cunts whores, sluts', that's (indistinct). Is there swearing at inmates? Absolutely. Do we get sworn at? Absolutely.*

COMMISSIONER: *Did the Governor swear?*

MR GILES: Yes.

COMMISSIONER: *At officers?*

MR GILES: Yes.

COMMISSIONER: *At inmates?*

MR GILES: Yes.

COMMISSIONER: *In foul language?*

MR GILES: Yes.¹²³³

997. He later gave the following further evidence on the same topic:

MR WATSON: *You were asked some questions about the language used by Corrections officers between each other and also inmates.*

MR GILES: Yes.

MR WATSON: *And specifically I made a note of what I'll call the serious bad language.*

MR GILES: *Yes.*

MR WATSON: *And I'll take you through them: 'whores', 'cunts', 'sluts' and 'molls'.*

MR GILES: *Yes.*

MR WATSON: *And I think you said that you never heard any Corrections officer direct that type of language to inmates?*

MR GILES: *Correct.*

MR WATSON: *I think you said in response to a question from the Commissioner that you certainly swore?*

MR GILES: *Absolutely.*

MR WATSON: *All right. Well, I'll be frank with you. Did you use the words like 'fuck'?*

MR GILES: *Yes.*

MR WATSON: *Right. And was that to Corrections officers?*

MR GILES: *Absolutely.*

MR WATSON: *And to inmates?*

MR GILES: *At times.*

MR WATSON: *All right. Well, what's an example of how you used the word 'fuck'? Was it something like, 'What the fuck's going on?'*

MR GILES: *That — when you're going into a situation where there's somebody slashing up — a female slashing up, blood everywhere, a fight between two inmates, inmates throwing stuff at myself or my staff — a wide range of things that can happen in a gaol, you know, to the extreme of walking into a female that was deceased. So, yes, absolutely swore. Absolutely I swear.*

MR WATSON: All right. So do you agree that there's a different level of what I'll call obscenity to the types of words that have been used, as opposed to the —

MR GILES: Yes.

COMMISSIONER: Well, I put to him 'foul language', and he accepted that.

MR WATSON: Yes. I —

COMMISSIONER: So that's a bit beyond where you've gone.

MR WATSON: I'm just trying to get some definition.

COMMISSIONER: I know. And that's why I used the word 'foul'. It was in contrast to where you've gone.

MR WATSON: I think — so you're giving some definition. You heard what the Commissioner just said.

MR GILES: Yes.¹²³⁴

998. While Mr Giles accepted that he used swear words at Dillwynia, he denied that he had verbally abused or berated inmates. It was submitted on behalf of Mr Giles that Witness C's evidence on this topic should be rejected, along with her evidence 'generally'. It was submitted that Witness C was an unreliable witness and that her evidence should be assessed with 'scrutiny (if not scepticism)', having regard to the offences for which she has been sentenced. It was further submitted, on the basis of her sentencing judgment, that Witness C was 'well-versed in the art of deception'.¹²³⁵
999. Witness C's criminal history and sentencing judgment are not before me, nor are the facts of the offences for which she has been convicted. Her offending was clearly of a serious criminal nature, however the mere fact that Witness C has committed offences of dishonesty, does not alone suggest a motive or propensity to lie about the events that occurred at Dillwynia. She remains incarcerated,¹²³⁶

1234 Transcript, 17 November 2023, 2636.9-2637.29.

1235 Submissions on behalf of Westley Giles and Mishelle Robinson, 14 December 2023, AST.002.013.0107_0010 [41]-[42].

1236 Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0001 [3].

and at risk of retribution for having given evidence at the Special Commission. This makes it most unlikely her evidence about the derogatory and abusive language used by Correctional Officers, including Mr Giles, towards inmates, was fabricated. I accept Witness C's evidence on this topic. It is consistent with the evidence of both Witness O and Ms Dolly which was not challenged by Mr Giles' Counsel. I do not accept Mr Giles' denial that he was abusive to inmates.

1000. When asked about the language officers used when speaking to each other, Manager of Security (**MOS**) Leanne O'Toole explained:

I've always said that officers tend to start to mirror inmate behaviours, and the mirroring is also in the inmate, you know, the types of language used. When I went through the academy, it was an accepted — part of the training that, you know, inmates understood — and excuse my language, sir, but inmates would understand, 'Get the fuck out of here', or, 'No, you're not fucking getting this', and, 'No, you cunt, you're not having that'. Because that's the way inmates spoke.¹²³⁷

1001. Ms O'Toole stated that later, when she was a trainer at Brush Farm Academy, officers were trained to 'avoid putting themselves down onto the same level of language as inmates' so as to maintain a professional boundary between officers and inmates.¹²³⁸

1002. Ms O'Toole, who it should be remembered was the second most senior officer in Dillwynia, gave evidence about the commonplace use of foul language by officers, particularly the men, which they directed towards both inmates and other officers, including to her.¹²³⁹ She described it as a symptom of a workplace that was inherently toxic. Her view was that the culture and language used by officers would always occur because a gaol is a 'community within a community'. She explained:

1237 Transcript, 7 November 2023, 1848.31-1849.18.

1238 Transcript, 7 November 2023, 1848.31-1849.18.

1239 Transcript, 7 November 2023, 1838.36-1839.2.

*You're working alongside inmates— the— it's toxic. It's toxic. It's negative. There's very rarely anything positive that you can take away from a correctional centre. I've taken away myself a few positive things in that I have helped inmates stay out of gaol.*¹²⁴⁰

1003. I accept her evidence.

1004. The overwhelming thrust of the evidence before the Special Commission was that foul language was and is used by officers towards inmates at Dillwynia. I am satisfied that foul and abusive language by officers towards inmates, including description of inmates as 'bitches' and 'cunts' and including as a means of intimidation, was and is commonplace at Dillwynia. The evidence from officers which confirms this behaviour was of course given against their interest.

1005. Mr Giles, when giving his evidence, did not impress me as a person who would reject the pervasive culture of the gaol; indeed, quite the contrary. After all, he was one of the senior managers. It would be fanciful to accept that he alone did not use or had never heard foul language such as 'cunts', 'whores', 'dogs', 'sluts' and 'mutts' directed at inmates as I was told by multiple officers was commonplace in the gaol.

7.2 Workplace culture

7.2.1 Inappropriate language – generally

1006. Multiple officers gave evidence of inappropriate and derogatory language used among staff members towards each other and by Ms Martin towards her subordinates.¹²⁴¹ Officers were referred to as 'cunts' and 'fucking idiots' by other officers, including in the presence of inmates and other staff,¹²⁴² and were sworn at by other officers.¹²⁴³ As detailed in Chapter 8, Correctional Officer Julijana

1240 Transcript, 7 November 2023, 1850.26-1850.36.

1241 Transcript, 17 November 2023, 2591.17-31; Ex. 23, TB 2, Vol. 7, Tab 52A, AST.002.013.0019_0006 [31].

1242 Transcript, 27 October 2023, 1096.30-43; Transcript, 26 October 2023, 919.30-920.9; Transcript, 30 October 2023, 1267.27-30.

1243 Transcript, 17 November 2023, 2591.1-15.

Miskov's evidence was that she was verbally abused daily and called names like 'cunt' in front of other officers and inmates during her month at Dillwynia as a new graduate of Brush Farm Academy. She reports an incident in which, while she was at the centre with a contract worker during a period of construction, she was unable to obtain a safety vest. A senior officer yelled out to her, 'Hey cunt, where's your vest?'.¹²⁴⁴

1007. Numerous officers gave evidence that Ms Martin used inappropriate and demeaning language with staff and was aggressive.¹²⁴⁵ She was known to swear¹²⁴⁶ and to refer to staff members as 'cunts'¹²⁴⁷ and 'dud[s]',¹²⁴⁸ including while addressing staff at a staff meeting,¹²⁴⁹ albeit she denied having done so.¹²⁵⁰ Ms Martin was described as a 'tyrant' of whom staff were scared, and as someone who was very 'old school' and set in her ways.¹²⁵¹
1008. Mr Wilson's evidence was that if Ms Martin passed staff in the gaol, she would not acknowledge them.¹²⁵² Correctional Officer Glenn Clark gave evidence that he would say 'good morning' to Ms Martin and be grunted at in return. He said he did not have confidence in management and was of the view that there was a 'club mentality' with senior management.¹²⁵³
1009. Correctional Officer Davey Jeans' evidence was that Ms Martin was a bully and would give staff a 'serve' at the morning parade.¹²⁵⁴ Similarly, Mr Barglik's evidence was that Ms Martin was unapproachable, rarely present on parade or musters, and on the occasions that she would address staff on parade, it was not in a positive manner and her language and demeanour were intimidating to staff.¹²⁵⁵

1244 Transcript, 24 October 2023, 708.1-709.27; Ex. 7, TB 2, Vol. 8, Tab 76, AST.002.013.0024_0002-0003 [13]-[18].

1245 See eg Transcript, 1 November 2023, 1413.40-42; Ex. 23, TB 2, Vol. 7, Tab 52A, AST.002.013.0019_0006 [31]; Ex. 57, TB 2, Vol. 7, Tab 50A, AST.002.013.0037_0009 [73]; Ex. 3, TB 3, Vol. 17, Tab 571, CSNSW.0002.0029.1175_0001.

1246 Ex. 23, TB 2, Vol. 7, Tab 52A, AST.002.013.0019_0006 [31].

1247 Transcript, 27 October 2023, 1120.44-1121.19; Transcript, 27 October 2023, 1120.26-27

1248 Ex. 57, TB 2, Vol. 8A, Tab 87, AST.002.013.0034_0006 [48].

1249 Transcript, 1 November 2023, 1454.25-26; Transcript, 2 November 2023, 1484.6-1484.24.

1250 Transcript, 14 November 2023, 2366.41-2367.10.

1251 Ex. 15, TB 2, Vol. 8, Tab 70, AST.002.013.0012_0008 [63]; Ex. 57, TB 2, Vol. 8, Tab 79, AST.002.013.0038_0008 [55].

1252 Ex. 23, TB 2, Vol. 7, Tab 52A, AST.002.013.0019_0006 [31].

1253 Transcript, 25 October 2023, 742.21-38.

1254 Ex. 57, TB 2, Vol. 8A, Tab 87, AST.002.013.0034_0006 [48]-[49].

1255 Ex. 57, TB 2, Vol. 7, Tab 50A, AST.002.013.0037_0009 [73].

1010. I am satisfied that the use of foul and inappropriate language among officers was commonplace at Dillwynia during Ms Martin's time as Governor and that such language was used by Ms Martin herself. Ms Martin on occasion addressed Dillwynia staff on parade as 'cunts'. The use of such language by the Governor towards officers clearly fed into a culture where there was little respect between officers, and likely increased the lack of trust or confidence in Ms Martin's leadership by officers she was responsible for managing. I do not accept Ms Martin as a reliable witness. When her evidence conflicts with others, I reject her account. I reject her evidence that she did not use foul language towards staff.

7.2.2 Intimate relationships between staff members

1011. The evidence of a number of witnesses suggests that intimate relationships between officers at Dillwynia affected the management and behavioural culture at the centre. Apparently, it was not uncommon for officers to be in intimate relationships with each other.¹²⁵⁶

1012. At the time of Astill's offending, the evidence relevant to this Special Commission suggests that at least the following officers were known to be in intimate relationships:

- a) Astill and Ms Hockey;¹²⁵⁷
- b) Mr Giles and Ms Robinson;¹²⁵⁸
- c) Mr Wilson and Ms Kim Wilson;¹²⁵⁹ and
- d) Overseer Fiona Baker and Overseer Anthony Baker.¹²⁶⁰

1013. Mr Jeans, Ms Dolly and Ms O'Toole gave evidence of the volatile relationship between Astill and Ms Hockey while at work. Mr Jeans explained that Astill and Ms Hockey would be 'very affectionate' and then a week later, Astill would yell

1256 Transcript, 1 November 2023, 1409.4-11; Transcript, 1 November 2023, 1465.42-45; Transcript, 27 October 2023, 1020.28-39.

1257 Transcript, 1 November 2023, 1408.32-44.

1258 Ex. 24, TB 2, Vol. 8, Tab 81, AST.002.013.0051_0003 [15]; Transcript, 2 November 2023, 1497.44-46.

1259 Transcript, 1 November 2023, 1467.19-37.

1260 Ex. 57, TB 2, Vol. 8, Tab 68A, AST.002.013.0025_0004 [28].

out to ‘look at that cunt over there’, referring to Ms Hockey.¹²⁶¹ Ms Dolly’s evidence was that if Astill and Ms Hockey were fighting, it would be very uncomfortable for other staff on duty that day. She recalled that on occasions Ms Hockey would be in the clinic crying. At the same time Astill would be directing other junior staff to ‘tell that bitch, tell that cunt to go and get my dinner’.¹²⁶² Ms Dolly gave evidence that there were occasions when she saw Astill ‘dry humping’ Ms Hockey over the kitchen bench in the office of the Senior Correctional Officer for the night shift.¹²⁶³

1014. Ms O’Toole gave evidence that Astill was ‘very, very harsh’ with Ms Hockey, and while she did not witness him verbally attack her, he would demean her, requiring Ms O’Toole to intervene on one occasion.¹²⁶⁴
1015. Ms Hockey’s evidence was that ‘work was work’ and ‘home was home’ so there were no issues with her reporting directly to Astill.¹²⁶⁵
1016. Ms Kim Wilson similarly said that she was not placed in a position of a conflict while working at Dillwynia with her husband¹²⁶⁶ and that they rarely worked together.¹²⁶⁷
1017. Ms Robinson’s evidence was that she and Mr Giles had a rule that they did not talk about work outside the workplace.¹²⁶⁸ His evidence was that if he was next in the chain of command to Ms Robinson, she would not report an issue to him, and would instead report to the person above him in the chain of command.¹²⁶⁹
1018. Mr Giles was asked what he would anticipate would occur in the event that officers who were in relationships were unable to work at the same centre. He said he thought that officers would lie, or not be forthcoming with information

1261 Ex. 57, TB 2, Vol 8A, Tab 87, AST.002.013.0034_0006 [46].
1262 Transcript, 27 October 2023, 1096.30-43.
1263 Ex. 16, TB 2, Vol. 8, Tab 77, AST.002.013.0026_0002-0003 [16].
1264 Transcript, 7 November 2023, 1838.36-1839.17.
1265 Transcript, 1 November 2023, 1420.10-14.
1266 Transcript, 1 November 2023, 1466.1-5.
1267 Transcript, 1 November 2023, 1467.19-46.
1268 Transcript, 2 November 2023, 1498.1-14.
1269 Transcript, 17 November 2023, 2624.26-31.

that they were in a relationship to avoid being moved.¹²⁷⁰ He did suggest that officers should be required to complete a declaration of conflict of interest if they were in a relationship with another officer, to ensure that they could be placed in different areas of the gaol.¹²⁷¹

1019. Witness C said that officers discussed private matters, kissed and flirted in front of inmates.¹²⁷²
1020. Witness C also said that as a result of there being various couples working at Dillwynia, it made asking for assistance or making complaints really difficult, as inmates did not know whether the officer would share something the inmate had said with their partner or other family members working at the centre.¹²⁷³
1021. Ms Ward gave evidence that Ms Hockey was always very difficult and unpleasant towards her. She felt this was because Ms Hockey knew what Astill was doing to her.¹²⁷⁴
1022. Witness C gave evidence that Ms Hockey was allocated as her caseworker, and that it soon became clear to her that Ms Hockey was feeding personal information about her to Astill.¹²⁷⁵ Ms Hockey was once overheard asking Witness C whether there was ‘anything going on’ between her and Astill.¹²⁷⁶ Similarly, Witness N’s evidence was that Ms Hockey once asked her to tell her what Astill had been doing¹²⁷⁷ and, on a different occasion, asked if he was in a sexual relationship with Ms Baker.¹²⁷⁸
1023. Ms Berry gave evidence that following the incident involving Witness C’s ring, detailed further in Chapter 8, she spoke with Ms Hockey who said she had told Astill ‘off’ as he was ‘looking bad’ with Witness C. Ms Berry’s evidence was that

1270 Transcript, 17 November 2023, 2624.2-21.

1271 Transcript, 17 November 2023, 2626.16-33.

1272 Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0014 [58].

1273 Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0014 [58].

1274 Ex. 3, TB 1, Vol. 5, Tab 14A, AST.002.013.0003_0004 [17].

1275 Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0008 [32].

1276 Ex. 3, TB 1, Vol. 5, Tab 12A, AST.002.013.0007_0004 [32].

1277 Ex. 3, TB 1, Vol. 6, Tab 32A, AST.002.013.0005_0006 [25].

1278 Ex. 3, TB 1, Vol. 6, Tab 32A, AST.002.013.0005_0006 [25].

Ms Hockey also said that she had heard from an inmate that Astill was receiving blow jobs from Witness C and she was upset that she had not heard the rumour first from Astill.¹²⁷⁹ Ms Hockey was asked about Ms Berry's evidence. She denied that she had ever heard a rumour about any kind of sexual activity between Astill and Witness C.¹²⁸⁰ She similarly denied that she had a conversation with Ms Berry about rumours of sexual activity between Astill and Witness C, or about his involvement in the Witness C ring incident.¹²⁸¹

1024. Ms Hockey indicated that she recalled being allocated as Witness C's case manager at Witness C's request. Ms Hockey said the request was 'unusual' as she did not have a rapport with Witness C. Ms Hockey denied that she had passed on confidential information provided by Witness C in the course of her case management to Astill.¹²⁸² Ms Hockey did confirm that she directly reported to Astill in the relevant period.¹²⁸³

1025. It was no secret that Ms Hockey and Astill were in a relationship. Nevertheless, an arrangement was approved whereby Ms Hockey directly reported to Astill. There were also work allocations in which Ms Robinson was managed by Mr Giles. Such arrangements would obviously have created conflicts, or at least the potential for them. It does not appear that Dillwynia management took any steps to avoid or manage those conflicts. The evidence suggests officers in intimate relationships with each other, may be an issue at other correctional centres. I accept that in regional areas (where a particular correctional centre may be a significant employer in a regional town, for example) it would be unrealistic to impose a rule that officers in intimate relationships should not work in the same correctional centre. However, it does not appear that such a rule would present the same problem in urban areas, although in view of Mr Giles's evidence it would be sensible that it be accompanied by clear disclosure requirements carrying disciplinary consequences if not complied with.

1279 Ex. 18, TB 2, Vol. 7, Tab 48, AST.002.002.0055_0005 [24]-[25].

1280 Transcript, 1 November 2023, 1421.23-29.

1281 Transcript, 1 November 2023, 1423.46-1424.17.

1282 Transcript, 1 November 2023, 1419.36-41; Transcript, 1 November 2023, 1421.8-21.

1283 Transcript, 1 November 2023, 1420.5-8.

1026. Commissioner of CSNSW Kevin Corcoran gave the following evidence on this topic:

MR LLOYD: *There's some evidence that the Commission has heard about some difficulties which are created by officers, taking Dillwynia as an example, being in intimate relationships.*

MR CORCORAN: Yes.

MR LLOYD: *Are you aware of that?*

MR CORCORAN: Yes.

MR LLOYD: *Do you agree that that can present a problem in terms of proper governance of a correctional centre?*

MR CORCORAN: *Well, it certainly did at — at this particular correctional —*

MR LLOYD: *What about more broadly in your experience —*

MR CORCORAN: *Yeah, more broadly, you know, it — it — it can be an issue, you know. But certainly in the regional centres, we would have a — you know, a significant problem if we said, you know, intimate partners could not work together because we have to — probably only about two-thirds of the staff left after that.*

MR LLOYD: *And it might mean that staff in those regional centres, if they want to continue to be correctional officers, would have to move to the city, effectively?*

MR CORCORAN: *That's right, yeah.*

MR LLOYD: *And even in terms of Dillwynia, we've got a correctional facility right next door?*

MR CORCORAN: Yes.

MR LLOYD: *But for places that are a little bit out of the city (crosstalk) —*

MR CORCORAN: *Yeah. Look, the city is fine. You know, we can certainly make that sort of a policy work in the city.*

MR LLOYD: *Is that — do you think, in terms of its workability, it can work?*

MR CORCORAN: *It — it can work now that we have rescinded this island award. It was a problem in Dillwynia before because of the nature of that award that applied. But now that that's been rescinded, there's no barrier to that sort of policy coming into play.*

MR LLOYD: *Is it good policy? So it's workable in the city. Is it good policy, though, do you think?*

MR CORCORAN: *Look, yeah, I think so. But it's going to be problematic to retrospectively apply that to regional locations.*

MR LLOYD: *But just in terms of the city ones at least, do you think it's a good policy?*

MR CORCORAN: *City ones — yeah, I think it would be good policy.¹²⁸⁴*

1027. The Special Commission heard some evidence that imposing such a rule may lead to industrial action. Obviously, any new rule would need to be introduced in a manner consistent with the requirements of the *Government Sector Employment Act 2013 (GSE Act)* and relevant awards, but given the consequences for inmates of failure to manage the conflict of interest created by the relationship between Astill and Ms Hockey, the prospect of Public Service Association members disagreeing with its introduction is an insufficient reason for rejecting the proposal. The intimate relationships between officers at Dillwynia inhibited the reporting of complaints by inmates about Astill's conduct.

1028. **RECOMMENDATION:** **In urban areas, and where possible in other areas, officers in intimate relationships with each other should not be permitted to work in the same correctional centres. In rural areas, where implementation of such a rule may not be practical, clear and specific instructions accompanied by training in managing conflicts of interest should be mandatory for correctional centre management and officers themselves. There should be a requirement that such training be repeated at regular intervals.**

7.2.3 Close friendships between staff members

1029. Close friendships between staff similarly had an effect on the management and workplace culture at Dillwynia.¹²⁸⁵
1030. It was common knowledge that Ms Hockey was good friends with Ms O’Toole, and that Ms O’Toole was also friends with Astill.¹²⁸⁶ Ms O’Toole gave evidence that she would socialise with Ms Martin and her husband, along with Astill and Ms Hockey, Mr Brumwell and Nichole Brumwell and Dimity Geddes and her partner, and would often celebrate birthdays and New Year’s Eve and attend barbecues together. Ms O’Toole stated that she and her family would attend camping trips with Ms Martin’s family, and that their husbands had worked together previously.¹²⁸⁷
1031. Former Principal Correctional Officer Pam Hotham gave evidence that Astill was friends with Ms Martin, Ms O’Toole, Mr Giles and their partners, and that they attended barbecues together outside of work. Ms Hotham’s evidence was that staff could see that those staff members were friendly.¹²⁸⁸ It appeared to have been common knowledge among officers that Ms Martin, Ms O’Toole and Astill were friends.¹²⁸⁹
1032. Ms Martin’s Counsel submitted that it was ‘pellucidly clear from the evidence that [Astill and Ms Martin] never socialised together, had no interests in common, did not go on holidays together, did not dine together at clubs and restaurants, and that their families never socialised or even knew each other’.¹²⁹⁰ I do not accept this. Both Ms Hotham and Ms O’Toole gave evidence about Ms Martin socialising with Astill and Ms Hockey outside of work, including in the case of Ms O’Toole in her presence. I accept their evidence, which is, of course, inconsistent with Ms Martin’s evidence.

1285 See eg Ex. 17, TB 2, Vol. 7, Tab 62A, AST.002.013.0045_0002, 0003, 0009-0010 [7], [15], [57]. See also Ex. 15, TB 2, Vol. 8, Tab 70, AST.002.013.0012_0007 [56].

1286 Transcript, 18 October 2023, 279.33-44; Transcript, 18 October 2023, 289.28-33; Ex. 3, TB 1, Vol. 5, Tab 6A, AST.002.013.0005_0006 [37]; Ex. 3, TB 1, Vol. 6, Tab 32A, AST.002.013.0004_0004 [18]. See also Transcript, 7 November 2023, 1808.5-20.

1287 Ex. 30, TB 2, Vol. 8A, Tab 88, AST.002.013.0044_0009 [82]-[84].

1288 Ex. 27, TB 2, Vol. 8, Tab 85, AST.002.013.0039_0002-0003 [16].

1289 Transcript, 25 October 2023, 751.1-10; Transcript, 26 October 2023, 875.29-45; Transcript, 26 October 2023, 947.35-43; Transcript, 26 October 2023, 978.19-27; Transcript, 27 October 2023, 1017.17-44; Ex. 23, TB 2, Vol. 7, Tab 52A, AST.002.013.0019_0005-0006 [29].

1290 Submissions on behalf of Shari Martin, 22 December 2023, AST.002.013.0115_0002 [6].

1033. Mr Giles's evidence (consistent with that of other officers) was that there were cliques at Dillwynia. He explained that officers spent a lot of time together, and as a result would become good friends with each other and that this would result in cliques forming.¹²⁹¹

1034. Witness C's evidence was that the close relationships between staff made it very difficult to know which staff members were aligned with others. The following exchange took place:

MR LLOYD: *In terms of your perspective about the environment for making complaints about the sexual abuse by Astill, what did the fact that there were various couples in the centre do for your attitude about it?*

WITNESS C: *Well, it made it very difficult to know who was connected to who. If you went somewhere, would you be safe? Would it be — would the information that you're giving them suddenly be across the compound the next day? Would anything actually happen? There were not only just couples but there were mother/daughter combinations, there were sisters, there were cousins. And I'm not even aware of all of the relationships but it was — we were all very aware that you had to be careful where you went because you just didn't know who you were talking to.*¹²⁹²

1035. Witness C also indicated in her statement to the Special Commission that after she was transferred to Silverwater, an officer named Dayna who worked at reception made derogatory comments towards her and had tried to accuse Witness C's manager at her employment of being favourable towards her. Witness C's evidence was that she was told by another officer that Dayna was Ms O'Toole's daughter. Witness C said that another officer who gave her a 'hard time' at Silverwater was Ms Berry's identical twin Kit.¹²⁹³

1291 Transcript, 17 November 2023, 2560.39-2561.27.

1292 Transcript, 19 October 2023, 366.28-39.

1293 Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0014-0015 [59]-[60].

1036. Witness B similarly gave evidence that she would try to go up the chain of command with issues she had, but it seemed to her that the officers' responses were affected by their friendships with those with whom they worked.¹²⁹⁴
1037. Ms Miskov's evidence, which I accept, characterised the centre's culture as akin to a 'cult' where staff looked after each other.¹²⁹⁵ This is particularly apparent through the failure by management to competently, impartially and swiftly deal with the complaints made by inmates against Astill.

7.2.4 The 'boys' club'

1038. Multiple witnesses gave evidence about the 'boys' club' at Dillwynia.¹²⁹⁶ As Witness B explained:

*Those officers [who treat inmates like human beings and help inmates without asking for anything in return] do not seem to last long at Dillwynia. It seems to be a boy's club, where the bad culture starts at the lowest level and goes right up the hierarchy.*¹²⁹⁷

1039. Correctional Officer Cailla Barlow similarly reflected on the toxic culture of the centre so far as female officers were concerned:

*The culture at Dillwynia was very toxic. If you were female, casual, or showed any sort of ambition, it was abysmal. There were some overseers who had a dislike for female officers and did not like reporting to them.*¹²⁹⁸

1040. Ms Miskov gave evidence, referred to further in Chapter 8, that when she was a graduate Correctional Officer at Dillwynia, Astill would make inappropriate sexualised comments towards her in the workplace in front of other officers. Her evidence was that at no time did the other officers who witnessed this conduct

1294 Ex. 3, TB 1, Vol. 6, Tab 23A, AST.002.013.0030_0007 [36].

1295 Transcript, 24 October 2023, 719.19-24.

1296 Transcript, 25 October 2023, 745.13-32; Transcript, 26 October 2023, 947.35-43; Ex. 8, TB 2, Vol. 7, Tab 63A, AST.002.013.0022_0003 [17]; Ex. 3, TB 1, Vol. 6, Tab 46, AST.002.013.0009_0008 [50].

1297 Ex. 3, TB 1, Vol. 6, Tab 23A, AST.002.013.0030_0010 [54]. See also Transcript, 24 October 2023, 690.8.

1298 Ex. 57, TB 2, Vol. 8, Tab 82, AST.002.013.0071_0008 [43].

pull Astill up on his behaviour or intervene in anyway.¹²⁹⁹ She explained that there was constant name-calling and she was made to look stupid in front of inmates and staff, despite the fact that she was new to the centre and there to learn.¹³⁰⁰ She also gave evidence that some of Astill's 'puppets', including Mr Giles, Ms Robinson and Correctional Officer Patricia Peek also gave her a 'hard time' and would yell out to her and call her names like 'cunt'.¹³⁰¹

1041. A number of officers gave evidence about a group of officers known as 'Shari's boys', being Mr Giles, Chief Correctional Officer Neil Holman, then Principal Correctional Officer Michael Paddison and Astill.¹³⁰² Ms Berry's evidence was that Dillwynia was run on fear of Ms Martin and unless an officer was one of her 'boys', they had no options, opportunities or proper treatment. Her evidence was that she was bullied, harassed and treated badly by 'Shari's boys'.
1042. Ms Barry gave evidence that 'Shari's boys' could do no wrong in Ms Martin's and Ms O'Toole's eyes and that Mr Giles and Astill had more say over the day-to-day running of the centre than anyone else.¹³⁰³
1043. Mr Jeans' evidence was that officers who were known favourites of Ms Martin, being Mr Holman, Mr Paddison and Astill, could 'get away with a lot' and were her 'minions'.¹³⁰⁴
1044. Ms Martin was asked about 'Shari's boys'. She said that she could not understand why that was said. Ms Martin said that most of her dealings were with executive staff, being Ms O'Toole, former MOS Suryanarayan Hariharan, Chief Correctional Officers Deborah Wilson, Pamela Kellett, Mr Holman and Mr Paddison, though she did not see Ms Barry much despite her being an executive member. Ms Martin's evidence was that when Mr Giles was a Senior Correctional Officer (prior to his appointment as a Chief Correctional Officer) she had dealings with

1299 Transcript, 24 October 2023, 705.25-706.34.

1300 Transcript, 24 October 2023, 708.5-20.

1301 Ex. 7, TB 2, Vol. 8, Tab 76, AST.002.013.0024_0002 [13].

1302 Transcript, 27 October 2023, 1109.1-36; Ex. 18, TB 2, Vol. 7, Tab 49A, AST.002.013.0013_0004-0005, 0029 [18], [189]; Ex. 17, TB 2, Vol. 7, Tab 62A, AST.002.013.0045_0002 [7]; Ex. 27, TB 2, Vol. 8, Tab 85, AST.002.013.0039_0002 [11], [16]. See also Ex. 57, TB 2, Vol. 8A, Tab 87, AST.002.013.0034_0006 [48]-[49].

1303 Ex. 17, TB 2, Vol. 7, Tab 62A, AST.002.013.0045_0002, 0003, 0009 [7], [15], [57].

1304 Ex. 57, TB 2, Vol. 8A, Tab 87, AST.002.013.0034_0006 [48]-[49].

him as the union delegate, and that she did not see Astill much.¹³⁰⁵ I do not accept her evidence. The evidence to the contrary comes from multiple sources.¹³⁰⁶ Her denials must be rejected.

1045. Ms Dolly gave evidence about the group of officers in the High Needs area, being Mr Giles, Correctional Officer Steve Vella, Ms Robinson, Correctional Officer Dave Edwards, Mr Gaffney and Ms Peek. Ms Dolly's evidence was that this group of officers were known as 'the Golden Circle' because they got away with 'so much', including bullying and harassment of officers who were not part of that group.¹³⁰⁷ She said that Mr Giles had 'free reign' of High Needs as he was good friends with Ms Martin.¹³⁰⁸ Ms Dolly recalled an occasion when she spoke to Mr Giles about some issues that had arisen in the High Needs unit. In response, Mr Giles abused Ms Dolly and called her a 'cunt' in front of inmates.¹³⁰⁹
1046. Ms Berry gave evidence that she was subjected to bullying behaviour by Mr Giles. She said that she was aware that other staff members had submitted reports of bullying and harassment by Mr Giles; however, nothing was ever done. Ms Berry said that she spoke with Ms O'Toole regarding Mr Giles' conduct towards her and Ms O'Toole said that his treatment of Ms Berry was 'more than enough to place a grievance in', but asked whether 'that is a road [Ms Berry was] willing to travel'. As a result, Ms Berry did not pursue her complaint. Ms Berry assumed that Ms O'Toole must have spoken to Mr Giles about his conduct, as his treatment of her improved after this.¹³¹⁰
1047. Similarly, Correctional Officer Grant Riddle gave evidence regarding Mr Giles' group. He explained that the officers in that group worked together and socialised together. Mr Riddle's evidence was that officers who were not part of that group were 'ostracised'.¹³¹¹

1305 Transcript, 13 November 2023, 2230.19-27.

1306 Ex. 27, TB 2, Vol. 8, Tab 85, AST.002.013.0039_0002-0003 [16]; Transcript, 25 October 2023, 751.1-10; Transcript, 27 October 2023, 1017.17-44; Ex. 23, TB 2, Vol. 7, Tab 52A, AST.002.013.0019_0005-0006 [29].

1307 Transcript, 27 October 2023, 1109.1-36.

1308 Transcript, 27 October 2023, 1109.33-36.

1309 Transcript, 27 October 2023, 1108.29-44.

1310 Ex. 18, TB 2, Vol. 7, Tab 49A, AST.002.013.0013_0008 [39].

1311 Transcript, 27 October 2023, 1016.4-14.

1048. Witness C gave evidence that at that time there was a group of officers known by some inmates as ‘Giles’ gang’, which included Mr Brown, Ms Robinson, Mr Vella and Mr Gaffney. Witness C recalled that Mr Giles would say ‘I run this show’ and she commonly heard Dillwynia being referred to as ‘Giles’ gaol’.¹³¹²
1049. Witness C’s evidence was that officers who helped inmates, followed through on basic requests or interacted with inmates, such as by playing sports, were treated poorly by other staff. She recalls that officers, including Mr Clark, Correctional Officer Paul Foster, Correctional Officer David Alessi and the Chaplain, Suellen Johnson, would be ridiculed because they were seen to interact with, and help, inmates. She once overheard Mr Giles say to another officer, ‘don’t fucking help those crims, they are pieces of shit’.¹³¹³ Witness C explained that ‘crim lovers’ were seen as weak.¹³¹⁴ New officers were spoken down to, sworn at, condescended to and subjected to derogatory comments from other officers in the presence of inmates.¹³¹⁵ Her evidence was as follows:

Over time, I lost faith in the staff. In addition to the behaviour of some officers towards inmates, I observed some officers being nasty to other officers too. Any officer who wanted to support an inmate or follow through on a basic request was treated so poorly. Some of them would try and interact with us, like play touch football or basketball with us when we were playing. I heard Officer Giles say: “don’t fucking help those crims, they are pieces of shit’ and he would call any officer who would interact with us ‘a dog’. The officers didn’t treat officer Clark well, and I heard them talk about him poorly. Officer Poole and Officer Geddes ran the YASP (a Young Offenders) program and I heard officers make snide remarks about them, more or less saying they were too useful and too kind. Officer Alessi used to cop it for going out too far on a limb for inmates, he was nice but not overly nice he would simply take your request forms and say ‘no problems’ and just not make life hard for us. Mr Foster and Chaplain Suzie were ridiculed and told to buzz off by the

1312 Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0002 [9]-[10].

1313 Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0004, 0014 [14], [57].

1314 Transcript, 19 October 2023, 360.13-21.

1315 Transcript, 19 October 2023, 359.45-360.11; Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0004 [15].

high needs staff if it was seen that they were interacting with inmates too much or doing too much for us. I recall Officer Giles said one day openly in the lunch time break to someone who was talking to him about Suzie, 'she just gets in the way'.

If an officer was trying to be a role model for the inmates, they would be ridiculed in front of the inmates. Officers were openly sworn at. I remember hearing Officer Giles talking to Officer Gaffney about another officer that was being nice to us. I was standing outside the office at the time and I heard Officer Giles say about that nice officer "fuck him off to a shitty post". New staff were particularly targeted. I saw officers make faces at Officer Hari when he turned around, I observed that they generally weren't pleasant to him and if he helped anyone out it was frowned upon.¹³¹⁶

1050. Witness C's evidence regarding Mr Giles was challenged by Counsel who was then appearing for him. She did not resile from her evidence.¹³¹⁷
1051. Witness C gave evidence that there was a clear division between the officers who held the most power and had the best roles, and those who were considered weak or soft.¹³¹⁸ Inmates would be aware of which officers were getting the 'shit shifts', who were sent to the 'crappy posts' and who could not get overtime.¹³¹⁹
1052. Mr Giles was asked about Witness C's evidence. He denied that he had said that he would 'fuck' another officer 'off to a shitty post' and said that Mr Gaffney was his best mate.¹³²⁰
1053. Ms Johnson's evidence was that the officers, including Correctional Officer Jocelyn Ryan, Ms Barry and Principal Industries Officer Catheryne Avery were given a hard time by other staff as they really tried to make a difference for inmates.¹³²¹

1316 Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0004 [14]-[15].
1317 Transcript, 19 October 2023, 426.43-430.27.
1318 Transcript, 19 October 2023, 360.17-21.
1319 Transcript, 19 October 2023, 359.37-360.11.
1320 Transcript, 17 November 2023, 2570.13-22.
1321 Ex. 19, TB 2, Vol. 7, Tab 47A, AST.002.013.0047_0003 [17].

1054. Mr Giles accepted that there were cliques amongst officers at Dillwynia. It is not necessary to make findings as to the precise membership of such cliques, or to resolve the conflicting accounts of Witness C and Mr Giles' evidence that Mr Giles said he would 'fuck' an officer who was nice to inmates 'off to a shitty post'. However, it is apparent that the officer clique in the High Needs unit was one exemplar of a 'boys' club' culture at Dillwynia during the period of Astill's offending. Disrespectful and exclusionary behaviour between officers was tolerated, and apparently condoned, by management.
1055. Although by reason of the management needs for different sections of the gaol some officers must work more often with only a limited number of officers, the emergence of power groups, with favouritism shown by management to some officers, must always carry the risk of a breakdown in the effective management of the gaol. I am in no doubt that this occurred at Dillwynia.
1056. The existence of a 'boys' club' culture at Dillwynia during the period of Astill's offending allowed some male officers to engage in disrespectful and inappropriate conduct towards others, particularly female officers. On occasions, good officers who treated inmates and colleagues with respect were themselves treated poorly and intimidated into silence or compliance, leaving Dillwynia to be run by the 'boys' club', particularly Ms Martin's favoured officers.

7.2.5 Rumours, gossip and bullying

1057. Numerous witnesses gave evidence about the bullying of staff at Dillwynia, particularly of Ms Berry, Ms Barry and Ms Dolly by Astill and other senior staff members, including Mr Giles and Ms O'Toole.¹³²²
1058. I am satisfied that the gaol was full of gossip and rumours about staff, which contributed to a toxic culture.¹³²³ Ms O'Toole described it as a 'viper pit'.¹³²⁴

1322 Transcript, 25 October 2023, 736.1-4; Transcript, 27 October 2023, 1016.4-14; Transcript, 27 October 2023, 1019.5-8; Transcript, 27 October 2023, 1170.1-2; Transcript, 30 October 2023, 1199.17-20; Ex. 29, TB 2, Vol. 8, Tab 83, AST.002.013.0035_0015-16 [141]; Ex. 9, TB 2, Vol. 7, Tab 64A, AST.002.013.0017_0011 [71]; Ex. 16, TB 2, Vol. 8, Tab 77, AST.002.013.0026_0009 [44]. See also Ex. 30, TB 2, Vol. 8A, Tab 88, AST.002.013.0044_0002 [11].

1323 Ex. 57, TB 2, Vol. 8, Tab 74, AST.002.013.0021_0006 [45].

1324 Ex. 30, TB 2, Vol. 8A, Tab 88, AST.002.013.0044_0002 [11].

1059. On 3 November 2015, Ms O'Toole sent an email to a large number of staff members at Dillwynia. The email confirms the problems at the gaol and the inability of the leadership to maintain a positive culture among officers. The email said:

A number of you have a considerable amount to say in relation to specific incidents that have taken place in this centre and the manner in which these incidents have come to my attention. I would like to reinforce the following:

- (1) If inmates wish to report staff for a variety of issues, they have every right to do so.*
- (2) If I deem that the information supplied to me by inmates is relatively factual, I will follow up with staff concerned not the general staff population of this centre.*
- (3) If staff are informed of issues from inmates & inmates request to speak to management about the same issue it is not 'dobbing or a weak act' on the part of the officer. The officer is merely informing me that the inmates wish to see me & why.*
- (4) What you deem as acceptable behaviour in the work place does not necessarily mean it is acceptable. Management, policies & legislation deem what is acceptable in the workplace.*
- (5) If you have an issue with how management address certain issues please feel free to discuss with management, not every man & their dog.*
- (6) If any of you take offence to the contents of this email, then it is probably because you are one of the ones making comment.*

I have observed over a long period of time that the bulk of you in this centre have a great deal to say about management & I might add that little of it is positive — this really doesn't bother me because when I look around the majority of those making comment have never worked in another centre, moved out of their comfort zones, stood up to be counted as an individual or attempted to improve yourselves. I find it greatly amusing that those with such little experience at managing people have the audacity to pass comment. Perhaps if you all spent as much time & energy on doing your

*job as you do on ‘slamming’ each other & management, this centre would be a nicer place to work.*¹³²⁵

1060. Astill replied to Ms O’Toole’s email with a single word: ‘GOLD’.¹³²⁶

1061. When asked what she meant by ‘relatively factual’ in this email, Ms O’Toole denied that the first thing she would do when she received a report from an inmate about misconduct was determine whether the allegation was factual or relatively factual. She explained it was ‘just poor choice of wording’ as she would follow up with the Governor, Intelligence Officer and other staff members as appropriate.¹³²⁷ When asked about the comment in the email to the effect that the staff had made negative comments about management, Ms O’Toole’s evidence was that:

*There was, again, a lot of rumour and innuendo. There was rumour and innuendo — as I said, it was rife at Dillwynia. There was finger-pointing, accusations, allegations. It was the — it was a place I referred to as the viper pit, simply because people had little to do with their time and, as we all know, idle hands are the devil’s playground. But to — to stick knives in each other’s backs and gossip and rumour-monger amongst themselves, and particularly they were highly critical amongst themselves and their gossiping about how management performed their roles. Like, they were very, very judgmental in relation to how the whole management team performed their roles.*¹³²⁸

1062. She then gave the following further evidence:

MR LLOYD: *Well, in the first paragraph after the numbered ones, you say you’ve observed over a long period that:*

1325 Ex. 3, TB 3, Vol. 17, Tab 588, CSNSW.0002.0001.2308_0001-0002.

1326 Ex. 3, TB 3, Vol. 17, Tab 588, CSNSW.0002.0001.2308_0001.

1327 Transcript, 7 November 2023, 1817.42-1818.8.

1328 Transcript, 7 November 2023, 1819.2-10

'...the bulk of you in this centre have a great deal to say about management, and I might add that little of it is positive.'

Do you see that?

MS O'TOOLE: Yes.

MR LLOYD: That's you levelling a criticism at the bulk of the employees, that is, officers, in the centre; is that right?

MS O'TOOLE: Yes.

MR LLOYD: Because they were having things to say about management, and little of it was positive. Is that how we read it?

MS O'TOOLE: Correct. Yeah, they were gossiping.

MR LLOYD: Did you ever think it might be the other way around and the problem might be with the few people in management rather than the bulk of the officers in the centre?

MS O'TOOLE: I believe it was the bulk of the officers in the centre. Because if you go on further, the bulk of the officers in that centre had never worked anywhere else. So close friendships were formed between those officers. And if management deemed to counsel an officer or, you know, do their — well, do their job, we were criticised. We were criticised for basically anything that we did because these staff — the bulk of the staff there had never experienced any other Correctional Centre. They had only ever experienced Dillwynia. And when Dillwynia was opened, Dillwynia staff were treated with kid gloves.¹³²⁹

1063. Ms O'Toole believed that Dillwynia did not function well because the staff had no experience at any other correctional centre and were averse to change. She stated that when Dillwynia was first opened, the staff were treated with 'kid gloves' by management, which she explained to mean 'softly'. Ms O'Toole explained that staff became used to that treatment. Her evidence was that this

was the reason staff criticised management.¹³³⁰ Ms O'Toole said that staff had been at Dillwynia for long periods of time and, as a result, had formed 'large cliques' and socialised together, and that this perpetuated a culture in which officers felt unable to submit reports about the conduct of other officers. Ms O'Toole's evidence was that it would have been 'pointless' raising the issue as there was no tenure system in CSNSW requiring staff to move to a different role or location after a certain number of years.¹³³¹ I will return to this issue later in this Report.

1064. Mr Riddle gave evidence regarding the email from Ms O'Toole. He said that he recalled asking Ms O'Toole why she had not sent the email only to the person who was responsible for the behaviour she was raising, and queried why he had received the email, as he didn't 'chatter'.¹³³² He recalls that Ms O'Toole explained that she sent the email so that everybody would know that gossiping was not permitted.¹³³³
1065. Ms Barry's evidence was that she did not take the email from Ms O'Toole personally, and that it was another example of her bullying approach.¹³³⁴
1066. Ms Martin's evidence was that she did not think that staff were treated with 'kid gloves', though she did agree that a number of staff members had only worked at Dillwynia and had only experienced the management style of the centre when it opened. Ms Martin did not agree that all staff were unhappy and thought that they seemed to be working hard and working well, and that she did not receive complaints when she walked around the centre.¹³³⁵
1067. I cannot accept her evidence. The preponderance of the evidence is to the contrary and either Ms Martin was not aware of the culture in the gaol or she is glossing over the real problems.

1330 Transcript, 7 November 2023, 1819.12-1821.4.

1331 Transcript, 7 November 2023, 1825.12-34.

1332 Ex. 15, TB 2, Vol. 8, Tab 70, AST.002.013.0012_0008 [70].

1333 Transcript, 27 October 2023, 1068.25-43.

1334 Transcript, 30 October 2023, 1199.15-20.

1335 Transcript, 14 November 2023, 2236.16-39.

1068. Ms Martin was asked about the email sent by Ms O’Toole on 3 November 2015. She said that it was not uncommon in a correctional centre for the bulk of officers to have things to say about management which were not positive.¹³³⁶ Ms Martin stated that she would have spoken to Ms O’Toole about the email as she agreed that it was an example of poor management by Ms O’Toole, although she could not recall the specifics of what she would have said to Ms O’Toole.¹³³⁷
1069. Both the former Director Custodial Corrections Metropolitan Region, Marilyn Wright, and the former Commissioner of CSNSW, Peter Severin, gave evidence regarding the benefits of the rotation of Correctional Officers between correctional centres, referred to by Ms O’Toole. Ms Wright agreed that officers staying in the same correctional centre for long periods of time can lead to behavioural problems and difficulties in management. Her evidence was that she would always encourage staff to move to different correctional centres, and that staff tended to become complacent if they remained in the one gaol longer than three years. However, Ms Wright’s evidence was that it was very difficult to get staff to agree to move. She also said that she had introduced a rotation system whereby staff would transfer to different roles inside the gaol, but acknowledged this could be ineffective in solving the behavioural problems and management difficulties.¹³³⁸
1070. Mr Severin’s evidence was that it would be ideal for CSNSW to have a rotation policy, similar to NSWPF. His evidence was that implementing a rotational system at CSNSW would be an involved process and explained how it would need to differ from the NSWPF system:

*There might be some differences, particularly when it comes to specialist roles. However, under the Government Sector Employment Act, that is not as simply – not as simple to be implemented. So police, obviously, have a different piece of legislation that governs that, but you can’t do that.*¹³³⁹

1336 Transcript, 13 November 2023, 2192.39-2195.36.

1337 Transcript, 13 November 2023, 2196.1-12.

1338 Transcript, 16 November 2023, 2438.2-46.

1339 Transcript, 20 November 2023, 2720.8-12.

1071. When asked whether legislative change could or should be considered to mandate Correctional Officers rotating between correctional centres, Mr Severin responded:

Yes, I agree. And that would be the most robust way of achieving this. We tried with the Government Sector Employment Act to make it – not mandatory, but to make it sort of a condition of employment ... and we were – failed at every juncture when it came to the Government Sector Employment Act in the context of not enforceable. So we even appointed a person to a region, from memory, rather than a prison, and – but the fact that they were in that prison – and I’m talking about not people being there 20 years, but during my time – gave them some rights in maintaining that workplace under the GSE, which no doubt is well intended, but it’s not suitable for the custodial environment.¹³⁴⁰

1072. Mr Severin said that CSNSW currently relies on, and encourages, staff voluntarily moving between correctional centres, which occurred particularly when old facilities closed down and new facilities opened. The downside with a voluntary system, as he explained, was that ‘you don’t get the ones you may want to actually move or encourage to move’.¹³⁴¹

1073. Ms Wright was an impressive witness and reflected considerable insight into the problems at Dillwynia. I have no doubt she is correct when she said in evidence that staff working at the same correctional centre for long periods of time can lead to behavioural problems and difficulties in management. The inevitable conclusion is that the lengthy period of time over which many staff had worked at Dillwynia contributed to the entrenched nature of the culture at the centre and inevitably made (and makes) that culture more difficult to shift.

1074. I appreciate the legislative problems and difficulty in restructuring employee conditions in CSNSW. CSNSW submitted that imposing a mandated rotational system for Correctional Officers may lead to industrial action. Obviously, any such system would need to be introduced in a manner consistent with the

1340 Transcript, 20 November 2023, 2721.15-27.

1341 Transcript, 20 November 2023, 2720.7-28.

requirements of the GSE Act and relevant awards. However, the problems at Dillwynia demonstrate the potential for failure of management of a gaol unless officers are regularly moved between centres. As is apparent in this case, failure can have catastrophic consequences. Cliques will inevitably develop, and laziness and tolerance of poor behaviour become more common, in an environment where the checks and balances which accompany effective management break down.

1075. **RECOMMENDATION: The Department of Communities and Justice (DCJ) should consider what legislative amendments (to the GSE Act or otherwise) or other measures could be put in place in order to be able to require Correctional Officers to rotate between correctional centres after a period of 10 years.**

7.3 Contraband

1076. Astill used contraband, which he brought into the prison, to manipulate inmates and secure their compliance.
1077. Contraband is corrosive of the effective management of a gaol. It is obvious that it poses a serious risk to the safety and security of the correctional environment in two ways. Some contraband poses a direct risk from the nature of the items themselves. This is obvious with items such as non-prescription drugs, which pose a direct risk of abuse and overdose. Furthermore, the flow of contraband into a correctional centre can create tension and conflict between inmates and opportunities for blackmail and coercion of both inmates and Correctional Officers. This can be illustrated by Ms Ward's evidence that Witness N was receiving contraband from Astill, including tobacco, make-up and jewellery:

[T]he issue really was the tobacco, because it gave her a lot of power in the unit, and she, you know, was wheeling and dealing and selling it and all the rest of it, and it caused a lot of problems.¹³⁴²

1342 Transcript, 18 October 2023, 285.10-13.

1078. It is apparent that contraband has been, and probably remains, a problem in NSW gaols. It is equally apparent that inadequate measures have been taken to deal with it.
1079. Mr Severin gave evidence that CSNSW experienced a significant increase in the introduction of illicit substances into prisons from 2015 onwards.¹³⁴³ Apparently, it was an issue in every facility and remains an ongoing issue for correctional jurisdictions internationally and in Australia. Mr Severin said that this prompted a focus on preventative measures including technology, body scanners and drug detection, and continuous focus on reporting and awareness.¹³⁴⁴
1080. Mr Severin was asked about the evidence that Correctional Officers are not subject to the same strict inspection or scanning as members of the public when they enter prisons as visitors. He responded, '[w]e encountered some significant resistance from the staff and the unions at the time, and we had to make a decision to either not use the technology at all or at least use it for those that we could screen.'¹³⁴⁵ His interpretation of the stance taken by the unions on this issue was 'I think it's simply [Correctional Officers] don't want to be subject to the same interrogation that strangers to this prison are subject to because [Correctional Officers] can be trusted'.¹³⁴⁶
1081. Business Partner to Infrastructure and Assets Manager of Technical Security, Fergal Molloy, said that he was not aware that there was a significant issue with contraband in the form of tobacco, clothing and jewellery being brought into Dillwynia by people, including Astill.¹³⁴⁷
1082. Mr Molloy said that all persons entering Dillwynia pass through a metal detector and their baggage is screened using a baggage X-ray scanner.¹³⁴⁸ Correctional Officers are required to use clear bags which are also passed through the X-ray scanner. Mr Molloy described the X-ray scanner as similar to those used in an airport, giving a 'fairly clear' image of the contents of a bag.

1343 Transcript, 20 November 2023, 2687.29-2688.5.

1344 Transcript, 20 November 2023, 2687.46-2688.2.

1345 Transcript, 20 November 2023, 2688.19-24.

1346 Transcript, 20 November 2023, 2688.43-44.

1347 Transcript, 6 October 2023, 163.10-15.

1348 Transcript, 6 October 2023, 163.3-164.4.

1083. However, Mr Molloy conceded, soft items carried into Dillwynia on the person of a Correctional Officer or visitor, such as drugs and cigarettes, would not be detected by the metal detector.¹³⁴⁹ Such items would only be detected by a physical search or, in the case of drugs, use of drug detection dogs.¹³⁵⁰ Mr Molloy said that drug detection dogs are deployed on a regular basis, across all correctional centres in NSW.
1084. Mr Molloy gave evidence that body scanners had been rolled out in the last year and a half across the State and had been very successful in reducing the amount of contraband entering centres on members of the public, including by way of internal concealment.¹³⁵¹ However, he was unable to confirm if a body scanner had been installed at Dillwynia.
1085. The Inspector, in her 2023 report, detailed that inmates at Dillwynia were subject to a millimetre wave scanner (a type of X-ray body scanner used to identify the secretion of contraband) after their visits, as were visitors to Area 1 of Dillwynia.¹³⁵²
1086. Security and Intelligence Senior Assistant Superintendent (and former Senior Correctional Officer at Dillwynia) Scott Westlake gave evidence that there was no routine screening of officers for non-metallic contraband unless the dog unit was present or by searching staff.¹³⁵³ Although he denied any personal knowledge of staff bringing contraband into Dillwynia,¹³⁵⁴ he said that the dog unit was 'not very often' available.¹³⁵⁵
1087. In addition to bringing contraband into correctional centres by passing through screening undetected, the Special Commission heard evidence from Ms Kellett that contraband could have been thrown over the fence or brought in during C watch when no searches of staff were conducted.¹³⁵⁶

1349 Transcript, 6 October 2023, 164.8-21.

1350 Transcript, 6 October 2023, T164.23-31.

1351 Transcript, 6 October 2023, 165.6-23.

1352 Ex. 60, TB 6, Tab 24, AST.002.013.0093_0084.

1353 Transcript, 26 October 2023, 899.25-38.

1354 Transcript, 26 October 2023, 900.24-29.

1355 Transcript, 20 October 2023, 899.42-900.6.

1356 Transcript, 2 November 2023, 1605.14-19.

1088. Ms Kellett's evidence was persuasive. It is clear to me that contraband is a serious issue which may, in part, be because of a failure to effectively monitor every person, including Correctional Officers, who enters a gaol.

1089. Ms Barry gave evidence about knowledge of Astill bringing in contraband. The following is extracted from her evidence:

MR LLOYD: *Were you aware during this period, '15 to October 2018, of rumours that Astill was bringing contraband into the gaol?*

MS BARRY: *Yes.*

MR LLOYD: *Was that something that was widely discussed?*

MS BARRY: *Yes.*

MR LLOYD: *Between officers?*

MS BARRY: *Yes. And I would purposely bring him in for a search, because he'd come in and be quite intimidating to staff. So staff wouldn't necessarily pick him because he was just that type of person. He was arrogant. He — he just had a way of — of scaring staff. And he didn't have to do or say anything at this particular time, but staff wouldn't bring — bring him in for a search. And when you did bring him in for a search, he was very blasé and, 'That's all right', and, 'This is all right', and —*

MR LLOYD: *Just let me understand some things about that. The process for searching officers when they come into the gaol for work each day, there's a metal detector?*

MS BARRY: *Yes.*

MR LLOYD: *But the search you're talking about that you tried to do with Astill, that's a personal search using a wand?*

MS BARRY: *A wand. And what would happen is they would go through their bag. You wouldn't touch their stuff. So they'd flip open things and show you their pockets and — but they would do that. If they had a wallet, they'd just flick through the wallet.*

MR LLOYD: *This Commission has heard evidence that Astill was bringing drugs into the gaol.*

MS BARRY: Right.

MR LLOYD: Did you hear about that?

MS BARRY: Yes.

MR LLOYD: Was that widely discussed?

MS BARRY: Yes.¹³⁵⁷

1090. Ms Dolly recalled a meeting in 2016 attended by herself, Astill, Ms Martin, Ms Kellett, Mr Holman, Mr Paddison and Ms Hotham. During the meeting, Ms Dolly raised concerns that inmates were referring to Astill as 'Poppy' and asked him why this was so. Astill stated that Ms Hockey had informed the inmates that he was going to be a grandfather. Ms Dolly responded, 'Wayne you're lying, I've been told, you're bringing stuff in for the inmates'. Ms Dolly's evidence was that at this point, Mr Paddison asked Ms Dolly to leave the meeting, stating, 'You're nothing but a troublemaker, you're not required here'. She recalled that following the meeting, she submitted a report to Ms Wilson about the information she had received from an inmate that Astill was referred to as Poppy as he brought tobacco and drugs into the centre for inmates and did favours for them.¹³⁵⁸

1091. Mr Paddison's evidence in respect of this issue was unsatisfactory:

MR LLOYD: *Could I ask you about a different topic. Sometime in about 2016 — you may have heard this evidence also, Mr Paddison — Jean Dolly tells us about a meeting at which she says you were present where the allegation was made by her that Astill was bringing contraband in for inmates.*

MR PADDISON: Yes.

MR LLOYD: *Do you remember being at a meeting where that allegation was raised?*

MR PADDISON: *Again, I'm not doing myself any favours here, but I — going off Officer Dolly's evidence, I find it — that it would be very difficult*

1357 Transcript, 30 October 2023, 1185.21-1186.37.

1358 Ex. 16, TB 2, Vol. 8, Tab 77, AST.002.013.0026_0009 [42]-[43].

for her to have been in an executive meeting in 2016. I believe she could have possibly been in an executive meeting in 2018, because she was not at the rank to be invited to a meeting as such. And I can only say to that is if — going by what happened in 2017, if Officer Dolly came into a room where several executive staff who were in that meeting were aware of what we knew about Wayne Astill, I'm pretty confident we actually would have stopped Jean and asked her for further details or information after the fact.

So I — I don't believe that what Officer Dolly said that she was saying to Wayne is correct. And it also falls into line with, I believe, what she said, it was around the time that a mediation occurred, which I conducted that mediation with her. And the mediation that occurred between herself and Wayne Astill was very hostile, and I believed that she would have come into that meeting, she would have been just been [sic] hostile again to Wayne Astill. And due to the nature of a high-level executive meeting, I probably said to Jean, 'Just leave'. And I — I do not believe she was saying anything about contraband or things like that in regards to Wayne. Because like I said, we would have — we would have jumped on that straightaway.

COMMISSIONER: Mr Paddison, that whole answer is just out of your imagination, isn't it? You have no recollection of any of the things you've just spoken of.

MR PADDISON: I can only assume as to why I would have told her to be quiet. And that's the only — that's the only answer that I can come up with, Commissioner.

COMMISSIONER: Well, the events that you purport to relate are events that you have no recollection of; correct?

MR PADDISON: That's correct.

MR LLOYD: And in terms of just — you're no doubt aware that the Commission has heard a range of evidence about mediations, so called, in the early part of 2018 involving Thomas Woods. You know about that?

MR PADDISON: Yes.

MR LLOYD: The mediation you're talking about is quite a different event —

MR PADDISON: Yeah, it's its own event between Officer Dolly and Wayne Astill.

MR LLOYD: As you understood, that so-called mediation was to try and resolve the conflict between those two officers?

MR PADDISON: Yes. So Officer Dolly had written a report. She had requested mediation within her report. And I was instructed by Governor Martin to conduct a mediation, but I took a more informal approach. It was a — it's a 'just talk' approach.

MR LLOYD: Whether it was at a mediation, so called, or an executive meeting, and whether it was in 2016 or 2018, what I want you to respond to is what Ms Dolly told the Commissioner, that she, in your presence, made an allegation that Astill had been bringing contraband in for inmates, and you responded to her by saying, 'You're nothing but a troublemaker. You're not required here. Get out.' What do you say about that?

MR PADDISON: It's quite possible that I said that. And that — that was Officer Dolly, unfortunately. She was very well known as a troublemaker. And as I said, if she'd come into an executive meeting, starting an argument with an officer, regardless of whoever it was, I probably would have said the same thing to anybody, to get out.

MR LLOYD: Do you remember ever at any time being concerned about allegations that Astill was bringing contraband in?

MR PADDISON: No.

MR JAMES: Commissioner, I object.

COMMISSIONER: Mr Paddison, I find your evidence startling. We now know that Mr Astill was bringing contraband into the gaol, don't we?

MR PADDISON: Yes.

COMMISSIONER: And yet you believe that when Ms Dolly reported that that was probably happening, you would have been able to say to her, in good conscience, 'Just get out of the room'?

MR PADDISON: Yes.

COMMISSIONER: Are you embarrassed by what you did?

MR PADDISON: No, because I — no, Commissioner.

MR LLOYD: Assuming that happened, there was an allegation by — Ms Dolly, certainly by 2018, was a Senior [Correctional Officer]?

MR PADDISON: Yes.

MR LLOYD: And if she was making an allegation of that kind, that another senior officer was bringing in contraband, that positively demanded an explanation into whether the allegation was true. Do you agree?

MR PADDISON: Yes.

MR LLOYD: Do you remember there being any investigation into whether Astill was bringing contraband in?

MR PADDISON: I'm not aware of contraband. No.¹³⁵⁹

1092. I am completely satisfied that I should accept Ms Dolly's evidence. She impressed me as a forthright witness with a strong personality. This event reflects poorly on Mr Paddison, but also on the other officers who were present. It is plain that the effective management of the gaol was broken. The account of Ms Dolly that she had been told that Astill was dealing with contraband tobacco reflects information which as it happens was true. It is extraordinary that it was not reported and investigated.
1093. Assistant Commissioner, Delivery, Performance and Culture, Chantal Snell gave evidence that she has been involved in initiating and/or progressing various improvements in response to Astill's offending and the work of the Special Commission.¹³⁶⁰ She outlined the following improvements targeted to the issue of contraband:
- a) implementation of training for CSNSW staff administering security screening of staff and visitors entering a correctional centre in line with COPP Chapter 17.3, 'Stop, detain and search of visitors and staff'.¹³⁶¹

1359 Transcript, 2 November 2023, 1539.26-1541.41.

1360 Ex. 55, TB 5, Vol. 28, Tab 12, CSNSW.0001.0263.1558_0005 [19].

1361 Ex. 55, TB 5, Vol. 28, Tab 12, CSNSW.0001.0263.1558_0020-0021.

A Commissioner's Instruction has been drafted to remind staff of their obligations in line with this policy. CSNSW are looking into commercial training packages which would enhance the capability of staff undertaking security screening. Specific options for computer-based training courses are being considered which would include content on X-ray theory and operation. CSNSW intends to roll out training to all Correctional Officers responsible for security screening by the end of March 2024; and

- b) CSNSW is undertaking a full re-design of the Immediate Action Team and Security Operations Group One Team model.¹³⁶² Ms Snell states that this will provide for a more holistic approach to the use of detection dogs and to have this more readily available across correctional centre locations. She said that the renewed focus on the essential capability of 'K9' services will enable local action, target searches and an increase in the detection of contraband of various introduction methods. Ms Snell describes this as a long-term improvement, able to be implemented in 12 months or more.

1094. Mr Corcoran was asked whether it would be beneficial to have people external to correctional centres, at least from time to time, conducting surveillance of staff members entering the gaol. Mr Corcoran gave evidence that he had 'never contemplated that' but was aware that other jurisdictions utilised such a system.¹³⁶³ It is quite obviously a sensible suggestion.

1095. **RECOMMENDATION: CSNSW should implement the measures proposed by Ms Snell to reduce contraband in CSNSW facilities. Further sophisticated detection devices for contraband on all persons coming into gaols, including officers, should be utilised. The responsibility for supervision and screening of entrants to the gaol should be assigned to the relevant Correctional Officers on a rotational basis. Alongside this, as occurs in other jurisdictions, a group of Correctional Officers should be tasked with visiting different gaols to undertake the screening process to protect against friendships or familiarity between officers from prejudicing the integrity of the screening process.**

1362 Ex. 55, TB 5, Vol. 28, Tab 12, CSNSW.0001.0263.1558_0026.

1363 Transcript, 23 November 2023, 3130.31-3131.4.

7.4 Reporting and complaint culture

7.4.1 File 13

1096. The evidence before the Special Commission suggests that there was a common practice at Dillwynia of destroying the documents which recorded complaints. It was sufficiently common to be colloquially called ‘File 13’.
1097. Witness C said that it was common knowledge at Dillwynia that when staff or inmates referred to a complaint or inmate request form being put in ‘File 13’, that meant the document would be shredded.¹³⁶⁴
1098. The evidence given by multiple inmates was that no one cared about or believed what inmates said¹³⁶⁵ and that nothing came of complaints that were made.¹³⁶⁶ It was suggested that officers would openly ridicule inmate’s requests. Witness C’s evidence was that once the reporting inmate had walked away, officers would say that the request was going to ‘File 13’, in front of other inmates.¹³⁶⁷
1099. Witness B said that at Dillwynia, the officers in charge of a wing (**Wing Officers**) made their own determination about whether a request made by an inmate to speak to the Governor was valid and could refuse to take the complaint to the Governor.¹³⁶⁸ On Witness C’s evidence, it was the same with respect to requesting to speak to a SAPO, as Wing Officers would make inmates explain to them why they needed to speak to a SAPO.¹³⁶⁹ In contrast, Witness B said that her experience at Silverwater was that Wing Officers would progress any request to speak to the Governor, irrespective of what was contained in the form or the reason for the request.¹³⁷⁰ The practice at Dillwynia (on Witness B’s evidence) is particularly concerning when viewed against cl. 168 of the CAS Regulation, which provides that a Correctional Officer to whom an oral or written request by an inmate for

1364 Transcript, 19 October 2023, 356.6-24; Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.012.0001_0010-0011 [42].

1365 Ex. 3, TB 1, Vol. 6, Tab 23A, AST.002.013.0030_0010 [49]; Ex. 3, TB 1, Vol. 5, Tab 6B, AST.002.009.0074_0001 [15].

1366 Ex. 3, TB 1, Vol. 6, Tab 46, AST.002.013.0009_0009 [52].

1367 Transcript, 19 October 2023, 356.20-24; Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0010-0011 [42].

1368 Ex. 3, TB 1, Vol. 6, Tab 23A, AST.002.013.0030_0011 [56].

1369 Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.012.0001_0014 [55].

1370 Transcript, 24 October 2023, 694.6-9; Ex. 3, TB 1, Vol. 6, Tab 23A, AST.002.013.0030_0011 [55]-[56].

permission to speak with the Governor is addressed or delivered must, without unreasonable delay, convey it to the Governor. In turn, the Governor must give the inmate an opportunity to speak with them on the day in which the request was conveyed or made, or as soon as practicable after that day.¹³⁷¹

1100. The evidence of some of the officers was, in some respects, at odds with the inmates. Mr Westlake gave evidence about the possibility of ‘a lazy intel officer’ shredding a report.¹³⁷² Mr Westlake said while he was at Dillwynia, he was not aware of Intelligence Reports being shredded, but told the Special Commission that ‘sometimes other things might get shredded’.¹³⁷³
1101. Mr Paddison, Mr Giles and Ms Martin denied that ‘File 13’ was a practice at Dillwynia.¹³⁷⁴ Mr Paddison and Mr Giles gave evidence that the term ‘File 13’ was used as a joke or urban legend to describe a place where missing paperwork must have gone.¹³⁷⁵ When asked why it was a joke, Mr Giles explained that officers would shred documents that were duplicates and no longer required, or would shred documents, such as briefs, that inmates no longer required.¹³⁷⁶ Mr Giles said that if an inmate asked for something to disappear, officers would joke ‘Do you want me to File 13 it?’.¹³⁷⁷
1102. Ms Martin’s evidence was that ‘File 13’ was a phrase that referred to paperwork being destroyed. She said that she was not aware of a practice at Dillwynia whereby documents containing allegations would be destroyed and denied that she had engaged in this conduct. Ms Martin agreed that had a report containing allegations been destroyed, it would be gross misconduct.¹³⁷⁸
1103. Despite Ms Martin’s denials, I am satisfied that the term ‘File 13’ did refer to documents being shredded. It was understood by Dillwynia inmates to have that

1371 CAS Regulation, cl. 168.

1372 Transcript, 26 October 2023, 912.19-24; Ex. 12, TB 2, Vol. 8, Tab 78, AST.002.013.0036_0004 [26].

1373 Transcript, 26 October 2023, 913.38-914.7.

1374 Transcript, 2 November 2023, 1526.38-1527.9; Transcript, 17 November 2023, 2562.32-2563.29; Transcript, 13 November 2023, 2225.14-41.

1375 Transcript, 2 November 2023, 1526.38-44; Transcript, 2 November 2023, 1587.37-42; Transcript, 17 November 2023, 2562.21-2563.39.

1376 Transcript, 17 November 2023, 2562.21-2563.39.

1377 Transcript, 17 November 2023, 2562.43-2563.4.

1378 Transcript, 13 November 2023, 2225.14-2226.3.

meaning. It may have been used in a jocular sense but even then, it was masking serious malpractice. Even when used as a joke it reflected a culture in which staff and inmates had no confidence that management took their reports seriously. The evidence that some officers regarded a term referring to shredding of documents as funny, in an environment where, at the time of Astill's offending and subsequently, many reports were required to be 'on paper', reflects poorly on those responsible for managing Dillwynia. It is little wonder that many inmates gave evidence that lodging a complaint was a waste of time from which the only outcome might be reprisal.

7.4.2 Fear of reprisal from staff

1104. The culture at Dillwynia had a significant impact upon both inmates' and staff's willingness to come forward with complaints.¹³⁷⁹ As explained by Ms Sheiles:

*[T]he girls do not believe that they are safe to come forward and put in their complaint or put in a request, because as far as they're concerned in that mentality and that culture, it's blue will back blue. If you say something about an officer to another officer, they'll either tell the original officer or they won't do anything about it because it's another officer. And, unfortunately, that's the culture that we're led to believe happens.*¹³⁸⁰

1105. Witness M gave evidence that she was fearful of making a report about Astill's conduct towards her due to a fear of reprisal. Her evidence was that she did not feel safe.¹³⁸¹ When Mr Paddison was asked about Witness M's reluctance to make a report due to a fear of reprisal, he agreed that her fear indicated a serious problem within the system.¹³⁸²

1106. Mr Clark gave evidence that he was fearful about making a complaint on the basis of an allegation made by an inmate, like those made to him by Ms Sheiles, if that

1379 Transcript, 25 October 2023, 750.11-13.

1380 Transcript, 17 October 2023, 224.22-32.

1381 Ex. 3, TB 1, Vol. 5, Tab 10A, AST.002.013.0006_0002 [7].

1382 Transcript, 2 November 2023, 1553.4-32.

inmate was not prepared to put the allegation in writing. He explained that he feared for both himself and the inmate, which placed him in a very difficult position.¹³⁸³

1107. Similarly, Mr Riddle gave evidence that there could be retribution, such as bullying, harassment and ostracisation of an officer who made a report about the conduct of another officer. He said that, as a result, it was ‘pushed down your throat, that you don’t “paper” another officer’. His evidence was that he would be surprised if there was any officer at any correctional centre who did not hold that fear of reprisal.¹³⁸⁴
1108. Ms Gaynor gave evidence that she was not ‘game’ to put information on paper about conduct she had witnessed involving Witness E.¹³⁸⁵ Ms Robinson’s evidence was that there was a mentality at CSNSW that officers who ‘dob[bed]’ on staff were ‘dogs’. Even though Dillwynia was a newer gaol, she said that culture existed there as well.¹³⁸⁶
1109. Ms Dolly’s evidence was similar. She said that there was a culture, at the time of Astill’s offending, in which it was frowned upon to ‘paper’ another officer by submitting a report about another officer’s conduct to management. Her evidence was that the culture against papering another officer has been long-standing at Dillwynia and was present when she commenced at the centre. She recalled Mr Giles being ‘adamant’ that an officer was not to paper another officer.¹³⁸⁷ Although on the day when Ms Dolly gave this evidence, Mr Giles’ Counsel, Mr Watson, was not present, his solicitor, who was present, indicated that he was seeking instructions and may ask for Ms Dolly to be recalled.¹³⁸⁸ That application was never made.
1110. Mr Giles’ opposition to ‘papering’ another officer is likewise found in an Investigator’s Note prepared by Investigations Branch (**IB**) Principal Investigator Mark Farrell. Mr Farrell was tasked to investigate six allegations made to PSB

1383 Transcript, 25 October 2023, 750.25-38.

1384 Transcript, 27 October 2023, 1015.1-46; Transcript, 27 October 2023, 1019.25-42. See also Transcript, 13 November 2023, 2140.8-16.

1385 Transcript, 26 October 2023, 991.1-26.

1386 Ex. 24, TB 2, Vol. 8, Tab 81, AST.002.013.0051_0004 [27]-[28].

1387 Transcript, 27 October 2023, 1113.16-1114.15.

1388 Transcript, 27 October 2023, 1170.28-1171.20; Transcript, 26 October 2023, 982.15-17.

regarding a kitchen Overseer at Dillwynia having inappropriate associations with inmates, including accessing the internet for inmates.¹³⁸⁹ Mr Giles was identified as a witness during the course of the investigation, as Ms O'Toole provided a memorandum which included information provided by Mr Giles that inappropriate letters between inmates and officers had been located in the High Needs area, being the area that Mr Giles regularly managed as Senior Correctional Officer. Mr Giles advised Ms O'Toole that though he had heard that information, no such letters had been located by staff and he believed the information to be 'gossip & innuendo'.¹³⁹⁰ Mr Farrell's investigation note dated 30 May 2014 states that Mr Farrell 'spoke with Westley Giles re requirement of a report'. The note records that Mr Giles responded, 'I won't do a report, do what you like'.¹³⁹¹

1111. Mr Giles gave evidence that when he first started at CSNSW as a 19-year-old in 1999, there was a general culture that an officer should not 'paper' another officer, regardless of what the subject of the complaint was. He said that by 2015 the culture had improved, and there was an expectation that misconduct be reported; however, it still carried the risk of being labelled a 'dog'.¹³⁹² When Mr Giles was asked by his Counsel about his view on 'papering' other officers, he gave the following evidence:

MR WATSON: *You know about the term 'papering'?*

MR GILES: *Yes.*

MR WATSON: *That refers to the reporting of officers or possible misconduct?*

MR GILES: *That's correct.*

MR WATSON: *That you were supposedly - you told people that that just wasn't on?*

MR GILES: *That's incorrect.*

1389 Ex. 3, TB 3, Vol. 15, Tab 491, CSNSW.0001.0032.4102_0011-0012.

1390 Ex. 3, TB 3, Vol. 15, Tab 491, CSNSW.0001.0032.4102_0045.

1391 Ex. 3, TB 3, Vol. 15, Tab 491, CSNSW.0001.0032.4102_0337.

1392 Transcript, 17 November 2023, 2559.47-2560.37.

MR WATSON: *Right. Is it the case that you've actually written reports on occasion?*

MR GILES: *I've reported misconduct by an officer as recent as 18 months ago.*¹³⁹³

1112. It was submitted on behalf of Mr Giles that he 'should be found to be an officer acutely aware of the historical connotations to papering but that such connotations clearly did not affect his willingness to paper other officers'. It was also submitted that I should reject Ms Dolly's evidence that Mr Giles was 'adamant' that an officer was not to paper another officer.¹³⁹⁴ I am unable to do so. Apart from the fact that Ms Dolly's evidence was not challenged, it derives support from the contemporaneous note of the investigator from the IB.
1113. Although I accept that Mr Giles may on occasion have reported misconduct by an officer, I accept Ms Dolly's evidence that Mr Giles impressed on other officers that they should not 'paper' colleagues.
1114. Ms Berry's evidence was that there was a 'bit of an old school mentality' whereby officers would not put complaints against another officer down on paper. Ms Berry gave evidence about an incident on 12 January 2017, when Astill requested that she provide an inmate a copy of an inmate's identification document. As this request was contrary to policy, Ms Berry refused to action it and as a result was yelled at by Astill.¹³⁹⁵ Ms Berry did not make a written complaint about the incident as she was scared for her safety and thought that Astill would physically assault her.¹³⁹⁶
1115. Mr Wilson also gave evidence about an 'old culture' whereby an officer would not put complaints against another officer down on paper; however, he said that when newer officers, such as himself, started working for CSNSW, they did not adopt that culture.¹³⁹⁷

1393 Transcript, 17 November 2023, 2633.44-2634.13.

1394 Submissions on behalf of Westley Giles and Mishelle Robinson, 14 December 2023, AST.002.013.0107_0012 [54]-[57].

1395 Ex. 18, TB 2, Vol. 7, Tab 49A, AST.002.013.0013_0018-0019 [105]-[106].

1396 Transcript, 30 October 2023, 1262.15-44.

1397 Transcript, 2 November 2023, 1481.38-1482.2.

1116. Director of Custodial Operations, Metro West, Hamish Shearer's evidence was that officers were scared to report things. He explained that 'if you put your head above the parapet, you get it knocked off'.¹³⁹⁸ Mr Shearer's evidence was that staff were often 'stood over' by other officers not to report things, and that staff became 'victims' when they raised complaints.¹³⁹⁹
1117. Mr Shearer gave evidence that there was a deference to the 'old' model in CSNSW that officers keep their mouths shut. His view was this deference arose from the culture wherein young staff who commence at CSNSW 'very fresh and bright-eyed with new ideas' get told to 'shut up' until they have done their 'time'. He said that it was a particularly misogynistic culture, making it tough for women.¹⁴⁰⁰
1118. Former Director of IB Michael Hovey also gave evidence about the culture against 'dobbing' which he said existed earlier on in his career, including early on in his appointment as the Director of IB. He gave evidence that the culture changed around 2021, resulting in a large increase in referrals to the IB from Correctional Officers regarding concerns about the behaviour of other officers.¹⁴⁰¹
1119. When Ms Martin was asked about the evidence of numerous inmates and officers who wanted to make complaints about Astill's conduct and were bullied and intimidated by him against doing so, Ms Martin stated that she was not aware Astill was intimidating staff.¹⁴⁰²
1120. I am satisfied that, at least during the time of Astill's offending, there was a widespread culture at Dillwynia in which officers were pressured against reporting the misconduct of other officers. This culture had very real, and damaging, impacts on the women at Dillwynia, who were victimised by Astill over a lengthy period of time. It also had a serious and damaging effect on some female officers. It is apparent that officers held a fear of reprisal if they reported

1398 Transcript, 16 November 2023, 2508.4-7.

1399 Transcript, 17 November 2023, 2542.1-29.

1400 Transcript, 17 November 2023, 2542.11-22.

1401 Transcript, 8 November 2023, 1859.9-21.

1402 Transcript, 13 November 2023, 2219.15-20.

Astill, and that fear of putting other officers ‘on paper’ is still held today, although perhaps not to the same extent.

1121. Although not strictly within the terms of reference, the Special Commission heard evidence from numerous officers that there was a stigma and shame associated with making a report about the conduct of another officer at other gaols in addition to Dillwynia.¹⁴⁰³ Ms Kellett’s evidence was that there was a cultural issue across a number of centres, including Dillwynia, Long Bay Correctional Centre, Silverwater and Metropolitan Remand and Reception Centre, that staff would not submit misconduct reports.¹⁴⁰⁴
1122. Mr Greaves gave evidence that it was not at all surprising that inmates and junior staff were fearful, if not terrified, of the consequences of reporting misconduct by a senior officer who had the overt support from the executives. He also noted the physical risk of violence faced by inmates who made reports.¹⁴⁰⁵ Mr Greaves gave evidence about the ethical leadership training that he conducted. He was concerned about the widespread mistrust of CSNSW’s leadership in general and was aware that there was a ‘culture of cover-up’ within the agency.¹⁴⁰⁶ His evidence was that he introduced the training to overcome concerns that officers would not ‘paper’ another officer.¹⁴⁰⁷ He said that the flat structure within Custodial Corrections and the intense competition for promotion also created difficulties in respect of reporting the conduct of a more senior staff member.¹⁴⁰⁸ He gave evidence about broader cultural factors affecting reporting by officers, including that there were several overlapping policy documents which provided inconsistent instructions to staff on their obligations to report misconduct.¹⁴⁰⁹
1123. Acting Director Professional Standards and Investigations (**PSI**) Angela Zekanovic gave evidence that there was a reluctance by CSNSW staff to speak

1403 Ex. 57, TB 2, Vol. 8, Tab 74, AST.002.013.0021_0006 [43]; Transcript, 30 October 2023, 1262.21-44; Ex. 26, TB 2, Vol. 7, Tab 60A, AST.002.013.0048_0007 [46].

1404 Ex. 26, TB 2, Vol. 7, Tab 60A, AST.002.013.0048_0007 [46].

1405 Ex. 35, TB 2, Vol. 8A, Tab 91, AST.002.013.0057_0031-0032 [149]-[151].

1406 Ex. 35, TB 2, Vol. 8A, Tab 91, AST.002.013.0057_0019 [94].

1407 Transcript, 13 November 2023, 2139.35-2140.33.

1408 Ex. 35, TB 2, Vol. 8A, Tab 91, AST.002.013.0057_0031 [147]-[148].

1409 Ex. 35, TB 2, Vol. 8A, Tab 91, AST.002.013.0057_0014 [69].

to PSB staff and agreed that the attitude against ‘papering’ another officer remained a cultural problem at CSNSW.¹⁴¹⁰

1124. Ms Chappell’s evidence was similar. She said that it was not acceptable to ‘paper’ another officer. She said that concerns about that culture still existed; however, ‘the narrative around it is changing’. Her view was that ‘those types of culture changes do take time’.¹⁴¹¹ Ms Chappell was asked about her knowledge of officers being at risk of retribution, bullying or intimidation if they made reports about other officers. Her evidence was:

*I think, historically, there have been reservations, and I would say that the team now do still report concerns around that. What we’re trying to do at Dillwynia at the moment is to encourage an understanding around bullying and harassment and what that might look like and why sometimes, even if you mean a comment in a well-intended way, it could be misconstrued by someone who’s put a complaint in.*¹⁴¹²

1125. Mr Corcoran also gave evidence about the retribution faced by officers who made reports, or ‘papered’ other officers. His evidence was that it ‘is a common feature of Corrective Services around the nation’. He said that, in his experience in jurisdictions across Australia, including NSW, officers were reluctant to report other officers, including where the behaviour involved serious misconduct.¹⁴¹³
1126. When asked whether there was a mentality at Dillwynia that officers who doxed on other officers were ‘dogs’, Ms Martin said that mentality was not evident to her.¹⁴¹⁴ As in other respects, I cannot accept her evidence. The evidence to the contrary is persuasive.
1127. It is beyond question that there has been, and may remain, a mentality or culture among Correctional Officers that officers should not report the misconduct

1410 Transcript, 21 November 2023, 2819.18-38.

1411 Transcript, 22 November 2023, 2934.10-26.

1412 Transcript, 22 November 2023, 2934.45-2935.7.

1413 Transcript, 22 November 2023, 2966.34-2967.17.

1414 Transcript, 13 November 2023, 2191.10-13.

of other officers. Both from those who have worked in Dillwynia and from senior managers in CSNSW, the evidence is consistent. It presents a serious management issue that, unless adequately addressed, will always leave open the possibility of the problems that occurred with Astill and allowed him to offend over a number of years. It is corrosive of the integrity of the management of the gaol, damaging to morale and leaves good staff frustrated and burdened by a sense of ineffective management. It requires a comprehensive and in-depth response from the managers in CSNSW.

1128. It is necessary to consider the evidence of reports in relation to Astill's conduct with an understanding of this background.

7.4.3 Correctional and Senior Correctional Officers' handling of complaints

1129. The Inspector gave evidence that women in custody may feel particularly vulnerable due to previous experience of abuse, violence and trauma.¹⁴¹⁵ Many also have particular needs and experiences. Aboriginal and Torres Strait Islander people, people with disability, people from culturally and linguistically diverse backgrounds and survivors of abuse may all have a reluctance to make a complaint, particularly if they are in an environment where they feel those needs are not well understood.¹⁴¹⁶
1130. The Special Commission heard evidence from a number of inmates about their difficulties in making reports of misconduct by officers to Correctional Officers and Senior Correctional Officers.
1131. Witness C gave evidence of her experience making complaints. She told of an occasion in 2015 on which she spoke to Mr Rowe about other inmates being picked on. She said that in response, Mr Rowe was verbally aggressive and

1415 Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0027 [178].

1416 Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0027 [178].

abusive towards her in front of other inmates. Witness C said, 'I have come to you for help and you are screaming at me'.¹⁴¹⁷

1132. Witness C also said that when she made complaints to Mr Giles he would mostly brush her off, saying things like, 'Go away and come back later', 'That's not that important compared to other things I have to do' or 'Don't worry, you're not special'.¹⁴¹⁸ If Witness C asked to speak to a manager to action her complaint, she would be told either that they were too busy or that actioning the complaint was the responsibility of the Correctional Officer she had initially approached.¹⁴¹⁹ Witness C's evidence was that if she made a complaint to someone other than Mr Giles, she was accused of 'officer shopping'.¹⁴²⁰ She recalled an incident in which she raised an issue with Mr Giles and later raised the issue with another officer, following which Mr Giles punished her by cancelling her visits and increasing the number of cell searches.¹⁴²¹
1133. Mr Giles denied that he had accused Witness C of officer shopping or had punished her after she had done so.¹⁴²² He also said that Witness C's evidence in relation to him brushing her off when she tried to make a complaint and telling her that 'she was not that special', was incorrect.¹⁴²³
1134. Witness P gave evidence about an occasion on which she asked Mr Giles to see Ms Martin about Astill's conduct. Mr Giles responded, 'I can see what he's doing but I can't do anything'.¹⁴²⁴
1135. Ms Cox gave evidence that inmates were scared to make complaints due to fear of retribution by the officer against whom the complaint was made.¹⁴²⁵ She recalled an occasion on which she submitted a complaint about an officer and

1417 Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0006 [23].

1418 Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0009-0010 [37].

1419 Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0009-0010 [37].

1420 Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0003 [11].

1421 Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0003 [11].

1422 Transcript, 17 November 2023, 2568.21-43.

1423 Transcript, 17 November 2023, 2582.20-36.

1424 Ex. 3, TB 1, Vol. 5, Tab 12A, AST.002.013.0007_0004 [29].

1425 Transcript, 20 October 2023, 503.26-40.

was ‘pulled’ into a room with that officer and told if she went any further with it, she would be charged with making a frivolous complaint.¹⁴²⁶

1136. Witnesses B, R and V were associated in making a complaint about Astill’s conduct towards Witness M (I will return to this in Chapter 8). Following this, Astill and other officers would refer to those involved in making the complaint as ‘dogs’.¹⁴²⁷ A number of inmates gave evidence about an occasion at a muster on which Astill said ‘This place smells like dogs’, which the inmates understood to be directed at those who reported Astill’s conduct towards Witness M.¹⁴²⁸ Witness B’s evidence was that this occurred in front of a number of officers including Ms Robinson and Correctional Officer Matthew Holyoak.¹⁴²⁹ Witness N said that then Senior Correctional Officer Mirza Mohtaj was present when Astill said something ‘really nasty’ towards Witness B in front of everyone at muster, about dogs.¹⁴³⁰ Witness V also gave evidence regarding the incident and recalled that Correctional Officers Mr Mohtaj, Ms Robinson, Hayley Davis and Mr Holyoak were present.¹⁴³¹

1137. Mr Mohtaj was asked about this incident in his evidence and stated that he could not recall such an incident and accepted that if such an incident had occurred, it would be likely to be something to stick in his memory.¹⁴³²

1138. Ms Robinson recalled the incident as follows:

I can remember speaking to one inmate about an incident that happened in her unit, but it wasn’t really the way he spoke to her, it was when he walked into a unit and said, ‘It smells like fucking dog in here’. I was present that evening. I remember talking to [Witness B] I think it might have even been a couple of days later, and I asked her, ‘What was that about?’ She looks after the Greyhounds, and sometimes she would take a

1426 Transcript, 20 October 2023, 514.33-39.

1427 Ex. 3, TB 1, Vol. 6, Tab 23A, AST.002.013.0030_0003 [15].

1428 Ex. 3, TB 1, Vol. 6, Tab 23A, AST.002.013.0030_0004 [21]; Ex. 3, TB 1, Vol. 5, Tab 11A, AST.002.013.0002_0003 [12].

1429 Ex. 3, TB 1, Vol. 6, Tab 23A, AST.002.013.0030_0004 [21].

1430 Ex. 3, TB 1, Vol. 6, Tab 32A, AST.002.013.0004_0003 [14].

1431 Ex. 3, TB 1, Vol. 5, Tab 11A, AST.002.013.0002_0003 [12].

1432 Transcript, 26 October 2023, 881.35-884.15.

Greyhound into the unit for the evening. When we walked in and he said, "It smells like fucking dog in here," I could see he was looking at [Witness B]. I have a good sense of smell and I couldn't smell anything. I remember looking at him, and looking at her, and not being able to make sense of what was going on. I thought it was strange the way he had said that, with the tone in his voice and the way he was looking at [Witness B].

When I asked what it was about, she said, "It's all in my report to the Governor." She said, "He speaks to me like that all the time."

When we left that muster, I said to him, "What was that about, I couldn't smell dog." He said, "I could smell dog in there." Hindsight is a wonderful thing, and I can look back now and see how he could have been bullying [Witness B], but at the time I was actually confused because sometimes the unit did smell like dog if one had been in there, but the way Astill said it I didn't think that's what he meant, but I couldn't piece it together.¹⁴³³

1139. The following day, Witness V spoke with Ms Barry and informed her of the comment made by Astill the previous day at muster. Ms Barry told Witness V that she heard that a report had been made about Astill in the 'last few days' so it must have 'leaked' back to Astill.¹⁴³⁴ As previously discussed, the Special Commission heard evidence that being called a 'dog' could carry significant risks for an inmate's safety.
1140. Mr Riddle gave evidence that officers did not believe it to be worthwhile to make reports about misconduct by other officers, as they believed that the reports would be pushed 'under the rug' by management. He recalled other officers telling him that they had submitted reports, and nothing would come of them.¹⁴³⁵ Mr Rowe's evidence was similarly that junior officers were very reluctant to submit reports as they believed that they were not being dealt with properly.¹⁴³⁶

1433 Ex. 24, TB 2, Vol. 8, Tab 81, AST.002.013.0051_0007-0008 [53]-[55].

1434 Transcript, 20 October 2023, 459.29-39; Ex. 3, TB 1, Vol. 5, Tab 11A, AST.002.013.0002_0003-0004 [13].

1435 Transcript, 27 October 2023, 1056.34-37.

1436 Ex. 57, TB 2, Vol. 8A, Tab 96, AST.002.013.0043_0005 [60].

1141. Mr Jeans' evidence was that there was a culture of fear around the time of Astill's offending, and for the few reports that were submitted, no or very little action was taken. His evidence was that officers would not submit reports because of this.¹⁴³⁷ Mr Wilson gave evidence that he heard of other officers who had submitted reports regarding officer misconduct and the reports were left on the desk, where other staff members could read them.¹⁴³⁸
1142. Ms Dolly gave evidence that she spoke to Ms Wilson in relation to the reports Ms Dolly had submitted and was advised that 'management are taking care of it'. Ms Dolly never heard from Ms Martin about any of the reports and never saw anything happen in relation to them.¹⁴³⁹ Ms Dolly also gave evidence that she was aware she could make a complaint to the Official Visitor following the series of mediations she attended with Astill, however she was hesitant to speak to the Official Visitor as she believed that they would report back to Ms Martin, so there was no point.¹⁴⁴⁰
1143. Ms Martin was also asked about the comments made by various officers regarding the handling of complaints of misconduct by management at Dillwynia. Her evidence was that she did not know why Mr Riddle gave evidence that officers did not believe it to be worthwhile to make reports as management would push them under the carpet.¹⁴⁴¹ She disagreed with Mr Clark's evidence that the lack of confidence in senior management hindered reporting of misconduct by officers.¹⁴⁴²
1144. Mr Greaves gave evidence that he was concerned, in his role as Professional Standards Manager, about the widespread mistrust of leadership at CSNSW in general. Various staff informed him explicitly of the 'cover-up' culture at the agency, and that if they reported misconduct or complained about problems, then management inaction and retribution would inevitably follow. Staff also informed him that nepotism and patronage were rife.¹⁴⁴³

1437 Ex. 57, TB 2, Vol. 8A, Tab 87, AST.002.013.0034_0004 [32].

1438 Transcript, 2 November 2023, 1482.10-15.

1439 Ex. 16, TB 2, Vol. 8, Tab 77, AST.002.013.0026_0004-0005 [25]-[27].

1440 Transcript, 27 October 2023, 1147.27-39.

1441 Transcript, 13 November 2023, 2191.3-8.

1442 Transcript, 13 November 2023, 2190.35-39.

1443 Ex. 35, TB 2, Vol. 8A, Tab 91, AST.002.013.0057_0019 [94].

1145. I generally accept the evidence from both inmates and some officers as to the difficulties in reporting complaints at Dillwynia. The failure by senior staff members and management to competently and respectfully deal with complaints made by officers and inmates alike, resulted in a situation where many staff understood that reporting was pointless and inmates, rightfully, understood that they would not be believed by those in management when making a report of serious misconduct by an officer and feared the consequences of doing so. The profound significance of this lack of trust for the women who were victims of offending by Astill cannot be overstated and created an environment where such conduct was able to continue long after it should have been stopped.
1146. The evidence of Mr Riddle and Mr Clark, regarding the cultural reluctance to make reports to senior staff, is consistent with the evidence of Witnesses C, O and P who gave evidence of their problems with Mr Giles.
1147. I have previously indicated that notwithstanding the fact that the inmates, and this includes Witnesses O and C, have been convicted of crimes, they had nothing to gain by fabricating evidence to the Special Commission. Indeed, many who gave evidence were witnesses who have been believed by the jury at Astill's trial. Furthermore, a number have significant terms yet to serve on their sentence, making retribution within gaol a real possibility.
1148. With respect to Mr Giles, he is an officer with an acute interest in salvaging his reputation. Because of events at Dillwynia, he is presently suspended. The evidence of Witness C in relation to her interactions with Mr Giles is generally consistent with the abundant evidence of a failed culture at Dillwynia. Where there is conflict between the evidence of Witness C and Mr Giles, I prefer Witness C's evidence.
1149. It is impossible to conclude that Mr Giles, who was among the senior officers in the gaol, did not contribute to the culture of apprehension and fear which prevailed in the gaol in relation to the making of complaints. As a senior officer it fell upon him (among other senior officers) to assist in changing the culture to improve the management of the gaol. I am not satisfied that Mr Giles was more favourably disposed to inmate complaints than other senior officers.

7.5 Culture at Dillwynia throughout the Special Commission

1150. On 14 October 2023, Mr Corcoran issued Commissioner’s Instruction 2023/20, ‘Special Commission of Inquiry – Staff Conduct’ to caution staff that certain types of conduct that might obstruct the work undertaken by the Special Commission would not be tolerated.¹⁴⁴⁴ The Instruction specified that such conduct included:
- a) asking staff or inmates whether they had involvement in the Special Commission;
 - b) refusing staff or inmates access to support services, or delaying their ability to receive such support services;
 - c) intimidating or attempting to intimidate, staff or inmates in relation to any evidence they may give at the Special Commission; and
 - d) actions of any kind against staff or inmates that could be seen as punishment or retribution for having some involvement in the Special Commission.
1151. Witness B gave evidence at the Special Commission on 24 October 2023 and explained that during the course of the Special Commission, officers at Dillwynia had been asking inmates, ‘Are you testifying?’ and telling inmates that they were ‘full of shit’ for doing so.¹⁴⁴⁵ Numerous officers told Witness B that there would be retribution if she gave evidence at the Special Commission. She felt pressure not to participate. She said that officers have submitted false unfavourable case notes about her. Witness B relies on favourable case notes, as do all inmates, for decisions affecting parole and classification. Similarly, Witness V heard from other officers, including Ms Berry and Mr Clark, that they were told by the ‘big boss’ to be silent and not say anything about Astill, even following the commencement of the Special Commission.¹⁴⁴⁶

1444 Ex. 59, TB 5, Vol. 29, Tab 18, AST.002.013.0083_0027-0028 [115]; Ex. 59, TB 5, Vol. 29, Tab 18, Annexure Tab 43, CSNSW.0001.0128.0001-002.

1445 Transcript, 24 October 2023, 691.1-692.47.

1446 Ex. 3, TB 1, Vol. 5, Tab 11A, AST.002.013.0002_0008 [29].

1152. Later, on 24 October 2023, I informed CSNSW that I expected those in senior management to provide the Special Commission with assurance as to the steps taken to ensure that no inmate would suffer retribution, bullying, criticism or any form of misbehaviour by reason of their participation in the Special Commission.¹⁴⁴⁷

1153. On 25 October 2023, in response to the concerns raised by the Special Commission, a document was prepared on behalf of CSNSW detailing the measures taken, including:

- a) on 24 October 2023, Mr Corcoran and Deputy Commissioner Dr Anne-Marie Martin met with staff at Dillwynia regarding the concerns raised by inmates in respect of their participation in the Special Commission;
- b) also on 24 October 2023, Mr Corcoran emailed the staff at Dillwynia regarding the evidence that retributive action and intimidation of some people participating in the Special Commission was occurring, and advised that attempting to interfere or influence any person in relation to their participation in the Special Commission was a criminal offence;
- c) prior to commencing duty on 25 October 2023, staff were required to sign that they had read and understood the Commissioner's Instruction, which would continue until all staff across all shifts had done so;
- d) the Commissioner's Instruction was placed on various walls at Dillwynia; and
- e) a direct process for inmates to raise issues with the Governor had been implemented and was in operation.¹⁴⁴⁸

1154. I am not aware whether the efforts to provide a secure environment for witnesses to the Special Commission achieved their aim. Many of the witnesses gave evidence which may have left them vulnerable to retribution. I have not received reports that this has occurred, but it will be important once the Special Commission comes to an end that those witnesses continue to be respected and not suffer retribution for the evidence they have given.

1447 Transcript, 24 October 2023, 724.8-17.

1448 Ex. 59, TB 5, Vol. 29, Tab 18, Annexure Tab 44, CSNSW.0001.0209.0196-0.0198.

7.6 Initiatives aimed at improving the culture at Dillwynia after Astill's arrest

1155. The Special Commission heard evidence from former and current Dillwynia Governors Ms Cartwright and Ms Chappell and Assistant Commissioner Ms Snell regarding initiatives recently, or currently being, introduced at Dillwynia aimed at improving the culture at the centre, among other training initiatives.
1156. Ms Cartwright was Governor of Dillwynia from September 2021 to July 2023.¹⁴⁴⁹ She gave evidence regarding leadership training that was delivered as part of the benchmarking process throughout 2017 to 2019 and delivered to Governors and Managers of Security. It was mandatory for all staff in those roles to complete an Advanced Diploma in Leadership and Management to help them undertake their leadership and management roles.¹⁴⁵⁰ She also gave evidence that it became clear to her while she was Governor at Dillwynia that staff did not know how to report misconduct outside the chain of command, or outside the centre.¹⁴⁵¹ In response to that concern, over a number of staff parades Ms Cartwright addressed staff to inform them that they were able to report misconduct directly to her, the Director of the Region or the Commissioner of CSNSW, as well as to external agencies including ICAC, the Ombudsman and NSWPF.
1157. Ms Cartwright also gave evidence that she arranged for PSI to attend Dillwynia and present to managers about the misconduct process and supporting staff to make reports.¹⁴⁵²
1158. Ms Cartwright's evidence was that following the opening of the new area of Dillwynia in 2020, she set up a working group which, among other things, involved her supporting staff in an effort to ensure Dillwynia returned to the rehabilitative centre it once was.¹⁴⁵³ She gave evidence that she took staff to visit Macquarie

1449 Transcript, 20 November 2023, 2741.35-2742.6.

1450 Transcript, 20 November 2023, 2742.23-33; 2744.1-29.

1451 Transcript, 20 November 2023, 2744.45-2745.17.

1452 Transcript, 20 November 2023, 2757.11-24.

1453 Transcript, 20 November 2023, 2758.15-2759.8.

Correctional Centre, which was a maximum-security male facility and a 'centre of excellence', to show staff how to manage inmates safely with a rehabilitative approach.

1159. With respect to the use of inappropriate language by staff, Ms Cartwright gave evidence that she directed her executive staff to watch their own language and call out the inappropriate use of language by others.¹⁴⁵⁴ Her evidence was that she, and her predecessor Emma Smith who was Governor while Ms Cartwright was MOS, called out any poor performance or poor behaviour, which included referral of staff, both executive and non-executive, to the PSB for use of foul language. She also gave evidence regarding her open-door policy and how she ensured that any reports of misconduct were treated confidentially and sensitively. Her evidence was that she would always thank staff for their courage in making reports and would ensure she provided them with updates where she was able to do so.
1160. Ms Chappell commenced as Governor of Dillwynia in October 2023.¹⁴⁵⁵ She gave evidence regarding a risk report that was being prepared by SafetyWorks Consulting involving a psychosocial risk assessment in respect of interpersonal hazards such as bullying, conflict or harassment; job-specific hazards such as work overload, job demands and ambiguity; and organisational hazards such as poor change management, poor organisational justice and work systems (among other things).¹⁴⁵⁶ She also stated a Wellbeing Manager has been located at Dillwynia since 27 September 2023 to offer psychosocial support to staff and to support the wellbeing strategy at the centre. Ms Chappell gave evidence that a staff survey was being designed to determine staff satisfaction with the Wellbeing Manager. Her evidence was that both male and female psychologists had been commissioned since October 2023 to provide psychosocial crisis support to staff at the centre, in respect to both work and personal issues.¹⁴⁵⁷

1454 Transcript, 20 November 2023, 2759.10-39.

1455 Ex. 50, TB 5, Vol. 27, Tab 11, CSNSW.0001.0261.0001_0004 [12].

1456 Ex. 50, TB 5, Vol. 27, Tab 11, CSNSW.0001.0261.0001_0006 [16(a)].

1457 Ex. 50, TB 5, Vol. 27, Tab 11, CSNSW.0001.0261.0001_0006-0007 [16(b)].

1161. Ms Chappell also gave evidence that she intended, by December 2023, to implement a Wellbeing Consultative Group at Dillwynia to identify themes and co-design solutions in relation to issues affecting staff wellbeing at the centre and identify Wellbeing Champions to work with the management team to ensure that staff and inmates feel supported.¹⁴⁵⁸
1162. Ms Chappell informed the Special Commission about a number of training programs for staff aimed at improving the culture at the centre, among other things. She gave evidence regarding:
- a) the implementation of a training program, ‘Managing Professional Boundaries’, which was made mandatory for all CSNSW staff and facilitated face-to-face by the Brush Farm Academy, aimed at introducing the concept of personal and professional boundaries, defining what professional boundaries are and identifying the role of professional boundaries in the workplace, and describing influences on boundaries within different types of professional roles.¹⁴⁵⁹ Ms Chappell’s evidence was that 210 out of 277 staff at Dillwynia had completed the course as at 31 October 2023;¹⁴⁶⁰
 - b) the ‘Working with Female Offenders’ training program, introduced in December 2021, which runs over three days and is delivered both face-to-face (at the Brush Farm Academy) and virtually, aims to provide an awareness of the specific needs of female offenders and to help staff build on their skills to become more effective in their work and dealings with female offenders.¹⁴⁶¹ The training also emphasises the challenges of working with women in custody and acknowledges the background of female inmates who are more likely to have experienced trauma, including being victims of physical and sexual violence. Ms Chappell’s view was that the course should be mandatory for all staff working in female centres, but that staff should complete the program after they have worked in the centre for a short period so that they have practical examples to apply and

1458 Ex. 50, TB 5, Vol. 27, Tab 11, CSNSW.0001.0261.0001_0007 [16(c)].

1459 Ex. 50, TB 5, Vol. 27, Tab 11, CSNSW.0001.0261.0001_0012 [19]-[20].

1460 Ex. 50, TB 5, Vol. 27, Tab 11, CSNSW.0001.0261.0001_0013 [22].

1461 Ex. 50, TB 5, Vol. 27, Tab 11, CSNSW.0001.0261.0001_0019-0020 [47]-[51].

consider in the training.¹⁴⁶² Her evidence was that 208 out of 277 of her staff had completed the program;¹⁴⁶³

- c) Five Minute Intervention training which Dillwynia began to implement for all staff (custodial and non-custodial) from 25 February 2021.¹⁴⁶⁴ The program is a mandatory two-day course delivered face-to-face at the Brush Farm Academy, designed for staff to recognise everyday conversations with inmates as opportunities to promote change and encourage pro-social behaviour. The program trains staff to focus on building positive relationships with inmates and overcoming barriers to communication. As of 31 October 2023, 269 out of 277 staff at Dillwynia had completed the training;
- d) an Unconscious Bias online course delivered by Thrive (a DCJ online platform) which was introduced at CSNSW in September 2021.¹⁴⁶⁵ The course is designed to challenge understandings of bias and stereotypes and provide strategies to identify and manage biases in the workplace. As of 16 November 2023, 91 out of 277 staff at Dillwynia had completed the course;
- e) Mental Health First Aid training offered externally by providers such as Mental Health First Aid Australia to better identify and equip staff with skills to respond to inmates who suffer psychosocial harm.¹⁴⁶⁶ This training has historically been offered to staff at Dillwynia and Ms Chappell is currently exploring training providers to reintroduce the training at the centre; and
- f) Ms Chappell also gave evidence that, in consultation with CSNSW, she was seeking to procure an external training provider to implement a training program to assist staff in identifying unethical and corrupt conduct.¹⁴⁶⁷ She intends the program to be mandatory for all CSNSW staff at Dillwynia.

1462 Transcript, 22 November 2023, 2950.26-2952.5. See also Ms Snell's evidence that the program will be mandatory for all staff working in a female correctional centre: Transcript, 24 November 2023, 3267.40-3268.8.

1463 Ex. 50, TB 5, Vol. 27, Tab 11, CSNSW.0001.0261.0001_0020 [51].

1464 Ex. 50, TB 5, Vol. 27, Tab 11, CSNSW.0001.0261.0001_0020-0022 [52]-[59]; Transcript, 22 November 2023, 2952.7-24.

1465 Ex. 50, TB 5, Vol. 27, Tab 11, CSNSW.0001.0261.0001_0022 [60]-[62]; Transcript, 22 November 2023, 2952.26-2953.2. See also Ms Snell's evidence: Transcript, 24 November 2023, 3268.10-39.

1466 Ex. 50, TB 5, Vol. 27, Tab 11, CSNSW.0001.0261.0001_0007 [16(f)].

1467 Ex. 50, TB 5, Vol. 27, Tab 11, CSNSW.0001.0261.0001_0008 [16(h)].

1163. Ms Chappell also gave evidence regarding a number of programs aimed specifically at managers and those in leadership positions, including:

- a) the Inclusive Leadership course developed and delivered by Strategic Delivery, which is mandatory for the Governor, Managers of Security and Functional Managers.¹⁴⁶⁸ The course is aimed at developing leadership capabilities for managing biases at work through the cultivation of an inclusive workplace culture. In 2022, six Dillwynia staff, including the then Governor Ms Cartwright, the MOS and Functional Managers completed the program;
- b) the DCJ Leadership Sessions for staff at Dillwynia provided by SafetyWorks Consulting which commenced on 17 November 2023, aimed at providing staff (particularly Functional Managers, Managers of Offender Services and Programs, and Senior Psychologists) with one-on-one leadership support and coaching sessions regarding managing workloads, supporting staff, psychological safety and building trust;¹⁴⁶⁹ and
- c) the Pre-Promotional Leadership and Development Course that Managers of Security, Functional Managers and Senior Correctional Officers can be nominated to participate in, run by the Commissioner of CSNSW's Office, which includes tailored training for staff members in those roles to enhance and strengthen their capabilities and skill-level on a range of topics, including, emotional intelligence and emotional self-management.¹⁴⁷⁰ Ms Chappell's evidence was that three of the seven members of the Dillwynia management team had completed the training program. She gave evidence that the balance of the management team would complete the program when possible, but had been unable to do so to date due to leave and other staffing issues.¹⁴⁷¹ Ms Snell's evidence was the course was not currently mandatory for staff in those roles, but is mandatory for all staff prior to promotion.¹⁴⁷²

1468 Ex. 50, TB 5, Vol. 27, Tab 11, CSNSW.0001.0261.0001_0018-0019 [44]-[45].

1469 Ex. 50, TB 5, Vol. 27, Tab 11, CSNSW.0001.0261.0001_0017-0018 [41]-[43].

1470 Ex. 50, TB 5, Vol. 27, Tab 11, CSNSW.0001.0261.0001_0016-0017 [35]-[40].

1471 Transcript, 22 November 2023, 2943.12-24.

1472 Transcript, 24 November 2023, 3266.30-3267.38.

1164. Ms Chappell gave evidence that staff at Dillwynia would benefit from training that explicitly linked the training material to operational practices, and proposed this could be done by working with the providers of the 'Working with Female Offenders' program to incorporate practical scenarios into the training material.¹⁴⁷³ She also noted that staff would benefit from training that explored their personal views and how these aligned with the values of DCJ, to assist staff to understand when their values are misaligned with those of the Department.¹⁴⁷⁴
1165. Other initiatives that have been introduced at the centre include monthly Senior Correctional Officer meetings, which were implemented in 2019 and aimed at encouraging leadership and coaching to address operational issues at Dillwynia and to ensure a consistent approach among staff.¹⁴⁷⁵ Ms Chappell gave evidence of the implementation of the DCJ Let's Talk toolkit, a structured communication tool that assists people to communicate clearly when discussing difficult topics.¹⁴⁷⁶ The toolkit includes checklists, conversation guides and videos on how to have productive conversations and, used properly, is designed to enable respectful conversations to take place.
1166. Ms Chappell gave evidence about a Workplace Mentor Program that was launched at Dillwynia on 10 May 2023, which is a peer support program designed to improve workplace culture and enhance staff skills and knowledge within CSNSW.¹⁴⁷⁷ Ms Chappell's evidence was that the program covers topics including, dealing with inmates at risk of suicide and conducting a medical escort for female inmates. Ms Chappell said that her management team was workshopping other topics to be included in the program, including job expectations, professional standards and ethical conduct.
1167. Ms Chappell also gave evidence regarding a briefing note that had been submitted for executive approval for there to be a stand-alone Governor of Dillwynia, rather than one Governor responsible for both Dillwynia and Emu

1473 Ex. 50, TB 5, Vol. 27, Tab 11, CSNSW.0001.0261.0001_0022 [63]; Transcript, 22 November 2023, 2953.4-27.

1474 Ex. 50, TB 5, Vol. 27, Tab 11, CSNSW.0001.0261.0001_0022 [65].

1475 Ex. 50, TB 5, Vol. 27, Tab 11, CSNSW.0001.0261.0001_0008 [16(i)].

1476 Ex. 50, TB 5, Vol. 27, Tab 11, CSNSW.0001.0261.0001_0009 [16(l)].

1477 Ex. 50, TB 5, Vol. 27, Tab 11, CSNSW.0001.0261.0001_0008 [16(j)].

Plains.¹⁴⁷⁸ Her evidence was that following her appointment as Governor at both centres in October 2023, it became apparent that there was too much work for one Governor to be responsible for both; however, her understanding was that the briefing note had already been submitted prior to her assuming the role.

1168. Given the particular need at Dillwynia to restore effective management, I have no doubt that its management, at least for a period, should be separate from Emu Plains. The need for a stand-alone Governor of Dillwynia at present is clear and should be implemented as soon as possible.

1169. **RECOMMENDATION: I recommend that a stand-alone Governor for Dillwynia should be appointed as a priority.**

1170. Ms Chappell also gave evidence that the role of the Intelligence Officer at Dillwynia was now filled using cyclical rostering, meaning that the role is filled on the basis of the preferences of staff and staff stay in the role for six months.¹⁴⁷⁹

1171. Ms Chappell gave evidence regarding the Inmate Delegate Committee and house meetings, detailed in Chapter 6, that had been reintroduced at Dillwynia and which give inmates both formal (with respect to the Inmate Delegate Committee) and informal (with respect to the house meetings) mechanisms to raise issues with senior staff at the centre.¹⁴⁸⁰ Her evidence was that that house meetings were a way in which trust could be built between inmates and staff and were an essential way to build positive working relationships, thereby creating an environment in which inmates felt able to come forward with complaints, including about serious misconduct towards them by staff.

1172. Although not specific to Dillwynia, Ms Snell gave evidence about her involvement in a number of initiatives across CSNSW.¹⁴⁸¹ She gave evidence regarding the development of a New Training Model to support the ongoing professionalisation of CSNSW's workforce and focus on cultural reform by providing clarity on the

1478 Transcript, 22 November 2023, 2931.36-2932.17. See also Ex. 55, TB 5, Vol. 28, Tab 12, CSNSW.0001.0263.1558_0021.

1479 Transcript, 22 November 2023, 2940.25-34.

1480 Transcript, 22 November 2023, 2944.8-2945.32. See also the evidence of Ms Snell: Transcript, 24 November 2023, 3266.2-28.

1481 Ex. 55, TB 5, Vol. 28, Tab 12, CSNSW.0001.0263.1558_0010 [38]-[44].

standards expected of employees. Staff are currently being consulted on the new model, with a view to it being introduced by June 2024. It will involve all new staff attending a newly developed five-day induction program on topic areas including ethical standards, misconduct and trauma-informed practice, followed by a practical placement in one business area of the agency. This would be followed by a common foundational training, which would be uniform to staff across all areas, including custodial, services and programs and community corrections, and a second practical placement. Her evidence was that it was anticipated that queries arising from the placement could then be addressed when staff returned to Brush Farm Academy to complete their training.¹⁴⁸²

1173. **RECOMMENDATION: Any training program for new recruits should ensure they are made aware of the opportunity to raise concerns or complaints in relation to other CSNSW staff in a safe manner.**

1174. Ms Snell gave evidence regarding the development of pre-promotion training designed to enhance and strengthen the capability and skills of Managers of Security, Senior Assistant Superintendents and Senior Correctional Officers across areas including communication and modelling accountability. It is intended that the training will commence from April 2024.¹⁴⁸³

1175. Ms Snell described further additions to training programs for all staff, including:

- a) embedding changes to primary training, as well as the 'Doing the Right Thing' and 'Managing Female Offenders' courses, so that sexual harassment and workplace bullying are issues that are fully explored;
- b) embedding training about managing complaints from inmates in a trauma-informed manner into the Integrated Induction course, Trauma Informed Practice course, Working with Female Offenders and Respectful Workplace Relationships course;
- c) adding content to the Integrated Induction courses, primary training and 'Doing the Right Thing' course regarding appropriate behaviour around

1482 Ex. 55, TB 5, Vol. 28, Tab 12, CSNSW.0001.0263.1558_0009 [39(d)].

1483 Ex. 55, TB 5, Vol. 28, Tab 12, CSNSW.0001.0263.1558_0010 [41]-[42]; Ex. 55, TB 5, Vol. 28, Tab 12, CSNSW.0001.0263.1558_0026.

managing complaints and expectations in respect to complaints, including that retributive action is not tolerated and is a form of misconduct,¹⁴⁸⁴ and

- d) the development of a new training package to teach staff how to manage misconduct, which would be delivered over two days and would cover bullying and harassment, sexual harassment, misconduct management, and record keeping, among other things.¹⁴⁸⁵

1176. Ms Snell also gave evidence regarding the CSNSW Training Academy's plan to introduce a points-based system with staff required to obtain a certain number of Continuing Development Points each year.¹⁴⁸⁶

1177. Ms Snell also gave evidence regarding the establishment of the Staff Support, Culture and Wellbeing Directorate and its design of the Culture Framework and Wellbeing Framework aimed to address the culture and wellbeing challenges faced by CSNSW. Her evidence was that it is anticipated that the Directorate will be fully operational in the first quarter of 2024, with preliminary staff members having already commenced. The Culture Framework aims to enable the development of a rehabilitative culture in relation to offenders, focusing on fairness, working conditions, perceptions of management, teamwork, safety and wellbeing. The Wellbeing Framework focuses on the prevention of, and early intervention to resolve, workplace issues. The Directorate will also support staff who are involved in, or victims of, misconduct matters, aimed at providing greater transparency in the misconduct process.¹⁴⁸⁷

1178. With respect to conflicts of interest between staff members at CSNSW, Ms Snell's evidence was that CSNSW will:

- a) release a Commissioner's Broadcast Memorandum to recommunicate the conflicts of interest policy requiring staff to declare conflicts, including perceived conflicts;

1484 Ex. 55, TB 5, Vol. 28, Tab 12, CSNSW.0001.0263.1558_0021-0022.

1485 Ex. 55, TB 5, Vol. 28, Tab 12, CSNSW.0001.0263.1558_0023.

1486 Ex. 55, TB 5, Vol. 28, Tab 12, CSNSW.0001.0263.1558_0010 [43].

1487 Ex. 55, TB 5, Vol. 28, Tab 12, CSNSW.0001.0263.1558_0010-0012 [45]-[52].

- b) include the declaration form in onboarding packages for new recruits and staff transferring between locations;
- c) develop a training package to upskill managers to identify, address and manage conflicts of interest; and
- d) review the current arrangements for reporting and monitoring conflicts of interest within the workplace.¹⁴⁸⁸

1179. With respect to the *Public Interest Disclosure Act 2022* which commenced operation in October 2023, Ms Snell stated that CSNSW is working on an implementation plan and training course to implement the changes prescribed by this legislation, to encourage staff, as prescribed by the legislation, to disclose corruption, maladministration and privacy contraventions by (among other things) protecting people from detrimental actions simply because they have made a disclosure; and providing for disclosures to be properly investigated and dealt with.¹⁴⁸⁹ She also gave evidence that Public Interest Disclosure officers, as required by s. 18 as the person responsible for receiving voluntary public interest disclosures, had been nominated for each CSNSW office and those persons had been advised of their role.¹⁴⁹⁰

1180. The Inspector, in her 2020 report following her inspection of Dillwynia and other centres that house women on remand, observed the following:

The inspection also identified a need to increase the training available to correctional officers in the management of female inmates and their elevated mental health needs. CSNSW has recently instated Trauma Informed Care and Practice (TICP) training to all new officer recruits based on international research finding that correctional processes, procedures and practices can themselves be traumatising or trigger re-traumatisation. It is therefore important that all staff within prisons, including correctional officers, are trained in TICP to minimise this risk. It is particularly important

1488 Ex. 55, TB 5, Vol. 28, Tab 12, CSNSW.0001.0263.1558_0024.

1489 Ex. 55, TB 5, Vol. 28, Tab 12, CSNSW.0001.0263.1558_0024-0025.

1490 Transcript, 24 November 2023, 3275.32-3276.12.

*for staff working with female inmates, as many women in custody have been victims of sexual abuse and/or domestic violence.*¹⁴⁹¹

1181. In the Inspector's 2023 report, following her inspection of Dillwynia in 2022, she recommended that CSNSW ensured that there was an emphasis on the need for specialist teams at Dillwynia, such as the Immediate Action Team, to have completed the Trauma Informed Practice training. The Immediate Action Team is a team comprising specifically trained custodial officers who can be deployed rapidly within a custodial centre to respond to critical or high-risk incidents, particularly where use of force is involved. The Inspector expressed concern that only 60 per cent of Immediate Action Team trained officers had completed the Trauma Informed Practice training, which was particularly concerning as her staff also observed inappropriate material posted on the walls of the Immediate Action Team office. The Inspector indicated that this also suggested there was a need for a reminder about the importance of professional standards and interpersonal respect. The Inspector also detailed that improvement was required in the completion rates for other relevant training modules, including Aboriginal Cultural Awareness, which less than one per cent of custodial officers at Dillwynia had completed, and Mental Health Awareness, which less than five per cent had completed.¹⁴⁹²
1182. Noting that Dillwynia is the primary women's custodial setting for program delivery for inmates in NSW, the Inspector recommended that CSNSW provide training and development to enhance the capacity of custodial officers to support the services and programs delivered at Dillwynia, in particular drug and alcohol interventions, domestic and family violence interventions and health services.¹⁴⁹³
1183. The Inspector also recommended that further training could be undertaken by all CSNSW staff, including those in executive and management positions, on the following topics:

1491 Ex. 45, TB 5, Vol. 26, Tab 10, Annexure K, AST.002.013.0060_0214-0215.

1492 Ex. 60, TB 6, Tab 24, AST.002.013.0093_0090-0091.

1493 Ex. 60, TB 6, Tab 24, AST.002.013.0093_0091.

- a) the importance of communicating effectively with an inmate when they are making a complaint;¹⁴⁹⁴
- b) interacting with inmates in a respectful way, particularly when handling complaints;¹⁴⁹⁵
- c) the conduct that constitutes reprisal in respect of a complaint, including that reprisal action is an offence under s. 20 of the *Inspector of Custodial Services Act 2012*;¹⁴⁹⁶
- d) the behaviour that constitutes sexual harassment and sexual assault and identifying inappropriate and/or grooming behaviour towards inmates, such as special favours, introducing contraband, or providing access to information;¹⁴⁹⁷
- e) obligations arising under the legislation, Code of Conduct and the duty of care staff owe to people in custody;
- f) the obligation of staff to report sexual assault and sexual harassment to Professional Standards (for new and existing staff); and
- g) responding to complaints of serious staff misconduct, including how to keep victims safe and supported, the importance of confidentiality, the serious consequences of taking reprisal action, and the actions that must be taken to manage alleged perpetrators (including natural justice and suspending staff).¹⁴⁹⁸

1184. **RECOMMENDATION: That training on the following topics be delivered to all CSNSW staff and not limited to induction training for new staff. Such training should be delivered in-person where possible and be required of all staff members, including those at senior and management levels. The topics which should be covered are:**

- a) ethical standards;**

1494 Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0028 [187].

1495 Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0027 [182]; Transcript, 17 November 2023, 2663.1-39.

1496 Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0028 [187]; Inspector of Custodial Services Act 2012, s. 20.

1497 Transcript, 17 November 2023, 2664.16-38.

1498 Ex. 45, TB 5, Vol. 26, Tab 10, AST.002.013.0060_0028 [192].

- b) **trauma-informed practice;**
- c) **identifying behaviour that constitutes misconduct;**
- d) **reporting misconduct, including in respect to the reporting obligations in CAS Regulation cl. 253, and specifically that an inmate's consent to a report being made is not relevant to the obligation; and**
- e) **communicating with, and supporting, inmates when handling their complaints of misconduct.**

1185. **RECOMMENDATION: That a Continuing Professional Development points-based system for training be introduced. It is further recommended that the system mandate that staff be required to obtain a certain number of points from different mandated categories, and that such categories include ethics and the reporting of misconduct.**

7.6.1 Policies and procedures for female inmates

1186. Assistant Commissioner, Custody Metro Branch, Security and Custody, John Buckley gave evidence regarding the CSNSW policies and procedures relating specifically to female inmates. His evidence was that those policies and procedures were:

- a) COPP Chapter 4 relating to inmate property, including the clothing and other items female inmates are permitted to have;
- b) COPP Chapter 6.2 relating to elective emergency admission;
- c) COPP Chapter 6.7 relating to access to dental dams for female inmates;
- d) COPP Chapter 19.6 relating to the requirement that, where possible, a female Correctional Officer must escort a female inmate to medical appointments, and particularly for obstetric and gynaecological consultation;
- e) COPP Chapter 17 relating to the searching, including strip searching, of female inmates; and

f) COPP Chapter 19.1 relating to the general escort procedures for female inmates.¹⁴⁹⁹

1187. Ms Snell also gave evidence regarding a number of strategy and policy initiatives that the CSNSW Strategy and Policy Branch intended to introduce to establish and maintain a rehabilitative culture at CSNSW. Her evidence was that those initiatives would include a Women's Strategy and a rehabilitation framework that provides guidance and support for rehabilitative practice.¹⁵⁰⁰

1188. The Inspector in her 2020 report noted that a Women's Strategy had been developed by the CSNSW Women's Advisory Council and that CSNSW advised it would be implemented in 2020. Her report also noted that CSNSW had recently established a Women's Innovation Change Committee, led by a Senior Officer to oversee strategic and operational issues for women in custody; and that a primary function of the Committee would support the implementation and promotion of the CSNSW Women's Strategy.¹⁵⁰¹ The Inspector stated:

The importance of having a centralised command for women has been embraced in many jurisdictions both nationally and internationally, in recognition of the gender-specific needs of incarcerated women. In addition to the Women's Strategy, the Inspector recommends that CSNSW consider establishing a Women's Command with a Senior Officer responsible for overseeing all women's correctional centres and women's units attached to correctional centres holding male inmates in NSW. The establishment of a Women's Innovation Change Committee, led by a Senior Officer, to oversee strategic and operational issues for women in custody across NSW is a positive development in this regard. This should result in women in custody being treated equitably as a special-needs group, with a dedicated Senior Officer responsible for the strategic and operational response to the female correctional system in NSW.¹⁵⁰²

1499 Ex. 59, TB 5, Vol. 22, Tab 4, Annexure E, CSNSW.0001.0087.0001_0062-0068.

1500 Ex. 55, TB 5, Vol. 28, Tab 12, CSNSW.0001.0263.1558_0011-0012 [52]; Ex. 55, TB 5, Vol. 28, Tab 12, Annexure C, CSNSW.0001.0263.1558_0027.

1501 Ex. 45, TB 5, Vol. 26, Tab 10, Annexure K, AST.002.013.0060_0209.

1502 Ex. 45, TB 5, Vol. 26, Tab 10, Annexure K, AST.002.013.0060_0214.

1189. In light of this, the Inspector recommended in 2020 that CSNSW implement its Women's Strategy and create a Women's Command led by a dedicated Senior Officer to oversee the implementation of the Women's Strategy.¹⁵⁰³
1190. Further, with respect to the Inspector's 2020 recommendation that a Women's Command be implemented, she observed the following:

It is recognised internationally that while women are a subpopulation of the prison population, they have needs that warrant specialised treatment and consideration. The specialised needs of women in prison are recognised through the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders ('The Bangkok Rules'). Many jurisdictions across the world have specialised women's units which are responsible for driving the appropriate and gender-specific treatment of incarcerated women. The importance of having a centralised command for women was reinforced in The Corston Report in the UK. The report noted that 'without the safeguard of strong, visible direction of issues relating to women in the criminal justice system, provision for women is likely to continue to be inconsistent and to depend on the level of priority and strength of leadership afforded locally and the depth of local understanding about women's needs.'

Currently, CSNSW has a Principal Advisor of Women Offenders who sits within the Strategy and Policy Unit. CSNSW previously had a Women's Services Unit that researched, developed and assisted in the implementation of policy and programs relating to the special needs of women in correctional centres. However, whilst CSNSW no longer has a specified unit for women at an operational level this is becoming a common and valued feature of other jurisdictions ...

CSNSW has a Women's Advisory Council (WAC), which was developed as a recommendation of the 1985 NSW Women in Prison Task Force. The WAC members are appointed by the Commissioner of Corrective Services NSW to provide advice on improving outcomes and experience

1503 Ex. 45, TB 5, Vol. 26, Tab 10, Annexure K, AST.002.013.0060_0222.

of women in the criminal justice system. This includes women in custody and those at risk of entering the system. The WAC is comprised of senior officers within the NSW Public Sector, non- Government Organisations and academics ...

More recently CSNSW has developed a Women's Strategy in consultation with the WAC. CSNSW and the WAC are to be commended for the development of its strategy. To respond to the current challenges facing the female prison population, CSNSW should also consider establishing a Women's Command to oversee the implementation of the strategy at all of the women's correctional centres and women's units attached to correctional centres holding male inmates in NSW. CSNSW has established the Women's Innovation Change Committee to oversee strategic and operational issues for women in custody across NSW. The Committee led by a senior officer has responsibility for the implementation of the Women's Strategy.¹⁵⁰⁴

1191. In her 2023 report, the Inspector stated the following:

The Women on Remand Report, containing 38 recommendations, called for the implementation of a Women's Strategy, as well as a Women's Command to oversee implementation. Five years on, the inspection of the two women's centres in NSW has revealed that despite a welcome decline in the number of women in custody in NSW, and the implementation of some of our recommendations, conditions and access to services for many women in custody have deteriorated. The COVID-19 pandemic and associated staffing shortages contributed to the deterioration in access to basic services and amenity. It also exacerbated existing weaknesses in the NSW custodial system. In addition to the recommendations in this report, our recommendations from five years ago remain relevant for Corrective Services NSW to be responsive to the changing demographic and needs of women in custody in NSW.¹⁵⁰⁵

1504 Ex. 45, TB 5, Vol. 26, Tab 10, Annexure K, AST.002.013.0060_0241-0242.

1505 Ex. 60, TB 6, Tab 24, AST.002.013.0093_0005.

1192. It is unclear on the evidence before me that a Women's Command was established in response to the Inspector's recommendation in 2020. If such a Command has not yet been established, the benefit of such a specialised unit is clear and should be implemented, as has occurred in other jurisdictions in Australia and overseas.
1193. Given Ms Snell's evidence, in late 2023, that CSNSW intended to introduce a Women's Strategy, it seems to me that CSNSW did not introduce the Women's Strategy that it told the Inspector had been developed and would be implemented in 2020. If such a strategy was introduced, no copy of it was produced to this Special Commission in response to a specific request for all written CSNSW policies and procedures relating to female prisoners specifically.¹⁵⁰⁶
1194. The evidence before me indicates that there is no CSNSW policy or procedure regarding the management of female inmates specifically, beyond those particular sections of the COPP relating to procedures for female inmates identified by Mr Buckley.
1195. **RECOMMENDATION: That a Women's Strategy be implemented to oversee strategic and operational issues for female inmates. This should include, as one aspect of a Women's Strategy, the development of a sexual misconduct policy and associated training for CSNSW staff.**

1506 Ex. 59, TB 5, Vol. 22, Tab 4, CSNSW.0001.0087.0001_0002 [4].



New South Wales
Australia

8

Complaints about Astill – A record of management failure

8.1 Framework for the management of complaints

8.1.1 CAS Regulation – Clause 253

1196. Clause 253 of the *Crimes (Administration of Sentences) Regulation 2014* (**CAS Regulation**) imposes obligations on prison officers to report the misconduct of officers. It provides:

253 Reporting of misconduct by correctional officers

- (1) If—
 - (a) an allegation is made to a correctional officer that another correctional officer has, while carrying out his or her duties as a correctional officer, engaged in conduct that, in the opinion of the officer to whom the allegation is made, constitutes a criminal offence or other misconduct, or
 - (b) a correctional officer sincerely believes that another correctional officer has engaged in conduct of that kind, the correctional officer must report the conduct, or alleged conduct, to a correctional officer who is more senior in rank than the officer making the report.
- (2) The senior correctional officer must report the conduct, or alleged conduct, promptly to the Commissioner if the senior correctional officer believes that it—
 - (a) constitutes, or would constitute, a criminal offence by the correctional officer, or
 - (b) would provide sufficient grounds for taking proceedings or action under section 69 of the *Government Sector Employment Act 2013* against the correctional officer.

- (3) Subclause (1) does not apply to conduct or alleged conduct that —
- (a) has been made the subject of any proceedings or action under section 69 of the *Government Sector Employment Act 2013*, or
 - (b) has been the subject of evidence or other material given, or submissions made, in the course of criminal proceedings, or
 - (c) has already been reported under this clause to a more senior correctional officer.

...

1197. The obligation imposed by cl. 253(1)(a) is triggered by the making of an allegation to a Correctional Officer that another Correctional Officer has engaged in, ‘in the opinion of’ the receiving correctional officer, conduct of a particular kind.
1198. The obligation in cl. 253(1)(b) is triggered by the formation of a ‘sincere belief’ that a Correctional Officer has engaged in conduct of the kind referred to in cl. 253(1)(a).
1199. Clause 253(1) does not stipulate any temporal requirement for reporting the conduct referred to in the clause to a senior Correctional Officer. This contrasts with the requirement in cl. 253(2) that a senior Correctional Officer must make a report to the Commissioner of CSNSW ‘promptly’. Where a provision requires an act to be done without stipulating a time for compliance, it will be implied that the act must be done within ‘a reasonable time’.¹⁵⁰⁷ It is necessary to imply such a requirement into cl. 253(1) as, without this requirement, the duty to report would be illusory.¹⁵⁰⁸ In determining whether a report has been made within ‘a reasonable time’, the circumstances of the allegation and report should be considered, as well as any purported justification for the delay.

1507 *R v Skurray* (1967) 86 WN (Pt 1) (NSW) 1; *Deputy Commissioner of Taxation v Ganke* [1975] 1 NSWLR 252; *Re O’Reilly; Ex parte Australena Investments Pty Ltd* (1983) 58 ALJR 36.

1508 *Re O’Reilly; Ex parte Australena Investments Pty Ltd* (1983) 58 ALJR 36.

1200. The obligation in cl. 253(2) is not qualified by reference to the sincerity or otherwise of the belief or whether the belief is true. Rather, cl. 253(2) is engaged where the 'senior correctional officer' believes that the conduct referred to in cl. 253(1) has a particular character. The senior officer must believe that the conduct or alleged conduct 'constitutes, or would constitute' a criminal offence, or would provide sufficient grounds for taking proceedings or action under s. 69 of the *Government Sector Employment Act 2013* (NSW) (**GSE Act**).
1201. Clause 253(3)(c) qualifies the obligation in cl. 253(1). The obligation in cl. 253(1) does not arise if the alleged conduct has already been the subject of a report that was made in accordance with the subclause. An officer who knows that a report had already been made is not required by the subclause to make a report. Furthermore, cl. 253(1) would not be breached if the officer failed to report but, unknown to them, a report had already been made.
1202. Clause 253(3)(c) refers to action that has already occurred ('already been reported'). It is not enough for a Correctional Officer to believe that a report by a more senior Correctional Officer will be forthcoming. The obligation arises as soon as the officer is made aware of the initial allegation. A mistaken belief that a report has already been made will not be sufficient to relieve the officer of their obligation under cl. 253(1). However, a mistaken belief will be relevant to any consequences that might flow from a failure to report under cl. 253(1).
1203. Clause 253 does not directly respond to the circumstance where two officers, one being more senior, are made aware of the relevant allegation at the same time. However, in my view, it is reasonable for the more junior officer to assume that the more senior officer will act in accordance with the CAS Regulation and make the required report. But if the more junior officer becomes aware that the allegation was not reported, their obligation to comply with cl. 253(1) remains. It may not follow, however, that in these circumstances a failure to report under the subclause would be enough to find that the more junior officer engaged in misconduct for the purposes of s. 69 of the GSE Act. That would depend on all of the circumstances.
1204. In circumstances where two Correctional Officers of equal rank receive a report of an allegation at the same time, both officers have an obligation under cl. 253(1)

to report the allegation to an officer more senior in rank than them. However, again it may be that a failure to report under cl. 253(1) is not enough to find that either officer has engaged in misconduct for the purposes of s. 69 of the GSE Act. If either officer believed on reasonable grounds that the other *would* or *will* report the allegation – because, for example, one officer assured the other that they would do so – it may not be reasonable for misconduct proceedings to be brought against that officer.

1205. Although cl. 253(3)(c) removes the obligation of an officer to report in circumstances where the allegation has already been reported to a more senior Correctional Officer, there is no exception provided in cl. 253(3) to the senior Correctional Officer’s obligation under cl. 253(2). The obligation remains irrespective of whether the allegation has already been reported.

8.1.2 What is misconduct?

1206. As I discussed in Chapter 4, the definition of ‘misconduct’ in s. 69(1) of the GSE Act is non-exhaustive. I there referred to relevant case law which deals with s. 69 of the GSE Act and the kind of conduct that may or may not amount to ‘misconduct’. The meaning of ‘misconduct’ in the context of the offence of misconduct in public office is also discussed in Chapter 4.
1207. Whether conduct constitutes misconduct depends on the level of seriousness of the alleged breach. It may be that a technical breach of, for example, cl. 253(1), does not amount to misconduct because the breach was not serious enough to warrant proceedings or action under s. 69 of the GSE Act.
1208. It may also be that it is not appropriate to bring misconduct proceedings under s. 69(1) of the GSE Act for other reasons, such as the relevant knowledge and state of mind of the person who is allegedly in breach.

8.1.3 Reporting of misconduct

1209. I have set out at Chapter 4 and 5 the legislation, policies, systems, and procedures relevant to the reporting of complaints of misconduct, which were in place during the time of Astill’s offending. I am satisfied that at the relevant time none of the officers

at Dillwynia had received adequate training about the legislation governing the reporting of allegations of misconduct, or the policies, systems and procedures which were applicable.¹⁵⁰⁹ Few, if any, appear to have known of their existence. Further, the policies, systems and procedures were unclear, and there were a range of factors at Dillwynia which inhibited officers making reports of misconduct by other officers.

8.1.3.1 Department of Justice Managing Misconduct Procedure

1210. The Department of Justice (**DOJ**) Managing Misconduct Procedure provided that managers were to report alleged misconduct or criminal offences to the Strategic Human Resources Business Partner or relevant Professional Standards Unit in the first instance.¹⁵¹⁰ The relevant Professional Standards Unit within CSNSW was the Professional Standards Branch (**PSB**). Because the Professional Standards Committee (**PSC**) existed within CSNSW, the Strategic Human Resources Business Partner was required to be either a member of the PSC or have input into matters where required.

8.1.3.2 Commissioner's Instruction No. 10/2013

1211. As discussed in Chapter 4, Commissioner's Instruction No. 10/2013 was issued on 21 August 2013 and provided that employees have a duty to report suspected corrupt conduct.¹⁵¹¹ Such conduct was required to be reported in writing to the employee's supervisor, manager, Branch Head or Divisional Head, or to the Director, PSB, Assistant Commissioner, Governance and Continuous Improvement, or to the Commissioner of CSNSW.

8.1.3.3 The 12 September 2017 Email Policy

1212. On 12 September 2017, Director Custodial Operations Metro (**Director Metro**), Hamish Shearer, at the instigation of Commissioner of CSNSW, Kevin Corcoran,

1509 See eg Transcript, 29 September 2023, 112.42-113.25, 122.21-39; Transcript, 25 October 2023, 750.1-7; Transcript, 26 October 2023, 968.26-46; Transcript, 7 November 2023, 1729.29-1730.4.

1510 Ex. 3, TB 3, Vol. 9, Tab 149, CSNSW.0001.0034.0043_0007.

1511 Ex. 3, TB 3 Vol. 9, Tab 146, CSNSW.0001.0032.0338_0001-0002.

issued an email to, among others, then Governor of Dillwynia Shari Martin and then Manager of Security (**MOS**) at Mary Wade Correctional Centre Michael Paddison, requiring that ‘any incidents of a disciplinary or performance nature that warrant elevation are in the first instance to be raised with me [Mr Shearer] and we will decide whether a performance or disciplinary investigative [sic] is most appropriate’ (**12 September 2017 Email Policy**).¹⁵¹² In effect, the 12 September 2017 Email Policy altered the DOJ Managing Misconduct Procedure by requiring managers to, in the first instance, report a matter to Mr Shearer, and not PSB.

1213. As it happens, it appears that the requirements of this email were not implemented by Mr Shearer. He continued to forward matters to PSB. There is no evidence before me as to how other Directors responded. As discussed elsewhere, the proposal in this email has been heavily criticised, including by former Commissioner of CSNSW Peter Severin, who did not believe it was an effective process by which to manage complaints about staff. Because the email was not generally followed, I have not discussed it further when considering the response of individual officers to their reporting obligations.

8.2 Complaints about Astill’s conduct

1214. The Special Commission received evidence of a number of complaints made about Astill’s conduct, and about the response of Correctional Officers at Dillwynia, and of staff in the PSB and Investigations Branch (**IB**), to those complaints. This evidence forms a record of management failure at multiple levels reflecting a culture that was inadequate to underpin the effective and, importantly, safe management of Dillwynia. Complaints which should have brought an immediate and effective response were either ignored or dismissed out of hand. The consequences have been tragic for a number of women.
1215. I make a number of findings that Ms Martin breached cl. 253 of the CAS Regulation, the DOJ Managing Misconduct Procedure and Commissioner’s Instruction No. 10/2013, and may thereby have engaged in misconduct for the

1512 Ex. 25, TB 2, Vol. 8, Tab 84, Annexure Tab K, AST.002.013.0055_0033-0034.

purposes of s. 69 of the GSE Act. Ms Martin has retired and is no longer an employee of CSNSW. Proceedings and actions pursuant to s. 69 of the GSE Act may be taken despite an employee resigning or otherwise ceasing to be an employee (s. 69(5)). The utility of any such action being pursued more than five years after Ms Martin's retirement is a matter for CSNSW to resolve. It is plain that Ms Martin had various reporting avenues available to her at any given time, yet I am satisfied she failed to report some serious allegations that were being made by various people about Astill.

1216. On occasions, Ms Martin's approach to dealing with reports of misconduct bore some resemblance to the procedure set out in Chapter 16.12 of the Custodial Operations Policy and Procedures (**COPP**) in that she directed the Intelligence Officer to submit an Intelligence Report. However, as I have set out below, the process generally followed by Ms Martin, when she indeed followed a process, did not comply with the relevant legislation and policies.
1217. Apart from the actions of Ms Martin, this Chapter discusses complaints of both inmates and officers about Astill's conduct. It is possible to analyse the conduct of officers who received these complaints to determine whether they complied with cl. 253 of the CAS Regulation. However, there would be little purpose in doing so. It would seem that no one in CSNSW – at least no one who may have been able to report or respond to Astill's offending – was aware of the CAS Regulation and the obligations imposed. Any compliance with it was accidental.
1218. The most serious consequence of failure to comply with the Regulation was that the Commissioner of CSNSW at the time, Mr Severin, was not told of allegations of misconduct in relation to Astill. This, of course, was a very serious failure. However, in the absence of any instruction or training in the obligations imposed by the CAS Regulation, I do not believe any purpose would be served in assessing every officer's conduct against the requirements of the Regulation. I have focused instead on the conduct of senior officers who were involved in the events described.
1219. It is important to understand the events that happened and whether an appropriate response was made. The evidence satisfies me that some lessons have already been learnt and others will follow from consideration of the circumstances of

Astill's offending and the lack of effective response from some CSNSW officers over a number of years.

1220. In the following sections I consider the complaints made about Astill's conduct in broadly chronological order, and the response to those complaints. The chronology below is useful to understand the sequence in which the relevant incidents occurred, and the manner in which they were documented and brought to the attention of senior officers (if at all):

- a) In January 2016, Astill was observed to enter the J Unit alone by First Class Correctional Officers Glenn Clark and Mark Wilson. This is referred to as the 'J Unit incident'.
- b) In early 2016, likely on 8 January, Astill was seen to share a can of Coca Cola with Witness C. This is referred to as the 'Coke can incident'.
- c) On 13 February 2016, an incident occurred in the visits area involving Witness C who was confronted about a ring she was wearing. Chief Correctional Officer Judith Barry and Senior Correctional Officer Renee Berry were both involved in this incident. This is referred to as the 'ring incident'.
- d) On 14 February 2016, Ms Barry completed an Incident/ Witness Report concerning the ring incident.
- e) On 16 February 2016, Ms Berry was called to a meeting with Governor Shari Martin and MOS Leanne O'Toole at which the ring incident was discussed. Ms Berry said that during that meeting she raised a rumour that Astill had been getting 'blow jobs' from Witness C.
- f) On 18 February 2016, Chief Correctional Officer Neil Holman met with Witness C, who asked if it would go on her record if other inmates stated she had given an officer a blow job.
- g) On or around 23 February 2016, Witness C met with Ms Martin and Ms O'Toole and raised allegations of inappropriate behaviour between Correctional Officers and inmates. Witness C made similar disclosures to Ms Martin and Ms O'Toole on another occasion shortly thereafter.

- h) Sometime before 25 February 2016, Ms Barry recalls that she met with Ms Martin and Ms O'Toole in person and discussed a number of issues concerning Astill.
- i) On 25 February 2016, Ms Martin emailed Ms Barry requesting that Ms Barry provide a report to her in relation to information told to Ms Barry concerning Astill.
- j) On the same day, Ms Barry completed an Incident/ Witness report which discussed the Coke can incident and the J Unit incident.
- k) In early March 2016, Witness C said she reported to Ms Martin and Michael Paddison that rumours were circulating among officers, specifically that she was giving 'head jobs' to managers.
- l) On 4 March 2016, Ms Barry completed an Incident/Witness Report concerning an intercepted letter written by Witness C to Witness DD. In that letter, Witness C made a number of complaints about Ms Barry, including that Ms Barry had been telling staff that Witness C was giving male officers head jobs.
- m) On 9 March 2016, Mr Holman completed an Incident Report concerning his meeting with Witness C on 18 February 2016.
- n) In May 2016, then Correctional Officer Julijana Miskov reported to Mr Paddison and a woman she believed to be Ms Martin that she was assaulted by Astill in a sexual manner in the workplace.
- o) In October 2016, Witness P wrote a letter to her friend, former inmate Witness HH. In that letter, Witness P alleged that Witness C was having 'a fling with a male officer' at Dillwynia. The letter was intercepted by Astill. It was brought to the attention of Ms Martin and Intelligence Officer Pamela Kellett.
- p) On 9 November 2016, Ms Kellett submitted an Intelligence Report, IR-16-2783, concerning Witness P's letter to Witness HH.
- q) In March 2017, Witnesses O and T witnessed inmate Trudy Sheiles in Astill's office in the High Needs area. Witness O saw Astill touch Ms Sheiles on the bottom. Witnesses O and T reported what they had seen to Senior Correctional Officer Timothy Peek and Chief Correctional Officer

Westley Giles. Ms Martin subsequently arranged for an 'investigation' to be conducted by Acting MOS Brian Bartlett.

- r) In around May 2017, Witness M disclosed to Witnesses R, V and B that Astill had tried to touch her several times. Witness V experienced intimidating conduct by Astill after this time.
- s) On or around 20 July 2017, a meeting occurred in which Witnesses V and R disclosed to Mr Paddison – then Acting MOS – Mr Holman, Senior Correctional Officer Scott Westlake and, ultimately, Ms Martin what Witness M had disclosed.
- t) On 21 July 2017, Mr Holman prepared an Incident Report regarding the meeting on 20 July 2017.
- u) On 24 July 2017, Mr Holman prepared an Incident Report recording that Astill had made threatening comments about Witness V to another inmate.
- v) On or about 30 July 2017, Ms Kellett submitted an Intelligence Report, IR-17-2051, referring to the matters in Mr Holman's Incident Reports of 21 July and 24 July 2017.
- w) In the second half of 2017, Witnesses V and B informed Intelligence Officer Deborah Wilson that they had been keeping a diary concerning Astill's conduct. Ms Wilson made a copy of the diary.
- x) In November 2017, Ms Sheiles said that a number of inmates from the J Unit met Ms Wilson, who she thought was the MOS at the time. Inmates went in one by one to speak to the MOS. Ms Sheiles informed the MOS that Astill was verbally inappropriate and would touch her inappropriately as he brushed past.
- y) In late 2017, Witness B met twice with Ms Martin and Ms Wilson. Witness B said she made a number of complaints about Astill's conduct towards her in these meetings. Witness B said she also raised that inmates were being inappropriately touched by Astill, that he had been going into the accommodation units, and that he had intimidated inmates.
- z) On 22 November 2017, Mr Shearer, Ms Martin and Astill met at Dillwynia. Issues concerning Astill's conduct were discussed.

- aa) On 25 November 2017, Astill sent a letter to Ms Martin rebutting a number of allegations made against him by inmates. This included the allegations made by Witnesses O and T concerning Ms Sheiles, and allegations made by Witnesses B and V.
- ab) On 3 January 2018, Astill emailed his letter dated 25 November 2017 to Mr Shearer.
- ac) On the same day Mr Shearer forwarded Astill's email to Acting Governor Thomas Woods. Mr Woods replied indicating that he was hoping to 'undertake the mediation this week'.
- ad) On 16 or 17 January 2018, Mr Woods conducted a 'mediation' between Witness P and Astill. Mr Peek and Chaplain Suellen Johnson were present.
- ae) On 16 or 17 January 2018, Mr Woods conducted a 'mediation' between Witness V and Astill. Ms Johnson and Mr Peek were again present.
- af) On 25 January 2018, Mr Woods conducted a 'mediation' between Witness B and Astill. Ms Johnson was present.
- ag) On 13 February 2018, Mr Woods emailed a report on the three mediations to Mr Shearer, copying in Ms Martin.
- ah) Between March and June 2018, Ms Sheiles made a number of disclosures to Mr Clark concerning Astill. Mr Clark said that in April 2018, Ms Sheiles made specific allegations of sexual assault against Astill.
- ai) In mid-2018, prior to 6 June 2018, inmate Elizabeth Cox met with Ms Martin and Mr Giles. She informed them of a number of serious allegations concerning Astill, including that he was bringing contraband into Dillwynia and receiving sexual favours from inmates. At the meeting, Ms Cox provided Ms Martin and Mr Giles with handwritten notes she had made concerning Astill's conduct.
- aj) On 6 June 2018, Ms Wilson submitted an Intelligence Report, IR-18-1378. Among other things, this Intelligence Report set out the allegations contained in the paperwork Ms Cox had provided to Ms Martin. The Intelligence Report also stated that on 2 June 2018, Ms Cox had approached staff wanting to take out an Apprehended Violence Order (**AVO**) against Astill.

- ak) On or around 28 June 2018, Ms Cox reported to Mr Clark that Astill was bringing drugs into Dillwynia. Mr Clark telephoned Ms Martin and advised her of this allegation.
- al) On 15 August 2018, Ms Wilson submitted an Intelligence Report, IR-18-1983, concerning suspected illegal activity between Astill and Witness JJ, involving contraband jewellery which had been seized in December 2017.
- am) On 19 August 2018, Ms Wilson emailed Sarah Casey, an Intelligence Analyst in the Special Investigations Unit (**SIU**), a subset of the IB. Her email attached a summary document she had prepared concerning incidents involving Astill, and a copy of the diary maintained by Witnesses B and V.
- an) On 21 August 2018, Michael Hovey, Director IB, prepared a Highly Confidential Briefing to the Commissioner of CSNSW concerning the allegations in IR-18-1983. The briefing did not name Astill as the officer involved.
- ao) On 30 August 2018, Ms Kellett reported to Ms Martin that inmates had made up a song which included the lyrics 'Astill and [Witness N] hanging in the hub/Astill and [Witness N] having a rub and tug'. Ms Kellett's report was passed on to the PSB by Ms Martin. However, the focus of Ms Martin's report to the PSB was a complaint made by Astill against Senior Correctional Officer Jean Dolly.
- ap) In late 2018, inmate Sarah Ward reported to Ms Berry and Ms Barry that Astill had touched her on the bottom and said inappropriate things to her.
- aq) In late September or early October 2018, Mr Clark told the then Senior Assistant Superintendent – Intelligence Stephen Virgo about Ms Sheiles' disclosures, including that Ms Sheiles said she had been raped by Astill.
- ar) On 3 October 2018, Mr Clark witnessed Astill at Ms Ward's cell in the Behavioural Intervention Unit. Mr Clark challenged Astill as to why he was there. Mr Clark reported what he had seen to Mr Virgo the following morning. Subsequently, Mr Virgo encouraged Ms Ward to speak with the NSW Police Force (**NSWPF**).
- as) On 5 October 2018, Ms Sheiles met with Mr Virgo. Ms Sheiles made vague disclosures about her sexual encounters with Astill.

- at) On 9 October 2018, Mr Virgo submitted an Intelligence Report recording that Ms Sheiles had sensitive information to disclose about an officer, once she was transferred to another correctional centre.
- au) On 10 October 2018, Ms Sheiles signed a NSWPF statement detailing Astill's conduct towards her.
- av) On 18 December 2018, Ms Ward attended Windsor Police Station and made a statement to NSWPF concerning Astill's conduct.

1221. It is important to understand that the evidence discloses that the majority of Astill's sexual offending occurred after March 2016. Had the reports made to senior officers in February and March 2016 been adequately responded to, there is a real prospect that Astill's offending could have been stopped. This did not occur. As time went on, numerous opportunities to take decisive action to protect inmates from Astill were missed. This is nothing short of tragic.

8.3 January 2016 – The J Unit Incident

1222. In January 2016, Astill was observed to enter J Unit alone by First Class Correctional Officers Glenn Clark and Mark Wilson. This is referred to as the 'J Unit incident'.

1223. As discussed above, Dillwynia accommodated High, Medium and Low Needs inmates in the accommodation units in Area 2. The High Needs areas are subject to greater supervision and restrictions than Medium Needs. For example, in High Needs inmates are locked into their cells at night, whereas in Medium Needs they are locked into the units but not their cells.¹⁵¹³ The High Needs accommodation units at Dillwynia were located in Buildings J and K. Building J was often referred to by witnesses as 'J Unit'.¹⁵¹⁴

1513 Ex. 18, TB 2, Vol. 7, Tab 48, AST.002.002.0055_0014 [70].

1514 Ex. 46, TB 5, Vol. 25B, Tab 8, Annexure Tab 146, CSNSW.0001.0009.0001.

1224. Mr Clark was frequently rostered in the High Needs area between 2016 and 2018.¹⁵¹⁵ Mr Clark recalled that he was working a night shift with Mr Wilson in January 2016 when he observed Astill exiting J Unit alone after lock-in.¹⁵¹⁶ Mr Clark said that he saw Astill closing the door to J Unit and that while Astill gave a reason for why he had been inside, it was against protocol to enter a unit alone after lock-in.¹⁵¹⁷ Mr Clark was not aware of any reason why Astill would have been inside J Unit in apparent breach of protocol.¹⁵¹⁸
1225. Mr Wilson gave evidence that he and Mr Clark were escorting an inmate from K Unit to the clinic when they observed Astill go around to the rear of J Unit and not come out immediately.¹⁵¹⁹ This was unusual. He recalled commenting to that effect to Mr Clark and the two of them going to J Unit to see what Astill was doing.¹⁵²⁰ He saw Astill exiting J Unit and said that he confronted him. He said that Astill responded that he had gone to check the back door of J Unit and heard a disturbance, so had gone inside to check it out, but that everything was okay.¹⁵²¹ Mr Wilson further said that this explanation did not make sense to him, and that normal procedure would require two officers to attend. Mr Wilson said he told Astill ‘Wayne, there’s two of us outside. We’ve got a video camera, cuffs, rescue tool ... If there was something that needed help, you should have given us a yell!’¹⁵²² Mr Wilson said that he was not happy about the incident and made a notation about it in his work diary.¹⁵²³ Mr Wilson stated he ‘mentioned it to other staff’; however, he clarified in oral evidence that he only spoke to Mr Clark about the incident.¹⁵²⁴ He gave the following evidence:

1515 Ex. 8, TB 2, Vol. 7, Tab 63A, AST.002.013.0022_0001 [8].

1516 Ex. 8, TB 2, Vol. 7, Tab 63A, AST.002.013.0022_0011 [93].

1517 Ex. 8, TB 2, Vol. 7, Tab 63A, AST.002.013.0022_0011 [93]-[94]; Transcript, 25 October 2023, 751.33-34.

1518 Transcript, 25 October 2023, 751.36-752.1.

1519 Transcript, 2 November 2023, 1471.40-48; Ex. 23, TB 2, Vol. 7, Tab 52, AST.002.002.0062_0002 [7].

1520 Transcript, 2 November 2023, 1471.40-48; Ex. 23, TB 2, Vol. 7, Tab 52, AST.002.002.0062_0002 [8].

1521 Transcript, 2 November 2023, 1472.12-17.

1522 Transcript, 2 November 2023, 1472.21-24; Ex. 23, TB 2, Vol. 7, Tab 52, AST.002.002.0062_0002 [8].

1523 Transcript, 2 November 2023, 1472.25-26; Ex. 23, TB 2, Vol. 7, Tab 52, AST.002.002.0062_0002-0003 [9].

1524 Transcript, 2 November 2023, 1474.18-29; Ex. 23, TB 2, Vol. 7, Tab 52, AST.002.002.0062_0002 [9].

MS DAVIDSON: *It was unusual enough for you to make a notation in your work diary in 2016. Did you consider at that point in January 2016 whether you needed to do anything else about it?*

MR M. WILSON: *No, not really. I mean, I don't know — like I said, I didn't actually see him do anything in the unit. Years later, in hindsight, I would say he was obviously up to no good. But I did not observe anything then. I — I accepted he was running the gaol that night, it's his centre, and I just thought it was a pretty dumb thing to do ...*¹⁵²⁵

8.3.1 Incident/Witness report completed by Judith Barry

1226. The incident at J Unit came to Ms Martin's attention following a meeting with Ms Barry in February 2016, discussed further below. On 25 February 2016, Ms Martin sent an email to Ms Barry with the following message:

*Jude, can you please provide a report to me in relation to the information told to you about SCO [Senior Correctional Officer] Astill. Officer Astill has also been asked to provide a report. I will be sending this further so can you please provide the name of the staff member/s who informed you of his inappropriate behaviour.*¹⁵²⁶

1227. Ms Barry duly completed an Incident/Witness Report, dated 25 February 2016. She described an incident in which Astill was observed sharing a can of drink with Witness C. I discuss that incident in detail below. The report also stated the following in relation to J Unit:

It was also stated by SCO [Anne] O'Reilly that on 31/12/2015 SCO Astill was seen by an officer who was working in the control room that afternoon/night (unknown to me) coming out the front of J Unit on the day he was D watch Chief after lock in. It was also alleged by SCO O'Reilly that he was seen on another occasion by Centre patrol staff (unknown to me) coming

1525 Transcript, 2 November 2023, 1474.1-9.

1526 Ex. 17, TB 2, Vol. 7, Tab 62A, AST.002.013.0045_0020.

*out the back of J Unit when it was alleged that he stated to staff that he had heard a commotion in J unit and he went to investigate. I had not reported this incident at the time as it was only in general conversation and hear say [sic].*¹⁵²⁷

1228. Senior Correctional Officer Anne O'Reilly did not give evidence before the Special Commission. However, it is plain that one of the incidents conveyed by Ms O'Reilly to Ms Barry was the incident at J Unit described by Mr Clark and Mr Wilson.
1229. Ms Martin gave evidence about an incident where Astill opened an accommodation unit at night.¹⁵²⁸ Her evidence was not clear, but she is likely describing the information conveyed to her by Ms Barry in her report of 25 February 2016. In her statement to NSWPF for Astill's trial, Ms Martin said:

*A matter that stands out is a complaint about Wayne ASTILL with [Witness C] who was an inmate at Dillwynia Correctional Centre. The nature of the complaint was that he would be seen talking with her at times and in a manner not proper to his duties as a correctional officer. Other inmates in protection told staff that Wayne Astill and [Witness C] were up to no good. One time at night he opened up the unit (Protection High Needs). This is generally something not done at night by a single officer due to safety. Wayne ASTILL was at the time, in charge of the watch (effectively the ranking officer). Wayne gave me an excuse, but I can't remember what that excuse was now.*¹⁵²⁹

1230. Ms Martin was asked about this paragraph:

MR LLOYD: *You don't think that the information you recount in this paragraph, that is, being in the unit at night, doing something which is not normally done by a single officer, and the reports about Witness C and Astill being up to no good, were matters that should have been referred out by you to the Investigations Branch?*

1527 Ex. 17, TB 2, Vol. 7, Tab 62A, AST.002.013.0045_0021.

1528 Ex. 38, TB 2, Vol. 7, Tab 59, AST.002.002.0071_0003 [13].

1529 Ex. 38, TB 2, Vol. 7, Tab 59, AST.002.002.0071_0003 [13].

MS MARTIN: *Well, I think the first part of this was something that was addressed, I'm — I think. And the second part of it was dealt with, because his reasons at the time were acceptable.*¹⁵³⁰

1231. Ms Martin said that Astill's excuse was something to do with the 'hot boxes'. She said that Ms Barry had spoken to Astill and considered his excuse to be reasonable. Ms Martin said that she had also spoken to Astill, and she also thought that his excuse was reasonable.¹⁵³¹ Ms Martin did not make any reports or referrals regarding Astill's entry to J Unit unaccompanied.¹⁵³² Ms Martin's response to the information about Astill's interactions with Witness C is considered further below.

8.3.2 Consideration of breaches of law and policies

1232. Mr Clark was of the view that Astill's entry to J Unit was a breach of protocol, but no specific protocol bearing on the situation was identified. Mr Wilson described it as 'unusual'.

1233. I am satisfied Ms Martin became aware of Astill's entry to J Unit by way of Ms Barry's Incident/Witness Report dated 25 February 2016. Ms Martin was bound by cl. 253(2) of the CAS Regulation to report the allegations to the Commissioner of CSNSW if she believed the behaviour constituted a criminal offence or grounds for proceedings under s. 69 of the GSE Act. Ms Martin gave the following evidence as to her opinion about this allegation:

MR LLOYD: *One time, at night, he opened up the unit, protection high needs, and this is generally something not done at night by a single officer due to safety. Do you see that?*

MS MARTIN: *Yes.*

MR LLOYD: *That was a very serious breach of protocol, wasn't it?*

1530 Transcript, 13 November 2023, 2201.14-22.

1531 Transcript, 13 November 2023, 2201.9-12.

1532 Transcript, 13 November 2023, 2201.14-2202.9.

MS MARTIN: Well, not necessarily if he was the night Senior — or it is a serious breach, but they can be unlocked for medical emergencies, knock-ups [use of an in-cell intercom by an inmate], security.

MR LLOYD: I want you to assume for the purpose of this question there was never any information that he was there for a medical emergency.

MS MARTIN: No, there wasn't. And I remember that it was something to do with the hot boxes or — or something like that. Jude Barry had spoken to him, and she — I recall she thought the reason — his — his reason was reasonable, and I spoke to him, and the reason he gave me was reasonable.¹⁵³³

1234. I am not satisfied that Ms Martin believed that this allegation would constitute a criminal offence or misconduct, such as to enliven her reporting obligations pursuant to cl. 253 of the CAS Regulation.
1235. For the same reasons, Ms Martin was not required by the DOJ Managing Misconduct Procedure to report the incident to the PSB.
1236. However, Ms Martin's knowledge of this incident was relevant to her understanding of subsequent allegations regarding Astill that were reported to her, and the reasonableness of her actions (and inaction) in response to those reports.

8.4 Early 2016 – Incidents and rumours involving Witness C

1237. Witness C was an inmate at Dillwynia between February 2014 and December 2016. She was the victim of a number of offences committed by Astill. In January and February 2016, two incidents occurred involving Astill and Witness C which came to the attention of senior officers. These are referred to below as the 'ring incident' and the 'Coke can incident'. These two incidents occurred against a background of rumours that were circulating among officers and inmates concerning Astill and Witness C.

1533 Transcript, 13 November 2023, 2200.42-2201.12.

8.4.1 The Ring Incident

1238. On 13 February 2016, an incident occurred in the visits area involving Witness C who was confronted about a ring she was wearing. Ms Barry and Ms Berry were both involved in this incident. This is referred to as the ‘ring incident’.
1239. Ms Berry recalled that she was running visits on the day of this incident.¹⁵³⁴ Witness C was wearing a men’s silver ring which she refused to take off. Witness C insisted she had the ring when she came into custody; however, it was not on her property card. Ms Berry recalled that Astill had become aware of the incident involving Witness C and came to the visits area to investigate. She said he banged on the door and radioed her until he was let in, then stood next to Witness C and demanded to know what was wrong. Astill was swearing and ‘bad-mouthing’ other inmates. It was at this point Ms Berry asked Correctional Officer Jacinta Curtin to radio Principal Correctional Officer Pam Hotham, who attended with Ms Barry and took Witness C to the Behavioural Intervention Unit.
1240. Ms Berry recalled that she spoke to Astill’s partner, Correctional Officer Tania Hockey, after the situation and asked her ‘what’s his problem?’, referring to Astill. Ms Hockey replied, ‘he is angry because I told him off this morning because when inmate [redacted] left she said to other inmates that Wayne was receiving blow jobs from Witness C, and I should have heard that from him and not inmates’. Ms Berry stated she did not respond as she was shocked.¹⁵³⁵ Ms Berry made notes about the ring incident, including her conversation with Ms Hockey, in her notebook.¹⁵³⁶
1241. Ms Barry’s account was that she attended the visits area with Ms Hotham, following a call from Ms Curtin.¹⁵³⁷ Ms Barry believed the ring did not belong to Witness C and was aware of rumours Astill had given it to her.
1242. Ms Barry recalled that she and Ms Hotham escorted Witness C to the clinic, where she still refused to take the ring off. Witness C was then moved to the

1534 Ex. 18, TB 2, Vol. 7, Tab 49A, AST.002.013.0013_0016 [92]-[93].

1535 Ex. 18, TB 2, Vol. 7, Tab 49A, AST.002.013.0013_0016 [94].

1536 Ex. 18, TB 2, Vol. 7, Tab 48, AST.002.002.0055_0020-0022.

1537 Ex. 17, TB 2, Vol. 7, Tab 62A, AST.002.013.0045_0014-0015 [88].

Behavioural Intervention Unit and the issue was escalated ‘for management to deal with her and the ring on Monday’.¹⁵³⁸ Ms Barry elaborated on her rationale for placing Witness C in the Behavioural Intervention Unit as follows:

*So because I had my suspicion that the ring had come from [Astill] — and I had my own suspicion that that was the case — I put her in the BIU [Behavioural Intervention Unit] overnight, which is something we wouldn’t normally do over a bit of jewellery. But because of my suspicions, I was hoping, by putting her in the BIU [Behavioural Intervention Unit] where she refused again to take it off, that management would deal with it on Monday, and hopefully this would help bring up Astill’s wrongdoings. But it didn’t work.*¹⁵³⁹

1243. Ms Berry and Ms Barry’s evidence was that they considered that Astill’s intervention on behalf of Witness C was suggestive of a close and intimate relationship.¹⁵⁴⁰

1244. On 14 February 2016, Ms Barry completed an Incident/Witness Report concerning the ring incident.¹⁵⁴¹ The report stated in part:

I instructed Officer Curtin to escort [Witness C] to the clinic until I consult with the Principal and D Watch Chief which we decided to place [Witness C] in the BIU [Behavioural Intervention Unit] until she was seen by the Manager of Security. D Watch Chief and I spoke to [Witness C] about handing over the ring and after a lengthy consultation with her she still declined to hand it over. [Witness C] was told it would be given to the Manager of Security and she would make a decision on it next week. [Witness C] said ‘no it will get lost, I’m not handing it over, it means a lot to me’. [Witness C] continued to talk over us when Chief Paddison and I tried to explain the situation. [Witness C] was given an instruction to hand over the ring or she would be placed in the BIU [Behavioural Intervention Unit] until she does. [Witness C] was given numerous

1538 Ex. 17, TB 2, Vol. 7, Tab 62A, AST.002.013.0045_0015 [88].

1539 Transcript, 30 October 2023, 1195.25-43.

1540 Transcript, 30 October 2023, 1196.7-11; Ex. 18, TB 2, Vol. 7, Tab 48, AST.002.002.0055_0005 [27].

1541 Ex. 17, TB 2, Vol. 7, Tab 61, Annexure Tab A, AST.002.002.0073_0006.

opportunities to comply with directions however she still refused to remove the ring. Whilst speaking with [Witness C] she accused me of speaking aggressively to her. Chief Paddison attempted to further explain the situation to her; however she continued to talk trying to take over the conversation without listening to what was being said.

1245. Ms Barry gave evidence that it was ordinary practice for reports of this nature to go to the Governor.¹⁵⁴² She did not believe she had any discussion with Ms Martin about the report at that time, noting her lack of trust in colleagues (other than Ms Berry) during that period.
1246. Ms Berry gave evidence that on 16 February 2016, she was called into a meeting in Ms Martin’s office.¹⁵⁴³ The then MOS Leanne O’Toole was present. Ms Berry stated she was criticised for making up gossip about Astill’s behaviour. She said she was ‘interrogated on [her] processes about Witness C and why the ring was taken and if other inmates had the same treatment’. She stated, ‘I was eventually given the right to reply, and I explained what had happened on the previous Saturday in visits with Wayne and his abuse, I told them about the conversation with Tanya [Hockey] [sic] and the rumour she told me about the blow jobs Wayne was accused of getting from Witness C’. Ms O’Toole denied being present in any such meeting.¹⁵⁴⁴ Ms Martin denied any recollection of the meeting and denied she would have responded in the manner described by Ms Berry.¹⁵⁴⁵

8.4.1.1 Witness C’s account of the ring incident

1247. In her account of the ring incident, Witness C stated, ‘Officer Berry and Officer Barry dragged me down the corridor to the back of the clinic near night seniors, where inmates go if they have a mental health issue, and said “take it off or we will fucking cut it off”’.¹⁵⁴⁶ If established, those actions on behalf of Ms Berry and Ms Barry may amount to the offence of common assault.

1542 Transcript, 30 October 2023, 1197.19-35.

1543 Ex. 18, TB 2, Vol. 7, Tab 49A, AST.002.013.0013_0017-0018 [99]-[101].

1544 Ex. 30, TB 2, Vol. 8A, Tab 88, AST.002.013.0044_0007 [66]-[67].

1545 Transcript, 13 November 2023, 2210.6-2211.14.

1546 Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0006 [22].

1248. I am not satisfied that Witness C's account of this incident is sufficiently reliable to allow me to conclude that an assault occurred. Although Witness C referred briefly to the ring incident in her statement to the NSWPF made on 7 May 2019 for Astill's trial,¹⁵⁴⁷ that account was understandably lacking in detail given the purpose of that statement. The actions of individual officers involved in the incident were not described. Witness C first gave a detailed account of the incident in her statement to the Special Commission, made in October 2023.

1249. I accept that the ring incident was significantly distressing for Witness C. Her distress was no doubt compounded by being placed in the Behavioural Intervention Unit, a response which Ms Barry acknowledged would not usually be utilised for an incident of this seriousness. I consider that Witness C's distress, together with the passage of time, may have impacted on the accuracy of her recollection of some details of the incident.

1250. Ms Berry denied any involvement in taking Witness C to the clinic and denied saying, 'take it off or we'll fucking cut it off'.¹⁵⁴⁸ I accept Ms Berry's evidence that she did not escort Witness C to the clinic or say those words, as it is consistent with Ms Barry's evidence that she accompanied Witness C to the clinic, together with Ms Hotham, and with the contemporaneous Incident/Witness Report made by Ms Barry. Given this finding, I am unable to accept Witness C's account of the actions of Ms Berry and Ms Barry and am not satisfied an assault occurred.

8.4.2 The Coke Can Incident

1251. In early 2016, likely on 8 January, Astill was seen to share a can of Coca Cola with Witness C. This is referred to as the 'Coke can incident'. The incident was observed by a number of people and was widely discussed among Correctional Officers. Although it may seem trivial, in context it has real significance.

1252. Witness C's evidence was that she and three other inmates were standing outside the library when Astill walked up to them with a can of Coke. Astill opened

1547 Ex. 3, TB 1, Vol. 5, Tab 7, AST.002.002.0002_0005 [18].

1548 Transcript, 30 October 2023, 1313.43-1314.10.

the can and said they could share it.¹⁵⁴⁹ Witness C said that it was not usual for Correctional Officers to share items with inmates.¹⁵⁵⁰ Witness C disputed accounts which suggested that it was only her and Astill who shared the can of Coke, stating that there were multiple inmates involved.¹⁵⁵¹

1253. Mr Giles said in his evidence that everybody in Dillwynia heard the rumour about the Coke can.¹⁵⁵² A number of Correctional Officers gave evidence that they were told at the time that Astill and Witness C had been observed sharing a can of Coke between them (that is, in the absence of any other inmates).¹⁵⁵³ Other Correctional Officers gave evidence that they had heard a rumour that Astill shared a can of Coke with Witness C and that there was a sexual element to the interaction, with Witness C placing the can in and out of her cleavage, or running it across her breast, in the course of sharing it with Astill.¹⁵⁵⁴

1254. Ms Barry gave evidence that she was informed about the Coke can incident by Ms O'Reilly. Ms Barry recalled that sometime after early January 2016, Ms O'Reilly reported to her that she had observed Witness C and Astill on closed-circuit television (**CCTV**) sharing a can of drink.¹⁵⁵⁵ Ms Barry's evidence was that she and Ms O'Reilly attempted to access the footage of the incident shortly after it occurred in order to copy it as proof of Astill's inappropriate behaviour. However, when they tried to access the footage, it was gone. Ms Barry believed it had been deleted.¹⁵⁵⁶

1255. Ms Barry said that she informed Ms Martin about the incident between around 22 and 26 February 2016. Ms Barry said that Ms Martin then called her in for a meeting and asked her what she knew about Astill and what he was doing.

1549 Transcript, 19 October 2023, 347.21-44; Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0008 [31].

1550 Transcript, 19 October 2023, 347.41-44.

1551 Transcript, 19 October 2023, 391.38-46.

1552 Transcript, 17 November 2023, 2581.3-12.

1553 Transcript, 26 October 2023, 957.1-28; Transcript, 27 October 2023, 1036.29-1037.22; Transcript, 2 November 2023, 1524.44-1525.10; Ex. 25, TB 2, Vol. 8, Tab 84, AST.002.013.0055_0010 [59]; Transcript, 3 November 2023, 1652.17-25; Ex. 27, TB 2, Vol. 8, Tab 85, AST.002.013.0039_0003 [18]; Transcript, 3 November 2023, 1687.33-38; Ex. 28, TB 2, Vol. 8, Tab 80, AST.002.013.0053_0006 [29]; Ex. 57, TB 2, Vol. 7, Tab 51, AST.002.002.0061_0002 [11]; Transcript, 1 November 2023, 1455.42-45; Transcript, 2 November 2023, 1484.26-32.

1554 Transcript, 27 October 2023, 1164.7-38; Transcript, 2 November 2023, 1495.16-20; Ex. 24, TB 2, Vol. 8, Tab 81, AST.002.013.0051_0008 [57].

1555 Transcript, 30 October 2023, 1193.26-35.

1556 Transcript, 30 October 2023, 1194.5-37; Ex. 17, TB 2, Vol. 7, Tab 62A, AST.002.013.0045_0014 [87].

1256. Ms Barry's account of this meeting was somewhat confusing. Accordingly, it is useful to set out her evidence at some length. Ms Barry was referred to the email she received from Ms Martin on 25 February 2016 (extracted in part above), asking her to 'provide a report to me in relation to the information told to you about SCO [Senior Correctional Officer] Astill'.¹⁵⁵⁷ Her evidence continued as follows:

MR LLOYD: *What was the information that had been told to you about Wayne Astill that it appeared that you had some discussion with Shari Martin about?*

MS BARRY: *About the head jobs. I told Shari Martin about that.*

MR LLOYD: *What did you tell her?*

MS BARRY: *I said that the rumour was that Witness C was giving him —*

...

MS BARRY: *I was told — I told her Witness C was giving Wayne Astill head jobs in — by getting — this is — my belief at the time was prescription medication, possibly the ring.*

MR LLOYD: *So let me just understand. This is the meeting which you recall being at. Was it just you and Shari Martin?*

MS BARRY: *It was Leanne O'Toole as well. And you'll see my report in response to this somewhere further. As you can see, I was very brief because I did not want to write everything because I didn't trust her at the time. So it was very brief, my report.*

MR LLOYD: *At the moment, anyway, a meeting between you, Shari Martin and Leanne O'Toole —*

MS BARRY: *Yes.*

MR LLOYD: *— where you were saying to those two women, Ms Martin and Ms O'Toole, things that you believed were occurring in the gaol?*

MS BARRY: *I was very careful, what I said, again because I didn't trust her.*

MR LLOYD: *Do you remember —*

MS BARRY: *Them.*

MR LLOYD: *— doing the best you can, what it is that you said?*

MS BARRY: *Oh, yes.*

MR LLOYD: *Tell us —*

MS BARRY: *I told her — I basically told her that — initially, I spoke to her about the ring that she had — that Witness C had, and the fact that Witness C was giving Astill head jobs for the payment. And I also — Shari said to me, 'Why didn't you come — why didn't you come to me earlier?' And I said, 'Because I didn't have any proof'. And she said, 'Well, it's not up to you to investigate'. So I just left it at that, because my understanding is you don't put an officer in if you've got no proof. Anyway. So — and I said, 'By the way' — I said — I looked at Leanne O'Toole, and I said, 'Leanne O'Toole goes on holidays and goes out with Wayne Astill and Tania Hockey, and staff are not comfortable coming to her'. And with that, she walked out the room crying. And —*

MR LLOYD: *When you say 'she', that's Leanne?*

MS BARRY: *Leanne O'Toole walked out the room crying. And then I spoke to Shari about — Witness C wrote a letter —*

MR LLOYD: *Just pause. Witness C. That's all right.*¹⁵⁵⁸

1257. A short time later, Ms Barry clarified what was discussed at this meeting:

MS BARRY: *I did, I beg your pardon. It might have been — to set the record straight, it probably was the can of drink, not the ring, okay? The can of drink and the head job. So the ring may not have been mentioned*

*then. I forgot about the can of drink, sorry. That was mentioned in that meeting by myself.*¹⁵⁵⁹

1258. In her Incident/Witness Report, part of which was discussed above in relation to the incident involving J Unit, Ms Barry said in relation to the Coke can incident:¹⁵⁶⁰

*I have been asked by General Manager Mrs. Martin to furnish this report on allegations that were made to me on Senior Correctional Officer Astill a few weeks ago, date and time unknown. Senior Correctional Officer O'Reilly had stated to me in general conversation that SCO Astill was seen on camera by her on 08/01/2016 walking up the path alongside the admin building with offender known to me as [Witness C] when they were observed sharing a can of drink ... I had not reported this incident at the time as it was only in general conversation and hear say [sic].*¹⁵⁶¹

1259. Ms Barry was asked what she expected to happen following the reports she filed during this period. Ms Barry stated that there should have been an investigation by an external body. She said 'We're not talking about one [allegation] here; we're talking about several. If there were several allegations about myself, I would expect myself to be investigated, yes. We're not talking about one or two.'¹⁵⁶²

1260. Chief Correctional Officer Neil Holman gave evidence that he was told about the Coke can incident by Ms Barry. He said that he did not take any action in respect of the incident upon being told about it because he did not have direct knowledge of it, and he understood from his conversation with Ms Barry that the incident had been reported up to Ms O'Toole or Ms Martin.¹⁵⁶³

1261. Ms O'Toole's evidence was that she recalled receiving an Incident Report from a control room officer regarding Astill sharing a can of Coke with Witness C while walking across the compound. Ms O'Toole said that she took this report

1559 Transcript, 30 October 2023, 1206.1-4.

1560 Ex. 17, TB 2, Vol. 7, Tab 62A, AST.002.013.0045_0016 [92]-[93].

1561 Ex. 17, TB 2, Vol. 7, Tab 62A, AST.002.013.0045_0021.

1562 Transcript, 30 October 2023, 1208.42-1209.5.

1563 Ex. 28, TB 2, Vol. 8, Tab 80, AST.002.013.0053_0011 [57]; Transcript, 3 November 2023, 1687.4-31.

to Ms Martin. Ms O'Toole's belief was that Ms Martin referred the report to PSB; however, the basis for this belief is somewhat unclear.¹⁵⁶⁴ Her evidence on this issue was as follows:

MR LLOYD: *And you say you took this report to the General Manager, and she referred it to the PSB?*

MS O'TOOLE: *Yes. Yes.*

MR LLOYD: *Is that something she told you, that she'd made that referral?*

MS O'TOOLE: *Yes, I believe that she did make that referral. And I believe the response that came back was to manage locally (indistinct) with the report.*

MR LLOYD: *That was what she told you?*

MS O'TOOLE: *Sorry?*

MR LLOYD: *That was what she told you? That was what she told you, Shari Martin?*

MS O'TOOLE: *That was my — that was my knowledge of it, yes.*

MR LLOYD: *Your understanding was for it to be managed locally.*

MS O'TOOLE: *Yes.*¹⁵⁶⁵

1262. Ms O'Toole said that she and Ms Martin 'counselled' Astill about this incident. Ms O'Toole said that 'counselling' involved discussing behaviour that 'leaves a person wide open for allegations'. She said that Astill's response was that it was a 'lapse in judgement' and that Witness C asked for a sip of his Coke and 'he just automatically handed it to her'. Her evidence was that she and Ms Martin told Astill that it was a stupid thing to do for health reasons and because his responsibility was to supervise inmates, not share cans of Coke with them. She said that they told Astill that it was 'a really, really foolish thing on his part'. Ms O'Toole's evidence was that sharing the drink was 'sheer stupidity'; however, the incident 'certainly didn't suggest to [her] that there was any inappropriate

1564 Ex. 30, TB 2, Vol. 8A, Tab 88, AST.002.013.0044_0002 [21].

1565 Transcript, 7 November 2023, 1827:19-40.

relationship' as it was not uncommon for Correctional Officers to be walking around the compound talking to inmates.¹⁵⁶⁶

1263. Ms Martin gave evidence that the Coke can incident was an 'odd one'. She described it as 'odd' because of the health risks involved in sharing a drink with someone and because of the 'public nature of the alleged misconduct'.¹⁵⁶⁷ Ms Martin could not recall if the incident was referred to the PSB or handled at the local level. She recalled that some sort of report was produced about the incident and that she 'counselled' Astill about it in her office. Her recollection was that she and Ms O'Toole were involved in 'counselling' Astill and that 'counselling' generally involved Ms Martin, normally in the company of someone else, sitting in her office and asking the subject of the incident for their side of the matter, finding out why it happened, telling them about the various repercussions of such an incident, and obtaining an acknowledgment from the person that what they had done was wrong.¹⁵⁶⁸ She said that she did not recall the specifics of this counselling episode.
1264. Ms Martin accepted in her oral evidence that the incident involved misconduct by Astill which should have been referred by her to IB or PSB. She stated that she assumed that a referral was made.¹⁵⁶⁹ She further accepted that if that was not done, it was a failure by her not to have done so.¹⁵⁷⁰ Her evidence was as follows:

MR LLOYD: *I identified, for your response, it had to be referred out either to the Investigations Branch or the Professional Standards Branch. Do you remember me saying that?*

MS MARTIN: *Yes, I do.*

MR LLOYD: *You agreed with me, I thought?*

MS MARTIN: *Yes.*

1566 Transcript, 7 November 2023, 1827.46-1828.32.

1567 Ex. 38, TB 2, Vol. 7, Tab 59A, AST.002.013.0059_0014 [64].

1568 Ex. 38, TB 2, Vol. 7, Tab 59A, AST.002.013.0059_0014 [65]-[66].

1569 Transcript, 13 November 2023, 2204.10-19.

1570 Transcript, 13 November 2023, 2204.21-2205.11.

MR LLOYD: *And my proposition to you is that you did neither of those things; you did not refer it out to Investigations Branch, and you did not report or refer it to Professional Standards?*

MS MARTIN: *That's correct.*

MR LLOYD: *And that was a failure?*

MS MARTIN: *Yes, it would have been a failure.*¹⁵⁷¹

1265. As to a record of the incident, Ms Martin said that she made a report about it which she placed in her filing cabinet. She said that no report was placed on Astill's personnel file.¹⁵⁷² She later said in her evidence that she could not recall if she had brought the report to the attention of anyone outside the gaol.¹⁵⁷³
1266. For the most part, the facts in relation to this incident are clear. I do not find it is necessary to resolve the difference in the evidence as to whether the incident involved only Witness C and Astill, or whether there were other inmates involved, or whether Witness C placed the can in her cleavage. All of the officers who gave evidence accepted the incident involved inappropriate behaviour by Astill, and Ms Martin described the incident as one of 'alleged misconduct' by Astill.¹⁵⁷⁴
1267. In relation to Ms Barry's evidence regarding attempts to access CCTV of the incident, though the circumstances are troubling, I cannot find that CCTV footage was deliberately destroyed. The CCTV footage was not available when Ms Barry and Ms O'Reilly searched for it, but the evidence does not satisfactorily explain why that was so.
1268. I am satisfied that Ms Martin did not report the incident to the PSB or IB. There are multiple reasons for this conclusion.

1571 Transcript, 13 November 2023, 2204.40-2205.11.

1572 Transcript, 13 November 2023, 2206.23-2207.10.

1573 Transcript, 13 November 2023, 2207.12-19.

1574 Ex. 38, TB 2, Vol. 7, Tab 59A, AST.002.013.0059_0014 [64].

1269. Although in her written statement she said that she could not recall whether the incident was referred to PSB or handled at the local level¹⁵⁷⁵ in oral evidence she accepted that the incident was not referred to IB or PSB.¹⁵⁷⁶
1270. This conclusion is reinforced by the fact that no record of any report could be located.
1271. Although Ms O’Toole’s evidence was that Ms Martin told her the incident had been reported to PSB, this was not correct. It is obvious that it should have been, given Ms Martin considered it an allegation of misconduct.¹⁵⁷⁷

8.4.2.1 Consideration of breaches of law and policies

1272. A number of officers became aware of the Coke can incident.
1273. Ms O’Reilly was aware of the incident and made a report to Ms Barry, who was more senior in rank than her.
1274. However, the evidence is unclear as to whether Ms Barry believed the Coke can incident, in isolation, would provide sufficient grounds for taking proceedings or action under s. 69 of the GSE Act against Astill, so as to engage her obligation pursuant to cl. 253(2)(b). The evidence about the Coke can incident cannot be considered in isolation. The following evidence is of relevance to this issue:
- a) in her Incident/Witness Report of 25 February 2016, which referred to the Coke can incident and reports of Astill leaving J unit alone, Ms Barry stated, ‘I had not reported this incident at the time as it was only in general conversation [sic] and hear say [sic]’.¹⁵⁷⁸ This statement may suggest she did not regard the incident as sufficient to ground the taking of proceedings under the GSE Act at that time;

1575 Ex. 38, TB 2, Vol. 7, Tab 59A, AST.002.013.0059_0014 [65].

1576 Transcript, 13 November 2023, 2204.40-2205.11.

1577 Ex. 38, TB 2, Vol. 7, Tab 59A, AST.002.013.0059_0014 [64].

1578 Ex. 17, TB 2, Vol. 7, Tab 62A, AST.002.013.0045_0021.

- b) Ms Barry gave evidence that she thought each of the matters she had raised during this period were ‘serious’;¹⁵⁷⁹ and
- c) Ms Barry’s evidence was that in the meeting at which she discussed the Coke can incident with Ms Martin and Ms O’Toole, she also discussed ‘the head job’;¹⁵⁸⁰ a reference to rumours she had heard that Witness C was performing oral sex for Astill.¹⁵⁸¹

1275. I am satisfied that at the time Ms Barry became aware of the Coke can incident, in light of other incidents and rumours of which she was aware, Ms Barry believed the allegations were serious enough to constitute misconduct. While cl. 253(2) required Ms Barry to report the allegations reported to her to the Commissioner of CSNSW, she instead reported them to Ms Martin. I accept the submission made on behalf of Ms Barry that her non-compliance with cl. 253(2) must be considered in the context of the dysfunctional management environment she was working within, and the lack of understanding among Correctional Officers of their reporting obligations.¹⁵⁸² In the circumstances her conduct did not amount to misconduct within the meaning of s. 69 of the GSE Act.

1276. Ms Martin having received the report from Ms Barry also became a ‘senior correctional officer’ within cl. 253(2) of the CAS Regulation. She characterised the Coke can incident as misconduct and I am satisfied she believed it to be such at the time the incident was reported to her.¹⁵⁸³ Further, as discussed below, I am satisfied that at the time Ms Martin became aware of the Coke can incident she had also been informed by at least Ms Berry (and possibly Ms Barry) about rumours that Astill was receiving ‘head jobs’ from inmates. This information should have informed her response to the Coke can incident. As a consequence, she ought to have reported this incident to the Commissioner of CSNSW. No report was made. Furthermore, as Ms Martin accepted, she should have reported the matter to the IB, and to the PSB under the DOJ Managing Misconduct Policy, but failed to do so.

1579 Transcript, 30 October 2023, 1206.25.

1580 Transcript, 30 October 2023, 1205.25-1206.4.

1581 Transcript, 30 October 2023, 1202.8-29.

1582 Submissions on behalf of Judith Barry, Renee Berry, Ronald Brown and Scott Westlake, 14 December 2023, AST.002.013.0104_0005 [26].

1583 Ex. 38, TB 2, Vol. 7, Tab 59A, AST.002.013.0059_0014 [64].

8.4.3 Information about inappropriate relationships between Astill, Witness C, and others

1277. During Witness C's incarceration at Dillwynia there was talk about an inappropriate relationship between her and Astill beyond the specific incidents addressed above.
1278. Witness C's evidence is that she believed that CSNSW staff would have been aware of rumours about her and Astill.¹⁵⁸⁴ She stated that she was regularly called out over the public address system to go and see Astill. The frequency with which she was called to see Astill led other inmates to heckle her with comments such as 'your boyfriend wants you again' or 'go down and get another favour'.¹⁵⁸⁵ Witness C stated that such comments may have been made in the presence of CSNSW staff.¹⁵⁸⁶ Witness C said that she would ask Mr Giles if she had to go, and he would tell her that '[Astill] is the manager so you have to go and see him if he wants to see you'.¹⁵⁸⁷ Witness C suspected many Correctional Officers would have known how frequently she was being called out by Astill but did not ask her what Astill wanted or assist her in getting out of going to his office.¹⁵⁸⁸
1279. Witness C gave evidence that when she attended Astill's office, the door would sometimes be left open and sometimes would be closed. The time that she remained in Astill's office would vary from a couple of minutes to around 15 to 20 minutes. She recalled that other Correctional Officers were generally present in the vicinity when she attended Astill's office, because the main office was attached to Astill's office. She could not recall the specific Correctional Officers who were present, but suspected that all High Needs Correctional Officers were aware of who was going in and out of Astill's office because their offices had windows that faced directly onto Astill's office.¹⁵⁸⁹

1584 Transcript, 19 October 2023, 348.6-349.26; Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0008-0009 [34].

1585 Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0008 [34].

1586 Transcript, 19 October 2023, 348.42-349.6.

1587 Transcript, 19 October 2023, 348.17-35.

1588 Transcript, 19 October 2023, 351.13-17; Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0008-0009 [34].

1589 Transcript, 19 October 2023, 349.45-350.32.

1280. Witness C said that the attention she received from Astill led to her being treated differently by other Correctional Officers. She describes being given a ‘hard time’ by a number of officers.¹⁵⁹⁰ She said that because of the consistency and frequency of Astill’s interactions with her, she felt that those officers thought that she was being favoured or getting preferential treatment, which led to their behaviour towards her changing.¹⁵⁹¹
1281. I am satisfied that there were many rumours in the gaol about a relationship between Astill and Witness C. The evidence of the frequency with which Witness C was called to see Astill and the comments that I accept were made confirm that it would be surprising if, in the confined circumstances of the gaol, most inmates and officers were not aware of the ‘special’ nature of the relationship between the two of them. I also accept that as a result, Witness C believed she was treated differently.

8.4.3.1 Witness C told Ms Hockey about an allegation involving ‘managers’ and Witness C

1282. Witness C gave evidence that there were rumours among Dillwynia staff about her engaging in sexual activity with Correctional Officers more generally. She recalled becoming aware of these rumours in early 2016.¹⁵⁹²
1283. Witness C said she went to Ms Hockey about a rumour that she had apparently been giving ‘blow jobs’ to managers.¹⁵⁹³ Witness C said Ms Hockey told her not to worry about it and that it related to a feud between Astill and Ms Barry. In her oral evidence, Ms Hockey said that she did not recall such a conversation with Witness C.¹⁵⁹⁴
1284. Evidence was given by Senior Correctional Officer Paul Foster that there was an occasion where he rang Ms Hockey because she ‘didn’t seem quite right’ and

1590 Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0009 [35].

1591 Transcript, 19 October 2023, 351.1-11.

1592 Transcript, 19 October 2023, 375.32-35.

1593 Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0009 [36].

1594 Transcript, 1 November 2023, 1422.1-13.

asked her what was wrong.¹⁵⁹⁵ He recalled Ms Hockey responding that she did not think that she could go through ‘all the rumours’ again. Mr Foster recalled that Ms Hockey made this comment at a time when there were rumours surrounding Witness C. Although Ms Hockey said she did not recall the conversation, she did say that it ‘may very well have happened’.¹⁵⁹⁶

1285. The statement made by Ms Hockey as recounted by Mr Foster is consistent with Witness C’s evidence of the discussion between her and Ms Hockey. I accept Mr Foster’s evidence. He was an impressive and careful witness with no reason to invent that conversation. He volunteered a precise recollection of it.

8.4.3.2 Ms Berry and Ms Barry told Ms Martin and Ms O’Toole about the rumour that Astill was receiving ‘head jobs’ from Witness C

1286. Ms Berry gave evidence that she recalled being told by Ms Hockey that there was a rumour that Astill specifically (as opposed to ‘managers’ generally) was receiving ‘head jobs’ from Witness C. As discussed above, Ms Berry stated that she raised this rumour in a meeting with Ms Martin and Ms O’Toole on 16 February 2016.¹⁵⁹⁷ She recalled being told by Ms Martin and Ms O’Toole that she needed to stop the rumours about Astill and that if the rumours continued, she would lose her rank and job.¹⁵⁹⁸ As noted above, Ms O’Toole denied being present in any such meeting.¹⁵⁹⁹ Ms Berry recorded in her notebook shortly after the meeting that Ms O’Toole was present, and I find that she was.¹⁶⁰⁰ Ms Martin denied any recollection of the meeting and denied she would have behaved in the manner described by Ms Berry.¹⁶⁰¹

1287. Counsel for Ms Martin submitted that I should prefer the evidence of Ms Martin over Ms Berry on the basis that her account is corroborated by Ms O’Toole.¹⁶⁰²

1595 Ex. 13, TB 2, Vol. 7, Tab 56A, AST.002.013.0032_0011-0012 [81].

1596 Transcript, 1 November 2023, 1429.26-1430.22.

1597 Ex. 18, TB 2, Vol. 7, Tab 49A, AST.002.013.0013_0017-0018 [99]-[100]; Transcript, 30 October 2023, 1257.9-1258.23.

1598 Transcript, 30 October 2023, 1258.4-30.

1599 Ex. 30, TB 2, Vol. 8A, Tab 88, AST.002.013.0044_0007 [66]-[67].

1600 Ex. 18, TB 2, Vol. 7, Tab 48, AST.002.002.0055_0025; Ex. 18, TB 2, Vol. 7, Tab 48, AST.002.002.0055_0006 [28].

1601 Transcript, 13 November 2023, 2210.6-2211.14.

1602 Submissions on behalf of Shari Martin, 22 December 2023, AST.002.013.0115_0023 [91].

1288. I accept the evidence of Ms Berry. I am satisfied that she notified Ms Martin and Ms O'Toole of the rumours. There were other occasions when Ms Berry made reports of allegations that she regarded as serious, and her conduct in that respect is consistent with what she said she did on this occasion.
1289. I formed the opinion that the evidence of Ms Martin and Ms O'Toole that they did not recall the event was crafted in order to attempt to avoid responsibility for not taking any action. Counsel Assisting submitted that Ms O'Toole may have a poor memory. Whether that is true, I cannot accept that an event of this nature would not be remembered.
1290. Although Ms Martin did not recall Ms Berry making this report to her, she did agree that dismissing an allegation of this kind would be inappropriate and that it was conduct of a kind that is required to be recorded in an Intelligence Report.¹⁶⁰³ In any event, the conduct alleged was so serious as to (at least) provide sufficient grounds for taking action under s. 69 of the GSE Act and thereby bring it within cl. 253(2). No report to the Commissioner of CSNSW was made by either Ms Martin or Ms O'Toole.
1291. As set out in detail above, Ms Barry also gave an account of telling Ms Martin and Ms O'Toole about this rumour, prior to completing her Incident/Witness report concerning the Coke can and J Unit incidents. She recounted, 'I told her — I basically told her that — initially, I spoke to her about the ring that she had — that Witness C had, and the fact that Witness C was giving Astill head jobs for the payment'.¹⁶⁰⁴ As noted above, Ms Barry's account of exactly what was discussed in this meeting was somewhat confused. I am mindful that Ms Barry did not refer to the 'head jobs' rumour in her Incident/Witness Report completed shortly after this meeting occurred. She gave an explanation for this omission: 'I was very brief because I did not want to write everything because I didn't trust her at the time.'¹⁶⁰⁵ Further, in a subsequent Incident/Witness Report completed by Ms Barry on 4 March 2016, Ms Barry discussed an intercepted letter written by Witness C to

1603 Transcript, 13 November 2023, 2210.33-2211.25.

1604 Transcript, 30 October 2023, 1203.12-14.

1605 Transcript, 30 October 2023, 1202.35-36.

Witness DD.¹⁶⁰⁶ In that letter, Witness C accuses Ms Barry of being ‘such a gossip’ and ‘telling her staff that I’V [sic] been giving male officers head jobs’. Ms Barry writes in the report that she is distressed about Witness C’s allegations against her, and states ‘I have never played any games nor made any stories up about an offender let alone spreading gossip that could be detrimental to a person’s character’. The tenor of this report appears inconsistent with Ms Barry having raised the ‘head jobs’ rumour with Ms Martin and Ms O’Toole prior to this time. Ms Martin and Ms O’Toole were not asked about this meeting in their oral evidence. I am unable to make a finding that Ms Barry raised the ‘head jobs’ rumour with Ms Martin and Ms O’Toole at the meeting, although it is possible that she did so.

8.4.3.3 Witness C told Ms Martin and Ms O’Toole about CSNSW staff misconduct (at least)

1292. Witness C gave evidence that she met with Ms Martin and Ms O’Toole on about 23 February 2016 and raised the subject of inappropriate behaviour between Correctional Officers and inmates.¹⁶⁰⁷ Witness C said that she didn’t refer to Astill specifically at that meeting. She recalled using the word ‘manager’, but also making the complaint in a ‘generalised’ way.¹⁶⁰⁸ She said:

*So the tone of the conversation certainly was that some staff members, obviously male—or it doesn’t have to obviously be male but in this conversation it was obviously male—were showing particular interest in some inmates, favouritism, hanging around certain areas for unusual amounts of time, going into girls’ cells one-on-one. Those sorts of behaviours is what I was indicating to them.*¹⁶⁰⁹

1606 Ex. 17, TB 2, Vol. 7, Tab 61, Annexure Tab D, AST.002.002.0073_0009.

1607 Transcript, 19 October 2023, 368.31-370.20; Ex 3, TB 1, Vol. 5, Tab 7, AST.002.002.0002_0005 [19]; Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0013 [51].

1608 Transcript, 19 October 2023, 371.4-11.

1609 Transcript, 19 October 2023, 370.34-371.2.

1293. Ms Martin denied any recollection of this meeting.¹⁶¹⁰ Ms O’Toole said that she recalled meeting with Witness C but not with Ms Martin present.¹⁶¹¹ She said that Witness C did not refer to any specific officer behaving inappropriately around inmates. She further said that if Witness C had disclosed such matters to her, she would have acted appropriately by reporting the matters to the SIU.
1294. Witness C stated that she made similar disclosures to Ms Martin and Ms O’Toole on another occasion shortly after the 23 February 2016 meeting.¹⁶¹² She said that she told them about the gossip and rumours about ‘head jobs’, staff openly discussing inmates sexually in the Night Senior Correctional Officer’s office, staff in the High Needs area going into inmates’ rooms one on one, and staff commenting on inmates’ bodies during strip searches. Witness C recalled that she got nowhere with Ms Martin and was told to ‘either put a request or complaint in, or get the fuck out of [her] office’.¹⁶¹³ Ms Martin disputed this as ‘incorrect’ but did not provide any alternative account of this meeting.¹⁶¹⁴ As with the earlier meeting, Ms O’Toole recalled meeting with Witness C but not with Ms Martin present.¹⁶¹⁵ However, Ms O’Toole denied any such disclosure by Witness C, stating ‘[t]hat did not happen’. As with the earlier meeting, she said that if Witness C had disclosed such matters to her, she would have acted appropriately by reporting the matters to the SIU.
1295. Counsel for Ms Martin submitted that I would prefer the evidence of Ms Martin over that of Witness C, as Ms Martin’s account is corroborated by Ms O’Toole.¹⁶¹⁶
1296. Among other matters, it is significant that what Witness C said she had reported happened to be true. Of course, Witness C was one of the victims of Astill but it is not difficult to understand that she wanted the offending to stop without identifying herself as a victim.

1610 Transcript, 13 November 2023, 2211.27-2212.10.

1611 Transcript, 7 November 2023, 1830.1-1831.14.

1612 Transcript, 19 October 2023, 369.45-370.25; Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0011 [44], 0013 [51].

1613 Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0011 [44]; Transcript, 19 October 2023, 373.14-35.

1614 Transcript, 13 November 2023, 2191.25-38, 2212.37-2213.1.

1615 Transcript, 7 November 2023, 1830.1-1831.14.

1616 Submissions on behalf of Shari Martin, 22 December 2023, AST.002.013.0115_0022 [89].

1297. Further, Ms Barry's Incident/Witness Report dated 4 March 2016 provides some support for the proposition that Witness C raised these issues, at least with Ms O'Toole, who was the MOS at that time. In that report, Ms Barry records the following extracts from an intercepted letter from Witness C to Witness DD:

*'What shits me the most is [Ms Barry] is telling her staff that I'V [sic] been giving male officers head jobs.' 'I front footed it with MOS but she reassured me not to worry.' 'I assumed she would deal with it but Barry is still telling people I suck dick.'*¹⁶¹⁷

1298. Witness C had no motive to fabricate her account of these two meetings. The position of Ms Martin and Ms O'Toole is quite different. Although on occasion I believe Witness C's judgement of a situation and recollection may be faulty, I do not believe that was the case on these occasions.

1299. I am satisfied that Witness C disclosed to Ms Martin and Ms O'Toole at the meeting on 23 February 2016, and the meeting shortly thereafter, that there were rumours of sexual activity between inmates and Dillwynia staff. I accept that Ms Martin told Witness C to make a report or 'get the fuck out of [her] office'. It is consistent with the general tenor of the considerable evidence I received of her behaviour.

8.4.3.3.1 Consideration of breaches of law and policies

1300. Witness C's disclosures in these meetings did not identify a Correctional Officer who had engaged in criminal activity or misconduct. Her complaint was made in a generalised way. Accordingly, cl. 253 was not engaged. Nevertheless, the concerns Witness C raised regarding staff treatment of inmates were serious, and competent management called for a considered response. It would have been prudent, and consistent with Ms Martin's duty of care towards inmates, for that response to include reporting of the allegations to the PSB or IB to be referred for further investigation. Given Ms Martin was more senior than Ms O'Toole, it is reasonable that Ms O'Toole may have assumed that Ms Martin would report the matter. However, there is no evidence that Ms Martin did so.

1617 Ex. 17, TB 2, Vol. 7, Tab 61, Annexure Tab D, AST.002.002.0073_0009.

The manner in which Ms Martin responded to these allegations fell well short of what would be expected from a person in her position.

8.4.3.4 Witness C told Neil Holman about the ‘blow job’ allegations

1301. On 9 March 2016, Chief Correctional Officer Neil Holman completed an Incident Report concerning an interaction with Witness C that occurred on 18 February 2016, at a time when he was Acting Principal Correctional Officer.¹⁶¹⁸ The Incident Report records the following:

I conducted an interview with inmate [Witness C] at about 11:45am in the Principals [sic] office. During the interview Inmate [Witness C] stated ‘Would it go on my record if other inmates state that I gave an officer a blow job?’ I said to [Witness C] ‘All matters that serious are investigated, who is saying that?’ [Witness C] said ‘Just girls in the unit.’ I said to [Witness C] ‘You know how the girls in the unit are, it’s a very manipulative and gossip filled area. Some of the girls in there are not happy unless they are sowing discord amongst all of you. If there is no substance to the rumour then you would have nothing to worry about.’¹⁶¹⁹

1302. Mr Holman said that he had no independent recollection of completing or forwarding the Incident Report.¹⁶²⁰ His evidence was that given the serious nature of the gossip reported he ‘would have reported it up’ and that given the report concerned a serious incident ‘an investigation into the statement would have been undertaken’.
1303. In her oral evidence, Ms Martin was asked if she remembered seeing the report prepared by Mr Holman.¹⁶²¹ She said that she did not recall seeing the report but agreed that it was Mr Holman’s usual practice to ensure that these sorts of Incident Reports reached her.

1618 Ex. 28, TB 2, Vol. 8, Tab 80, AST.002.013.0053_0013 [70]-[71].

1619 Ex. 28, TB 2, Vol. 8, Tab 80, Annexure Tab D, AST.002.013.0075_0001.

1620 Ex. 28, TB 2, Vol. 8, Tab 80, AST.002.013.0053_0013 [71].

1621 Transcript, 13 November 2023, 2221.45-2222.25

1304. Former Chief Correctional Officer and Intelligence Officer Deborah Wilson was asked about the Incident Report prepared by Mr Holman and stated that while she did not recall the report, it ought to have come to her attention as an Intelligence Officer at the time and had that occurred, she said she would have referred the report to the SIU.¹⁶²²
1305. It appears that in his discussion with Witness C, Mr Holman became aware of a serious allegation.¹⁶²³ The allegation did not identify any wrongdoing by an identified Correctional Officer, and identified the source of the rumours regarding Witness C as ‘girls in the unit’. Accordingly, cl. 253 was not engaged. Nevertheless, given the seriousness of the matters raised by Witness C, it was appropriate for Mr Holman to report what he was told to a senior Correctional Officer. It was accepted by Ms Martin that this was Mr Holman’s usual practice and there is no reason to conclude he did otherwise on this occasion.
1306. Ms Martin agreed in her evidence that she understood that Mr Holman would usually send his reports to her, and that if he had on this occasion, it was a report the subject matter of which was serious enough to warrant referral out of Dillwynia for investigative action.¹⁶²⁴ Good management called for Ms Martin to report the allegations to PSB or IB for further investigation, and inform the Commissioner or at least her Director of the serious rumours circulating at Dillwynia. Not doing so was a serious omission.

8.4.3.5 Witness C told Ms Martin and Mr Paddison about the rumours

1307. Witness C stated that she again reported the rumours in a meeting with Ms Martin and, on this occasion, Mr Paddison in early March 2016, and made a diary entry to this effect on 9 March 2016.¹⁶²⁵ Witness C’s diary was provided to NSWPF during the course of the criminal proceedings against Astill. Witness C attempted to

1622 Transcript, 7 November 2023, 1737.43-1738.13.

1623 Ex. 28, TB 2, Vol. 8, Tab 80, AST.002.013.0053_0013 [71].

1624 Transcript, 13 November 2023, 2221.45-2222.45.

1625 Transcript, 19 October 2023, 375.37-376.15; Ex.3, TB 1, Vol. 5, Tab 7, AST.002.002.0002_0005 [21]; Ex. 3, TB 1, Vol. 5, Tab 8A, AST.002.013.0001_0011, 0012 [43], [49].

recover the diary after the trial and was told it had been lost.¹⁶²⁶ She recalled informing Ms Martin and Mr Paddison that she had heard through various sources that Correctional Officers were talking about inmates — and, specifically, her — giving ‘head jobs’ to managers. Witness C stated that Ms Martin did not respond verbally to this disclosure and instead gave the impression that Witness C was annoying her and Mr Paddison.¹⁶²⁷ Witness C provided the following detail of this conversation:

WITNESS C: *Yeah. So I brought up that I'd heard through various sources that Officers were talking about inmates and in particular me, giving head jobs to managers. I also said — they said, 'Well, that's the kind of talk that goes on in that office, in the night senior [Correctional Officer]'s office' and I said, 'Well, that's not right', like, just because that's what happens doesn't make it right. That was the tone of the conversation. And then Paddison was involved in the conversation and I looked at him and said, 'How would you feel — how would your wife feel if she reads on the newspaper tomorrow that Witness C is giving head jobs to managers at Dillwynia' and he said, 'Oh, she wouldn't she just' —*

...

MR LLOYD: *And so I think you were up to something that you said at this meeting, in effect, making a complaint about the rumours.*

WITNESS C: *That's right, and I said to Mr Paddison, 'Imagine in your wife saw on the front of the newspaper tomorrow Ms C is giving head jobs to managers at Dillwynia' and he said, 'Oh, my wife wouldn't believe it' and I said something along the lines of, 'Are you sure about that?' And during that conversation there was absolutely no comforting or compassion or understanding about where I was trying to come from and this — this had been — multiple times I've had to repeat this humiliating statement to people, that's completely untrue, and getting absolutely no action, or*

1626 Transcript, 19 October 2023, 383.42-384.5.

1627 Transcript, 19 October 2023, 376.17-377.46.

*no empathy or understanding about what I was trying to do. It was like I was just annoying them.*¹⁶²⁸

1308. Ms Martin in her evidence denied any recollection of being told about rumours that Astill was receiving oral sex from Witness C, or that any officers were receiving oral sex from inmates.¹⁶²⁹ Mr Paddison also said that he did not recall any such meeting.¹⁶³⁰ However he conceded it was possible it occurred and he had no memory of it.¹⁶³¹
1309. On this occasion I prefer the evidence of Witness C to that of Ms Martin and Mr Paddison. Witness C gave a detailed and specific account of the conversation. Mr Paddison conceded the meeting may have occurred. Witness C has no reason to fabricate this evidence. As it happens, the rumours had a good foundation. In every sense, this was her 'cry for help' which, at various levels, was not responded to.

8.4.3.5.1 Consideration of breaches of law and policies

1310. There is no evidence of either Ms Martin or Mr Paddison reporting the allegations Witness C raised to a more senior officer. It is of course reasonable for Mr Paddison to assume that Ms Martin would report the matter. She should have taken this step.

8.4.3.6 A number of CSNSW officers heard about Astill and Witness C's alleged inappropriate relationship

1311. Various witnesses gave evidence about knowledge of the rumours of an inappropriate relationship between Astill and Witness C.
1312. Ms Sheiles gave evidence that she discussed the relationship between Astill and Witness C with a number of different overseers (CSNSW officers who supervise

1628 Transcript, 19 October 2023, 376.38-377.23.

1629 Transcript, 13 November 2023, 2210.27-36.

1630 Transcript, 2 November 2023, 1523.31-43.

1631 Transcript, 2 November 2023, 1524.29-42.

inmates in their employment in custody)¹⁶³² at about the time that she first arrived at Dillwynia (which was late 2015). She recalled discussing the relationship with Overseer Cheryl Douglas. She stated 'Cheryl said to me things that made me understand she thought Astill was a pig and was being inappropriate. She made it very clear that something was going on with [Witness C] and she did not think it was non-consensual.'¹⁶³³ In oral evidence, she stated that Ms Douglas commented that Witness C had Astill 'wrapped around her little finger'.¹⁶³⁴

1313. Former Senior Correctional Officer Grant Riddle recalled being told, sometime before the incident involving Witness C's ring, of a rumour by another officer that Astill was entering J Unit after hours when he was the Senior Officer on duty in charge of Dillwynia and was going to Witness C's cell.¹⁶³⁵ He also stated that Astill would show more interest in Witness C during musters and was friendlier with her than with other inmates.¹⁶³⁶
1314. Ms Martin gave evidence that she was also aware of rumours relating to Astill and Witness C in early 2016. Her evidence was that she received a complaint that Astill would be seen talking with Witness C at times and in a manner not proper to his duties as a Correctional Officer and that he and Witness C were 'up to no good'.¹⁶³⁷ Ms Martin also recalled that other inmates in protection told staff that Astill had opened up the High Needs unit at night, which was not something done at night by a single officer 'due to safety'.¹⁶³⁸ When examined about this evidence, Ms Martin denied that the effect of the rumours was that Astill and Witness C were having an inappropriate relationship:

MR LLOYD: *By that, you understood were having an inappropriate intimate relationship. Do you agree?*

MS MARTIN: *No.*

1632 Ex. 3, TB 3, Vol 9, Tab 134, CSNSW.0001.0030.0129_0001.

1633 Ex. 3, TB 1, Vol. 5, Tab 6A, AST.002.013.0005_0007 [43].

1634 Transcript, 17 October 2023, 188.41-189.5.

1635 Transcript, 27 October 2023, 1033.21-25; Ex. 15, TB 2, Vol. 8, Tab 70, AST.002.013.0012_0007 [60].

1636 Ex. 15, TB 2, Vol. 8, Tab 70, AST.002.013.0012_0006 [48].

1637 Ex. 38, TB 2, Vol. 7, Tab 59, AST.002.002.0071_0003 [13].

1638 Ex. 38, TB 2, Vol. 7, Tab 59, AST.002.002.0071_0003 [13].

MR LLOYD: *What do you mean when you recount here:*

‘Other inmates telling staff they were up to no good.’

What did you understand that to be?

MS MARTIN: *Well, it could have been anything.*

MR LLOYD: *Well, what did you understand it to be?*

MS MARTIN: *I – I don’t know. I – I told – I sent – I wrote this – or this statement was taken two years after I’d left the Department. And at the time, that’s what I thought had happened.*

MR LLOYD: *Are you able to tell the Commissioner what you thought when you were told that staff members of yours at Dillwynia thought that Astill and Witness C were up to no good?*

MS MARTIN: *I can’t recall what I thought at the time.*¹⁶³⁹

1315. Former Chaplain Suellen Johnson recalled rumours of an affair involving sexual activity between Astill and Witness C.¹⁶⁴⁰
1316. A number of CSNSW staff members also gave evidence about rumours of inappropriate behaviour of Astill towards inmates generally, and some inmates in particular.
1317. Ms Barry recalled hearing inmates giggling and singing the lyrics, ‘[i]f you want a rub and tug go to The Hub’ before a muster.¹⁶⁴¹ She understood the lyrics ‘rub and tug’ to suggest sexual activity.¹⁶⁴² To Ms Barry’s knowledge, ‘lots’ of other Correctional Officers had heard the song being sung by inmates and it was talked and laughed about.¹⁶⁴³ At around the time Ms Barry heard inmates singing these lyrics, Astill was using an office within an area of Dillwynia known as ‘The Hub’. Ms Barry’s evidence was that there was general talk that Astill was

1639 Transcript, 13 November 2023, 2200.17-40.

1640 Transcript, 30 October 2023, 1288.1-29.

1641 Transcript, 30 October 2023, 1189.11-14; Ex. 17, TB 2, Vol. 7, Tab 62A, AST.002.013.0045_0008 [44].

1642 Transcript, 30 October 2023, 1191.1-9.

1643 Transcript, 30 October 2023, 1191.20-27.

behaving inappropriately with inmates in The Hub and would have inmates in his office with the door closed over lunch time.¹⁶⁴⁴ She confirmed that the rumours of sexual activity between Astill and inmates were widely discussed between Correctional Officers and inmates at Dillwynia.¹⁶⁴⁵

1318. Ms Wilson recalled rumours about an inappropriate relationship between Astill and inmates.¹⁶⁴⁶ In her statement to the Special Commission she stated:

*I was never aware of anything sexual. There were a few reports that came to me, that I worked, I couldn't substantiate the information, so I worked it, and it went up to the SIU.*¹⁶⁴⁷

1319. She acknowledged later in her statement that she had received reports with 'hearsay evidence' related to 'a couple of the South American girls doing sexual favours for [Astill]'.¹⁶⁴⁸ By 'hearsay evidence', Ms Wilson meant that the information came from a third party and that there was no other information at the time to back it up. When questioned about this, Ms Wilson stated that she did not believe that she conducted further investigations into that information, although she said that she reported it up.¹⁶⁴⁹

1320. Ms Wilson was asked about the inconsistency as to whether or not she was aware of rumours of a sexual nature in oral evidence:

COMMISSIONER: *In your statement— Mr Lloyd has taken you to one passage, but there's another— at least one other indication that you received what you referred to as hearsay, alleging that Mr Astill had engaged in sexual activity with inmates. It's plain, isn't it, that you did receive information that Astill had engaged in sexual activity with inmates?*

MS D. WILSON: *Well, yes.*

1644 Transcript, 30 October 2023, 1189.29-1190.3.

1645 Transcript, 30 October 2023, 1192.1-15.

1646 Transcript, 7 November 2023, 1738.27-31.

1647 Ex. 29, TB 2, Vol. 8, Tab 83, AST.002.013.0035_0009 [85].

1648 Ex. 29, TB 2, Vol. 8, Tab 83, AST.002.013.0035_00011 [94].

1649 Transcript, 7 November 2023, 1740.22-40.

COMMISSIONER: Yes.

MS D. WILSON: Looking back, yeah.

COMMISSIONER: But — well, it's not a question of looking back; it's a question of what happened at the time. You received that information, didn't you?

MS D. WILSON: That's correct. And I reported it on.

COMMISSIONER: But you otherwise did nothing with it yourself?

MS D. WILSON: I don't believe so.

COMMISSIONER: And that's because you didn't believe you had authority to pursue those matters? Is that what it was?

MS D. WILSON: I — I didn't have the — the training to investigate, yes. And the authority, I don't — I thought by reporting it up that, you know, they had more powers than I did and they could investigate it further.

COMMISSIONER: So we have the picture that you have information that Mr Astill was doing favours for inmates; correct?

MS D. WILSON: Correct.

COMMISSIONER: And those favours included contraband which should not have been in the gaol; correct?

MS D. WILSON: Correct.

COMMISSIONER: You had information that he'd engaged in sexual activity with inmates; correct?

MS D. WILSON: Correct.

COMMISSIONER: And you investigated none of those matters?

MS D. WILSON: We did —

COMMISSIONER: Correct?

MS D. WILSON: Well, we did set up searches at the gate for Mr Astill, to try and intercept him, but obviously it still got through. So —

COMMISSIONER: *So that was the extent that you responded to that information?*

MS D. WILSON: *Well, we did conduct further —*

COMMISSIONER: *He was searched at the gate?*

MS D. WILSON: *We did conduct further searches throughout the centre for the — with the information we had, for contraband, but — yes.*

COMMISSIONER: *Did that contraband, to your information, include drugs?*

MS D. WILSON: *I believe it was more tobacco and jewellery at the time.*

COMMISSIONER: *But did it include drugs?*

MS D. WILSON: *I believe so.*¹⁶⁵⁰

1321. Ms Wilson gave evidence that she made at least a dozen reports regarding Astill's behaviour that were 'sent on' and the originals were stored in a safe in the Governor's office so Astill had no access to them.¹⁶⁵¹ The original reports referred to by Ms Wilson have never been produced. Adam Schreiber, who acted as Governor immediately following Ms Martin's departure, gave evidence that the safe in the Governor's office was full when he commenced in the role. He said, 'you couldn't get another piece of paper in it, and most of it related to Astill'. Mr Schreiber stated he gave everything in the safe relating to Astill to the detectives who were conducting the criminal investigation.¹⁶⁵² A summons was issued to CSNSW for all documents stored in the safe inside the office of the Governor at Dillwynia, now or at any time since 2014, relating to complaints made against a CSNSW employee.¹⁶⁵³ The documents from the safe were not produced in response. A summons issued to NSWPF for all documents relating to the offences committed by Astill at Dillwynia¹⁶⁵⁴ also did not result in production of the original documents from the safe. The question of exactly what documents were stored there, and what became of them, remains unanswered.

1650 Transcript 7 November 2023, 1741.24-1742.45.

1651 Transcript, 7 November 2023, 1739.3-33.

1652 Ex. 57, TB 2, Vol. 7, Tab 57A, AST.002.013.0031_0009 [48].

1653 Summons No. 7, 22 September 2023, AST.002.006.0057_0002.

1654 Summons No. 1, 19 September 2023, AST.002.006.0001_0002.

1322. While it is somewhat unclear what Ms Wilson meant by her evidence that she ‘sent on’ a dozen reports, it is noted that Ms Wilson was the author of the following Intelligence Reports and Information Notes submitted via SIU: IR-18-1378 submitted on 6 June 2018 concerning allegations made by Ms Cox (discussed below),¹⁶⁵⁵ IN-18-0727 submitted on 24 July 2018 concerning contraband,¹⁶⁵⁶ and IR-18-1983 submitted on 15 August 2018 concerning allegations of suspicious activity including contraband involving Astill and Witness JJ.¹⁶⁵⁷
1323. Mr Clark gave evidence that several months prior to March or April 2018, he had heard rumours among Dillwynia staff that Astill was a ‘sleaze’ and was inappropriate with inmates.¹⁶⁵⁸ This extended to rumours of improper behaviour with inmates.¹⁶⁵⁹
1324. Mr Foster gave evidence that he heard rumours that Astill had improper involvement with inmates. The rumours related to bringing contraband into Dillwynia, including drugs and ‘frilly’ underwear.¹⁶⁶⁰ He recalled that he raised the rumours directly with Astill sometime before November 2018, stating ‘I’ve been hearing terrible things about you’ and that Astill responded, ‘[i]t’s all bullshit’.¹⁶⁶¹
1325. Correctional Officer Jean Dolly gave evidence of a staff meeting she attended at which Ms Martin called the staff present ‘cunts’ and said ‘the rumour mongering about Astill needed to stop’. She thought this occurred around 2016 or 2017.¹⁶⁶² Ms Martin denied this evidence and said that it was not true, and that Ms Dolly was ‘making it up’.¹⁶⁶³ Ms Dolly had no reason to fabricate this evidence. Her report of Ms Martin’s conduct is consistent with other evidence as to Ms Martin’s approach to her job. I accept Ms Dolly’s account.

1655 Ex. 3, TB 3, Vol 10, Tab 171, CSNSW.0001.0021.1172_0001-0009.

1656 Ex. 3, TB 3, Vol 10, Tab 172, CSNSW.0001.0022.0015_0001-0008.

1657 Ex. 3, TB 3, Vol 10, Tab 173, CSNSW.0001.0021.1181_0001-0006.

1658 Transcript, 25 October 2023, 752.39-754.36; Ex. 8, TB 2, Vol. 7, Tab 63A, AST.002.013.0022_0005 [29].

1659 Transcript, 25 October 2023, 756.14-20; Transcript, 25 October 2023, 753.6-10.

1660 Transcript, 26 October 2023, 950.37-951.10; Ex. 13, TB 2, Vol. 7, Tab 56A, AST.002.013.0032_0003 [18].

1661 Transcript, 26 October 2023, 964.28-46; Transcript, 26 October 2023, 965.32-37; Ex. 13, TB 2, Vol. 7, Tab 56A, AST.002.013.0032_0003-0004 [21].

1662 Transcript, 27 October 2023, 1120.5-47; Ex. 16, TB 2, Vol. 8, Tab 77, AST.002.013.0026_0005 [27].

1663 Transcript, 14 November 2023, 2367.6-10.

1326. First Class Correctional Officer Kim Wilson gave evidence of a CSNSW Officer parade in 2018 a few months before Astill's arrest, where Dillwynia staff were told by either Ms Martin or Ms O'Toole that there were malicious rumours going around about Astill, that they needed to stop, and that anyone who was involved in spreading such rumours would be dealt with harshly.¹⁶⁶⁴ I note that Ms O'Toole was no longer working at Dillwynia at that time.
1327. Ms Hockey recalled hearing of rumours sometime between 2015 and 2018 that something was going on between Astill and Witness LL. She believed that this was because Witness LL was very flirtatious with Astill. She stated that she also heard general chitchat in the offices about 'what's Astill up to?'.¹⁶⁶⁵
1328. Services and Programs Officer (**SAPO**) Deborah Gaynor gave evidence that she heard rumours that Astill picked on inmates and engaged in unprofessional conduct, in that he was 'too nice' to certain inmates and granted them favours.¹⁶⁶⁶

8.4.3.7 Conclusion regarding various officers hearing rumours

1329. I am satisfied that the rumours about Astill were widespread. It is difficult to believe that any officer in the gaol was not aware of them. There can be no doubt that Ms Martin and Ms O'Toole would have been aware of them.
1330. Not only were the rumours widespread and consistent, the substance of the rumours has been found to be true. The evidence makes plain that the inmates and many officers were discussing the rumours, but the management of the gaol did not act to investigate them and ensure that the gaol was safe for all inmates. Apart from the evidence that Ms Martin was actually told about numerous concerns regarding Astill's conduct, it is obvious that she must have been aware of the rumours. It could hardly be otherwise.

1664 Transcript, 1 November 2023, 1460.36-1462.44; Ex. 22, TB 2, Vol. 8, Tab 71, AST.002.013.0018_0009-0010 [86].

1665 Transcript, 1 November 2023, 1431.15-41.

1666 Transcript, 26 October 2023, 989.23-990.15; Ex. 14, TB 2, Vol. 7, Tab 58A, AST.002.013.0040_0003 [13]-[14].

8.5 May 2016 – Incident involving Julijana Miskov

1331. In May 2016, newly appointed Correctional Officer Julijana Miskov reported to Mr Paddison and a woman she believed to be Ms Martin that she was assaulted by Astill in a sexual manner in the workplace.
1332. Now a Senior Correctional Officer, Ms Miskov gave evidence of a number of incidents involving her and Astill that occurred in around May 2016, shortly after she commenced employment as a Correctional Officer.
1333. Ms Miskov graduated from Brush Farm Academy on 16 May 2016. She commenced work as a Correctional Officer at Dillwynia about one week after she graduated.¹⁶⁶⁷ As a result of the conduct of Astill, Ms Miskov was at Dillwynia for only a short period before asking to be moved to another correctional centre.¹⁶⁶⁸
1334. As part of Ms Miskov’s induction on her first day at Dillwynia, she and another new Correctional Officer were shown around by Astill.¹⁶⁶⁹ Ms Miskov’s evidence is that Astill was inappropriate in his interactions with her from the moment they were introduced. Specifically, Astill spent the duration of Ms Miskov’s induction telling her that she reminded him of his ‘first love’.¹⁶⁷⁰ This made her feel very uncomfortable.
1335. Following her induction, Ms Miskov was assigned to the High Needs area, where she reported to Astill, who was then the Senior Correctional Officer within that area.¹⁶⁷¹ Ms Miskov’s evidence is that Astill continued to be inappropriate in his interactions with her. This included making further comments that Ms Miskov reminded him of his first love, together with inappropriate sexualised comments about her body that were made in front of other officers.¹⁶⁷²

1667 Transcript, 24 October 2023, 703.6-18; Ex. 7, TB 2, Vol. 8, Tab 76, AST.002.013.0024_0001 [5].

1668 Transcript, 24 October 2023, 718.23-35; Ex. 7, TB 2, Vol. 8, Tab 76, AST.002.013.0024_0004 [23].

1669 Transcript, 24 October 2023, 703.39.5-704.19; Ex. 7, TB 2, Vol. 8, Tab 76, AST.002.013.0024_0001 [7].

1670 Transcript, 24 October 2023, 704.21-29; Ex. 7, TB 2, Vol. 8, Tab 76, AST.002.013.0024_0001 [7].

1671 Transcript, 24 October 2023, 705.1-23; Ex. 7, TB 2, Vol. 8, Tab 76, AST.002.013.0024_0002 [9].

1672 Transcript, 24 October 2023, 705.25-706.38; Ex. 7, TB 2, Vol. 8, Tab 76, AST.002.013.0024_0002 [11].

1336. Correctional Officer Cailla Barlow gave evidence that she often worked in the High Needs area with Ms Miskov during her first few weeks at Dillwynia.¹⁶⁷³ Ms Barlow also said that Astill would constantly make inappropriate comments to Ms Miskov, including that she reminded him of his first love and was ‘so beautiful’. Ms Barlow recalled Astill commenting on Ms Miskov’s body and moving unnecessarily close to her when navigating around the officer’s post.
1337. After several days of inappropriate comments, Ms Miskov confronted Astill and told him that his comments were too much.¹⁶⁷⁴ She said that Astill and his friends then gave her a hard time and treated her terribly. Ms Miskov perceived that Correctional Officers Mishelle Robinson, Patricia Peek and Mr Giles were Astill’s friends.¹⁶⁷⁵ The treatment she received included verbal abuse and name calling, such as being called a ‘cunt’ in front of other officers and inmates. The treatment also included attempts to trip up Ms Miskov in the performance of her duties and the making of false reports about her conduct in the workplace.¹⁶⁷⁶ One such example given by Ms Miskov was an occasion where she was called into a meeting with Astill, Mr Paddison and possibly Ms Martin and accused of leaving the Medium Needs door open. She was also ‘told to pull [her] head in’.¹⁶⁷⁷ Ms Miskov’s evidence was that she had never worked in Medium Needs and was not rostered on to work on the date the door was allegedly left open.¹⁶⁷⁸
1338. Ms Barlow said that Astill turned on Ms Miskov after she ‘shut down his advances’.¹⁶⁷⁹ Ms Barlow said Ms Miskov told her about Astill enlisting the help of other staff to bully and harass her, including by accusing her of leaving doors open when she was not on shift, screaming at her, and calling her a cunt in front of staff and inmates.
1339. Ms Miskov described an occasion on which she was eating lunch in the High Needs officers’ station at the same time as Astill and Ms Peek, Ms Robinson, and

1673 Ex. 57, TB 2, Vol. 8, Tab 82, AST.002.013.0071_0004 [22].

1674 Ex. 7, TB 2, Vol. 8, Tab 76, AST.002.013.0024_0002 [12]-[13]; Transcript 24 October 2023, 706.40-707.20.

1675 Ex. 7, TB 2, Vol. 8, Tab 76, AST.002.013.0024_0002 [13]; Transcript, 24 October 2023, 707.34-708.20.

1676 Ex. 7, TB 2, Vol. 8, Tab 76, AST.002.013.0024_0002-0003 [14]-[18]; Transcript, 24 October 2023, 708.22-711.8.

1677 Transcript, 24 October 2023, 711.33-43.

1678 Transcript, 24 October 2023, 711.18-43; Ex. 7, TB 2, Vol. 8, Tab 76, AST.002.013.0024_0003 [19].

1679 Ex. 57, TB 2, Vol. 8, Tab 82, AST.002.013.0071_0004 [24].

Mr Giles.¹⁶⁸⁰ Her evidence is that while she was sitting eating her lunch, Astill walked up to her and rubbed his crotch against her face in (she believes) full view of the other officers. This caused some officers present to laugh, although Ms Miskov could not be sure which ones. In response, Ms Miskov got up, pushed Astill away, said to him ‘what the hell are you doing’, and walked away.

1340. Mr Giles gave evidence that he did not recall Ms Miskov working at Dillwynia and denied that he was in the room for or saw the incident involving Ms Miskov and Astill.¹⁶⁸¹ Ms Peek was not called, and Ms Robinson was not asked questions about this incident. It is not necessary for me to resolve the question of whether Mr Giles was present when this incident occurred. While I consider it likely that the presence of Mr Giles, a Senior Correctional Officer and imposing presence in the workplace, would have been memorable to Ms Miskov, I cannot exclude the possibility that she is mistaken as to that detail, in the face of Mr Giles’ strong denial and the absence of evidence from Ms Robinson and Ms Peek. The precise details of other persons present in the room do not bear upon the likelihood that Ms Miskov was assaulted by Astill in the manner she described. Having regard to all of the circumstances, and acknowledging that Astill was not called, I believe it to be likely that an assault occurred. There is evidence warranting a prosecution for a specific offence. Whether such a prosecution should be commenced is a matter requiring careful consideration by the NSWPF and the Director of Public Prosecutions, particularly because he has already been convicted and sentenced for far more serious offences.

1341. Ms Miskov said that she immediately wrote a report in relation to the incident, in which she described what happened and named the officers present using their nicknames, given that she was a new employee and did not know their full names.¹⁶⁸² She then signed the report and took it to Ms Martin’s office where, Ms Martin being absent, it was placed on Ms Martin’s desk by her personal assistant.

1342. Ms Miskov describes being called into a meeting a short time later to discuss the report. There is some uncertainty in her evidence as to whether Ms Martin

1680 Transcript, 24 October 2023, 712.26-715.25; Ex. 7, TB 2, Vol. 8, Tab 76, AST.002.013.0024_0003 [20]-[21].

1681 Transcript, 17 November 2023, 2564.18-2565.23.

1682 Transcript, 24 October 2023, 715.27-717.15; Ex. 7, TB 2, Vol. 8, Tab 76, AST.002.013.0024_0004 [22].

was present at this meeting, and what occurred. In her statement to the Special Commission, Ms Miskov stated:

*I was called into Paddison's office, and I think Shari was there, they ripped the report and said we will deal with this in house. They just called me in, then they did that.*¹⁶⁸³

1343. In her oral evidence, Ms Miskov stated:

MS MISKOV: *I was called in maybe half an hour, 40 minutes later. And I believe Mr Paddison was there and Shari Martin. I missed seeing her a few times, so I'm assuming she was the Governor. Again, I wasn't introduced to her.*¹⁶⁸⁴

1344. Ms Miskov acknowledged some uncertainty as to whether the woman present at this meeting was Ms Martin. However, I note that she identified the woman as the same woman present at an earlier meeting at which she was counselled by Mr Paddison, Astill and a female officer about leaving a door open in the Medium Needs area. In relation to the woman present at that earlier meeting, Ms Miskov said:

*I think the Governor – she didn't introduce herself, so I'm assuming it was Shari Martin. But she never introduced herself, so I can't really say exactly it was her. But she was the Governor at that time.*¹⁶⁸⁵

1345. It is somewhat unclear from this answer whether Ms Miskov knew the woman present at that earlier meeting was the Governor, and therefore assumed it was Ms Martin, because she was Governor at that time, or whether Ms Miskov was making an assumption as to the name and rank of the woman present.

1683 Ex. 7, TB 2, Vol. 8, Tab 76, AST.002.013.0024_0004 [22].

1684 Transcript, 24 October 2023, 717.17-22.

1685 Transcript, 24 October 2023, 711.33-35.

1346. As to what happened next at the meeting with Mr Paddison and the person Ms Miskov thought was Ms Martin, after Ms Miskov complained about Astill, the evidence continued:

MS MISKOV: ... And they basically ripped my report and said, 'We're going to deal with this in-house.'

MR LLOYD: When you say they 'ripped the report' just describe –

MS MISKOV: Actually ripped my report.

MR LLOYD: Who did that, Paddison or Shari Martin?

MS MISKOV: To be honest, I can't tell you exactly who ripped the report, it just – I can't remember.

MR LLOYD: Whoever did it was in the presence of the other?

MS MISKOV: Yes.

MR LLOYD: So the three of you at the meeting?

MS MISKOV: Yes.

MR LLOYD: Do you remember who said, 'We'll deal with this in-house'?

MS MISKOV: Ms Shari Martin.¹⁶⁸⁶

1347. After this incident, Ms Miskov went home sick and asked to be moved to another correctional centre.¹⁶⁸⁷ She did not return to Dillwynia after this incident.

1348. Ms Miskov's account of what occurred at the meeting with Mr Paddison and the person she thought was Ms Martin was unchallenged by Counsel for either of them; however, neither of those witnesses were legally represented on the day when Ms Miskov gave evidence. Both subsequently obtained legal representation. Although the account of Ms Miskov is challenged in Ms Martin and Mr Paddison's submissions, no application was made for Ms Miskov to be recalled.

1686 Transcript, 24 October 2023, 717.21-43.

1687 Transcript, 24 October 2023, 718.23-40; Ex. 7, TB 2, Vol. 8, Tab 76, AST.002.013.0024_0004 [23].

1349. The allegations made by Ms Miskov about the conduct of Ms Martin and Mr Paddison are serious and attract the principles stated in *Briginshaw v Briginshaw* (1938) 60 CLR 336 (***Briginshaw***).
1350. Counsel for Ms Martin submitted that Ms Miskov's evidence suggested uncertainty as to whether Ms Martin was present at the meeting.¹⁶⁸⁸ This uncertainty is evident in the passages of evidence set out above. I am not satisfied, bearing in mind *Briginshaw*, that Ms Martin was present. The meeting took place in Mr Paddison's office after Ms Miskov had seen her report placed on Ms Martin's desk. Ms Miskov assumed the woman present to be Ms Martin. The assumption she made was that it was the Governor she met with, although she had not been formally introduced to her. The assumption was plainly reasonable but may not have been accurate.
1351. Mr Paddison was asked about this incident.¹⁶⁸⁹ He denied any memory of being told about Astill assaulting Ms Miskov, or meeting with Ms Miskov and Ms Martin in relation to it. As to Ms Miskov's evidence about the ripping up of the report, Mr Paddison said that he had no recollection of this taking place. With respect to Mr Paddison's memory, the following exchange took place:

COMMISSIONER: *You've told us that you've got great difficulty remembering a lot of things. Would it be that you just don't remember this incident?*

MR PADDISON: *No, I'm telling you the truth, Commissioner. I do not recall that incident. I don't even recall the officer.*

COMMISSIONER: *Well, maybe that's so, but you're having trouble remembering lots of things, aren't you?*

MR PADDISON: *Unfortunately, I think when I look back, Commissioner, there are a lot of things I'm not recalling because I think, unfortunately, I was just involved with so many incidents over the years. To try and remember specifics about incidents, particularly things I'm sure we're*

1688 Submissions on behalf of Shari Martin, 22 December 2023, AST.002.013.0115_0007-0008 [27]-[29].

1689 Transcript, 2 November 2023, 1527.11-1529.37.

*going to talk about shortly, I just did not — don't recall. Literally even when I read some reports, and some emails, I still look back and go, 'Jeez, I can't even remember that happening.'*¹⁶⁹⁰

1352. Mr Paddison's evidence that he did not 'even recall the officer' must be considered in the context of Ms Miskov describing two other meetings with Mr Paddison at which she was disciplined, in addition to the meeting at which her complaint was torn up. At the first meeting, she met only with Mr Paddison and was counselled in relation to an altercation she had had with another officer about not wearing a safety vest.¹⁶⁹¹ At the second meeting she met with Mr Paddison, Astill, and a woman she thought may be Ms Martin and was accused of leaving a door open in the Medium Needs area.¹⁶⁹²
1353. Mr Paddison said that ripping up a report is 'something that would be a very significant thing' and that he strongly believed he would have recalled if it was done in his presence or by him.¹⁶⁹³ He agreed that if that had occurred, it would have been 'serious misconduct'.¹⁶⁹⁴
1354. Ms Martin denied any recollection of a meeting with Ms Miskov and stated that she would not have torn up a report.¹⁶⁹⁵ Ms Martin agreed that destruction of a report containing allegations against officers is 'gross misconduct'.¹⁶⁹⁶ She also said that if Ms Miskov's report had been before her, she would have reported the matter immediately to PSB and let the Director Metro know so that officer movements could be considered if necessary.¹⁶⁹⁷ Ms Martin also agreed that the conduct of Astill reported by Ms Miskov would 'more than likely' be criminal conduct.¹⁶⁹⁸ It was submitted by her Counsel that there was no evidence that

1690 Transcript, 2 November 2023, 1528.12-26.

1691 Transcript, 24 October 2023, 709.29-47; Ex. 7, TB 2, Vol. 8, Tab 76, AST.002.013.0024_0003 [17]-[18].

1692 Ex. 7, TB 2, Vol. 8, Tab 76, AST.002.013.0024_0003 [19]; Transcript, 24 October 2023, 711.18-43.

1693 Transcript, 2 November 2023, 1525.26-1526.26.

1694 Transcript, 2 November 2023, 1526.22-26.

1695 Transcript, 13 November 2023, 2223.10-2225.12.

1696 Transcript, 13 November 2023, 2225.39-2226.3.

1697 Transcript, 13 November 2023, 2226.5-45.

1698 Transcript, 13 November 2023, 2227.31-35.

Ms Martin, if she was present, had read the report.¹⁶⁹⁹ That submission has no substance. Plainly, Ms Miskov, having made the report which she saw placed on Ms Martin's desk, was called to a meeting because of the content of the report. If Ms Martin was at the meeting, she must have read the report. At the least she must have known of its substance.

1355. I have no hesitation in accepting Ms Miskov's evidence about Astill's behaviour towards her. The alleged conduct by Astill is consistent with the unchallenged evidence from a range of witnesses about Astill's preparedness to engage in inappropriate sexual conduct in the workplace,¹⁷⁰⁰ and his generally inappropriate sexualised behaviour towards other Correctional Officers.¹⁷⁰¹
1356. Ms Miskov was an impressive witness. She would gain no advantage by fabricating her evidence. On the contrary, as she is still a Correctional Officer, her evidence implicating ongoing employees of CSNSW had the potential to cause her problems within her workplace. The significance of the events she reported would have caused them to be impressed on her memory, particularly having happened so early in her career. It was submitted on behalf of Mr Paddison that I should have regard to the lack of electronic records of the report made by Ms Miskov, the lack of corroboration by other officers said to have witnessed Astill's conduct and the lack of corroboration of the meeting having occurred by way of calendar entries, meeting records, diary entries or similar.¹⁷⁰² I have considered these matters. I have addressed Mr Giles' evidence above and noted that I did not hear from the other officers alleged to be present in relation to this incident. The lack of corroborative records is consistent with the standard of record keeping I have observed to be in place at Dillwynia at the time and does not cause me to doubt Ms Miskov's account.
1357. Ms Martin was a poor witness. When an issue which may have contained a criticism of her conduct arose, she commonly resorted to responding by saying she did not recall. This happened on occasions where the significance of the events made it unlikely

1699 Submissions on behalf of Shari Martin, 22 December 2023, AST.002.013.0115_0008 [29]-[30].

1700 See eg Transcript, 30 October 2023, 1189.4-1193.3, 1202.27-29, 1288.1-29; Ex. 18, TB 2, Vol. 7, Tab 49A, AST.002.013.0013_0017-0018 [99]-[101]; Transcript, 25 October 2023, 837.22-36; Ex. 17, TB 2, Vol. 7, Tab 62A, AST.002.013.0045_0008 [44].

1701 Ex. 16, TB 2, Vol. 8, Tab 77, AST.002.013.0026_0002-0003 [16]-[17]; Ex 57, TB 2, Vol. 8, Tab 79, AST.002.013.0038_0003 [19].

1702 Submissions on behalf of Michael Paddison, AST.002.013.0109_0003-0004 [18].

that she would not remember any detail. She failed on multiple occasions to respond to information or allegations of misconduct.¹⁷⁰³ Nevertheless, I am not satisfied that it was Ms Martin who was at the meeting.¹⁷⁰⁴ Even if Ms Miskov's assumption that she met with Ms Martin is not correct, however, it seems inconceivable that Ms Martin was not told of these events. No copy of Ms Miskov's report has been found.

1358. Mr Paddison accepted that he had trouble remembering lots of things. He stated, 'there are a lot of things I'm not recalling because I think, unfortunately, I was just involved with so many incidents over the years'.¹⁷⁰⁵ He was willing to concede, 'I can't say I wasn't there' and that it was 'probably more than likely that I was there'.¹⁷⁰⁶ However he was also adamant that he had never shredded a report.¹⁷⁰⁷ He considered the ripping up of a report to be 'a very significant thing' that he strongly believed he would have a recollection of.¹⁷⁰⁸

1359. There is not the same evidence of poor practices with regard to reporting allegations of misconduct by Mr Paddison as there is with respect to Ms Martin. However, given Mr Paddison's poor recollection of events, and concessions he made in his evidence, I have no hesitation in preferring Ms Miskov's evidence to that of Mr Paddison.

1360. It was submitted on behalf of Mr Paddison that I should consider the possibility that Ms Martin tore up the report in front of Ms Miskov prior to the arrival of Mr Paddison, or after his departure. This possibility is speculative and does not accord with the evidence of Ms Miskov, who I accept to be a witness of truth.¹⁷⁰⁹

1703 For example, Ms Martin's failure to report the Coke can incident (Transcript, 13 November 2023, 2203.28-2205.11); Ms Martin's failure to report the sexual rumours involving Astill and Witness C (Transcript, 13 November 2023, 2199.27-2200.28); Ms Martin's failure to refer the incident involving Witness O in March and April 2017 for investigation (Transcript, 14 November 2023, 2267.7-37); and Ms Martin's failure to refer the disclosures made by Witnesses R and V in June 2017 for investigation (Transcript, 14 November 2023, 2278.44-2279.42).

1704 See eg Transcript, 1 November 2023, 1413.38-42, 1454.9-26; Transcript, 27 October 2023, 1120.44-1121.19; Ex. 15, TB 2, Vol. 8, Tab 70, AST.002.013.0012_0008 [63]; Ex. 57, TB 2, Vol. 8, Tab 79, AST.002.013.0038_0008 [55]; Ex. 23, TB 2, Vol. 7, Tab 52A, AST.002.013.0019_0005-0006 [29], [31]; Ex. 57, TB 2, Vol. 8A, Tab 87, AST.002.013.0034_0006 [48]-[49]; Ex. 57, TB 2, Vol. 7, Tab 50A, AST.002.013.0037_0009 [73].

1705 Transcript, 2 November 2022, 1528.21-26.

1706 Transcript, 2 November 2023, 1529.14-15.

1707 Transcript, 2 November 2023, 1527.1.

1708 Transcript, 2 November 2023, 1526.17-20.

1709 Submissions on behalf of Michael Paddison, AST.002.013.0109_0005 [21(e)].

1361. I am relevantly satisfied that Ms Miskov did disclose in her written report that she had been assaulted by Astill; that this report was provided to Ms Martin's office; and that in the presence of Mr Paddison and another female officer (who I am unable to find was Ms Martin), the report was torn up. The woman present (who Ms Miskov thought was Ms Martin) said the matter would be dealt with 'in house'. This was serious misbehaviour by both officers.
1362. I consider in Chapter 11 whether Mr Paddison's alleged conduct, or that of the woman who may have been Ms Martin, with regard to the tearing up of Ms Miskov's report, may amount to a breach of s. 316 of the *Crimes Act 1900*, s. 21 of the *State Records Act 1998*, or the common law offence of misconduct in public office.

8.6 October 2016 – Witness P's allegations about Astill and Witness C

1363. Witness P is an inmate at Dillwynia. She gave evidence as a witness at Astill's criminal trial.
1364. In October 2016, Witness P wrote a letter to her friend, former inmate Witness HH. In that letter, Witness P alleged that Witness C was having a 'fling' with a male officer at Dillwynia. The letter was intercepted by Astill. It was brought to the attention of Ms Martin and Ms Kellett.
1365. Part of the letter reads as follows:

Hehe well as for [Witness C] i hate her fucken guts, she's a dead set screw lovin dog!!! always running to them, snitching on girls!!! bad fucken dogg [Witness HH]! Still up to her same old tricks that cunt she's even having a fling with one of the male officers here, the dirty slut!!! getting him to bring stuff in for her, sending her mail, special phone calls! you name it! i promise you! I've seen it with my own eyes, his wife/ girlfriend works here too, she's been pulled up before about it! Im serious!!! [sic]¹⁷¹⁰

1710 Ex. 3, TB 1, Vol. 5, Tab 12, Annexure A, AST.002.002.0021_0004.

1366. Witness P's evidence was that she wrote the letter because 'no one was listening' and she thought that Witness HH could get the information out to the media.¹⁷¹¹ She states in the letter 'hey with that info, you can do what ever you with it!!!! [sic]'.¹⁷¹²
1367. Witness P's evidence was that at the time of writing the letter, she understood that Correctional Officers read her mail.¹⁷¹³ Witness P recalled that after she attempted to send her letter, Astill got hold of it. While on muster, Astill said to her, 'you've got creative writing, don't you?'. Astill then got another officer to search her room and check her handwriting.¹⁷¹⁴
1368. Witness P stated that Ms Kellett later came and talked to her about the letter and stated that she would put the letter in her property so that it could be used at a later date.¹⁷¹⁵ Witness P understood from this that her letter would not be sent to Witness HH.¹⁷¹⁶
1369. Ms Kellett gave evidence about this incident. She recalled that Astill had intercepted Witness P's letter and had taken it to Ms Martin and admitted that he was the Correctional Officer referred to in the letter.¹⁷¹⁷ Because of the serious nature of the contents of the letter, Ms Kellett submitted an Intelligence Report dated 9 November 2016, IR-16-2783, which detailed the allegations made by Witness P in her letter to Witness HH.¹⁷¹⁸ As recorded in the Intelligence Report, it was automatically disseminated to Astill (who was at the time acting in the role of Intelligence Officer), Ms O'Toole, Ms Martin, Ms Wilson, Ms Kellett, and Mr Shearer.¹⁷¹⁹

1711 Ex. 3, TB 1, Vol. 5, Tab 12A, AST.002.013.0007_0002 [9].

1712 Ex. 3, TB 1, Vol. 5, Tab 12, Annexure A, AST.002.002.0021_0005.

1713 Transcript, 23 October 2023, 559.20-23.

1714 Transcript, 23 October 2023, 561.19-47; Ex. 3, TB 1, Vol. 5, Tab 12A, AST.002.013.0007_0002 [11].

1715 Ex. 3, TB 1, Vol. 5, Tab 12A, AST.002.013.0007_0002 [12].

1716 Transcript, 23 October 2023, 562.24-38.

1717 Transcript, 2 November 2023, 1603.29-46.

1718 Ex. 26, TB 2, Vol. 7, Tab 60A, Annexure B, CSNSW.0001.0021.1153_0001-0014.

1719 Ex. 26, TB 2, Vol. 7, Tab 60A, Annexure B, CSNSW.0001.0021.1153_0004.

1370. The Intelligence Report records Andrew Tayler as the allocated SIU Intelligence Analyst with the 'Date Analysed' listed as 11 November 2016. Director of IB, Michael Hovey is listed as having reviewed the report on 14 November 2016.¹⁷²⁰
1371. Ms Kellett recalled that the Corrections Intelligence Group (**CIG**) rang her. The person she spoke to was almost certainly Mr Tayler.¹⁷²¹ Ms Kellett recalled that she 'filled CIG in a little bit more regarding all the things that were occurring in the gaol'.¹⁷²² She recalled that following that discussion, the 'CIG' analyst changed the classification of the Intelligence Report from unreliable to 'highly possible'.¹⁷²³ The Intelligence Report itself shows that the 'Information Validity' rating was changed from 'Cannot Be Judged' to 'Probably True' when the Intelligence Report was reviewed.
1372. Within the section of the Intelligence Report titled 'CI Analysis', which was completed by Mr Tayler, the following narrative appears:

In early October, a letter was sent by [Witness P] (from inside Dillwynia) to [Witness HH] at the address then current to [Witness HH] The letter was intercepted before it was sent and passed to the Manager of Security at DILWYNNIA.

...

At the time the letter was sent, both Officers WILSON and KELLET were on leave which mean [sic] that ASTILL was acting as Intelligence Officer. He saw the letter in the MOS office and identified himself. ASTILL then took the letter to the General Manager, Dillwynia, Shari MARTIN.

Ms MARTIN then took the letter to the relevant Regional Commander, Marilyn WRIGHT (who has since retired). Both Ms WRIGHT and Ms MARTIN then spoke to ASTILL, giving him a warning and caution.

1720 Ex. 26, TB 2, Vol. 7, Tab 60A, Annexure B, CSNSW.0001.0021.1153_0006.

1721 Ex. 26, TB 2, Vol. 7, Tab 60A, Annexure B, CSNSW.0001.0021.1153_0006.

1722 Transcript, 2 November 2023, 1603.29-41.

1723 Transcript, 2 November 2023, 1603.29-41.

*The letter was then returned to the Intelligence Officer by GM [General Manager] MARTIN with an instruction to raise an IR [Intelligence Report] so that the matter was transparent. The IR was raised on 8 November.*¹⁷²⁴

1373. Ms Kellett explained that she did not have personal knowledge of Ms Martin's and Ms Wright's actions with respect to the letter, nor did she convey that information to the person she spoke to at CIG.¹⁷²⁵
1374. Ms Kellett explained that she put Witness P's letter into Witness P's property to ensure that Astill could not access and destroy it. She was concerned about storing the letter in the Intelligence Officer's room because Astill had access to that room as an Intelligence Officer.¹⁷²⁶
1375. Ms Martin gave evidence about this incident. She said she could not recall Astill coming to her with the letter.¹⁷²⁷ Ms Martin was asked about the reference in the Intelligence Report to taking the letter to Ms Wright, and counselling Astill. Ms Martin gave the following evidence:

MR LLOYD: *Ms Martin, do you remember when Marilyn Wright retired?*

MS MARTIN: *I think it was in late '16.*

MR LLOYD: *I want to suggest to you that she retired from her position in about August of 2016.*

MS MARTIN: *Oh, did she?*

MR LLOYD: *And when you came back to Dillwynia after the break that I've asked you about, she was no longer in that position of Regional Commander. Do you remember that?*

MS MARTIN: *You're right. She wouldn't have been, no.*

1724 Ex. 3, TB 3, Vol. 10, Tab 169, CSNSW.0001.0021.1153_0005.

1725 Transcript, 3 November 2023, 1615.37-1616.19.

1726 Transcript, 3 November 2023, 1617.20-1618.13.

1727 Transcript, 14 November 2023, 2251.13-24.

MR LLOYD: *The words recorded here, that you took the letter to her and that you and Ms Wright then spoke to Astill, giving him a warning and a caution, are not correct insofar as they include Ms Wright being involved, are they?*

MS MARTIN: *Well, no, it's not right.*

MR LLOYD: *Did you tell Pamela Kellett or anyone else that you had taken the letter to Ms Wright and you had sat down with Ms Wright and Astill?*

MS MARTIN: *Well, not that I recall, because she wouldn't have been there.*

MR LLOYD: *Did you sit down yourself with Astill and give him a warning and a caution about the letter that we're talking about here, the one from PP to Inmate HH?*

MS MARTIN: *I — honestly, I don't know why this is written like this.*

MR LLOYD: *Could you just come back to my question.*

MS MARTIN: *Oh, sorry.*

MR LLOYD: *Did you sit down with Astill and give him a warning and a caution about a letter in which an allegation was made by an inmate that he was in a sexual relationship with Witness C?*

MS MARTIN: *No, I can't — I can't recall it.*

MR LLOYD: *Do you have an explanation for why it is that words appear on a page stating that you sat down and gave him a warning and a caution about this letter?*

MS MARTIN: *No.*¹⁷²⁸

1376. I accept Ms Kellett's evidence that she did not write the portion of the Intelligence Report that refers to Ms Wright and Ms Martin counselling Astill, and that she did not provide that information to 'CIG'. The strongest available inference is that that information was added to the Intelligence Report by someone who reviewed the report, likely Mr Tayler, following contact between that person and Ms Martin.

1377. The reference in IR-16-2783 to Ms Wright being informed of Witness P's allegations, and participating in counselling Astill along with Ms Martin, is plainly wrong. The letter was written by Witness P *after* Ms Wright had retired. It may be that the reference in the Intelligence Report was thought by the source to be a reference to some earlier event involving counselling of Astill in which Ms Wright was involved, but there is no basis to make that finding and Ms Wright denied being involved in any counselling of Astill.¹⁷²⁹ I accept her evidence.
1378. Ms Martin maintained that she 'would have' ensured this went up to a Regional Commander, Director, or to the IB.¹⁷³⁰
1379. As for the notation that after Astill was given a warning and a caution the letter 'was then returned to the Intelligence Officer by GM MARTIN [sic] with an instruction to raise an IR so that the matter was transparent',¹⁷³¹ Ms Martin accepted that the notation suggests that the incident 'came to an end' by her giving a warning and caution, but that this should not have been the process.¹⁷³²
1380. Mr Shearer stated that he had no recollection of Ms Martin or anyone else telling him around November 2016 about allegations of an inappropriate sexual relationship between Astill and Witness C, nor about a letter containing allegations to that effect.¹⁷³³ However, as I set out above, the Intelligence Report suggests it might have been disseminated to, among others, Mr Shearer.
1381. Mr Hovey said that he could not remember being made aware of the contents of the Intelligence Report.¹⁷³⁴ However, the entry in that document next to 'reviewer' (where his name appears) and the date reviewed (14 November 2016) confirms that he had access to the Intelligence Report and reviewed it on that date.¹⁷³⁵

1729 Ex. 42, TB 2, Vol. 8A, Tab 90, AST.002.013.0046_0001, 0002 [5], [16].

1730 Transcript, 14 November 2023, 2253.12-2254.35.

1731 Ex. 3, TB 3, Vol. 10, Tab 169, CSNSW.0001.0021.1153_0005.

1732 Transcript, 14 November 2023, 2258.12-46.

1733 Transcript, 16 November 2023, 2431.1-15.

1734 Transcript, 8 November 2023, 1909.31-37.

1735 Transcript, 8 November 2023, 1910.16-36; Ex. 3, TB 3, Vol. 10, Tab 169, CSNSW.0001.0021.1153_0006.

1382. Mr Hovey conceded the response of the IB fell short of what was required. His evidence as to this issue was as follows:

MR LLOYD: *What you were being told — I withdraw that. But what is recorded evidently by Mr Tayler here that this had been dealt with by Astill being given a warning and a caution, was an extremely serious departure from what the system of investigating complaints of this kind required, wasn't it?*

MR HOVEY: *The answer is yes. On this particular instance, I think that I can't avoid the fact that, with hindsight, it should have been investigated. I'm — I'm not denying that. In this particular instance, bearing in mind the workloads we were under, the pressure, et cetera — and I'm not making that an excuse, just as an observation — the situation was such that the person alleged to be involved brings this to the attention of the Governor who then initiates the procedure locally and managing that instance.*

COMMISSIONER: *Mr Hovey, it didn't need hindsight to realise this should have been investigated, did it?*

MR HOVEY: *It's — when I say hindsight, Commissioner, I'm just — it's — it's now been brought to my attention for an opinion and my opinion is, in hindsight, I would have managed that differently —*

COMMISSIONER: *It's not in hindsight. It's looking at the circumstances that existed at the time. It's clear from those circumstances it should have been investigated. Isn't that right?*

MR HOVEY: *I — I wouldn't argue with that.*

COMMISSIONER: *And it's a very serious failure, whatever be the cause of the failure, it's a very serious failure that it wasn't investigated, isn't it?*

MR HOVEY: *Yes.*

MR LLOYD: *And just in terms of your particular branch, you've talked about the resourcing issues in your evidence to us today, but the fact that you were able to look at this within three days of Mr Tayler looking at it, and you personally did nothing, I want to suggest to you, you personally did nothing to cause an investigation to be conducted, that was a serious failure on your part, wasn't it? ...*

Commissioner, I have spoken to Mr Hovey about section 23 and I take an objection on his behalf.

COMMISSIONER: *Yes, I require you to answer, Mr Hovey.*

MR HOVEY: *No problem, Commissioner. Yes.*¹⁷³⁶

8.6.1 Consideration of breaches of law and policies

1383. Ms Kellett became aware of the serious allegations against Astill by reading Witness P's letter and speaking to Witness P. In authoring IR-16-2783, Ms Kellett was of the view that the conduct reported by Witness P was serious enough to warrant thorough investigation.¹⁷³⁷
1384. Ms Martin received Ms Kellett's Intelligence Report. Given the allegation was so serious as to constitute (at least) conduct that would provide sufficient grounds for action under s. 69 of the GSE Act, she was obliged under cl. 253(2) of the CAS Regulation to report the matter to the Commissioner of CSNSW. There is no evidence that she did so.
1385. Upon receipt of IR-16-2783, the appropriate course would have been for IB to refer the matter to the PSB, where the report should originally have been made, pursuant to the DOJ Managing Misconduct Procedure. Referral to the Corrective Services Investigation Unit (**CSIU**) would also have been warranted, given the criminal nature of the conduct alleged. Neither of these referrals happened. The IB took no action in response to IR-16-2783, which was a serious failure.
1386. Mr Hovey frankly accepted that he was aware of the contents of IR-16-2783 and took no action in response to it. He conceded an investigation should have been conducted, and his failure to cause this to happen was a serious failure on his part.¹⁷³⁸ That concession was properly made.

1736 Transcript, 8 November 2023, 1917.4-47.

1737 Transcript, 3 November 2023, 1616.21-35.

1738 Transcript, 8 November 2023, 1917.9-47.

8.7 March and April 2017 – Incident involving Witnesses O and T

1387. Witness O was formerly an inmate at Dillwynia. She was the victim of a number of offences committed by Astill. Witness T was formerly an inmate at Dillwynia. She gave evidence as a witness at Astill's trial. Ms Sheiles was formerly an inmate at Dillwynia. Astill was convicted of offending against her.
1388. In March 2017, Witnesses O and T witnessed Ms Sheiles in Astill's office in the High Needs area. Witness O said that she saw Astill touch Ms Sheiles on the bottom. Witnesses O and T reported what they saw to Mr Peek and Mr Giles. Ms Martin subsequently arranged for an 'investigation' to be conducted by Mr Bartlett.

8.7.1 Initial complaint to Mr Peek and Mr Giles

1389. Both Witnesses O and T gave evidence of the incident and the response to their disclosure of that incident to correctional staff.
1390. Witness O stated that she and Witness T were walking past Astill's office in the High Needs area. She said as they walked past, she saw Astill sitting in a chair and Ms Sheiles kneeling, changing the bin at the same time as vacuuming. She saw Astill touch Ms Sheiles on the bottom.¹⁷³⁹
1391. Witness T stated she was walking with Witness O near the Principal Correctional Officer's office. She looked inside the office and saw Ms Sheiles on her knees in the office beside the desk at which Astill was seated. The door was only open slightly, but she could see clearly through the door. Ms Sheiles remained on her knees for a quite a while. She stated, 'it all seemed very inappropriate'.¹⁷⁴⁰
1392. Witness O recalled that she and Witness T spoke to Mr Peek about the incident that same day. Witness O stated 'I said to him that I had seen inappropriate things

1739 Transcript, 24 October 2023, 611.2-15; Ex. 3, TB 1, Vol. 5, Tab 17A, AST.002.013.0028_0001 [6]; Ex. 3, TB 1, Vol. 5, Tab 16, AST.002.002.0016_0002 [6]-[8].

1740 Ex. 3, TB 1, Vol. 5, Tab 15, AST.002.002.0018_0001-0002 [5].

between Trudy and [Astill] and I told him what I had seen. I told him the details of [Astill] touching Trudy on the bottom.' She recalled Mr Peek responding, 'leave it with me'.¹⁷⁴¹

1393. Either that same day or soon after, Witness O recalls being called to the Senior Correctional Officer's office by Mr Peek. There, Witness O says she repeated to both Mr Peek and Mr Giles exactly what she had earlier described to Mr Peek, including Astill touching Ms Sheiles on the bottom.¹⁷⁴²
1394. Witness O recalled that they asked her to put what she saw in writing. She recalled being told 'you will be safe and no one will know about you making the complaint'.¹⁷⁴³ Mr Giles then provided her with an Inmate Application form; however, she told him she did not know how to write English. Mr Giles offered to write it out for her. He read it out to her, and she signed it.¹⁷⁴⁴
1395. Despite Witness O's recollection that Mr Giles wrote out the form, the Inmate Application form states 'written on behalf of inmate Witness O by SCO Peek'. The form was also signed by Mr Giles. The narrative records 'I believe that something inappropriate happened yesterday (28/3/2017) between inmate [Ms Sheiles] and Chief Astill. I believe I have witnessed this on previous occasions also'.¹⁷⁴⁵
1396. In the course of making his statement to the Special Commission, Mr Peek was shown Witness O's Inmate Application form. He stated he did not remember the form, but acknowledged it bore his handwriting.¹⁷⁴⁶ Elsewhere in his statement, Mr Peek recalled an incident where three inmates approached him to report 'strange behaviour' between Astill and Ms Sheiles. He thought they were Witnesses J, P and G but acknowledged he was 'guessing'. He recalled taking them to the Chief Correctional Officer's office, when Mr Giles was the Chief. He recalled speaking with them separately and taking three separate applications.¹⁷⁴⁷

1741 Transcript, 24 October 2023, 612.42-613.5; Ex. 3, TB 1, Vol. 5, Tab 17A, AST.002.013.0028_0002 [8].

1742 Ex. 3, TB 1, Vol 5, Tab 17A, AST.002.013.0028_0002, 0003, [9], [13]-[15]; Transcript, 24 October 2023, 616.5-30.

1743 Transcript, 24 October 2023, 619.32-620.17; Ex. 3, TB 1, Vol. 5, Tab 17A, AST.002.013.0028_0003 [15].

1744 Ex. 3, TB 1, Vol. 5, Tab 17A, AST.002.0013.0028_0003 [16]; Transcript, 24 October 2023, 616.43-617.5.

1745 Ex. 3, TB 1, Vol. 5, Tab 15, AST.002.002.0018_0043-0044.

1746 Ex. 21, TB 2, Vol 8, Tab 73, AST.002.013.0033_0009 [72].

1747 Ex. 21, TB 2, Vol 8, Tab 73, AST.002.013.0033_0007 at [53].

1397. In his oral evidence, Mr Peek stated as follows:

MR PEEK: *I just didn't have a memory of— I wasn't able to remember who it was or what had really happened until the investigator asked me directly and then it pieced together, so —*

MR LLOYD: *You wouldn't be the first witness, Mr Peek, whose memory has been aided by seeing a contemporaneous document. Is that what you're telling us?*

MR PEEK: *Possibly, yeah.*

MR LLOYD: *So the way we make sense of your evidence in paragraph 53 by reference to a report from three inmates, being J, P and G, is that what you're saying here is by reference to your recollection about a report by two inmates, being O and T?*

MR PEEK: *Yes. Yes, I still think there was a third there at the time. But, yeah, it definitely is that same incident. Those three inmates — I didn't remember who exactly they were. It was a guess at the time, but obviously it was Witness O and the other inmates.*

MR LLOYD: *And do you have — now that you have a better recollection from seeing the documents, do you actually have a recollection of the occasion when the particular inmate or inmates came forward?*

MR PEEK: *Yes. Yes.*

MR LLOYD: *And is it a good recollection about what happened?*

MR PEEK: *What do you mean by 'good'?*

MR LLOYD: *Do you have a good recollection about —*

MR PEEK: *I don't remember proceeding when Witness O came — says she came to see me on the compound and first tell me. I remember being with Mr Giles in the office and taking those — I remember what was said in the office, and I remember it being Mr Giles — Mr Giles taking those.¹⁷⁴⁸*

1398. Mr Peek stated he did not recall what Witness O told him when she first approached him.¹⁷⁴⁹ However he denied thinking at the time that what she conveyed hinted at some kind of sexual activity, as opposed to inappropriateness.¹⁷⁵⁰ He said he thought the inappropriateness arose from the amount of time Ms Sheiles spent in the office.¹⁷⁵¹ Mr Peek gave evidence that ‘The only behaviour that Witness O reported was that Mr Astill was in the — Ms Sheiles was in the office for excessive amounts of time and at times she was unable to be seen’.¹⁷⁵² He was ‘very sure’ that he was not told that Astill had touched Ms Sheiles on the bottom.¹⁷⁵³
1399. Mr Giles’ recollection was that Mr Peek rang him and said that he had inmates who wanted to make a complaint about another officer so he said that he would talk to them. He stated that he did not recall interviewing Witnesses O or T, but that he had no reason to doubt or dispute Mr Peek’s evidence.¹⁷⁵⁴
1400. Witness T did not give an account of speaking with Mr Peek. She recalled completing an Inmate Request form the following day, on 29 March 2017, asking to speak with a Manager or the Governor about what she had seen between Ms Sheiles and Astill.¹⁷⁵⁵ The Inmate Request form completed by Witness T is headed ‘Allegations’ and the narrative reads as follows:

I approached Mr Astal [sic] on the 28th of March approx 8:30 am informing I would like a chat in regards 2 some issues I have had in wing I was told id [sic] be called later whilst waiting to be called I noticed another inmate [Ms Sheiles] nealing [sic] in the office some time chatting with officer later I witnessd [sic] same inmate vacuming [sic] office for 45 mins plus. I believe this was inappropriate between the two.¹⁷⁵⁶

1749 Transcript, 1 November 2023, 1380.32-35.

1750 Transcript, 1 November 2023, 1381.37-47; Transcript, 1 November 2023, 1384.1-1385.7.

1751 Transcript, 1 November 2023, 1382.1-34.

1752 Transcript, 1 November 2023, 1388.21-23.

1753 Transcript, 1 November 2023, 1388.30-1389-11.

1754 Transcript, 17 November 2023, 2592.6-25.

1755 Ex. 3, TB 1, Vol 5, Tab 15, AST.002.002.0018_0002 [8].

1756 Ex. 3, TB 1, Vol 5, Tab 15, AST.002.002.0018_0040.

1401. Mr Peek had no recollection of speaking to Witness T but believed they ‘would have’ spoken to her separately.¹⁷⁵⁷
1402. I accept Witness O’s evidence that she went to Mr Peek about what she and Witness T had observed. There is dispute as to whether Witness O told Mr Peek and Mr Giles that Astill touched Ms Sheiles. I am satisfied that did happen. There was little point in reporting inappropriate conduct without giving some detail of what it was. Although the form does not record that Witness O disclosed that Astill touched Ms Sheiles, I am satisfied, whether it was omitted by accident or deliberately, that Witness O must have given some details to that effect. In reaching this conclusion I take into account that when initially shown the Inmate Application form in the course of preparing his statement to the Special Commission, Mr Peek had no recollection of completing it. My impression was that Witness O’s recollection of these events was clearer and more reliable than Mr Peek’s, who formed a recollection sometime after being shown the Inmate Application form.
1403. It is submitted on behalf of Mr Peek that there may have been a miscommunication between Witness O, Mr Peek and Mr Giles as a result of Witness O’s poor spoken and written English, and a lack of expertise on the part of Mr Peek and Mr Giles in taking evidence from inmates from culturally and linguistically diverse backgrounds.¹⁷⁵⁸ While an aspect of Witness O’s account was that she sought assistance with her written complaint due to her English writing skills at that time, she did not give evidence that she had difficulty explaining the fact that Astill had touched Ms Sheiles. Further, neither Mr Peek nor Mr Giles gave evidence that they had difficulty understanding what Witness O was telling them. The evidence falls short of satisfying me that Witness O’s cultural and linguistic background gave rise to a miscommunication in this instance.
1404. Mr Peek’s submissions make reference to the offences for which Witness O was incarcerated, and evidence as to her mental state at the time of her offending and sentencing, derived from the remarks on sentence of the sentencing Judge.

1757 Transcript, 1 November 2023, 13876-13.

1758 Submissions on behalf of Timothy Peek, 13 December 2023, AST.002.013.0102_0002 [8], [9].

No submission has been developed on Mr Peek's behalf as to how those factors ought to inform my assessment of Witness O's evidence.¹⁷⁵⁹ On behalf of Mr Giles, it is submitted that I should treat Witness O's evidence with 'a degree of caution (and even scepticism)' in light of the nature of her offending, lies Witness O told which related to her offending, and concerns as to her mental state raised at the time of sentence.¹⁷⁶⁰ The remarks on sentence relied upon to support the submission are not formally before me.

1405. I am not satisfied the nature of Witness O's offending has any bearing on the honesty or accuracy of the evidence she gave on this issue. My impression of Witness O's evidence was that her mental state was not impeding her capacity to give a reliable account at the time she gave evidence before me. Although she may have, in seeking to defend herself against criminal charges, told untruths, the current situation is quite different. In the present case it is not possible to identify a motive for her to lie. No questions were put to Witness O to the effect that her mental state was adversely impacted at the time of these events, or at the time she gave evidence to the Special Commission. I reject the submission.

1406. Mr Peek's evidence was that after Witness O and Witness T were spoken to, their Inmate Application forms would have been taken to either the MOS or the Governor by Mr Giles. This is consistent with annotations on both forms.¹⁷⁶¹

8.7.2 Investigation by Brian Bartlett

1407. Sometime after completing her Inmate Application form, Witness O was approached by a male officer who she thought may have been the Acting Governor to discuss her form.¹⁷⁶² Witness O recalled explaining to that officer what she had reported to Mr Peek and Mr Giles in the same level of detail. That officer then said, 'leave it with me, I will investigate it'.¹⁷⁶³

1759 Submissions on behalf of Timothy Peek, 13 December 2023, AST.002.013.0102_0004 [14].

1760 Submissions on behalf of Westley Giles and Mishelle Robinson, 14 December 2023, AST.002.013.0107_0019 [82].

1761 Transcript, 1 November 2023, 1394.10-29; Ex. 3, TB 1, Vol. 5, Tab 15, AST.002.002.0018_0040-0041; Ex. 3, TB 1, Vol. 5, Tab 15, AST.002.002.0018_0043-44.

1762 Ex. 3, TB 1, Vol. 5, Tab 17A, AST.002.013.0028_0004 [18].

1763 Ex. 3, TB 1, Vol. 5, Tab 16, AST.002.002.0016_0003 [11]; Ex. 3, TB 1, Vol. 5, Tab 17A, AST.002.013.0028_0004 [18]-[19].

1408. The male officer Witness O spoke to is likely the then Acting MOS Brian Bartlett. Ms Martin recalled that upon receiving the reports from Witnesses O and T, she asked Mr Bartlett to ‘sit down’ with the inmates and ‘find out more information.’¹⁷⁶⁴
1409. Mr Bartlett gave evidence that he received a request from Ms Martin to interview Witnesses O and T regarding allegations of Astill’s inappropriate behaviour.¹⁷⁶⁵
1410. Mr Bartlett conducted an interview with Witness O on 3 April 2017.¹⁷⁶⁶ He recalled that upon being questioned about what she had observed between Ms Sheiles and Astill, Witness O ‘started to retract.’¹⁷⁶⁷
1411. Mr Bartlett’s handwritten notes, dated 3 April 2017, taken during his interview of Witness O recorded:
- a) Witness O saw Ms Sheiles inside ‘Chief Astill’s Office’ kneeling on the floor with her back to the door changing the rubbish bin while Astill was sitting on the chair;
 - b) Witness O observed Astill bend down to where Ms Sheiles was kneeling, and when she stood up and bent to pick up the vacuum cord, Astill’s hand came into contact with her inner thigh, appearing to attempt to hold the cord but touching her thigh instead. Witness O walked away in disgust;
 - c) before Astill was promoted, Witness O saw Astill go to Ms Sheiles’ window at night and talk to her, but that Witness O heard nothing inappropriate;
 - d) Astill had given tracing paper to Ms Sheiles;
 - e) Stoffers [a Correctional Officer] in Low Needs office found Ms Sheiles at a table with crossed legs;
 - f) Witness O and Ms Sheiles had an argument in October 2016 and had not been friends since; and

1764 Transcript, 14 November 2023, 2267.7-23.

1765 Ex. 20, TB 2, Vol. 8, Tab 65, AST.002.002.0079_0001 [4].

1766 Ex. 20, TB 2, Vol. 8, Tab 65, AST.002.002.0079_0001-0002 [5].

1767 Transcript, 1 November 2023, 1336.16-32.

g) Ms Sheiles had 'turned other inmates against' Witness O.¹⁷⁶⁸

1412. The typed Inmate Interview form, dated 3 April 2017, completed by Mr Bartlett following his interview with Witness O recorded the following:

- a) Witness O observed Ms Sheiles kneeling on the floor of the Principal Correctional Officers' office appearing to change the waste bin liner and vacuuming the floor. Astill was seated at the desk facing her and Ms Sheiles had her back to the door;
- b) Witness O observed Astill bent over where Ms Sheiles was kneeling, and Ms Sheiles then stood up and Astill 'appeared to take hold of the cord but placed his hand on her thigh instead';
- c) Witness O was 'disgusted' and walked away;
- d) Witness O said there were past instances while on night shifts that Astill would go to the rear of Ms Sheiles' cell and talk with her; and
- e) Witness O said that she is not friends with Ms Sheiles and that they had a serious falling out last year and do not talk.¹⁷⁶⁹

1413. I am satisfied that Witness O disclosed to Mr Bartlett that she had seen Astill touching Ms Sheiles on the bottom. It is true that Mr Bartlett's notes of the meeting do not record this detail, and as a contemporaneous documentary record this deserves considerable weight. However, there is at least one critical detail which differs between Mr Bartlett's handwritten notes and his typed note. In Mr Bartlett's handwritten notes, he details that Witness O reported that Ms Sheiles stood up and Astill appeared to take hold of the vacuum cord, and placed his hand on her inner thigh.¹⁷⁷⁰ Mr Bartlett's typed note omits the reference to 'inner' thigh and just describes touching on the thigh. There is a significant difference between a touch on the thigh and inner thigh. In my opinion, this is reason to doubt the accuracy of the details in Mr Bartlett's notes.

1768 Ex. 20, TB 2, Vol. 8, Tab 65A, AST.002.013.0041_0009.

1769 Ex. 20, TB 2, Vol. 8, Tab 65, AST.002.002.0079_0016.

1770 Ex. 20, TB 2, Vol. 8, Tab 65, AST.002.002.0079_0004.

1414. Mr Bartlett said that after he interviewed Witness O, he conducted a separate interview with Witness T.¹⁷⁷¹ Mr Bartlett's handwritten notes taken during his interview of Witness T recorded:
- a) Witnesses T and O noticed Ms Sheiles on her knees behind the desk inside Astill's office, and remained there for 'some time' near the bin;
 - b) On the same morning, Witness T had observed Ms Sheiles vacuuming in Astill's office for approximately 30 minutes, after which she packed up the vacuum and placed it outside the door, only to return and take the vacuum back inside the office shortly after;
 - c) Witness T did not notice anything inappropriate after Ms Sheiles had taken the vacuum back into the office and did not have any previous knowledge of any inappropriate behaviour; and
 - d) Ms Sheiles was intimidating towards Witness T.¹⁷⁷²
1415. The typed Inmate Interview form completed by Mr Bartlett following his interview with Witness T records that on 28 March 2017, Witness T observed Ms Sheiles 'on her knees in the Office beside the desk where Mr Astill was seated' and that Ms Sheiles was 'kneeling on the floor for a considerable time near the waste paper bin'. Witness T observed Ms Sheiles pack up the vacuum cleaner in the morning and place it outside Astill's office, and shortly afterward, return and take the vacuum cleaner back into the office. Witness T reportedly saw no inappropriate actions or behaviour between Astill and Ms Sheiles and stated that she and Ms Sheiles were not friends.¹⁷⁷³
1416. In Witness T's statement, she cast doubt upon whether she met Mr Bartlett at all. When shown the Inmate Interview form, she stated that she had no recollection of the interview and disputed certain details contained in the form.¹⁷⁷⁴ In circumstances where it was not possible to call Witness T to give oral evidence, and where Mr Bartlett said that he did meet with her and had handwritten notes

1771 Ex. 20, TB 2, Vol. 8, Tab 65, AST.002.002.0079_0002 [6].

1772 Ex. 20, TB 2, Vol. 8, Tab 65A, AST.002.013.0041_0010.

1773 Ex. 3, TB 1, Vol. 5, Tab 15, Annexure A, AST.002.002.0018_00039.

1774 Ex. 3, TB 1, Vol. 5, Tab 15, AST.002.002.0018_0002 [9].

of that event, I do not consider it open to reject Mr Bartlett's evidence that there was such a meeting.

1417. Mr Bartlett's evidence was that upon conducting interviews with Witnesses O and T, he formed the opinion that they were looking to try and incriminate Ms Sheiles.¹⁷⁷⁵

1418. On 4 April 2017, Mr Bartlett interviewed Astill. Mr Bartlett stated he 'put the allegation of inappropriate behaviour between him and [Ms Sheiles]' and Astill 'admitted that [Ms Sheiles] was in his office but strongly denied ever inappropriately touching her'. Astill claimed that if he did touch Ms Sheiles, it was accidental.¹⁷⁷⁶

1419. At Mr Bartlett's request, Mr Astill prepared a report dated 4 April 2017 which said:

I cannot state with any certainty if inmate [Sheiles] cleaned the office on that day. If she did and as I mostly do is plug the vacuum cleaner in for her or any other inmate as the power point is situated in the corner of the room behind the fridge. I remain in the room for security reasons and when the vacuuming is finished I unplug the cord and usually just drop it to the floor or hand it to the inmate, then they leave.

*If as claimed, I made any contact with her person, it was accidently [sic], however I am sure this did not occur.*¹⁷⁷⁷

1420. Following the interviews with Witnesses O and T, and Astill, Mr Bartlett made a report to Ms Martin about his investigation, having determined not to interview Ms Sheiles.¹⁷⁷⁸ Mr Bartlett's explanation for not doing so was that he was fearful there might be retribution against Witness O and Witness T by Ms Sheiles.¹⁷⁷⁹ However in his statement to NSWPF completed on 14 September 2020, Mr Bartlett stated he did not interview Ms Sheiles because the 'allegations against

1775 Transcript, 1 November 2023, 1337.1-29.

1776 Transcript, 1 November 2023, 1343.32-40; Ex. 20, TB 2, Vol. 8, Tab 65, AST.002.002.0079_0002 [8].

1777 Ex. 20, TB 2, Vol. 8, Tab 65, AST.002.002.0079_0009.

1778 Ex. 20, TB 2, Vol. 8, Tab 65, AST.002.002.0079_0002 [10]; Ex. 20, TB 2, Vol. 8, Tab 65, AST.002.002.0079_0004-0005.

1779 Transcript, 1 November 2023, 1344.2-19; Ex. 20, TB 2, Vol. 8, Tab 65A, AST.002.013.0041_0005 [34].

Trudy Sheiles appeared unfounded at the time.¹⁷⁸⁰ It was put to Mr Bartlett in oral evidence that the real reason he didn't interview Ms Sheiles was that he thought the allegations were unfounded. He responded:

*Well, at that — at that point, I — I was — I formed the view that their information probably — in my own view, it — it wasn't enough at that stage and that I didn't — you know, I was dubious at what they were saying and that I was genuinely concerned if this information got back to her.*¹⁷⁸¹

1421. I find this explanation concerning. Ms Sheiles was at the centre of the reports made. It is obvious that speaking with her should have been a crucial step in assessing the veracity of the reports.
1422. Mr Bartlett's report, dated 4 April 2017, contained a section titled 'interview findings', which expressed conclusions about the quality of the evidence and made a 'recommendation' that 'there appears to be insufficient evidence or information available to warrant further action or investigation, however, I will closely monitor all parties concerned'.¹⁷⁸²
1423. Mr Bartlett accepted in his evidence that he had no training to 'look into' the matter as Ms Martin asked him to do, at least to the extent that looking into the matter required an investigation or evaluation of the information.¹⁷⁸³ Mr Bartlett also stated that he was unaware of any other allegations of inappropriate behaviour by Astill.¹⁷⁸⁴ When asked whether he understood that following his report, nothing more had happened in terms of Ms Martin escalating the report, he provided the following response:

Well, this was — this was where I was sort of wanting some direction from her in what she wanted to do from this point forward, whether or not she wanted — she wanted to initiate something or she wanted me to go back

1780 Ex. 20, TB 2, Vol. 8, Tab 65, AST.002.002.0079_0002 [10].

1781 Transcript, 1 November 2023, 1344.42-1345.2.

1782 Ex. 20, TB 2, Vol. 8, Tab 65, AST.002.002.0079_0004-0005; Ex. 20, TB 2, Vol. 8, Tab 65, AST.002.002.0079_0002, 0003 [13], [14].

1783 Transcript, 1 November 2023, 1329.18-1330.43.

1784 Transcript, 1 November 2023, 1330.26-43.

*and me to initiate something. But I didn't hear anything back from her about what future steps she wanted to take.*¹⁷⁸⁵

1424. Ms Martin accepted that the reports made by Witnesses T and O raised the possibility of 'inappropriate conduct' by Astill.¹⁷⁸⁶
1425. Ms Martin did not, however, accept that the allegations required an 'investigation' and denied that Mr Bartlett was interviewing Witnesses O and T, and Astill, as part of an investigation.¹⁷⁸⁷ She said instead that Mr Bartlett's role was to 'find out more information' and add value to it.¹⁷⁸⁸
1426. Notwithstanding Ms Martin's characterisation of Mr Bartlett's process, Ms Martin accepted that Astill's version of events was not relevant to the decision to report the allegations to the IB for investigation.¹⁷⁸⁹
1427. At times during her oral evidence, Ms Martin appeared to struggle to maintain the distinction she was drawing between 'information gathering' and an 'investigation'. The following exchange occurred:

MR LLOYD: *If it wasn't an investigation, didn't one need to be done?*

MS MARTIN: *That's why he was given this task, to gather information. And by his recommendation, he felt that there should be no further action. I trusted his judgment. He was an experienced Manager of Security who had acted up in a General Manager's position.*

MR LLOYD: *You just told us he wasn't doing an investigation.*

MS MARTIN: *Well, slip of the tongue.*

MR LLOYD: *Well, was he doing an investigation?*

MS MARTIN: *No, he was — he was gathering information.*

1785 Transcript, 1 November 2023, 1347:17-21.

1786 Transcript, 14 November 2023, 2267:39-2270:4.

1787 Transcript, 14 November 2023, 2272:15-2273:10.

1788 Transcript, 14 November 2023, 2267:7-23; Transcript, 14 November 2023, 2272:30-2273:10.

1789 Transcript, 14 November 2023, 2267:25-30; Transcript, 14 November 2023, 2271:9-18.

MR LLOYD: *Was it an investigation or not?*

MS MARTIN: *It was a slip of the tongue just then.*

MR LLOYD: *No, no. Don't worry about the slip of the tongue. Was he doing an —*

MS MARTIN: *No, I have told you it wasn't an investigation.*

MR LLOYD: *Someone needed to investigate, didn't they?*

MS MARTIN: *No, I think someone needed to find out what the information was and add value to it, and that's what he's done, and he's given me his recommendation.¹⁷⁹⁰*

1428. Ms Martin said that she was content with Mr Bartlett's conclusions and trusted his recommendation.¹⁷⁹¹ Ms Martin denied that it was necessary to escalate Witnesses O and T's complaint. Specifically, she said:

If information — if information comes to us, we speak to the inmate. We gather more information to add value. And then what we do is we make a determination whether that information should be in an information report — Intelligence Report to Investigations Branch or not. I asked the Manager of Security to look at this, to speak to the women, and his recommendation — I wasn't at the meeting. His recommendation was such, and I respected that judgment.¹⁷⁹²

1429. Counsel for Ms Martin submitted that Mr Bartlett's evidence on the issue of whether there was an 'investigation' corroborates her evidence that there was not.¹⁷⁹³ Mr Bartlett gave evidence suggesting that he also did not consider that he was carrying out an 'investigation'. He said that 'all I was trying to do at that point was just interview them, but just to get enough information' that he could

1790 Transcript, 14 November 2023, 2272.30-2273.10.

1791 Transcript, 14 November 2023, 2272.15-35.

1792 Transcript, 14 November 2023, 2275.10-16.

1793 Submissions on behalf of Shari Martin, 22 December 2023, AST.002.013.0115_0025 [98].

put forward to be actioned.¹⁷⁹⁴ He considered that his role was to ‘gather the initial information’.¹⁷⁹⁵

1430. Notwithstanding how both Mr Bartlett and Ms Martin described this process in their oral evidence, the characterisation of Mr Bartlett’s actions as information gathering, rather than an investigation, is unconvincing. Mr Bartlett’s report contained a section titled ‘interview findings’, which expressed conclusions about the quality of the evidence he gathered in the interviewing of Witnesses O and T, and Astill, and made a ‘recommendation’ as to the need for ‘further action or investigation’. The fact that Mr Bartlett interviewed the alleged perpetrator indicates a process that is more than simply ‘information gathering’. There was no reason to interview Astill unless he was conducting an investigation with a view to assessing the veracity of the allegations and making a finding. This is the role of the IB. I reject Ms Martin’s assertions that it was merely an information gathering exercise. Mr Bartlett’s investigation was entirely inappropriate.
1431. Functional MOS Stephen Virgo gave evidence that the appropriate process in this situation would have been to interview the inmates to see if they were willing to elaborate on their allegations, and then report the matter to the SIU and bring it to the attention of the Governor. Mr Virgo said that the purpose of the interview with the inmate would be to gather more information and not try to test whether the information was truthful. Mr Virgo also stated that interviewing the officer who was the subject of the allegations would be ‘deeply inappropriate’ because ‘that gives the— the Officer under the allegation an opportunity to try and badger, stand over, have the inmate change their information in the report’.¹⁷⁹⁶ Mr Virgo agreed that an internal investigation into the allegations was completely inappropriate and should never have happened.¹⁷⁹⁷
1432. Witness O’s evidence is that she did not hear anything from Mr Peek, Mr Giles, or Mr Bartlett after she made her report. However, Astill’s treatment of her changed

1794 Transcript, 1 November 2023, 1329.32-45.

1795 Transcript, 1 November 2023, 1327.5-23.

1796 Transcript, 25 October 2023, 828.16-829.42.

1797 Transcript, 25 October 2023, 832.7-29.

and he began to bully her.¹⁷⁹⁸ She recalled that on one occasion, Astill asked her to come into his office and told her that he was aware of her complaint and said, ‘don’t do it again, next time there will be consequences’.¹⁷⁹⁹ Witness O’s experience illustrates the very dangers inherent in the approach that Mr Virgo described.

8.7.3 Consideration of breaches of law and policies

1433. Witnesses O and T first reported the matter to Mr Peek, who, although he does not recall this initial conversation with the inmates, admitted that what he heard from them was serious enough to warrant going to Mr Giles.
1434. Upon Mr Peek’s report being made to him, Mr Giles became the ‘senior correctional officer’ within the meaning of cl. 253(2) of the CAS Regulation. Mr Giles stated that he believed that the allegation was of sufficient seriousness to be reported to the Governor.¹⁸⁰⁰ This occurred by way of provision of the Inmate Application forms to Ms Martin.
1435. Mr Bartlett became aware of the matter when Ms Martin asked him to interview Witnesses O and T about the content of their Inmate Application forms. Mr Bartlett told the Special Commission that he believed the allegation was one of inappropriate conduct.¹⁸⁰¹ He was aware that Witness O alleged Astill touched Ms Sheiles on the inner thigh.¹⁸⁰² He conceded it occurred to him that Witness T’s original complaint might have suggested oral sex was occurring, however ‘that wasn’t witnessed’.¹⁸⁰³ It is clear he had formed an opinion that the alleged conduct constituted (at least) misconduct. While I consider the approach of Mr Bartlett in conducting an investigation and providing a report to Ms Martin to be wholly inappropriate, I take into account that he was acting at the direction of his superior officer and would have proceeded on the expectation that the appropriate next steps in response to his final report would be decided by Ms Martin.

1798 Transcript, 24 October 2023, 628.45-629.15; Ex. 3, TB 1, Vol. 5, Tab 17A, AST.002.013.0028_0004-0005 [22]-[27].

1799 Ex. 3, TB 1, Vol. 5, Tab 17A, AST.002.013.0028_0005 [25]-[27].

1800 Transcript, 17 November 2023, 2595.15-21.

1801 Transcript, 1 November 2023, 1326.23-45.

1802 Transcript, 1 November 2023, 1336.7-10.

1803 Transcript, 1 November 2023, 1342.38-1343.10.

1436. Ms Martin took no further steps in relation to this matter upon receipt of Mr Bartlett's report. Apart from failing to report the matter to the Commissioner (a breach of cl. 253 of the CAS Regulation), Ms Martin also breached the DOJ Managing Misconduct Procedure by failing to cause the allegations made by Witnesses O and T to be reported to the PSB.
1437. Organising an investigation by Mr Bartlett into the allegations was not authorised by any policy. The proper agency to conduct any investigation was the IB or the CSIU. No proper or effective investigation was undertaken.
1438. It should be noted that by the time Ms Martin received Mr Bartlett's report as to these events, rumours that Astill had been receiving oral sex from inmates had been circulating at Dillwynia since at least early 2016. As stated above, I am satisfied those rumours were brought to Ms Martin's attention in February 2016. The implication of Witnesses O and T's reports should, on any common-sense appraisal, have been informed by those rumours. Ms Martin's decision to defer to the judgement of Mr Bartlett, who may not have had the complete picture of rumours circulating in the gaol at that time, was a gross failure of leadership and management. The situation known to Ms Martin at this time called for immediate escalation. Her failure to act had significant consequences.

8.8 May – July 2017 – Complaint by Witnesses V and R concerning Witness M

1439. Witness V is an inmate at Dillwynia. She gave evidence as a witness at Astill's trial. Witness R was formerly an inmate at Dillwynia. She also gave evidence as a witness at Astill's trial. Witness B is an inmate at Dillwynia, who gave evidence at Astill's trial. Astill was convicted of an offence against her. Witness M was formerly an inmate at Dillwynia. Astill was convicted of offending against her.
1440. In around May 2017, Witness M disclosed to Witnesses R, V and B that Astill had tried to touch her several times. Witness V experienced intimidating conduct by Astill after this time. Witnesses V and R disclosed to Acting MOS Michael Paddison, Chief Correctional Officer Neil Holman, Senior Correctional Officer Scott Westlake and ultimately Ms Martin what Witness M had told them.

Mr Holman prepared two Incident Reports relating to these events. An Intelligence Report, IR-17-2051, was submitted to the IB on 30 July 2017. No steps were taken by the IB to refer or investigate the matters in the Intelligence Report.

8.8.1 Evidence of Witness V

1441. Witness V gave evidence of an occasion when Witnesses M and R came into her room within the M-Right Unit. Witness V said this visit took place approximately between May and July 2017.¹⁸⁰⁴ A diary note made by Witness V discussing the conversation that occurred on this occasion is headed ‘MAY 2017 (EXACT DATE UNSURE)’.¹⁸⁰⁵
1442. On the relevant occasion, Witness M was upset and started crying.¹⁸⁰⁶ When Witness V asked what was wrong, Witness M said ‘Look, Mr. Astill has tried to touch me serval [sic] times. At first it was little hand touches but this time I feel really bad and I feel really disgusted. He put his hand on my face and told me he was going to miss [me].’
1443. Witness R told Witness V that she had witnessed Astill’s conduct towards Witness M, including him touching her hands and her face. Witness V then suggested they speak with Witness B as she was ‘like a mother’ to them.¹⁸⁰⁷ They went to Witness B’s room and Witness M told Witness B what Astill had been doing to her. Witness W was also present. During that conversation, Witness M said she did not want to make a complaint.¹⁸⁰⁸ They made a pact that in future, in order to protect themselves, no one would walk to Astill’s office alone.¹⁸⁰⁹
1444. On or around 27 May 2017, Witness M was transferred out of Dillwynia to Bathurst Correctional Centre.¹⁸¹⁰ Witness M said she was at Bathurst Correctional Centre

1804 Transcript, 20 October 2023, 443.4-12.

1805 Ex. 3, TB 1, Vol. 5, Tab 11, Annexure Tab A, AST.002.002.0030_0004.

1806 Ex. 3, TB 1, Vol. 5, Tab 11, AST.002.002.0030_0001-0002 [6].

1807 Transcript, 20 October 2023, 444.1-22.

1808 Transcript, 20 October 2023, 443.29-445.16.

1809 Transcript, 20 October 2023, 445.8-16.

1810 Ex. 3, TB 1, Vol. 5, Tab 10A, AST.002.013.0006_0003 [16]; Ex 3, TB 1, Vol. 5, Tab 9, AST.002.002.0025_0005 [19].

for about six weeks after leaving Dillwynia, and was housed in six different goals up until her release from custody in August 2017.¹⁸¹¹

1445. Sometime after the meeting in Witness B's cell, Witness V was told by Witness B that Astill was 'gunning for her'. Witness B had heard via another inmate that Astill was saying Witness V had called him a 'kiddie fiddler', an allegation which Witness V denied.¹⁸¹²
1446. Witness V noticed Astill was treating her differently. He would at times look at her in an intimidating way, or call her 'scum' or a 'criminal'.¹⁸¹³ While working in the Principal Industries Office as a clerk, she received a number of phone calls in which someone was just breathing on the phone.¹⁸¹⁴ During one of the calls, she heard a small laugh or chuckle, and recognised the voice as Astill's. During another of the calls, she heard someone say 'Wayne' in the background.
1447. Witness V became increasingly distressed about Astill's conduct towards her.¹⁸¹⁵ She approached Witness R. She was shaking and felt sick. While Witness V didn't witness it occurring, Witness V understood that Witness R asked Witness R's Overseer, Craig Quinton, to arrange for them to speak to Ms Martin about Astill's behaviour. She was walked to the Governor's office by Acting Principal Industries Officer Scott White. Witness R was taken there separately.¹⁸¹⁶
1448. At Ms Martin's office, Witness V and Witness R met with then Acting MOS Mr Paddison, Mr Holman, and Mr Westlake.¹⁸¹⁷ Ms Martin was not initially present.
1449. Witness V gave the following account of this meeting:

During that meeting I was crying. I asked for help to stop Mr Astill harassing and intimidating us. I remember Mr Paddison asked Witness R

1811 Ex. 3, TB 1, Vol. 5, Tab 10A, AST.002.013.0006_0003-0004 [16]-[17].

1812 Transcript, 20 October 2023, 445.30-446.16; Ex. 3, TB 1, Vol. 5, Tab 11, AST.002.002.0030_0002 [9].

1813 Transcript, 20 October 2023, 447.1-11.

1814 Ex. 3, TB 1, Vol. 5, Tab 11A, AST.002.013.0002_0002 [7]; Transcript, 20 October 2023, 447.26-43.

1815 Ex. 3, TB 1, Vol. 5, Tab 11A, AST.002.013.0002_0002 [8]-[10].

1816 Ex. 3, TB 1, Vol. 5, Tab 11A, AST.002.013.0002_0002 [10].

1817 Ex. 28, TB 2, Vol. 8, Tab 80, Annexure Tab A, AST.0002.013.0053_0019.

and I why Mr Astill would be doing that to us. Witness R and I looked at each other at that point because we weren't sure if we should disclose to them what Witness M had told us. It wasn't our story to tell, it was Witness M's. Witness R said to me 'She's already told [her] mother'. So we told them what Mr Astill had been doing to Witness M.¹⁸¹⁸

1450. While they were discussing this Mr Paddison stopped them and said that '[d]ue to the seriousness, we have to call the Governor'.¹⁸¹⁹ Someone left the room to call Ms Martin. Ms Martin then attended the meeting. Witness V said that they then repeated what they had said about Astill in the presence of Ms Martin.
1451. Witness V's evidence was that the first thing Ms Martin said to them in response was, 'you do know inmates lie right?'. She recalled Witness R immediately responding, 'But I saw it. I witnessed it.' Ms Martin and Mr Paddison then told her and Witness R that they would look into it and get back to them. Mr Paddison said he would contact Witness M's mother and 'get to the bottom of everything'.¹⁸²⁰
1452. After Witness V and Witness R spoke to Ms Martin about Astill, Astill's bullying and intimidation worsened.¹⁸²¹
1453. Shortly after the meeting, Witness V stated she was in the muster line with Witnesses R, B and W and they were approached by Astill. Astill took a deep breath and said, 'smells like dogs in here'.¹⁸²² She recalls him then saying, '[i]f anyone has anything to say, say it to my face'. Witness V felt Astill made that comment because 'dogs' is a derogative term for an informant, and he knew that they had complained about him to Ms Martin (this incident is also discussed in Chapter 7). I have no doubt her assumption was correct.

1818 Ex. 3, TB 1, Vol. 5, Tab 11A, AST.002.013.0002_0003 [11].

1819 Transcript, 20 October 2023, 450.29-455.44; Ex. 3, TB1, Vol. 5, Tab 11A, AST.002.013.0002_0003 [11]; Ex. 3, TB 1, Vol. 5, Tab 11, AST.002.002.0030_0003 [12].

1820 Transcript, 20 October 2023, 454.36-455.38; Ex. 3, TB 1, Vol. 5, Tab 11A, AST.002.013.0002_0003 [11].

1821 Transcript, 20 October 2023, 463.12-27.

1822 Transcript, 20 October 2023, 457.6-458.29; Ex. 3, TB 1, Vol. 5, Tab 11A, AST.002.013.0002_0003 [12].

1454. The following day, Witness V recalled she was called in for a urine test.¹⁸²³ She was paranoid because Astill was in charge of that area. She bumped into Ms Barry and said 'I just had a urine but Mr Astill is in there. Is he going to tamper with my urine?'. Ms Barry questioned why he would do so, and Witness V told her about the incident at muster the previous day. Ms Barry said she had heard something about a report made against Astill in the last few days. Ms Barry said, 'I don't know who leaked it out'.

8.8.2 Evidence of Witness R

1455. Witness R gave evidence that she was aware that Witness M had spoken to Witness B and Witness V about Astill attempting to kiss her.¹⁸²⁴ She recalled that something had happened with Witnesses V and B and Astill. She heard that it got back to Astill that Witness V had called him a 'kiddie fiddler'. Witness V was worried about this, and wanted to report the incident with Witness M.

1456. Witness R recalled approaching Mr Holman to speak to him about what had happened to Witness M. She recalled that there were other officers present at the time, but could not recall who they were. She could not recall Witness V being present at the meeting.¹⁸²⁵ However in her first statement she recalled that 'Witness V and I went to the admin building to speak with Mr Holman'.¹⁸²⁶ Witness R's evidence was that she told Mr Holman that Astill had tried to kiss Witness M.¹⁸²⁷ She recalled being told several times by Mr Holman how serious the complaint was and the ramifications for an officer if these types of complaints are made. She recalled Mr Holman then stating that due to the serious nature of the allegation, Ms Martin would need to be called.

1457. Witness R's evidence was that in the presence of Mr Holman, she then told Ms Martin exactly what she had told Mr Holman about Astill trying to kiss

1823 Ex. 3, TB 1, Vol. 5, Tab 11A, AST.002.013.0002_0003-0004 [13].

1824 Ex. 3, TB 1, Vol. 6, Tab 21A, AST.002.013.0029_0003 [14]-[15].

1825 Transcript, 23 October 2023, 602.21.

1826 Ex. 3, TB 1, Vol. 6, Tab 21, AST.002.002.0028_0005-0006 [19].

1827 Transcript, 23 October 2023, 597.9-598.43; Ex. 3, TB 1, Vol. 6, Tab 21A, AST.002.013.0029_0003 [16]-[17].

Witness M. She also recalled providing Ms Martin with a photocopy of a letter she had received from Witness M detailing what had happened with Astill.¹⁸²⁸

1458. She recalled Ms Martin stating that they would investigate the matter. Witness R stated ‘[a]t the meeting, I got the sense that the Governor did not want to deal with the drama. I did not get the sense that she did not believe what I said, but rather that she did not want to deal with it.’¹⁸²⁹
1459. Witness R said that nothing happened after the meeting, and she did not hear anything about it again.¹⁸³⁰

8.8.3 Evidence of Mr Paddison

1460. Mr Paddison stated that he had a very vague recollection of the meeting with Witnesses V and R.¹⁸³¹ He did not recall what Witnesses V and R told him. He did not dispute that they raised that Astill had been touching Witness M in an inappropriate, sexualised way. He did not dispute other aspects of the account of the meeting given by Witnesses V and R. He stated that all he could recall was that inmates wanted to make a complaint about a staff member.¹⁸³²
1461. Mr Paddison stated that following a meeting with representatives of the Special Commission, he searched his emails to try to find any documents he had in relation to this meeting.¹⁸³³ Through that process, he located an email he received on 21 July 2017 from Michelle Clark, Intelligence Manager at CIG. Reading this email ‘prompted a vague memory I have of calling the CIG on that day after receiving the complaint’. He could not recall to whom he spoke at CIG but stated, ‘I do recall that no officers on duty at Dillwynia on that day, had access to the Integrated Intelligence System (IIS), and therefore we couldn’t lodge an Information Report through the normal process’.¹⁸³⁴ He could not otherwise recall the call.

1828 Transcript, 23 October 2023, 601.5-46; Ex. 3, TB 1, Vol. 6, Tab 21, AST.002.002.0028_0005-0006 [19].

1829 Ex. 3, TB 1, Vol. 6, Tab 21A, AST.002.013.0029_0003 [19].

1830 Transcript, 23 October 2023, 602.1-9; Ex. 3, TB 1, Vol. 6, Tab 21A, AST.002.013.0029_0003 [18]-[19].

1831 Transcript, 2 November 2023, 1542.20-1545.11.

1832 Ex. 25, TB 2, Vol. 8, Tab 84, AST.002.013.0055_0005 [28]-[29].

1833 Transcript, 2 November 2023, 1544.31-1545.27.

1834 Ex. 25, TB 2, Vol. 8, Tab 84, AST.002.013.0055_0006 [31].

1462. Mr Paddison located an email he sent to the MOS of Wellington Correctional Centre, Craig Smith, on 22 July 2017.¹⁸³⁵ The email commences ‘[w]e are currently undertaking an investigation at Dillwynia Correctional Centre in relation to alleged inappropriate interactions between a custodial staff member here at Dillwynia and an offender who was previously incarcerated here but is now at Wellington Correctional Centre’.¹⁸³⁶ In that email he requested that Mr Smith conduct an interview with Witness M ‘and ascertain the validity of these allegations prior to us taking further action’. Ms Martin was copied into the email. In his oral evidence, Mr Paddison agreed this was a thoroughly inappropriate request to make of Mr Smith.¹⁸³⁷ He recalled that he spoke to Mr Smith a few days after the email was sent.¹⁸³⁸ He believed by that time Witness M was no longer housed at Wellington; however, could not otherwise recall the conversation.
1463. On 27 July 2017 Mr Paddison received an email from Ms Berry confirming the cancellation of Witness M’s transfer from Silverwater Women’s Correctional Centre to Dillwynia ‘at request of Principal Paddison’.¹⁸³⁹ Mr Paddison stated that this came about after either Ms Martin or he made the decision to cancel Witness M’s transfer back to Dillwynia in order to protect her, based on the information disclosed in the meeting.
1464. Mr Paddison stated that he had a very vague recollection that Mr Holman made attempts to have staff at Silverwater Women’s Correctional Centre interview Witness M in relation to the complaint, but that he was not sure what the outcome was.¹⁸⁴⁰ He further stated that he believed that at some point an Intelligence Report regarding this incident was submitted to CIG through the IIS but did not recall any further details about this report.

1835 Ex. 25, TB 2, Vol. 8, Tab 84, AST.002.013.0055_0006 [32].

1836 Ex. 25, TB 2, Vol. 8, Tab 84, Annexure Tab D, AST.002.013.0055_0023.

1837 Transcript, 2 November 2023, 1550.45-1551.4.

1838 Ex. 25, TB 2, Vol. 8, Tab 84, AST.002.013.0055_0006 [34].

1839 Ex. 25, TB 2, Vol. 8, Tab 84, AST.002.013.0055_0007 [37]; Ex. 25, TB 2, Vol 8, Tab 84, Annexure Tab G, AST.002.013.0055_0028; Ex. 25, TB 2, Vol. 8, Tab 84, Annexure Tab H, AST.002.013.0055_0029.

1840 Ex. 25, TB 2, Vol. 8, Tab 84, AST.002.013.0055_0007 [38]-[39].

1465. Mr Paddison left Dillwynia on 6 August 2017, and he did not return until late April 2018.¹⁸⁴¹

1466. Despite these events, Mr Paddison denied that he conducted an ‘investigation’ into the allegations concerning Witness M, saying, ‘I would have definitely been trying to find further facts in regard to the allegations that were made.’¹⁸⁴² His evidence was he would have done so at the direction of Ms Martin.¹⁸⁴³

8.8.4 Evidence of Mr Holman

1467. Mr Holman stated that he had limited recollection of an occasion in or around July 2017 on which he was called to the office of the MOS and had a meeting with inmates regarding serious misconduct allegations against Astill.¹⁸⁴⁴ He located an Incident Report dated 21 July 2017 that he had prepared.¹⁸⁴⁵ The report stated:

On the 20th July 2017 about 1400Hrs I was asked to attend the Mos office by acting Mos M. Paddison.

When I entered the room it contained A/Mos M. Paddison, SCO [Senior Correctional Officer] S. Westlake and an inmate known to me as [Witness R]. I had previously been briefed by A/Mos Paddison that an unknown inmate was attending his office to disclose some information so as a result I closed the door to the room and sat on the lounge to assist in questioning and note taking.

[Witness R] stated that she had heard that Chief Astill had been approached by inmate [Witness V]. ... In regards to issues that [Witness V] thought she might have with Chief Astill. And that Chief Astill refused to talk to [Witness V]. At this stage [Witness V] was called to the office so the information could be verified directly from that inmate.

1841 Ex. 25, TB 2, Vol. 8, Tab 84, AST.002.013.0055_0006 [39].

1842 Transcript, 2 November 2023, 1550.1-8.

1843 Transcript, 2 November 2023, 1551.30-1552.11.

1844 Ex. 28, TB 2, Vol. 8, Tab 80, AST.002.013.0053_0005 [22].

1845 Ex. 28, TB 2, Vol. 8, Tab 80, Annexure Tab E, CSNSW.0001.0021.1167_0001.

Inmate [Witness V] went on to say that she had heard from various inmates around the centre that she should look out for herself as there was rumour on the compound that [Witness V] had labelled Chief Astill as a 'Kiddie fiddler'. [Witness V] denied that she had made any comment to such content. [Witness V] was questioned as to why such a comment would be made by other inmates. [Witness V] stated that she had cautioned other inmates not to be alone with Chief Astill.

[Witness V] was asked why she made statement to that effect. [Witness V] stated that she had been told by inmate [Witness M]. That Chief Astill had attempted to kiss her at one time, that he would frequently rub his hand up and down her arm and that he was always asking for her to come to the Chiefs [sic] office. At this point [Witness R] stated that she had seen Chief Astill directly rub his hand on [Witness M]'s arm. [Witness V] stated that [Witness M] had informed her of these events in the company of [Witness R], [Witness B] and [Witness W].

It was around or slightly previous to this time that Governor Martin was asked to attend the room in regards to the matter.

[Witness R] stated to staff present that she had correspondence with [Witness M] that inmate [Witness M] was going to contact [Witness M]'s mother regarding the issue and that legal advice would be sought over the alleged incident. A copy of the letter was obtained from [Witness R] and submitted with this report.

[Witness V] stated that [Witness M] did not want to take the matter any further and that she allegedly made an effort to avoid Chief Astill thereafter. I asked [Witness V] if she had anything further to add to which she stated that she just did not want any reprisals. Inmate [Witness V] stated she felt safe to return to the compound and would contact any of the staff in the room if there were any further issues.

At this time it should be noted that there are tensions between the inmates in the unit that inmate [Witness V] resides in at her own admission. That

*inmate [Witness M] now resides at Wellington Correctional Centre and that any information given by the inmates is alleged at this time.*¹⁸⁴⁶

1468. Mr Holman's evidence was that he was 'satisfied' this report 'would have' been forwarded to PSB by Ms Martin.¹⁸⁴⁷

8.8.5 Evidence of Ms Martin

1469. Ms Martin's evidence was that she could not recall any meeting with Witnesses V and R.¹⁸⁴⁸ However, she did not deny she was present. She stated she had no reason to doubt Witness R's account of the events. However, she said she would not have said 'inmates lie', as she would have taken this complaint very seriously.

1470. Ms Martin denied instructing Mr Paddison to conduct an investigation into the incident, instead stating that she would have said, '[w]e need to find out more information' and 'find out exactly what was going on'.¹⁸⁴⁹ The distinction she is making is unclear. Obviously, an investigation requires the gathering of information.

8.8.6 Subsequent events

1471. Following the meeting between Witness V, Witness R, Ms Martin, Mr Paddison, Mr Holman and Mr Westlake, a further serious incident involving Astill came to the attention of Mr Holman.

1472. Mr Holman described in his statement that he prepared a further Incident Report on 24 July 2017 – that is, a few days after the meeting with Witnesses V and R.¹⁸⁵⁰ In that report, Mr Holman recorded allegations that Astill had made threatening comments about Witness V to another inmate, including that Witness V was a

1846 Ex. 28, TB 2, Vol. 8, Tab 80, Annexure Tab A, AST.002.013.0053_0019-0020.

1847 Ex. 28, TB 2, Vol. 8, Tab 80, AST.002.013.0053_0005 [24].

1848 Transcript, 14 November 2023, 2278.21-2279.31.

1849 Transcript, 14 November 2023, 2280.34-46.

1850 Ex. 28, TB 2, Vol. 8, Tab 80, AST.002.013.0053_0005 [23]; Transcript, 3 November 2023, 1697.32-1698.2.

‘fucking thing’ and that he would ‘get her moved to [H]igh [N]eeds’, and that ‘if anything comes of [the complaint] [he] will take [Witness V] down’.¹⁸⁵¹ Mr Holman accepted in his evidence that these allegations amounted (in part) to an attempt by Astill to bully or intimidate the women who had come forward and made the disclosures with respect to Witness M.¹⁸⁵² The report concluded ‘I informed the Governor of this conversation’.¹⁸⁵³

1473. On 30 July 2017, Ms Kellett submitted an Intelligence Report concerning the disclosures made by Witnesses V and R (IR-17-2051).¹⁸⁵⁴ The Intelligence Report is based upon the Incident Report prepared by Mr Holman concerning the 20 July 2017 meeting.¹⁸⁵⁵ Further, the Intelligence Report included a reference to Mr Holman’s second Incident Report which recounted the threatening behaviour of Astill towards Witness V.¹⁸⁵⁶

1474. The Intelligence Report was reviewed by Mr Tayler, the allocated SIU Intelligence Analyst from the IB, on 26 September 2017 and was reviewed by Mr Hovey on 27 September 2017.¹⁸⁵⁷ The analysis inserted by Mr Tayler states:

*This IR [Intelligence Report] is related to IR-16-2783 [the report with respect to the allegations made by Witness P about Astill] ... ASTILL is accused of improper conduct with inmates held at DILLWYNIA CC. However, the same problem arises with this IR as did in the first, namely that the reliability of the sources cannot be assessed and the validity of the information cannot be judged. A lot of the accusations made are at least second hand, ie the person making the accusation is reporting that some other person has made an accusation. As such no reliable conclusion can be drawn from the information at hand.*¹⁸⁵⁸

1851 Ex. 28, TB 2, Vol. 8, Tab 80, AST.002.013.0053_0021-0022.

1852 Transcript, 3 November 2023, 1697.32-1698.42.

1853 Ex. 28, TB 2, Vol. 8, Tab 80, AST.002.013.0053_0022.

1854 Ex. 3, TB 3, Vol. 10, Tab 170 CSNSW.0001.0021.1167_0001-0005.

1855 Ex. 3, TB 3, Vol. 10, Tab 170, CSNSW.0001.0021.1167_0002; Ex. 28, TB 2, Vol. 8, Tab 80, Annexure A, AST.002.013.0053_0019.

1856 Ex. 3, TB 3, Vol. 10, Tab 170, CSNSW.0001.0021.1167_0002-0003.

1857 Ex. 3, TB 3, Vol. 10, Tab 170, CSNSW.0001.0021.1167_0005.

1858 Ex. 3, TB 3, Vol. 10, Tab 170, CSNSW.0001.0021.1167_0004.

1475. Mr Hovey was asked about this Intelligence Report in his oral evidence. He accepted that it appeared that no steps were taken by the IB to conduct any investigation into these allegations, nor did the IB refer these matters to the PSB or to the CSIU.¹⁸⁵⁹
1476. On 11 October 2017, Professional Standards Manager, PSB, Douglas Greaves, sent an email to Mr Shearer copied to Director PSB, Peter Robinson.¹⁸⁶⁰ Mr Greaves stated that the PSB was currently coordinating some sensitive inquiries, and while doing so had come upon information to the effect that an officer at Dillwynia had been accused of making sexual advances towards Witness M, and that the allegations at face value appeared to involve serious misconduct within the meaning of s. 69 of the GSE Act. Therefore, Mr Greaves wrote, the allegation should have been reported to the PSC, which would have considered and initiated an investigation by the IB. The email stated that instead Mr Paddison had been tasked to undertake an investigation into the allegations and that Ms Martin was aware of the investigation. Mr Greaves asked Mr Shearer whether this was correct and asked for advice about why the allegation was not referred to the PSC or the PSB.¹⁸⁶¹
1477. Two days later, Mr Greaves reported to Mr Robinson that he had spoken to Mr Shearer and that Mr Shearer had made inquiries with Ms Martin.¹⁸⁶² What was evidently reported by Mr Shearer to Mr Greaves was that Ms Martin had told Mr Shearer that there was not an investigation as such. She had said that she had liaised with Mr Hovey about the matter and that the interview Mr Paddison had been tasked to undertake was ‘one step down path of assembling relevant information’. Mr Greaves said that if Mr Hovey was ‘still in “intelligence gathering” mode, then it makes sense that the matter hasn’t yet been referred to the PSC. As a result, I don’t see a need for any further action on this one.’¹⁸⁶³

1859 Transcript, 8 November 2023, 1931.2-46.

1860 Ex. 3, TB 3, Vol. 14, Tab 452, CSNSW.0001.0032.0130_0001-0002.

1861 Ex. 3, TB 3, Vol. 14, Tab 452, CSNSW.0001.0032.0130_0001-0002.

1862 Ex. 3, TB 3, Vol. 14, Tab 452, CSNSW.0001.0032.0130_0001.

1863 Ex. 3, TB 3, Vol. 14, Tab 452, CSNSW.0001.0032.0130_0001.

1478. With respect to this email exchange, Mr Shearer recalled that he read the email from Mr Greaves and spoke to Ms Martin and Mr Greaves about the allegation. He stated that he was informed that the allegation went to IB when he was ‘first notified of the complaint in July 2017’.¹⁸⁶⁴ He had a vague recollection that following receipt of the 11 October 2017 email, Ms Martin said ‘something to the effect, “it’s being referred up through IB”’. Mr Shearer’s understanding following his conversation with Ms Martin was that there had been an Intelligence Report made, and the matter was being investigated by Mr Hovey. He conveyed that to Mr Greaves.¹⁸⁶⁵ He stated in evidence ‘I wasn’t aware of the — the practices that followed that Intelligence Report. I thought that the practice was that Mick Hovey’s team were going to manage the process.’¹⁸⁶⁶
1479. Mr Robinson’s response was to thank Mr Greaves but note that ‘it still remains all a bit odd’.¹⁸⁶⁷
1480. Nothing further appears to have happened with respect to Witness M’s allegations or the allegations of bullying or intimidation made by the women who had brought forward those allegations. Witness M gave evidence that she was not spoken to by anyone about her allegations.¹⁸⁶⁸ Nor was there ever any referral to the PSB or to the PSC or to the CSIU or to the NSWPF more generally.
1481. This sequence of events is a collection of failures. To say that an opportunity was missed is a gross understatement.
1482. I am satisfied that:
- a) Mr Westlake, Mr Paddison and Mr Holman and later Ms Martin were all present when Witness R and Witness V made the disclosures in relation to Witness M;

1864 Ex. 43, TB 2, Vol 8A, Tab 98, AST.002.013.0061_0013 [67].

1865 Transcript, 16 November 2023, 2482.25-2483.45.

1866 Transcript, 16 November 2023, 2483.43-45.

1867 Ex. 3, TB 3, Vol. 14, Tab 452, CSNSW.0001.0032.0130_0001.

1868 Ex. 3, TB 1, Vol. 5, Tab 10A, AST.002.013.0006_0004 [18]-[19].

- b) those disclosures by Witnesses R and V included allegations that Witness M had been assaulted by Astill and that Witness R had witnessed the assaults;
- c) Mr Holman subsequently made two written Incident Reports concerning these events;
- d) Astill was made aware of the fact that those women had come forward with those complaints, leading to the confrontation by him of Witnesses B, R and V during muster, and Astill stating it smelt 'like dogs in here' (Witness B had accompanied Witnesses V and R to the meeting but had remained outside¹⁸⁶⁹);
- e) an 'investigation', of sorts, was commenced within Dillwynia, but nothing came of that investigation;
- f) Witness M was never spoken to by anyone about her allegations;
- g) the IB was notified of the allegations, but no action was taken by that branch in response;
- h) Mr Shearer became aware of allegations of Witness M in October 2017, but took no action in the mistaken belief that there was an investigation underway by the IB; and
- i) PSB became aware of the allegations but was content to allow the process adopted thus far to continue.

8.8.7 Consideration of breaches of law and policies

1483. The disclosures made by Witness V and R of Astill's assaults on Witness M were allegations of criminal offences.

1484. It is somewhat unclear which officer first became aware of the matters raised by Witnesses V and R. Witness V's recollection is that Witness R first went to her Overseer, Mr Quinton. Witness R did not give that evidence and Witness V was not a witness to any such conversation. I set Witness V's evidence on this question aside.

1869 Ex. 3, TB 1, Vol. 6, Tab 23, AST.002.002.0029_0002 [9].

1485. Witness R stated that she could not recall the exact circumstances of how the incident involving Witness M came to be reported to Ms Martin.¹⁸⁷⁰ Witness R's evidence was that she approached Mr Holman to speak to him about what had happened to Witness M. She recalled that there were other officers present at the time, but could not recall who they were. Her evidence reads as though she is describing the meeting in the Governor's office, rather than any preliminary conversation with Mr Holman; however, I am unable to make a firm finding as to whether any such initial conversation occurred, based on her evidence.
1486. Mr Holman's recollection of the 20 July 2017 meeting was also poor. However, his Incident Report concerning the meeting, which was relatively contemporaneous and likely to be reliable, records that he was asked to attend the MOS office by Mr Paddison. When he attended, Mr Paddison and Mr Westlake were already present. Accordingly, I am not satisfied Witness R made any report to Mr Holman prior to the 20 July 2017 meeting occurring.
1487. I am satisfied that Witness R and Witness V's disclosures were made to Mr Paddison, Mr Holman, and Mr Westlake simultaneously at the 20 July 2017 meeting. As at July 2017, Mr Paddison was an Acting Principal Correctional Officer, Mr Holman was a Chief Correctional Officer and Mr Westlake was a Senior Correctional Officer. As the most senior officer present, Mr Paddison was bound by cl. 253(1) CAS Regulation to report to a more senior officer. That obligation was satisfied by the summoning of Ms Martin to the meeting. Mr Holman and Mr Westlake were present for those events and were not obliged to take any further action.
1488. Upon Mr Paddison reporting to Ms Martin, she became the 'senior correctional officer' for the purposes of cl. 253(2) of the CAS Regulation and, because the allegation clearly involved criminal conduct, became bound to report the alleged conduct promptly to the Commissioner of CSNSW. She did not do this. Furthermore, Ms Martin did not comply with the DOJ Managing Misconduct Procedure. That policy required a report to the PSB, being the relevant Professional Standards Unit of CSNSW.

1870 Ex. 3, TB 1, Vol. 6, Tab 21A, AST.002.013.0029_0003 [13].

1489. Mr Paddison's participation in an 'investigation' into the alleged assault of Witness M was a departure from proper practice. The proper practice did not contemplate investigations of this kind being conducted by officers within a correctional centre. Mr Paddison acknowledged in his evidence that neither he nor Mr Smith had the training necessary to conduct investigations.¹⁸⁷¹
1490. I note that in his email responding to Mr Paddison's request that he interview Witness M, Mr Smith, MOS at Wellington Correctional Centre, responded 'Hey mate, Give me a call when you get a chance and I [sic] tell you the process for this, I've done several'.¹⁸⁷² Mr Smith did not give evidence before the Special Commission, and I am unable to make any finding as to what 'process' he intended to convey to Mr Paddison. However, his response that he had 'done several' raises the possibility that the process of interviewing inmates regarding allegations of this level of seriousness at a local level was commonplace. This should not have been happening.
1491. Mr Hovey accepted that upon the IB being made aware of these allegations it became necessary to refer them to the CSIU.¹⁸⁷³ This step was not taken. Mr Hovey accepted that that was a failure.¹⁸⁷⁴
1492. Mr Hovey accepted that the contents of IR-17-2051 came to his attention on 27 September 2017 and that he did not cause the matters it raised referred to be referred to PSB or to be investigated by IB or the CSIU.¹⁸⁷⁵ By failing to take any of those steps, Mr Hovey failed to properly discharge his duty.
1493. By October 2017 Mr Shearer had become aware that an investigation was being conducted by officers at Dillwynia into the allegations concerning Witness M. It appears that he was informed by Ms Martin that she had been liaising with Mr Hovey, and that an interview, which Mr Paddison had been tasked to undertake with Witness M, was part of the process of assembling relevant information.

1871 Transcript, 2 November 2023, 1550.10-18.

1872 Ex. 25, TB 2, Vol 8, Tab 84, Annexure D, AST.002.013.0055_0022-0023.

1873 Transcript, 8 November 2023, 1931.22-46.

1874 Transcript, 8 November 2023, 1931.36-46.

1875 Transcript, 8 November 2023, 1923.44-1924.10, 1931.22-46, 1943.18-1944.37.

Mr Shearer formed the mistaken view, based on his conversation with Ms Martin, that the investigation was being conducted or managed by Mr Hovey.

1494. Whatever the accuracy of the information provided to Mr Shearer, it was necessary for him to make further inquiries about the status of that investigation. Mr Shearer accepted as much in his evidence. Mr Shearer also accepted that he should have contacted Mr Hovey or made an inquiry about which officer was the subject of the allegations.¹⁸⁷⁶ He accepted that it was a failure not to make an inquiry of the IB and Mr Hovey to find out what was happening.¹⁸⁷⁷ Mr Shearer's evidence that he 'wasn't aware' of the practices that followed the Intelligence Report is of concern, given the seniority of Mr Shearer's position. His lack of awareness of the proper procedures that applied to the reporting and investigation of an allegation of this nature likely contributed to his failure to identify irregularities in the procedure that had been adopted.

1495. I have considered whether there is a similar failure by the PSB having regard to the information recorded in the email chains of 11 and 13 October 2017. The obvious inquiry to make would have been of Mr Hovey, or someone else in IB. The PSB was provided with an explanation of sorts by Mr Shearer, evidently after a discussion with Ms Martin. However, as Mr Robinson correctly noted, even on that explanation 'it still remains all a bit odd'.¹⁸⁷⁸ That was an understatement. The situation as disclosed to the PSB in the email chain reflected a serious departure from the established practice, namely that any allegations of a criminal offence ought to be made known to the PSB and to the Commissioner of CSNSW. The only available conclusion is that the PSB failed to make proper inquiries about the status of any investigation into the allegations by Witness M.

1876 Transcript, 16 November 2023, 2487.35-39; Transcript, 16 November 2023, 2485.27-43.

1877 Transcript, 16 November 2023, 2487.35-39.

1878 Ex. 3, TB 3, Vol. 14, Tab 452, CSNSW.0001.0032.0130_0001.

8.9 Second half of 2017 – Disclosures to Deborah Wilson by Witnesses B and V

1496. In the second half of 2017, Witnesses V and B informed Intelligence Officer Deborah Wilson that they had been keeping a diary concerning Astill’s conduct. Ms Wilson made a copy of the diary.

8.9.1 Evidence of Witness B

1497. Witness B gave evidence of an incident in the second half of 2017 relating to a disclosure that she and Witness V made to Ms Wilson. The disclosure related to a diary kept by Witnesses B and V recording incidents involving Astill.¹⁸⁷⁹ Witnesses B and V started keeping a diary following a comment made by Astill (which Witness B believed was directed at her) that ‘some people should get the lethal injection in this place’.¹⁸⁸⁰ Witness B said that Ms Robinson overheard this comment and suggested that she write it down.¹⁸⁸¹ Witness B said that from then on, she and Witness V would record an entry in the diary for anything that happened that they thought they needed to record. This included when they informed officers about something Astill had done.¹⁸⁸² She said that the diary consisted of two small exercise books stuck together and contained a large number of entries.¹⁸⁸³

1498. Witness B said that at some point, she and Witness V told Ms Wilson about the diary and showed it to her.¹⁸⁸⁴ This included telling Ms Wilson about every complaint regarding Astill, including specifically the complaint about his conduct towards Witness M, and the fact that Astill referred to them as ‘dogs’ upon becoming aware that they had made a complaint about him.¹⁸⁸⁵ Witness B’s evidence was that she and Witness V told Ms Wilson ‘everything’.¹⁸⁸⁶

1879 Ex. 3, TB 1, Vol. 6, Tab 23A, AST.002.013.0030_0003, 0007 [18], [31], [33].

1880 Ex. 3, TB 1, Vol. 6, Tab 23A, AST.002.013.0030_0003 [16]-[18].

1881 Ex. 3, TB 1, Vol. 6, Tab 23A, AST.002.013.0030_0003 [17]-[18].

1882 Ex. 3, TB 1, Vol. 6, Tab 23A, AST.002.013.0030_0007 [31].

1883 Ex. 3, TB 1, Vol. 6, Tab 23A, AST.002.013.0030_0007 [31].

1884 Transcript, 24 October 2023, 671.18-26; Ex. 3, TB 1, Vol. 6, Tab 23A, AST.002.013.0030_0007 [33].

1885 Transcript, 24 October 2023, 670.16-672.9.

1886 Transcript, 24 October 2023, 670.36.

1499. Witness B's evidence was that following their first meeting with Ms Wilson, she and Witness V had a number of further meetings with Ms Wilson and continued to make disclosures in relation to Astill.¹⁸⁸⁷ Witness B said that Ms Wilson took the diary away from her and Witness V at one point and, at a later meeting with them, told them that she had shown it to Ms Martin.¹⁸⁸⁸ Witness B stated that she and Witness V asked Ms Wilson to speak to the inmates referred to in the diary and Ms Wilson responded, 'if girls want to speak to [me], they can come and talk to [me]' and that she was not going to go and 'look for them'.¹⁸⁸⁹
1500. Witness B recalled that after Ms Wilson told them she had shown the diary to Ms Martin, Ms Wilson suggested that they should get rid of the diary and offered to shred it for them.¹⁸⁹⁰ The apparent concern of Ms Wilson was that Astill might find the diary.¹⁸⁹¹ Witness B stated that ultimately, Witness V arranged to send the diary to her lawyer.¹⁸⁹²

8.9.2 Evidence of Ms Wilson

1501. Ms Wilson agreed that Witnesses B and V showed her the diary and discussed its contents with her. She recalled the allegations about Astill concerned bullying and harassment of inmates.¹⁸⁹³ Ms Wilson vaguely recalled Witness B informing her that Witness B had reported Astill's assault of Witness M and that they had been intimidated by Astill after coming forward.¹⁸⁹⁴ Ms Wilson accepted that she 'possibly' told Witness B that 'if girls wanted to speak to [her], they [can] come and talk to' her and that she would not 'go and look for them' as she found that a lot of the time, the inmates would not talk.¹⁸⁹⁵ Ms Wilson said that she thought that it was 'more than likely' that she discussed Witness B's disclosure and the

1887 Transcript, 24 October 2023, 671.7-12; Transcript, 24 October 2023, 671.28-31.

1888 Transcript, 24 October 2023, 673.7-43; Ex. 3, TB 1, Vol. 6, Tab 23A, AST.002.013.0030_0007 [33].

1889 Transcript, 24 October 2023, 672.4-26; Transcript, 24 October 2023, 674.17-26.

1890 Transcript, 24 October 2023, 674.31-42; Ex. 3, TB 1, Vol. 6, Tab 23A, AST.002.013.0030_0007 [34].

1891 Transcript, 24 October 2023, 677.3-7.

1892 Ex. 3, TB 1, Vol. 6, Tab 23A, AST.002.013.0030_0007 [35]; Transcript, 24 October 2023, 676.41-677.1.

1893 Transcript, 7 November 2023, 1752.38-1753.6.

1894 Transcript, 7 November 2023, 1753.19-23.

1895 Transcript, 7 November 2023, 1754.16-22.

diary with Ms Martin and that she believed that she submitted a report to the SIU in relation to it.¹⁸⁹⁶

8.9.3 Response of Ms Wilson and subsequent conduct by the IB

1502. There is no evidence Ms Wilson made any contemporaneous report regarding the diary or the disclosures made by Witness B. However, documents produced to the Special Commission after Ms Wilson gave oral evidence demonstrate that she brought the diary to the attention of the IB at a later stage.
1503. The circumstances in which that occurred are as follows. On 15 August 2018, Ms Wilson submitted IR-18-1983 to the IB. IR-18-1983 concerned suspected illegal activity between Astill and Witness JJ involving contraband jewellery which had been seized in December 2017.¹⁸⁹⁷ That Intelligence Report stated, among other things, that:

It is of concern that staff are raising the issue of inappropriate behaviour by a staff member and of even more concern is that it is only the one person that is mentioned. Staff were questioned as to why these reports have taken the time period to be reported and they state that they felt intimidated by Chief Astill previously however, more staff are coming forward and this inappropriate behaviour needed to be reported.

...

Wayne Astill has been of interest to local intel for a period of time however, this has escalated in the past six months with a number of staff making assumptions on their suspicions with his interactions with inmates. Inmates have also recently started calling Wayne Astill 'poppy', which is inappropriate. A number of reports have recently been submitted through SIU in relation to Wayne Astill and also introduction of tobacco/

1896 Transcript, 7 November 2023, 1756.7-11; Transcript, 7 November 2023, 1757.23-42.

1897 Ex. 3, TB 3, Vol. 10, Tab 173, CSNSW.0001.0021.1181_0001-0006.

*illicit drugs by a staff member and given the information coming forward, it cannot be discounted that this is the one person, if in fact, it is.*¹⁸⁹⁸

1504. The day after Ms Wilson submitted IR-18-1983, IB Intelligence Analyst Sarah Casey sent an email to Ms Wilson asking her to call her about that Intelligence Report.¹⁸⁹⁹ It is clear from a subsequent email sent by Ms Casey to Mr Hovey on 16 August 2018 that contact was made between Ms Casey and Ms Wilson. In that email, Ms Casey noted a range of matters arising from contact made with Ms Wilson, including an explanation for the delay in the submission of the Intelligence Report, and that:

*officers were apprehensive about coming forward and reporting any suspicious behaviour of ASTILL as he has publicly berated them for reporting him on prior occasions. I questioned this and stated that the attachments contained reports from BERRY, CURTIN, BROWN and BARLING all dated February 2018 which WILSON stated would have been forwarded to the Governor with the covering report from BERRY dated 24 Feb 2018. WILSON was unaware what happened with the submission of that information.*¹⁹⁰⁰

1505. Further, the email states that Ms Wilson ‘mentioned that there were a number of people interlinked and that ASTILL appears to be at the centre of it’. Under a section in the email named ‘Proposed Action’, Ms Casey said the following:

In speaking with WILSON, she believes that issues involving ASTILL and possible misconduct had been occurring for a while. As such I would propose that further information be collected and assessed to determine the nature of the matter. At this point in time, without collecting further information, all I have is an incident that occurred in Dec/Feb involving ASTILL an inmate [Witness JJ] (reported to IB by way IR [Intelligence Report] 15/08/2018) and very general, non-specific hearsay from

1898 Ex. 3, TB 3, Vol. 10, Tab 173, CSNSW.0001.0021.1181_0004.

1899 Ex. 56, AST.002.013.0092_0001.

1900 Ex. 56, AST.002.013.0092_0002.

*WILSON regarding the scale and seriousness of the matter. I will await your response.*¹⁹⁰¹

1506. There is no evidence of any written response by Mr Hovey to that email. Mr Hovey's evidence was that it was his usual practice to follow up emails from people working in his building with a verbal discussion.¹⁹⁰²
1507. Ms Casey wrote back to Ms Wilson on 17 August 2018 by email and asked her to call her as a matter of urgency.
1508. Ms Wilson again emailed Ms Casey on Sunday 19 August 2018 saying: 'Hi Sarah, I have attached what I could find in this matter along with a summary and I will email General Manager to see what she has, if she has any more.' Attached to that email was a summary document prepared by Ms Wilson along with a copy of the diary maintained by Witnesses B and V.¹⁹⁰³
1509. On 19 August 2018, Ms Wilson emailed Ms Martin saying '[c]an you please furnish any further reports you have on Wayne Astill to [redacted]@justice.nsw.gov.au. I have forwarded copies of the paperwork from your safe.'¹⁹⁰⁴ There is no evidence that Ms Martin ever provided any material to Ms Casey.
1510. On 21 August 2018, Mr Hovey prepared a Highly Confidential Briefing to the Commissioner concerning the allegations in IR-18-1983.¹⁹⁰⁵ That briefing stated 'CSNSW Investigations Branch [IB] has received information supporting that a male officer at DCC [Dillwynia Correctional Centre] was involved in an inappropriate relationship with an inmate'. The facts concerning the finding and confiscation of the jewellery were briefly summarised. The briefing did not identify Astill as the officer involved and did not refer to any other intelligence holdings concerning Astill, or any of the material forwarded by Ms Wilson to Ms Casey on 19 August 2018. The briefing stated:

1901 Ex. 56, AST.002.013.0092_0002.

1902 Transcript, 24 November 2023, 3290.1-8.

1903 Ex. 56, AST.002.013.0092_0005-0041.

1904 Ex. 3, TB 3, Vol. 17, Tab 524, CSNSW.0002.0024.0710_0001.

1905 Ex. 3, TB 3, Vol. 10, Tab 173, CSNSW.0001.0021.1181_0001-0006.

*IB are currently prioritising enquiries into this allegation and will update progress via the Director's dashboard ... The immediate risk factor has been addressed given the inmate involved is no longer at the centre, however if the alleged behaviour is occurring, it is possible that more than one inmate is involved.*¹⁹⁰⁶

1511. The obvious risk factor of Astill remaining employed at Dillwynia was not referred to.
1512. A copy of the briefing signed by then Commissioner Severin was returned to Mr Hovey via email, copying in Mr Robinson, Director PSB. Mr Hovey was instructed to send the briefing to Task Force Themis, in accordance with a notation made by Commissioner Severin.¹⁹⁰⁷
1513. Unfortunately, Mr Hovey's Briefing to the Commissioner was not tendered in evidence until after Mr Hovey gave evidence about the email correspondence of August 2018 from Ms Casey and his response to it.¹⁹⁰⁸ During the course of that questioning, Mr Hovey clearly had no recollection of sending the briefing and it was not brought to his attention. Accordingly, there is some (unintended) unfairness in the way he was questioned on this topic, and I treat his answers with caution. Mr Hovey proffered that the IB were in an 'information gathering' phase, and conceded that any intelligence gathered should have been provided to police.¹⁹⁰⁹ He also conceded it could have been referred to the PSB.¹⁹¹⁰ Because of the way the evidence on this issue unfolded, I am not assisted by Mr Hovey's explanation as to why he decided to proceed by way of a Briefing to the Commissioner which did not identify Astill, and referred only to the information in IR-18-1983 without reference to other intelligence concerning Astill which was directly brought to his attention in the days prior to preparing the briefing. The attention of Mr Hovey's solicitor was drawn to the fact that evidence had been tendered in Chambers which concerned Mr Hovey. The briefing was not

1906 Ex. 61, CSNSW.0002.0119.1630_0001, CSNSW.0002.0119.1631_0001-0002.

1907 Ex. 61, CSNSW.0002.0119.1971_0001, CSNSW.0002.0119.1972_0001-0002.

1908 See, generally, Transcript, 24 November 2023, 3289.26-3304.27.

1909 Transcript, 24 November 2023, 3294.30-38.

1910 Transcript, 24 November 2023, 3294.40-44.

addressed in Mr Hovey's submissions in reply, which were filed subsequently. On its face, the approach was at best inadequate, and potentially highly misleading.

8.9.4 Evidence of Ms Martin

1514. Ms Martin's evidence was that if Ms Wilson had told the Special Commission that she had discussed Witness B's allegations with her and made reference to the diary, Ms Wilson's evidence would be correct.¹⁹¹¹

8.9.5 Some conclusions

1515. Although the evidence about these events was initially unclear, based on the further documentary material tendered, I am satisfied that the following occurred:

- a) Witnesses B and V did discuss the contents of the diary with Ms Wilson and did provide a copy of the diary to her. Ms Wilson made a copy of that diary and provided it to Ms Casey in mid-August 2018;
- b) Ms Wilson discussed the contents of that diary and the disclosures made by Witnesses B and V with Ms Martin, and subsequently asked Ms Martin to provide to the IB any reports that she had concerning Astill. I am satisfied that the 'paperwork from your safe' referred to in Ms Wilson's email to Ms Martin included a copy of the diary belonging to Witnesses B and V, which supports the conclusion she had discussed the diary with Ms Martin;
- c) Ms Martin did not provide any further documents that she had with respect to these disclosures to the IB or take any other steps with respect to these disclosures;
- d) upon Ms Wilson's lodgement of IR-18-1983 and subsequent provision of the diary and other materials to the IB, no investigation into those matters was conducted by the IB other than the enquiries made of Ms Wilson by Ms Casey; and

1911 Transcript, 14 November 2023, 2310.37-2311.18.

- e) Mr Hovey briefed the Commissioner of CSNSW with respect to IR-18-1983 without reference to other information brought to the attention of the IB at that time, including the diary provided by Witnesses B and V.

8.9.6 Consideration of breaches of law and policies

1516. The allegations contained in the diary of Witness B and disclosed by Witnesses B and V to Ms Wilson were allegations made to a Correctional Officer that clearly concerned misconduct within the meaning of cl. 253(1)(a) of the CAS Regulation. Ms Wilson was bound to raise these allegations with a senior officer. I am satisfied she discussed them with Ms Martin, although the timing, format and content of any such discussion remains unclear. Ms Martin was bound to report to the Commissioner pursuant to cl. 253(2). This did not occur. Ms Martin also did not make any report of the matters in the diaries to the PSB, thereby breaching the DOJ Managing Misconduct Procedure.

8.10 November 2017 – Meetings between J Unit inmates and Deborah Wilson

1517. In November 2017, Ms Sheiles said that a number of inmates from the J Unit met with the MOS. She thought the MOS they spoke with was Ms Wilson. Inmates went in one by one to speak to the MOS. Ms Sheiles said that she informed the MOS that Astill was verbally inappropriate and would touch her inappropriately as he brushed past.

8.10.1 Evidence of Ms Sheiles

1518. Ms Sheiles gave evidence of a meeting in November 2017 involving a number of inmates from the J Unit and the MOS at the time. In her statement to NSWPF dated 10 October 2018, she described the person they spoke with as the MOS 'Miss Wilson'.¹⁹¹² In her statement to the Special Commission Ms Sheiles could

1912 Ex. 3, TB 1, Vol. 5, Tab 3, AST.002.002.0011_0012 [23].

not be sure whether the meeting was with Ms Wilson or Ms O’Toole.¹⁹¹³ In oral evidence, she said it was Ms Wilson, but also confirmed that the person she spoke to was in the position of MOS, which Ms Wilson did not hold. She explained she had spoken to somebody recently who mentioned Ms O’Toole and it ‘sort of stuck’. She deferred to her earlier statement ‘which would have been at the time 100 per cent correct’ and reiterated she had spoken with Ms Wilson.¹⁹¹⁴

1519. The position of MOS was vacant for much of 2017.¹⁹¹⁵ Ms O’Toole left Dillwynia in around October 2016.¹⁹¹⁶ The person Ms Sheiles was referring to could not have been Ms O’Toole. Ms Sheiles’ recollection when she made her statement in October 2018 was likely to be more accurate and I am satisfied the person she spoke to was Ms Wilson, although she is incorrect about Ms Wilson’s role at that time. Ms Sheiles referred to the person she spoke to as the MOS throughout her evidence.
1520. Ms Sheiles recalled that she arranged a meeting with the other J Unit inmates regarding Astill’s inappropriate behaviour and language, and that approximately three quarters of the 22 inmates from J Unit spoke to the MOS about Astill.¹⁹¹⁷
1521. Ms Sheiles’ stated that the inmates then went in one by one to speak to the MOS. Ms Sheiles recalled telling the MOS that Astill was verbally inappropriate and that he would touch her inappropriately on her ‘ass’ or breast as he brushed past, making her extremely uncomfortable.¹⁹¹⁸
1522. Ms Sheiles’ impression was that the MOS did not seem that interested in her disclosures and did not seem to believe her. Ms Sheiles stated that the MOS’s reaction was ‘like she was fobbing us off’.¹⁹¹⁹ To Ms Sheiles’ knowledge, the only outcome of the meetings between the J Unit inmates and the MOS was that Astill was less frequently rostered on as the Chief Correctional Officer in the J

1913 Ex. 3, TB 1, Vol. 5, Tab 6A, AST.002.013.0005_0007 [48].

1914 Transcript, 17 October 2023, 217.40-218.15.

1915 Ex. 58, TB 3, Vol. 9, Tab 105A, CSNSW.0002.0002.0001_0002; Ex. 58, TB 3, Vol. 9, Tab 107, CSNSW.0001.0014.0001_0007-0015.

1916 Transcript, 7 November 2023, 1807.8-11.

1917 Transcript, 17 October 2023, 217.40-218.31.

1918 Transcript, 17 October 2023, T220.17-221.15; Ex. 3, TB 1, Vol. 5, Tab 6A, AST.002.013.0005_0007 [48].

1919 Transcript, 17 October 2023, 221.21-28; Ex. 3, TB 1, Vol. 5, Tab 6A, AST.002.013.0005_0001 [48].

Unit.¹⁹²⁰ After the meeting, Ms Sheiles did not try to raise any further concerns about Astill because she did not think that anything would be done.¹⁹²¹

1523. Ms Sheiles was not able to give evidence about the contents of disclosures made by the other inmates to the MOS in their meetings, as she was not present for those meetings.

8.10.2 Evidence of Ms Wilson

1524. Ms Wilson did not remember meeting with Ms Sheiles but recalled that a number of women came to speak to her in the High Needs area about Astill and his intimidation.¹⁹²² She agreed in oral evidence that she saw them one by one about their complaints.¹⁹²³ She accepted this occurred in around the same timeframe she spoke to Witness B about the diary.¹⁹²⁴

1525. She could not recall the details of her interview with Ms Sheiles.¹⁹²⁵ Ms Wilson did not deny that Ms Sheiles made a disclosure of the kind identified by Ms Sheiles to her, but said that she could not recall exactly what was said during the interview.¹⁹²⁶ She accepted that she was required to report to the SIU a disclosure of the kind Ms Sheiles said she made.¹⁹²⁷ When she was challenged as to whether she did in fact make such a report to the SIU, she said that she would otherwise have made a report to Ms Martin:

MR LLOYD: *But what you're telling us is you can't remember whether you did a report to the SIU — let me make sure I understand what you're saying. You either did a report to the SIU or to the Governor, is your recollection?*

MS D. WILSON: *That's correct.*

1920 Transcript, 17 October 2023, 221.30-42; Ex. 3, TB 1, Vol. 5, Tab 3, AST.002.002.0011_0012 [23]; Ex. 3, TB 1, Vol. 5, Tab 6A, AST.002.013.0005_0007 [48].

1921 Ex. 3, TB 1, Vol. 5, Tab 6A, AST.002.013.0005_0008 [49].

1922 Ex. 29, TB 2, Vol. 8, Tab 83, AST.002.013.0035_0011 [96].

1923 Transcript, 7 November 2023, 1758.28-46.

1924 Transcript, 7 November 2023, T1761.5-16.

1925 Transcript, 7 November 2023, T1759.1-18.

1926 Transcript, 7 November 2023, T1759.1-18.

1927 Transcript, 7 November 2023, 1759.29-1780.1.

MR LLOYD: *I need to put this to you: That you did not make a report to the SIU about this. I object.*

MR WHITE: *I object.*

COMMISSIONER: *I require an answer.*

MS D. WILSON: *Well, in that case, I probably— I would have done a report to the Governor.*¹⁹²⁸

8.10.3 Evidence of Ms Martin

1526. Ms Martin's evidence was that she did not remember Ms Wilson informing her about Ms Sheiles' allegation that Astill had assaulted her, by touching her inappropriately on the bottom and breast as he brushed past. She stated that she was sure that if Ms Wilson had told her about Ms Sheiles' disclosure, Ms Wilson would have compiled an Intelligence Report and sent it to IB.¹⁹²⁹ When pressed, Ms Martin accepted that if Ms Sheiles' disclosure was brought to her attention by Ms Wilson, it would have been necessary for her to give Ms Wilson a direction to make an Intelligence Report but stated that 'I wouldn't necessarily have to if I wasn't there; she would just do it'.¹⁹³⁰
1527. It is not possible to make a finding about the precise nature of the disclosures made by inmates other than Ms Sheiles to Ms Wilson. It is clear that a number of inmates met with Ms Wilson and that complaints about Astill were made.
1528. Ms Sheiles was an impressive witness. She had no reason to lie and gave clear evidence of the disclosure she made to Ms Wilson, although she was mistaken that Ms Wilson was the MOS. Ms Wilson did not deny that the disclosure was made, and generally recalled speaking to a number of women in High Needs at around that time. I am satisfied that Ms Sheiles did disclose to Ms Wilson that Astill had been assaulting her.

1928 Transcript, 7 November 2023, T1760.3-1760.17.

1929 Transcript, 14 November 2023, 2311.20-32.

1930 Transcript, 14 November 2023, 2312.10-26.

1529. The evidence indicates that Ms Wilson was prepared to make reports to Ms Martin and then the IB (via Intelligence Reports) about allegations involving misconduct by Astill. However, there is no evidence that Ms Wilson reported Ms Sheiles' allegations to the IB. Although there is documentary evidence that on other occasions Ms Wilson caused Intelligence Reports to be submitted to the IB, there is nothing to support that she did so on this occasion. Further, I note there is no reference to Ms Sheiles' allegation in the 'summary' document Ms Wilson sent to Ms Casey on 19 August 2018.¹⁹³¹ It was submitted on behalf of Ms Wilson that an Intelligence Report may have been submitted to the IB that was misplaced or not located.¹⁹³² Given the fragmented production of evidence to the Special Commission by CSNSW I cannot exclude this possibility. However, the evidence falls short of establishing that any Intelligence Report was submitted.

1530. Ms Wilson said that if she did not lodge an Intelligence Report, she would have passed the allegations on to Ms Martin. She had no recollection of doing so, but she said that it was her usual practice to either report allegations of this kind to the SIU or Ms Martin. Ms Martin said she had no recollection of such a report. In the absence of any evidence of a report to SIU, I accept that it is possible Ms Wilson reported Ms Sheiles' allegations to Ms Martin in accordance with her stated practice. However, the evidence falls short of positively satisfying me that she did so.

8.10.4 Consideration of breaches of law and policies

1531. The allegations made by Ms Sheiles were serious and criminal in nature. Ms Wilson was required to report those allegations to a more senior officer, pursuant to cl. 253(1) of the CAS Regulation. Although there is evidence Ms Wilson made a number of reports, the evidence does not establish one way or another whether Ms Wilson reported these allegations to Ms Martin or elsewhere. Accordingly, Ms Martin's compliance with cl. 253 in this instance does not arise for consideration.

1931 Ex. 56, AST.002.013.0092_0006-7.

1932 Submissions on behalf of Deborah Wilson, 13 December 2023, AST.002.013.0103_0002 [3(e)].

8.11 Events between November 2017 and January 2018

8.11.1 Background to mediations

1532. The Special Commission received evidence in relation to a sequence of events commencing in November 2017 that culminated in three ‘mediations’ involving Witnesses P, V and B in January 2018. These events are related. The starting point is that Witness B met with Ms Martin and Ms Wilson to discuss Astill’s intimidating and inappropriate conduct.

8.11.1.1 Meetings between Witness B, Ms Martin and Ms Wilson

1533. Witness B gave evidence of two meetings she attended with Ms Martin, with Ms Wilson present.¹⁹³³ During one of the meetings she made a complaint about Astill’s intimidation of her, including that Astill had threatened to have her daughters raped and her parents killed, and that he had showed her their addresses and said he could get them wherever they were. Witness B said that Astill told her that he used to be a Police Officer and was also a member of a motorcycle gang. Witness B recalled that Ms Martin responded by calling her a liar and saying that it never happened.¹⁹³⁴

1534. Witness B said that in the other meeting, she reported to Ms Martin that inmates were being inappropriately touched by Astill, that he had been going into the accommodation units, and that he had intimidated inmates. Witness B recalled that Ms Martin ‘basically called [Witness B] a liar’ and a waste of her time and told her to get out of her office. Witness B recalled that these two meetings occurred after she showed Ms Wilson her diary (discussed above) and before the mediations (which occurred on 25 January 2018 as discussed further below).¹⁹³⁵

1933 Transcript, 24 October 2023, 684.31-35.

1934 Transcript, 24 October 2023, 682.37-683.20.

1935 Transcript, 24 October 2023, 683.40-684.40

1535. Ms Martin was asked whether she recalled a meeting with Witness B in the second half of 2017 when she raised a complaint that Astill had intimidated her. She said she could not remember unless it was in a meeting she arranged with two or three inmates after she became aware of an allegation that Astill made bullying or offensive remarks to inmates at a muster. Ms Martin could not recall how she became aware of the allegation about the incident at the muster. She gave evidence that the inmates told her what happened, and they were upset by something Astill had said. Ms Martin could not remember the details of this.¹⁹³⁶ She accepted that she was told by the inmates that Astill had made a comment that it ‘smells like dogs in here’.¹⁹³⁷
1536. Ms Martin said she could not recall Witness B telling her Astill had threatened her daughters and parents. Ms Martin denied that Witness B told her that Astill threatened her by telling her he used to be a Police Officer and a member of a motorcycle gang, saying ‘I don’t believe that was told to me whatsoever’.¹⁹³⁸ When asked whether the allegations made by Witness B required reporting, Ms Martin responded, ‘They weren’t told to me. Those — I have never heard that before’. She accepted that if those things were told to her, they required reporting.¹⁹³⁹
1537. Ms Martin denied she called Witness B a liar. She said that the meeting did not happen, and that Witness B’s account was ‘fabricated’.¹⁹⁴⁰
1538. Ms Wilson did not give any evidence about her attendance at meetings with Witness B and Ms Martin in late 2017.

8.11.1.2 Consideration of breaches of law and policy arising from Witness B’s meetings with Ms Martin

1539. Witness B’s evidence was that she reported to Ms Martin that Astill threatened to have her family killed, that he was threatening inmates, had engaged in

1936 Ex. 38, TB 2, Vol. 7, Tab 59A, AST.002.013.0059_0015 [71]-[73].

1937 Transcript, 14 November 2023, 2286.42-47.

1938 Transcript, 14 November 2023, 2308.1-24.

1939 Transcript, 14 November 2023, 2308.26-42.

1940 Transcript, 14 November 2023, 2307.28-45; Transcript, 14 November 2023, 2309.9-43.

inappropriate behaviour with other inmates and had entered the accommodation unit. Witness B's evidence was that Ms Martin told Witness B she was a liar when she made those reports. Ms Martin did not give unequivocal evidence regarding these meetings with Witness B. She initially said she could not remember whether Witness B reported that Astill threatened to have her family killed, and then later said she had 'never heard that before'. She did not deny that she attended a meeting with Witness B and suggested that it may have occurred in a meeting she held with two or three inmates where Astill's comment regarding a 'dog smell' at muster was raised.

1540. I accept Witness B's evidence. It is significant that Astill was convicted of an offence of intimidation in relation to Witness B that included his threat to have her family killed. Witness B was clearly affected by that threat and had every reason to remember the details of her conversation with Ms Martin regarding it.
1541. No report of these allegations was ever made by Ms Martin. Ms Martin accepted that if the allegations made by Witness B were made to her, they should have been reported as required by cl. 253. Furthermore, Ms Martin did not comply with the DOJ Managing Misconduct Procedure. That policy required a report to the PSB, and she did not do so.

8.11.1.3 Contact between Ms Martin and Mr Shearer

1542. Ms Martin said that after the meeting she recalled with two or three inmates at which Astill's bullying conduct at muster was discussed (see above), she rang Mr Shearer and said, 'I don't know what to do about this man. We have put in reports in on him, but nothing is happening. I need something done.' She said that Mr Shearer said he would speak with Astill. Ms Martin was unable to recall the details but has a recollection that Mr Shearer did speak with Astill.¹⁹⁴¹
1543. Mr Shearer gave evidence that in November 2017, he received a call from Ms Martin requesting that he attend Dillwynia to support her in a meeting with Astill as complaints had been received suggesting that he was playing inmates against

1941 Ex. 38, TB 2, Vol. 7, Tab 59A, AST.002.013.0059_0015-0016 [71]-[77]; Transcript, 14 November 2023, 2300.23-37.

each other. Mr Shearer also recalled that in that phone call Ms Martin said questions had been raised regarding ‘the intelligence officer’ who had directed inappropriate or targeted searches of the cells in the Special Management Area Placement (**SMAP**) unit. It is unclear if the ‘intelligence officer’ referred to was Astill (who occasionally acted in that role) or another Intelligence Officer.¹⁹⁴² Mr Shearer made notes recording details of the conversation in his diary. The notes read:

Chief on TA [Temporary Assignment]

- *Snippets fm inmates*
- *Playing inmates against each other*

*Q intel offr – SMAP inmates complained – search that wing.*¹⁹⁴³

1544. Mr Shearer’s impression from the phone call was that Ms Martin wanted him to attend the meeting to give her message to Astill more weight.¹⁹⁴⁴

8.11.1.4 Meeting between Astill, Ms Martin and Mr Shearer

1545. Mr Shearer agreed to attend the meeting with Ms Martin and Astill, which took place on 22 November 2017. Mr Shearer recalled that Ms Martin put the allegations to Astill that were discussed during their phone call earlier in the month. He could not recall Astill saying anything in response. During the meeting, Mr Shearer reinforced to Astill the importance of him being aware of his personal approach when dealing with female inmates; and the need to be mindful that a lot of these women had suffered abuse in the past.¹⁹⁴⁵

1546. Ms Martin gave evidence that she did not have a recollection of the meeting on 22 November 2017, beyond that it occurred. In relation to what was discussed at the meeting, she gave evidence that ‘It would have been in relation to the

1942 Ex. 43, TB 2, Vol. 8A, Tab 98, AST.002.013.0061_0010 [51].

1943 Ex. 43, TB 2, Vol. 8A, Tab 98, Annexure B, AST.002.013.0061_0015.

1944 Ex. 43, TB 2, Vol. 8A, Tab 98, AST.002.013.0061_0010 [51].

1945 Ex. 43, TB 2, Vol. 8A, Tab 98, AST.002.013.0061_0010 [52].

inmates' complaint about his — his actions during muster'.¹⁹⁴⁶ When asked what the outcome of the meeting was, and whether it resulted in a warning or caution being delivered to Astill, or an Intelligence Report being sent out at her direction, Ms Martin said that she could not recall and that Mr Shearer, rather than her, was controlling the meeting.¹⁹⁴⁷

1547. On 25 November 2017, Astill authored a letter to Ms Martin.¹⁹⁴⁸ Mr Shearer was not listed as an intended recipient of the letter. It stated:

After our meeting on Wednesday 22 November where you indicated to me that you have received a number of complaints regarding me being:

- (1) Intimidating toward some inmates.*
- (2) Inmates being in fear of reprisals.*
- (3) Making, 'off the cuff remarks'*

*I would like to make you aware of certain matters.*¹⁹⁴⁹

1548. The letter then goes on to detail a number of distinct matters:

- a) 'false allegations' made by Witness O and Witness T in March 2017 against him and Ms Sheiles. Astill said that Witness O was wanting payback on Ms Sheiles, after Witness O 'had a spell in the BIU [Behavioural Intervention Unit]' and used Astill to do it. Astill said that 'it was however [Witness P] who coerced her to do it and told her what to say. Witness O will confirm this.' Astill detailed that many officers, from Senior Correctional Officers to Managers of Security, had spoken to 'these' inmates on countless occasions. He detailed that there were continual complaints made by inmates against Witness P.
- b) allegations made about an incident involving another inmate who had obtained a camera and had taken nude photos of herself for Astill.

1946 Transcript, 14 November 2023, 2298.19-33.

1947 Transcript, 14 November 2023, 2303.33-43.

1948 Ex. 3, TB 3, Vol. 17, Tab 520, CSNSW.0002.0023.2977_0001-0004; Ex. 34, TB 2, Vol 8A, Tab 97, Annexure C, CSNSW.0002.0023.2977_0001-0004.

1949 Ex. 3, TB 3, Vol. 17, Tab 520, CSNSW.0002.0023.2977_0001; Ex. 34, TB 2, Vol 8A, Tab 97, Annexure C, CSNSW.0002.0023.2977_0001.

- c) fear of 'reprisals' after inmates complained to Ms Barry about cell searches that were conducted.
- d) allegations by Witnesses B and V. Astill alleged that these inmates had a vendetta against him and had made a written record of every word that he spoke. Astill stated that the 'attack' went back to events earlier in the year. He referred to a conversation he had with three inmates who were very nervous and asked him not to say anything as they feared Witnesses V and B. He claimed that Witness GG was one of the three inmates and she had said, 'I feel embarrassed to say this Mr Astill but [Witness V] said we only talk to you to look at your peanuts, she is not very nice, please don't say anything, she controls the jobs and we will get nothing'.
- e) a muster where Astill made a comment that the area where the inmates lined up smelled like 'dog'. He claimed that as he turned to leave, Witness B said, 'You're the only dog in here'. Astill responded, 'What did you say?'. Witness B responded 'Nothing'. Astill said, 'I have more respect for people when they say things to my face, rather than behind my back, irrespective of what it is they say'. Witness B asked if that was directed to her, and Astill responded, 'All of you here, but mostly to you as you are the one who said it'. The letter indicated that at another muster weeks later, Astill made the same comment regarding the 'dog' smell remaining in the area.
- f) allegations that Witness V had approached overseer Erin McDonnell and told her that two women came up to her crying. One of the inmates said to Witness V that Astill had put his hand on her face and told her she had beautiful eyes. Witness V conveyed this to Ms McDonnell. Astill stated, 'The two inmates in question were not known to either Witness V or [redacted] and have never been identified or found since this alleged incident claimed by Witness V'.¹⁹⁵⁰ It is noted that this event is recounted in the diary provided by Witness V and Witness B to Ms Wilson.

1950 Ex. 3, TB 3, Vol. 17, Tab 520, CSNSW.0002.0023.2977_0001-0004; Ex. 34, TB 2, Vol 8A, Tab 97, Annexure C, CSNSW.0002.0023.2977_0001-0004.

1549. The letter concludes ‘there is further information that I wish to convey but as you have requested this information as of this date, I will include it later’.¹⁹⁵¹

1550. When asked about whether the various allegations contained in the letter from Astill were discussed in the meeting on 22 November 2017, Ms Martin confirmed that she had no recollection of what was discussed in the meeting, but if those matters were contained in a report, then she assumed they would have been discussed.¹⁹⁵²

1551. On 17 December 2017, Ms Martin sent Astill an email which stated:

In relation to our discussion with the Director Metro West on 22 November, 2017 and with your approval, I have spoken to the following inmates: [Witness P, Witness B, Witness V].

All inmates have agreed to individual meetings in relation to their complaints against you.

The Chaplain has agreed to support the inmates in this process. A support person for yourself is also approved.

As discussed, to end the constant rumours, innuendoes and allegations, a mediation has been determine as one strategy to reduce the risk of further misunderstanding and complaints made against you by inmates.

*A/Governor Woods will be briefed on the above and I will ask him to conduct the mediation asap.*¹⁹⁵³

1552. Mr Shearer’s evidence was that he did not hear anything further regarding Astill following the meeting on 22 November 2017 until 3 January 2018, when he received an email from Astill attaching his letter to Ms Martin dated 25 November 2017¹⁹⁵⁴ and stating:

1951 Ex. 3, TB 3, Vol. 17, Tab 520, CSNSW.0002.0023.2977_0004; Ex. 34, TB 2, Vol. 8A, Tab 97, Annexure C, CSNSW.0002.0023.2977_0004.

1952 Transcript, 14 November 2023, 2300.40-2301.17; Transcript, 14 November 2023, 2298.24-27.

1953 Ex. 39, TB 4, Tab 20, CSNSW.0002.0002.0399.

1954 Ex. 43, TB 2, Vol. 8A, Tab 98, AST.002.013.0061_0011 [57].

*I have attached a letter detailing a number of issues that I said I would provide. Governor Martin has this letter also and has arranged for Act Gov Tom Woods to deal with the issue whilst she is on leave. I have attached this for your information. If you wish to discuss any of the content please contact me.*¹⁹⁵⁵

1553. Mr Shearer's evidence was that he was shocked by Astill's letter and was not 'expecting it'.¹⁹⁵⁶ When asked whether the allegations contained in Astill's letter dated 25 November 2017 were discussed in the meeting on 22 November 2017, Mr Shearer said:

*No, it wasn't. I can recall the meeting. It was conducted in Shari's office. I was acting in the AC's [Assistant Commissioner] role that week. So I came out — I knew I didn't have much — you know, she invited me out and said she wanted to talk to me, so I — I made it out there. I can recall meeting her in her office and sitting on a small round table to the right-hand side of her desk. She called in Astill, and she — she relayed those comments that I've recorded in my diary about him being — about some complaints from inmates who were in the SMAP and also that he is — he appears to be playing inmates across each other. At that stage, I interpreted that to be a performance matter and that he wasn't showing the appropriate approach to managing female inmates.*¹⁹⁵⁷

1554. When asked whether the allegation contained in the letter that Witnesses O and T had made false allegations about Astill and Ms Sheiles sounded serious, Mr Shearer responded 'I think any allegation against an officer is serious'.¹⁹⁵⁸ When questioned further about the allegations, Mr Shearer gave the following evidence:

MR LLOYD: *Did you make any enquiries about whether the allegations that he was denying — calling them false — had been investigated by the appropriate person or body?*

1955 Ex. 34, TB 2, Vol. 8A, Tab 97, Annexure B, CSNSW.0002.0023.2976_0001.

1956 Transcript, 16 November 2023, 2494.8-9.

1957 Transcript, 16 November 2023, 2492.38-2492.2.

1958 Transcript, 16 November 2023, 2494.28-36.

MR SHEARER: No.

MR LLOYD: Why?

MR SHEARER: Because matters had been presented to the Governor. I had no knowledge. There was a couple of things in this letter which rung true to me that I recognised from incidents I knew were happening at Dillwynia. Do you want me to mention those to you?

MR LLOYD: Certainly.

MR SHEARER: There's the dogs — the greyhounds as pets — dogs. So I could resonate with that comment, and it seemed plausible. And the other one was around an incident where an inmate gained access to a camera in the education unit. She took a photo of herself there and photocopied it and put it in a letter to send home, and I think that was where it was identified. So those two things appeared to connect with some knowledge I had of Dillwynia.

MR LLOYD: I'll come to those. Just dealing with this: you're at the moment dealing with the denial of allegations, but you didn't know what the allegations were or whether they'd ever been referred to the appropriate person to be investigated.

MR SHEARER: I didn't know that, no.

MR LLOYD: Do you now know that, in fact, this appears to be a reference to allegations that had been made about what was said to be inappropriate conduct by Astill toward an inmate, Trudy Sheiles?

MR SHEARER: I don't know which inmates were offended and what the nature is, but I don't have any question to doubt that. I think there's a lot of references in here which relate to those offences.

MR LLOYD: Don't you think you should have, at a minimum, when you saw that reference, denying false allegations, found out whether they'd been put into an intelligence report and been properly investigated?

MR SHEARER: Yes, that was an error. I should have referred this to PSB.

MR LLOYD: This whole document?

MR SHEARER: Yes.

MR LLOYD: *And in particular, you should have found out whether the allegations that he was denying had been investigated by Investigations. Do you agree?*

MR SHEARER: Yes.¹⁹⁵⁹

1555. When asked about the allegation contained in the letter regarding a fear of 'reprisals' after inmates complained to Ms Barry about cell searches that were conducted, Mr Shearer gave evidence that he did not find out what the reprisals were or what the circumstances or context was. When asked whether that was a failure, Mr Shearer accepted that it was.¹⁹⁶⁰

1556. In relation to the allegations regarding Witnesses V and B's 'vendetta' towards Astill referred in the letter, Mr Shearer gave the following evidence:

MR LLOYD: *Now, again without getting bogged down, there are allegations here, in effect, that have been denied that Astill was engaged in seeking retribution against one of the inmates; true?*

MR SHEARER: Yes.

MR LLOYD: *Again, I think you've accepted, requiring investigation?*

MR SHEARER: Yes.¹⁹⁶¹

1557. When asked about the allegations involving Astill mentioning the smell of 'dog' at muster, Mr Shearer said the following:

MR LLOYD: *Can I just ask you, Mr Shearer: when you saw his account about this, saying, in effect, there was an incident where he had gone in to M Right [unit] and had said, 'Smells like dog', you took that at face value to be a legitimate and truthful answer by him, that is, he could smell the greyhounds that you knew were kept by the prisoners?*

1959 Transcript, 16 November 2023, 2495.1-2496.5.

1960 Transcript, 16 November 2023, 2497.1-8.

1961 Transcript, 16 November 2023, 2497.28-36.

MR SHEARER: *I'd seen the girls — or the ladies walking around the dogs, and it was sort of a dog (indistinct) program, and I knew that they were around about the accommodation blocks, yes.*

MR LLOYD: *Did it occur to you that this explanation in here, that he goes into M Right, talks about it smelling like dogs, in the context of a document dealing with reprisals and intimidation, that this denial or explanation might be (indistinct) was likely to be absolute rubbish?*

MR SHEARER: *I know that now. At the time, I didn't think that.*

MR LLOYD: *And that the reference to dogs was quite likely to be intimidatory language because people had — that is, inmates had made reports about him?*

MR SHEARER: *I know that now. At the time, I didn't link the two.*¹⁹⁶²

1558. Lastly, in relation to the allegation that Astill had put his hand on an inmate's face and told her she had beautiful eyes, Mr Shearer accepted that, if true, it was plainly inappropriate conduct and that it was another reason for the document to be referred out for investigation.¹⁹⁶³

8.11.2 Arranging the mediations

1559. On 3 January 2018, Mr Shearer forwarded Astill's email attaching his letter of 25 November 2017 to Mr Woods, who was Acting Governor at Dillwynia at the time, and said: 'I believe Wayne has also sent this to you. Shari (while I was present) spoke to Wayne regarding some allegations around his interaction with inmates.'¹⁹⁶⁴

1560. Later that day, Mr Woods responded to the email and said 'Yes, I was hoping to undertake the mediation this week (waiting on support person Chaplain for the inmates to attend the centre)'. Mr Shearer responded and said, 'Thanks, I was hoping to pop out on Friday for a catch up if that works for you?'. Ms Martin is

1962 Transcript, 16 November 2023, 2498.11-31.

1963 Transcript, 16 November 2023, 2498.33-2499.4.

1964 Ex. 34, TB 2, Vol. 8A, Tab 97, Annexure D, CSNSW.0002.0023.2982_0001-0002.

copied to each of the emails in this chain. No reply to Mr Shearer's last email is contained in the evidence.¹⁹⁶⁵

8.11.2.1 Evidence of Witness P

1561. As set out above, Witness P wrote a letter to her friend, Witness HH and in the letter she alleged that Witness C was having a 'fling' with one of the male officers, whose 'wife/girlfriend works here too'.¹⁹⁶⁶ As I have previously discussed, Astill got hold of the letter,¹⁹⁶⁷ following which, on Witness P's evidence, Astill would target her by giving her dirty looks, leaving her locked in during a muster, putting her on a management plan, and bullying and intimidating her. She believed that Astill also tried to turn other inmates against her, including convincing other inmates to lodge non-association orders against her. She also believed that Astill sent her to the Behavioural Intervention Unit and would manipulate her placements.¹⁹⁶⁸
1562. Witness P gave evidence that she recalled other SMAP inmates, in around November 2017, going to see Ms Wilson to make complaints about Astill, but that she could not recall if she also did so.¹⁹⁶⁹ Ms Sheiles' evidence is that Witness P was in attendance at that meeting with Ms Wilson.¹⁹⁷⁰
1563. Witness P recalled that at some point, she was told by Ms Martin that she was required to mediate with Astill, and if she declined she would be transferred to a different correctional centre. Witness P gave evidence that she thought that the mediation was Ms Martin's and the Acting Governor's idea but that she really did not know how it came about and she had not asked for a meeting with Astill.¹⁹⁷¹

1965 Ex. 34, TB 2, Vol. 8A, Tab 97, Annexure D, CSNSW.0002.0023.2982_0001.

1966 Ex. 3, TB 1, Vol. 5, Tab 12, Annexure A, AST.002.002.0021_0004.

1967 Transcript, 23 October 2023, 561.19-47.

1968 Transcript, 23 October 2023, 574.46-575.1; Transcript, 23 October 2023, 551.29-43; Ex. 3, TB 1, Vol. 5, Tab 12A, AST.002.013.0007_0002-0003 [13]-[17].

1969 Transcript, 23 October 2023, 571.25-572.25.

1970 Ex. 3, TB 1, Vol. 5, Tab 3, AST.002.002.0011_0012 [23].

1971 Transcript, 23 October 2023, 573.43-574.5; Ex. 3, TB 1, Vol. 5, Tab 12A, AST.002.013.0007_0003 [18]-[19].

8.11.2.2 Evidence of Witness V

1564. Witness V's evidence was that Ms Martin asked her to participate in a mediation with Astill, following the complaints that had been made of him intimidating and harassing her after she raised issues regarding his conduct towards Witness M. Her evidence was that she and Witness B were called to the administration office where the Governor's office was and spoke to Ms Martin separately. She said that she was not sure if another inmate was also called. Witness V's evidence was that Ms Martin said that Astill wanted a mediation and asked if she was 'willing to do that'. Witness V's evidence was that she responded, 'I don't know how I feel about that'. She was not consulted again by Ms Martin before the mediation occurred. She said that when she left Ms Martin's office, she waited outside for Witness B who also spoke with Ms Martin. When Witness B came out, she was shaking and crying.¹⁹⁷²

8.11.2.3 Evidence of Witness B

1565. Witness B recalled that at some point Ms Martin made her participate in mediation with Astill and made it clear that if she declined to do so, she would be transferred to a different correctional centre.¹⁹⁷³ As with the other two inmates, Ms Martin accepted that she spoke with Witness B regarding the mediation.¹⁹⁷⁴

8.11.2.4 Evidence of Ms Martin

1566. When asked about the mediations, Ms Martin's evidence was that Mr Shearer directed that a mediation take place between the three inmates and Astill and that it 'was not something [she] would have directed'. She recalled checking to see if the inmates agreed to participate in the mediation, which they did. She said that she 'then would have passed on to whomever was filling in for me that a mediation was going to take place'.¹⁹⁷⁵

1972 Transcript, 20 October 2023, 461.5-462.14.

1973 Ex. 3, TB 1, Vol. 6, Tab 23A, AST.002.013.0030_0009 [42].

1974 Transcript, 14 November 2023, 2313.35-2314.37.

1975 Ex. 38, TB 2, Vol. 7, Tab 59A, AST.002.013.0059_0016 [78].

1567. She insisted that it ‘wouldn’t have’ been her idea to conduct the mediations and accepted that to do so was ‘completely inappropriate’ having regard to the nature of the allegations about Astill. When asked whether she would have questioned the direction from Mr Shearer to conduct mediations, Ms Martin said she could not recall, but may have challenged it. Ms Martin said that she normally challenged ideas that she did not agree with, but given her view that Mr Shearer did not value her opinion, she may not have done so.¹⁹⁷⁶

8.11.2.5 Evidence of Mr Shearer

1568. Mr Shearer gave evidence that he ‘became aware’ Mr Woods had arranged to conduct a mediation between the inmates and Astill and believed it was on the advice of Ms Martin.¹⁹⁷⁷ He said that he had ‘no idea’ how the idea of having mediations to try and resolve the issues had come about. When Ms Martin’s evidence that mediation was Mr Shearer’s idea was put to him, he said that was incorrect.¹⁹⁷⁸ In his statement to the Special Commission, he said: ‘Mediation was not my idea but I allowed it to occur. I have no independent memory of talking with Tom [Woods] before he conducted the mediation.’¹⁹⁷⁹ He said that the only conversation he had with Ms Martin about these issues was on 22 November 2017 and he had no correspondence or communication with her since that time. He said that when he read Mr Woods’ email on 3 January 2018, it appeared to him that the matter ‘had now transitioned to mediation with the inmates. I didn’t endorse that at the time.’ Mr Shearer accepted that conducting mediations with inmates to ‘get to the bottom’ of the matter was inappropriate.¹⁹⁸⁰ Mr Shearer also said that the only occasion of which he was aware that a mediation was conducted between inmates and staff were the mediations between Astill and Witnesses P, B and V.¹⁹⁸¹

1976 Ex. 38, TB 2, Vol. 7, Tab 59A, AST.002.013.0059_0016 [78]; Transcript 14 November 2023, 2302.34-2303.43.

1977 Ex. 43, TB 2, Vol. 8A, Tab 98, AST.002.013.0061_0011 [55].

1978 Transcript, 16 November 2023, 2499.12-30

1979 Ex. 43, TB 2, Vol. 8A, Tab 98, AST.002.013.0061_0011 [55].

1980 Transcript, 16 November 2023, 2499.26-41.

1981 Ex. 43, TB 2, Vol. 8A, Tab 98, AST.002.013.0061_0011 [60].

1569. Counsel for Ms Martin submitted that the contemporaneous evidence supports her evidence that the mediation was Mr Shearer's idea. Counsel rely on an email from Mr Shearer to Mr Woods on 3 January 2018, which, it is submitted, indicates Mr Shearer wanted to come to Dillwynia again to speak to Mr Woods about the upcoming mediation.
1570. The email relied upon is in response to Mr Woods email in which he indicated he was hoping to undertake the mediation that week. Mr Shearer simply replied 'Thanks, I was hoping to pop out on Friday for a catch up if that works for you'.¹⁹⁸² I do not consider that Mr Shearer's response indicates that he wished to speak with Mr Woods about the upcoming mediation.
1571. Counsel for Ms Martin further submitted that the fact that Mr Woods was reporting to Mr Shearer before the mediations and reported to him the outcome of the mediations also suggests that they were Mr Shearer's idea. I do not accept that it follows from the mere fact that Mr Woods told Mr Shearer he was conducting the mediation, and later informed him of the outcome, that the mediations were Mr Shearer's idea. This is equally consistent with Mr Shearer's evidence that he was advised the mediations were to occur and that he allowed them to go ahead. The fact that the outcome was reported to Mr Shearer in circumstances where concerns regarding Astill's conduct with inmates had been raised with him is unsurprising.
1572. I have no difficulty in resolving the difference between Mr Shearer and Ms Martin's evidence as to who decided there would be a mediation. Mr Shearer impressed me as an honest witness who was trying to accurately recall the events. On a number of occasions, he gave evidence contrary to his own interests. This included his evidence that he allowed the mediations to occur.
1573. Ms Martin created a quite different impression and would not make concessions when they seemed to me to be required. In the present case, it is clear she recognised that mediations should not have occurred but nevertheless I am satisfied that, in what at best could be described as a clumsy attempt to avoid an apparent major management failure, it was she who chose that course.

1982 Ex. 39, TB 4, Tab 37, CSNSW.0002.0023.2982.

8.11.2.6 Evidence of Mr Woods

1574. Mr Woods gave evidence that in late 2017 when he attended Dillwynia and met with Ms Martin for a handover for the period he would be Acting Governor of the centre while she was on leave, Ms Martin asked him to conduct a mediation with some inmates. Ms Martin said she would let him know the names of the inmates, and also that he would receive a report from Astill. Mr Woods could not recall the names of the inmates or any further information regarding this conversation.¹⁹⁸³

8.11.3 Mediations

8.11.3.1 Mediation with Witness P – 16 or 17 January 2018

1575. Witness P gave evidence that she attended the mediation with Astill, which was conducted by the Acting Governor. Her evidence was that Mr Peek and the Chaplain, Ms Johnson, were also present. She could not remember when the mediation took place. Witness P's evidence is that during the mediation she raised everything that Astill had been doing to her, including that he had been intimidating towards her, bullied her and that she had overheard Astill refer to her as a 'cunt' when speaking to Witness J and ask Witness J if Witness P was 'starting shit again' in the SMAP unit. Witness P said that she told Astill this behaviour was inappropriate during the mediation. She said that she did not go into details about his behaviour towards the other inmates. She recalled that Astill told her it was all in her head and made her out to be a liar. Witness P ended up having to leave the mediation as it was making her angry.¹⁹⁸⁴

1576. Ms Johnson's evidence was that the first mediation took place on 17 January 2018 with Witness P and Astill, also attended by herself and Mr Woods. She did not know how Witness P came to be involved. She said that she did not even know that Witness P was going to be in the mediation and that 'it was a bit of a shock when [she] saw her'. Ms Johnson said that the mediation was 'very quick', and that Witness P said, 'I have nothing to say. I've got another 17 [y]ears here, so I'm not

1983 Ex. 34, TB 2, Vol. 8A, Tab 97, AST.002.013.0058_0001-0002 [4], [6].

1984 Ex. 3, TB 1, Vol. 5, Tab 12A, AST.002.013.0007_0003 [18]-[21]; Transcript, 23 October 2023, 574.46-575.20; Transcript, 23 October 2023, 579.32-36.

saying anything.’ Mr Woods and Astill accepted that, and Witness P was taken back to her room. Ms Johnson recalled that they tried to ask Witness P a few questions, but Witness P did not give up anything. Ms Johnson said that Witness P was her normal self during the mediation, ‘staunch and without emotion’.¹⁹⁸⁵

1577. In Mr Woods’ report on the mediation with Witness P, which he emailed to Mr Shearer (copied to Ms Martin) on 13 February 2018, he indicated that it took place on 16 January 2018 at 9.20am in the Governor’s office, with Ms Johnson attending as a support person for Witness P and Mr Peek attending as a support person for Astill. The report indicated that he conducted a brief overview and opened the discussion. The report indicated that Mr Woods attempted to persuade Witness P to participate but she declined. The report said, ‘It is worth noting that having three custodial staff sitting in close proximity may have been a bit much for her to feel comfortable speaking out’, and ‘I have since had a follow up meeting with her (A/MOS Kellett was present). She did speak more openly but didn’t contribute any new information other than she felt he gave her a hard time, but it has been okay in recent weeks.’¹⁹⁸⁶

1578. Mr Woods gave evidence about the three mediations but did not recall what was said by each of the inmates. His evidence was that he relied on his report sent to Mr Shearer to identify the people who attended the mediations. He gave evidence that the complaints raised during the mediations ranged from Astill’s demeanour, comments, invasion of personal boundaries, and initiation of searches. His evidence was that he did not recall the meetings ‘being anything but reasonably cordial between the parties despite that it may have been difficult for those witnesses to participate’. Mr Woods recalled the demeanour of each of the inmates at the three mediations (though not by reference to their names). He described that one of the inmates, who he could not recall that much, came into the mediation, ‘had some commentary and then left’. His memory was that she acted ‘slightly defiant in manner or with bravado’.¹⁹⁸⁷ It appears more likely

1985 Ex. 19, TB 2, Vol. 7, Tab 47A, AST.002.013.0047_0006 [36].

1986 Ex. 34, TB 2, Vol. 8A, Tab 97, Annexure E, CSNSW.0002.0023.3543_0001, CSNSW.0002.0023.3544_0001.

1987 Ex. 34, TB 2, Vol. 8A, Tab 97, AST.002.013.0058_0003-0005 [12]-[27].

than not, based on Ms Johnson's description of Witness P's demeanour at the mediation, that Mr Woods was referring to Witness P.

1579. Mr Woods had no recollection of the further meeting he attended with Witness P and Ms Kellett.¹⁹⁸⁸

1580. When asked about his involvement in the mediations, Mr Peek gave evidence that he recalled attending as a witness or a neutral third party at the mediation with Witness P and denied that he attended as a support person for Astill, as recorded in Mr Woods' letter to Mr Shearer reporting on the outcome of the mediations.¹⁹⁸⁹

8.11.3.2 Mediation with Witness V – 16 or 17 January 2018

1581. Witness V's evidence was that she attended a mediation with Astill, conducted by Mr Woods with Ms Johnson as her support person. She could not recall exactly when it occurred.

1582. Witness V said that she 'just sat there while Mr Astill said all these things to make [her] look like a liar'.¹⁹⁹⁰ She said that 'It was called a mediation but it's basically to cover Mr Astill's arse, because a lot of reports were starting to pile up against him, and it was his way to save [him]'.¹⁹⁹¹

1583. Witness V said she 'tried to say' what Astill had been doing. She recalled that she said to Astill, 'Why are you doing this to us? I refuse for you to make me feel inferior to you.' Witness V's evidence was that she said Astill made false allegations that she was putting [Buprenorphine] strips into people's drinks. She recalled that Mr Woods saw she was starting to get upset so told Astill to step out and nothing was resolved.¹⁹⁹²

1988 Ex. 34, TB 2, Vol. 8A, Tab 97, AST.002.013.0058_0003-0005 [12].

1989 Transcript, 1 November 2023, 1402.5-40; Ex. 34, TB 2, Vol. 8A, Tab 34, Annexure E, CSNSW.0002.0023.3544_0001.

1990 Ex. 3, TB 1, Vol. 5, Tab 11A, AST.002.013.0002_0004 [17].

1991 Transcript, 20 October 2023, 462.10-14.

1992 Ex. 3, TB 1, Vol. 5, Tab 11A, AST.002.013.0002_0004-0005 [17]-[18]; Transcript, 20 October 2023, 460.24-462.29.

1584. Ms Johnson's impression was that Witness V spoke well and that her mediation went for at least an hour. She recalled that at one point, Witness V detailed Astill's bullying or intimidation towards her and Mr Woods said, 'That's not professional of an officer'. She further said that she thought that Witness V presented a very good case, and that Astill had a 'staunch demeanour' towards her and was trying to intimidate her. She thought that Mr Woods 'could see the real story' and came away thinking, 'something is going to be done now and I know these girls are going to be safe'.¹⁹⁹³
1585. In Mr Woods' report on the mediation with Witness V, which he emailed to Mr Shearer on 13 February 2018, he indicated that it took place on 16 February 2018 at 9.40am in the Governor's office, with Ms Johnson attending as a support person for Witness V and Mr Peek remaining as a support person for Astill. In his statement, Mr Woods notes that the date appears to have a typing error.¹⁹⁹⁴
1586. The report indicated that Witness V 'took the opportunity to speak out' and reiterated all the 'content' that had been submitted previously and stressed how his behaviour made her feel. Astill responded and reiterated the points he made in his letter dated 25 November 2017. According to the report, the mediation took around two hours and both parties were allowed to air their issues of concern.¹⁹⁹⁵
1587. As with Witness P's mediation, above, Mr Peek gave evidence that he recalled attending as a witness or a neutral third party at the mediations with Witness V and denied that he attended as a support person for Astill.¹⁹⁹⁶

1993 Ex. 19, TB 2, Vol. 7, Tab 47A, AST.002.013.0047_0007 [37]-[39]; Transcript, 30 October 2023, 1294.14-1296.7.

1994 Ex. 34, TB 2, Vol. 8A, Tab 97, AST.002.013.0058_0002 [11]; Ex. 34, TB 2, Vol. 8A, Tab 97, Annexure E, CSNSW.0002.0023.3543_00001, CSNSW.0002.0023.3544_0001.

1995 Ex. 34, TB 2, Vol. 8A, Tab 97, Annexure E, CSNSW.0002.0023.3544_0001.

1996 Transcript, 1 November 2023, 1402.8-40; Ex. 34, TB 2, Vol. 8A, Tab 34, Annexure E, CSNSW.0002.0023.3544_0001.

8.11.3.3 Mediation with Witness B – 25 January 2018

1588. Witness B gave evidence of the mediation she participated in with Astill. Her recollection was that it took place at the end of 2017;¹⁹⁹⁷ however, Mr Woods' report on the mediation indicated it took place on 25 January 2018.¹⁹⁹⁸
1589. Witness B's evidence was that before the mediation she knew that Astill would be there, but she did not have any further information about what would be involved. She asked Ms Johnson to attend as her support person. Others present at the mediation were Astill and Mr Woods.¹⁹⁹⁹
1590. Witness B recalled that when the mediation started, Mr Woods said that 'it was between [her] and Astill and did not do anything else to control the conversation'. She stated that the mediation was a 'slanging match at [her] by Astill', who said that none of the things she had been saying were real or true and that he had been collecting paperwork on her. She described the mediation as Astill 'doing all the talking while the [Acting] Governor just sat there'.²⁰⁰⁰ Witness B stated that she 'said all the things that [she] had been saying, including about [Astill] intimidating [her], were true'.²⁰⁰¹
1591. Witness B recalled that Mr Woods eventually stopped the mediation. She stated that he then asked her something to the effect of '[a]re you not going to have a problem after this?' and she felt that she had to agree with him because Astill and the Acting Governor were there and '[t]here was nothing else [she] could say'.²⁰⁰²
1592. Ms Johnson gave evidence about the mediation with Witness B. She said that it took place on 25 January 2018 and that Witness B did not know in advance that it was occurring that day.²⁰⁰³ Ms Johnson stated that Witness B was 'really distressed' and did not 'hold it together' enough to be able to give her story as

1997 Transcript, 24 October 2023, 684.22-29; Ex. 3, TB 1, Vol. 6, Tab 23A, AST.002.013.0030_0009 [42].

1998 Ex. 34, TB 2, Vol. 8A, Tab 97, Annexure E, CSNSW.0002.0023.3544_0001.

1999 Ex. 3, TB 1, Vol. 6, Tab 23A, AST.002.013.0030_0009 [43].

2000 Ex. 3, TB 1, Vol. 6, Tab 23A, AST.002.013.0030_0009 [44].

2001 Ex. 3, TB 1, Vol. 6, Tab 23A, AST.002.013.0030_0009 [45].

2002 Ex. 3, TB 1, Vol. 6, Tab 23A, AST.002.013.0030_0009 [46].

2003 Ex. 19, TB 2, Vol. 7, Tab 47A, AST.002.013.0047_0007 [40]-[41]; Transcript, 30 October 2023, 1296.19-1297.25.

clearly as Witness V did during Witness V's mediation. Ms Johnson recalled that Witness B 'still got out what had happened' and her impression was that Astill would be held accountable as two inmates had given the same story.²⁰⁰⁴

1593. In Mr Woods' report on the mediation with Witness B, which he emailed to Mr Shearer on 13 February 2018, he indicated that it took place on 25 January 2018, with Ms Johnson attending as a support person for Witness B. The report indicates that Astill chose to participate with no support officer. According to the report, the 'majority of [Witness B's] submission appeared to be in support or defence of [Witness V]'.²⁰⁰⁵
1594. Mr Woods gave evidence that he recalled a complaint raised during one of the mediations that Astill approached an inmate sitting in a lounge chair and raised his leg and placed a foot on the chair, putting his crotch at eye level. Despite this event, he said that there was no issue of sexual assault or inappropriate sexual relationships raised during the mediations and that had there been, he would have stopped the mediation immediately and informed the NSWPF, PSB and Mr Shearer.²⁰⁰⁶ He acknowledged that the power imbalance between an inmate and an officer could not be greater, and agreed, given the knowledge he now had, that the power imbalance was going to lead inevitably to great caution by inmates, if not reluctance to disclose facts which may damage the officer and rebound upon the inmate.²⁰⁰⁷ Mr Woods explained that he viewed the conduct of Astill putting his crotch at the eye level of an inmate as intimidation, and that even though it could be seen to carry a sexual connotation he did not see it that way, or otherwise see it as having sexual content at all.²⁰⁰⁸ He likewise did not view that, or similar conduct, to be sexual harassment.²⁰⁰⁹
1595. He gave evidence that other complaints raised during the mediations, related to an incident at muster about 'dog' smell, Astill standing with his feet splayed,

2004 Ex. 19, TB 2, Vol. 7, Tab 47A, AST.002.013.0047_0008 [42].

2005 Ex. 34, TB 2, Vol. 8A, Tab 97, AST.002.013.0058_0002 [11]; Ex. 34, TB 2, Vol. 8A, Tab 97, Annexure E, CSNSW.0002.0023.3544_0001.

2006 Ex. 34, TB 2, Vol. 8A, Tab 97, AST.002.013.0058_0002-0003 [11]-[17].

2007 Transcript, 10 November 2023, 2086.15-29.

2008 Transcript, 10 November 2023, 2087.29-2088.35.

2009 Transcript, 10 November 2023, 2090.1-47.

arms folded over his chest and staring at particular inmates, and a further complaint that they felt targeted by having their cells searched.²⁰¹⁰ When asked about the ‘dog’ smell incident, Mr Woods gave evidence that the term ‘dog’ was a derisive comment that carried connotations that inmates have provided information against another inmate to police or elsewhere, and which, in some circumstances, could place an inmate at risk to their physical safety from other inmates.²⁰¹¹ Mr Woods’ evidence, however was that he took the comment to be a reference to the greyhounds program at Dillwynia and it did not cross his mind that it would be a reference to the common use of the word ‘dog’ in gaols, or among, offenders.²⁰¹² I find this evidence surprising.

8.11.4 After the mediations

1596. Ms Johnson gave evidence that a few days after Witness B’s mediation, Witnesses B and V approached her and said that their house had been ‘ramped’ [searched]. She took this as Astill taking retribution for them coming forward at the mediations.²⁰¹³
1597. Ms Johnson said that Mr Woods spoke to her about the mediation after it took place and said to her about Witness B and V, ‘they’re best friends, I think they’ve just cahooted together to do this to Officer Astill’. She understood from this comment, that Mr Woods did not believe Witnesses B and V.²⁰¹⁴ Ms Johnson’s evidence was that her ‘heart dropped’ when Mr Woods said this to her, and she was ‘a little bit beside [herself]’ thinking ‘[n]ow what are the girls going to do?’²⁰¹⁵
1598. Mr Woods said that following the mediations, he had contact with the inmates to see if they had any further run-ins with Astill and none were reported.²⁰¹⁶ As to Ms Johnson’s contention regarding a comment he made that the inmates had

2010 Ex. 34, TB 2, Vol. 8A, Tab 97, AST.002.013.0058_0002-0003 [15]-[16].

2011 Transcript, 10 November 2023, 2081.1-47; Transcript, 10 November 2023, 2094.2-27.

2012 Transcript, 10 November 2023, 2081.1-47.

2013 Transcript, 30 October 2023, 1298.26-41; Ex. 19, TB 2, Vol. 7, Tab 47A, AST.002.013.0047_0008 [46].

2014 Transcript, 30 October 2023, 1297.32-47.

2015 Ex. 19, TB 2, Vol. 7, Tab 47A, AST.002.013.0047_0008 [43].

2016 Ex. 34, TB 2, Vol. 8A, Tab 97, AST.002.013.0058_0005 [25].

concocted a story, Mr Woods said that he did not recall having conversation with Ms Johnson after the mediations, but he may have mentioned ‘that there may have been some collusion, but that was after the second or the third mediation, which was not a surprise that there was collusion’.²⁰¹⁷ Mr Woods said that ‘there were some statements that were kind of verbatim’, which would have ‘[given] [him] the thought of collusion’.²⁰¹⁸ He said that as the inmates had prior notice about the mediations, it would not be unexpected that they would have discussed certain things and that it did not mean that he discounted their complaints.²⁰¹⁹

1599. I accept Ms Johnson’s evidence. It may be that Mr Woods used the word ‘collusion’. Whatever the precise words, I am satisfied that Mr Woods was indicating that he did not believe Witnesses B and V. Ms Johnson had no reason to misrepresent her position. She was obviously seriously impacted by the situation and the failure of CSNSW to respond effectively to it.

1600. Mr Woods said that his primary purpose in conducting the mediations was resolution, so that the parties involved could move on. He said that he was not conducting an investigation, or fact finding. Implicit in this proposition is that he did not anticipate, irrespective of Astill’s conduct, that he would be formally disciplined. After the mediations, he prepared a report to Ms Martin which he secured in the Governor’s file drawer, and he had a brief telephone conversation with Ms Martin regarding the report he had left. He recalled that Ms Martin’s response was brief, to the effect of ‘yeah, thanks mate’.²⁰²⁰

1601. He gave evidence that he did not believe he heard anything at the mediations by way of misconduct by an officer, but that he had a conversation with Astill following the mediations where he raised bullying and harassment with him and referred him to a policy document.²⁰²¹

1602. The transcript was as follows:

2017 Transcript, 10 November 2023, 2097.27-44; Ex. 34, TB 2, Vol. 8A, Tab 97, AST.002.013.0058_0005 [29].

2018 Transcript, 10 November 2023, 2098.15-20.

2019 Ex. 34, TB 2, Vol. 8A, Tab 97, AST.002.013.0058_0005 [29]; Transcript, 10 November 2023, 2098.17-26.

2020 Ex. 34, TB 2, Vol. 8A, Tab 97, AST.002.013.0058_0005-0006 [30]-[31].

2021 Transcript, 10 November 2023, 2096.20-2097.15.

MR WOODS: *At the time I made a report to — (indistinct) going to say. I made a report regarding the occurrence of the mediations to the Governor. I don't recall the details. The inmates had raised their concerns that were previously raised with the Governor. They had heard the views and officer had his responses, so how they perceived certain things was explained by the officer. So I don't believe I was hearing anything of misconduct by an officer.*

MS DAVIDSON: *Because the officer had given you an explanation for that, is that —*

MR WOODS: *The explanation was provided.*

MS DAVIDSON: *The explanation was provided by the same officer who was being accused of the misconduct?*

MR WOODS: *Yes.*

MS DAVIDSON: *And you accepted that explanation?*

MR WOODS: *I wasn't making judgment. It was a mediation, and the inmates at the end of the day appeared to be content that they'd been heard. In regards to the officer's behaviour, I had a conversation with him, drawing his attention to certain things.²⁰²²*

1603. On 13 February 2018, Mr Woods emailed a separate report on the mediations to Mr Shearer (copied to Ms Martin).²⁰²³ The report concluded that the inmates had stated that they appreciated being heard and afforded the opportunity to address their issues and that the issue was of past events and 'that in recent months there had been no further problem, they avoided Mr Astill and he was rarely in their vicinity'. The report also stated that Mr Woods 'stress[ed] that all parties intimated they were getting information from third parties and that was creating angst for everyone, they had to stop being involved in "gossip"'.²⁰²⁴

2022 Transcript, 10 November 2023, 2096.22-44.

2023 Ex. 34, TB 2, Vol. 8A, Tab 97, AST.002.013.0058_0002, 0005 [10], [30].

2024 Ex. 34, TB 2, Vol. 8A, Tab 97, Annexure E, CSNSW.0002.0023.3543_0001, CSNSW.0002.0023.3544_0001.

1604. Ms Martin was asked whether she remembered reading Ms Woods' report on the mediations and said that she did not, but she 'would have' read it. She agreed that the report indicated that the allegations made by the three inmates remained unresolved. When asked whether upon receiving this report and becoming aware of the record of the mediations, she understood that she was required to take steps to refer the allegations out to the IB for the allegations to be properly investigated, Ms Martin responded, 'that's the way the Director wanted it handled'. Ms Martin disagreed that it was part of her function to ensure that an Intelligence Report was sent out following the mediations, on the basis that she was not present at the mediations and did not know what conversations Mr Shearer and Mr Woods had. She further stated that she would not go against Mr Shearer in circumstances where she 'had a number of issues with him as it was'.²⁰²⁵ She accepted that she had responsibility for managing the safety of the inmates given that the allegations had not been resolved by the mediation process, but stated that she thought that taking steps independently of the mediation process had been done by Mr Woods and Mr Shearer.²⁰²⁶
1605. Ms Johnson also gave evidence of a conversation she had with Ms Martin regarding the mediations, when she returned from leave. Her recollection was that Ms Martin said, '[h]ow did it go?', and she responded, 'Well, terrible. The two women weren't believed. So, you know, he's just got away with it.'²⁰²⁷ Ms Johnson recalled that Ms Martin then replied '[t]hey're two mates, they're, you know, they're going to — they're in cahoots with one another, they're just getting away with it'. Ms Johnson said that she replied, '[w]hat if there's six [of them]?', to which Ms Martin responded, 'I don't believe it'.²⁰²⁸ Ms Johnson's evidence was that her 'heart just dropped because [she] was again left helpless to help these women'.²⁰²⁹ Ms Johnson said that Ms Martin made no enquiry at all about what she meant by the reference to 'what if there's six [of them]'.²⁰³⁰

2025 Transcript, 14 November 2023, 2322.8-2325.40.

2026 Transcript, 14 November 2023, 2325.39-2326.34.

2027 Transcript, 30 October 2023, 1301.44-1302.10.

2028 Transcript, 30 October 2023, 1301.44-1302.25; Ex. 19, TB 2, Vol. 7, Tab 47A, AST.002.013.0047_0010 [55].

2029 Ex. 19, TB 2, Vol. 7, Tab 47A, AST.002.013.0047_0010 [55].

2030 Transcript, 30 October 2023, 1306.41-1307.9; Transcript, 30 October 2023, 1302.9-10.

1606. Ms Martin disagreed with Ms Johnson's account of their conversation following the mediations. She stated that she did not remember having such a conversation with Ms Johnson and denied that she would use the phrase 'in cahoots'. She stated that she did not recall telling Ms Johnson that the inmates were 'making it up'. When asked whether she denied saying that, Ms Martin reiterated that she did not recall it and that she would not talk to Ms Johnson about disregarding inmates.²⁰³¹

1607. Counsel for Ms Martin submitted that I should prefer her evidence to that of Ms Johnson for two reasons. First, it is submitted that Ms Johnson's account given in her statement to NSWPF on 7 May 2019, differed from the account of this conversation given to the Special Commission. In her police statement she said:

[Ms Martin] said something like 'There are only two of them and they are inmates after all' I took this to mean that she didn't believe anything they had to say. I said 'What if there were six of them?' I said this as I knew there were others who were too scared to come forward. Shari said 'I don't believe it.'²⁰³²

1608. It was submitted that Ms Johnson's account has changed and involves reconstruction rather than recollection.²⁰³³ I do not accept Ms Johnson's evidence is relevantly different. On both occasions she stated that Ms Martin said she did not believe the women.

1609. The second reason it was submitted I should prefer Ms Martin is that she would not talk about inmates that way to Ms Johnson given she was aware of 'how passionate she was towards them.'²⁰³⁴ I reject this submission. That Ms Martin would be concerned about talking in a way that disparaged inmates is entirely inconsistent with the evidence before the Special Commission.

1610. I do not accept Ms Martin's evidence. Ms Johnson was clearly distressed by the sequence of events and CSNSW's response to them. She plainly believed the

2031 Transcript, 14 November 2023, 23279-45.

2032 Ex.19, TB 2, Vol. 7, Tab 47, AST.002.002.0070_0002 [8].

2033 Submissions on behalf of Shari Martin, 22 December 2023, AST.002.013.0115_0028 [110].

2034 Submissions on behalf of Shari Martin, 22 December 2023, AST.002.013.0115_0028 [111].

substance of the allegations which we now have positive confirmation were true. Ms Martin's evidence was fundamentally that she could not recall the details of the conversation. On the other hand, Ms Johnson gave a clear account of an event which affected her deeply. I have no hesitation in accepting her account to be accurate.

1611. Mr Shearer agreed that he received Mr Woods' report as to the outcome of the mediations in February 2018.²⁰³⁵ It was put to him that the report did not reflect a satisfactory resolution of the matters that had been addressed either in the meeting on 22 November 2017 or in Astill's letter of 25 November 2017. Mr Shearer responded:

*At the time, acknowledging Tom was a clean set of eyes, that he had these — that he would have identified if there were any issues, I relied on his — his report, knowing, acknowledging that misconduct, the mediation process was not the right forum.*²⁰³⁶

1612. He accepted that the combination of things going on in the gaol that had been brought to his attention was uncommon and required him to make a report or referral to someone senior to him, to the IB or to the PSB and that this did not occur.²⁰³⁷ When queried about this failure, he stated:

*I didn't know what had occurred from the report mentioning it to Shari to 25 November to this point. She was on leave. I had no way of calling her on leave. I'd received this on 3 January, just before the mediation was supposed to occur. I sort of was in a quandary and I felt that Thomas Woods, who I had heard good things about, was an independent officer and a straight shooter, would receive these comments. He would consider them in the context of the mediation and would have flagged to me if there anomalies that needed referral. I wasn't aware if Shari had made any referrals in the preceding month or five weeks.*²⁰³⁸

2035 Transcript, 16 November 2023, 2500.31-33.

2036 Transcript, 16 November 2023, 2500.39-46.

2037 Transcript, 16 November 2023, 2501.24-47.

2038 Transcript, 16 November 2023, 2502.16-30.

8.11.5 Consideration of breaches of law and policies arising from the mediations

1613. The conclusions referred to in the following paragraphs involve preferring the evidence of Witnesses P, V and B, Mr Shearer and Ms Johnson to the evidence of Ms Martin. I have no hesitation in doing so. Witnesses P, V and B, Mr Shearer and Ms Johnson all gave clear accounts of their conversations with Ms Martin. Witnesses P, V and B and Ms Johnson were plainly affected by these events and had every reason to remember the details. Their evidence regarding Ms Martin's conduct in these events was consistent with her conduct in other instances when inmates raised complaints with her. Ms Martin was not a reliable witness. I formed the view she would endeavour to assist her own cause even if that meant foregoing a truthful answer to a question she believed to possibly be embarrassing.
1614. During the course of the mediations the inmates made a variety of allegations about Astill – some of them serious. Those allegations triggered the obligations under cl. 253 of the CAS Regulation for the various officers present. Furthermore, the DOJ Managing Misconduct Procedure was engaged.
1615. Both the Regulation and the DOJ Managing Misconduct Procedure imposed reporting obligations which meant that the Commissioner of CSNSW and PSB should have been informed of the allegations that were made. Mr Woods was obliged to report the allegations made to him in the mediations to a senior officer. I am satisfied he did so by way of the reports discussed below.
1616. Mr Woods prepared two reports on the mediations. One he provided to Mr Shearer, copied to Ms Martin, on 13 February 2018, which summarised basic details of the mediations but did not contain any details regarding what the inmates said during the mediations. I accept his evidence that he prepared another report which he left in Ms Martin's safe. The details of what was contained in this report remain unknown (the report has not been found), though I am satisfied Ms Martin read the report and from doing so became aware that the allegations remained unresolved. I am also satisfied that Mr Woods had a telephone conversation with Ms Martin regarding the report, but likewise the details of what was discussed are unknown. Ms Martin was obliged pursuant to cl. 253(2) to report the allegations arising from the mediations which were reported to her to the Commissioner of CSNSW. She did not do so.

1617. I am satisfied that Mr Shearer’s response to the matters brought to his attention regarding Astill’s conduct between November 2017 and February 2018 fell short of what was required of someone in his senior position. Mr Shearer’s lack of curiosity about the source or investigation of the allegations raised in Astill’s letter dated 25 November 2017 is remarkable. I accept that he did not initiate the mediations, but he was aware they were to occur and did nothing to prevent them, despite agreeing they were entirely inappropriate. It was insufficient for him to defer to the opinion of Mr Woods, based on the fact that he had ‘heard good things’ about him, rather than referring the allegations of misconduct for investigation or to the PSB. So much was acknowledged by Mr Shearer in his oral evidence, and in submissions made on his behalf.
1618. While I am unable to reach a conclusion as to precisely what allegations of misconduct against Astill were raised at the meeting on 22 November 2017, I am satisfied that upon receipt of Astill’s letter dated 25 November 2017, Mr Shearer became aware of allegations regarding Astill that concerned criminal offending or misconduct.
1619. It is submitted on behalf of Mr Shearer that Astill’s letter did not engage cl. 253 because:
- a) As a ‘retort’ to allegations it does not appear to be either an allegation made to a Correctional Officer within the meaning of cl. 253(1), or a report of the allegations made under cl. 253(1), that is precondition to cl. 253(2); and
 - b) Clause 253(1) creates an obligation on a Correctional Officer to report an allegation made to them about *another Correctional Officer* (emphasis in submissions). Astill’s letter could not constitute such a report.²⁰³⁹
1620. I am not satisfied that cl. 253 operates as narrowly as is submitted on Mr Shearer’s behalf. Clause 253(1) is engaged if ‘an allegation is made to a correctional officer’ about the conduct of ‘another correctional officer’. In my view, these words are capable of applying to a situation where allegations are brought to the attention of a Correctional Officer by the officer about whom they are made, and if the reporting officer disputes the truth of the allegations. Were this not so, it would

2039 Submissions of Hamish Shearer, 11 December 2023, AST.002.013.0101_0007-0008 [28]-[31].

be possible for a Correctional Officer to effectively 'cut things off at the pass' by disputing allegations against them prior to them being otherwise reported. Although he was likely unaware of cl. 253 of the CAS Regulation, this pattern of attempting to discredit allegations against him by getting in first with his own reports was one utilised by Astill on a number of occasions. In my view cl. 253 ought not be interpreted in a way which would allow such conduct to circumvent the intended purpose of the clause.

1621. In my view, Mr Shearer was obliged to report the allegations contained in Astill's letter to a more senior officer, and he did not do so.
1622. It is submitted on Mr Shearer's behalf that cl. 253 does not on its terms mandate disclosure of information a Correctional Officer may accumulate over time, and/or from various sources where each individual allegation or report made to the Correctional Officer is not of itself reportable.²⁰⁴⁰ This observation as to the terms of cl. 253 is correct. With respect to Astill's letter dated 25 November 2017, this consideration does not arise as in my view the letter contained allegations that were reportable, for the reasons set out above. With respect to Mr Woods' report on the mediations, sent to Mr Shearer on 13 February 2018, the position is somewhat less clear. The report, read in isolation, does not convey any allegations against Astill in terms precise enough to determine if they may constitute criminal offending or misconduct. The report clearly alluded to Witness V making allegations as to Astill's 'behaviour'. Had Mr Shearer made the appropriate enquiries as to what those allegations were, he would likely have been made aware that her allegations involved misconduct. Nevertheless, I am unable to conclude that Mr Woods' report must have caused Mr Shearer to form the state of belief required to oblige him to report that document to the Commissioner of CSNSW pursuant to cl. 253(2). However, it is obvious, as was acknowledged by Mr Shearer, that the entirety of the circumstances known to him at that time were exceptional, and required him to take action to ensure they were promptly and properly investigated.

2040 Submissions of Hamish Shearer, 11 December 2023, AST.002.013.0101_0008 [33].

8.12 2018 – Disclosures made to Mr Clark by Ms Sheiles

1623. Mr Clark gave evidence that in March, April and June 2018, Ms Sheiles made disclosures to him about Astill. Mr Clark prepared an Incident/Witness Report in relation to the circumstances of Ms Sheiles' disclosures around a year later, in March 2019.²⁰⁴¹ In late September or early October 2018, Mr Clark told the then Senior Assistant Superintendent – Intelligence Stephen Virgo about Ms Sheiles' disclosures, including that Ms Sheiles said she had been raped by Astill. Subsequently, Mr Virgo arranged for Ms Sheiles to meet with NSWPF and make a statement regarding Astill's conduct towards her. Her statement was signed on 10 October 2018.
1624. Mr Clark recalled that in around March 2018, Witness Z approached him while he was working in High Needs. Witness Z informed him that Ms Sheiles was scared of Astill and 'found his attitude repugnant'. Mr Clark was told that Ms Sheiles had a panic attack in response to being paged to Astill's office and Mr Clark asked Witness Z to tell Ms Sheiles to take someone with her if she was called to Astill's office.²⁰⁴²
1625. Mr Clark stated that several days later Ms Sheiles was paged to attend the Chief Correctional Officer's office by Astill. Mr Clark saw Ms Sheiles near the Wing Office and she told him that she was scared of Astill and that she did not want to attend his office as directed. He asked her why, and Ms Sheiles responded that she would tell him at a later date.²⁰⁴³ Ms Sheiles then said she was feeling unwell and retired to the wing.²⁰⁴⁴
1626. Ms Sheiles said that in early 2018, Witness Z told her that she had had a conversation with Mr Clark. Ms Sheiles said that Witness Z was concerned about

2041 Ex. 8, TB 2, Vol. 7, Tab 63, AST.002.002.0076_0005 [29]; Ex. 8, TB 2, Vol. 7, Tab 63, AST.002.002.0076_0011-0012; Transcript, 25 October 2023, T759.1-43.

2042 Ex. 8, TB 2, Vol. 7, Tab 63, AST.002.002.0076_0002-0003 [12].

2043 Transcript, 25 October 2023, 759.45-760.38; Ex. 8, TB 2, Vol. 7, Tab 63, AST.002.002.0076_0002-3 [12].

2044 Ex. 8, TB 2, Vol. 7, Tab 63, AST.002.002.0076_0003 [13].

Ms Sheiles as the door was closed with Ms Sheiles and Astill inside.²⁰⁴⁵ Witness Z asked Mr Clark to unlock the door to the office, and Witness Z told Ms Sheiles that Mr Clark responded that he could not do that because he was ‘under’ Astill and ‘subservient’ to him. Mr Clark told Witness Z that Ms Sheiles would have to unlock the door herself.²⁰⁴⁶

1627. Ms Sheiles said that Mr Clark came to see Ms Sheiles that afternoon and asked what was going on with Astill. Ms Sheiles told Mr Clark that Astill ‘was a bit inappropriate but that it was all good and not to worry’.²⁰⁴⁷

1628. Ms Sheiles said that she told Mr Clark in early 2018 that Astill made her ‘skin crawl’ and that she was very uncomfortable around him due to his inappropriate comments and innuendo towards other inmates and herself. She noticed that from that point on, Mr Clark looked out for her and would attempt to ensure she was not left alone with Astill.²⁰⁴⁸ Mr Clark also said that Ms Sheiles told him that Astill ‘made her skin crawl’ and that Astill made inappropriate comments towards her.²⁰⁴⁹

1629. Mr Clark said that in around April 2018, Ms Sheiles approached him at the High Needs office and made specific allegations of sexual assault against Astill. These allegations included that Astill gave Ms Sheiles a cup of his semen and told her to drink it.²⁰⁵⁰ Mr Clark’s evidence was that he advised Ms Sheiles that her allegations were extremely serious and that he needed to report them immediately.²⁰⁵¹

1630. Mr Clark recalled that Ms Sheiles told him that she was not mentally prepared to make a statement and pleaded with him, stating ‘I promise I will when I feel I can’.²⁰⁵² Mr Clark told Ms Sheiles that without a statement, he was unable to report

2045 Ex. 3, TB 1, Vol 5, Tab 3, AST.002.002.0013_0013 [24].

2046 Ex. 3, TB 1, Vol. 5, Tab 6A, AST.002.013.0005_0008 [50].

2047 Ex. 3, TB 1, Vol. 5, Tab 6A, AST.002.013.0005_0008 [51].

2048 Ex. 3, TB 1, Vol. 5, Tab 3, AST.002.002.0013_0013 [24].

2049 Ex. 8, TB 2, Vol. 7, Tab 63, AST.002.002.0076_0003 [14].

2050 Ex. 8, TB 2, Vol. 7, Tab 63, AST.002.002.0076_0002-0003 [15]-[16].

2051 Ex. 8, TB 2, Vol. 7, Tab 63, AST.002.002.0076_0003 [18].

2052 Ex. 8, TB 2, Vol. 7, Tab 63A, AST.002.013.0022_0004 [26]-[27].

it.²⁰⁵³ Mr Clark said that because Ms Sheiles did not want to make a complaint at that time, he did not think that it was open for him to independently make a report to the NSWPF.²⁰⁵⁴ He said that as Ms Sheiles did not want to make a statement at that time, he ‘told her if this is the case she has told me nothing’.²⁰⁵⁵ He said that it was a serious allegation against a senior staff member and without any evidence, it would have been difficult for him to raise the complaint internally.²⁰⁵⁶

1631. Ms Sheiles recalled that around this time Mr Clark was insisting that she make a statement about Astill and agreed that she had told him that she was not prepared mentally to do that.²⁰⁵⁷

1632. Mr Clark further stated that in around late June 2018, Ms Sheiles asked him to hold onto a piece of paper for her and told him that if something happened to her, to give it to the NSWPF. The piece of paper was annexed to Mr Clark’s police statement and contained three handwritten dates, which Ms Sheiles informed him were the dates on which Astill raped her.²⁰⁵⁸ Mr Clark stated that he told Ms Sheiles that her allegations were very serious, and he needed to report them. Ms Sheiles again told Mr Clark ‘I am not in the right headspace but I promise at the right time, I will’.²⁰⁵⁹ He stated that he tried to convince Ms Sheiles to report her allegations against Astill but ultimately he kept the paper at home in his safe. He stated that once Ms Sheiles reported the complaint to the NSWPF, he gave the piece of paper to them.²⁰⁶⁰

1633. Mr Clark agreed that Mr Sheiles’ allegations went ‘way beyond unprofessional behaviour’ and indicated that Astill was ‘more than likely behaving illegally’.²⁰⁶¹ Mr Clark later agreed that the allegations reflected both an extremely serious sexual assault and grave misconduct by Astill in the performance of his

2053 Ex. 8, TB 2, Vol. 7, Tab 63A, AST.002.013.0022_0004 [27].

2054 Transcript, 25 October 2023, 766.28-38.

2055 Ex. 8, TB 2, Vol. 7, Tab 63, AST.002.002.0076_0011_0003 [18].

2056 Ex. 8, TB 2, Vol. 7, Tab 63, AST.002.002.0076_0004 [19].

2057 Transcript, 17 October 2023, 241.41-37.

2058 Ex. 8, TB 2, Vol. 7, Tab 63, AST.002.002.0076_0010; Ex. 8, TB 2, Vol 7, Tab 63, AST.002.002.0076_0004 [20]-[21].

2059 Ex. 8, TB 2, Vol. 7, Tab 63, AST.002.002.0076_0004 [21].

2060 Ex. 8, TB 2, Vol. 7, Tab 63, AST.002.002.0076_0004 [21]; Ex. 8, TB 2, Vol. 7, Tab 63A, AST.002.013.0022_0004 [27].

2061 Transcript, 25 October 2023, 756.22-44.

duties.²⁰⁶² Mr Clark said that his belief at this time was that he could not advance Ms Sheiles' allegations any further without a written complaint from her,²⁰⁶³ and that he feared retribution against both himself and Ms Sheiles if he did so.²⁰⁶⁴ He also believed that he could not independently make a report to police and he was unaware of the SIU reporting function.²⁰⁶⁵ Mr Clark did not believe that there was any member of senior management that would deal with Ms Sheiles' disclosure confidentially and properly.²⁰⁶⁶

1634. Mr Clark said that in late June 2018, he spoke with Ms Sheiles in the Behavioural Intervention Unit and asked whether she had had any unwanted visitors, referring to Astill. Ms Sheiles said to Mr Clark words to the effect of 'No he hasn't been down here the creep' and Mr Clark understood that this was a reference to Astill.²⁰⁶⁷
1635. Ms Sheiles also gave evidence that Mr Clark had come to check on her in the Behavioural Intervention Unit in June 2018, and asked whether she was okay. Ms Sheiles said that Mr Clark asked her whether she had any unwanted visitors and she told him 'no'.²⁰⁶⁸ Ms Sheiles believed Mr Clark was referring to Astill and told him that she had not seen him.²⁰⁶⁹
1636. Ms Sheiles gave evidence that in mid to late September 2018 she spoke with Mr Clark about her hopes that she would be gone by the time Astill returned from the holiday he was on. Ms Sheiles said she told Mr Clark that she would tell him a few things once she was out of gaol, but Mr Clark repeatedly asked her what had happened.²⁰⁷⁰ In her first statement to NSWPF for Astill's trial, Ms Sheiles said she told Mr Clark 'in an indirect way' during this conversation that Astill had had sex with her.²⁰⁷¹ In her statement to the Special Commission, Ms Sheiles said she merely 'alluded that there was a lot more to it' and begged

2062 Transcript, 25 October 2023, 763.21-35.

2063 Transcript, 25 October 2023, 764.32-42.

2064 Transcript, 25 October 2023, 749.1-36; Ex.8, TB 2, Vol 7, Tab 63A, AST.002.013.0022_0003 [22].

2065 Transcript, 25 October 2023, 766.34-767.9.

2066 Transcript, 25 October 2023, 767.11-768.10.

2067 Ex. 8, TB 2, Vol. 7, Tab 63, AST.002.002.0076_0004-0005 [23].

2068 Ex. 3, TB 1, Vol. 5, Tab 6A, AST.002.013.0005_0008 [53].

2069 Ex. 3, TB 1, Vol. 5, Tab 3, AST.002.002.0013_0013 [26]; Transcript, 17 October 2023, 225.9-30.

2070 Ex. 3, TB 1, Vol. 5, Tab 3, AST.002.002.0011_0013-0014 [27].

2071 Ex. 3, TB 1, Vol. 5, Tab 3, AST.002.002.0011_0013-0014 [27].

him not to say anything about it.²⁰⁷² Ms Sheiles said Mr Clark was clearly stressed and concerned about her comments. Ms Sheiles said that Mr Clark returned the following day to check on her and ask what she wanted to do about her disclosure. Ms Sheiles told him that she did not want to do anything.

1637. Mr Clark's evidence is that it was not until Mr Virgo commenced at Dillwynia as Senior Assistant Superintendent–Intelligence in September 2018, that Ms Sheiles decided to report the complaint to NSWPF. Mr Clark said that soon after Mr Virgo first arrived at Dillwynia, he had a private conversation with Mr Virgo in which he told him about Ms Sheiles' disclosures, including that she had been raped by Astill, and that he was trying to encourage her to make a statement.²⁰⁷³ Mr Clark gave evidence that Mr Virgo was the first senior officer he felt he could trust with this information.²⁰⁷⁴ Mr Virgo agreed that he was approached by Mr Clark who said that Ms Sheiles wanted to speak to him about a 'sensitive matter'.²⁰⁷⁵
1638. Mr Clark recalled that Ms Sheiles asked him if she could trust Mr Virgo, and he told her that she could. Mr Clark said that, at Ms Sheiles' request, he then arranged for Mr Virgo to speak to Ms Sheiles in an interview room of the Behavioural Intervention Unit, where Ms Sheiles provided a statement about Astill's conduct towards her.²⁰⁷⁶ Mr Clark said he understood that Mr Virgo then reported Ms Sheiles' allegations to the NSWPF.²⁰⁷⁷
1639. Ms Sheiles said that the meeting with Mr Virgo occurred on 5 October 2018. Ms Sheiles said that Mr Virgo came to see her and asked if she had any information regarding former cellmates in J Unit. Later that afternoon, Mr Clark came to check on Ms Sheiles and escorted her to another interview with Mr Virgo, which Ms Sheiles had requested. Ms Sheiles said that Mr Clark encouraged her to tell Mr Virgo about the incidents with Astill, and that Mr Virgo could be trusted.²⁰⁷⁸

2072 Ex. 3, TB 1, Vol 5, Tab 6A, AST.002.013.0005_0008 [55].

2073 Transcript, 25 October 2023, 778.15-779.9.

2074 Transcript, 25 October 2023, 781.1-29.

2075 Transcript, 25 October 2023, 810.24-37; Ex. 9, TB 2, Vol. 7, Tab 64A, AST.002.013.0017_0009 [51]; Ex. 9, TB 2, Vol. 7, Tab 64, AST.002.002.0078_0001 [4].

2076 Ex. 8, TB 2, Vol. 7, Tab 63A, AST.002.013.0022_0004 [28].

2077 Transcript, 25 October 2023, 782.4-9.

2078 Ex. 3, TB 1, Vol. 5, Tab 3, AST.002.002.0011_0014 [28]; Ex. 3, TB 1, Vol. 5, Tab 5, AST.002.002.0012_0004 [12].

Ms Sheiles said that she then told Mr Virgo about her sexual encounters with Astill ‘very vaguely’ but included that she had been raped and threatened by Astill.²⁰⁷⁹ Mr Virgo did not tell her what action he would take in response to her disclosures; however, a couple of days later, after Ms Sheiles was transferred to Mulawa Correctional Centre, two detectives from the NSWPF attended and asked Ms Sheiles whether she wanted to give a statement.²⁰⁸⁰ Ms Sheiles’ statement to the NSWPF was signed on 10 October 2018.

1640. Mr Virgo agreed that he met with Ms Sheiles on 5 October 2018 and she disclosed that she had been sexually assaulted by Astill.²⁰⁸¹ Mr Virgo submitted an Intelligence Report to SIU on 9 October 2018 recording that Ms Sheiles’ had sensitive information to disclose about an officer, once she was transferred to another correctional centre.²⁰⁸² He subsequently spoke with Mr Hovey and told him that Ms Sheiles’ disclosures related to serious sexual offending. Mr Virgo understood that from this point onward, the matters disclosed by Ms Sheiles were being investigated by the NSWPF.²⁰⁸³
1641. Ms Sheiles’ account of her disclosure to Mr Clark largely accords with that of Mr Clark, but for some inconsistencies regarding the timing of her disclosures. Ms Sheiles’ gave evidence that she only disclosed to Mr Clark the specifics of what Astill had done to her the day before she saw Mr Virgo. Ms Sheiles said that on this date, she told Mr Clark ‘everything’, including ‘about the cucumber incident, the semen in the cup incident, that there had been intercourse, and some other specifics’.²⁰⁸⁴

8.12.1 Consideration of breaches of law and policies

1642. Although I have not generally discussed whether more junior officers failed in their obligations under the CAS Regulation, it is important to address the

2079 Transcript, 17 October 2023, 230.44-231.3.

2080 Ex. 3, TB 1, Vol. 5, Tab 6A, AST.002.013.0005_0009-0010 [62].

2081 Transcript, 25 October 2023, 810.24-811.7.

2082 Ex. 9, TB 2, Vol. 7, Tab 64, AST.002.002.0078_0003-0006.

2083 Transcript, 25 October 2023, 814.36-T815.7; Ex. 9, Vol. 7, Tab 64A, AST.002.013.0017_0009 [52].

2084 Ex. 3, TB 1, Vol. 5, Tab 6A, AST.002.013.0005_0009 [57].

response to the disclosures made by Ms Sheiles to Mr Clark. The disclosures made by Ms Sheiles to Mr Clark in April and June 2018 were allegations of serious criminal offences for the purposes of cl. 253(1)(a) of the CAS Regulation. Mr Clark agreed that the conduct reported by Ms Sheiles was both an extremely serious sexual assault and grave misconduct by Astill in the performance of his duties. Mr Clark was required by cl. 253(1)(a) to report the allegations to an officer more senior in rank to him.

1643. Mr Clark reported Ms Sheiles' disclosures to Mr Virgo shortly after Mr Virgo's arrival at Dillwynia in September 2018. However, this was approximately six months after he received the initial disclosure from Ms Sheiles. As I have set out at the commencement of this Chapter, the requirement imposed by cl. 253(1) of the CAS Regulation must be complied with within a reasonable time.
1644. Mr Clark submitted that there were a number of reasons why he did not make a report to a more senior officer upon receiving the initial disclosures from Ms Sheiles, including that Ms Sheiles made disclosures to him in confidence and pleaded with him not to make any report, that Mr Clark did not feel there was any senior officer he could trust with the report, and that he feared retribution against both himself and Ms Sheiles if he made a report without having any supporting documentation.²⁰⁸⁵ Mr Clark submitted that these 'difficult circumstances' justified his delay in reporting until the arrival of Mr Virgo, whom Mr Clark felt he could trust, and to whom Ms Sheiles was willing to make a direct report.²⁰⁸⁶
1645. I do not accept that these matters excused Mr Clark from his obligation under cl. 253(1) of the CAS Regulation to make a report within a reasonable time, nor do I accept that a six-month delay could be considered 'reasonable'. Mr Clark became aware of serious criminal conduct that clearly fell within the scope of cl. of the 253(1)(a) CAS Regulation in April and June 2018 and there was ample opportunity for Mr Clark to make a report to a senior officer prior to October

2085 Submissions on behalf of CSNSW Officers: Peter Barglik, Glenn Clark, Mirza Mohtaj, Stephen Virgo, Kim Wilson and Mark Wilson, 20 December 2023, AST.002.013.0113_0037 [51-57].

2086 Submissions on behalf of CSNSW Officers: Peter Barglik, Glenn Clark, Mirza Mohtaj, Stephen Virgo, Kim Wilson and Mark Wilson, 20 December 2023, AST.002.013.0113_0035 [52]; Submissions on behalf of CSNSW Officers: Peter Barglik, Glenn Clark, Mirza Mohtaj, Stephen Virgo, Kim Wilson and Mark Wilson, 20 December 2023, AST.002.013.0113_0038-0039 [58].

2018. Mr Clark's failure to report Ms Sheiles' allegations to a more senior officer for a period of six months breached cl. 253(1) of the CAS Regulation.

1646. However, there can be no doubt Mr Clark found himself in a very difficult situation. I accept he held a number of legitimate concerns which he felt prevented him from reporting Ms Sheiles' disclosures to a more senior officer until October 2018. Mr Clark was operating under the misguided belief that he could not advance Ms Sheiles' allegations without a written complaint from her. He was unaware of the ability to make an Intelligence Report outside the gaol through the SIU function. He was concerned about the prospect of retaliation. To his credit, once Mr Virgo arrived at Dillwynia, Mr Clark did report, and also facilitated Ms Sheiles to report Astill's conduct to Mr Virgo.
1647. It was submitted on behalf of Mr Clark that 'a narrow and strict application of Regulation 253(1)(a) potentially gives rise to a conflict with an officer's ultimate duty to ensure an inmate's safety'.²⁰⁸⁷ However, there are multiple ways in which management could have addressed the issue and sought to protect Ms Sheiles. One obvious step would have been to transfer Astill out of the gaol while the issue was being investigated. Clause 253 does not require the inmate who is the source of an allegation to be identified. A report could have been made which did not identify Ms Sheiles as the inmate involved. There would have been other options.
1648. In these circumstances, I do not consider that Mr Clark engaged in misconduct within s. 69 of the GSE Act in failing to comply with cl. 253(1) CAS Regulation or any other breach of the law.
1649. I have set out in Chapter 4 (section 4.2.1) the elements of the offence under s. 316 of the *Crimes Act 1900*. Although it is open to find that (a), (b) and (c) of the elements recorded at section 4.2.1 above may be satisfied with respect to Mr Clark's failure to report the information he had about the alleged offences by Astill, I consider that Mr Clark had a reasonable excuse for not making the report. Mr Clark believed on reasonable grounds that Ms Sheiles did not want

2087 Submissions on behalf of Peter Barglik, Glenn Clark, Mirza Mohtaj, Stephen Virgo, Kim Wilson and Mark Wilson, 20 December 2023, AST.002.013.0113_0036 [53].

the allegations reported, either to the NSWPF or within CSNSW, based on the repeated comments Ms Sheiles made to Mr Clark to this effect.

8.13 Mid 2018 – Ms Cox’s meeting with Ms Martin and Mr Giles, and her request for an AVO against Astill

1650. Elizabeth Cox is an inmate at Dillwynia. In mid-2018, prior to 6 June 2018, Ms Cox met with Ms Martin and Mr Giles. She informed them of a number of serious allegations concerning Astill, including that he was bringing contraband into Dillwynia and receiving sexual favours. At the meeting, Ms Cox provided Ms Martin and Mr Giles with handwritten notes she had made concerning Astill’s conduct. On or around 2 June 2018, Ms Cox told multiple officers she wanted an AVO taken out against Astill. On 6 June 2018, Ms Wilson submitted an Intelligence Report, IR-18-1378, related to these events.

8.13.1 Evidence of Ms Cox

1651. Ms Cox gave evidence of a meeting she had with Ms Martin and Mr Giles in 2018. It is apparent from the date of submission of IR-18-1378 that the meeting occurred sometime prior to 6 June 2018.²⁰⁸⁸

1652. Ms Cox described a number of incidents of significance in the lead-up to this meeting. The backdrop to these incidents was that she was assaulted by Astill in 2015 and he continued to call her to his office.²⁰⁸⁹ When she refused to provide sexual favours to Astill, she felt that he turned on her and started targeting her negatively.²⁰⁹⁰

2088 Ex. 3, TB 3, Vol. 10, Tab 171, CSNSW.0001.0021.1172_0008.

2089 Ex. 3, TB1, Vol. 6, Tab 46, AST.002.013.0009_0001-0002 [7]-[9].

2090 Ex. 3, TB1, Vol. 6, Tab 46, AST.002.013.0009_0003 [17].

8.13.2 Incident involving urine test

1653. Ms Cox recalled an incident in which Astill had paged her to see him. She did not respond to Astill's page and was then called to Medium Needs by Ms Dolly. When Ms Cox arrived, Ms Dolly told her 'I have to take you to see Mr Astill'. Ms Cox recalled that she told Ms Dolly that she did not want to go, and that Astill was a predator. Her impression was that Ms Dolly was sympathetic but made her go to see Astill anyway.²⁰⁹¹

1654. Ms Cox recalled that when she went into Astill's office, Astill told her that she had a 'dirty' [i.e., positive for drugs] urine result and wanted her to sign paperwork admitting the charge. Ms Cox stated that she refused to sign the paperwork because she believed Astill had tampered with the result. She said that Astill then became really aggressive with her and grabbed her arm violently as Ms Cox went to leave the office. Her evidence was that she got away from Astill and as she got to the door, 'Officer Riddles' (Senior Correctional Officer Grant Riddle) had opened the door to enter the office and Astill yelled at him to not let Ms Cox out. Mr Riddle shut the door in Ms Cox's face and she believed that Mr Riddle then realised that something was not right and opened the door and let her out.²⁰⁹²

1655. She then went straight from Astill's office to see Ms Dolly and was followed by Astill, who told Ms Dolly that Ms Cox needed to be moved to High Needs. Ms Cox said that she told Ms Dolly that she wanted to take an AVO out against Astill.²⁰⁹³ She stated that she later told Ms Dolly that Astill needed to be kept away from the inmates and got the impression that Ms Dolly was going to report what was happening.²⁰⁹⁴

8.13.3 Incident involving phone list

1656. Ms Cox described another occasion on which she had requested her phone list. She was told to see the Chief [Correctional Officer]. She thought she was going to see Ms Kellett, but when she got to the Chief Correctional Officer's office,

2091 Transcript, 20 October 2023, 490.34-491.10; Ex. 3, TB1, Vol. 6, Tab 46, AST.002.013.0009_0004 [26].

2092 Transcript, 20 October 2023, 492.9-31; Ex. 3, TB1, Vol. 6, Tab 46, AST.002.013.0009_0005 [27].

2093 Ex. 3, TB1, Vol. 6, Tab 46, AST.002.013.0009_0005 [28]-[29]; Transcript, 20 October 2023, 492.38-494.9.

2094 Ex. 3, TB1, Vol. 6, Tab 46, AST.002.013.0009_0005 [28]-[29].

Astill was there. He told her he couldn't give her phone list. She told him she 'knew about the things that he was doing in the gaol'. Specifically, she told him she knew he was touching young girls, changing urine samples, and bringing in drugs and contraband. She told him she was going to tell the Governor.²⁰⁹⁵

1657. After this incident, Astill asked Ms Robinson to escort Ms Cox to High Needs. Ms Cox recalled she was screaming across the compound. She told Ms Robinson she wanted an AVO against Astill.²⁰⁹⁶

1658. In her evidence, Ms Robinson recalled an incident when she was asked by Astill to escort Ms Cox across the compound and Ms Cox was screaming. The only thing she could recall Ms Cox screaming was 'just 'cause I don't suck your cock'.²⁰⁹⁷

1659. After this incident, Ms Cox put in a request to see the Governor. She reported that she had had enough, stating 'I had all these girls coming to me and I knew I had to do something'.²⁰⁹⁸

8.13.4 Evidence of Ms Dolly

1660. Ms Dolly gave evidence that on an occasion on which she was the Acting Senior in Medium Needs, Ms Cox came to her and latched onto her, wrapping her arms around her, stating that Astill had paged her to go to the Hub and pleading 'Please don't make me go Dolly, please don't make me go'.²⁰⁹⁹ Ms Dolly said that she thought this was odd behaviour by Ms Cox because she had never seen her in an emotional state, and that Ms Cox was very distressed and crying. Ms Dolly said that she believed that for Ms Cox to have acted that way, there was something seriously wrong.²¹⁰⁰

2095 Ex. 3, TB1, Vol. 6, Tab 46, AST.002.013.0009_0005-0006 [32].

2096 Ex. 3, TB1, Vol. 6, Tab 46, AST.002.013.0009_0006 [33].

2097 Transcript, 2 November 2023, 1500.1-1501.25.

2098 Ex. 3, TB1, Vol. 6, Tab 46, AST.002.013.0009_0006 [34].

2099 Ex. 16, TB 2, Vol. 8, Tab 77, AST.002.013.0026_0005 [28].

2100 Ex. 16, TB 2, Vol. 8, Tab 77, AST.002.013.0026_0005-0006 [28]-[29].

1661. Ms Dolly said that she then locked Ms Cox in the storeroom and asked Correctional Officer Peter Barglik to stand at the door and not let anyone in. Ms Dolly said:

Maybe five minutes later, Astill come screaming in the door. He said, 'Where the fuck is she you fat bitch?' I said, 'I don't know what you're talking about.' He yelled, 'I know she's fucking here.' I played dumb and said, 'I don't know what you're talking about.' He slammed the door and left.²¹⁰¹

1662. Ms Cox did not recall the incident with the storeroom occurring.²¹⁰² She did recall an occasion where she was standing out of sight, near the Medium Needs office, and she heard Astill yelling at Ms Dolly words to the effect of 'where the fuck is she, you fat bitch', and 'I know she's fucking here', but disputed that she was in a storeroom.²¹⁰³

1663. Ms Dolly said that she then took Ms Cox to Ms Martin. During the walk to Ms Martin's office, Ms Cox told Ms Dolly that she wanted an AVO against Astill and said that he had threatened Ms Cox's family with 'bikies'.²¹⁰⁴ Ms Dolly said that when she got to Ms Martin's office with Ms Cox, the following occurred:

When we arrived, I knocked on the door, I said to Governor Martin, 'Ma'am, [Ms Cox] is here. She would like to take an AVO out against Wayne Astill.' Shari jumped up out of her chair and she said, 'You are not taking a fucking AVO out against one of my best officers. You're a fucking troublemaker (directed toward me), get her the fuck out of here.' She told me to take [Ms Cox] to the BIU [Behavioural Intervention Unit], then radioed and said take her to high needs. She did not ask [Ms Cox] in my presence what it was about. Shari Martin put her on a truck the following day and transferred her to another gaol.²¹⁰⁵

1664. Ms Cox did not recall being taken to the Governor by Ms Dolly on this occasion.²¹⁰⁶

2101 Ex. 16, TB 2, Vol. 8, Tab 77, AST.002.013.0026_0006 [30].

2102 Transcript, 20 October 2023, 491.12-17; Transcript, 20 October 2023, 525.41-526.4.

2103 Transcript, 20 October 2023, 526.5-28.

2104 Ex. 16, TB 2, Vol. 8, Tab 77, AST.002.013.0026_0006 [30].

2105 Ex. 16, TB 2, Vol. 8, Tab 77, AST.002.013.0026_0006-0007 [32].

2106 Transcript, 20 October 2023, 526.38-527.38.

1665. Ms Dolly also recalled that on another occasion, Ms Cox came to her in the Medium Needs office stating that her urine samples had been changed. Ms Dolly could not recall whether Ms Cox had said they were changed from clean to dirty, or dirty to clean. Ms Dolly said she heard Ms Cox yell out at Astill something to the effect of ‘Why don’t you change my urine like you did for [one of the other inmates]’.²¹⁰⁷ Ms Dolly stated that Astill came over 20 to 30 minutes later and said that he had told Ms Cox he would move her to High Needs and asked Ms Dolly to move her.²¹⁰⁸

8.13.5 Meeting with Ms Martin and Mr Giles

1666. Ms Cox said that she submitted an Inmate Request form to speak to Ms Martin. She stated that her request form did not have any information on it that referred to Astill.²¹⁰⁹ Ms Cox recalled that a day or two after she submitted her request form, she was called down to the ‘hole in the wall’, which is where inmates went to be taken into the Governor’s office. She assumed that she was being called to see Ms Martin because of her request form. However, when she arrived, Ms Martin and Mr Giles were present and informed her that she was there because Astill had accused her of attempting to bribe him when she had tried to get her phone list.²¹¹⁰

1667. Ms Cox said that she made a number of disclosures about Astill to Ms Martin and Mr Giles. Her disclosures included her suspicion that Astill had tampered with her urine sample, together with a range of complaints about Astill’s conduct in respect of other inmates. Ms Cox stated that she did not discuss anything to do with herself, because she knew that Ms Martin did not like her, so instead, tried to focus on what was happening to other inmates albeit omitting the inmates’ names.²¹¹¹ Ms Cox said that she told Ms Martin and Mr Giles about seeing Astill bringing tobacco into Dillwynia (including that she had seen him bring it in), that Astill was having people collect ‘debts’ for him, that he was receiving sexual favours, and that he was bringing in a range of contraband, including jewellery,

2107 Transcript, 27 October 2023, 1125.1-20.

2108 Transcript, 27 October 2023, 1125.24-38.

2109 Ex. 3, TB1, Vol. 6, Tab 46, AST.002.013.0009_0006 [38].

2110 Transcript, 20 October 2023, 501.6-34; Ex. 3, TB 1, Vol. 6, Tab 46, AST.002.013.0009_0007 [39]-[40].

2111 Ex. 3, TB 1, Vol. 6, Tab 46, AST.002.013.0009_0007 [40]; Transcript, 20 October 2023, 502.11-23.

clothes and make-up.²¹¹² She also reported to Ms Martin and Mr Giles that Astill was sexually harassing a number of young inmates and had a ‘hit list’.²¹¹³

1668. Ms Cox’s evidence was that she had taken notes that she had been keeping of incidents involving Astill to the meeting with Ms Martin and Mr Giles. She had four foolscap pages as well as a notebook in which she recorded the dates and times of incidents involving Astill.²¹¹⁴ Her notebook included details of the substance of the incidents – for example, Astill’s sexual harassment of inmates, as well as the fact that Astill was bringing drugs into Dillwynia that he was trading for sexual favours.²¹¹⁵ Ms Cox stated that Ms Martin and Mr Giles did not read her notes during the meeting, but Mr Giles made a photocopy of them which was retained by Ms Martin after Ms Cox left. Ms Cox said she told them what was in the notes.²¹¹⁶

1669. Ms Cox stated that at the end of the meeting, Ms Martin said to her, ‘even if I didn’t believe you, I have to err on the side of caution’. She took this to mean that Ms Martin believed her and was going to report it higher up and do something about Astill. Ms Cox stated that following this meeting, she had to be escorted by two officers anytime she went anywhere outside of High Needs. She recalls that she was told by one of the officers that this was for Astill’s protection. Her evidence was that she did not notice anything different about how Astill was treated.²¹¹⁷

8.13.6 Evidence of Ms Martin

1670. Ms Martin’s evidence was that on one occasion a ‘hysterical’ Ms Cox was brought to her office by a staff member stating that she wanted an AVO against Astill because Astill had threatened her.²¹¹⁸ Ms Martin recalled that Ms Cox appeared to be under the influence of an illicit substance. However, Ms Martin also stated

2112 Transcript, 20 October 2023, 502.15-28.

2113 Transcript, 20 October 2023, 502.44-503.29.

2114 Transcript, 20 October 2023, 504.1-33; Ex. 3, TB 1, Vol. 6, Tab 46, AST.002.013.0009_0007 [40].

2115 Transcript, 20 October 2023, 504.26-503.3.

2116 Transcript, 20 October 2023, 505.9-22.

2117 Transcript, 20 October 2023, 507.12-T508.16; Ex. 3, TB 1, Vol. 6 Tab 46, AST.002.013.0009_0007 [45].

2118 Ex. 38, TB 2, Vol. 7, Tab 59A, AST.002.013.0059_0015 [67]; Transcript, 14 November 2023, 2339.7-19.

that she had known Ms Cox for a very long time and ‘believed her’.²¹¹⁹ She recalled trying to calm Ms Cox down and said that she told Ms Cox she would ‘get an officer to escort her to the clinic, so she could feel safe and obtain whatever medical support she needed. Again, she appeared under the influence.’²¹²⁰ Ms Martin also stated that she told Ms Cox that she would need to be moved to another facility for her own wellbeing, and that Ms Cox responded ‘you won’t investigate you f...ing c... You are just trying to get rid of me.’²¹²¹ Ms Martin said that she responded, ‘no I am not, it was important if Astill had done this that [Ms Cox] felt safe and so that it could be investigated’.²¹²² Ms Martin said that ‘there would have been’ another member of executive or senior management also present during this meeting, and that to the best of her recollection it was Ms Kellett who was present. She stated that she would have asked an executive or the Intelligence Officer to raise a report in relation to this incident and that it would have been externally investigated.²¹²³

1671. Ms Martin did not recall an occasion when Ms Dolly told Ms Martin that Ms Cox wanted to take out an AVO against Astill and she responded ‘You are not taking a fucking AVO out against one of my best officers’, or called Ms Dolly a ‘troublemaker’ and said ‘get the fuck out of my office’.²¹²⁴ She did not recall telling Ms Dolly to take Ms Cox to the Behavioural Intervention Unit and then after they had left her office, radioing Ms Dolly to tell her to take Ms Cox to the High Needs area instead of to the Behavioural Intervention Unit.²¹²⁵
1672. In the course of her evidence, Ms Martin was shown an Intelligence Report submitted on 6 June 2018 (IR-18-1378),²¹²⁶ authored by Ms Wilson. Among other things, it records that Ms Cox provided paperwork to Ms Martin which involved various ‘points of interest’ in respect of Astill.²¹²⁷ I am satisfied this paperwork is

2119 Ex. 38, TB 2, Vol. 7, Tab 59A, AST.002.013.0059_0015 [67]-[68].

2120 Ex. 38, TB 2, Vol. 7, Tab 59A, AST.002.013.0059_0015 [68].

2121 Ex. 38, TB 2, Vol. 7, Tab 59A, AST.002.013.0059_0015 [67].

2122 Ex. 38, TB 2, Vol. 7, Tab 59A, AST.002.013.0059_0015 [67].

2123 Ex. 38, TB 2, Vol. 7, Tab 59A, AST.002.013.0059_0015 [67].

2124 Transcript, 16 November 2023, 2408.19-41.

2125 Transcript, 16 November 2023, 2408.37-47.

2126 Transcript, 14 November 2023, 2334.18-30.

2127 Ex. 3, TB 3, Vol. 10, Tab 171, CSNSW.0001.0021.1172_0003.

a reference to Ms Cox's notes of incidents involving Astill that she said she had when she met with Ms Martin and Mr Giles.

1673. The allegations in the Intelligence Report are extremely serious and include allegations of Astill requesting Ms Cox to assault another inmate; facilitating inmate moves with respect to inmates to whom Astill 'talks dirty, touches with obvious sexual overtones [sic]';²¹²⁸ failing to act on allegations about inmates selling drugs; filing false and misleading reports to Ms Martin as a 'pre-emptive strike' to discredit allegations, and to invoke negative consequences;²¹²⁹ making inappropriate sexual comments to young inmates with sexualised touching and fantasy-like desires being disclosed; threatening payback against inmates who informed on him; allegations that he was bringing tobacco in to the centre for inmates; allegations that inmates were attending the Hub and that on closer inspection all lights were off and the door was locked in the context of inmates incurring some kind of 'bill' which needed to be paid, suggesting that there was inappropriate sexual activity going on.²¹³⁰ The record of the information in Ms Cox's 'paperwork' is broadly consistent with Ms Cox's evidence of her oral disclosures to Ms Martin and Mr Giles.

1674. Ms Martin believed that the meeting described by Ms Cox, and the meeting referred to in IR-18-1378, was the same meeting she recalled having with a 'hysterical' Ms Cox.²¹³¹ Her memory of this meeting is clearly faulty, as she recalled Ms Kellett being present. Rather than Ms Kellett, it is clear that Mr Giles was present. She could not recall Ms Cox raising the allegations about Astill, as described above, during that meeting, although she accepted that Ms Cox handed her paperwork recording allegations.²¹³² Ms Martin accepted that IR-18-1378 and the notes described by Ms Cox appeared to concern the same material and stated, '[i]n this incident, I didn't read the notes, I would have given them to the intelligence officer', and that Ms Cox 'was hysterical. I was trying to calm her

2128 Ex. 3, TB 3, Vol. 10, Tab 171, CSNSW.0001.0021.1172_0004.

2129 Ex. 3, TB 3, Vol. 10, Tab 171, CSNSW.0001.0021.1172_0004.

2130 Ex. 3, TB 3, Vol. 10, Tab 171, CSNSW.0001.0021.1172_0003-0005.

2131 Transcript, 14 November 2023, 2342.7-30.

2132 Transcript, 14 November 2023, 2342.20-30.

down'.²¹³³ When clarification was sought, Ms Martin reiterated that she did not read the notes and would have given them to the Intelligence Officer.²¹³⁴

1675. Further, while Ms Martin did not recall Ms Cox raising suspicions during this meeting that Astill had changed her urine results from clean results to dirty results, she did recall 'another occasion' on which an inmate, possibly Ms Cox, raised a concern in relation to tampering with urine samples and she contacted urinalysis to ask whether this was possible.²¹³⁵

1676. As to Ms Cox's evidence that after the meeting she was escorted around Dillwynia, Ms Martin accepted that, after she was consulted, Astill was advised he should not have any further formal contact with Ms Cox and Ms Martin stated that she took this step for Ms Cox's wellbeing.²¹³⁶

8.13.7 Evidence of Mr Giles

1677. Mr Giles gave evidence about this meeting as follows:

MR LLOYD: *And I'll just take you through some of the things she says happened to get your response. She said that the first thing that happened in this meeting was that she was informed that Astill had made an allegation that Ms Cox had tried to bribe him in relation to some dirty urine results. Do you remember that happening?*

MR GILES: *Yep. Yep.*

MR LLOYD: *And what happened after that issue was raised at the meeting, Ms Cox told us, was that she said she was suspicious that Astill had falsified the urine results because she knew that her urine samples ought to be clean.*

MR GILES: *That's right. She did say that. Yep. In them sort of words, yes.*

2133 Transcript, 14 November 2023, 2342.20-42.

2134 Transcript, 14 November 2023, 2342.42-2343.10.

2135 Transcript, 14 November 2023, 2340.24-36.

2136 Transcript, 14 November 2023, 2346.11-2347.8.

MR LLOYD: *She then told us in her evidence that after that topic was discussed, she then moved on to level a range of other allegations against Astill in terms of a range of matters of misconduct towards inmates —*

MR GILES: *Correct.*

MR LLOYD: *—just broadly. I'll take you to the detail. Do you remember at the meeting it moving on to that kind of thing?*

MR GILES: *Yes.*

MR LLOYD: *She said — she didn't name any inmates other than herself, but she said she had seen Astill bringing tobacco into the Centre, and she said that he was having people collect debts for him. Now, just pausing there, do you remember that?*

MR GILES: *No, she didn't say that.*

MR LLOYD: *Are you sure?*

MR GILES: *Positive.*

MR LLOYD: *She said to us in her evidence that she went on to say:*

'He was getting payment, including by inmates performing sexual favours.'

MR GILES: *She didn't say that at the meeting whilst I was there.*

MR LLOYD: *And he wasn't — she also told us that she said at this meeting:*

'He wasn't only bringing in drugs; he was bringing in jewellery, bringing in anything that was censored, clothes, make-up and...'

In her description:

'...things that make women feel like women.'

MR GILES: *No, she didn't say that whilst I was there.*

MR LLOYD: *She told us that at the meeting she went on to say he had a hit list of women, that several young girls, talking 18 to 20s — mid-20s, who were coming to her and asking for help.*

MR GILES: *No. She didn't — didn't say that.*

MR LLOYD: *And that she said that he was sexually harassing a number of inmates, as in, being sexually inappropriate with inmates between 18 and their mid-20s.*

MR GILES: *Definitely not.*

COMMISSIONER: *Mr Giles —*

MR GILES: *Yes, sir.*

COMMISSIONER: *—everything that Mr Lloyd has put to you that Ms Cox said happens to be true, doesn't it?*

MR GILES: *No, that's incorrect, Commissioner. That's incorrect.*

COMMISSIONER: *What? What's not true? The content of what he says Ms Cox said is true?*

MR GILES: *Sorry —*

COMMISSIONER: *All those events that she related were happening in the gaol.*

MR GILES: *We understand that now.*

COMMISSIONER: *Yes. All true.*

MR GILES: *Yes, sir. Yes.*

MR LLOYD: *And I just continue to put what she told us in her account, that she had four foolscap pages of notes which she handed over during the meeting.*

MR GILES: *Correct.*

MR LLOYD: *And she said that the foolscap pages contained details of the kinds of things she was saying at the meeting.*

MR GILES: *She said that but didn't say about any— any sexual inappropriate behaviour by Astill. She said other things, which I'm sure you'll come to.²¹³⁷*

1678. He recalled the discussion about the dirty urine results and Ms Cox's allegation that Astill had falsified the results. He also recalled Ms Cox's complaint about Astill going into units and treating certain inmates differently.²¹³⁸ Mr Giles was adamant that Ms Cox did not in his presence report that Astill was bringing contraband (including tobacco, drugs and jewellery) into Dillwynia or that Astill was having inmates collect debts for him, or that Astill was sexually harassing, or being sexually inappropriate, with inmates. He agreed that Ms Cox provided her handwritten notes to Ms Martin and accepted that he made a copy of them. He said that he did not read the notes but understood that the notes recorded Ms Cox's complaints.²¹³⁹ Finally, he accepted that if Ms Cox had disclosed to him and Ms Martin what she said she disclosed, then it was necessary for the NSWPF to be notified.²¹⁴⁰

8.13.8 IR-18-1378

1679. IR-18-1378 was submitted by Ms Deborah Wilson on 6 June 2018. It relevantly recorded:

On 27/04/2018 a report was submitted by Chief Wayne ASTILL stating the following:

'About 11:45am on Friday 27/04/2018 inmate [redacted] COX, Elizabeth came to the Chiefs office in Medium Needs asking if she could speak to me. Cox sat down with tears in her eyes and said "I'll cut to the chase, I've got 2 dirty urines coming my way, I want you to do something for me, make them go away I know you can do it you did it for [Witness JJ] with her gabapentin". I said "I don't know [sic] where you got this idea from, urinalysis is sent to another location and done there and the results are sent back here. No one from the gaols handle the samples after they leave the centre." Cox then said "you go overseas and stay with her mother". I said "I have met [Witness JJ's] mother about 3 times in the processing area when she has come to visit her and I went overseas prior to ever meeting her mother, so I don't know who has fed this rubbish to you.'

2138 Transcript, 17 November 2023, 2599.11-2603.30.

2139 Transcript, 17 November 2023, 2600.3-2603.35.

2140 Transcript, 17 November 2023, 2605.39-2606.38.

Cox said “three inmates have put application in to ICAC [Independent Commission Against Corruption] about it anyway, so what do I have to do to get something done, sell officer’s home addresses or something”. I said “best you leave now”. Cox got up and walked out of the office. It was obvious that Cox was making threats as to where staff live with the intent to intimidate me to do something for her. I know she knows exactly where officers Curtin and Barling live and most likely where my son and family live in my old house in [redacted] as Cox did live in the street behind me in the past.’

On 22/05/2018 Chief Kellett submitted a report stating the following:

‘HS-[redacted] approached myself asking if she could talk to me about a [sic] officer. HS went on to say that she had heard on the compound from other inmates that Chief Astill had been doing favours from bringing in tobacco to sexual act with the [redacted] inmates. Because of what she had heard on the compound she decided to put the rumours to the test as she is currently the main hygiene cleaner for the Chief’s and Principal area which is located within the medium needs area. HS made an agreement with Chief Astill that if she done [sic] a good job in cleaning the Chief’s office that he would give her a lollypop that she had spotted on the desk in his office. On the completion of cleaning the office Officer Astill handed HS the lollypop from the desk. HS went on to say that if I would like to confirm the rumours within the centre I should speak to [redacted] COX Elizabeth. I would like to highlight that there is a number of reports submitted by officer Astill regarding his interaction with inmate COX asking Chief Astill for favours regarding her pending urine (make them go away) as she feels that they will return with a positive indication to her drug use within the centre. COX also has made alleged allegation regarding his interaction with the inmates. I believe that this interaction with HS has been partly fuelled by COX and Chief Astill’s reluctance to make COX’s urine disappear or go away. It can also be said that both these inmates are known to associate on the compound and reside in the same until [sic] at this time, are associates on the outside and are currently colluding to conspire against Chief Astill.’

COX later handed General Manager Martin some paperwork stating the following: Points of Interest:

- 'Entering [redacted] cell after lock-in, alone to boast & high five for a job well done ie: placing me on boxes. Approx 3.12.17 & witnessed by several inmates including [Witness X] who was in [redacted] cell with her.
- Tampering/altering urinalysis results to suit.
- Showing my personal information to [redacted] by way of computer in Chiefs office including my current phone numbers listed ie: family, friends, legal. Fully aware threats [sic] had been made.
- Request I assault [sic] another inmate [redacted] stating I've got more go in me & someone has to shut her up (witnessed [sic] by [Witness X]).
- Informing myself & other inmates of who has "dogged" on fellow inmates, when & what they said.
- Informing me that Intel officer D. Wilson is gunning for me & is trying to "fuck him up the arse hard". He is just byding [sic] his time until retirement.
- Booked visits for [Witness JJ] and [redacted] after lines closed on Fri/Sat 3pm for Sun 1pm session around either.
- Openly divulges [sic] discussions between inmate informers & Intel officer Wilson. As well as character assassinations on both Wilson & Chief Khellet [sic].
- Facilitating inmate moves in at least Med needs to inmates whom he talks dirty, touches with obvious sexual overtones [sic] & that of their friends.
- Did not act on information given regarding [Witness JJ] selling bupe on the compound. [Witness JJ] told him herself & that it was for tobacco & gold jewellery. I believe, according to [Witness JJ], Mr A even ensured some gold items where [sic] placed on [Witness JJ]'s property card. [Witness JJ] even offered to have him do the same for friends including myself; however my jewellery is already entered as I was received into SWCC [Silverwater Women's Correctional Centre] with the items.

Items stolen from buy ups were found in [Witness JJ]'s cell. Inmate responsible no [sic] in DCC [Dillwynia Correctional Centre].

- *Filling [sic] false & misleading reports to GM to invoke negative consequences [sic] & to silence [sic] or discredit these accusations. Pre-emptive strike or thought I had already reported to GM [General Manager] or ICAC.*
- *Ignored information given by myself that [redacted] had asked me to introduce drugs into the gaol on her behalf & and when told NO went on to organise one of her visitors to visit someone else as her husband is band [sic] from visiting. Her explanation for Mr R ban was that he had assaulted [sic] officers previously.*
- *Ignored intel [redacted] was using stand over tactics to ensure her 'drop' was taken & in turn handed over to her.*
- *4/5/18 told inmate, when asked to print off hi min photo, he can't do anything shifty atm [at the moment] because a certain inmate has red-lighted him to the GM.*
- *Was heard to mumble 'game on' as I walked past. When on muster stares me down with smirk displayed.*
- *Told my m8 he can [sic] do anything shifty right now because a certain inmate has red lighted him with the GM & put him under the microscope. 5/5*
- *Told [redacted] girl shes racked up a big tick bill; she'll have to pay soon. Xmas 2017 or Australia day 18.*
- *Had [Witness JJ's] mother [redacted] property hunting overseas for cheap or flipable [sic] houses to lease to keep income flowing post retirement.*
- *Was planning overseas possibly with Hocky [sic] & Michelle was to accommodate to assist [sic] in cost cutting said holiday. (check hols).*
- *Was informed certain inmate was onselling prescribed Gabapantons to [Witness JJ] and [Witness JJ] was to incur [sic] a positive urine*

test for these specific pills. Neither inmate was halted for this illegal practice. Hence [Witness JJ] maraculouse [sic] negative results.

- *Innappropriatly discussess venereal [sic] diseases with 20 & under inmates.*
- *Innappropriate [sic] sexual comments to young girls coupled with touching & fantasy-like desires.*
- *Threats of payback & pre-emptive strikes on inmates who will inform on his indescreptions [sic].*
- *6.5.18 knew I was at visits as I walked past him & Mr Riddles. Apon [sic] letting another inmate into the unit he said hello to & asked how another inmate was before enquiring "where's Cox?" The inmate & others present thought this strange.*
- *Threatening inmate [redacted] being abusive and aggressive.*
- *Talk on compound that he is bringing tobacco into the centre for inmates.*
- *I have observed certain inmates attending 'the hub'. On closer inspection all lights are off, office door shut & hub door locked.*
- *Pay the piper comment – tick bill.*
- *Asked an inmate "what's Coxys drug of choice".*
- *Comments Mon 14th May to [redacted] reliable source informed me he borrowed a reasonable sum of \$\$\$ from [redacted] for the purpose of paying off his new car.'*

On 02/06/2018 it is reported that COX approached staff wanting to place an AVO on Chief Astill. COX was then moved to BIU [Behavioural Intervention Unit] to eliminate any contact with Chief Astill and General Manager Martin was informed of situation. Chief Astill was then advised that he is to limit all contact with COX and that any formal matters requiring interaction with COX to be undertaken by other executive staff. COX was then interviewed regarding the issue. COX stated that she no longer wanted an AVO and provided application #060/18 stating that she could associate with Chief Astill but requested that all formal dealings

with her be conducted by other executive staff. COX was then returned to her unit in high needs where she is on a management plan to address her drug seeking behaviour.

A further report has been submitted recommending a change of placement for COX.

Local Analysis

...

In relation to the points of interest submitted by COX, the following is provided:

...

- It cannot be substantiated that Chief Astill entered a cell after lock in alone, no other witnesses have come forward.*
- Urinalysis is completed by an independent laboratory.*
- Cannot be substantiated if personal information of one inmate was shown to another inmate however, it is known that [redacted] was questioning whether COX had her husbands [sic] telephone number on her account as she claimed COX was calling him.*
- Cannot be substantiated if COX was asked to assault another inmate.*
- Cannot be substantiated that information was given on fellow inmates.*
- The information in relation to intel officer (author) is incorrect.*
- It is not unusual for an executive officer to have a visit booked after hours dependant [sic] on circumstances.*
- Discussing information given by informers is part of the intelligence role.*
- It is not unusual for an executive officer to co-ordinate inmate moves dependant [sic] on circumstances.*
- It cannot be substantiated whether discussions evolve around sex.*
- Information regarding [Witness JJ] was commonly known amongst staff with regular searches conducted.*

- *It has been confirmed that [Witness JJ] has had jewellery confiscated which was not on her property card and there has been a report submitted in relation to this.*
- *It is confirmed that [Witness JJ] was found in possession of a pair of shoes which had been stolen from the buy up shop by [redacted] suspected as being for payment of illicit drugs (reports submitted by Principal Industries Officer Avery).*
- *Filing false and misleading reports to General Manager cannot be substantiated.*
- *Both COX and [redacted] were known to staff for suspected drug introduction and that [redacted] was also a 'standover'.*
- *The comment in relation to borrowing a reasonable sum of money to pay off his new car are unsubstantiated, also, the cars are reportedly second hand.*
- *The remainder of information cannot be substantiated.*
- *Prior to this information there has been nothing to suggest tobacco being introduced illegally by any staff member.*

The majority of information supplied cannot be proven as it relies on hearsay and given COX's history and previous interactions with staff, it is probably she is being vindictive towards Chief Astill as he would not be corrupted. There is however, previous reports in relation to Chief Astill's interactions with inmates.

...

Summary:

[redacted] Elizabeth COX approached CSNSW staff member Wayne ASTILL requesting they tamper with urinalysis in order to make the non prescribed ones go away and when refused, COX then stated to ASTILL 'so what do I

have to do to get something done, sell officer's home addresses'. COX has also submitted a number of allegations against Mr ASTILL.²¹⁴¹

8.13.9 Factual findings

1680. There are some critical differences between the accounts of the meeting given by Ms Cox on the one hand, and Ms Martin and Mr Giles on the other.
1681. Ms Cox was an impressive witness. She plainly was doing her best to recall events which were of particular significance to her. She clearly had a good recollection of the meeting with Ms Martin and Mr Giles. There was no reason for Ms Cox to give false evidence.
1682. It was submitted on behalf of Mr Giles that I should treat Ms Cox's evidence with a degree of caution, 'and even scepticism', in circumstances where she has been sentenced for murder (in 1999) and 'potentially other offences'.²¹⁴² Ms Cox's criminal history is not before me. Nothing about the bare fact that she has been sentenced for a murder offence some decades ago causes me to doubt the honesty or reliability of the evidence she gave to the Special Commission. Ms Cox's offending was obviously of a serious criminal nature. However, with respect to the circumstances of her incarceration at Dillwynia she had no motive to lie. She had nothing to gain by reporting what she said had occurred.
1683. Ms Cox's account derives a significant degree of support from the contemporaneous document, being IR-18-1378. That document records a range of serious allegations made by Ms Cox in paperwork handed to Ms Martin. The allegations recorded in Ms Cox's notes, as set out in IR-18-1378, are consistent with the matters Ms Cox says she raised orally.
1684. Ms Martin and Mr Giles both accept that Ms Cox had recorded her allegations in a document which she gave to them. As I have indicated, both Ms Martin and Mr Giles denied reading Ms Cox's notes. That seems to me to defy reality.

2141 Ex. 3, TB 3, Vol. 10, Tab 171, CSNSW.0001.0021.1172_0002-0008.

2142 Submissions on behalf of Westley Giles and Mishelle Robinson, 14 December 2023, AST.002.013.0107_0021 [87]-[88].

I appreciate that Ms Cox said that they did not read the notes in her presence. I am in no doubt that Ms Cox must have spoken of her allegations against Astill which would have excited some curiosity in both Ms Martin and Mr Giles. It defies ordinary human experience that they would not at least have a cursory look at the document. Mr Giles said that he left the room briefly to make a photocopy of it. It would be remarkable if he did not at least spend some time in reading at least part of it before passing it to Ms Martin.

1685. The meeting occurred after a request from Ms Cox to see the Governor. She went prepared with her document to air her allegations. It is self-evident that she had something to report, likely to be a complaint. Although the meeting commenced with Ms Martin challenging Ms Cox about an allegation by Astill that she attempted to bribe him, it must have soon turned to Ms Cox reciting her complaint. It defies ordinary human behaviour for the meeting to have progressed without Ms Cox reporting the matters that prompted her to seek a meeting.
1686. Mr Giles does accept Ms Cox discussed the dirty urine results and her allegation that Astill had falsified the results, and that Astill was going into units and treating certain inmates differently.²¹⁴³ However, he otherwise denies that Ms Cox did in his presence report that Astill was bringing contraband (including tobacco, drugs and jewellery) into Dillwynia or that Astill was having inmates collect debts for him, or that Astill was sexually assaulting or harassing inmates. Mr Giles at least accepts that Ms Cox aired some of her complaints.
1687. Both Ms Martin and Mr Giles had an interest in contradicting Ms Cox's evidence. In particular, Mr Giles, who is still a Correctional Officer, had reason to try and avoid any adverse criticism of his conduct. Ms Martin said she believed Ms Cox to be generally truthful. I believe Ms Cox gave me a truthful account of this meeting.
1688. Ms Martin's Counsel submitted that I should accept her account that Ms Cox did not mention any complaint beyond that Astill had threatened her. It was suggested that given that she had prepared a written document, there was 'an

inherent implausibility' she referred to anything it contained.²¹⁴⁴ I do not accept that submission. If, as Ms Martin said, Ms Cox was agitated, it is most unlikely that she did not speak to any of her allegations or confined herself, as Mr Giles said, to only one complaint rather than referring to at least some of the issues she sought to raise about Astill's conduct.

1689. Furthermore, Mr Giles said he was not a friend of Astill and did not like him. If that is so, there is no reason to infer that rumours might have been kept from him. It is quite simply not believable that he would not have come to know the rumours that were abroad in the gaol. The gaol was alive to rumours about Astill of which Ms Martin and Mr Giles must have been aware. When an inmate comes with a document recording complaints about Astill, it is inconceivable that, apart from their professional obligations, ordinary human curiosity, much less curiosity heightened by rumours, would not prevail and lead them to read the document.
1690. It matters not that Ms Martin passed the notes onto an Intelligence Officer (likely Ms Wilson who wrote IR-18-1378). Plainly, Ms Martin and Mr Giles had them first. It would be a serious failure of their duty to effectively manage the gaol if neither Ms Martin nor Mr Giles looked at Ms Cox's document. I do not accept that they would be so detached from their responsibilities that they simply passed the document to another officer without looking at it. Finally, I observe that if it was true that Ms Martin and Mr Giles did not read the notes, this would amount to a failure to exercise the responsibilities Ms Martin and Mr Giles carried as a result of their senior roles at the gaol. Both officers had a duty to take an interest in the serious complaints that had been brought to them, in writing, by Ms Cox, and to respond appropriately. Simply passing the notes on to an Intelligence Officer without so much as a cursory review in my view would not be commensurate with the responsibilities they held. And, as I have said, I do not believe that happened.
1691. Mr Hovey gave evidence about IR-18-1378. The effect of his evidence was that no action was taken by the IB in response to that report until after Astill's arrest. Mr

2144 Submissions on behalf of Shari Martin, 22 December 2023, AST.002.013.0115_0005-0006 [20]-[21].

Hovey accepted that it was ‘completely unacceptable’ that the IB did not review the report until approximately 10 months after it was submitted.²¹⁴⁵

8.13.10 Consideration of breaches of law and policies

8.13.10.1 The Ms Martin and Mr Giles meeting

1692. It is difficult to overstate the gravity of the allegations made by Ms Cox about Astill’s conduct. They included allegations that Astill was sexually assaulting and harassing multiple inmates and was bringing a range of contraband into the centre. The written record of the allegations made by Ms Cox, as set out in IR-18-1378, involved allegations of Astill requesting Ms Cox to assault another inmate; facilitating inmate moves with respect to inmates to whom Astill ‘talks dirty, touches with obvious sexual overtones [sic]’;²¹⁴⁶ failing to act on allegations about inmates selling drugs; filing false and misleading reports to Ms Martin as a ‘pre-emptive strike’ to discredit allegations, and to invoke negative consequences;²¹⁴⁷ making inappropriate sexual comments to young inmates with sexualised touching and fantasy-like desires being disclosed; threatening payback to inmates who informed on him; allegations that he was bringing tobacco into the centre for inmates; and allegations that inmates were attending the Hub, and on closer inspection all lights were off and the door was locked, in the context of inmates incurring some kind of bill which needed to be paid, suggesting that there was inappropriate sexual activity going on.²¹⁴⁸

1693. Those allegations, if true, included allegations of criminal conduct in the form of sexual or indecent assault, corrupt conduct in the form of bringing contraband into the centre, evidently in exchange for sexual favours; inappropriate sexual contact between Astill and inmates; and Astill intimidating and bullying inmates who had threatened to report on him. Ms Martin accepted that some of the allegations listed in IR-18-1378 had a clear sexual connotation.²¹⁴⁹

2145 Transcript, 8 November 2023, 19476-1949.37.

2146 Ex. 3, TB 3, Vol. 10, Tab 171, CSNSW.0001.0021.1172_0004.

2147 Ex. 3, TB 3, Vol. 10, Tab 171, CSNSW.0001.0021.1172_0004.

2148 Ex. 3, TB 3, Vol. 10, Tab 171, CSNSW.0001.0021.1172_0003-0005.

2149 Transcript, 14 November 2023, 2338.23-30.

1694. Ms Cox was prepared to make those allegations in circumstances in which she obviously knew that doing so exposed her to considerable risk because of the very conduct disclosed about Astill, including in the nature of bullying and intimidation. In the circumstances, Ms Cox's willingness to come forward with those allegations and make them to Ms Martin and Mr Giles took considerable courage on her part.

8.13.10.2 CAS Regulation

1695. The allegations by Ms Cox were made simultaneously to Ms Martin and Mr Giles. On receipt of those allegations, both Mr Giles and Ms Martin became aware of alleged conduct that plainly constituted misconduct, if not criminal offences, within the meaning of cl. 253(1)(a) of the CAS Regulation. Both were bound to report the conduct to an officer more senior in rank than them. As discussed above, in my view Mr Giles, as the more junior officer, was entitled to assume that Ms Martin would act in accordance with the Regulation and make the required report. There is no evidence to suggest that this occurred. Ms Martin said in her oral evidence that she could not recall whether she had informed Mr Shearer or Mr Hovey about the matter and agreed that if she had not contacted Mr Shearer as her Director, that it was a serious failure on her part.²¹⁵⁰ Accordingly, Ms Martin, being the senior officer, was in breach of cl. 253(1)(a).

8.13.10.3 Commissioner's Instruction No. 10/2013

1696. The allegations that came to the attention of Ms Martin and Mr Giles included allegations of suspected corrupt conduct within the meaning of Commissioner's Instruction No. 10/2013.²¹⁵¹ Accordingly, Ms Martin and Mr Giles were obliged to report the allegations promptly to their supervisor, manager, Branch or Divisional Head, Director, PSB, Assistant Commissioner, Governance and Continuous Improvement, or the Commissioner of CSNSW.

1697. Mr Giles heard the allegations in a meeting at which his manager was present. In that event, I do not consider that Mr Giles was in breach of the Instruction.

2150 Transcript, 14 November 2023, 2345.20-2346.10.

2151 Ex. 3, TB 3, Vol. 9, Tab 146, CSNSW.0001.0032.0338_0001-0002.

1698. Ms Martin failed to make a report of the allegations Ms Cox raised in the meeting. Accordingly, she was in breach of the Instruction.

8.13.10.4 Other reporting avenues

1699. Mr Giles said that if Ms Cox had made the disclosures she said she made at the meeting, NSWPF should have been called. He said that if that were the case, he would have contacted NSWPF himself or would have sent an email to Mr Hovey, the Director, the Commissioner of CSNSW, or someone higher than the Governor.²¹⁵² Mr Giles accepted that if those disclosures had been made in his presence it would have been a serious failure on his part to have not passed those allegations on.²¹⁵³

1700. I agree with Mr Giles' in this respect. It was a serious failure of leadership on the part of Mr Giles and Ms Martin to not report the allegations, which I am satisfied were aired by Ms Cox in their presence, to NSWPF, the Assistant Commissioner, or Commissioner of CSNSW. On a common-sense appraisal of the situation, it is clear that that was the appropriate course to take. In my view, having regard to the serious nature of the allegations, passing the matter to another officer who was not directly involved in the events to make an Intelligence Report to the IB fell well short of an adequate response to the serious allegations raised by Ms Cox.

8.13.10.5 Obligations of IB

1701. Intelligence Report 18-1378 was submitted on 6 June 2018.²¹⁵⁴ Mr Hovey gave evidence that IR-18-1378 did not appear to have been reviewed by anyone within the IB until 12 April 2019 and that he did not review it until 28 May 2019, after Astill's arrest.²¹⁵⁵ He said that there was a serious resourcing problem in the 2018 calendar year, such that there was no Intelligence Analyst charged with the function of

2152 Transcript, 17 November 2023, 2605.39-2607.13.

2153 Transcript, 17 November 2023, 2607.1-23.

2154 Ex. 3, TB 3, Vol. 10, Tab 171, CSNSW.0001.0021.1172_0008.

2155 Transcript, 8 November 2023, 1947.6-46.

reviewing Intelligence Reports.²¹⁵⁶ Mr Hovey accepted that the failure by the IB to review IR-18-1378 prior to 28 May 2019 was completely unacceptable.²¹⁵⁷

1702. Mr Hovey accepted some personal responsibility for this failure but emphasised that his unit was under-resourced leading to a lack of capacity to deal with matters. This may have been the case but at the very least he should have introduced a triage system to enable reports of serious misconduct to be identified and, if justified, given priority for investigation. In this respect he failed, with potentially serious consequences. To have allowed at least the initial review of reports to be delayed by months was entirely unacceptable.

8.14 June 2018 – Disclosures made by Ms Cox to Mr Clark

1703. On or around 28 June 2018, Ms Cox reported to Mr Clark that Astill was bringing drugs into Dillwynia. Mr Clark telephoned Ms Martin and advised her of this allegation.
1704. Ms Cox gave evidence that she disclosed to Mr Clark the incident where Astill had paged her to attend his office and told her she had a dirty urine result. She recalled Mr Clark asking her if she had been using drugs, which she denied. She then told Mr Clark that Astill was bringing drugs into Dillwynia.²¹⁵⁸ Ms Cox told the Special Commission that it was widely known among inmates that Astill was bringing drugs into Dillwynia and that she believed it was also widely known by officers.²¹⁵⁹ She stated that Astill's requests for sexual favours 'was the price he was selling [drugs] for'.²¹⁶⁰
1705. Mr Clark recalled this incident taking place on 28 June 2018.²¹⁶¹ He recalled seeing Ms Cox coming back from reception and that she was really upset. He asked her what was wrong, and she said that she was 'sick of being fucked

2156 Transcript, 8 November 2023, T1950.13-1951.20.

2157 Transcript, 8 November 2023, T1949.18-40.

2158 Transcript, 20 October 2023, 494.21-39.

2159 Transcript, 20 October 2023, 494.32-495.2.

2160 Transcript, 20 October 2023, 495.21-28.

2161 Ex. 8, TB 2, Vol. 7, Tab 63A, AST.002.013.0022_0005 [30].

around’ and then disclosed to him that Astill was bringing drugs into Dillwynia. He stated that he had no reason to doubt what Ms Cox was telling him and asked her to step into the office while he made a complaint.²¹⁶²

1706. Ms Cox’s evidence was that Mr Clark then rang Ms Martin in her presence and told her that he had an ‘inmate saying that Wayne is bringing in drugs’. She had the impression that Ms Martin hung up on Mr Clark. Mr Clark then told Ms Cox that he was going to send Ms Martin an email about it.²¹⁶³
1707. Mr Clark agreed that he telephoned Ms Martin in Ms Cox’s presence and told her ‘I have an inmate sitting in front of me that’s just advised me that one of your executive staff is bringing drugs and other contraband into the gaol’.²¹⁶⁴ He named Astill. His evidence was that Ms Martin responded ‘[o]h fuck’ and said that she would ‘send Pammy up’ (which he understood to be a reference to Ms Kellett).²¹⁶⁵ He stated that he then saw Ms Kellett enter the unit and leave a short time later. He said that after this conversation he did not receive any further information or communication about his complaint and did not notice any difference in the way Astill was treated within Dillwynia.²¹⁶⁶
1708. Ms Kellett was questioned about this incident but said she did not have any recollection of it.²¹⁶⁷
1709. Ms Martin was questioned about this incident but stated that she did not recall it.²¹⁶⁸
1710. I find this to be surprising in both cases. Ms Cox was making serious allegations against a senior officer. A complete failure of recollection about these events is remarkable. Notwithstanding the apparent difficulties in the recall of Ms Martin and Ms Kellett, I have no difficulty in accepting the accounts of Ms Cox and Mr Clark. Both Ms Cox and Mr Clark appear to have a clear recollection of what

2162 Transcript, 25 October 2023, 771.38-42; Ex. 8, TB 2, Vol. 7, Tab 63A, AST.002.013.0022_0005 [30]-[32].

2163 Transcript, 20 October 2023, 496.31-497.1; Ex. 3, TB 1, Vol. 6, Tab 46, AST.002.013.0009_0005 [30].

2164 Transcript, 25 October 2023, 772.6-15; Ex. 8, TB 2, Vol. 7, Tab 63A, AST.002.013.0022_0005 [32].

2165 Transcript, 25 October 2023, 772.17-38; Ex. 8, TB 2, Vol. 7, Tab 63A, AST.002.013.0022_0005 [32].

2166 Transcript, 25 October 2023, 772.34-773.47; Ex. 8, TB 2, Vol. 7, Tab 63A,

2167 Transcript, 3 November 2023, 1633.38-1634.7.

2168 Transcript, 14 November 2023, 2352.13-20.

occurred. They had no motive to collude or give false evidence. In particular, Mr Clark had no conceivable motivation to fabricate his evidence. A claimed lack of recall does not replace a clear account from someone who has no motive to give false evidence.

1711. There is no evidence that an Intelligence Report was submitted about these allegations to the IB, nor any report made to the PSB.

8.14.1 Consideration of breaches of law and policies

1712. The allegations reported to Mr Clark by Ms Cox were allegations of an officer bringing contraband into Dillwynia and therefore were allegations of (at a minimum) misconduct within the meaning of cl. 253(1)(a) CAS Regulation. Mr Clark was bound to report the alleged conduct to a Correctional Officer who was more senior in rank than him. He immediately did so by making a report to Ms Martin, thereby complying with his obligations under cl. 253(1).
1713. Upon receiving that report, Ms Martin became the 'senior correctional officer' within the meaning of cl. 253(2) CAS Regulation. That required her to promptly make a report to the Commissioner of CSNSW. There is no evidence that she did so. Accordingly, Ms Martin was in breach of cl. 253(2).
1714. Further, there was no Intelligence Report made to the IB, or any other notification to the PSB or Mr Shearer. Ms Martin therefore breached the DOJ Managing Misconduct Procedure.
1715. The allegations made by Ms Cox that Astill was bringing drugs into Dillwynia were a report of 'suspected corrupt conduct'. Commissioner's Instruction No. 10/2013, dated 21 August 2013, required employees to report such conduct promptly in writing to 'their supervisor, manager, Branch Head or Divisional Head, or to the Director, Professional Standards Branch, Assistant Commissioner, Governance and Continuous Improvement, or to the Commissioner'.²¹⁶⁹ Mr Clark complied

2169 Ex. 3, TB 3, Vol. 9, Tab 146, CSNSW.0001.0032.0338_0001-0002.

with the Instruction by reporting the matter to Ms Martin (albeit not in writing). Ms Martin failed to comply with the Instruction.

1716. As for the position with respect to Ms Kellett, the evidence does not indicate what, if anything, she was told by Ms Martin about the nature of the allegations. In these circumstances, I am not able to make any finding in respect of her conduct.

8.15 Complaint about Ms Dolly

1717. On 1 August 2018, Astill made a written complaint to Ms Martin about Ms Dolly. The gist of the complaint was that Ms Dolly had suggested that he was bringing tobacco into Dillwynia and was referring to him as ‘Poppy Astill’.²¹⁷⁰ The complaint commences:

I have to bring the following matters to your attention regarding Officer Dolly. About 6 weeks ago an inmate, [redacted] was telling me that some of the inmates refer to me as Poppy Astill. I asked her if she knew why and she stated, ‘When the officers tell the inmates to either go away or piss off etc they will come to you because you will listen to them and help if you can’. I did not like the idea of this as it breeds familiarity among the inmates. I told [redacted] that if inmates are eligible for something or are in need I will attempt to assist them as I have always done. About 3 weeks or so back inmate [redacted] was caught and charged with having tobacco in her possession. Shortly after this event whilst working in the hygiene store she was overheard by Overseer Baker to make the following statement to inmate [redacted]. Quote: ‘Dolly asked me if I got the tobacco off poppy Astill.’ Overseer Baker brought this to my attention.’²¹⁷¹

1718. The complaint goes on to state that Ms Dolly ‘has picked up where Elizabeth Cox left off’.²¹⁷²

2170 Ex. 3, TB 3, Vol. 17, Tab 525, CSNSW.0002.0002.6992_0003.

2171 Ex. 3, TB 3, Vol. 17, Tab 525, CSNSW.0002.0002.6992_0003.

2172 Ex. 3, TB 3, Vol. 17, Tab 525, CSNSW.0002.0002.6992_0003.

1719. Ms Martin appointed Ms Kellett to investigate Astill's complaint.²¹⁷³ Ms Kellett provided a report to Ms Martin dated 30 August 2018.²¹⁷⁴ In that report Ms Kellett said:

I investigated the 'Poppy' allegation my finding it is common knowledge amongst staff and inmate's [sic] that Mr Astill is referred to as Poppy Astill some of the reasons I am led to believe is the colour of his hair, some inmate [sic] see him as a grandfather figure and that inmate [redacted] made up a in appreciate [sic] song regarding Mr Astill word to the affect as follows

'Astill and [Witness N] hanging in the hub

Astill and [Witness N] having a rub and tug.'

*I am led to believe that Mr Astill is aware of this song as it was sung to him by inmates date unknown person unknown and he was very distressed about it.*²¹⁷⁵

1720. Ms Martin provided Ms Kellett's report to the PSB. However, the content of Ms Martin's report to the PSB focused on Astill's complaint about Ms Dolly and did not highlight the evidence Ms Kellett had uncovered about the allegations in the song.²¹⁷⁶ The report states:

I have interviewed TA/SCO [Temporary Assignment/Senior Correctional Officer] Jean Dolly in relation to this complaint. Officer Dolly denies that she asked an inmate did Poppy Astill give them tobacco. Officer Dolly admits when inmates come up to the wing office that on some occasions they do ask if Poppy Astill is on. She admits to replying to those inmates that Poppy Astill is not working up in that area. She stated that the inmates were not being derogative when calling him Poppy Astill. She said that she had a conversation with SCO Astill about what inmates call

2173 Ex. 3, TB 3, Vol. 17, Tab 525, CSNSW.0002.0002.6992_0001.

2174 Ex. 3, TB 3, Vol. 17, Tab 525, CSNSW.0002.0002.6992_0005-0007.

2175 Ex. 3, TB 3, Vol. 17, Tab 525, CSNSW.0002.0002.6992_0005-0006.

2176 Ex. 3, TB 3, Vol. 17, Tab 525, CSNSW.0002.0002.6992_0001.

*him and she said that he said it was because they overheard him talking about being a grandfather. She said that she did say to him that it was because he gave them what they wanted.*²¹⁷⁷

1721. Ms Martin accepted that the song suggested sexual activity.²¹⁷⁸ When asked whether the song raised matters that demanded investigation, Ms Martin gave the following evidence:

MS MARTIN: *There was matters that — I — I agree that they were serious — that was a serious matter, the —*

MR LLOYD: *Demanding investigation?*

MS MARTIN: *If that information had already been put on an IR [Intelligence Report], I'm not sure if it did.*

MR LLOYD: *Take it from me, on the evidence before this Commission, there is no intelligence report which includes that information. If what I put to you is right, that is a serious oversight, isn't it —*

MR TYSON: *Objection. Privilege.*

COMMISSIONER: *I require an answer.*

MR LLOYD: *— that that information was not reported up to Investigations. Do you agree?*

MS MARTIN: *I don't think Investigations would have looked at this information on its own — on its own.*

MR LLOYD: *What, a song by inmates suggesting sexual activity between a Chief Correctional Officer and inmates? Are you serious?*

MS MARTIN: *Well, I — I — I don't know if that would have been — been looked at by Investigations. There's been many songs made up by many inmates, but I know what you're saying. Yes, it is serious.*²¹⁷⁹

2177 Ex. 3, TB 3, Vol. 17, Tab 525, CSNSW.0002.0002.6992_0001.

2178 Transcript, 14 November 2023, 2363.7-14.

2179 Transcript, 14 November 2023, 2363.19-46.

1722. No Intelligence Report regarding the song, or the obvious sexual connotations contained within it, was produced to the Special Commission.
1723. The song required a proper investigative process to determine why the inmates had created and were singing it. The failure to take these steps is extraordinary.
1724. In circumstances where the report to PSB was effectively limited to the conduct of Ms Dolly, it is not surprising that the PSC determined that the complaint was one that should continue to be managed locally because of ‘the actions that have already been taken and that this is on the lower end of misconduct’.²¹⁸⁰
1725. The inadequacy of Ms Martin’s report to PSB, her failure to direct the song be reported by way of an Intelligence Report, and the failure at multiple levels to progress or action reports concerning Astill’s conduct gives rise to suspicions that Astill was being protected. It is possible, although I believe unlikely, that Ms Martin simply grossly mismanaged the situation. What can be said is that the evidence of a culture where officers do not ‘dob’ on each other is one where favouritism or ‘protection’ in some form is likely to exist.

8.16 Late 2018 – Sarah Ward’s disclosures about Astill

1726. Sarah Ward is an inmate who was the victim of offending by Astill.
1727. In late 2018, Ms Ward reported to Ms Berry and Ms Barry that Astill had touched her on the bottom and said inappropriate things to her. Ms Ward also described an earlier conversation with Ms Berry about Astill’s conduct. For reasons discussed below, I am not satisfied that conversation occurred in the manner described by Ms Ward.

2180 Ex. 3, TB 3, Vol. 17, Tab 526, CSNSW.0002.0024.6991_0001.

8.16.1 Disclosure to Ms Berry

1728. Ms Ward's evidence was that the first Correctional Officer she spoke to about Astill's inappropriate conduct towards her was Ms Berry.²¹⁸¹ At the time, Ms Ward was employed as a sweeper within Dillwynia's reception area and Ms Berry was the Senior Correctional Officer for that area. Ms Ward recalled telling Ms Berry that Astill had been grabbing her backside and touching her and she did not like it and wanted it to stop. Ms Ward recalled that Ms Berry appeared concerned, said 'I know what he's like', and responded that if she told Ms Martin, Ms Martin would shut her down and not believe her. Ms Ward said that Ms Berry told her to stay close to her if Astill came around while Ms Ward was working.²¹⁸²
1729. Ms Berry said that she did not recall this incident. She said that had Ms Ward disclosed to her that Astill had been grabbing her backside and touching her, she would have 'pounced on' it and would have 'tried helping her'.²¹⁸³ Ms Berry accepted that there was an occasion where she was told by Ms Ward that she did not like how Astill talked to her for too long.²¹⁸⁴ She said she advised Ms Ward to come out to her when she heard Astill whistle 'so he can't be talking to you'.²¹⁸⁵ However, Ms Berry denied that she said that management would 'shut her down', saying 'that's not a statement I would say'. She explained that she thought she was 'out smarting' management by making reports to the SIU, above the Governor. She did not feel she was shut down.²¹⁸⁶
1730. Both Ms Ward and Ms Berry were impressive witnesses. Ms Ward of course had no reason to give false evidence.
1731. Ms Berry says she did recall an occasion when Ms Ward complained about Astill's conduct but not in the detail recalled by Ms Ward. It is submitted on behalf of Ms Berry I should find that Ms Ward was mistaken as to having made

2181 Transcript, 18 October 2023, 273.29-44; Ex. 3, TB 3, Vol. 5, Tab 14A, AST.002.013.0003_0001 [4].

2182 Transcript, 18 October 2023, 273.42-274.33; Ex. 3, TB 3, Vol. 5, Tab 14A, AST.002.013.0003_0001 [4].

2183 Transcript, 30 October 2023, 1270.25-40.

2184 Transcript, 30 October 2023, 1270.35-1271.5.

2185 Transcript, 30 October 2023, 1271.1-16.

2186 Transcript, 30 October, 1271.18-29.

the disclosures set out above to Ms Berry, given Ms Berry had a track record of disclosure and reporting concerns she had at Dillwynia, both internally and externally, to the SIU. Had Ms Ward made the disclosure, it is submitted Ms Berry would have reported it. It is further submitted that the fact that Ms Ward had not made the disclosure described is consistent with Ms Berry's reaction during the subsequent conversation with Ms Ward and Ms Berry, discussed below. In that conversation, she spoke in support of Ms Ward but made no mention of having been previously told Astill had touched her on the backside.²¹⁸⁷

1732. In the circumstances, I accept that Ms Ward did make allegations of serious misconduct to an officer; however, I doubt that her recollection that she made them to Ms Berry on this occasion is correct. I accept that Ms Berry acted on reports of inmates a number of times and failure to do so on this occasion would be inconsistent with her track record.

8.16.2 Disclosure to Ms Berry (and a short time later, Ms Berry again)

1733. Ms Ward said that on another occasion, she and Astill were in a storage room at the back of Dillwynia's reception area when Ms Berry walked through and observed them.²¹⁸⁸ After Astill left, Ms Ward walked into the reception area and Ms Berry said, '[a]re you alright Ward? You looked very uncomfortable.' Ms Ward's evidence was that she told Ms Berry that she was not ok, and that Astill kept grabbing her backside and saying inappropriate things to her.²¹⁸⁹
1734. She recalled that Ms Berry was also present. Ms Ward stated that Ms Berry said that she believed Ms Ward but said that she had issues with Astill in the workplace, so if she said anything to Ms Martin, Ms Martin would think that she was motivated by her personal issues with Astill.²¹⁹⁰

2187 Submissions on behalf of Judith Barry, Renee Berry, Ronald Brown and Scott Westlake, 14 December 2023, AST.002.013.0104_0008 [39]-[43].

2188 Transcript, 18 October 2023, 275.22-42; Ex. 3, TB 3, Vol. 5, Tab 14A, AST.002.013.0003_0001-0002 [5].

2189 Transcript, 18 October 2023, 275.37-42; Ex. 3, TB 3, Vol. 5, Tab 14A, AST.002.013.0003_0001-0002 [5].

2190 Transcript, 18 October 2023, 276.5-13; Ex. 3, TB 3, Vol. 5, Tab 14A, AST.002.013.0003_0001-0002 [5].

1735. In her evidence, Ms Barry accepted that this event occurred, and that Ms Ward disclosed to her that Astill ‘slapped her on the arse’. She stated that she believed Ms Ward and agreed that by her statement, Ms Ward disclosed an assault which was sexual in nature by Astill. Ms Barry could not offer any explanation as to why she did not report it, beyond the fact that she was ‘barely coping’ herself.²¹⁹¹
1736. Ms Berry also accepted that this event occurred. She recalled walking in on Ms Ward discussing Astill with Ms Barry. She said that Ms Barry made a comment to the effect that, ‘Sarah’s just told me [Astill] taps on the bum [sic]’. She recalled supporting Ms Ward, saying to Ms Barry ‘she has mentioned that she feels uncomfortable. He talks too long to her and stuff.’²¹⁹² Ms Berry recalled saying to Ms Ward, ‘[j]ust keep yourself under the camera’ [i.e., within view of the CCTV] and telling Ms Ward about her own ‘safety plan’.²¹⁹³
1737. Ms Berry said that her understanding was that Ms Barry would do something about Ms Ward’s disclosure as the higher-ranking officer. She stated that she had four days off work after the incident as her dad was dying. It was a difficult time for her. Ms Berry said that she could not recall having a conversation with Ms Barry about who would action Ms Ward’s disclosure and admitted that she should have checked this with Ms Barry.²¹⁹⁴
1738. I am satisfied that Ms Ward disclosed an assault by Astill to Ms Barry, and a short time later during the same conversation, to Ms Berry.
1739. Ms Barry believed Ms Ward’s account of the alleged assault afterwards, when she thought about it,²¹⁹⁵ and accepted that she failed to report the allegation. She acknowledged that she ‘let the girls down’ by failing to report the allegation.²¹⁹⁶ Ms Berry also accepted Ms Ward made the disclosure.

2191 Transcript, 30 October 2023, 1211.5-1212.33.

2192 Transcript, 30 October 2023, 1271.31.46.

2193 Transcript, 30 October 2023, 1271.31-1272.10.

2194 Transcript, 30 October 2023, 1271.31-1272.34.

2195 Transcript, 30 October 2023, 1212.25-28.

2196 Transcript, 30 October 2023, 1212.19-23.

1740. It is apparent that these events engaged the obligations in CAS Regulation cl. 253(1) to report the allegations. However, I accept, as was submitted on Ms Barry's behalf, that Dillwynia was a toxic and isolating workplace.²¹⁹⁷ Astill was a domineering bully who a number of officers believed was looked upon favourably by senior officers and was capable of delivering retribution upon those he perceived to be his 'enemies'. Ms Barry was not adequately trained or supported in how to go about making a report. I accept Ms Barry's evidence that she assumed Ms Barry would take action in relation to the report as the senior officer and was distracted from following up on that assumption by personal matters.

8.17 October 2018 – Mr Clark observing Astill at Sarah Ward's cell after lockdown

1741. On 3 October 2018, Mr Clark witnessed Astill at Ms Ward's cell in the Behavioural Intervention Unit. Mr Clark challenged Astill as to why he was there. Mr Clark reported what he had seen to Mr Virgo the following morning. Subsequently, Mr Virgo encouraged Ms Ward to speak with NSWPF. Ms Ward ultimately did so, and made a statement concerning Astill's conduct on 18 December 2018.

1742. Ms Ward gave evidence that while she was being held in segregation in the Behavioural Intervention Unit, Astill came to her cell and opened her door two nights in a row after lockdown. On the first of these nights, Astill made a comment to Ms Ward that he was 'so disappointed' (referencing the reason why she was in the Behavioural Intervention Unit) and to 'look after that arse'. On the second night, Astill said to Ms Ward, 'You know I care about you' and reached out and grabbed her around the waist and tried to pull her in, with his face forward as if to kiss her. Ms Ward stepped back and said something like, 'what are you doing?'.²¹⁹⁸

1743. On the second night, Mr Clark was at reception while Astill was at Ms Ward's cell door. She stated that it was possible to see down to her cell in the Behavioural Intervention Unit from reception and that Mr Clark came down to her cell and

2197 Submissions on behalf of Judith Barry, Renee Berry, Ronald Brown and Scott Westlake, 14 December 2023, AST.002.013.0104_0005 [24].

2198 Transcript, 18 October 2023, 286.3-33; Ex. 3, TB 1, Vol. 5, Tab 14A, AST.002.013.0003_0002 [6]; Ex. 3, TB 1, Vol. 5, Tab 13, AST.002.002.0008_0005-0006 [19]-[20].

asked what was going on and why Astill had the door to her cell open. Mr Clark asked her if she was alright.²¹⁹⁹ Ms Ward's perception was that Mr Clark was not impressed. She recalled that Astill told Mr Clark something to the effect that she wanted something from her property. Mr Clark then asked her if she was okay before he closed her cell door and walked away with Astill.²²⁰⁰

1744. Mr Clark's evidence was that this incident occurred on 3 October 2018. He stated that it 'still haunts [him] to this day'.²²⁰¹ He recalled he was working in reception on afternoon shift when he noticed that both the door to the Behavioural Intervention Unit and the door to Cell 3 in that unit were open. He could see Ms Ward near the door and Astill in the doorway. Mr Clark then saw Ms Ward mouthing 'help' to him, which caused him to challenge Astill about why he was there. He stated that he then asked Ms Ward if she was okay and to tell him what happened. Mr Clark recalled that Ms Ward responded that she was fine, but his impression was that she was shaken. He stated that that night, he made sure that Astill did not go back to the Behavioural Intervention Unit.²²⁰²
1745. Mr Clark made an undated Incident/Witness Report concerning this incident. He stated he made the report in March 2019, but did not provide it to anyone prior to making his statement to NSWPF in September 2020.²²⁰³ The report provides additional details, including that Ms Ward was 'crying and shaking' and that she said Astill 'tried to grab me' and 'wanted a kiss'.²²⁰⁴
1746. Mr Clark gave evidence that he reported the incident involving Astill and Ms Ward to Mr Virgo the following morning.²²⁰⁵
1747. Mr Virgo recalled being told of allegations concerning Ms Ward. By that stage, Mr Virgo had been informed of the allegations made by Ms Sheiles and had commenced reporting in relation to those allegations. He recalled the allegations

2199 Ex. 3, TB 1, Vol. 5, Tab 14A, AST.002.013.0003_0002 [6].

2200 Transcript, 18 October 2023, 286.39-287.11; Ex. 3, TB 1, Vol. 5, Tab 14A, AST.002.013.0003_0002 [6].

2201 Ex. 8, TB 2, Vol. 7, Tab 63A, AST.002.013.0022_0006 [37].

2202 Ex. 8, TB 2, Vol. 7, Tab 63A, AST.002.013.0022_0006 [37]-[38].

2203 Ex. 8, TB 2, Vol. 7, Tab 63, AST.002.002.0076_0006 [30].

2204 Ex. 8, TB 2, Vol. 7, Tab 63, AST.002.002.0076_0013.

2205 Ex. 8, TB 2, Vol. 7, Tab 63A, AST.002.013.0022_0006 [39].

concerning Ms Ward were not as 'severe' as those concerning Ms Sheiles but were nonetheless allegations of 'sexual assault' by Astill. He could not recall whether he submitted a report or just contacted the detectives who had already started an investigation regarding Ms Sheiles.²²⁰⁶

1748. Ms Ward said that about two days after this incident, Mr Virgo and Ms Kellett came to her cell and took her into an office, where Mr Virgo said, 'I believe you had a visitor the other night'. Ms Ward's evidence was that she was scared and did not want to say anything, so 'played dumb'. She stated that she was scared because she had been told by Astill that he was friends with Mr Virgo.²²⁰⁷ A few days later, Mr Clark approached her and encouraged her to speak to Mr Virgo so that Astill's behaviour could be stopped.²²⁰⁸ Ms Ward appears not to have responded immediately, but a few weeks later she again spoke to Mr Virgo and, with his encouragement, told him that Astill had been assaulting her. In response, Mr Virgo encouraged Ms Ward to make a statement to NSWPF, 'because Astill needed to be stopped'. Mr Virgo then arranged a meeting at Dillwynia with detectives from NSWPF.²²⁰⁹

1749. Ms Ward's evidence was that when the time came for her to speak to NSWPF, she was called into Ms Martin's office, but Ms Martin was present and remained when discussions began. Ms Ward said that she 'freaked out' because she believed that Ms Martin was not helping women who spoke up. As a result, she told NSWPF detectives that Astill was 'great' and that she did not want him to lose his job. Her recollection was that Ms Martin responded with words to the effect of '[g]ood on you Ward' and the interview was terminated.²²¹⁰

1750. Ms Ward's evidence was that after she left Ms Martin's office, Mr Virgo asked her if she spoke to NSWPF, and she explained that she had not and had walked out. She said that he later arranged for her to be collected and taken to Windsor

2206 Transcript, 25 October 2023, 815.28-46.

2207 Transcript, 18 October 2023, 287.33-46; Ex. 3, TB 1, Vol. 5, Tab 14A, AST.002.013.0003_0002 [6].

2208 Transcript, 18 October 2023, 288.6-12; Ex. 3, TB 1, Vol. 5, Tab 14A, AST.002.013.0003_0002 [7].

2209 Transcript, 18 October 2023, 288.27-42; Ex. 3, TB 1, Vol. 5, Tab 14A, AST.002.013.0003_0002 [8].

2210 Transcript, 18 October 2023, 290.24-38; Ex. 3, TB 1, Vol. 5, Tab 14A, AST.002.013.0003_0003 [9].

Police Station, at which time she made a statement to NSWPF.²²¹¹ Ms Ward's first statement to NSWPF records that it was made at Windsor on 18 December 2018.²²¹²

1751. Ms Ward's evidence was that after she made the complaint to NSWPF, she was informed that Astill would not return to Dillwynia. However, there was a subsequent occasion when he approached her cell window at 3am when she was asleep and shined a torch on her and said words to the effect of, 'You had better tell them we're not in a relationship'. Ms Ward recalled that she was 'petrified' and informed Acting Governor Schreiber the following morning. Astill was arrested about three days later.²²¹³
1752. Ms Martin also gave evidence about this incident. She said that there was an occasion on which Ms Ward was brought to her office and was hysterical because Astill had threatened her through the cell door when she was housed in the Behavioural Intervention Unit. Ms Martin stated that she believed Ms Ward and called the Intelligence Officer or Ms Kellett to raise an Intelligence Report about the incident. She stated that she then arranged for Ms Ward to speak to NSWPF.²²¹⁴
1753. Ms Martin's evidence was that the NSWPF came to the gaol and spoke to Ms Ward in the conference room, which was separate from her office. She said that one of the officers came to her and told her that Ms Ward did not want to talk to them and asked Ms Martin to help by getting Ms Ward to talk. Ms Martin stated that she then spoke to Ms Ward in her office and undertook to Ms Ward that she would be safe. Ms Martin stated that after this, Ms Ward said 'Ok Shari I will talk to them'. Ms Martin stated that Ms Ward then went back into the conference room, and she understood Ms Ward then gave a statement to NSWPF.²²¹⁵
1754. Ms Ward's version of the incident was put to Ms Martin. Ms Martin denied the truth of Ms Ward's account and denied being present during Ms Ward's interview with NSWPF.²²¹⁶

2211 Transcript, 18 October 2023, 291.4-14; Ex. 3, TB 1, Vol. 5, Tab 14A, AST.002.013.0003_0003 [10]

2212 Ex. 3, TB 1, Vol. 5, Tab 13, AST.002.002.0008_0002.

2213 Transcript, 18 October 2023, 294.15-295.41; Ex. 3, TB 1, Vol. 5, Tab 14A, AST.002.013.0003_0003-0004 [12].

2214 Ex. 38, TB 2, Vol. 7, Tab 59A, AST.002.013.0059_0016-0017 [79]-[84].

2215 Ex. 38, TB 2, Vol. 7, Tab 59A, AST.002.013.0059_0017 [85]-[88]; Transcript, 14 November 2023, 2368.6-2371.31.

2216 Transcript, 14 November 2023, 2370.6-2371.31.

1755. I have previously indicated that Ms Ward was an impressive witness. She appeared to have a clear recollection of the event. She had no reason to give false evidence. In contrast, Ms Martin appeared to have a poor recollection generally. It may be that Ms Ward's recollection is faulty about the precise physical arrangements when she spoke to the police, but I am satisfied Ms Ward was concerned that Ms Martin would hear what she had to say.
1756. It is submitted by CSNSW, and adopted by Ms Martin, that it is 'doubtful' Ms Ward is correct in her account of Ms Martin being present when she first spoke to NSWPF as 'it appears very unlikely that police officers would interview a witness in the presence of another potential witness (namely, Ms Martin)'.²²¹⁷ I do not find it inherently unlikely that the events described by Ms Ward occurred. The NSWPF investigation was at an early stage, and this was Ms Ward's initial meeting with investigators. It is not implausible that Ms Martin may have been present when the meeting commenced, given it occurred in Ms Martin's office.
1757. Furthermore, the apparent dismissive response of Ms Martin to Ms Ward is consistent with her response when faced with allegations made by a number of inmates. Ms Ward's account is consistent with the known sequence of events, in particular that she was taken to the Windsor Police Station where she made her statement.
1758. I reject Ms Martin's account and accept the evidence of Ms Ward.

8.17.1 Consideration of breaches of law and policies

1759. I am satisfied Mr Clark sincerely believed Astill had engaged in criminal conduct or other misconduct. This would engage his obligations pursuant to cl. 253 of the CAS Regulation although I doubt that he was aware of that fact. By this time Mr Clark was aware of the allegations made against Astill by Ms Sheiles, and he would have interpreted what he witnessed in Ms Ward's cell in that context. He was concerned enough by what he had seen to ensure Astill did not go back to the Behavioural Intervention Unit. His evidence was that if Astill had a genuine

²²¹⁷ Submissions on behalf of CSNSW, 20 December 2023, AST.002.013.0114_0007-0008 [19]; Submission on behalf of Shari Martin, 22 December 2023, AST.002.013.0115_0031-32 [125]-[126]; Submissions in reply on behalf of Shari Martin, 30 January 2024, AST.002.013.0120_0003 [14]-[15].

reason to speak to Ms Ward, he should have had a second officer with him. That was 'standard protocol'.²²¹⁸ Mr Clark's actions in reporting the incident to Mr Virgo complied with his obligation pursuant to cl. 253(1).

1760. Upon receipt of the report from Mr Clark, Mr Virgo was obliged by cl. 253(2) to report the alleged conduct to the Commissioner of CSNSW if he held the requisite belief in regard to that conduct. However, in the circumstances I consider Mr Virgo's actions in referring the matter to the detectives who were already investigating Ms Sheiles' complaints reasonable and appropriate.

2218 Ex. 8, TB 2, Vol. 7, Tab 63A, AST.002.013.0022_0006 [39].



New South Wales
Australia

9

Oversight of Management at Dillwynia Correctional Centre

1761. During a significant period of Astill's offending, the then Governor of Dillwynia, Shari Martin, reported directly to Hamish Shearer,²²¹⁹ who was the Director Custodial Operations Metro (**Director Metro**), who in turn reported directly to Kevin Corcoran the then Assistant Commissioner, Custodial Corrections.
1762. Ms Martin, Mr Shearer, and Mr Corcoran all gave evidence about their working relationships during this time, and until Ms Martin's retirement at the end of December 2018. It is plain that there were difficulties in the relationship between Mr Shearer and Mr Corcoran. They both experienced difficulty in managing Ms Martin.

9.1 Background and relationship between Mr Shearer and Mr Corcoran

9.1.1 General difficulties faced by Mr Shearer

1763. When Mr Shearer commenced in the role of Director Metro in July 2016, he did not have any experience with CSNSW.²²²⁰ His previous work experience included positions within the New Zealand Army and Australian Federal Police (**AFP**).²²²¹ Mr Shearer's role with CSNSW initially gave him responsibility for six correctional centres and approximately 600 to 700 officers across the region. That later expanded to 10 centres in 2018.²²²²
1764. Mr Shearer gave evidence that when he started with CSNSW, he completed a one-week Corrections leadership program.²²²³ However, the policies and procedures were new to him, and he said that he relied on the advice of others to understand how to manage some matters.²²²⁴ Mr Shearer agreed that he felt out of his depth in dealing with the 'nuts and bolts' of CSNSW at this time.²²²⁵ He was shocked by

2219 Ex. 43, TB 2, Vol. 8A, Tab 98, AST.002.013.0061_0002 [8].

2220 Transcript, 16 November 2023, 2446.19-27; Ex. 43, TB 2, Vol. 8A, Tab 98, AST.002.013.0061_0003 [12].

2221 Transcript, 16 November 2023, 2445.32-2446.17; Ex. 43, TB 2, Vol. 8A, Tab 98, AST.002.013.0061_0003 [12].

2222 Transcript, 16 November 2023, 2447.11-15; Ex. 43, TB 2, Vol. 8A, Tab 98, AST.002.013.0061_0001, 0003 [4]-[5], [14].

2223 Ex. 43, TB 2, Vol. 8A, Tab 98, AST.002.013.0061_0003 [12].

2224 Transcript, 16 November 2023, 2446.29-2447.4.

2225 Transcript, 16 November 2023, 2446.29-32.

the poor culture within CSNSW.²²²⁶ He said that when he commenced in the role, he was struggling to do all that was required of him.²²²⁷

1765. Mr Shearer said that when he commenced in his role, he recognised that he did not have enough staff to run the region. Mr Shearer had an Assistant Superintendent seconded to assist him primarily with answering the volume of emails he received. For this purpose, the Assistant Superintendent was required to access Mr Shearer's emails and identify matters to be actioned. However, Mr Corcoran apparently directed Mr Shearer to cease using the Assistant Superintendent in that manner due to the sensitivity of the emails.²²²⁸ From that time on, Mr Shearer had no direct resources to assist him to do his job, as a submission he had prepared to Mr Corcoran seeking to retain additional support to enable him to do what was required in his role, was unsuccessful.²²²⁹
1766. In mid-July 2017, Mr Shearer raised concerns with Mr Corcoran regarding his lack of support staff. Mr Shearer recalled that in a dismissive and unhelpful remark Mr Corcoran responded, 'Well maybe the role of Director isn't right for you, you do have a young family'.²²³⁰
1767. Mr Shearer said that when he joined CSNSW, Mr Corcoran discussed training opportunities for him through the Brush Farm Academy, including a 10-week Custodial Recruit training course. Mr Shearer explained that it was not feasible for him to do that course in addition to his day-to-day functions. He said that he did not have the opportunity to complete it until late 2022, over six years after commencing with CSNSW.²²³¹ Mr Shearer agreed that there were numerous courses run between 2016 and 2022; however, he said that the issue was not the availability of courses but, rather, finding the time to fit the course in, given his heavy workload, i.e. finding a 'clear window to do the program'.²²³² Mr Shearer said that to do the course he would have needed to have been taken out of his

2226 Transcript, 16 November 2023, 2447:17-25.

2227 Ex. 43, TB 2, Vol. 8A, Tab 98, AST.002.013.0061_0004 [15].

2228 Transcript, 16 November 2023, 2448:26-2449:19; Ex. 43, TB 2, Vol. 8A, Tab 98, AST.002.013.0061_0003 [14].

2229 Ex. 43, TB 2, Vol. 8A, Tab 98, AST.002.013.0061_0004 [16].

2230 Ex. 43, TB 2, Vol. 8A, Tab 98, AST.002.013.0061_0004 [15].

2231 Transcript, 16 November 2023, 2450:1-33; Ex. 43, TB 2, Vol. 8A, Tab 98, AST.002.013.0061_0003 [13].

2232 Transcript, 17 November 2023, 2518:18-2519:12.

role for a period of more than two months, which required the approval of those above him.²²³³ Mr Shearer told the Special Commission that when he raised the practical difficulties of doing the course with Mr Corcoran, Mr Corcoran referred Mr Shearer to the Brush Farm Academy to see what they could do.²²³⁴ The difficulties were not resolved in a timely fashion.

1768. Mr Shearer gave evidence about the content of the course that he ultimately went on to complete in 2022:

*It would have helped especially on the technical side of the role. That course goes through a range of training; for instance, what is use of force, how you do searching, some of those sort of very basic officer roles, the expectations in the role, some of the legislation which is particular to them. So that stuff I found illuminating, it was great.*²²³⁵

9.1.2 Management of Mr Shearer

9.1.2.1 Mr Shearer's evidence

1769. Mr Shearer said that he had regular meetings with Mr Corcoran, including one-on-one meetings every fortnight and group meetings, including steering committees and executive committees, which approximately occurred weekly for the first one to two years Mr Shearer was in the role.²²³⁶
1770. Mr Shearer described his relationship with Mr Corcoran as 'challenging' and that it had its 'highs and lows' over the years.²²³⁷ However, Mr Shearer also stated that in the past one to two years, the relationship had developed into one of professional respect.²²³⁸

2233 Transcript, 17 November 2023, 2522.27-2523.1.

2234 Transcript, 17 November 2023, 2519.4-12; 2549.15-37.

2235 Transcript, 16 November 2023, 2451.1-5.

2236 Transcript, 16 November 2023, 2459.30-35.

2237 Transcript, 16 November 2023, 2448.13-21.

2238 Transcript, 17 November 2023, 2519.14-23.

1771. Mr Shearer gave evidence that in 2017 or 2018, he raised concerns regarding bullying in the organisation with the Chief Director of Human Resources, Michael Baldi. According to Mr Shearer, Mr Baldi then spoke with the then Commissioner of CSNSW, Peter Severin, about Mr Shearer's concerns and Mr Baldi relayed to Mr Shearer that something would be done about the bullying. Mr Shearer was unsure whether anything had in fact been done in response to his concerns.²²³⁹
1772. When pressed by the Special Commission as to the subject of his bullying complaint, Mr Shearer identified Mr Corcoran. He said that his complaint related not only to Mr Corcoran's treatment of him but also to Mr Corcoran's treatment of other officers.²²⁴⁰
1773. When giving evidence, Mr Shearer stated that revealing Mr Corcoran's name publicly in the context of those complaints 'would be the end' of him (that is, Mr Shearer).²²⁴¹
1774. Mr Shearer stated that Mr Corcoran's treatment of people made them scared to report concerns through the chain of command, as in his view reporters could become 'victims' themselves.²²⁴²
1775. Mr Shearer also gave evidence about a more general culture of bullying at CSNSW. He said, 'It's been there for a long time, but it's getting better'. He was asked about the differences he experienced in culture between CSNSW, the AFP and the New Zealand Army. He explained that those agencies were properly governed by those in senior management and were 'a decade' in front of CSNSW. He explained that when he was deployed to Afghanistan it was difficult, 'but you knew who the bad guys were', whereas at CSNSW 'sometimes you don't'.²²⁴³
1776. Mr Shearer said that in 2019 he was made aware, by a Human Resources representative, of an annual report that Mr Corcoran had submitted in relation to his performance. Mr Shearer stated that he contacted Mr Corcoran two or

2239 Transcript, 16 November 2023, 2506.27-2507.14.

2240 Transcript, 16 November 2023, 2507.26-46.

2241 Transcript, 16 November 2023, 2507.29-40.

2242 Transcript, 16 November 2023, 2508.1-19.

2243 Transcript, 16 November 2023, 2505.4-39.

three times via email to request a copy of the report. He received no response until he copied in Mr Severin to his request. After Mr Severin became aware of Mr Shearer's request, Mr Shearer attended a meeting with the then Deputy Commissioner, Luke Grant, and told him that he could not 'keep looking over [his] shoulder for a sniper on the hill' (referring to Mr Corcoran).²²⁴⁴

1777. In relation to conversations he had with Mr Corcoran about his performance, Mr Shearer recalled one occasion in 2019 when Mr Corcoran told him that he had been speaking to officers who did not believe that Mr Shearer was performing to a suitable level. Mr Shearer explained that when asked, Mr Corcoran refused to name those officers. Mr Corcoran suggested that he would create a SurveyMonkey survey to send to those officers with questions about Mr Shearer's performance. Mr Shearer was concerned that the survey would not be objective, as it would only be sent to the officers selected by Mr Corcoran and not those who worked directly with Mr Shearer. Mr Shearer said that the survey did not proceed.²²⁴⁵

1778. Mr Shearer also gave evidence about an email he received from Mr Corcoran in around 2019 which noted that his technical knowledge had not improved sufficiently in the time since his commencement in 2016. Mr Shearer responded by indicating, as Mr Corcoran would have known, that he had not received any training on the technical knowledge required.²²⁴⁶

1779. Mr Shearer told the Special Commission that, while he had training in matters of senior executive management, he did not have training in the technical and operational expertise specific to CSNSW and their systems.²²⁴⁷

9.1.2.2 Mr Corcoran's evidence

1780. Mr Corcoran gave evidence about his professional relationship with Mr Shearer. He said that he hired Mr Shearer in July 2016 to take over the role of Director Metro from Marilyn Wright. Mr Corcoran believed that Mr Shearer was an

2244 Transcript, 17 November 2023, 2519.30-42.

2245 Transcript, 17 November 2023, 2519.44-2520.7.

2246 Transcript, 17 November 2023, 2520.28-2521.3.

2247 Transcript, 17 November 2023, 2520.28-2521.8.

attractive and highly qualified candidate for this senior executive role, due to Mr Shearer's experience in the New Zealand Army and the AFP, his qualifications in management and his background outside of CSNSW.²²⁴⁸

1781. Mr Corcoran said that Mr Shearer worked alongside Ms Wright for a period of four weeks upon his commencement, during which time Mr Shearer was introduced to his day-to-day responsibilities and relevant policies and procedures.²²⁴⁹
1782. Mr Corcoran said that throughout the recruitment process and from the commencement of his employment, Mr Corcoran encouraged Mr Shearer to participate in the 10-week Custodial Recruit training course which, while not essential, he believed would be of assistance to Mr Shearer.²²⁵⁰ He gave evidence that the training course teaches Correctional Officers how to handcuff inmates, conduct an escort, lock a cell and other tasks of that nature.²²⁵¹
1783. Other information about the content of the training course is located elsewhere in the evidence. For example, Corrections Intelligence Group Acting Senior Assistant Superintendent Bernd Kaschubs' evidence was that the course included a session on charging inmates with breaches of correctional centre discipline, and another session on the exclusionary rules—that is, that information that can be categorised as opinion, similar fact and hearsay cannot be used in a report relating to a charge against an inmate.²²⁵² The topics covered during the training course are set out in the transcript of Astill's Certificate III in Correctional Practice (Custodial Corrections), being the certificate obtained by candidates who successfully complete the 10-week training course. Those topics are as follows:
- a) develop and maintain effective workplace practice and standards;
 - b) contribute to the achievement of organisational goals;
 - c) contribute to achieving the goals of the justice system;

2248 Ex. 59, TB 5, Vol. 29, Tab 18, AST.002.013.0083_0030-0031 [125]-[128].

2249 Ex. 59, TB 5, Vol. 29, Tab 18, AST.002.013.0083_0031 [129].

2250 Ex. 59, TB 5, Vol. 29, Tab 18, AST.002.013.0083_0031 [130].

2251 Transcript, 22 November 2023, 3041.18-24.

2252 Ex. 59, TB 5, Vol. 28, Tab 13, AST.002.013.0088_0014 [48]-[49].

- d) communicate effectively;
- e) manage direct contact (interview) to gather and provide information;
- f) prepare and present reports;
- g) contribute to supervision, surveillance and monitoring;
- h) contribute to the health, safety and welfare of individuals;
- i) maintain safety and security;
- j) contain incidents which jeopardise safety and security;
- k) use and organise the maintenance of workplace equipment;
- l) implement effective communications techniques;
- m) maintain security systems;
- n) conduct searches;
- o) promote cooperative behaviour;
- p) support offenders to maintain positive relationships;
- q) process offender induction and discharge;
- r) report to formal inquiry;
- s) weapons emergency response training;
- t) defensive tactics, baton and restraints training;
- u) success in tertiary education;
- v) structure and role of CSNSW; and
- w) the legal environment.²²⁵³

1784. Mr Corcoran said that Mr Shearer strongly resisted participation in the 10-week Custodial Recruit training course and continued to decline participation for six and a half years, until he eventually completed the course in 2022. Mr Corcoran stated that Mr Shearer could have arranged for someone to act in his role for

2253 Ex. 3, TB 3, Vol. 17, Tab 583, CSNSW.0002.0027.5387_0001.

the duration of the training and that approximately 15 courses were run each year between 2016 and 2022. Mr Corcoran stated that he strongly encouraged Mr Shearer to participate in the course and formed the view that Mr Shearer was embarrassed to participate in this training because of his extensive experience, including in the Army, and that Mr Shearer felt it was beneath him.²²⁵⁴ Mr Corcoran also said that he told Mr Severin that he had encouraged Mr Shearer to participate in the program. When asked whether he told Mr Severin that Mr Shearer and other executive staff members in comparable positions should be required to complete the program, Mr Corcoran said, 'I didn't tell him it should be a requirement because, you know, he did not believe it should be a requirement'.²²⁵⁵

1785. Mr Corcoran gave evidence that over time he became frustrated with Mr Shearer's performance and formed the view that he was underperforming. Mr Corcoran stated that he discussed these issues with Mr Shearer on numerous occasions.²²⁵⁶

1786. Mr Corcoran explained that he received numerous complaints that Mr Shearer was outsourcing his role to other people.²²⁵⁷ In relation to Mr Shearer granting an Assistant Superintendent access to his emails, Mr Corcoran considered that this was inappropriate given the sensitivity of Mr Shearer's emails, as well as Mr Corcoran's view that the Assistant Superintendent was substantively responding to matters instead of Mr Shearer. Mr Corcoran also referred to an incident in which the Assistant Superintendent had attended a correctional centre to conduct an inquiry and develop recommendations following a serious incident, which Mr Corcoran believed was Mr Shearer's job. Mr Corcoran considered that Mr Shearer was inappropriately delegating his duties on these occasions.²²⁵⁸

1787. Mr Corcoran also gave evidence that, in his view, Mr Shearer ought to have developed his skills over time such that he could deliver in his role with relative independence; however, he said he was 'a slow learner, who did not ... absorb or act on feedback'. Mr Corcoran said that he was frustrated by this and did not

2254 Ex. 59, TB 5, Vol. 29, Tab 18, AST.002.013.0083_0031 [131]; Transcript, 22 November 2023, 3038.1-18.

2255 Transcript, 22 November 2023, 3038.25-3039.40.

2256 Ex. 59, TB 5, Vol. 29, Tab 18, AST.002.013.0083_0031 [132].

2257 Ex. 59, TB 5, Vol. 29, Tab 18, AST.002.013.0083_0031 [132].

2258 Ex. 59, TB 5, Vol. 29, Tab 18, AST.002.013.0083_0031-0032 [133].

consider that Mr Shearer could act with the required independence. For this reason, Mr Corcoran stated that he commenced performance management of Mr Shearer in 2019.²²⁵⁹

1788. Mr Corcoran agreed with Mr Shearer that there was a bullying culture in CSNSW at least as at late 2017/early 2018; however, he did not agree that this included the top levels of the organisation.²²⁶⁰ Mr Corcoran denied that he bullied Mr Shearer or any other person in the workplace,²²⁶¹ although he recalled the complaint that Mr Shearer had made in relation to Mr Corcoran bullying him.²²⁶²
1789. Mr Corcoran explained that the background to Mr Shearer's complaint was the conversations that Mr Corcoran was having with him about his approach to certain issues, including his technical knowledge and complaints that Mr Corcoran was receiving from Governors about Mr Shearer telling them to ask other people for answers when they had questions, instead of Mr Shearer finding out the answer.²²⁶³

9.1.2.3 Mr Severin's evidence

1790. Mr Severin also gave evidence regarding the training required by Mr Shearer to successfully perform in his role. Mr Severin's evidence was as follows:

MR SEVERIN: *Again, I can also refer to the evidence I heard on the stream. I know about the issue in relation to the basic officer training. I have to say there would have been every opportunity for Mr Shearer to participate in that training. There was no impediment to do so. It would have been clear that he wouldn't have had to do that in parallel to doing his job. Somebody else would have been acting up during him doing the training. It is unusual that Directors, even if they are sideways entries to the base grade officer training, but it's not also wrong.*

2259 Ex. 59, TB 5, Vol 29, Tab 18, AST.002.013.0083_0032 [134].

2260 Transcript, 22 November 2023, 2971.32-2972.2.

2261 Ex. 59, TB 5, Vol. 29, Tab 18, AST.002.013.0083_0032 [135].

2262 Transcript, 22 November 2023, 2972.4-27.

2263 Transcript, 22 November 2023, 2972.31-43.

Mr Shearer would have no doubt — and I'm not across the detail as to what type of induction he received, but he would have no doubt — he certainly made aware and provided with details about processes relevant to his role. And so I personally am not convinced that the absence of that training resulted in some of the decisions that were subsequently made. I am also saying there would have been no impediment on him doing the training. Other — like, there were other Directors that came from police, and they did the training. They asked the Assistant Commissioner to do so. They were allowed to do so.

COMMISSIONER: *Mr Severin, really, surely it shouldn't have been a question of him asking. It should have been assumed that someone coming into that job in that role, the first step would be to give them basic training, wouldn't it?*

MR SEVERIN: *To get — to get some training in relation to his role, yes.*

COMMISSIONER: *Yes.*

MR SEVERIN: *It is highly unusual, in my experience — that's not to say it's wrong, because people can do it — for senior members of staff executives to do base grade officer training and it is certainly not something I have any problem with. I never objected to it —*

COMMISSIONER: *But, furthermore, you would want it to happen, wouldn't you?*

MR SEVERIN: *You want your staff to be trained.*

COMMISSIONER: *That's right. I mean, you wouldn't bring anyone in at this level that Mr Shearer came in without saying, 'Okay. You've got to do the basics, as well as being able to perform as a manager.'*

MR SEVERIN: *Yeah, absolutely.*

COMMISSIONER: *And the person to whom he reported surely was the person responsible for ensuring that that happened, wasn't it?*

MR SEVERIN: *The — the other issue is, of course, there is an annual performance review, and it has a training component in it. That would*

have been the opportunity, if something wasn't provided, for Mr Shearer to say, 'I really need this' —

COMMISSIONER: *No, Mr Severin. You and I are around the wrong way here. What I'm putting to you is that it wasn't a question for Mr Shearer to ask for it.*

MR SEVERIN: *Obligation there.*

COMMISSIONER: *Your organisation had an obligation, surely, when bringing people into senior management roles to make sure they were equipped at least with the basic knowledge.*

MR SEVERIN: *I agree with that, needs reform, albeit through some other form of — I'm not suggesting that he didn't get any of that.*

COMMISSIONER: *No.*

MR SEVERIN: *I'm not across the detail, but you wouldn't employ somebody regardless of their background, even if they come from another correctional jurisdiction, without providing some introduction into the role.*

COMMISSIONER: *Now, who was responsible for ensuring that Mr Shearer undertook that basic training?*

MR SEVERIN: *It would have been Assistant Commissioner Corcoran at the time. Together, obviously, with the human resources of the Academy —*

COMMISSIONER: *Sure.*

MR SEVERIN: *— who can provide that training.²²⁶⁴*

1791. When asked about Mr Shearer's evidence to the effect that he did not know how to deal with the allegations raised between November 2017 and January 2018 (involving Astill that gave rise to the mediations which occurred in January 2018, discussed in Chapter 8) and he was not aware of how the complaint system worked,²²⁶⁵ Mr Severin gave the following evidence:

2264 Transcript, 20 November 2023, 2706.14-2707.42.

2265 Transcript, 20 November 2023, 2711.13-18.

MR SEVERIN: *In the conversation I had with him, from— from my recollection, he did talk about the fact that he feels that he is not properly equipped, in the context of knowledge, to do certain tasks of his role and that he would require some remedial training or introduction into— into certain aspects of his role. He also, obviously, felt that he was particularly targeted in a way of being supervised doing his role by his Assistant Commissioner. That was his subjective impression at the time, which gave rise to me then, obviously in consultation with the executive director of human resources, suggesting a mediation approach, which then Assistant Commissioner— or later Deputy Commissioner Grant facilitated.*

MR LLOYD: *But the first part of it may be part subjective and part objective, that is, saying that he needed more training?*

MR SEVERIN: *Again, while I can't recall the details of what training he asked for, yes, I certainly recall the fact that training was an issue and that I encouraged him to avail himself of the training opportunities and to raise it with his Assistant Commissioner as part of - not simply as part of performance review but as a general approach to getting more support.²²⁶⁶*

1792. I am satisfied Mr Shearer raised with Mr Severin that he believed he needed further training. Mr Severin suggested that he pursue the issue with Mr Corcoran. These conclusions are inconsistent with the suggestion that Mr Shearer resisted undertaking the 10-week Custodial Recruit training course. I reject Mr Corcoran's evidence to that effect.

9.1.3 Conclusions regarding Mr Corcoran's management of Mr Shearer

1793. Mr Shearer impressed me as an honest and thoughtful witness. He has clearly worked under significant strain at CSNSW not having experience inside a gaol before taking up his role.

1794. It is plain from the evidence given by both Mr Shearer and Mr Corcoran that there were considerable issues in the workplace relationship between them. Mr Shearer was frustrated by the lack of training he had received and the practical hurdles that impacted his ability to complete the training, which he perceived as necessary to do his role. He felt unsupported in his role, not only due to its scope and by the lack of staffing support, but also by Mr Corcoran as his supervisor. He detailed an environment, at least in the early part of their working relationship, where he perceived Mr Corcoran to be unapproachable, culminating in his view that he was being bullied by Mr Corcoran.
1795. On the other hand, Mr Corcoran appears to have had high hopes for Mr Shearer following his successful recruitment, but was concerned at the pace with which Mr Shearer was acquiring his role-specific skills. Mr Corcoran did not feel as though Mr Shearer was across the detail required for the job.
1796. It is not possible nor necessary to resolve issues disputed by Mr Shearer and Mr Corcoran about their working relationship. However, it is not hard to imagine that the fact that Mr Shearer came from outside CSNSW and was unfamiliar with the culture and practices of the organisation may have caused him some difficulties, including being accepted by both his subordinates and his managers. Whatever the shortcomings of Mr Shearer, Mr Corcoran does not appear to have possessed the skills or approach to management to maximise the resource Mr Shearer's experience represented to CSNSW.
1797. The fractured relationship between the two men undoubtedly affected their ability to provide effective governance in their areas of responsibility. The most significant failure relevant to this Special Commission was the mismanagement of Ms Martin.
1798. In his role as the senior manager, Mr Corcoran should have ensured Mr Shearer completed the 10-week Custodial Recruit training. I have found above that Mr Shearer was not resistant to doing so. Senior Counsel for Mr Corcoran submitted that it was not for him 'to direct a senior manager to take steps which are ones which senior staff ought to be expected to organise themselves'.²²⁶⁷

2267 Submissions on behalf of Kevin Corcoran, 14 December 2023, AST.002.013.0108_0017 [63].

I reject this submission. It is clear, given the evidence that another staff member was required to act in Mr Shearer's role for a period of 10 weeks while he completed the training, that Mr Shearer's line manager, Mr Corcoran, would have to be involved in some respect in approving such an arrangement. I am satisfied that the difficult working relationship between Mr Corcoran and Mr Shearer played a role in Mr Shearer not completing the training in a timely manner.

1799. Senior Counsel for Mr Corcoran submitted that there was no evidence that the training would have assisted Mr Shearer in the performance of his role as to the management of complaints,²²⁶⁸ and there is insufficient evidence²²⁶⁹ to link Mr Shearer's 'deficiencies' with his delayed participation in the training.²²⁶⁹ While there was no policy in place at the time requiring Mr Shearer to undertake such training, the need for him to do so was obvious. Mr Shearer was in an executive role within CSNSW for six and a half years before he completed the basic training for a Correctional Officer working in the centres for which he was responsible. Without that foundational training, Mr Shearer had a diminished understanding of the custodial environment and the officers who work within it. In order to effectively manage complaints and performance issues, he needed to understand the environment in which Correctional Officers under his supervision were working. Mr Corcoran agreed that this training should be mandated for executive staff entering the organisation.²²⁷⁰ He was in a position to require it. I will make that recommendation.
1800. Mr Shearer told the Special Commission that culture was of critical importance in a gaol, and that his role required him to understand the culture in the gaols he was responsible for if he was to effectively identify and fix any problems and ensure the managers underneath him were doing their job properly.²²⁷¹ Mr Shearer also accepted that his lack of understanding about the culture at Dillwynia made it very difficult for him to satisfactorily perform his management role.²²⁷²

2268 Submissions on behalf of Kevin Corcoran, 14 December 2023, AST.002.013.0108_0015 [53].

2269 Submissions on behalf of Kevin Corcoran, 14 December 2023, AST.002.013.0108_0016 [59].

2270 Transcript, 23 November 2023, 3133.26-46.

2271 Transcript, 16 November 2023, 2458.16-41.

2272 Transcript, 16 November 2023, 2459.11-23.

1801. **RECOMMENDATION: Every executive of CSNSW should complete the entry-level Correctional Officer training as part of any onboarding for their respective role, and prior to any substantive uptake of the executive position.**

9.2 Background to management of Ms Martin

1802. It is apparent that Ms Martin did not have a good working relationship with Mr Shearer or Mr Corcoran (or with Mr Severin for that matter).

9.2.1 Relationship between Mr Shearer and Ms Martin

1803. Mr Shearer accepted that as Director Metro he had an obligation to mentor and manage those who directly reported to him. At the time he commenced in the role, Ms Martin, along with the other Governors at each centre in the Metro West Region, reported to him. Following Benchmarking, which was implemented by late 2016 to 2018, the Managers of Security at the small centres, including Emu Plains and Mary Ward Correctional Centres, also directly reported to him.²²⁷³ Mr Shearer's evidence was that there was no expectation as to how often he would visit each centre; however, he would aim to do so each fortnight. If he was unable to travel to the centre (which was increasingly difficult after the number of centres he was responsible for increased, including in regional areas, in late 2016 to 2018), he would speak to the Governors on the phone.²²⁷⁴
1804. During his handover with Ms Wright, Mr Shearer was told by Ms Wright that Ms Martin could be difficult, used colourful language and came across as aggressive.²²⁷⁵ Others within CSNSW also made comments to Mr Shearer to the effect that Ms Martin was challenging and difficult to work with.²²⁷⁶

2273 Ex. 43, TB 2, Vol. 8A, Tab 98, AST.002.013.0061_0002 [7]-[9].

2274 Ex. 43, TB 2, Vol. 8A, Tab 98, AST.002.013.0061_0002 [9].

2275 Ex. 43, TB 2, Vol. 8A, Tab 98, AST.002.013.0061_0004 [17].

2276 Transcript, 16 November 2023, 2453.21-2454.10; Ex. 43, TB 2, Vol. 8A, Tab 98, AST.002.013.0061_0004 [18].

1805. This was also Mr Shearer's experience. Mr Shearer considered Ms Martin to be the most challenging Governor he ever dealt with at CSNSW.²²⁷⁷ In particular, Mr Shearer recalled that Ms Martin

*was resistant to engagement, wasn't as open and forthcoming as the other managers in the region, often didn't dial into the Governor's teleconferences and on at least one occasion did not attend a yearly in-person Governor's conference.*²²⁷⁸

1806. Mr Shearer agreed that these issues caused him to question Ms Martin's suitability to govern two gaols.²²⁷⁹ However, he also told the Special Commission that he had no reason to question Ms Martin's robustness in reporting matters to him,²²⁸⁰ notwithstanding that there were some challenges in his interpersonal relationship with her.²²⁸¹

1807. Mr Shearer said that the culture led by Ms Martin at Dillwynia was 'more command and control oriented' than the other centres he managed.²²⁸² When it was put to Mr Shearer that evidence heard by the Special Commission suggested the culture at Dillwynia included a distrust of management, a fear of management and a general belief that complaints of misconduct by officers would not be taken seriously, Mr Shearer stated that he had not drawn these conclusions.²²⁸³ Mr Shearer explained that he had only received two complaints from within Dillwynia about Ms Martin during his time managing her, and he otherwise had 'no understanding of the culture that existed there from day to day'.²²⁸⁴

1808. However, Mr Shearer did have issues with Ms Martin's management of Dillwynia.

2277 Transcript, 16 November 2023, 2454.12-46; Ex. 43, TB 2, Vol. 8A, Tab 98, AST.002.013.0061_0004-0005 [19].

2278 Ex. 43, TB 2, Vol. 8A, Tab 98, AST.002.013.0061_0004 [19].

2279 Transcript, 16 November 2023, 2454.44-2455.9.

2280 Transcript, 16 November 2023, 2486.4-13.

2281 Transcript, 16 November 2023, 2455.11-23.

2282 Transcript, 16 November 2023, 2458.9-14.

2283 Transcript, 16 November 2023, 2457.19-30.

2284 Transcript, 16 November 2023, 2458.43-2459.9.

1809. On 30 November 2016, and following Ms Martin's attendance at a Regional Governor's meeting, Mr Shearer sent Ms Martin an email regarding concerns he had with regard to her behaviour and attitude (the **30 November email**). It is necessary to set out the content of this email in full. It states:

Shari,

Thank you for your attendance at our meeting today, and for taking the time to forward me your speaking notes in advance.

I wish though to share with you my observations on your interactions with me, and in the way you refer to senior officers in this organisation during the meeting.

You may not be aware but you come across as quite negative, and often disrespectful. When referring to your challenges today you implied the CSNSW Executive provided:

- Inadequate information/lack of detail i.e. Parklea [Correctional Centre] constant flow of information to management and staff-process was transparent.*
- No transparency*
- No available risk assessment or job evaluations*
- it would appear to all staff that benchmarking is a done deal (meaning no consultation).*
- That benchmarking appears to be measured against just inmate numbers, there appears to be no consideration to complexity of each individual centre.*
- Lack of proper and continued consultation with General managers.*

Many of these are personal views and not substantiated, so the impression that I took was that you transmit a view that is critical of CSNSW leadership and its initiatives. I'm not sure if you don't fully understand these complexities - or your message is emotive and designed to be dismissive of those working hard to transition CSNSW through this period.

When during the meeting we were discussing the suitability of the Kariong prison for female inmates, and I requested you forward me a copy of the paper you referred to as previously submitting (a few years ago) – you told me to ‘ask AC [Assistant Commissioner] Corcoran for it’.

I felt this was very disrespectful of both AC Corcoran – implying he had done nothing with it, and a disrespectful response to me in front of the other six GM’s [General Managers] present.

Over the last few months I have sought your engagement on a number of issues.

- In the formation of a Women’s Leadership Group you choose not to be part of the it group – saying ‘I’m not interested anymore’, which is a choice I accept.*
- You did not engaged [sic] in the meeting I arranged to discuss the Women and Children’s Program at Emu Plains – or sought [sic] to provide representation from custodial staff.*
- You have also refused to represent EPCC [Emu Plains Correctional Centre] during a government visit on 1 Dec – saying ‘I don’t want to do it’ and appointing your MOS [Manager of Security] to represent the prison.*
- I had also mentioned to you previously that I request that you ring into GM Conferences or, if you were unavailable, then to provide a suitable representative, no representative called in during the GM Conference this week to represent EPCC or DCC [Dillwynia Correctional Centre]. I am still awaiting a response to the text message requesting attendance when it became evident you hadn’t called in (I understand that you may have been on leave at that time, but you still have yet to acknowledged [sic] my message now that you are back at work).*

These are examples of where I think your communication falls short of that expected from a GM.

I believe GM’s need to be forthright and honest but they also need to be strategic and good communicators to achieve the best outcomes for

CSNSW and their centres. I think GM's are crucial to our success in over the current Better Prisons transformation otherwise we risk failure – which is not an option for us. I believe the role of GM is a great responsibility, and a privilege – GM's need to be good communicators and champions of our transformation.

I think you need to reflect on whether this challenging role is one that you are prepared to accept, and whether you are prepared to represent CSNSW as a GM in its representative and leadership roles. I think you have a great deal of experience and have achieved good success in your career, this Benchmarking transition period though is going to need energy, strategic thinking, positivity and support if we are going to achieve our goals.

I would like to work with you, and support you through this period. I would like you on the team – especially with the new women's goals and processes we are trying to address.

*For your consideration.*²²⁸⁵

1810. Mr Shearer forwarded a copy of the 30 November email to Mr Corcoran on the same day he sent it. The following day Mr Corcoran sent it to Mr Severin. Mr Corcoran's email stated:

Dear Peter

*I thought you should get a confidential copy of this email I received from Hamish in case you received some communication from Shari. I had a long talk to Hamish last night who appeared pretty drained from his Shari interactions.*²²⁸⁶

1811. The email then provided information in relation to a female bed shortage, being an issue which was referenced in Mr Shearer's email to Ms Martin.²²⁸⁷

2285 Ex. 41, CSNSW.0001.0244.0002-0003.

2286 Ex. 41, CSNSW.0001.0244.0001.

2287 Ex. 41, CSNSW.0001.0244.0001.

1812. With respect to Ms Martin's operational ability, Mr Shearer told the Special Commission that the issues between himself and Ms Martin came to a head in February/March 2017, when there was a poor staff response to two separate operational incidents occurring at Dillwynia.²²⁸⁸
1813. The first incident involved an inmate jumping into a 'sterile' zone at the centre, which was not identified by the officers in the monitoring room.²²⁸⁹
1814. The second incident involved inmates gaining access to the roof of the administration building. Mr Shearer gave evidence that he was notified of the incident by Mr Corcoran, who, in turn, had been advised of the incident by the Special Operations Group, who were responding at the scene. Mr Shearer stated that when he rang Ms Martin to ascertain what was happening and to determine whether additional resources were required, she was very flippant with him. Mr Shearer agreed that Ms Martin had not passed on critical information to himself, or anyone else in Custodial Operations, in a timely way, which was necessary for him to do his job.²²⁹⁰
1815. Ms Martin believes herself to have been a good Governor and to have had a good management style.²²⁹¹ She felt that Mr Shearer belittled her and put her down. She said that Mr Shearer did not value her opinion and lacked confidence in her abilities.²²⁹² She recalled that one of the first things Mr Shearer said to her when he took over as Director was that Mr Corcoran had described her as 'challenging'.²²⁹³
1816. Ms Martin provided details about a number of incidents, which she felt demonstrated the poor treatment she said she received from Mr Shearer. They included the following:
- a) Mr Shearer would ask her to write reports on a monthly basis regarding the large number of positive drug tests consistently collected from inmates at

2288 Transcript, 16 November 2023, 2460.16-45; Ex. 43, TB 2, Vol. 8A, Tab 98, AST.002.013.0061_0005 [20].

2289 Transcript, 16 November 2023, 2462.18.

2290 Transcript, 16 November 2023, 2462.18-2463.12; Ex. 43, TB 2, Vol. 8A, Tab 98, AST.002.013.0061_0005 [20].

2291 Transcript, 16 November 2023, 2389.38-2390.5.

2292 Transcript, 13 November 2023, 2177.31-40; Transcript, 14 November 2023, 2316.12-18; Ex. 38, TB 2, Vol. 7, Tab 59A, AST.002.013.0059_0011 [51].

2293 Ex. 38, TB 2, Vol. 7, Tab 59A, AST.002.013.0059_0011 [47].

Emu Plains Correctional Centre (**Emu Plains**). Ms Martin stated that while Mr Shearer believed that the drug tests were evidence of her staff not doing their job effectively, she regularly told him that the positive results were evidence of her staff targeting the correct inmates during urine testing. Ms Martin also stated that she put in numerous business cases for additional cameras to be installed at the correctional centre in response to the concerns about the positive drug tests, but that no additional resources were provided; nevertheless, Mr Shearer continued to request that Ms Martin produce reports explaining the 'dirty urines'.²²⁹⁴

- b) Ms Martin would get into trouble from Mr Shearer when she did not report issues to him in a timely manner.²²⁹⁵ Ms Martin gave as an example the incident when inmates had climbed onto the roof of one of the buildings at Dillwynia. She said she was managing the situation by calling a muster, negotiating with the inmates to come down from the roof and instructing one of her executives to call the specialist security unit. She said that approximately 12 minutes into the incident, she received a phone call from Mr Shearer during which she was berated for not having personally reported the incident to himself or Mr Corcoran first. Mr Shearer told Ms Martin that he had been informed about the incident by others and took issue with not being told about the situation by Ms Martin. Ms Martin thought this was unreasonable and told Mr Shearer that the incident had started only 12 minutes ago and that 'I have at least half an hour for a death in custody to report'.²²⁹⁶
- c) In November 2016, Ms Martin stated that she attended a Regional Governor's meeting and had prepared a briefing note in relation to converting the external area outside of Dillwynia into a mother's and children's area. During the meeting, Mr Shearer asked her a question about the briefing, and Ms Martin told him that it had already been sent to the Commissioner of CSNSW and he would have to ask him for it. Ms Martin explained that after the meeting, Mr Shearer asked to speak with her privately and that

2294 Transcript, 13 November 2023, 2177.31-2178.41.

2295 Transcript, 14 November 2023, 2316.36-38.

2296 Transcript, 14 November 2023, 2317.1-24.

he told her that she did not deserve the privilege of being a Governor.²²⁹⁷ Subsequent to the meeting, Ms Martin received the 30 November email,²²⁹⁸ referred to earlier, which Ms Martin forwarded to another Governor, Tracey Mannix, noting various issues she had with Mr Shearer's email.²²⁹⁹

- d) Ms Martin recalled an occasion where Mr Shearer met with her to show her a management pyramid. She said she found this conversation to be patronising and insulting. She also worried that Mr Shearer genuinely believed that a simple management diagram would assist her to manage hundreds of inmates and staff across two correctional centres.²³⁰⁰
- e) Ms Martin was also concerned that there was a lack of action by the director, and head office, when she would request funding for additional security measures, such as closed-circuit television (**CCTV**) cameras, lighting, and radios.²³⁰¹

9.2.2 Relationship between Mr Corcoran and Ms Martin

1817. Mr Corcoran gave evidence that, during his time as Assistant Commissioner, he was aware of management problems within Dillwynia. He knew that there were significant performance problems with Ms Martin. He told the Special Commission that he was not impressed with the way Ms Martin operated and said that in his assessment she was not managing Dillwynia properly or effectively.²³⁰² He later explained that he thought 'her treatment of staff and inmates was a problem' and 'some of the activities that were going on at [Dillwynia] at the time' were deficient.²³⁰³ These 'activities' included inmates who were unemployed being placed into the yard all day with nothing to do, which he viewed as problematic.²³⁰⁴

1818. Mr Corcoran initially told the Special Commission that he did not personally receive any reports from staff about the way Ms Martin treated them during her

2297 Transcript, 14 November 2023, 2410.6-2411.44.

2298 Ex. 41, CSNSW.0001.0244.0002-0003.

2299 Ex. 41, CSNSW.0002.0229.0735.

2300 Transcript, 16 November 2023, 2390.16-41; Ex. 38, TB 2, Vol. 7, Tab 59A, AST.002.013.0059_0011 [49].

2301 Ex. 38, TB 2, Vol. 7, Tab 59A, AST.002.013.0059_0004 [20].

2302 Transcript, 22 November 2023, 2973.25-43.

2303 Transcript, 22 November 2023, 2998.35-36.

2304 Transcript, 22 November 2023, 3000.6-13.

time at Dillwynia, but that he understood that reports had been submitted to Mr Shearer.²³⁰⁵ However, he subsequently told the Special Commission that he had been to the gaol and talked to officers and inmates about the problems at Dillwynia, and how they were being treated. He said that he asked Mr Shearer to start addressing those issues.²³⁰⁶ This is discussed in further detail below in relation to the management issues arising with respect to Ms Martin.

1819. Similarly, to her relationship with Mr Shearer, Ms Martin said that she felt demoralised and belittled in her dealings with Mr Corcoran.²³⁰⁷

1820. Ms Martin recalled an incident involving a sophisticated drug secretion scheme where drugs were entering one of her correctional centres in pairs of underwear. Ms Martin stated that she responded to this issue by providing a three-week opportunity for inmates to have underwear sent into the centre, after which inmates were to receive gaol-issued underwear. Ms Martin recalled that the media became aware of this decision, and she received a phone call from Mr Corcoran ‘blasting [her] for making such a decision without consulting him’ and telling her to reverse the decision. Ms Martin reversed the decision, and then a month or so later, an instruction was given to female-inmate centres that underwear would be provided by the centres.²³⁰⁸ Ms Martin understood that this instruction had come from Mr Corcoran.²³⁰⁹

1821. Ms Martin recalled that, in response to her questioning as to why she had not been given the opportunity to act up in a Director position, Mr Shearer told her that it was because she challenged Mr Corcoran.²³¹⁰

2305 Transcript, 22 November 2023, 3000.18-31.

2306 Transcript, 22 November 2023, 3000.37-46.

2307 Ex. 38, TB 2, Vol. 7, Tab 59A, AST.002.013.0059_0011 [51].

2308 Transcript, 13 November 2023, 2180.9-32.

2309 Transcript, 13 November 2023, 2181.22-30.

2310 Transcript, 13 November 2023, 2179.39-2180.5.

9.2.3 Relationship between Mr Severin and Ms Martin

1822. While Mr Severin did not have significant direct contact with Ms Martin during his time as Commissioner of CSNSW, he also gave evidence that he held some concerns about Ms Martin and pointed to difficult behaviour that she displayed, and of which he was aware. During the course of his oral evidence, Mr Severin agreed that, while he was Commissioner of CSNSW, a culture existed at Dillwynia as a result of which officers lacked trust in management and that complaints about other officers would not be dealt with properly.²³¹¹ In explaining this ‘failure of culture’ at the centre, Mr Severin stated that that there were certainly leadership challenges with Ms Martin, which were only resolved when she left in 2018 and Emma Smith was appointed as Governor.²³¹²
1823. Mr Severin told the Special Commission that Ms Martin was ‘quite obstructionist’ in meetings that he had attended with her, and that he formed the view that she believed she knew better than others. Mr Severin stated that he had also received feedback from Mr Corcoran at the time about difficulties involving Ms Martin and exchanges between Ms Martin and Mr Shearer.²³¹³
1824. Mr Severin stated that he never observed Ms Martin to be inappropriate with staff or inmates during his visits to Dillwynia; however, he accepted that Governors would be on their best behaviour while the Commissioner of CSNSW was visiting. Mr Severin accepted that he had failed in his oversight of the management of Dillwynia during the time when Ms Martin was Governor, and that his oversight should have included performance management, which may have consisted of providing direct feedback, undertaking formal performance management and/or removal from the position.²³¹⁴ He did not give evidence that a performance management plan or similar had been created for Ms Martin.

2311 Transcript, 20 November 2023, 2716.24-43.

2312 Transcript, 20 November 2023, 2717.6-19.

2313 Transcript, 20 November 2023, 2717.38-2718.3.

2314 Transcript, 20 November 2023, 2717.29-36; Transcript, 20 November 2023, 2718.5-28.

9.2.4 Ms Martin's redundancy

1825. Ms Martin left the role of Governor of Dillwynia on 21 December 2018, having taken a voluntary redundancy package. She gave evidence that the real reason that she left her position was due to the poor relationship between herself and her superiors at that time, being Mr Shearer and Mr Corcoran.²³¹⁵
1826. Following her retirement, Ms Martin wrote a letter to the Secretary for the Department of Communities and Justice (**DCJ**) in which she described being belittled, ignored and bullied by Mr Shearer and Mr Corcoran. She said that she was never given an opportunity to act in a capacity higher than Governor and watched junior Governors being offered more senior roles over her. Ms Martin recalled being questioned about her position as a manager by senior management and at one staff meeting was told that she did not deserve the privilege of being a Governor.²³¹⁶

9.3 Management of Ms Martin's performance

9.3.1 Mr Shearer's management of Ms Martin's performance

1827. It is apparent that the relationship between Ms Martin and Mr Shearer was marked by discord. There is no doubt that this discord contributed to the failure to address the cultural problems and the lack of effective management at Dillwynia.
1828. Following the incidents in February and March 2017 (detailed above), Mr Shearer told the Special Commission that he had concerns about Ms Martin's operational performance, in addition to his existing concerns about the culture at Dillwynia and Ms Martin's management style. He considered that, without improvement, Ms Martin was not capable of discharging her functions.²³¹⁷ He formed the view

2315 Transcript, 13 November 2023, 2177.3-10; Ex. 38, TB 2, Vol. 7, Tab 59A, AST.002.013.0059_0001 [4].

2316 Ex. 38, TB 2, Vol. 7, Tab 59A, AST.002.013.0059_0021.

2317 Transcript, 16 November 2023, 2461.6-26.

that Ms Martin ‘wasn’t up to the job’ of Governor; however, he was not able to specify exactly when he reached this view.²³¹⁸

1829. When asked whether there were any discussions between Mr Shearer and his superiors in relation to the problems at Dillwynia and Ms Martin’s performance, Mr Shearer stated that he could not recall Dillwynia’s performance being raised; however, it was ‘common knowledge that Shari was difficult to work with’.²³¹⁹ He also agreed that Ms Martin’s performance had been discussed at meetings he had attended.²³²⁰
1830. Mr Shearer subsequently informed Mr Corcoran and Ms Martin separately that he intended to prepare a Performance Improvement Plan (**PIP**) for Ms Martin.²³²¹
1831. Ms Martin gave evidence that in around 2018 (although she was not entirely sure about the date), Mr Shearer sent her a letter/email indicating his intention to place her on a PIP.²³²² Ms Martin did not understand why she would be placed on a PIP.²³²³
1832. According to Ms Martin, in response to this letter/email she met with Mr Corcoran, in the company of her union delegate, to discuss the PIP and the reasons for its implementation.²³²⁴ Ms Martin gave evidence that during this meeting she told Mr Corcoran that Mr Shearer had told her about Mr Corcoran describing her as ‘challenging’, which she said Mr Corcoran denied.²³²⁵ Ms Martin also explained that she advised Mr Corcoran about Mr Shearer’s behaviour and attitude toward her during his period as Director, and that she was not satisfied with the way in which Mr Shearer was handling certain issues.²³²⁶ Ms Martin stated that Mr Corcoran responded by telling her that Mr Shearer was with Human Resources organising her PIP and that he did not otherwise take any action in relation to her concerns.²³²⁷

2318 Transcript, 16 November 2023, 2456.1-21.

2319 Transcript, 16 November 2023, 2459.37-44.

2320 Transcript, 16 November 2023, 2459.37-46.

2321 Transcript, 16 November 2023, 2461.30-40; Transcript, 14 November 2023, 2317.40-2318.12.

2322 Transcript, 14 November 2023, 2317.40-2318.7; Transcript, 13 November 2023, 2181.35-38.

2323 Transcript, 14 November 2023, 2318.16-32.

2324 Transcript, 13 November 2023, 2181.32-38.

2325 Transcript, 13 November 2023, 2181.44-2182.1.

2326 Transcript, 14 November 2023, 2319.22-42.

2327 Transcript, 13 November 2023, 2182.5-16.

1833. Mr Shearer told the Special Commission that he prepared a draft of Ms Martin's PIP.²³²⁸ Two versions of a draft PIP were in evidence.²³²⁹
1834. On 2 March 2017, Mr Shearer emailed to himself the first version of the draft PIP (**the first draft PIP**).²³³⁰ The first draft PIP had the title 'Performance Management Plan' and detailed that it was for Ms Martin. It also recorded that the officer conducting the review was Mr Shearer. This draft consisted of a table with a series of columns as follows: 'Issues to be addressed'; 'Standards expected'; 'Action required'; 'Reviews'; and 'Officers' comments'. The only two columns that had any content in them were the 'Issues to be addressed' and 'Standards expected' columns.²³³¹
1835. The 'Issues to be addressed' column included headings such as 'develop personal attributes'; 'improve your self-management'; 'work more collaboratively'. These headings appear to relate to areas for suggested behavioural improvement. The 'Standards expected' column is largely self-descriptive and sets out behaviours that seem to be expected of a person in the role of Governor.
1836. The second version of the draft PIP was one which was attached to an email sent by Mr Shearer to Strategic Human Resources Business Partner, Cathryn Hellams, copied to Mr Corcoran on 8 March 2017 (**the second draft PIP**). The email stated:

Cathy,

Here is the draft I intend to forward to her later this week for her input before I formerly [sic] present it to her during the Governor's Conference next Tuesday.

*Any thoughts would be greatly appreciated.*²³³²

2328 Transcript, 16 November 2023, 2461.11-2462.42; Ex. 43, TB 2, Vol. 8A, Tab 98, AST.002.013.0061_0005, [21].

2329 Transcript, 16 November 2023, 2461.11-2462.6; Ex. 43, TB 2, Vol. 8A, Tab 98, AST.002.013.0061_0005 [21]; See, also, Ex. 52, TB 2, Vol. 8A, Tab 98A, AST.002.013.0089_0004-0009; Ex. 53, CSNSW.0001.0275.0272_0001-0012.

2330 Ex. 52, TB 2, Vol. 8A, Tab 98A, AST.002.013.0089_0001.

2331 Ex. 52, TB 2, Vol. 8A, Tab 98A, AST.002.013.0089_0004-0009.

2332 Ex. 53, CSNSW.0001.0275.0272_0002.

1837. The second version of the PIP had additional details in the 'Action required' column. The 'Action required' column contained details of specific actions to be taken to address the issues identified. It is clear that the 'Action required' column was developed in response to deficiencies in Ms Martin's performance as identified by Mr Shearer – for example, in respect to Ms Martin's handling of the incidents in February/March 2017. It included the following:

- *You are required to act and think strategically during any serious and complex incidents. You need to provide oversight to the tactical arrangements, but think bigger picture about the wider implications. As a communicator you are to keep your Director, CSNSW Executive, and CSNSW Media informed and updated as significant incidents progresses.*

...

- *Walk-about and engage with your staff and inmates to better understand their needs and concerns.*
- *Hold staff and inmate musters regularly to inform, pass information and invite discussion.*
- *Actively listen and encourage staff to offer new ideas that might be different to those of your own.*
- *Encourage and empower a culture where officers seek improvement and efficiencies.*
- *Look for opportunities to better meet the female inmate's needs, consider low cost options that use inmate labour.*
- *Look for opportunities to engage and lead the thinking on best practice to manage female inmate's needs. Inform CSNSW of your thinking and suggest positive changes.*
- *Be approachable and personable, and engage in a way where staff feel comfortable to raise concerns.*
- *Provide feedback and encouragement to staff.*
- *Engage with visitor groups and present CSNSW in a positive light.*

- *Actively participant [sic] at the Governor's Metro West meetings, and be positive and constructive in your engagement.*
- *Use language that encourages engagement and participation.*
- ...
- *Attend all Governor's workshops and meetings, and represent your centres on the fortnightly Custodial Corrections teleconferences.*
- *Create an environment where your staff feel they can contribute to your centre's decisions; invite discussion and feedback.*
- *Build diverse teams and distribute your leadership expectations.*
- *Empower your staff.*
- ...
- *Actively seek opportunities to improve the performance of your centres and the wellbeing of your staff and inmates.*
- *Routinely walk through your facilities to assess the serviceability and maintenance of your centres.*
- *Provide clear direction to your staff of the expectations on them, and drive effective leadership and performance.*
- *Address poor culture at your centres, and drive improvement.*
- *Address the issues identified at your centres in the 2016 People Matters Survey.*
- *Seek to reduce the levels of contraband entering your centres.*
- ...
- *Consider ways to improve the welfare of inmates at your centres*
- ...
- *Role model the behaviours you expect from your staff.*
- ...

- *Seek to improve your KPIs [Key Performance Indicators], in particular to reduce contraband in your centres, and poor behaviour by your staff*
- ...
- *Address inappropriate behaviour (through the disciplinary process, grievance action, or through local management and mediation).*²³³³

1838. This draft PIP further states:

- *This Plan will be reviewed on a fortnightly basis by your Director.*
- *This will occur on six occasions, initially in a face-to face meeting, alternating by video chat, over the three month implementation period*
- *These meeting [sic] will review progress and discuss issues of concern.*²³³⁴

1839. Mr Shearer said that he decided not to implement the PIP as he considered it to be a punitive approach that was not appropriate at the time.²³³⁵ Mr Shearer explained that the reason he withdrew the PIP was because he reflected on the incidents of February and March 2017, and his responsibility as a Director to grow the management team, rather than adopt a punitive approach. Mr Shearer also stated that Ms Martin was in the twilight of her career and the PIP would have been a 'bad mark' on her.²³³⁶

1840. Instead of going ahead with the PIP, Mr Shearer met with Ms Martin on 7 April 2017 to discuss 'each other's needs'. Mr Shearer considered that Ms Martin appeared to be more engaged with him following that meeting,²³³⁷ He felt his relationship with Ms Martin improved following their meeting in April and he found her to be more forthcoming.²³³⁸

2333 Ex. 53, CSNSW.0001.0275.0272_0004-0012.

2334 Ex. 53, CSNSW.0001.0275.0272_0012.

2335 Transcript, 16 November 2023, 2461.11-2462.6; Ex. 43, TB 2, Vol. 8A, Tab 98, AST.002.013.0061_0005, [21].

2336 Transcript, 16 November 2023, 2461.42-2462.6; Ex. 43, TB 2, Vol. 8A, Tab 98, AST.002.013.0061_0005 [21].

2337 Ex. 43, TB 2, Vol. 8A, Tab 98, AST.002.013.0061_0005 [21].

2338 Transcript, 16 November 2023, 2486.4-13; Ex. 43, TB 2, Vol. 8A, Tab 98, AST.002.013.0061_0005 [21].

1841. Ms Martin explained that, for reasons unknown to her, the PIP was ‘cancelled’.²³³⁹ She recalled that Mr Shearer subsequently came to speak with her at Dillwynia and, at Mr Shearer’s initiation, they had a frank conversation about how she was feeling and why she was feeling that way, and they ‘listened considerately’ to each other’s concerns.²³⁴⁰ Ms Martin stated that, while she appreciated the meeting, her understanding was that Mr Shearer had been encouraged, or told, to come and talk to her, although she did not say by whom.²³⁴¹
1842. When it was put to Mr Shearer that the decision not to progress the PIP meant that, in the absence of self-improvement, Ms Martin remained in a position where she was not capable of discharging her duties, Mr Shearer agreed that this was the case. Mr Shearer also agreed that this was not effective management and, while he believed at the time it would be a better outcome for Ms Martin, it was not ultimately a better outcome for the women at Dillwynia.²³⁴²
1843. In circumstances where Mr Shearer had considerable misgivings about Ms Martin’s ability to perform her duties, the decision not to place Ms Martin onto a PIP was significant and, as Mr Shearer himself conceded, detrimental to the women at Dillwynia.
1844. Given the feedback Mr Shearer had received regarding Ms Martin upon his commencement in his role, the difficulties he was having with Ms Martin by November 2016 and the subsequent incidents in February/March 2017, it is difficult to understand the decision to retreat from the implementation of the PIP. As I have indicated, Mr Shearer noted that one of the reasons he ultimately decided against the implementation of the PIP, and thereby a formal performance management tool, was that he did not want to ‘adopt a punitive approach’ and that the PIP would have been a ‘bad mark’ on the summary of Ms Martin’s career. However, the purpose of a PIP is to provide an employee with an oversight of areas in which their performance is lacking, and it provides them with an opportunity to improve their performance against articulated standards. This approach may

2339 Transcript, 13 November 2023, 2182.10-16.

2340 Transcript, 16 November 2023, 2391.40-47.

2341 Transcript, 16 November 2023, 2391.10-21; 2392.10-30.

2342 Transcript, 16 November 2023, 2463.32-2464.10.

ultimately result in a sanction that could be punitive if the employee is not able to meet the requisite performance standard that is expected from them, but equally it can provide that employee with important tools to try and improve their performance. When considering whether or not to implement a PIP, the fact that the end result may be punitive should not be a consideration. The PIP is either required or not. Equally, it should not matter whether the person may have a ‘bad mark’ against their name after any action is taken in relation to a completed PIP, prior to its implementation. Again, this presupposes a negative outcome and undermines the reason PIPs are used.

1845. Most importantly, however, without recording an employee’s performance that is considered unsatisfactory, a picture may emerge of an employee that is not consistent with their actual performance. For example, Ms Martin did not have any record in her personnel file that would suggest she had been subject to performance management, notwithstanding a view by a number of executives across different parts of CSNSW that she was challenging and that there were concerns regarding her ability to undertake her role.²³⁴³ Informal, undocumented discussions regarding serious performance concerns are an ineffective way to manage employees. Poor performance should be documented, and the implementation of a PIP should not be contingent on any particular result possibly arising. These matters should be regularly discussed by all persons in management roles at CSNSW.

9.3.2 Mr Corcoran’s awareness of Ms Martin’s performance as Governor

1846. Mr Corcoran repeatedly accepted in his evidence that during the portion of the period of Astill’s offending for which Ms Martin was the Governor, she was not capable of doing her job properly. She was the Governor from 14 July 2014 to 21 December 2018.²³⁴⁴

2343 See eg Ex. 58, TB 3, Vol. 18, Tab 668, CSNSW.0001.0013.2174_0001-0018; Ex. 58, TB 3, Vol. 18, Tab 669, CSNSW.0001.0013.3138_0001-0003; Ex. 58, TB 3, Vol. 18, Tab 670, CSNSW.0001.0013.3226_0006-0048; Ex. 58, TB 3, Vol. 18, Tab 671, CSNSW.0001.0013.3145_0001-0018.

2344 See eg Transcript, 22 November 2023, 2997:1-10; Ex. 3, TB 3, Vol. 9, Tab 107, CSNSW.0001.0014.0001_0001.

1847. Mr Corcoran gave evidence accepting that there were issues with Ms Martin's performance as Governor following Mr Shearer's appointment as Director in July 2016. His evidence was:

MR LLOYD: *In terms of Dillwynia, [Mr Shearer] was the Director with oversight of that particular Correctional Centre from when he was appointed into that role in 2016?*

MR CORCORAN: *Yes.*

MR LLOYD: *And he directly reported to you?*

MR CORCORAN: *Yes.*

MR LLOYD: *You were aware, at least in that period from when he was appointed, of some management problems inside that Correctional Centre?*

MR CORCORAN: *Yes.*

MR LLOYD: *And some performance problems by the then Governor?*

MR CORCORAN: *Yes.*

MR LLOYD: *What did you think of the performance of the then Governor Shari Martin at that time, from, say, August 2016 until the time of her departure in December of '18?*

MR CORCORAN: *Yeah, I wasn't impressed with the way she operated.*

MR LLOYD: *Did you think that she was managing the Centre properly and effectively?*

MR CORCORAN: *No.*²³⁴⁵

1848. He later gave evidence accepting that, in that same time period (August 2016 to December 2018), he had formed the view that she was not 'up to the job'.²³⁴⁶ Following this, he also gave similar evidence, though not with the same time limitations:

2345 Transcript, 22 November 2023, 2973.16-43.

2346 Transcript, 22 November 2023, 2974.27-30.

COMMISSIONER: *We started this conversation, though, talking about the Governor of the gaol.*

MR CORCORAN: *Yeah.*

COMMISSIONER: *Now — who was ultimately your responsibility in the line of command?*

MR CORCORAN: *Yes, that's right.*

COMMISSIONER: *Did you form the view she wasn't up to doing the job properly?*

MR CORCORAN: *I did form that view.*

COMMISSIONER: *You did?*

MR CORCORAN: *It has to go through the —*

COMMISSIONER: *You did form that view?*

MR CORCORAN: *Yeah.²³⁴⁷*

1849. When asked what deficiencies he had identified in Ms Martin's capacity as a Governor, Mr Corcoran gave the following evidence:

MR CORCORAN: *I think her treatment of staff and inmates was a problem, and, you know, some of the activities that were going on at that Centre at the time.*

COMMISSIONER: *Well, you'll have to explain that to me. What was the problem with her treatment of staff?*

MR CORCORAN: *Well, we were hearing about things, but people were not obviously prepared to put things on paper about a Governor. And so that's — you know, the problem is that, you know, we have to rely on, you know, I guess, hearsay evidence that things aren't going well.*

COMMISSIONER: *Where were you hearing things?*

MR CORCORAN: *From staff.*

COMMISSIONER: *So that's not hearsay; that's direct?*

MR CORCORAN: *Yeah, we haven't witnessed that behaviour.*

COMMISSIONER: *So you haven't witnessed it, but —*

MR CORCORAN: *Witnessed the behaviour.*

COMMISSIONER: *But people were reporting to you what they had seen?*

MR CORCORAN: *They were reporting it to Hamish and —*

COMMISSIONER: *Right. So it was coming up to you?*

MR CORCORAN: *Yes. And — and that's why we went down this path of this performance improvement plan with Ms Martin.*

COMMISSIONER: *And the second issue that you said was — you identified as being reflective of her incapacity?*

...

COMMISSIONER: *When you answered my question, you said there were two reasons: one was treatment of staff; and then you say some of the activities that were going on at the Centre at the time. What were the activities that were going on?*

MR CORCORAN: *As I — as I said, the way that inmates who were unemployed were placed in a yard all day with nothing to do — you know, nothing (indistinct). And that was problematic for me. And this is something I communicated through to Hamish, you know, after visits there. So I would see things not — you know, activities not occurring for inmates. And, you know, they were the things that, you know, I was disturbed about in terms of how that Centre was operating.*

COMMISSIONER: *Did you get reports about the way she treated her own staff and the language she used?*

MR CORCORAN: *I didn't personally get reports. But I understand that reports were submitted to Hamish. But — and I think that formed part of that performance improvement plan.*

COMMISSIONER: *So you got reports from Hamish?*

MR CORCORAN: *Well —*

COMMISSIONER: *About Ms Martin's conduct?*

MR CORCORAN: *Yeah.*

COMMISSIONER: *Did you go and have a look for yourself?*

MR CORCORAN: *Yes.*

COMMISSIONER: *Did you go and talk to officers about the problem?*

MR CORCORAN: *Yes, I talked to staff in the Centre and — and also, you know, talked to the inmates.*

COMMISSIONER: *So the staff and inmates told you of these problems, did they?*

MR CORCORAN: *They told me that — you know, how they were being treated at that point in time, and that's why I asked Hamish to start addressing these issues.²³⁴⁸*

1850. Mr Corcoran said that he had spoken to Ms Martin about the way she was managing, and her behaviours, on multiple occasions 'over the years', and that he reported this through to Mr Severin. However, he could not recall that he made any reports in writing.²³⁴⁹ I initially understood that he was telling me that he had conversations with Ms Martin when she was at Dillwynia. As I will explain, I was wrong.

1851. The essence of Mr Corcoran's complaint was that Ms Martin was unapproachable and was not listening. Mr Corcoran accepted that the kind of culture created by Ms Martin had the capacity to inhibit reports being made of misconduct.²³⁵⁰ Tragically, Mr Corcoran's assessment of the situation has turned out to be true. Ms Martin's behaviour did inhibit reporting of misconduct by staff. His evidence was:

2348 Transcript, 22 November 2023, 2998.35-3000.46.

2349 Transcript, 22 November 2023, 3001.21-40.

2350 Transcript, 22 November 2023, 3004.10-13.

MR LLOYD: *What were the reports from the employees at Dillwynia that came to your attention about her conduct? What was the substance of those reports?*

MR CORCORAN: *Nothing, you know, serious, you know, in terms of, you know, swearing at people on parade and things of that nature. But certainly just being rude and, you know, not, you know, talking to staff and so forth.*

MR LLOYD: *Being unapproachable?*

MR CORCORAN: *Unapproachable.*

MR LLOYD: *Not listening?*

MR CORCORAN: *Not listening. So more along those sort of lines, which, you know, are very — you know, as I said, very low-level. So, you know, you can't mount a campaign against a senior officer on — on that basis.*

MR LLOYD: *But low-level except when it creates an environment that inhibits reports of serious matters going up to the Governor.*

MR CORCORAN: *Yeah, very much so. Yeah.*

MR LLOYD: *And that kind of culture, to your knowledge, would have been one that had the capacity of doing that, that is, inhibiting reports?*

MR CORCORAN: *Yes.*

COMMISSIONER: *Mr Corcoran, I'm not understanding. You just told Mr Lloyd that the complaints that you heard about were low-level?*

MR CORCORAN: *Yeah. Well, the complaints that I heard about were low-level, yes. When I went out to visit — when I went out to visit.*

COMMISSIONER: *Well, did you get complaints other than when you went out to visit that weren't low-level?*

MR CORCORAN: *Well, through Hamish, yes. He would have got complaints about other things, and those things were then included in that — that performance improvement plan.*

COMMISSIONER: *So from Hamish, you were getting the higher-level complaints, were you?*

MR CORCORAN: *We were getting complaints about, you know, how she was managing the Centre and, you know, her relationships with staff.*

COMMISSIONER: *Higher-level complaints than you were getting yourself at the gaol?*

MR CORCORAN: *I— I wasn't getting higher-level complaints; I was getting low-level complaints.*

COMMISSIONER: *Yes, but you got higher-level complaints from Hamish; is that right?*

MR CORCORAN: *Yes. And that's why we embarked on that performance improvement plan.²³⁵¹*

1852. I asked him about whether he had sat down with Ms Martin himself. The following exchanged occurred:

COMMISSIONER: *I understand that. Did you sit down with Ms Martin yourself?*

MR CORCORAN: *I had.*

COMMISSIONER: *And talked to her about the way she was managing?*

MR CORCORAN: *Well, I talked to her about her behaviours, yes.*

COMMISSIONER: *You did? How many times did you do that?*

MR CORCORAN: *Multiple occasions over — over the years, yeah.*

COMMISSIONER: *Multiple occasions?*

MR CORCORAN: *And reported that through, obviously, to Mr Severin.*

COMMISSIONER: *Did you make written reports about this?*

MR CORCORAN: *Sorry?*

COMMISSIONER: *Did you provide — or record any of this in writing? Did you make written reports?*

MR CORCORAN: Look, I — I can't recall. I can't recall, sorry.

COMMISSIONER: Well, it's not going to be hard for us to find out.

MR CORCORAN: Yeah.

COMMISSIONER: Did you make written reports?

MR CORCORAN: I — I can't recall whether I put things in writing, sorry.

COMMISSIONER: Well, you should have, shouldn't you, surely, for this sort of problem?

MR CORCORAN: Yeah. Well, as I've said, you know, we — I conveyed information that I got from Hamish through to Peter Severin.

COMMISSIONER: But shouldn't you have been documenting this?

MR CORCORAN: We were documenting it.

COMMISSIONER: You were?

MR CORCORAN: We were — well, we (crosstalk) through this performance improvement plan, yes.

COMMISSIONER: But you didn't document your interviews with Ms Martin, did you?

MR CORCORAN: Not my interviews, no.

COMMISSIONER: Should you have?

MR CORCORAN: Well, you know, we endeavour to have conversations with people to ensure they understand what behaviour is all about. When you start documenting it, it becomes a formal process.

COMMISSIONER: Well, didn't you ever reach the stage where Ms Martin's behaviour was such that you needed some sort of process?

MR CORCORAN: Yes, we did. We did do that.

COMMISSIONER: Right. Well, what was wrong with — or why shouldn't you have been recording what you'd attempted to do with her?

MR CORCORAN: Why shouldn't we be?

COMMISSIONER: *Why weren't you recording your meetings with her pointing out to her her problems?*

MR CORCORAN: *I can't answer that, sorry.*²³⁵²

1853. Very soon after giving this evidence, Mr Corcoran said:

MR CORCORAN: *I mean, I was only out there — yeah, I only go for those visits, you know, every now and then. You know, when you've got 40 Correctional Centres, you have to spread yourself pretty thin around a system. So, you know, I probably might have only visited twice a year or something of that nature.*²³⁵³

1854. To this point, Mr Corcoran had given me the impression that he was counselling Ms Martin at Dillwynia. This turned out to be wrong. I pressed him further about the steps he had taken to deal with Ms Martin's difficulties at Dillwynia and it emerged that the counselling he was talking about occurred at another gaol before she came to Dillwynia. The transcript continued:

COMMISSIONER: *The sessions that you had with Shari herself, did you have those sessions when you went out to look at the prison or were they separate?*

MR CORCORAN: *No, they were separate. You know — but when I visited her at other prisons and talked about her behaviours then.*

COMMISSIONER: *Sorry: 'You know — but when I visited other prisons and talked about her behaviours.' What do you mean?*

MR CORCORAN: *Well, she was — prior to being at Dillwynia, she was in Dawn de Loas Correctional Centre.*

COMMISSIONER: *Yes. So what are you telling me now?*

MR CORCORAN: *So what I'm telling you is that I had those discussions with her at — at Dawn de Loas.*

2352 Transcript, 22 November 2023, 3001.16-3002.42.

2353 Transcript, 22 November 2023, 3005.1-5.

COMMISSIONER: *And not at Dillwynia?*

MR CORCORAN: *Not at Dillwynia, no.*

COMMISSIONER: *So you didn't have any sessions with her when she was Governor at Dillwynia; is that right?*

MR CORCORAN: *Not — not in Dillwynia. I certainly made, you know, sure that Hamish had those discussions with her.*

COMMISSIONER: *But you had reached the view that she wasn't capable of doing the job, hadn't you?*

MR CORCORAN: *Yeah, that's right.*

COMMISSIONER: *Wasn't it your responsibility to step in and take action to ensure that the prison was conducted in a safe and effective manner?*

MR CORCORAN: *Look, it certainly is my responsibility and — you know, I guess in the sense that I needed to communicate that through to the Commissioner, because the Commissioner was responsible for taking action against any Governor that, you know, presented the problems.*

COMMISSIONER: *But wasn't it your — I know the Commissioner has a role, but you were the person in the line of management, weren't you?*

MR CORCORAN: *As I explained before, the Commissioner took responsibility for managing Governors. So if there was any major misconduct or other matters involving, you know, Governors, that would have to go — necessarily have to go to the Commissioner for consideration.*

COMMISSIONER: *So we have the position, do we, that for two or three years, Ms Martin was in this gaol, you knew she wasn't capable of doing the job, but you didn't sit down and talk with her about improving? Is that right?*

MR CORCORAN: *I can't recall doing that.*

COMMISSIONER: *No.*

MR CORCORAN: *That's not to say I didn't do that, but I can't recall.*

MR LLOYD: *Can I ask you this, Mr Corcoran: if you didn't sit down and speak to her in that two and a half year period, would that be a failure on your part to have —*

MR HORTON: I object.

MR LLOYD: Sorry, do you need the question again? You understand what your barrister has done is taken an objection under the Act.

COMMISSIONER: I require an answer. Ask the question again.

MR LLOYD: I'll ask it again. If you had not sat down in the two and a half year period with Ms Martin to talk to her about the position that you had reached about her inability to do the job, would you agree that that was a failure on your part?

MR CORCORAN: What I can say is that we launched a performance improvement plan. So, from my perspective, I don't regard that as a failure.

MR LLOYD: You told us that you had a dim view — that's my word, not yours — but a dim view of the effectiveness of that kind of plan?

MR CORCORAN: Yes. But that's the only tool we had at our disposal.

MR LLOYD: Well, really, what I'm asking for you to respond to is whether you agree that not using the tool of sitting down with her and talking to her about your view that she was not capable of performing her job was a failure on your part.

MR CORCORAN: Well, I can't say. I just mentioned that I can't recall whether I did do that or not. But the point is that the supervisor — the supervisor made sure that that was occurring.

MR LLOYD: Let me make sure I put the proposition clearly. Assuming that you didn't — so pretending for one minute that there was no conversation — would you agree, if that's right, that there was a failure by you?

MR CORCORAN: No, I wouldn't. I wouldn't — I wouldn't because, you know, that is not my direct report.

MR LLOYD: You thought it was okay from where you sat in the chain for someone to remain in charge of a Correctional Centre who, in your view, was not up to the job? Is that — I want to make sure I'm being fair to you. Is that what you're saying to us?

MR CORCORAN: *I'm saying that at that — at that point in time, it was very difficult to deal with problematic general managers.*

MR LLOYD: *I've framed my questions about the period of time in which you thought she was not capable of doing the job starting at August '16 and running through to December '18. Do you remember I asked you a number of questions about that time period?*

MR CORCORAN: *Yes.*

MR LLOYD: *I did that because that's about when Mr Shearer started.*

MR CORCORAN: *Yeah.*

MR LLOYD: *I just want to ask you this: Did your view about her inability to do the job at Dillwynia go back before August '16?*

MR CORCORAN: *I thought that prior to that, she was, you know, behaving in a way which was problematic. But at that point in time, I don't think I formed a view about whether she was capable of running a Correctional Centre or not.*

MR LLOYD: *You mentioned to the Commissioner a short while ago a conversation you'd had with her when she was at another Correctional Centre?*

MR CORCORAN: *Yeah.*

MR LLOYD: *Had you formed a view, at least of doubtfulness, about her capacities at that time?*

MR CORCORAN: *It was more about her behaviours than her capacities.²³⁵⁴*

1855. It is apparent that unless the topic had been pursued, Mr Corcoran was content for me to be left with an entirely false impression that he had counselled Ms Martin when she was at Dillwynia. It was only in response to the pursuit by the Special Commission of a written record of any session that he disclosed that none occurred when she was at Dillwynia. In fact, he never had any discussions

with Ms Martin about her performance, including her behaviour, while she was at Dillwynia.²³⁵⁵ When asked whether this was a failure, Mr Corcoran said he did not regard this as a failure, as a PIP had been ‘launched’.²³⁵⁶ He also pointed to the fact that Ms Martin directly reported to Mr Shearer. Importantly, he said that it was very difficult, at that time, to deal with problematic Governors.²³⁵⁷

9.3.2.1 Decision to appoint Ms Martin as Governor at Dillwynia

1856. Mr Corcoran’s evidence on Ms Martin’s performance at Dawn de Loas Correctional Centre (including that his concerns related more to her problematic ‘behaviours’ than ‘capacities’) does not sit comfortably with Mr Corcoran’s decision that Ms Martin should be appointed to manage Dillwynia. It is plain that the capacity of a manager to perform in a satisfactory manner will be affected by her behaviour. It is a refinement without merit to accept that Ms Martin’s behaviour was poor but that this may not be reflected in her management. If the manager’s behaviour is poor, the capacity to gain respect and receive a willing contribution from staff will be diminished. It is difficult to understand why Mr Corcoran approved her appointment to Dillwynia when he did not have a view as to whether or not she was capable of running a correctional centre.
1857. When he was asked about his decision to transfer Ms Martin from Dawn de Loas Correctional Centre to the position of Governor of Dillwynia and Emu Plains, thereby making Ms Martin responsible for two correctional centres (when it was clear at that time that there were concerns regarding her ‘behaviour’, and that he had spoken to Ms Martin about these concerns on multiple occasions), Mr Corcoran sought to justify the decision by emphasising that the relevant award required Governors and Managers of Security to rotate around correctional centres.²³⁵⁸ With respect to the fact that she was appointed to two centres Mr Corcoran said that was his decision.²³⁵⁹ He said they were not large centres, which influenced his decision.

2355 Transcript, 22 November 2023, 3005.7-30.

2356 Transcript, 22 November 2023, 3006.37-38.

2357 Transcript, 22 November 2023, 3007.10-19.

2358 Transcript, 22 November 2023, 3063.5-12.

2359 Transcript, 22 November 2023, 3065.2-14.

9.3.2.2 Division of responsibilities between Mr Corcoran and Mr Severin

1858. Rather than accept any responsibility himself, Mr Corcoran said he held the view that the then Commissioner of CSNSW, Mr Severin, was responsible for managing Governors and any misconduct or serious performance issues with Governors.²³⁶⁰ It was his view that Mr Severin had the responsibility to intervene if there was a Governor not capable of discharging their functions.²³⁶¹ Of course, a Commissioner could only do this if he received information that required a response. For that, Mr Severin was dependent on Mr Corcoran.
1859. Mr Corcoran said that he recalled speaking to Mr Severin about Ms Martin's inability to discharge her functions as a Governor. He said that he told Mr Severin that Ms Martin was informed that she would be placed onto a PIP. He also thought that Mr Shearer had documented this and that it was sent through to Mr Severin.²³⁶²
1860. Both Mr Corcoran and Mr Severin gave evidence broadly on the issues that typically needed to be elevated to Mr Severin for either decision-making or information purposes. Mr Corcoran's evidence was as follows:

MR LLOYD: *In this period [August 2016 to December 2018], is what you're saying that then Commissioner Severin had the responsibility to intervene if there was a Governor who was not capable of discharging his or her functions?*

MR CORCORAN: *Yes, he took responsibility for that misconduct process or anything that, you know, moved into a misconduct process as a result of performance.*

MR LLOYD: *What about something short of misconduct but reflecting inability to discharge function —*

2360 Transcript, 22 November 2023, 2974.41-44.

2361 Transcript, 22 November 2023, 2975.1-7; see also Transcript, 22 November 2023, 3062.34.3063.43.

2362 Transcript, 22 November 2023, 2975.16-28.

MR CORCORAN: Yeah.

MR LLOYD: — through incompetence or something like that?

MR CORCORAN: That's right. So that would then go to Peter. I would be talking to Peter about those things.

MR LLOYD: Did you talk to him about Shari Martin's inability, in your view, to discharge her functions as Governor?

MR CORCORAN: Yes.

MR LLOYD: What did you say to him?

MR CORCORAN: Well, you know, we — we were letting her know that we were putting her on that performance improvement plan. I think Hamish documented that, and that was sent through to Peter, as I recall.

MR LLOYD: You didn't think that those were effective, though?

MR CORCORAN: I don't think the measures that we had available to us — the tools — are effective in managing people who are really, I guess, uncooperative.

...

MR LLOYD: And, to your knowledge, the performance review plan was unlikely to address her inability to do the job?

MR CORCORAN: Yes.

MR LLOYD: Didn't there come a point where you felt it was part of your obligation to take more serious or drastic action, or recommend more serious or drastic action, to deal with that particular problem than the performance review plan?

MR CORCORAN: As I said, you know, I can only brief Peter Severin on, you know, the activities of various Governors, and it was up to Peter to make a decision on what he wanted to do with those Governors. As I said, it was something that he specifically wanted to do.²³⁶³

1861. Mr Severin's evidence on the types of information that were typically elevated to him was as follows:

MR LLOYD: *In terms of your position in the ordinary course as Commissioner, could you just tell us: what are the kinds of situations in which complaints about misconduct would be elevated so that you become aware of them?*

MR SEVERIN: *There were various avenues, but the main avenue was that the Assistant Commissioner, Continuous Improvement— Governance and Continuous Improvement would regularly update me on matters that are currently under consideration or being investigated. Some matters obviously with investigation will be the result of incidents which I became aware of through the normal reporting. We're not talking about misconduct here, but escapes, et cetera. And I would then be appraised [sic], depending on the seriousness of the allegation and the nature of the investigation, on a regular basis as to the status of the matter.*

MR LLOYD: *One way in which you personally would become aware of allegations is if the Assistant Commissioner, who you've identified, determined that there was something that he knew about that you needed to know about?*

MR SEVERIN: *The Assistant Commissioner, Governance and Continuous Improvement was the line manager of Professional Standards and Investigation. So naturally, through that responsibility, he reported matters to me as a matter of cause [sic]. That doesn't mean that other Assistant Commissioners wouldn't bring matters to my attention, which then obviously had to be channelled through the established processes to be dealt with.*

COMMISSIONER: *Mr Severin, did you have any identified nature of issue that required to be reported to you? Were there rules around when you should find out or be told?*

MR SEVERIN: *They were rules that were not necessarily kept very black and white, but there were rules— anything criminal that was not just the result of an incident like an assault, for example, but anything criminal relating to, for example, misconduct would automatically be*

reported to me, in either a formal way or informally through the regular communication I had with the Assistant Commissioner of Governance and Continuous Improvement. The status of investigations which were serious incidents – riots, escapes, et cetera – would automatically continuously be reported to me for either the Assistant Commissioner, Governance in the context of any investigation, but also because you don't wait for the investigations report to be completed. The Assistant Commissioner of the relevant branch where it happened would report to me on any matters that resulted in immediate action that was taken to prevent a recurrence.

COMMISSIONER: *That was obviously your expectation. Was it written down anywhere that that's what you expected to happen?*

MR SEVERIN: *The general procedure was that I needed to be informed on matters, but that wasn't a – to the best of my recollection – and I haven't got the procedure in – in my mind, but – with the detail of it. There was no definition as to, 'This has to be reported. This has to be reported. That doesn't need to be reported.' It came down to - to professional judgment in many places.*

MR LLOYD: *I think you said that one, and only one, of the pathways for you of being informed of allegations against officers was by the Assistant Commissioner, Governance and Continuing Improvement notifying you?*

MR SEVERIN: *Yes. So that – there would have also been avenues where I might have received a letter directly from a person, either an inmate or anybody, making allegations, which I would have then referred through the chain to be dealt with.*

MR LLOYD: *I want to ask you about those other things, but if you were notified, for example, by the Assistant Commissioner, Governance and Continuous Improvement – and I think you said that wouldn't effectively stop other Assistant Commissioners notifying you?*

MR SEVERIN: *No, not necessarily. I met with every Assistant Commissioner. We – we had a very lean structure, and it was necessary to maintain those quite close interactions. And so if there was a significant issue that was subject to an investigation, I would have most probably also been regularly updated in relation to immediate actions that were taken in the workplace*

or in terms of systems processes. And I'm not just referring to matters of misconduct here, but in general, by the relevant — by an Assistant Commissioner, be it Custodial Corrections or Community Corrections.

MR LLOYD: *If you were notified by one of the Assistant Commissioners, that — and it was in relation to a serious misconduct allegations, that would be on the basis that you are effectively being told there's currently an investigation underway?*

MR SEVERIN: *Generally if an Assistant Commissioner other than the Assistant Commissioner, Governance and Continuous Improvement notified me, they would have already notified the Professional Standards and put the wheels into motion and then simply just updated me in relation to having done that in my weekly meeting.*²³⁶⁴

1862. Counsel for Mr Corcoran submitted that Mr Severin was responsible for Ms Martin's performance management rather than Mr Corcoran.²³⁶⁵ Counsel for Mr Severin submitted that 'the approach suggested by Mr Corcoran, that Mr Severin personally have responsibility for performance management of all senior staff, would be unworkable as Mr Severin would then have had performance management responsibility for in excess of 60 senior staff'.²³⁶⁶ I accept Mr Severin's submission, which is consistent with his evidence that, broadly, he received updates regarding actions taken in the workplace by the Assistant Commissioner, which would appear to extend to updates such as Ms Martin being placed on a PIP, but not such that Mr Severin assumed responsibility for its implementation. Mr Corcoran was the line manager with responsibility for the oversight of Dillwynia and, as such, had personal responsibility for Ms Martin's performance. Mr Corcoran accepted as much in his evidence:

MS GHABRIAL: *What did you actually do to monitor Ms Martin's performance? What did you actually do?*

2364 Transcript, 20 November 2023, 2671.7-2672.44.

2365 Submissions of Kevin Corcoran, 14 December 2023, AST.002.013.0108_0024-0025 [87].

2366 Submissions on behalf of Peter Severin, 16 January 2024, AST.002.013.0117_0004 [13].

MR CORCORAN: *I had Hamish engage with her and develop a performance plan.*

MS GHABRIAL: *Apart from that, what else did you actually do?*

MR CORCORAN: *Well, that's — that's what performance management is.*

MS GHABRIAL: *What did you do to monitor her performance? What did you actually do?*

MR CORCORAN: *I — I engaged with my Director who's responsible for managing that individual.*

MS GHABRIAL: *But you're ultimately responsible, aren't you?*

MR CORCORAN: *Yeah, of course I am ultimately responsible, as the Commissioner is.*

MS GHABRIAL: *And you've got no paper trail at all to support —*

MR CORCORAN: *And can I just say, as I said the other day, the Commissioner was the person who took responsibility for managing General Manager — Governors' performance.*

MS GHABRIAL: *But you had delegated authority to exercise employer functions.*

MR CORCORAN: *That's right.*

MS GHABRIAL: *So you had —*

MR CORCORAN: *And we — I delegated those employer functions for everybody below.*

COMMISSIONER: *Mr Corcoran, we've been over this ground. You accepted responsibility before lunch for the failures in relation to Ms Martin; correct?*

MR CORCORAN: *Yes.*

COMMISSIONER: *You accepted that?*

MR CORCORAN: *Yes.*

COMMISSIONER: *And you accept that in your role, as one of the deputies to the Commissioner, you had a responsibility to ensure that this gaol was being properly managed.*

MR CORCORAN: *That's right. ...*²³⁶⁷

9.3.2.3 Mr Corcoran's awareness of measures available to manage Ms Martin

1863. Mr Corcoran was asked about his understanding of the measures being used to manage Ms Martin. Mr Corcoran said he believed that Ms Martin had been placed onto a PIP by Mr Shearer, and that he 'think[s]' he communicated this step to the then Commissioner of CSNSW, Mr Severin.²³⁶⁸
1864. Notwithstanding his acceptance that Ms Martin needed to improve her performance in the job, Mr Corcoran told the Special Commission that he did not think that PIPs were very effective and that there were much more effective ways of managing 'low-level' behaviours other than to 'hover on misconduct or performance'.²³⁶⁹
1865. He later clarified his evidence and said that the reason he thought PIPs were ineffective was because you are trying to manage a person, 'who is ... basically a senior executive, that you can't be on site to supervise them all the time, it makes it incredibly difficult to make those — get proper results out of performance improvement'.²³⁷⁰ This is of course a reason why the 'wrong' person should not be appointed to the job in the first place.
1866. Mr Corcoran expressed the view that the management resources and tools that were available at the relevant time to manage governors were ineffective in managing officers who were 'uncooperative'.²³⁷¹ The following exchange occurred:

COMMISSIONER: *Mr Corcoran, you said that you:*

2367 Transcript, 23 November 2023, 3171.8-3172.13.

2368 Transcript, 22 November 2023, 2973.45-2974.10.

2369 Transcript, 22 November 2023, 2974.12-20.

2370 Transcript, 22 November 2023, 3001.6-14; see also Transcript, 22 November 2023, 2997.1-24.

2371 Transcript, 22 November 2023, 2975.32-33.

'didn't think that the measures that we had available to us — the tools — are effective in managing people who are really, I guess, uncooperative.'

What tools did you need?

MR CORCORAN: *Well, thanks, Commissioner. What we really need is an ability to have conversations with people and — and engage with them (indistinct) so they are aware of, you know, what behavioural limits they can be involved with. If they continue to misbehave or, you know, engage in inappropriate behaviour, we will then issue a first warning. If they continue it, a second and final warning. And then we move to a misconduct process. So that's not something that was available to us at that time.*

COMMISSIONER: *You couldn't have a conversation?*

MR CORCORAN: *We could have conversations, but it actually meant not very much. There was no consequence for —*

COMMISSIONER: *You mean that managers at the top of the organisation didn't ultimately have the capacity to say, 'You're not up to the job. You have to go'?*

MR CORCORAN: *They do in an SES [Senior Executive Service] environment, but not in — they're the award employees. So even though they're paid, you know, at sort of mid-range SES1, they're covered by an award. So we have to, you know, go through those particular processes that apply to award employees.*

COMMISSIONER: *So you could have a conversation, and if they continued not to perform, you could warn and then ultimately you could invite them to leave?*

MR CORCORAN: *We could — I could warn them. I could, you know, advise the Commissioner that, you know, they're just not behaving properly and — you know, there was — as I said, there wasn't the tools there.²³⁷²*

1867. It is plain that on the first day of his evidence, Mr Corcoran believed that it was only at Senior Executive Service level that CSNSW were able to remove managers that were not ‘up to the job’. However, in his view, for ‘award employees’ – which he said Ms Martin was – ‘we have to, you know, go through those particular processes that apply to award employees’.²³⁷³
1868. Mr Corcoran explained that he could warn such an employee that they were not behaving properly, but that, the ‘tools’ [for their dismissal] were not available at the time. He confirmed that the misconduct path was in relation to ‘something that was serious’. Surprisingly, he said that if someone was simply not up to the job, they could not be removed.²³⁷⁴ However when he was asked whether he had ever recommended to Mr Severin that Ms Martin be issued with a formal warning, Mr Corcoran said that the PIP was basically such, that it ‘is a formal warning of your behaviour’.²³⁷⁵

9.3.2.4 Mr Corcoran’s awareness of Ms Martin’s Performance Improvement Plan

1869. Mr Corcoran was further asked about his understanding about Ms Martin’s PIP. He was referred to evidence that Ms Martin gave to the Special Commission, as follows:

*There was an instance when Hamish Shearer had sent me a letter saying he was going to place me on a performance improvement plan, which I couldn’t understand why. And with my union delegate, I met with Assistant Commissioner Corcoran to discuss the situation.*²³⁷⁶

1870. Mr Corcoran said that he did not remember this meeting, nor did he remember that Ms Martin told him during that meeting, that Mr Shearer had been told by him that she was a ‘challenging’ Governor.²³⁷⁷ He also said that he did not remember telling

2373 Transcript, 22 November 2023, 2976.33-39; see also Transcript, 22 November 2023, 2998.1-30.

2374 Transcript, 22 November 2023, 2976.41-2977.10.

2375 Transcript, 22 November 2023, 3002.44-3003.31.

2376 Transcript, 23 November 2023, 3094.43-3095.4; Transcript, 13 November 2023, 2181.32-2182.16.

2377 Transcript, 23 November 2023, 3095.10-19.

Ms Martin during the meeting that Mr Shearer was ‘down at human resources, HR, as [they] were speaking, organising to have an improvement plan done.’²³⁷⁸

1871. Mr Corcoran was then also asked about Ms Martin’s evidence that although a PIP was discussed, it was never actually implemented. He responded that Mr Shearer sent him the PIP, which he forwarded to Mr Severin.²³⁷⁹

1872. Mr Corcoran was also asked about Mr Shearer’s evidence regarding the development of the PIP. His evidence was as follows:

MR LLOYD: *Can I just — I’ll show you a document in a minute, but just tell you what Mr Shearer told us: that he had formed the view by February/ March ‘17 that Ms Martin should be put on a performance improvement plan. That would be consistent with what you told us?*

MR CORCORAN: Yes.

MR LLOYD: *That he told you he was going to raise that with Ms Martin, that is, a performance improvement plan. Again, consistent — is that right?*

MR CORCORAN: Yes.

MR LLOYD: *And he informed you — it wasn’t a matter of agreement. He said that that’s what he was going to do?*

MR CORCORAN: Yes.

MR LLOYD: *Sound consistent so far?*

MR CORCORAN: Yes.

MR LLOYD: *He said, after that, he reflected on that decision and then made a different decision, in effect, what he said — his words — to withdraw the plan, and he drafted one, but it wasn’t sent to her. What do you say about that?*

2378 Transcript, 23 November 2023, 3095.21-26.

2379 Transcript, 23 November 2023, 3095.34-39.

MR CORCORAN: *Well, I'm pretty sure he sent that plan to me, and I forwarded it through to the Commissioner.*²³⁸⁰

1873. The Special Commission issued summonses to CSNSW calling for any briefing note, email, or other record of communication from Mr Corcoran to Mr Severin relating to Ms Martin's performance as Governor of Dillwynia, and any email correspondence between Mr Shearer and Mr Corcoran between 2015 and 2018 referring to a PIP for Ms Martin.²³⁸¹
1874. No email, or other form of correspondence, from Mr Corcoran to Mr Severin forwarding a PIP concerning Ms Martin was produced.
1875. Mr Corcoran was copied into an email Mr Shearer sent to Ms Hellams (Strategic Human Resources Business Partner) on 8 March 2017, referred to above, where Mr Shearer attached a draft PIP concerning Ms Martin, and indicated that he intended to forward it to Ms Martin later that week for her input, before formally presenting it to her the following week.²³⁸² Apart from the email of 30 November 2016, referred to earlier in this Report, the email of 8 March 2017 was the only piece of email correspondence between Mr Shearer and Mr Corcoran relating to Ms Martin's performance as Governor of Dillwynia produced to the Special Commission.
1876. Further, Mr Corcoran's evidence that he forwarded a copy of the PIP to Mr Severin was not unequivocal. He gave evidence that he 'think[s]' he did so;²³⁸³ and later said that he was 'pretty sure' he received it from Mr Shearer and forwarded it to Mr Severin.²³⁸⁴
1877. Mr Corcoran was taken to the first draft PIP and asked whether this was the document he had recalled seeing. He said it did not match his memory and that he just 'remember[ed] seeing an email from Hamish that had gone through what was included in the plan, which [Mr Corcoran] forwarded through' to

2380 Transcript, 23 November 2023, 3095.41-3096.20.

2381 Ex. 60, Tab 3, AST.002.006.0089_0001-0002; Ex. 60, Tab 5, AST.002.006.0090_0001-0002.

2382 Ex. 53, CSNSW.0001.0275.0272_0001-0002.

2383 Transcript, 22 November 2023, 2973.45-2974.10.

2384 Transcript, 23 November 2023, 3095.41-3096.20.

Mr Severin.²³⁸⁵ No such email between Mr Corcoran and Mr Severin was produced to the Special Commission.

1878. Mr Corcoran was subsequently taken to the second draft PIP that was attached to Mr Shearer's email to Ms Hellams. Mr Corcoran was asked whether the email attaching this further draft PIP was the email he had in mind. He answered 'no'. He then outlined his recollection of what the purported email contained.²³⁸⁶ He said:

*Basically, it was an email that had been — as I recall it, had been sent to Shari Martin from Hamish, copied into me, which went through a range of behavioural issues, with — that he had spent the day with Shari going through these things. This is — his documentation of what was discussed at the time was forwarded to me. I forwarded it to the — to the Commissioner.*²³⁸⁷

1879. Mr Corcoran did receive an email from Mr Shearer, on 30 November 2016 as detailed above, concerning Ms Martin's performance. The email said, 'Just to keep you in the loop' and forwarded a copy of an email Mr Shearer had sent Ms Martin earlier that day.²³⁸⁸

1880. The email from Mr Shearer to Ms Martin noted that they had a meeting earlier that day. Mr Shearer said he wanted to 'share with [Ms Martin] [his] observations' on her interactions with him and the way Ms Martin referred to senior officers within CSNSW in the meeting. Mr Shearer listed a number of complaints Ms Martin had made about the CSNSW executive and stated that many of them 'are personal views and not substantiated'. Mr Shearer also set out examples of where Ms Martin's communication fell short of what was expected of a Governor.²³⁸⁹

2385 Transcript, 23 November 2023, 3096.27-41.

2386 Transcript, 23 November 2023, 3190.36-3192.14.

2387 Transcript, 23 November 2023, 3191.10-14.

2388 Ex. 41, CSNSW.0001.0244.0001-0003.

2389 Ex. 41, CSNSW.0001.0244.0003.

1881. The email from Mr Shearer to Ms Martin did not refer to a PIP or any other formal performance management process concerning her.
1882. The email from Mr Shearer to Mr Corcoran, forwarding the email he sent Ms Martin, did not attach a PIP, in either draft or final form, and did not refer to any performance management process to be undertaken in relation to Ms Martin.
1883. Mr Corcoran forwarded this email to Mr Severin on 1 December 2016, and relevantly stated:

*I thought you should get a confidential copy of this email I received from Hamish in case you received some communication from Shari. I had a long talk with Hamish last night who appeared pretty drained from his Shari interactions.*²³⁹⁰

1884. There was no PIP attached to the email to Mr Severin nor was there any reference to a performance management process concerning Ms Martin.
1885. The fact that there was no PIP attached, or referred, to in the any of the emails in this email chain is unsurprising given the evidence before the Special Commission indicates that a decision to performance manage Ms Martin was not made until some months later, around February/March 2017.²³⁹¹
1886. Given the description Mr Corcoran gave the Special Commission of the content of the email he said he forwarded to Mr Severin, in particular the reference to it following a meeting between Ms Martin and Mr Shearer, and the lack of any other documents concerning this issue, it is likely that the email of 1 December 2016 is the email to which Mr Corcoran was referring in the evidence extracted above. Mr Corcoran was wrong, however, about there being a PIP attached to the email.

2390 Ex. 41, CSNSW.0001.0244.0001.

2391 Ex. 52, TB 2, Vol 8A, Tab 98A, AST.002.013.0089_0001; Ex. 53, CSNSW.0001.0275.0272_0001; Transcript, 16 November 2023, 2460.16-21; Transcript, 16 November 2023, 2461.17-40.

1887. I am satisfied that Mr Corcoran did not forward a copy of a PIP concerning Ms Martin to Mr Severin. I am further satisfied that Mr Corcoran never received a finalised PIP from Mr Shearer concerning Ms Martin.
1888. Returning to the issue of the second draft PIP, Mr Corcoran was taken to the 'Action required' section which included various improvements that were deemed to be necessary and agreed that the items in the 'Actions required' column had a relationship, or were directly relevant, to some of Ms Martin's management failures at Dillwynia.²³⁹²
1889. When it was suggested to Mr Corcoran that there was no final PIP and that he was mistaken about that, Mr Corcoran said that he had forwarded the PIP he had seen onto Mr Severin and that he otherwise 'was not aware that [Mr Shearer] had walked back on his plans' to implement the PIP.²³⁹³
1890. Mr Corcoran was asked about the contents of the draft PIP and said that it just set out 'things that are in ... a general manager's [Governor's] role description',²³⁹⁴ which he accepted was the level of performance that was expected of a Governor of a gaol.²³⁹⁵ However, he said this was not the PIP which he understood to be implemented.
1891. It was put to Mr Corcoran that the document suggested that Ms Martin was not meeting the expectations of a Governor, which Mr Corcoran did not accept. He also did not accept the proposition that the document represented a 'catalogue of failure'; rather, he repeated that what was set out in the document was a 'role description'.²³⁹⁶ I cannot accept this evidence. The draft PIP clearly details specific deficiencies in Ms Martin's performance as Governor of Dillwynia.
1892. Mr Corcoran was asked whether he went back to Mr Shearer to make inquiries after he believed the PIP was implemented about how Ms Martin was going

2392 Transcript, 23 November 2023, 3195.43-3197.22.

2393 Transcript, 23 November 2023, 3097.3-10.

2394 Transcript, 23 November 2023, 3115.21-32.

2395 Transcript, 23 November 2023, 3116.7-17.

2396 Transcript, 23 November 2023, 3115.21-3116.20.

and whether her performance was improving. He did not directly answer the question. Instead he said, 'I'm sure I did have those discussions ... with every Director about their Governors'.²³⁹⁷ When it was suggested to him that in fact he did not go back and ask Mr Shearer about whether Ms Martin's performance had improved as a consequence of any PIP, Mr Corcoran told the Special Commission that he had no recollection of 'going there or not going there'.²³⁹⁸ His evidence was as follows:

MR LLOYD: *See, I want to suggest to you, Mr Corcoran, you're mistaken that there was any finalised performance improvement plan that ever came into effect for Ms Martin. What do you say about that?*

MR CORCORAN: *I'd say that I got something from Hamish that I thought constituted his discussions or summarised his discussions and, you know, I forwarded it through to the Commissioner. So, yeah, I was not aware that he had walked back on his plans to do that. So —*

MR LLOYD: *Didn't you think it was necessary for you, having regard to what you told us about the views you formed about Ms Martin, to go back to him and make inquiries about how she was going, that is, 'Is her performance improving?'*

MR CORCORAN: *Well, I'm sure I did have those discussions. I had those discussions with every Director about their Governors.*

MR LLOYD: *Well, I want to suggest to you that you did not go back to Mr Shearer to ask him whether Ms Martin's performance had improved as a consequence of any performance improvement plan. What do you say about that?*

MR CORCORAN: *I have no recollection of going there or not going there.*

MR LLOYD: *Do you agree that having regard to the state you had reached in terms of Ms Martin's abilities to perform her role, that it was necessary for you to go back and check whether her performance was improving?*

2397 Transcript, 23 November 2023, 3097.12-17.

2398 Transcript, 23 November 2023, 3097.19-24.

MR CORCORAN: Yeah, that would be the normal course of events. Yes.

MR LLOYD: And if you didn't do that, that would be a failure by you in your then role as Assistant Commissioner with oversight over this particular Correctional Centre?

MR CORCORAN: Well, I have no recollection whether I did or I didn't. So —

MR LLOYD: If you didn't, you should have?

MR CORCORAN: I — I should have, yes.²³⁹⁹

1893. He subsequently gave the following further evidence:

MR CORCORAN: Well, as I said, Commissioner, there was evidence that her performance management was put in. (Indistinct) put in.

COMMISSIONER: No, there's not. No, there's not. There's no evidence of that. The evidence is to the contrary.

MR CORCORAN: Well — okay.

COMMISSIONER: And furthermore, if it was put in place, you did nothing — nothing — to follow up and see how she was going, did you?

MR CORCORAN: Well, I'm disputing that I did nothing. You know, I — I can't say that, you know —

COMMISSIONER: Well, there's no evidence —

MR CORCORAN: I — I can't point to any particular document now, but I was always having conversations with my Directors about how things were going in their regions.

COMMISSIONER: Unless Mr Shearer was prepared to bald-face lie to you, the position must be that there was no management plan in place.

MR CORCORAN: Well, I believe there was a management plan in place —

COMMISSIONER: *I know, but you — well, you say that.*

MR CORCORAN: *— and — and the Commissioner knew about it.*

COMMISSIONER: *You say that, but it must have been that Mr Shearer was lying to you if you had discussed with him how Ms Martin was going in relation to the plan; correct?*

MR CORCORAN: *Well, I don't — I mean, I think the plan was pretty comprehensive and — and covered off on — on the sorts of behaviours that, you know, we were — we were looking at.*

COMMISSIONER: *Yes. But it was your responsibility to find out how she was going, wasn't it?*

MR CORCORAN: *Yes.*²⁴⁰⁰

1894. Mr Shearer's evidence on the issue was also put to Mr Corcoran, who gave the following evidence:

MR LLOYD: *And I should put this to you arising from Mr Shearer's evidence for your response —*

MR CORCORAN: *Yes.*

MR LLOYD: *— that you're mistaken about following your usual practice. In fact, that did not happen, the follow-ups with Mr Shearer asking him how this plan was going.*

MR CORCORAN: *That was Mr Shearer's evidence, was it?*

MR LLOYD: *I'm putting to you his account.*

MR CORCORAN: *Yes.*

MR LLOYD: *When you say you would have been likely to do this, that is, follow up with him how the plan was going, that you're wrong about that. That didn't happen.*

MR CORCORAN: *Well, I can't refute that because I have no recollection.*²⁴⁰¹

1895. Obviously, if he had raised the issue with Mr Shearer, he would have been told there was no PIP. Mr Corcoran accepted that it was necessary for him to have checked on Ms Martin's performance given the view he had reached regarding her capabilities and that if he hadn't checked on Ms Martin's performance, he should have.²⁴⁰² While Mr Corcoran's evidence was that it was his usual practice to have conversations with Directors about matters like these, he had no recollection whether he actually did have a conversation with Mr Shearer regarding Ms Martin's progress on the PIP that Mr Corcoran understood to have been implemented.
1896. I am satisfied that Ms Martin was never placed on a PIP. I have no doubt about the integrity of Mr Shearer's evidence, which on this issue is consistent with that of Ms Martin. Their evidence was not challenged by Mr Corcoran, who was legally represented when both Ms Martin and Mr Shearer gave their evidence.
1897. Mr Corcoran's evidence that he saw a finalised PIP cannot be accepted. It was denied by Mr Shearer and Ms Martin and no copy of it was retrieved from CSNSW records.
1898. Mr Corcoran's counsel submitted, and I accept, that it was reasonable for Mr Corcoran to believe that Mr Shearer intended to implement a PIP. There is no evidence that Mr Shearer discussed with Mr Corcoran his decision not to proceed with the plan.
1899. To my mind, in order to discharge his obligations as the senior manager faced with poor performance of the Governor of a gaol, and one he did not believe was up to the job, Mr Corcoran was obliged to ensure that Ms Martin had been placed on a PIP. He failed to do so. Furthermore, he was obliged to seek an assurance that Ms Martin's performance was improving in relation to the principles in the PIP or otherwise take action to correct the situation. Mr Corcoran had no recollection as to whether he spoke to Mr Shearer regarding Ms Martin's performance under

2401 Transcript, 23 November 2023, 3195.10-29.

2402 Transcript, 23 November 2023, 3097.26-40.

the PIP that he understood had been implemented. I am satisfied that no such conversation ever occurred. If Mr Corcoran was not informed by Mr Shearer of his decision not to implement the PIP, this decision would have been obvious to Mr Corcoran if he had taken any steps to find out how Ms Martin's performance was progressing on the PIP. He failed to do so. It is now obvious that by both appointing Ms Martin to the job and leaving her in it, the opportunity for Astill to offend was increased, with tragic consequences.

1900. Mr Corcoran accepted in his evidence that it was his responsibility, on behalf of the Commissioner of CSNSW and through Mr Shearer, to deal with Ms Martin's performance. His evidence was as follows:

COMMISSIONER: *Well, Mr Corcoran — I'm sorry to interrupt again, but it's plain that there were multiple failures that caused the problem ultimately to emerge.*

MR CORCORAN: *Yes.*

COMMISSIONER: *One of the big failures, though, was you had a manager in the gaol who wasn't up to the job.*

MR CORCORAN: *Yes.*

COMMISSIONER: *And it was your responsibility, wasn't it, to make sure if you had a manager who wasn't up to the job that, through the Director, you fix the problem? That was your responsibility?*

MR CORCORAN: *Ultimately, as I said to you, I think yesterday, that the Commissioner was the one who was the —*

COMMISSIONER: *May be the Commissioner above you, but it was your responsibility, on behalf of the Commissioner, to try and solve the problem, wasn't it?*

MR CORCORAN: *Yes, that's right. And, you know, as I said, we put — I thought a performance management plan was put in place by the Director.*

...

COMMISSIONER: *Mr Corcoran, I have to tell you that the multiple failures come down to a catastrophe, as you know, for a number of women. You're not prepared to accept responsibility for some of those failures?*

MR CORCORAN: *Yeah. I mean, we did our absolute best. As I said to you before —*

COMMISSIONER: *Are you not prepared to accept responsibility for some of those failures?*

MR CORCORAN: *I have to accept, obviously, some responsibility for some of those failures. If — you know, if we had perhaps acted, you know, earlier, to, you know, address those issues —*

COMMISSIONER: *The most critical failure, it seems to me at the moment anyway, is that you had the wrong person as Governor.*

MR CORCORAN: *Yes.*

COMMISSIONER: *And you knew she couldn't do the job, didn't you?*

MR CORCORAN: *Yes. And very limited —*

COMMISSIONER: *It was your responsibility —*

MR CORCORAN: *Very limited capacity to do anything about it.*

COMMISSIONER: *Well, it was your responsibility to do you what could help her to manage the gaol, wasn't it? If you couldn't move her, you had a responsibility to do what you could to help her manage the gaol.*

MR CORCORAN: *That's right, and that's what — unfortunately that's what Directors are for in this environment.*

COMMISSIONER: *No, no. In this case you knew you had a failure on your hands. You can't wash your hands and say it's someone else's fault, someone else's responsibility. You are in the line of command, aren't you?*

MR CORCORAN: *Yes.*

COMMISSIONER: *And aren't we entitled to expect you to have done your job properly in those circumstances?*

MR CORCORAN: *Yes.*

COMMISSIONER: *And do you accept to you failed?*

MR CORCORAN: *I accept that, you know, there were multiple failures in this circumstance which enabled this offending to occur. And, you know, the management of that particular individual is certainly a significant factor.*

COMMISSIONER: *And do you accept responsibility for at least some of those failures?*

MR CORCORAN: *As I said before, there were very limited — there's very limited capacity to do anything about —*

COMMISSIONER: *Please answer my question.*

MR CORCORAN: *— removing people —*

COMMISSIONER: *Please, Mr Corcoran, please answer the question. Do you accept responsibility for any of those failures?*

MR CORCORAN: *I have to accept responsibility for some of the failures.*²⁴⁰³

1901. Notwithstanding that Mr Corcoran held the view it was Mr Shearer who was responsible for Ms Martin's management, in circumstances where Mr Corcoran had formed a view that she was not able to satisfactorily perform her duties by reason at least of her poor behaviour, it was incumbent on him in his role as the relevant Assistant Commissioner to keep himself informed of the situation. It was his responsibility to provide reports regarding Ms Martin's performance to the then Commissioner of CSNSW, Mr Severin, so that he was able to make appropriate and informed decisions regarding her employment. It is plain that this did not occur. I accept Counsel for Mr Severin's submission that he retained responsibility to deal with formal disciplinary issues, of which there were none in the case of Ms Martin, given there was no finalised PIP and no evidence that Mr Severin was provided with even the draft PIP in respect to Ms Martin. I also accept Counsel for Mr Severin's submission that there is no evidence Mr Corcoran ever requested Mr Severin to consider commencing disciplinary action against Ms Martin due to her performance or any other reason.²⁴⁰⁴

2403 Transcript, 23 November 2023, 3145.45-3148.18.

2404 Submissions on behalf of Peter Severin, 16 January 2024, AST.002.013.0117_0004 [11]-[14].

1902. Mr Corcoran said that he had regular discussions with Mr Shearer about Ms Martin’s performance. If that was so, it is plain that they never discussed whether Ms Martin was meeting the expectations of the PIP. On his own evidence he did not know that it had not been implemented.²⁴⁰⁵ If he had had those discussions, the true position would have to have been revealed. Mr Shearer’s evidence was that Mr Corcoran never came back to him to discuss the PIP. The evidence before me does not suggest that Mr Corcoran and Mr Shearer discussed Mr Shearer’s decision not to implement the PIP. Nor does it indicate that Mr Corcoran followed up – as, given his concerns he should have – with Mr Shearer to determine whether Ms Martin was making satisfactory progress. As far as Mr Corcoran is concerned, the issue seems to have fallen into a void. This was a serious failure on his part.

1903. The evidence makes plain that the management of Dillwynia at the relevant times was incompetent in a number of respects. As the Governor of the gaol, Ms Martin was primarily responsible for the problems which are now known. Mr Corcoran’s failure to exercise his responsibilities as the Assistant Commissioner, Custodial Corrections, with responsibility for gaols, contributed to the catastrophic consequences for the women of Dillwynia.

9.3.3 Mr Corcoran’s understanding of statutory tools regarding the performance management of public sector employees

1904. Mr Corcoran’s counsel submitted that, although mistaken, it was reasonable for Mr Corcoran to hold the belief that there was nothing he could do in a situation where a Governor on the award Ms Martin was on was not performing satisfactorily. I do not accept the submission.

1905. On the first day he gave evidence, Mr Corcoran – who, it should be remembered, has succeeded Mr Severin as Commissioner of CSNSW – said that there was nothing he could do in a situation where a Governor, on the award Ms Martin

2405 Transcript, 23 November 2023, 3097.3-30.

was on, was not performing in their role satisfactorily. However, he later said that in the last 12 to 18 months CSNSW had been ‘working on’ this issue and he had received advice from the Crown Solicitor’s Office (**CSO**) regarding the options available under the *Government Sector Employment Act 2013 (GSE Act)*. He believed that the advice from the CSO, contrary to his belief the day before, confirmed that the GSE Act provided the ability for a manager to manage, and ultimately remove someone, who was not capable of doing their job. Mr Corcoran said this advice

*will be a significant game changer in terms of behaviour right across the organisation. You know, we will be in a position where we can, you know, get people to do mandatory training on things like bullying, harassment, sexual harassment, racism, integrity. And then if something happens, we can put them onto a- a mentoring course (indistinct) and we can take misconduct action.*²⁴⁰⁶

1906. It was pointed out to Mr Corcoran that it appeared that the ‘tools’ he had labelled as ‘game changing’ (which, though unclear, appeared to relate to mandatory training, mentoring courses and the ability to issue warnings to employees and proceed to the misconduct processes if not complied with) related to misconduct or misbehaviour and not performance.²⁴⁰⁷ He explained that he was proposing to use these particular tools (which he reiterated were not, to his understanding, available at the time of Ms Martin’s employment) for employees whose performance was not adequate or who were not up to the job.²⁴⁰⁸ The evidence was as follows:

COMMISSIONER: *How are you proposing to manage them out of your system in the future?*

MR CORCORAN: *Well, I can propose using those particular tools that weren’t available to us at that time. The performance improvement programs, you know, run for maybe, you know, 12 to 18 months. But the*

2406 Transcript, 22 November 2023, 2977.20-27.

2407 Transcript, 22 November 2023, 2977.1-30.

2408 Transcript, 22 November 2023, 2977.29-2978.4.

*big thing, I think, you've got to understand with these people — these people are operating — or should be operating at the executive level, SES [Senior Executive Service] level. That's where they're being paid. So we expect them to be — you know, having all the characteristics of an SES to be able to manage themselves, you know, to drive behaviours, to set themselves up as role models for behaviours. So — so, you know, the likes of Hamish who's got maybe eight or 10 centres to go to, you know, all around the state, he's not going to position himself at Dillwynia and just watch one Governor. We — we do expect these people to be operating at that very, very senior level.*²⁴⁰⁹

1907. Mr Corcoran gave evidence about the sources he had for advice about his ability to manage underperforming officers. He indicated correctly that the Strategic Human Resources Business Partner and others working in industrial relations were responsible for giving advice about the relevant legislation and awards. He said it was his practice to take advice from Strategic Human Resources Business Partner. He also said that on occasions he and other managers had expressed their dissatisfaction with respect to performance management with the CSNSW Executive. He suggested that it was incumbent on CSNSW as an institution to ensure that correct advice was available. His evidence was as follows:

MR LLOYD: *Do you remember whether you caused anyone to secure advice from a lawyer who had an understanding of the award about what the options available to Corrective Services were to deal with the situation you told us, namely, your view that she was not up to performing her role as Governor?*

MR CORCORAN: *I don't have any recollection of that.*

MR LLOYD: *Do you think, having regard to the difficulties you've identified in your understanding of the award, that is, the limitations — just pausing there, the limitations, in effect, you told us about were short of a misconduct process, you felt the award constrained your ability and*

Corrective Services' ability to deal with her properly arising from the inability to perform the role. Is that a fair summary?

MR CORCORAN: Yes. Yes.

MR LLOYD: *You should have — in the circumstances regarding the view that you'd formed about her inability to do the job, you should have made sure that someone obtained some advice about what the legal options available were, shouldn't you?*

MR CORCORAN: *Well, at that time, you know, I think there were a number of us on our executive that weren't satisfied with how things were travelling with respect to performance management, misconduct, and we raised these things in executive.*

MR LLOYD: *Doesn't it go pretty centrally to the performance of — institutionally of Corrective Services if there's a Governor in charge of two Correctional Centres who is not up to doing his or her job?*

MR CORCORAN: *It is an issue.*

MR LLOYD: *And if that is the position over almost a period of two and a half, or thereabouts, years, that represents a very serious problem, institutionally, for Corrective Services. Do you agree?*

MR CORCORAN: Yes.²⁴¹⁰

1908. Mr Corcoran also accepted that it was his 'habit' to take advice from the Strategic Human Resources Business Partner about the effect of the GSE Act and Regulation.²⁴¹¹ There is no doubt that Mr Corcoran was entitled to rely on advice from the Strategic Human Resources Business Partner, but before he can implement any advice, he has to ask for it. There is no evidence that he did seek advice in relation to Ms Martin's situation or for any other similar issue. His own Counsel never suggested that he did seek advice, asking no question to that effect. If Mr Corcoran had sought advice, it is inconceivable that he would not have been told of the correct position.

2410 Transcript, 23 November 2023, 3098.9-44.

2411 Transcript, 23 November 2023, 3218.25-3219.29.

1909. Counsel for Mr Corcoran accepted that Mr Corcoran was mistaken in his belief throughout the period of Astill's offending and up to and during his oral evidence at the Special Commission that there was no legal capacity to dismiss a Governor in Ms Martin's situation.²⁴¹² That CSNSW appears to have functioned, seemingly for some time, under a complete misunderstanding of the power to respond to incompetent managers is extraordinary. No doubt others should carry some responsibility for the situation, but Mr Corcoran had responsibility for Ms Martin and Dillwynia. I am satisfied that he did not satisfactorily discharge that responsibility.
1910. Notwithstanding that he said he had been given advice as to the correct position when he gave evidence on the second day, it seemed he still did not understand the power to deal with unsatisfactory performance by a Governor at the time he gave his evidence. He was not aware of the relevant operative provisions of the GSE Act. It is remarkable that the holder of the most senior management role in CSNSW should not be aware of them. His Counsel in submissions accepted that Mr Corcoran's understanding of the situation was mistaken.²⁴¹³ But it was submitted that it was not unreasonable on Mr Corcoran's part, and he should not be criticised for the errors of the institution.
1911. Section 68 of the GSE Act relevantly provides as follows:

68 Unsatisfactory performance of government sector employees

- (1) The government sector employment rules may deal with the procedural requirements for dealing with unsatisfactory performance (consistently with procedural fairness).
- (2) If the performance of an employee of a government sector agency is determined to be unsatisfactory in accordance with those rules, the head of the agency may (without limitation on relevant action) take any of the following actions:
 - (a) terminate the employment of the employee (after giving the employee an opportunity to resign),

2412 Submissions on behalf of Kevin Corcoran, 14 December 2023, AST.002.013.0108_0024 [88].

2413 Submissions on behalf of Kevin Corcoran, 14 December 2023, AST.002.013.0108_0025 [89].

- (b) reduce the remuneration payable to the employee,
- (c) reduce the classification or grade of the employee,
- (d) assign the employee to a different role.²⁴¹⁴

1912. Rule 36(1) of the *Government Sector Employment (General) Rules 2014* (**GSE Rules**) provides for the following when dealing with unsatisfactory performance:

36 Dealing with unsatisfactory performance

- (1) The head of a government sector agency may not take any action under section 68(2) of the Act in relation to an employee unless:
 - (a) the employee's performance is determined by the agency head to be unsatisfactory in accordance with the agency's performance management system, and
 - (b) reasonable steps have been taken to advise the employee that the employee's performance is unsatisfactory and the basis on which it is unsatisfactory, and
 - (c) the employee is notified that the agency head is proposing to take specified action under section 68(2) of the Act in respect of the employee, and
 - (d) the employee is given a reasonable opportunity to respond to the notice, and
 - (e) the agency head has taken any such response into consideration.²⁴¹⁵

2414 GSE Act, s. 68(1-2).

2415 GSE Rules, r. 36(1).

1913. Section 67(1) GSE Act provides:

67 Performance management systems

- (1) The head of a government sector agency is responsible for developing and implementing a performance management system with respect to employees of the agency.
- (2) The government sector employment rules may deal with the core requirements of any such performance management system.²⁴¹⁶

1914. Finally, r. 35 GSE Rules provides the following in relation to the core requirements of performance management systems:

35 Core requirements of performance management systems

- (1) The core requirements of a performance management system are as follows —
 - (a) to set and clarify expectations for employees,
 - (b) to guide and review employee performance,
 - (c) to develop employee capability,
 - (d) to recognise employee achievements,
 - (e) to improve employee performance,
 - (f) to resolve unsatisfactory employee performance,
 - (g) to evaluate and strengthen practices.
- (2) The Commissioner may determine the essential elements of those core requirements.²⁴¹⁷

1915. These provisions, in substance, existed throughout the period of 2016 until Ms Martin's retirement at the end of 2018.

2416 GSE Act, s. 67.

2417 GSE Rules, r. 35.

1916. It is apparent that at the relevant times of Ms Martin's employment, both the GSE Act and the GSE Rules contemplated disciplinary action against government sector employees whose performance was unsatisfactory, including termination pursuant to s. 68(2)(a) GSE Act. Combined, the GSE Act and GSE Rules set out a procedure that appears entirely regular, when dealing with an employee who is not performing as required. Rule 36(1) of the GSE Rules mandates that no action under s. 68(2) GSE Act can be taken in relation to an employee unless certain steps are taken first. However, before such steps are able to be taken, an employer must have formed a view that an employee's performance was unsatisfactory in accordance with the employer's performance management system. Thereafter, the steps required by an employer include advising the employee of the employee's unsatisfactory performance and the basis for the assessment (r. 36(1)(b)); notifying the employee that specific action under s. 68(2) GSE Act is proposed (r. 36(1)(c)); providing the employee with an opportunity to respond (r. 36(1)(d)); and the decision maker taking any response from the employee into consideration (r. 36(1)(d)).
1917. It follows that in order to advise an employee of the employee's unsatisfactory performance and the basis for it, this performance must be captured in some form of performance management system. Indeed, r. 35 GSE Rules provides requisite detail regarding the core requirements of such a performance management system. This includes setting out and clarifying expectations (r. 35(1)(a)); guiding and reviewing an employee's performance (r. 35(1)(b)); improving employee performance (r. 35(1)(e)); and resolving unsatisfactory employee performance (r. 35(1)(f)).
1918. As I have indicated, Mr Corcoran repeatedly told the Special Commission that he had formed the view that Ms Martin was not up to doing the job properly²⁴¹⁸ but that the only tool he had available to manage her was a PIP, notwithstanding his belief that such a plan was ineffective. He further repeatedly stated that he was not able to remove a Governor who was clearly not up to the job.²⁴¹⁹

2418 See eg Transcript, 22 November 2023, 2978.16-27; Transcript, 22 November 2023, 2973.16.43; Transcript, 22 November 2023, 2974.27-30.

2419 See eg Transcript, 22 November 2023, 2977.1-10; Transcript, 22 November 2023, 2979.1-21; Transcript, 23 November 2023, 3106.18-3108.43.

1919. Mr Corcoran was clearly mistaken. As I have indicated his counsel accepted this was the case.

1920. When Mr Corcoran was taken to the legislative provisions during his second day of evidence, he accepted that the ‘way you can exercise those sort of options is going through a performance management plan’.²⁴²⁰ Prior to this point in his evidence, Mr Corcoran had told the Special Commission repeatedly that there were no options available to remove an award Governor who was not performing their job satisfactorily (other than a misconduct process).²⁴²¹

1921. The following exchange from the evidence makes this position plain:

COMMISSIONER: *Well, you’ve been saying to us for some days that you had no power to do anything because of the status of this — of a Governor as an employee. That’s what you’ve been saying to us?*

MR CORCORAN: *I said the award employee, it’s very difficult. It’s not difficult if they were an SES [Senior Executive Service] role. There’s a contract with the Secretary of the agency, and it has specific (crosstalk) —*

COMMISSIONER: *I understand what you’ve been saying. I do understand what you’ve been saying.*

MR CORCORAN: *Yeah.*

COMMISSIONER: *But this document [Rule 36 GSE Rules], together with section 68 [GSE Act], tells me that you, or ultimately Mr Severin, had the power to remove Ms Martin from your employment.*

MR CORCORAN: *That’s right.*

COMMISSIONER: *So it’s not the case that you were bound to keep her in this gaol, is it?*

MR CORCORAN: *That’s right. Not the case.*²⁴²²

2420 Transcript, 23 November 2023, 3167.9-3169.12.

2421 See eg Transcript, 22 November 2023, 2977.1-10; Transcript, 22 November 2023, 2979.1-21.

2422 Transcript, 23 November 2023, 3175.23-3176.2.

1922. Mr Corcoran repeatedly pointed to Ms Martin’s award throughout his evidence and said that it created hurdles to removing Ms Martin. After the above exchange, Mr Corcoran’s representative pointed out that the applicable award and its interaction with the GSE Act and GSE Rules had not been explored to date, and that ‘the award claims primacy in its provisions over the Act and regulations, that they apply only to the extent the award does not expressly provide for something. So it’s a more nuanced than might otherwise.’²⁴²³
1923. Mr Corcoran was taken to two awards during his oral evidence, namely the Crown Employees (General Managers, Superintendents, Managers Security and Deputy Superintendents, Department of Justice –Corrective Services NSW) Award 2009 dated 2 August 2016²⁴²⁴ (the **2 August 2016 Award**) and the Crown Employees (Correctional Officers, Corrective Services NSW) Award 2007 for Kempsey, Dillwynia, Wellington and John Morony Correctional Centres dated 3 November 2017 (the **2017 Award**).²⁴²⁵
1924. A further award, namely the Crown Employees (Custodial Executive Rank Officer – Department of Communities and Justice -Corrective Services NSW) Award dated 3 June 2022 (the **2022 Award**),²⁴²⁶ was provided to the Special Commission on 23 November 2023 by those assisting Mr Corcoran. However, the 2022 Award post-dates Ms Martin’s retirement. Further, ‘General Manager/ Governor’ is defined in cl. 3 as ‘a commissioned officer occupying a role at the rank of General Manager/ Governor in charge of Correctional Centres or other custodial operations, other than Mid North Coast, John Morony, Dillwynia or Wellington, or other positions designated by the Division Head’. In other words, the 2022 award did not apply to Governors at Dillwynia.
1925. The 2 August 2016 Award shown to Mr Corcoran during his evidence likewise did not apply to Ms Martin’s employment as Governor/General Manager at Dillwynia. Although the position of ‘General Manager’ appears in the Ranking Structure

2423 Transcript, 23 November 2023, 3176.7-28.

2424 Ex. 60, TB 6, Tab 27, AST.002.013.0097_0001-0012.

2425 Ex. 60, TB 6, Tab 26, AST.002.013.0096_0001-0017.

2426 NSW Industrial Relations Commission, ‘Crown Employees (Custodial Executive Rank Officer –Department of Communities and Justice – Corrective Services NSW) Award’, *Industrial Gazette*, No. C9457, 1.

that governs the application of the Award, cl. 3 relevantly excludes a ‘General Manager’ in charge of Dillwynia from the award’s application in the same manner as the 2022 Award.

1926. CSNSW provided the Special Commission with the Crown Employees (Correctional Officers, Corrective Services NSW) Award 2007 for Kempsey, Dillwynia and Wellington Correctional Centres dated 1 February 2016 (the **1 February 2016 Award**)²⁴²⁷ on 6 December 2023. It is apparent that this is the award that was applicable to the General Manager/Governor of Dillwynia up until the commencement of the 2017 Award, and accordingly governed Ms Martin’s employment during the relevant period.
1927. In relation to performance management, the 1 February 2016 Award and the 2017 Award both provide as follows:

16. Performance Management

- 16.1 *CSNSW’s Performance Management System shall be used as a process of identifying, evaluating and developing the work performance of all officers. This will ensure CSNSW meets its corporate objectives and, at the same time, will benefit officers by way of providing information, establishing agreed targets, providing performance feedback and enhancing rapport with supervisors.*
- 16.2 *Officers occupying roles of General Manager, Manager Security, Principal Correctional Officer, Chief Correctional Officer, Principal Industry Officer and Chief Industry Officer shall enter into a performance agreement with CSNSW.*²⁴²⁸

1928. In other words, the clause in the awards regarding performance management is not inconsistent with the legislation.

2427 NSW Industrial Relations Commission, ‘Crown Employees (Correctional Officers, Corrective Services NSW) Award 2007 for Kempsey, Dillwynia and Wellington Correctional Centres’, *Industrial Gazette*, No. C8517, 1 February 2016.

2428 Ex. 60, TB 6, Tab 26, AST.002.013.0096_0008; NSW Industrial Relations Commission, ‘Crown Employees (Correctional Officers, Corrective Services NSW) Award 2007 for Kempsey, Dillwynia and Wellington Correctional Centres’, *Industrial Gazette*, No. C8517, 1 February 2016.

1929. Mr Corcoran was asked whether he had read the 2 August 2016 Award and the 2017 Award prior to him giving evidence at the Special Commission, to which Mr Corcoran answered ‘yes’.²⁴²⁹ He was then further asked whether at the time that Ms Martin was Governor of Dillwynia and Emu Plains he knew what these two awards actually said, to which he also answered ‘yes’.²⁴³⁰ I am satisfied that the 2 August 2016 Award did not apply to Ms Martin’s employment, but it was the 1 February 2016 Award that applied during the relevant period. It follows that the award did not present the difficulties to management which Mr Corcoran suggested.
1930. Mr Corcoran was asked specifically whether the option to dismiss people under the GSE Act and GSE Rules was ‘always there’. Mr Corcoran agreed that it was. He also agreed that this option was available during the relevant period of Ms Martin’s employment, and that this was not a recent occurrence ‘at all’.²⁴³¹
1931. It is of considerable concern that Mr Corcoran, both when an Assistant Commissioner and now that he is the Commissioner, lacked an understanding of the legislative provisions applicable in relation to management of the performance of Governors at Dillwynia. Furthermore, he incorrectly cited the award applicable to Ms Martin as the reason why he was not able to remove Ms Martin for unsatisfactory performance.
1932. Mr Corcoran also told the Special Commission that the award ‘demanded’ that award employees be rotated around and that was the reason Ms Martin was moved from Dawn de Loas Correctional Centre in 2014 (at which time Mr Corcoran already had concerns about Ms Martin’s behaviour) to Dillwynia.²⁴³² The evidence was as follows:

COMMISSIONER: *It was ultimately your responsibility for that? No. Well, how did it happen that being unsatisfactory in one she gets responsibility for two?*

2429 Transcript, 23 November 2023, 3179.40-45.

2430 Transcript, 23 November 2023, 3180.1-4.

2431 Transcript, 23 November 2023, 3181.40-3182.10.

2432 Transcript, 22 November 2023, 3062.34-3064.30.

MR CORCORAN: *Because we have to rotate these people around.*

COMMISSIONER: *Yes, I know, but you didn't have to.*

MR CORCORAN: *No, but it was only a very small prison, the other one. That prison she was in at the time was a 500-bed prison. The Dillwynia and Emu Plains was a smaller facility at the time.*

COMMISSIONER: *I'm still not understanding how you go from one to two when she is not performing satisfactorily in one?*

MR CORCORAN: *We have to rotate these people around. So, you know, unless you go down the path of terminating someone because they're — you know, they're — they're not up to this role, as I've said to you before, very difficult, very difficult to do with these award employees.*

COMMISSIONER: *So you are telling me that the award demanded that she be given responsibility for two gaols. Is that what you are saying?*

MR CORCORAN: *No, the award demanded that they be rotated around.*

COMMISSIONER: *Right I understand that.*

MR CORCORAN: *Yes.*

COMMISSIONER: *But why give her two? Why not send her to somewhere where she has got one?*

MR CORCORAN: *It was a small one, you know, in total facility than the one that she —*

COMMISSIONER: *So that justified making her responsible for the management of two facilities did it?*

MR CORCORAN: *Well, I just can't go back and understand what we were doing at the time, why we made that particular decision. But we did have, you know as I said, 40 facilities to rotate people around int. So I — you know —*

COMMISSIONER: *That means you had many options for her apart from giving her two gaols.*

MR CORCORAN: *Yes.*

COMMISSIONER: *And you didn't take one of them?*

MR CORCORAN: *No, I didn't.*

COMMISSIONER: *And you can't tell me why?*

MR CORCORAN: *No, I'm sorry. That was a long time ago, almost— almost 10 years ago.*²⁴³³

1933. When it was put to Mr Corcoran that neither of the two awards he was shown 'demanded' the rotation of an employee, he conceded that the 'awards had a provision in there that every three years or so, we could rotate Governors or General Managers around in positions'.²⁴³⁴ However, he conceded that that the evidence he gave previously noting that the award 'demanded' the rotation occur was not correct.²⁴³⁵

1934. It is clear that Mr Corcoran lacked the appropriate level of knowledge about the contents of the relevant awards and, as a consequence, had little understanding of the tools available to deal with an underperforming prison governor.

1935. In summary, I am satisfied that:

- a) Notwithstanding that Mr Corcoran had counselled Ms Martin on multiple occasions about her conduct when Governor of another prison, he approved her appointment as Governor of Dillwynia.
- b) For at least a significant period of Astill's offending at Dillwynia, Mr Corcoran was of the view that Ms Martin was not able to satisfactorily perform the role of Governor at Dillwynia. He believed she was 'not up to the job'. In an endeavour to address the problem, Mr Shearer informed Mr Corcoran of his intention to place Ms Martin on a PIP. Mr Corcoran thought this was necessary and appropriate.
- c) Mr Shearer subsequently changed his mind and decided not to place Ms Martin on a PIP.

2433 Transcript, 22 November 2023, 3064.8-3065-14.

2434 Transcript, 23 November 2023, 3180.6-3181.3.

2435 Transcript, 23 November 2023, 3181.5-9.

- d) Mr Corcoran believed throughout the period of Astill's offending and up until giving his oral evidence at the Special Commission that CSNSW, through the Commissioner, did not have the legal power to dismiss a Governor who was incapable of discharging their functions unless it was via a misconduct process. He was mistaken.
- e) Although Mr Corcoran was not expected to come to his own view about the legal effect of the legislation and awards, in the exercise of his duties as Assistant Commissioner of Custodial Corrections with oversight of Dillwynia he was required to inform himself, including by seeking legal advice, of whether, and if so, how, a Governor could be removed if they were not capable of performing their job. He failed to do so. Until this Special Commission, he had not done this.
- f) If legal advice had been sought by Mr Corcoran, he would inevitably have been advised that there were legal means available to remove Ms Martin from her role on the basis that she was not up to performing that role. Any other advice is inconceivable, confirmed by the advice Mr Corcoran was in fact given when the issue was raised during the Special Commission.
- g) The mismanagement of Dillwynia by Ms Martin was fundamental to creating an environment at Dillwynia that allowed Astill's offending to occur.
- h) Mr Corcoran emphasised when giving evidence that the ultimate responsibility for a non-performing governor lay with the Commissioner. This is true. However, the Commissioner was dependent on advice from his Assistant Commissioner who had 'line' responsibility for governors. If, as was the case in relation to Mr Corcoran, the Assistant Commissioner did not understand the correct legal position, he could not give the Commissioner appropriate advice.



New South Wales
Australia

10

Suspensions of Westley Giles, Michael Paddison and Neil Holman

10.1 Initial allegations

1936. Allegations that officers at Dillwynia may have been complicit in Astill's offending were formally raised on 22 July 2022. The then Dillwynia Governor Saffron Cartwright sent an email to the Professional Standards Branch (**PSB**) attaching reports from Principal Correctional Officer Judith Barry and Senior Correctional Officer Renee Berry relating to a request by staff for Witness C not to be housed at Dillwynia, Emu Plains Correctional Centre, or Bolwara Transitional Centre.²⁴³⁶ The report from Ms Barry dated 21 July 2022 alleged that Witness C was 'closely aligned' to Astill, and therefore should not be housed at Dillwynia. Ms Barry's report contained the following information and allegations:

- a) inmates and staff were scared of Astill because 'he was allowed to get away with inexcusable unprofessional behaviour from Senior Management';
- b) Astill's partner, Correctional Officer Tania Hockey, was Witness C's case officer and Astill was Ms Hockey's case supervisor. It was brought to 'Senior Management's attention that it was a conflict of interest at the time, however initially nothing was done about this';
- c) 'During this time of Astill's behaviour he was given a TA [Temporary Assignment] as a Chief Correctional Officer by Senior Management who knew about some of the incidents'; and
- d) 'I also want to make it quite clear that I had no support from Senior Management and my peers who stuck their heads in the sand as though nothing was happening'.²⁴³⁷

1937. Ms Berry, in her report dated 22 July 2022, made the following allegations regarding Astill and complicity by management:

- a) 'I respectfully write this for you as you offer continual support in this matter. I was never offered this with General Manager Shari Martin or Manager of Security Leanne O'Toole. I was singled out by them, taken into the Governor's

2436 Ex. 3, TB 3, Vol. 17, Tab 569, CSNSW.0002.0029.1172_0001.

2437 Ex. 3, TB 3, Vol. 17, Tab 570, CSNSW.0002.0029.1173_0001-0002.

office by them, where I was berated, screamed at, accused, intimidated and threatened to have my rank of SCO [Senior Correctional Officer] removed and all for the sole purpose of protecting Wayne Astill and his inappropriate behaviour with inmate [Witness C]. I was one of 3 officers subjected to this treatment this day’.

- b) ‘I had Wayne Astill stand over the top of me at 6ft4 and myself 5ft3 screaming, swearing and point his finger at me aggressively at me to go against policy (my evidence in current court case). This was observed by 4 Senior Managers who did nothing, I had to protect myself. After this event [Witness C] started brushing past me (touching my arm) whilst stating comments that was circulating around the centre about what Wayne Astill was being accused of, implying it was coming from me’.
- c) ‘I have had a duress thrown at me by Wayne Astill when I was a gate officer. I lived on my nerves from the treatment of Wayne Astill and [Witness C] and sadly also Management for 10 months’; and
- d) ‘You still have current management that turned a blind eye in this department and one at Dillwynia CC [Correctional Centre] currently. I still engage respectfully with them and even the SCO who would relay all the information back to the General Manager Martin, who also is still currently at Dillwynia CC.’²⁴³⁸

1938. No other staff members or members of management alleged to have acted inappropriately or as having taken no action against inappropriate behaviour by Astill mentioned in Ms Barry’s and Ms Berry’s reports were named aside from the then Governor Shari Martin and Manager of Security (**MOS**) Leanne O’Toole.

1939. On 22 July 2022, Custodial Metro West Director Emma Smith sent a further email to PSB clarifying, in response to a request for the same, that the reports of Ms Berry and Ms Barry had been sent to PSB as they referenced inappropriate behaviour by managers, including Ms Martin and Ms O’Toole.

2438 Ex. 3, TB 3, Vol. 17, Tab 571, CSNSW.0002.0029.1175_0001-0003.

1940. On 26 July 2022, the then Acting Coordinator of the PSB, Karen Garrard, sent an email to the then Director of PSB, Steven Karras, outlining ‘historical allegations against managers who were present at the time of SCO [Senior Correctional Officer] Astill’s employment’, which summarised the contents of the reports prepared by Ms Barry and Ms Berry.²⁴³⁹ In her email to Mr Karras, Ms Garrard indicated her view that:

*As GM [General Manager] Martin and MOS [Manager of Security] O’Toole are no longer employed with CSNSW, misconduct allegations could not be pursued. While the historical allegations against the other ‘unnamed’ managers could potentially be pursued by IB [Investigations Branch], the lack of information and complexity of having the staff members involved in the ongoing court case may hinder any outcome. However, I can prepare for the PSC [Professional Standards Committee] if you consider there is validity in doing so.*²⁴⁴⁰

1941. No reply to Ms Garrard’s email to Mr Karras was produced by CSNSW. It is unclear whether any further steps were taken by PSB with respect to these allegations at this time.

1942. Commissioner of CSNSW Kevin Corcoran gave evidence that, given Astill’s criminal prosecution was still on foot at the time of Ms Garrard’s email, it was appropriate that any investigation into the matters raised by Ms Barry and Ms Berry was put on hold until Astill’s guilt had been determined.²⁴⁴¹

1943. The jury entered verdicts against Astill in August 2022, the month following Ms Garrard’s email. Professional Standards and Investigations (**PSI**) Acting Director Angela Zekanovic explained that, following the guilty verdicts, the allegations detailed in Ms Garrard’s email required investigation, via a referral to the Corrective Services Investigation Unit (**CSIU**).²⁴⁴² As explained below, it is unclear that such a referral was made at this time. Ms Zekanovic’s evidence was

2439 Ex. 3, TB 3, Vol. 17, Tab 568, CSNSW.0002.0029.1167_0001-0002.

2440 Ex. 3, TB 3, Vol 17, Tab 568, CSNSW.0002.0029.1167_0001-0002.

2441 Transcript, 22 November 2023, 3059.11-30.

2442 Transcript, 21 November 2023, 2803.30-34; Transcript, 21 November 2023, 2804.29-33.

that she thought there may have been a CSIU investigation into the allegations raised by Ms Barry and Ms Berry between July 2022 and April 2023, but she was not sure.²⁴⁴³

1944. On 26 August 2022, Ms Berry sent an email to Ms Smith and Ms Cartwright on behalf of Ms Barry and herself requesting to be advised how and who to contact at the Investigations Branch (**IB**) to request an investigation into the management team of Dillwynia between 2014 and 2019 during the period of Astill's offending, namely Ms Martin and Ms O'Toole. She said that Astill had been found guilty the day prior and 'There were over 60 witnesses, who at some point, spoke, reported, or engaged with the management team to later be reprimanded, mistreated and the assailant informed of the allegations. We believe that Management who shared a work /friendship outside of the centre walls (Bali Holidays) should answer for these charges also. At minimum, an investigation into why this occurred over a 4 year period to so many victims.' Ms Berry noted that she had spoken with Detective Joshua Palmer, who was involved in investigating Astill's criminal offending. He advised Ms Berry that the complaint was outside his jurisdiction and for her to follow up with the IB.²⁴⁴⁴
1945. Later on 26 August 2022, Ms Cartwright replied to Ms Berry's email and advised her to contact Director IB, Michael Hovey. Ms Berry emailed Mr Hovey later that day and requested a teleconference to discuss her and Ms Barry's concerns, including that they had been treated badly by the management team for speaking up.²⁴⁴⁵
1946. On 6 September 2022, Ms Cartwright also emailed Mr Hovey advising him that two of her staff members (Ms Barry and Ms Berry) had raised concerns that members of the Dillwynia management between 2014 and 2019 were aware of and failed to report allegations that Astill was sexually abusing inmates. She requested to speak to Mr Hovey in relation to Ms Berry's email to him requesting a teleconference.²⁴⁴⁶ Mr Hovey responded to this email and stated, in part:

2443 Transcript, 21 November 2023, 2809.20-2810.36.

2444 Ex. 3, TB 3, Vol. 17, Tab 529, CSNSW.0002.0029.1803_0002-0003.

2445 Ex. 3, TB 3, Vol. 17, Tab 529, CSNSW.0002.0029.1803_0001.

2446 Ex. 3, TB 3, Vol. 17, Tab 530, CSNSW.0002.0029.1920_0001-0002.

I'm unsure how I can assist Renee and Judi [Ms Barry and Ms Berry] — their complaints are against two former staff members and any resources deployed affects my BAU [business as usual] with no prospect of an outcome other than [sic] one which may (dependent upon the evidence) appease both ladies.

I don't want to sit here and merely wash my hands of this — not only will that solidify a view that no action is taken, I think we have to help Renee and Judi somehow.

I don't think it appropriate for me to meet with them, especially if Senior Executive request IB [Investigations Branch] to conduct enquires as our bias could be questioned.

Perhaps AC [Assistant Commissioner Anne-Marie] Martin could advise? — I'm happy to work in with a plan, say, with Anne-Marie's imprimatur arrange to take statements; gather evidence and make findings etc if that helps the bigger picture.²⁴⁴⁷

1947. No reply to Mr Hovey's email was produced to the Special Commission.

1948. It appears that nothing further occurred until 13 April 2023, when the Independent Commission Against Corruption (**ICAC**) made a written referral for the information of CSNSW pursuant to s. 53 of the *Independent Commission Against Corruption Act 1988*.²⁴⁴⁸ That referral was addressed to Mr Corcoran,²⁴⁴⁹ and related to allegations that 'unnamed CSNSW officers [were] threatening other staff and inmates against speaking up in relation to allegations about former CSNSW officer, Wayne Astill'. The particulars of the allegations were summarised as follows:

The complainant advised that inmates and other CSNSW officers at Dillwynia had further information about Mr Astill but that inmates had been told to 'keep their mouths shut' and officers have been told they

2447 Ex. 3, TB 3, Vol. 17, Tab 530, CSNSW.0002.0029.1920_0001.

2448 Ex. 48, Tab 3, CSNSW.0001.0024.0020-0022.

2449 Ex. 59, TB 5, Vol. 29, Tab 18, AST.002.013.0083_0026 [108]; Ex. 48, Tab 3, CSNSW.0001.0024.0020.

*would be sacked if they spoke up. The complainant claims CSNSW are trying to ‘sweep it under the carpet’.*²⁴⁵⁰

1949. The referral stated that ICAC would not be investigating the allegations and that the details of the matters were being provided to CSNSW for its information only. It concluded that CSNSW ‘may take whatever action is deemed appropriate in relation to this referral’.²⁴⁵¹ In his statement, Mr Corcoran confirmed that he had received this letter, but did not make any comment as to whether he considered or took any action in relation to its contents.²⁴⁵²
1950. On the same date, in response to the ICAC referral, Senior Professional Standards Officer PSI, Kurumi Todoroki, sent an email to Legal Officer Joanna Wong, recommending that the matter be referred to IB for fact finding and, if criminality was identified, that the matter be referred to CSIU. The email also recommended that, subject to the outcome of fact finding, misconduct papers be prepared for the consideration of the Decision-maker.²⁴⁵³
1951. On 18 April 2023, the Professional Standards Committee (**PSC**) considered the matter and confirmed the recommendations made by Mr Todoroki.²⁴⁵⁴
1952. In her evidence, Ms Zekanovic agreed the allegations referred to ICAC were ‘plainly appropriate’ for an investigation.²⁴⁵⁵ It appears that the allegations were referred to ‘Investigations’ following Mr Todoroki’s email.²⁴⁵⁶ Ms Zekanovic gave evidence that she thought at this time there may have already been a CSIU investigation on foot with respect to the allegations referred to the PSB on 22 July 2022, but she was not sure.²⁴⁵⁷ It appears based on the material before me that the allegations had not yet been referred to PSC or the CSIU at this time, particularly in light of Mr Hovey’s email of 6 September 2022.

2450 Ex. 48, Tab 3, CSNSW.0001.0024.0021.

2451 Ex. 48, Tab 3, CSNSW.0001.0024.0021; Ex. 59, TB 5, Vol. 29, Tab 18, AST.002.013.0083_0026 [108].

2452 Ex. 59, TB 5, Vol. 29, Tab 18, AST.002.013.0083_0026 [108].

2453 Ex. 3, TB 3, Vol. 17, Tab 533, CSNSW.0002.0032.0571_0001.

2454 Ex. 48, Tab 3, CSNSW.0001.0024.0027-0028.

2455 Transcript, 21 November 2023, 2810.16-19.

2456 Ex. 48, Tab 3, CSNSW.0001.0024.0031.

2457 Transcript, 21 November 2023, 2810.21-2811.11.

1953. Mr Corcoran was asked whether any disciplinary investigation in relation to officers who may have been complicit in Astill's offending, or who were aware of it and failed to respond, occurred between August 2022 (when Astill's verdict was delivered) and April 2023 (when the ICAC referral was received). Mr Corcoran stated that PSI had been 'going through the police facts and the transcripts of the court to try and identify what had happened and whether there was any matters that [they] had to follow up'.²⁴⁵⁸ This appears incorrect based on the material before me, as according to a Submission to the Commissioner prepared by PSI Legal Officer Stefan Skopelja on 31 July 2023 (discussed further below), the police brief was not reviewed by PSI until 13 July 2023.
1954. Mr Corcoran also gave evidence that he understood that the NSW Police Force (**NSWPF**) had launched an investigation into other people associated with Astill's offending, including officers at Dillwynia who had failed to act, and this meant that CSNSW investigations into other officers had to be suspended.²⁴⁵⁹
1955. On 19 May 2023, Ms Wong sent an email to PSI, copying in Ms Zekanovic, outlining a number of further allegations of misconduct made by Ms Berry during a meeting on 17 May 2023.²⁴⁶⁰ The email notes an allegation by Ms Berry that Astill and 'other staff' at Dillwynia had 'bullied, harassed and threatened her because she had reported about Astill's sexual offending conduct towards female inmates'.²⁴⁶¹ Ms Berry also alleged that, prior to Astill's arrest, she had made at least four reports to the Special Investigation Unit (**SIU**) sub-branch of the IB about Astill's sexual offending towards female inmates 'but nothing was done about these until he was charged'.²⁴⁶² The email identified a number of staff who 'should be held to account about what they knew and how they handled the allegations of sexual assault', including Suryararyan Hariharan, Deborah Wilson, Michael Paddison, Neil Holman, Pamela Kellett and Pam Hotham.²⁴⁶³

2458 Transcript, 22 November 2023, 3060.18-35.

2459 Transcript, 22 November 2023, 3061.38-3062.24.

2460 Ex. 48, Tab 2, CSNSW.0001.0019.0001-0002.

2461 Ex. 48, Tab 2, CSNSW.0001.0019.0001.

2462 Ex. 48, Tab 2, CSNSW.0001.0019.0001.

2463 Ex. 48, Tab 2, CSNSW.0001.0019.0001.

1956. These allegations were referred to PSC who on 24 May 2023 endorsed the following recommendations:

- a) the information be referred to the IB and combined with their fact-finding inquiries already on foot;
- b) the Director, PSI discuss any actions to be taken to address staff concerns with Assistant Commissioner Delivery, Performance and Culture, Chantal Snell, and Mr Corcoran; and
- c) the Support Unit contact Ms Berry to provide further support.²⁴⁶⁴

1957. On 8 and 9 June 2023, Support Unit Advisors Michelle Young, Lucy Connolly and Belinda Gurney attended Dillwynia to meet with, and support, staff who were identified as being adversely affected by Astill's offending.²⁴⁶⁵

1958. On 15 June 2023, Ms Connolly sent an email to Acting Manager, PSI, Ms Garrard, and Acting Coordinator of PSI, Leasha Michaelson, recording 'further information' that was passed onto the Support Unit Advisors during that visit by unnamed officers at Dillwynia, including the following specific allegations against Senior Correctional Officer Westley Giles, Mr Hariharan, Mr Paddison and Mr Holman:²⁴⁶⁶

- a) that it was 'highly probable' Mr Giles was aware of Astill's offending and failed to intervene or report the conduct 'due to his associations with centre management', which 'was confirmed by [Mr] Giles who advised he was extremely close to Governor Martin and Manager of Security O'Toole in both a personal and professional capacity';
- b) that Astill's offending was 'common knowledge' at Dillwynia and that Mr Giles, Mr Holman and Mr Paddison had a conversation during which Mr Holman and Mr Paddison joked about not wanting to attend J Block due to 'Wayne being balls deep' (in reference to sexual intercourse);

2464 Ex. 48, Tab 3, CSNSW.0001.0024.0027-0028.

2465 Ex. 48, Tab 3, CSNSW.0001.0024.0029-0030.

2466 Ex. 48, Tab 3, CSNSW.0001.0024.0029-0030.

- c) that Mr Holman was aware of, and complicit in, Astill's offending and was actively involved in allowing Astill to offend;
- d) that Mr Holman used his role to roster Ms Berry on shifts with Astill with the knowledge that Astill was engaging in intimidating and threatening behaviour towards her;
- e) that Mr Paddison was complicit in actively covering up Astill's offending and intimidating staff who attempted to report Astill's offending;
- f) that Mr Paddison failed to act on a report made by Senior Correctional Officer Jean Dolly about Astill's offending; and
- g) that Mr Hariharan was complicit with Ms Martin and Ms O'Toole in actively covering up the offending.²⁴⁶⁷

1959. Ms Connolly's email concluded that:

Given the seriousness of the allegations made and the documented detrimental impact of these staff continuing to be in the workplace, it is recommended that the PSC [Professional Standards Committee] considers the suspension of SCO [Senior Correctional Officer] Westley Giles, FM [Functional Manager] Neil Holman and Business Operations Manager Michael Paddison during the misconduct process. It is also recommended that CCO [Casual Correctional Officer] Suri 'Harry' Harriharn [sic] be removed from the casual calling list.²⁴⁶⁸

1960. During Ms Zekanovic's oral evidence, she confirmed that the three officers who had given the information on which Ms Connolly's email was based were Ms Berry, Ms Barry, and Ms Dolly.²⁴⁶⁹ She also confirmed that given Ms Connolly's position in the Support Unit that it was very unusual that she made a recommendation for the PSC to consider.²⁴⁷⁰

2467 Ex. 48, Tab 3, CSNSW.0001.0024.0029-0030.

2468 Ex. 48, Tab 3, CSNSW.0001.0024.0030.

2469 Transcript, 21 November 2023, 2816.28-2817.2.

2470 Transcript, 21 November 2023, 2820.28-2822.43.

10.1.1 PSI's Submission to the Assistant Commissioner and Director – 21 June 2023

1961. On 20 June 2023, the PSC considered the material available in respect of Mr Giles, Mr Paddison, and Mr Holman and recommended that the matter be referred to CSIU and CSNSW Investigations concurrently. PSC further recommended the suspension of Mr Giles, Mr Paddison, and Mr Holman with pay, pending the outcome of those assessments.²⁴⁷¹

1962. On 21 June 2023, a Submission to the Assistant Commissioner Steve Thorpe and Ms Smith was prepared by PSI (**21 June 2023 Submission**) recommending the suspension of Mr Giles, Mr Paddison, and Mr Holman from duty with pay,

*pending investigation into their alleged failure to report the serious misconduct of former CSNSW employee Wayne Astill (Mr Astill), actively being complicit in the concealment of crimes of Mr Astill and for intimidation, bullying and harassment of CSNSW colleagues to ensure the concealment of crimes committed by Mr Astill whilst he was in the employ of CSNSW.*²⁴⁷²

1963. The 21 June 2023 Submission further noted that the information provided by the Support Unit (also contained in Ms Connolly's email of 15 June 2023²⁴⁷³) indicated that at least two employees were on worker's compensation 'following claims of psychological injury suffered as a result of the inaction of management as well as the continued interaction with people alleged to have been complicit in Mr Astill's offending'.²⁴⁷⁴ The 21 June 2023 Submission did not refer to Mr Hariharan.

1964. On 29 June 2023, Ms Snell sent an email to Mr Thorpe and Ms Smith documenting the decision of Mr Thorpe and Ms Smith to reject PSI's recommendation to suspend Mr Giles, Mr Paddison, and Mr Holman.²⁴⁷⁵ Ms Snell noted that Mr Thorpe

2471 Ex. 48, Tab 3, CSNSW.0001.0024.0007-0009.

2472 Ex. 48, Tab 3, CSNSW.0001.0024.0007.

2473 Ex. 48, Tab 3, CSNSW.0001.0024.0029-0030.

2474 Ex. 48, Tab 3, CSNSW.0001.0024.0008.

2475 Ex. 48, Tab 4, CSNSW.0001.0052.1619.

and Ms Smith had determined that the matter could not progress ‘until further information [was] obtained by NSW Police Corrective Services Investigation Unit (CSIU) and/or PSI Investigations, which is likely to take several months’. The rationale for this decision was:

*that the indefinite suspension of the subject officers at this stage may hinder the investigation itself, in circumstances where the officers [were] not presently aware that they [were] persons of interest.*²⁴⁷⁶

10.2 Further evidence gathered

1965. On 7 July 2023, an article was published in *The Australian* newspaper reporting that an unnamed officer who worked with Astill had been referred to the NSWPF.²⁴⁷⁷

1966. On 14 July 2023, Ms Wong prepared a briefing note for the Secretary, Department of Communities and Justice (**Secretary**) for his information (**14 July 2023 Briefing Note**). According to the briefing note, PSI had reviewed the NSWPF Brief of Evidence used in the prosecution of Astill to identify any additional evidence that went towards staff members’ complicity in, or knowledge of, Astill’s offending. The 14 July 2023 Briefing Note was considered by Mr Corcoran and approved on 17 July 2023. The 14 July 2023 Briefing Note does not indicate whether the Secretary then viewed or noted its contents.²⁴⁷⁸ The Briefing Note stated the following:

It is clear from the volume of reports that staff and inmates made reports which were ultimately not pursued, or otherwise that they felt they were unable to report incidents because of Mr Astill’s influence within the correctional centre. However, the evidence going towards specific staff members’ complicity or awareness is frequently vague or speculative. The current state of the evidence can only point towards

2476 Ex. 48, Tab 4, CSNSW.0001.0052.1619.

2477 Ex. 48, Tab 6, CSNSW.0001.0052.1795.

2478 Ex. 59, TB 5, Vol. 29, Tab 18, Annexure Tab 40, CSNSW.0001.0023.0001-0003; See, also, Ex. 59, TB 5, Vol 29, Tab 18, AST.002.013.0083_0026 [109]-[110].

potential persons of interest, witnesses, or systemic shortcomings, but not concrete allegations or charges.

*Further investigation would be required to ground any conclusions that are to an actionable standard.*²⁴⁷⁹

1967. The 14 July 2023 Briefing Note stated that the names of staff who had been identified as complicit in Astill's offending had been provided to NSWPF and ICAC for those agencies to consider investigating. It further noted that the Commissioner of CSNSW was considering the suspension of further implicated officers, which was initially considered inappropriate due to the lack of probative evidence available as well as concerns that suspension would alert the officers and hinder the effectiveness of an investigation.²⁴⁸⁰
1968. On 19 July 2023, Mr Corcoran wrote to ICAC referring other allegations for its attention following the review of the NSWPF Brief of Evidence and internal preliminary inquiries conducted by CSNSW. The allegations referred to ICAC included the allegations referred to above, in addition to allegations contained in the Brief of Evidence regarding Mr Giles, Mr Paddison, and Mr Holman (among others). Mr Corcoran requested he be advised whether ICAC intended to investigate the referred allegations, and once advised of ICAC's position said that he would consider CSNSW's options, including pursuit of an external investigation.²⁴⁸¹
1969. On 21 July 2023, Ms Smith sent an email to Ms Snell, and copied in Assistant Commissioner, Custody Metro Branch, Security and Custody, John Buckley, and Deputy Commissioner of Security and Custody, Dr Anne-Marie Martin, attaching an email she had received from the DCJ Media Unit regarding Astill, which specifically named Mr Giles as allegedly being complicit. Ms Smith stated that 'Given the attached, I believe it may be beneficial for the matter to be reassessed by the PSC'. Mr Buckley replied to this email and stated, 'I agree with Emma that this matter be re-listed and consideration by the various decision makers for suspension or S46 relocation etc.' Ms Snell's response was that the information

2479 Ex. 59, TB 5, Vol. 29, Tab 18, Annexures Tab 40, CSNSW.0001.0023.0001.

2480 Ex. 59, TB 5, Vol. 29, Tab 18, Annexures Tab 40, CSNSW.0001.0023.0002.

2481 Ex. 58, TB 3, Vol. 18, Tab 616, CSNSW.0001.0024.0697_0001-0003; Ex. 59, TB 5, Vol. 29, Tab 18, AST.002.013.0083_0026 [111].

had already been captured in a submission for an urgent suspension (understood to be the Submission dated 31 July 2023 discussed below).²⁴⁸²

1970. On 24 July 2023, Mr Skopelja, prepared a file note recording further discussions he had had with Ms Young and Ms Gurney (two of the Support Unit workers who attended Dillwynia on 8 and 9 June 2023) regarding the information that had been provided to them. Mr Skopelja recorded that:

- a) Mr Giles was named as someone who was ‘bullying, harassing, or threatening staff to not report Mr Astill in order to prevent the offending from being investigated’, and was also identified as a contributing factor in the cases of two officers who were on workers compensation leave; and
- b) Mr Paddison and Mr Holman were identified by ‘a large number of staff’ as ‘being aware of Mr Astill’s offending and as a part of the leadership team that failed to act on that knowledge’ and that some staff referred to them as a ‘reminder’ of Astill’s offending; however they were not identified in the same way as Mr Giles was as ‘having bullied, harassed, or threatened staff to not report Mr Astill and neither of [them] got this impression from any of the staff [they] spoke to’.²⁴⁸³

1971. Mr Skopelja further recorded that Ms Young and Ms Gurney informed him that the purpose of their visit to Dillwynia had been to offer support and allow staff an opportunity to express their concerns. He recorded that they said they:

*were not there to conduct fact-finding. [They] allowed staff to express themselves without attempting to elicit further information, obtain specific accounts of incidents, or to identify staff that could be further approached. As a result, much of the information disclosed to [them] by staff was general in nature.*²⁴⁸⁴

1972. On 28 July 2023, Detective Inspector John Bamford of the CSIU verbally provided PSI with further information about Mr Giles, including an allegation

2482 Ex. 48, Tab 4, CSNSW.0001.0052.1618.

2483 Ex. 48, Tab 5, CSNSW.0001.0072.1148.

2484 Ex. 48, Tab 5, CSNSW.0001.0072.1148.

that one inmate had disclosed to Mr Giles that she had been sexually assaulted by Astill, following which Mr Giles took that inmate to see Astill, told her to repeat the allegation, and then left the two alone, following which Astill sexually assaulted the inmate again.²⁴⁸⁵ Detective Inspector Bamford provided written correspondence outlining this same information on 31 July 2023, noting that the information was ‘not based on fact (signed statements) however I believe once Police are permitted a statement will be given stating this occurred’.²⁴⁸⁶

10.3 PSI’s Submission to the Acting Commissioner – 31 July 2023

1973. On 31 July 2023, a Submission to the then Acting Commissioner, Dr Martin, was prepared by Mr Skopelja and endorsed by Ms Zekanovic (**31 July 2023 Submission**). The 31 July 2023 Submission noted the additional information obtained from the above further investigations, and identified a number of ‘risks’, including that:

*CSNSW is already under considerable scrutiny in respect of its handling of Mr Astill’s offending. Further perceived inaction, particularly if hindsight demonstrated that inaction was an error, would exacerbate any criticisms.*²⁴⁸⁷

1974. The 31 July 2023 Submission recommended that Mr Giles be suspended for bullying, threatening, and harassing colleagues to not report Astill’s misconduct and offending. The 31 July 2023 Submission noted that the only allegation with particularity pertained to Mr Giles, who was specifically identified as involved in bullying staff and was also specifically identified by one inmate as having, in effect, delivered her to Astill after she disclosed to him Astill was sexually assaulting her.²⁴⁸⁸ The 31 July 2023 Submission also noted that although there were no formal misconduct outcomes recorded against Mr Giles, he had been

2485 Ex. 48, Tab 6, CSNSW.0001.0049.1796.

2486 Ex. 48, Tab 6, CSNSW.0001.0049.1839.

2487 Ex. 48, Tab 6, CSNSW.0001.0049.1795-1800.

2488 Ex. 48, Tab 6, CSNSW.0001.0049.1797-1798.

the subject of 16 allegations previously, including allegations in 2016 that he bullied and harassed an officer, which were investigated by the IB and referred back to local management. It was also recommended that Mr Paddison and Mr Holman not be suspended from duty, pending further investigation into their alleged complicity and failure to report Astill's serious misconduct.²⁴⁸⁹

1975. The 31 July 2023 Submission made reference to the Premier's Memorandum M1994-35, which sets out factors to be considered in suspending an officer, including the public interest, the efficient operation of the agency, the maintenance of good order and discipline, and whether it is detrimental for the employees to remain at work.²⁴⁹⁰

1976. In coming to the recommendations, the 31 July 2023 Submission considered the risks to CSNSW (among other things). The 31 July 2023 Submission stated:

...CSNSW remains under an obligation to exercise its statutory powers reasonably and on a proper basis. This opens CSNSW to criticism and scrutiny if it is perceived as victimising non-senior staff without credible evidence in self-preservation or as blame-shifting.

*The decision to suspend is complicated by the patchwork nature of the evidence. While it is appreciated that time is of the essence, as further investigations are forthcoming it may be most prudent to act where the evidence is strongest and await further information in respect of the rest. There is no bar to reconsidering suspension at any time, and this can be done as and when that information is received.*²⁴⁹¹

10.4 Suspension of Mr Giles

1977. On 13 August 2023, following consideration of the 31 July 2023 submission from PSI, Dr Martin signed papers providing for the suspension of Mr Giles

2489 Ex. 48, Tab 6, CSNSW.0001.0049.1799-1800.

2490 Ex. 48, Tab 6, CSNSW.0001.0049.1799.

2491 Ex. 48, Tab 6, CSNSW.0001.0049.1800.

from duty with pay.²⁴⁹² Leon Taylor subsequently assumed the role of Acting Commissioner.²⁴⁹³

1978. On 14 August 2023, an email was sent by Ms Snell to Mr Buckley and Ms Zekanovic, with Dr Martin and Mr Taylor copied in, confirming that a decision had been made to suspend Mr Giles. Ms Snell noted that '[i]n discussing this matter with the A/Commissioner this evening, we will need to first ensure the Minister is briefed'.²⁴⁹⁴

1979. On 21 August 2023, Ms Zekanovic prepared a number of bullet points for Mr Taylor's discussion with the Secretary and stated that the reason a decision to suspend Mr Giles had only been made at that stage was 'because we weren't aware of these allegations until recently...and given that we have received them from multiple sources we consider it appropriate to do what we normally would in these circumstances and suspend [Mr Giles]'.²⁴⁹⁵

1980. In her oral evidence, Ms Zekanovic explained that it was a poorly worded email and should have said, 'in terms of why we are considering suspension now, it is because we received additional information from the CSIU', accepting that all the other evidence had been known when the decision was made by Mr Thorpe and Ms Smith to reject the initial recommendation to suspend Mr Giles.²⁴⁹⁶

1981. On 30 August 2023, Ms Smith sent an email to Legal Officer Cathy McInnes, Ms Zekanovic, and Ms Snell, with Mr Buckley copied in, recording the service of suspension documents on Mr Giles. The email records that on that date, Mr Giles met with Ms Smith and Mr Thorpe and was handed the letter advising him that he was suspended with pay, effective immediately.²⁴⁹⁷

2492 Ex. 48, Tab 11, AST.002.013.0072_0001.

2493 Ex. 48, Tab 7, CSNSW.0001.0019.0380-0381.

2494 Ex. 48, Tab 7, CSNSW.0001.0019.0381.

2495 Ex. 48, Tab 8, CSNSW.0001.0072.2651; Ex. 48, Tab 9, CSNSW.0001.0019.0383.

2496 Transcript, 21 November 2023, 2849.42-2850.4.

2497 Ex. 48, Tab 10, CSNSW.0001.0025.0177-178.

10.5 Meeting at Dillwynia – 19 September 2023

1982. On 19 September 2023, Mr Corcoran and Ms Snell attended Dillwynia to meet with the staff.²⁴⁹⁸
1983. Mr Corcoran stated that he attended Dillwynia on that date because he thought it was important to offer support to the staff now that the Special Commission had been announced.²⁴⁹⁹ Mr Corcoran believed that, during his visit, he spoke to the whole staff of 70 or so officers during a town hall-style meeting which was followed by a smaller meeting. Mr Corcoran then had separate meetings with six or seven officers, either in pairs or individually.²⁵⁰⁰ Initially, Mr Corcoran could only remember two of the officers he met with, being Ms Berry and Ms Barry;²⁵⁰¹ however, he subsequently accepted that Ms Dolly and the then Acting Governor of Dillwynia, Mark Dean, may have also been present at the smaller group meeting.²⁵⁰² Mr Corcoran stated that he did not make a documentary record of any of the meetings.²⁵⁰³
1984. Mr Corcoran could not recall whether his visit on 19 September 2023 was the first time he had visited Dillwynia to support the officers since Astill's conviction.²⁵⁰⁴ When it was put to Mr Corcoran that, at the outset of his meeting with staff on 19 September 2023, he was told by Ms Berry and Ms Barry that he had let them down, that the visit on that date was the first time anyone from DCJ had spoken to them about Astill, and that they had received no support, Mr Corcoran agreed that Ms Berry and Ms Barry had said something to that effect.²⁵⁰⁵ Notwithstanding this, Mr Corcoran stated that there had been a lot of support offered to the staff at Dillwynia and his understanding was that Assistant Commissioners and Directors had been visiting Dillwynia on a regular basis to offer support.²⁵⁰⁶

2498 Ex. 59, TB 5, Vol. 29, Tab 18, AST.002.013.0083_0028 [117(a)]; Transcript, 22 November 2023, 3055.4-8.

2499 Transcript, 23 November 2023, 3069.12-40, Transcript, 23 November 2023, 3198.12-19.

2500 Transcript, 22 November 2023, 3055.4-26; Transcript, 23 November 2023, 3198.32-36.

2501 Transcript, 22 November 2023, 3055.46-3057.13; Transcript, 23 November 2023, 3071.30-36.

2502 Transcript, 23 November 2023, 3200.6-21.

2503 Transcript, 22 November 2023, 3055.33-44.

2504 Transcript, 23 November 2023, 3069.18-40.

2505 Transcript, 23 November 2023, 3140.4-42.

2506 Transcript, 23 November 2023, 3140.4-42.

1985. When Mr Corcoran was pressed on the issue of support, he agreed that the support offered to the staff at Dillwynia had been inadequate,²⁵⁰⁷ but he did not agree that he had attended Dillwynia on 19 September 2023 to try and demonstrate in advance of the Special Commission that he had done something to support the staff.²⁵⁰⁸ Mr Corcoran gave evidence that he had visited Dillwynia frequently since 19 September 2023.²⁵⁰⁹
1986. Mr Corcoran did not have a good recollection of the matters which were being raised with him by specific officers in relation to concerns about Mr Paddison and Mr Holman.²⁵¹⁰ There was evidence that at least some of the officers were very angry and were shouting at him.²⁵¹¹ The only significant concern Mr Corcoran said he recalled, in relation to Mr Paddison and Mr Holman, was that Astill's victims were distressed by the presence of Mr Holman and Mr Paddison at the locations to which the officers had been moved.²⁵¹² Mr Corcoran thought that it was Ms Berry and Ms Barry, and possibly other officers he could not recall, who had raised these concerns with him.²⁵¹³ Mr Corcoran also accepted it 'could well be' the case that because of the frequency of his visits to Dillwynia, that what was said to him on one occasion compared to another tended to not be as clear.²⁵¹⁴
1987. Ms Snell made three pages of handwritten notes of the smaller meeting which took place between herself, Mr Corcoran, and between six to ten officers at Dillwynia.²⁵¹⁵ These notes are discussed below.

2507 Transcript, 23 November 2023, 3155.13-3156.7.

2508 Transcript, 23 November 2023, 3151.1-13.

2509 Transcript, 23 November 2023, 3199.23-26.

2510 Transcript, 22 November 2023, 3055.28-3057.30; Transcript, 23 November 2023, 3120.38-44.

2511 Transcript, 22 November 2023, 3055.28-44; Transcript, 23 November 2023, 3201.3-29; Transcript, 24 November 2023, 3236.22-25.

2512 Transcript, 23 November 2023, 3085.29-3086.15; Transcript, 23 November 2023, 3118.1-3119.1; Transcript, 23 November 2023, 3156.9-23.

2513 Transcript, 23 November 2023, 3120.35-44.

2514 Transcript, 23 November 2023, 3202.2-6.

2515 Ex. 51, CSNSW.0001.0273.0001-0003.

10.6 Mr Corcoran's request for a further Submission

1988. Ms Snell gave evidence that after Mr Corcoran finished speaking to the officers one on one or in pairs, she had a discussion with him about what had come out of those meetings and any views he had formed.²⁵¹⁶ Ms Snell said that Mr Corcoran said to her: 'I think we need to review the files in relation to Michael [sic] Holman and Paddison and consider whether any further action needs to be undertaken.'²⁵¹⁷
1989. Mr Corcoran agreed with the proposition that he may have said to Ms Snell after leaving Dillwynia on 19 September 2023: 'I'm considering suspending Mr Paddison and Mr Holman.'²⁵¹⁸ He also agreed that he said to Ms Snell on that day that she should prepare paperwork associated with his 'consideration of ... whether Mr Holman or Mr Paddison or both should be suspended'.²⁵¹⁹
1990. I accept that, either at Dillwynia or on the way back from Dillwynia on 19 September 2023, Mr Corcoran did make a comment to Ms Snell to the effect that he wanted a submission from PSI so that he could consider whether any further action needed to be taken including to suspend Mr Paddison and Mr Holman.
1991. Ms Snell said that after her discussion with Mr Corcoran, she sent a text message to Ms Zekanovic at 3:53pm AEST which said:

*Hi Angela, out of the meeting at Dillwynia today, can we prepare all of the information we have on Paddison and Holman, please. There was further feedback that they were just as complicit as Giles, and KC [Kevin Corcoran] would like to review tomorrow and consider urgent suspension. Thanks, Chantal.*²⁵²⁰

2516 Transcript, 24 November 2023, 3236.41-46.

2517 Transcript, 24 November 2023, 3237.3-5.

2518 Transcript, 23 November 2023, 3202.44-3203.1.

2519 Transcript, 23 November 2023, 3203.3-12.

2520 Transcript, 24 November 2023, 3237.23-43.

1992. Ms Snell said that in her text message to Ms Zekanovic, and in a subsequent conversation with her, she relayed to Ms Zekanovic ‘some of the information that was presented’ at Dillwynia on 19 September 2023.²⁵²¹ When asked about whether Ms Zekanovic had critical information, namely the particulars that had come to the attention of Mr Corcoran on that date, Ms Snell said ‘Well, I believe she had some from my text message and my phone call with her’.²⁵²²
1993. Ms Snell was asked why, then, she believed Ms Zekanovic made the statement in the Submission, discussed below, that ‘This submission is not aware of the concerns expressed by staff on 19 September 2023’. Ms Snell said: ‘Well, I’m — I don’t — it would have been perhaps helpful to reference the text message or the conversation.’²⁵²³
1994. Ms Zekanovic gave evidence about what was conveyed to her by Ms Snell. She repeatedly and consistently maintained that she was not given any particulars of the information that had come to the attention of Mr Corcoran at Dillwynia on 19 September 2023.²⁵²⁴
1995. I accept the evidence of Ms Zekanovic that Ms Snell did not provide any relevant information on 19 September 2023 that was new or different to any of the information that Ms Zekanovic had when preparing the earlier submission of 31 July 2023. This is consistent with the eventual concession by Ms Snell that the information she provided Ms Zekanovic about Mr Paddison and Mr Holman being ‘just as complicit as Giles’ was not new and had already been recorded in the 31 July 2023 submission.²⁵²⁵
1996. On the evening of 19 September 2023, Ms Zekanovic sent an email to Mr Skopelja, with Ms McInnes copied in, requesting that he urgently ‘prepare the submission to the Commissioner giving him the option to consider suspension of Paddison

2521 Transcript, 24 November 2023, 3240.7-8.

2522 Transcript, 24 November 2023, 3240.46-3241.5.

2523 Transcript, 24 November 2023, 3241.7-29.

2524 Transcript, 21 November 2023, 2858.15-22; Transcript, 21 November 2023, 2860.7-10; Transcript, 21 November 2023, 2861.32-43; Transcript, 21 November 2023, 2862.29-33; Transcript, 21 November 2023, 2863.2-10; Transcript, 21 November 2023, 2863.20-23; Transcript, 21 November 2023 2867.30-2868.34; Transcript, 21 November 2023, 2871.8-9.

2525 Transcript, 24 November 2023, 3242.43-3243.9; Ex. 60, TB 6, Tab 19, CSNSW.0001.0274.0002.

and Hollman [sic]' and noting her understanding that 'the Commissioner became aware of further information in relation to these officers when he attended Dillwynia today'.²⁵²⁶ On 20 September 2023, Mr Skopelja responded to Ms Zekanovic asking whether there were any documents he should be aware of or whether anyone could brief him on the further information referred to.²⁵²⁷

1997. Ms Zekanovic could not recall having a conversation with Mr Skopelja in response to his email but thought it was probable that they had spoken on the phone in terms consistent with her email and the submission ultimately prepared.²⁵²⁸
1998. As I have accepted above, Ms Zekanovic was incapable of passing any further information to Mr Skopelja for the purpose of preparing the submission, as she had not been provided any new information from Ms Snell or Mr Corcoran. Accordingly, the 20 September 2023 submission was incapable of including any information additional to what was included in the submission of 31 July 2023.

10.7 PSI's Submission to the Commissioner – 20 September 2023

1999. On 20 September 2023, a further Submission to the Commissioner of CSNSW was prepared by PSI (specifically, Mr Skopelja) and endorsed by Ms Zekanovic (**20 September 2023 Submission**). The 20 September 2023 Submission noted that on 19 September 2023, Mr Corcoran attended Dillwynia, during which 'conversations were had with staff where further concerns were expressed surrounding Mr Astill's offending'.²⁵²⁹ The 20 September 2023 Submission further noted that '[a]s a result, the Commissioner has expressed his intent to revisit whether it is appropriate to suspend SAS [Senior Assistant Superintendent] Holman and Superintendent Paddison'.²⁵³⁰ The 20 September 2023 Submission stated that PSI was not aware of the content of the concerns expressed by staff

2526 Ex. 49, AST.002.013.0090_0001.

2527 Ex. 49, AST.002.013.0090_0001.

2528 Transcript, 22 November 2023, 2921.44-2922.6.

2529 Ex. 48, Tab 11, AST.002.013.0072_0001-0004.

2530 Ex. 48, Tab 11, AST.002.013.0072_0001.

on 19 September 2023 and the 20 September 2023 Submission was merely intended as a brief of information already known to PSI regarding Mr Paddison and Mr Holman.²⁵³¹ The 20 September 2023 Submission recommended:

That the Commissioner acknowledge and consider the availability of the following options:

- (1) *Suspend SAS [Senior Assistant Superintendent] Holman and SI [Superintendent] Paddison. A letter can be drafted on short notice.*
- (2) *Decline to suspend SI Paddison and SAS Holman.*²⁵³²

2000. The 20 September 2023 Submission is signed by Ms Zekanovic. After it was received by Mr Corcoran, he made a handwritten note 'Please action option 1'.²⁵³³

2001. Ms Zekanovic confirmed that the information recorded in the 20 September 2023 Submission in relation to Mr Paddison and Mr Holman was not new and was previously recorded in the original 21 June 2023 Submission and the 31 July 2023 Submission.²⁵³⁴ Ms Zekanovic also agreed that, prior to the 20 September 2023 Submission, a decision had been made not to suspend Mr Holman and Mr Paddison in accordance with the recommendation in the 31 July 2023 Submission.²⁵³⁵ Ms Zekanovic gave evidence that she was consciously not making a recommendation in favour of suspension as she did not have all the information to enable her to make a recommendation.²⁵³⁶

2002. Ms Snell gave evidence that Mr Corcoran reviewed the 20 September 2023 Submission and 'relevant papers' in her office before signing the Submission. Ms Snell did not recall exactly how long Mr Corcoran reviewed the documents for before he signed the papers but stated that it would have been about 15 minutes or so.²⁵³⁷

2531 Ex. 48, Tab 11, AST.002.013.0072_0001.

2532 Ex. 48, Tab 11, AST.002.013.0072_0004.

2533 Ex. 48, Tab 11, AST.002.013.0072_0004.

2534 Transcript, 21 November 2023, 2858.15-39.

2535 Transcript, 21 November 2023, 2858.41-2859.5.

2536 Transcript, 22 November 2023, 2927.13-35.

2537 Transcript, 24 November 2023, 3280.44-3281.43.

2003. Mr Corcoran was asked if the previous 31 July 2023 Submission, which recommended that Mr Paddison and Mr Holman not be suspended, was attached to the 20 September 2023 Submission. Mr Corcoran responded, 'I imagine so'. He said that if the document had been attached, he would have referred to it and he had no reason to think that he had not been given a copy of the earlier submission.²⁵³⁸ However, when Mr Corcoran was shown the 31 July 2023 Submission, he did not recall having seen or read that document and also did not recall requesting a copy of it.²⁵³⁹

2004. I agree with Mr Corcoran's statement that the 31 July 2023 Submission would have been important to read if it was intended to be attached to the 20 September 2023 Submission.²⁵⁴⁰ As I have accepted above, the 20 September 2023 Submission did not include any information additional to the 31 July 2023 Submission, and the 31 July 2023 Submission recommended against the suspensions of Mr Holman and Mr Paddison.

10.7.1 Timing of Mr Corcoran's decision to suspend Mr Paddison and Mr Holman

2005. Mr Corcoran gave oral evidence about the timing of his decision to suspend Mr Paddison and Mr Holman. From the documents, it is apparent that Mr Corcoran formally made his decision to suspend Mr Paddison and Mr Holman on 20 September 2023 when he selected 'option 1' presented to him in the submission document prepared by Ms Zekanovic. Mr Corcoran was asked whether, in doing so, his decision was made on the information recorded in the document. He responded: 'It was consideration of the material in the document, as well as the material as — the information that I was given, confidentially, by staff.'²⁵⁴¹ Mr Corcoran also agreed that he determined to exercise the option to suspend 'arising from the submission' prepared by Ms Zekanovic.²⁵⁴²

2538 Transcript, 23 November 2023, 3076.4-44.

2539 Transcript, 23 November 2023, 3077.31-3079.15.

2540 Transcript, 23 November 2023, 3079.17-3080.36.

2541 Transcript, 23 November 2023, 3089.1-8.

2542 Transcript, 23 November 2023, 3089.31-34

2006. Later in his evidence, Mr Corcoran agreed with the proposition that he may have said to Ms Snell after leaving Dillwynia on 19 September 2023, 'I'm considering suspending Mr Paddison and Mr Holman.'²⁵⁴³ He also agreed that he said to Ms Snell on that day that she should prepare paperwork associated with his 'consideration of ... whether Mr Holman or Mr Paddison or both should be suspended.'²⁵⁴⁴

2007. The answer that he gave immediately after that answer is informative:

MR SELLER: *I think I'll ask this open. Had you on that occasion, that is, on 19 September while either at Dillwynia or on the way back into the CBD, formed a concluded view as to whether the officers should be suspended.*

MR CORCORAN: *That would have occurred while I was at the centre.*

MR SELLER: *At the centre?*

MR CORCORAN: *Yeah.*

MR SELLER: *So by the time you were in the vehicle on the way back to the CBD, was your view finalised as to whether you should suspend those officers or not?*

MR CORCORAN: *Yes.*

MR SELLER: *And the final view was that you should; is that right?*

MR CORCORAN: *Yes.*²⁵⁴⁵

2008. It is very difficult to reconcile this evidence with the other evidence Mr Corcoran gave about the process of his decision-making.²⁵⁴⁶

2009. Counsel for Mr Corcoran submitted that 'Mr Corcoran was straightforward in his evidence that he had decided to suspend before he returned from visiting and interviewing staff at Dillwynia' but that 'there was a period of reflection during which Mr Corcoran sat with Assistant Commissioner Snell and read the

2543 Transcript, 23 November 2023, 3202.44-3203.1.

2544 Transcript, 23 November 2023, 3203.3-12.

2545 Transcript, 23 November 2023, 3203.14-32.

2546 Transcript, 23 November 2023, 3089.1-34; Transcript, 23 November 2023, 3089.1-8.

Professional Standards submission.²⁵⁴⁷ Counsel submitted that '[t]he evidence is that the decision making started in a final sense on the way back from the prison and was finalised the next day.'²⁵⁴⁸ The request for 'suspension papers' from PSB was part of a decision-making process 'that was continuing'.²⁵⁴⁹

2010. I am satisfied that, whatever he may have told Ms Snell, Mr Corcoran had made a decision to suspend Mr Paddison and Mr Holman while at Dillwynia on 19 September 2023, which he then formalised on 20 September 2023.²⁵⁵⁰ As the extract from the transcript records, Mr Corcoran was expressly asked by Mr Sheller when it was that he formed a 'concluded view' on the issue of whether Mr Paddison and Mr Holman should be suspended. Mr Corcoran's unambiguous answer was that 'that would have occurred while I was at the centre.'
2011. Notwithstanding that he had already come to a decision to suspend Mr Paddison and Mr Holman, Mr Corcoran said to Ms Snell on 19 September 2023 that he wanted a submission from PSI to consider whether any further action needed to be taken in relation to the suspension of Mr Paddison and Mr Holman. He did not tell Ms Snell that he had already made up his mind. She believed the decision was yet to be made.²⁵⁵¹

10.7.2 Reasons for Mr Corcoran's decision to suspend Mr Paddison and Mr Holman

2012. Mr Corcoran told the Special Commission that he made the decision to suspend Mr Holman and Mr Paddison on the basis of further information he received from staff at Dillwynia on 19 September 2023 and the 20 September 2023 Submission.²⁵⁵² He later clarified that when he asked for the Submission that was provided on 20 September 2023, he already knew the relevant information

2547 Submissions on behalf of Kevin Corcoran, 14 December 2023, AST.002.013.0108_0010 [39].

2548 Submissions on behalf of Kevin Corcoran, 14 December 2023, AST.002.013.0108_0011 [40].

2549 Submissions on behalf of Kevin Corcoran, 14 December 2023, AST.002.013.0108_0011 [41(a)].

2550 Transcript, 23 November 2023, 3203.14-32; Ex. 48, Tab 11, AST.002.013.0072_0004.

2551 Transcript, 24 November 2023, 3236.45-3237.21

2552 Transcript, 23 November 2023, 3089.1-8.

to enable him to make a decision to suspend.²⁵⁵³ It is obvious that his decision to suspend was based on the information he received when he visited Dillwynia on 19 September 2023.

2013. The only documentary evidence of the information he received on 19 September 2023 is the handwritten notes of Ms Snell, who confirmed that the notes were taken during the meeting with Mr Corcoran and the group of six to ten officers.²⁵⁵⁴ The first page of those notes contain a reference to this effect:

*John Morony placed
Holman + Paddison
↓ More involvement²⁵⁵⁵*

2014. In her oral evidence, Ms Snell was questioned as to the meaning of the words ‘more involvement’. Her response was confused and sometimes contradictory. The following exchange occurred:

MS SNELL: ... *The next item in the agenda refers to -it actually says ‘John Morony placed Holman and Paddison’, and that’s probably written in reverse, as in, it’s meant to say ‘Holman and Paddison have been placed at John Morony’, and that they were concerned -you’ll see there’s a little arrow down to some words saying ‘more involvement’, as in, there was some concern that they could have more involvement in the operations of Dillwynia from John Morony, if that was an intent to prevent them having involvement at Dillwynia.*

MR LLOYD: *In terms of the sense of that, though, Ms Snell, ‘more involvement’, do we understand that to mean that -I mean, plainly enough, if they were moved out of Dillwynia to John Morony, they would have less involvement in the operations of Dillwynia?*

2553 Transcript, 23 November 2023 3093.22-34.

2554 Transcript, 24 November 2023, 3232.22-30.

2555 Ex. 51, CSNSW.0001.0273.0003; Transcript, 24 November 2023, 3232.38-3233.6.

MS SNELL: *I think what-what they were trying to say is that John Morony is really not very far from Dillwynia. It's in close proximity to. And so they could still have more involvement, was my interpretation of the-*

...

MR LLOYD: *But I just want to understand at least what you understood. It must be logical, mustn't it, that if they were moved out of Dillwynia to a centre even one very, very close by, that, in effect, what's being raised is that they would have less involvement with Dillwynia, but they would still be involved?*

MS SNELL: *I think they were saying they could still be involved. Obviously this was me attempting to take at speed some very brief notes, not judge their comments.*

MR LLOYD: *The involvement that you remember being raised, or the concerns about it, what were the nature of those concerns?*

MS SNELL: *Well, if you go to the next page, which starts, 'Converge-too hard'.*

MR LLOYD: *Yes.*

MS SNELL: *And then goes on to:*

'Disappointed Holman and Paddison are not suspended.'

They were-they were trying to highlight that there was more involvement in relation to Paddison and Holman, and that they were complicit in not reporting issues related to Wayne Astill and that they were equally involved in bullying and intimidation of other staff.

COMMISSIONER: *So the 'more involvement' words relate to their role in the problem with Astill; is that right?*

MS SNELL: *I believe it was-actually-I actually don't know. It could have been in relation to Astill or it could have been in relation to the proximity of Dillwynia to date. I'm not sure.*

MR LLOYD: *But what —*

COMMISSIONER: *It doesn't sound very likely that it's got anything to do with proximity to John Morony, I have to tell you. But it does sound very likely, when followed up with 'why haven't they been suspended', that it's a comment upon the degree of their involvement in the problem with Astill.*

MS SNELL: *It could absolutely be.*

COMMISSIONER: *That's how it reads.*

MS SNELL: *Yep.*

MR LLOYD: *And, Ms Snell, what the Commissioner has put to you would make more sense of the things that I asked you about, because it wouldn't really make sense to record officers saying that they would have more involvement with the operations at Dillwynia after being moved to a centre, even if it's close by?*

MS SNELL: *Look, I absolutely can see what you're saying. I just don't know what they were referring to there specifically.²⁵⁵⁶*

2015. I do not accept that Ms Snell's note has the meaning she initially attempted to give it. It was not that staff were concerned that the proximity of Mr Holman and Mr Paddison to Dillwynia meant they would have 'more involvement' with the centre. That explanation is completely illogical, and I reject it. It is clear that the concerns the subject of Ms Snell's note are related to Mr Holman and Mr Paddison having 'more involvement' in Astill's offending than may have been previously appreciated. Ms Snell ultimately accepted that this may have been the case.

2016. I accept that the concerns raised about Mr Paddison and Mr Holman in Ms Snell's presence were those recorded in the written notes discussed above. As Ms Snell elaborated, the specific concerns about Mr Paddison and Mr Holman were that they had 'more involvement' and 'that they were complicit in not reporting issues related to Wayne Astill and that they were equally involved in bullying and intimidation of other staff'.²⁵⁵⁷

2556 Transcript, 24 November 2023, 3233.31-3235.18.

2557 Transcript, 24 November 2023, 3234.23-37.

2017. Throughout his oral evidence, Mr Corcoran traversed a number of reasons as to why he made the decision to suspend Mr Holman and Mr Paddison. Relevantly, Mr Corcoran knew that at the time of his visit to Dillwynia, both Mr Holman and Mr Paddison had already been moved to other correctional centres.²⁵⁵⁸
2018. Mr Corcoran initially gave evidence that the issue raised with him on 19 September 2023 which ‘really underpinned [his] decision’ to suspend Mr Paddison and Mr Holman was that ‘the victims’ were distressed by the presence of Mr Holman and Mr Paddison at the correctional centres to which those officers had been moved.²⁵⁵⁹ The following exchange occurred:

MR LLOYD: *And so to the extent there were current staff at Dillwynia who were distressed by the presence of Officers Holman and Paddison, being officers who there might be a belief were complicit in some way in the offending –*

MR CORCORAN: *Yes.*

MR LLOYD: *- that wasn’t a real issue because they’d been moved away. Is that fair?*

MR CORCORAN: *Well, it was a real issue and really underpinned my decision.*

MR LLOYD: *They’d been moved away, though, so they wouldn’t be distressing the staff at Dillwynia on a daily basis as at 20 September.*

MR CORCORAN: *It wasn’t staff; it was the victims.*

MR LLOYD: *As in, the inmates there?*

MR CORCORAN: *Yes.*

MR LLOYD: *Is that something that you were told on the 19th?*

MR CORCORAN: *Yes.*

2558 Transcript, 23 November 2023 3085.4-27.

2559 Transcript, 23 November 2023, 3085.29-47.

MR LLOYD: *Inmates were distressed by the presence of Officers Holman and Paddison?*

MR CORCORAN: *In the locations they'd been moved to.*

MR LLOYD: *That's inmates at some other facility?*

MR CORCORAN: *Well - yes. And, you know, if - if you understand where they were moved to, they - there were female inmates coming in through one of those locations.*²⁵⁶⁰

2019. Immediately after giving this evidence, Mr Corcoran changed his position. He said that he formed the view that it was necessary to suspend the officers, not for the protection of the inmates, but rather for the protection of Mr Holman and Mr Paddison:

MR LLOYD: *There are plenty of correctional centres in New South Wales which house men; true?*

MR CORCORAN: *Yes.*

MR LLOYD: *If you wanted to make sure that the officers, if that was the particular problem, weren't going to have any contact with any inmates who had any association with the events at Dillwynia during Astill's offending, the obvious thing was to move them to a male centre; is that right?*

MR CORCORAN: *Yes. In the context of, you know, what we had in front of us with respect to the Commissioner's instruction that I put out in relation to action that might be taken against anybody who was alleged to have engaged in some sort of retribution against inmates, you know, I formed a view that it would be best for these two officers to be removed from the workplace to ensure that no allegations were brought against them.*

COMMISSIONER: *Mr Corcoran, there's nothing in the documents that suggests that you considered those matters at the time, is there? Not a single word -*

MR CORCORAN: *No, because -*

COMMISSIONER: *-in the documents that suggest that you considered those matters?*

MR CORCORAN: *The staff wanted that sort of information that I-that I was-*

COMMISSIONER: *I'm sorry?*

MR CORCORAN: *The staff wanted that information to be kept confidential.*

COMMISSIONER: *But it was a report to you and your decision to make upon reasonable grounds.*

MR CORCORAN: *That's right.*

COMMISSIONER: *Nothing that you've now said to Mr Lloyd about these people being suspended from this gaol or moved to another gaol or causing problems in another gaols -not a word of it is in this document.*

MR CORCORAN: *That's right.*

COMMISSIONER: *Nor did you record anywhere that that was the basis upon which you had made the decision, did you?*

MR CORCORAN: *No.*²⁵⁶¹

2020. Shortly after giving this evidence, Mr Corcoran again altered his position. He said that the decision was multifaceted and explained:

MR CORCORAN: *It was a decision to protect the – those two officers from any allegations and for – and to protect the inmates from seeing those two officers in their –in the workplace.*²⁵⁶²

2021. Later in his evidence, Mr Corcoran agreed that the extent of the 'further' information which informed his decision to suspend Mr Holman and Mr Paddison was the concerns expressed about those officers being proximate to victims of Astill at the correctional centres to which they were moved:

2561 Transcript 23 November 2034, 3086.17-3087.15.

2562 Transcript, 23 November 2023, 3088.29-36.

MR LLOYD: *And I thought you told us that something came to your attention about what was happening at the other facilities they'd been moved to?*

MR CORCORAN: *Victims in proximity.*

MR LLOYD: *Victims of Astill?*

MR CORCORAN: *Yes.*

MR LLOYD: *In proximity to them, that is, inmates at the facilities they'd been moved to?*

MR CORCORAN: *Yes.*

MR LLOYD: *Was that the extent of what you were told about the problems in relation to those two officers at the other centres?*

MR CORCORAN: *Yes.*

MR LLOYD: *Now, one can imagine concern on the part of inmates who had been victims of Astill if those inmates had a belief that two senior officers were at the centre that they were at, if those inmates, for example, believed those officers hadn't (indistinct)?*

MR CORCORAN: *One wasn't - one - one wasn't a centre per se; it was in an office on the complex.*

MR LLOYD: *What, in effect, the concern that you're describing is on the part of inmates who had been victims of Astill having to see senior officers on a day-to-day basis who they felt hadn't acted properly?*

MR CORCORAN: *Yes.*

MR LLOYD: *That was the concern?*

MR CORCORAN: *Yes.*²⁵⁶³

2022. Mr Corcoran had the following exchange with Jehane Ghabrial (who appeared for a group of Correctional Officers):

MS GHABRIAL: *Did you actually ask the decision-makers, or those assisting the decision-makers, where those officers had actually been moved to?*

MR CORCORAN: *Well, I knew where they'd been moved to. They'd been moved to corporate office and Amber Laurel [Correctional Centre].*

MS GHABRIAL: *To Corporate Office?*

MR CORCORAN: *CSI Corporate Office.*

MS GHABRIAL: *And where's that located?*

MR CORCORAN: *On the fence of Dillwynia.*

...

MS GHABRIAL: *Did you make any enquiries as at 19 September 2023 as to whether either of those officers were actually working anywhere near female inmates?*

MR CORCORAN: *Well -*

MS GHABRIAL: *Did you make any enquires on 19 September?*

MR CORCORAN: *Well -well, I know that female inmates come in through Amber Laurel.*

MS GHABRIAL: *Did you make -if you could just answer my question. Did you make any enquiries on 19 September this year as to whether either of those officers were working anywhere near female inmates at that time?*

MR CORCORAN: *I knew by their location that they were working near female inmates.*

...

MS GHABRIAL: *He was actually working at John Morony Correctional Centre, which I understand is a gaol for male inmates; correct?*

MR CORCORAN: *It's on the complex of -the same complex Dillwynia is on.*

MS GHABRIAL: *Can you answer my question, please.*

MR CORCORAN: *It's a male gaol.*²⁵⁶⁴

2023. When it was again put to Mr Corcoran that he could have resolved that issue by moving Mr Holman and Mr Paddison to a male correctional centre further away from Dillwynia, Mr Corcoran reiterated that the true reason for the suspensions was not the protection of inmates, but the protection of Mr Holman and Mr Paddison from allegations:

MR CORCORAN: *I just wanted to make sure that they were protected, those officers.*

COMMISSIONER: *Well, you could easily - sorry, the officers were protected?*

MR CORCORAN: *Yeah, the officers were protected from any allegation.*

COMMISSIONER: *Well then, you move them to another gaol where they can't be a problem, don't you?*

MR CORCORAN: *We'd already explored the options of moving some of these people, as I understand it. I wasn't involved, but, you know, I - I just thought the - the safest way to deal with this matter was in this - in this form.*

...

COMMISSIONER: *And what was the safety issue?*

MR CORCORAN: *The safety issue is, you know, the allegations of retribution that they might face if, you know, they come into contact with one of the victims.*

COMMISSIONER: *So a victim might attack them?*

...

MR CORCORAN: *No. No. A victim might make an allegation against that particular officer of - you know, they're involved in retribution against them.*²⁵⁶⁵

2564 Transcript, 23 November 2023, 3156.33-3158.4.

2565 Transcript, 23 November 2023, 3119.31-3120.33.

2024. Later still, he gave the following evidence as to further information he had received regarding the proximity of Mr Paddison and Mr Holman that he said justified their suspension:

COMMISSIONER: *Tell me again, what was the further information. I understand what you say about the two gentlemen being in another gaol, but what was the further information apart from that?*

MR CORCORAN: *The further information is they were in close proximity-*

COMMISSIONER: *No, no, no. Leaving aside the fact that they had been moved to another gaol, what was the further information, apart from that, which justified suspension?*

MR CORCORAN: *The justification was that they were -and I don't know what you're trying to ask me here, because I-I have communicated that they were in close proximity to-*

COMMISSIONER: *No, no, Mr Corcoran. We've heard you say multiple times that they were in another gaol nearby, which you believed might be a problem.*

MR CORCORAN: *Yes.*

COMMISSIONER: *Did you have any other further information justifying the suspension of the two gentlemen apart from that?*

MR CORCORAN: *No.*

COMMISSIONER: *No.*

MR CORCORAN: *No. As far as I was concerned, that posed a sufficient-*

COMMISSIONER: *So that was the sole basis on which you said there was further information?*

MR CORCORAN: *Yes. That posed sufficient risk for me to make that decision, in my view.²⁵⁶⁶*

2025. It is apparent that Mr Corcoran's explanation for the decision to suspend Mr Holman and Mr Paddison changed throughout the course of his evidence, and not in any logical fashion.

2026. In this regard, Ms Snell gave evidence that the officers who had raised the concerns about Mr Holman and Mr Paddison having more involvement in Astill's offending, as recorded in her written notes, were Ms Barry and Ms Berry in the meeting attended by six to ten officers.²⁵⁶⁷ Mr Corcoran agreed that it was also Ms Barry and Mr Berry who had raised the concerns about Mr Paddison and Mr Holman being proximate to Astill's victims at other centres:

COMMISSIONER: *Now, who was the officer that told of you of these problems at other gaols or other centres?*

MR CORCORAN: *I think there - I think there multiple officers who expressed concern about this in the meeting.*

COMMISSIONER: *Who, please? Who?*

MR CORCORAN: *I think it would have been Renee Berry and Jude Barry. I can't - and there may have been other staff members. I - I can't recall their names.*

COMMISSIONER: *And I assume the Assistant Commissioner would have a note of these things, would she?*

MR CORCORAN: *Yes.*²⁵⁶⁸

2027. Ms Snell accepted that she was not aware of the information Mr Corcoran received in the course of his one-on-one meetings on 19 September 2023 as she was not present in those meetings.²⁵⁶⁹ However, Mr Corcoran's evidence that Ms Snell would have made a note of the concerns raised by Ms Berry and Ms Barry about the proximity of Mr Holman and Mr Paddison to Astill's victims

2567 Transcript, 24 November 2023, 3235.41-3236.16.

2568 Transcript, 23 November 2023, 3120.35-3121.2.

2569 Transcript, 24 November 2023, 3232.11-20.

suggests that Ms Snell was present at the time the relevant information was provided to Mr Corcoran.

2028. Ms Snell did not recall any concern being raised that Mr Paddison and Mr Holman would be coming into contact with inmates who were victims of Astill during the meetings she attended.²⁵⁷⁰ She accepted that it was unlikely that any concern of this nature was raised in her presence, as she would have made a note of it.²⁵⁷¹ Mr Corcoran said that, just because the information he relied on was not in Ms Snell's notes 'doesn't mean it wasn't said'.²⁵⁷²

2029. Mr Corcoran's evidence that Ms Berry and Ms Barry raised concerns about the proximity of Mr Holman and Mr Paddison to Astill's victims was also challenged by Ms Ghabrial:

MS GHABRIAL: *And so when you gave evidence to the Commissioner about having spoken with Renee Berry and Judith Barry about their concerns, in which meeting did that occur? Was that in the larger meeting or in the smaller meeting?*

MR CORCORAN: *My recollection is that it was in a smaller meeting.*

MS GHABRIAL: *And can you tell the Commissioner what they actually said to you about their - what you say - concerns about inmate safety as a result of Mr Paddison and Mr Holman being in correctional centres where women were? Could you actually tell the Commissioner what those words were?*

MR CORCORAN: *I can't remember the exact words, but they inferred [sic], as I - as I can recollect, that both these officers were in locations where they would, you know, sometimes potentially come into contact with victims or be in close proximity to victims.*

...

2570 Transcript, 24 November 2023, 3235.28-32.

2571 Transcript, 24 November 2023, 3235.34-39.

2572 Transcript, 23 November 2023, 3142.4-12.

MS GHABRIAL: *So you've given evidence to the Commission that you inferred from the words that they used that female inmates were at risk of retribution - I think was the word you used - or retaliation - retribution - that their safety was at risk in that regard because those officers were still working in correctional centres that had female inmates; is that correct?*

MR CORCORAN: *No. I - what I think I said was that the victims were feeling - you know, would feel uncomfortable if they encountered them, not that they were feeling like that they would be the subject of retribution from those officers.*

MS GHABRIAL: *So are you now suggesting that the words that were used by Renee Berry and Judith Barry were that - to the effect that inmates felt that they were threatened? Is that what you're saying?*

MR CORCORAN: *Inmates would feel - look, it might be I had other meetings. I'm not 100 per cent certain without referring to Chantal Snell's notes that - you know, that that information came up in other meetings.²⁵⁷³*

2030. While there is a clear conflict between Mr Corcoran and Ms Snell as to the information disclosed in the meetings on 19 September 2023, I accept that the extent of the concerns expressed by Ms Barry and Ms Berry to Mr Corcoran were as recorded and described by Ms Snell, being that there was 'more involvement in relation to Paddison and Holman, and that they were complicit in not reporting issues related to Wayne Astill and that they were equally involved in bullying and intimidation of other staff'. I do not accept Mr Corcoran's evidence that victims of Astill may be distressed by the fact Mr Holman and Mr Paddison had been relocated to a correctional centre near Dillwynia.

2031. It follows that I do not accept that the basis for Mr Corcoran's decision was as he identified, namely concerns about the welfare of Astill's victims in being exposed to Mr Paddison and Mr Holman while they performed their roles at the correctional centres to which they had been moved. I similarly do not accept that

concerns to protect Mr Paddison and Mr Holman from retribution played any role in Mr Corcoran's decision.

2032. In making these findings, I note that there is no documentary or testimonial evidence which supports Mr Corcoran's evidence that the basis of his decision was as he identified.²⁵⁷⁴ Ms Snell's notes are the sole documentary record of the concerns reported by officers at Dillwynia on 19 September 2023 and I am satisfied both that Ms Snell was present when Mr Corcoran spoke with Ms Barry and Ms Berry, together with other officers, and that her notes reflect each of the key concerns raised.

2033. Mr Corcoran disavowed any suggestion that it was concerns raised about Mr Paddison and Mr Holman being aware of Astill's offending that underpinned his decision-making with respect to the suspensions.²⁵⁷⁵ Mr Corcoran stated, to the contrary, that the officers' conduct was not a 'legitimate concern' of his.²⁵⁷⁶

2034. Mr Corcoran accepted that on 19 September 2023 he was dealing with upset officers at Dillwynia who were telling him about their experiences of Astill's offending and its aftermath.²⁵⁷⁷ Ms Snell gave evidence that there were several officers who were shouting at Mr Corcoran during their meetings with him.²⁵⁷⁸

2035. Mr Corcoran also accepted that his visit to Dillwynia was occurring in the context of the approaching Special Commission.²⁵⁷⁹ Mr Corcoran initially denied that it was in his mind that at the time of his visit that the officers would be giving evidence before the Special Commission. However, he subsequently accepted that he was cognisant that their concerns would be aired publicly:

MR SHELLER: *Do you have a recollection now whether you had, in your mind at the time you were at Dillwynia, the fact that these officers would be giving evidence before the Commission?*

2574 Transcript, 23 November 2023, 3086.17-46; Transcript, 23 November 2023, 3119.28-43; Transcript, 23 November 2023, 3120.21-33.

2575 Transcript, 23 November 2023, 3144.9-30.

2576 Transcript, 23 November 2023, 3144.9-30.

2577 Transcript, 23 November 2023, 3201.16-29.

2578 Transcript, 24 November 2023, 3236.22-25; See also Transcript, 23 November 2023, 3201.3-29.

2579 Transcript, 23 November 2023, 3201.31-34.

MR CORCORAN: *Not -no, I-I didn't have in my mind.*

MR SELLER: *Do you recall having it in your mind at all that it was likely that all the matters of concern to officers at Dillwynia would play out in public during the hearing of the Commission?*

MR CORCORAN: *I think at that point in time, I-and I could be wrong-you know, we -no, I won't say that. Yeah, it-it could play out in public, yes.*²⁵⁸⁰

2036. It was put to Mr Corcoran that he had not in fact received any additional information during his visit on 19 September 2023 and had called for the submission regarding suspensions to be prepared in order to repair a perception that he had not acted to prevent the offending that had occurred at Dillwynia. Mr Corcoran denied this.²⁵⁸¹ The following exchange then occurred:

MS GHABRIAL: *What I'm going to suggest to you, Commissioner Corcoran, is that the so-called further information that you had were the criticisms levelled at you on that meeting - or during that meeting on 19 September 2023 in respect of your inaction. That's the further information that was available to you, wasn't it?*

MR CORCORAN: *No.*

MS GHABRIAL: *It triggered, in your mind, a concern with this Inquiry coming up that you were perceived to have done nothing, didn't it?*

MR CORCORAN: *No.*

MS GHABRIAL: *And the further information that you were acting on was the information that you received from these staff about your failings, and that was the information you acted upon, wasn't it?*

MR CORCORAN: *No.*

MS GHABRIAL: *To preserve your optics in respect of this Inquiry. That's what I'm suggesting to you.*

2580 Transcript, 23 November 2023, 3201.36-47.

2581 Transcript, 23 November 2023, 3151.15-3152.13.

MR CORCORAN: No.²⁵⁸²

2037. I am satisfied Mr Corcoran was confronted on 19 September 2023 by emotional responses from staff members, including Ms Barry and Ms Berry. He was conscious that their concerns were likely to be aired publicly in the Special Commission hearings. Mr Corcoran had not previously spoken to staff members about their issues, and it was likely that this was the first time that he appreciated the level of staff members' concerns.

2038. Although it is unnecessary to resolve the issue, it seems to me likely that it was the intensity of the response from the officers that caused Mr Corcoran to decide to suspend Mr Holman and Mr Paddison. He was rightly concerned to indicate to staff that he was responding to their concerns, but also concerned to demonstrate his preparedness to take action against staff who were complicit in Astill's offending ahead of this Special Commission.

10.7.3 Mr Corcoran's request for the preparation of the 20 September 2023 Submission

2039. I am satisfied that either at Dillwynia or on the way back from Dillwynia on 19 September 2023, Mr Corcoran told Ms Snell that he wanted a submission from PSI so that he could consider whether any further action needed to be taken in relation to Mr Paddison and Mr Holman, including suspension. Ms Snell subsequently passed that instruction on to Ms Zekanovic.²⁵⁸³

2040. Ms Snell said that her understanding of the position was that it was necessary for Ms Zekanovic to pull together all the information that was held about Mr Paddison and Mr Holman so that Mr Corcoran could consider that information in light of what he had heard and for him then to consider the next steps.²⁵⁸⁴ Ms Snell said that she thought 'we were preparing some of the historic facts in

2582 Transcript, 23 November 2023, 3163.42-3164.16.

2583 Transcript, 21 November 2023, 2869.12-24.

2584 Transcript, 24 November 2023, 3238.31-44.

relation to Holman and Paddison'.²⁵⁸⁵ This is reflected in the text message she sent to Ms Zekanovic on 19 September 2023, referred to above in which she is asked to 'prepare all of the information' that PSI had in relation to Mr Paddison and Mr Holman.²⁵⁸⁶

2041. In relation to Ms Zekanovic's understanding of what she was tasked to do on 19 September 2023, she stated that 'the instructions were to prepare a submission to suspend these officers'.²⁵⁸⁷ Ms Zekanovic was asked whether her understanding of her instructions was that she was to prepare a submission about whether to suspend or a submission recommending suspension,²⁵⁸⁸ and she said: 'It was just suspension papers that were being asked to prepare [sic]. So I assumed that it was to make a recommendation of suspension.'²⁵⁸⁹ Ms Zekanovic confirmed her understanding that Ms Snell was asking her to prepare suspension papers in the following exchange:²⁵⁹⁰

COMMISSIONER: Well, Mr Lloyd, you need to explore that. I interpret at the moment suspension papers to be papers which recommend suspension. That's my present understanding. Is that correct, Ms Zekanovic?

MS ZEKANOVIC: Yes

COMMISSIONER: Yes.

MR LLOYD: And my question is, what's going on? Why – in terms of the decision-making process here, why do you have a situation where a direction is coming from Assistant Commissioner Snell for you to prepare a submission with an identified outcome? She is not the decision maker.

MS ZEKANOVIC: No, she is not, but she's passing the message down from the Commissioner who had the information, which in his view, obviously, warranted the suspension.²⁵⁹¹

2585 Transcript, 24 November 2023, 3242.43-3243.9.

2586 Ex. 60, TB 6, Tab 19, CSNSW.0001.0274.0002.

2587 Transcript, 21 November 2023, 2869.8-10.

2588 Transcript, 21 November 2023, 2869.30-39.

2589 Transcript, 21 November 2023, 2869.30-44.

2590 Transcript, 21 November 2023, 2870.13-23.

2591 Transcript, 21 November 2023, 2871.27-42.

2042. As I have accepted above, the 20 September 2023 Submission made no reference to any information further to that which had already been included in the 31 July 2023 Submission. That earlier submission included detailed consideration of the information known about allegations made against Mr Paddison and Mr Holman at that time, and came to a considered recommendation that those officers not be suspended. That recommendation was accepted by the Decision-maker, Dr Martin. Both Ms Snell and Ms Zekanovic were aware of this fact at the time of the visit to Dillwynia on 19 September 2023.²⁵⁹²
2043. To the credit of Ms Zekanovic, when she was directed to prepare ‘suspension papers’, she did not comply with that direction. Instead, in preparing the 20 September 2023 Submission, Ms Zekanovic prepared a submission which made some reference to the material in the earlier 31 July 2023 Submission, and attached that submission.
2044. However, she refused to make a recommendation that Mr Paddison and Holman be suspended. Rather, because no new information had been disclosed to her, she simply left the options open to Mr Corcoran.
2045. When Ms Zekanovic was asked whether her understanding on 20 September 2023 was that Mr Corcoran wanted a submission prepared to allow him ‘come in’ and suspend Mr Paddison and Mr Holman, Ms Zekanovic agreed that that was her belief.²⁵⁹³ When it was put to Ms Zekanovic that it would appear she was ‘being asked to provide a paper trail to provide legitimacy to a decision which the Commissioner had already made’, Ms Zekanovic stated that she could understand that position and could ‘only assume that, yes, he had wanted to suspend those officers’.²⁵⁹⁴
2046. When a similar proposition was put to Ms Snell she stated that she was unaware of that at the time, but that it was possible based on Mr Corcoran’s evidence

2592 Transcript, 21 November 2023, 2834.28-2836.27; Transcript, 21 November 2023, 2842.22-30; Transcript, 21 November 2023, 2856.44-2857.13; Ex. 48, Tab 6, CSNSW.001.0049.1795-1800; Transcript, 24 November 2023, 3245.12-30.

2593 Transcript, 22 November 2023, 2926.24-34.

2594 Transcript, 22 November 2023, 2924.30-47.

to the Special Commission.²⁵⁹⁵ Ms Snell also gave the following evidence as to the information available when a decision was made to suspend Mr Holman and Mr Paddison, compared to earlier that year when the contrary view was taken:

MR LLOYD: *At the time that the decision was ultimately taken to suspend in September of 2023, you must have had a pretty good idea that if that decision was to be based upon material from Officers Berry and Barry about concerns about Holman and Paddison, that that material had already been considered earlier by the decision-makers?*

MS SNELL: *Yes.*

MR LLOYD: *In effect, concerns by those particular officers, Berry and Barry, about Holman and Paddison were not new?*

MS SNELL: *Well, they were making some strong representation to a new decision-maker. But the facts remained the same.*

MR LLOYD: *Their concerns - the facts remained the same?*

MS SNELL: *Correct.*

MR LLOYD: *And didn't that make you pause to consider what was happening when the decision was different in September than it was when you first were involved in the decision-makers - or knew that the decision-makers rejected the recommendation earlier and then Ms Zekanovic prepared the document recommending against suspension in July?*

MS SNELL: *I think what was happening - I did - I did absolutely reflect at the time, and I think what was happening was that we were in a slightly different situation at that time in terms of some sort of heightened sensitivity to action that we wanted to ensure was prevented, particularly any retributive action. We knew that the Inquiry was going on, so it's high profile. We wanted to protect other staff, those staff, any victims and so on. So I think that it was probably a series of emerging pieces of information, emerging sensitivity and new information to a new decision-maker.²⁵⁹⁶*

2595 Transcript, 24 November 2023, 3242.37-3243.16.

2596 Transcript, 24 November 2023, 3245.32-3246.16.

2047. It is obvious that there was no obligation on Mr Corcoran to request, or consider, a submission from PSI in order to suspend Mr Holman and Mr Paddison. As Commissioner of CSNSW, he had that authority. His suggestion that he nonetheless did so for ‘context’ and ‘information about what had transpired previously’ may be true but served no purpose. The 20 September 2023 submission added nothing further to the 31 July 2023 Submission. Its author and, it would seem, Ms Snell, were completely unaware of the information Mr Corcoran said that he relied on in making his decision. The submission reflected the accepted process for consideration of whether to suspend an officer but made no contribution to that decision.

10.8 Events following the preparation of the 20 September 2023 Submission

2048. The events following the preparation of Ms Zekanovic’s submission are clear. Mr Corcoran selected ‘option 1’ in that document, namely, to suspend. Letters notifying Mr Paddison and Mr Holman of their suspensions were prepared by PSI. Relevantly, those letters are in identical terms and provide as follows:

I have received information alleging that you may have engaged in serious misconduct by failing to report the criminal conduct, of which you were aware, of another Corrective Services New South Wales (CSNSW) employee and further, for displaying threatening and intimidating behaviour towards your CSNSW colleagues. These allegations are currently the subject of further inquiry.

In view of the serious nature of these allegations, I have decided, in accordance with section 70 of the Government Sector Employment Act 2013 (‘The Act’), to suspend you from duty, with pay, effective from the date of this letter.²⁵⁹⁷

2597 Ex. 54, AST.002.013.0091_0007-0010; Ex. 54, AST.002.013.0091_0011-0014.

2049. The evidence was that Mr Corcoran signed these letters on 22 September 2023, probably in Ms Snell's office, and that the letters were then provided to Mr Paddison and Mr Holman on that day effecting their suspension.²⁵⁹⁸ The letters make plain that the decision to suspend was made pursuant to s. 70 of the *Government Sector Employment Act 2013 (GSE Act)*, which provides power to suspend pending the resolution of allegations of misconduct.²⁵⁹⁹
2050. If Mr Corcoran's evidence to the Special Commission is true, it is clear that the letters did not accurately record the reasons for Mr Corcoran's decision to suspend the officers. The letters made no reference to any concern about Mr Paddison and Mr Holman being exposed to Astill's victims, or there being concern that they were still on active duty in nearby facilities. Nothing was said about them being suspended for their own protection.²⁶⁰⁰ Mr Corcoran accepted in his evidence that the letters did not provide Mr Paddison and Mr Holman with 'all the reasons' for the suspensions and that the officers were entitled to know what his reasons were for suspending them.²⁶⁰¹ He later accepted that was a problematic process.²⁶⁰²
2051. I agree with Mr Corcoran that this was a problematic process and that it was important for him to have made sure before signing the letters that they accurately stated the position with respect to the reasons for suspension.²⁶⁰³
2052. Mr Corcoran gave evidence that he met with Mr Holman and Mr Paddison separately on 22 September 2023 and advised them of his decision to suspend them. He said that he advised the officers of 'additional reasons' for their suspensions during these meetings.²⁶⁰⁴ He gave evidence that this included for reasons relating to Mr Paddison's and Mr Holman's safety, to protect them

2598 Transcript, 23 November 2023, 3205.12-3207.40.

2599 Ex. 54, AST.002.013.0091_0007; Ex. 54, AST.002.013.0091_0011.

2600 Transcript, 23 November 2023, 3210.13-27; Transcript, 23 November 2023, 3222.1-3223.38.

2601 Transcript, 23 November 2023, 3210.9-27.

2602 Transcript, 23 November 2023, 3222.22-3223.38.

2603 Transcript, 23 November 2023, 3223.31-38.

2604 Transcript, 23 November 2023, 3208.5-41.

against ‘allegations of retributions that they might face if ... they come into contact with one of [Astill’s] victims’.²⁶⁰⁵

2053. The reviews of Mr Holman and Mr Paddison’s suspensions are supposed to occur every 30 days. Mr Corcoran accepted that there should have been a review by the time he was giving evidence. Mr Corcoran was not aware whether this had occurred.²⁶⁰⁶

10.9 Compliance with accepted practice

2054. The following principles with respect to the process which ought to be followed where a decision is made to suspend officers pending the resolution of a disciplinary complaint emerged from the evidence of Ms Zekanovic and Ms Snell:

- a) all relevant information should be available both to the PSC and to PSI before consideration about whether it is appropriate to suspend an officer pending the resolution of a disciplinary complaint;²⁶⁰⁷
- b) if a recommendation has been made by the PSC and the PSI about suspension, and new information comes to light, that new information should be made available to the PSC and the PSI for further consideration about any recommendation to the decision maker;²⁶⁰⁸
- c) a Decision-maker ought to have the benefit of the considered position of the PSC about whether to suspend in the form of a written submission by the PSI;²⁶⁰⁹ and
- d) once the information is made available to the PSC and the PSI, and a submission has been prepared considering that material, it is then a matter for the Decision-maker to consider before exercising his or her power to suspend.²⁶¹⁰

2605 Transcript, 23 November 2023, 3120.18-33.

2606 Transcript, 23 November 2023, 3121.38-3122.15.

2607 Transcript, 21 November 2023, 2855.34-2856.26; Transcript, 24 November 2023, 3246.18-42.

2608 Transcript, 21 November 2023, 2855.4-2856.18.

2609 Transcript, 24 November 2023, 3248.28-42.

2610 Transcript, 24 November 2023, 3248.44-3249.1.

2055. This practice can be seen to operate properly when consideration is given to the 21 June 2023 Submission.²⁶¹¹ That submission records that the subject being addressed is whether to recommend suspension of Mr Paddison, Mr Holman and Mr Giles. It makes reference to the fact that the matter had been considered by the PSC and that the PSC had made a recommendation for the suspension of each of Mr Holman, Mr Giles and Mr Paddison. Ms Zekanovic then prepared a submission that was consistent with the PSC's recommendation, and that submission went to the relevant Decision-makers, who in this instance determined not to suspend any of the officers. This reflects the proper practice that ought to be followed.
2056. Mr Corcoran's decision to suspend Mr Paddison and Mr Holman on 19 September 2023 departed in a number of significant ways from the appropriate practice set out above. Mr Corcoran did not provide the information which was new to him on 19 September 2023 to PSI in order for that branch to consider that information in the process of making a recommendation. Accordingly, PSI was unable to prepare a submission that actually considered the relevant information.
2057. While, as I have previously indicated, the Commissioner is entitled to take steps to reduce a risk he perceived, including by the suspension of officers, and that he did not require the input of the PSB or PSI to do so,²⁶¹² having asked to be provided with a submission from PSI considering the suspension of Mr Holman and Mr Paddison, the appropriate practice would have been to ensure the submission contained all relevant information.
2058. To the knowledge of Mr Corcoran, the 20 September 2023 Submission did not state or even refer to the true reason behind his decision to suspend the officers.
2059. Finally, to the knowledge of Mr Corcoran, the letters advising of the suspension wrongly made reference to only some of the reasons for suspension. While it may be that Mr Corcoran advised Mr Holman and Mr Paddison of the additional reasons for their suspension that were not contained in the letter during their

2611 Ex. 48, Tab 3, CSNSW.0001.0024.0007-0009.

2612 Transcript, 21 November 2023, 2888.15-29; Transcript, 21 November 2023, 2905.27-2096.9.

meetings with him on 22 September 2023, the need for the letters to contain all the reasons for the suspension, so that the officer can seek appropriate legal advice, is clear. This was accepted by Mr Corcoran.

2060. Notwithstanding this departure from process, I accept that Mr Corcoran was acting promptly in response to serious concerns by officers who were distressed at the failure at Dillwynia to respond effectively to Astill's offending. This limited his ability, or perhaps his motivation, to complete the various procedural steps outlined above.

2061. Finally, it was submitted by Counsel for CSNSW and Mr Corcoran that the suspensions of Mr Giles, Mr Holman and Mr Paddison falls outside the Terms of Reference for this Special Commission. I disagree. A number of the allegations made against Mr Giles, Mr Holman and Mr Paddison discussed in this Chapter clearly relate to the knowledge or suspicion those officers (being staff in management positions) had of Astill's offending, such to fall within paragraphs B and F of the Terms of Reference.



New South Wales
Australia

11

Evidence that
could warrant
referral to other
authorities or
the prosecution
of persons for
offences

2062. It is my duty to report to the Governor whether there is or was ‘any evidence or sufficient evidence warranting the prosecution of a specified person for a specified offence’: s. 10(1), *Special Commissions of Inquiry Act 1983 (SCOI Act)*. There is an ambiguity in the section. Although reference is made to ‘any evidence’ I understand the section to require me to report whether there is any evidence warranting prosecution as well as whether there is sufficient evidence to take that step.

11.1 Offences arising from the evidence of Julijana Miskov

2063. I have found in Chapter 8 that Correctional Officer Julijana Miskov disclosed in the presence of Principal Correctional Officer Michael Paddison that she had been assaulted by Astill. She made a written report of her complaint. I consider it possible that the woman present when Ms Miskov made this disclosure to Mr Paddison was Ms Martin. However, for the reasons discussed in Chapter 8, I am not satisfied that there is sufficient evidence before me to establish that fact in accordance with the principles stated in *Briginshaw*.²⁶¹³

2064. I have found that, in the presence of Ms Miskov, either the woman or Mr Paddison tore up the report and said the matter would be dealt with ‘in house’. In this Chapter, I consider whether Mr Paddison or the woman present (who may have been Ms Martin) may have committed a criminal offence.

11.1.1 Concealing a serious indictable offence

2065. I have set out at Chapter 4 the elements of the offence of concealing a serious indictable offence provided by s. 316 of the *Crimes Act 1900 (Crimes Act)*. There is no prospect of s. 316 being satisfied in relation to the incident involving Ms Miskov. Astill’s conduct towards Ms Miskov would not constitute a ‘serious indictable offence’ (that is, an indictable offence that is punishable by imprisonment for a term of five years or more: s. 4 of the Crimes Act). At its highest, Astill’s conduct

2613 *Briginshaw v Briginshaw* (1938) 60 CLR 336.

may amount to an aggravated sexual act, contrary to s. 61KF Crimes Act. That offence carries a maximum penalty of three years imprisonment.

11.1.2 Misconduct in public office

2066. As set out at Chapter 4 the offence of misconduct in public office is committed where a public official in the course of, or in connection with, their public office wilfully misconducts themselves by act or omission (for example, by wilfully neglecting or failing to perform their duty) without reasonable excuse or justification, and that misconduct is serious and merits criminal punishment having regard to the responsibilities of the office and the officeholder, the importance of the public objects which they serve, and the nature and extent of the departure from those objects.²⁶¹⁴
2067. Upon the assumption it could be proved that Ms Martin was the female officer present, there is evidence before the Special Commission that may warrant her prosecution for misconduct in public office, in relation to the destruction of Ms Miskov's report. The same evidence may warrant prosecution of Mr Paddison for misconduct in public office.
2068. As Governor of Dillwynia, Ms Martin was a public officer. The meeting with Ms Miskov occurred in the course of her duties as a public officer. Similarly, Mr Paddison was a public officer, engaged in his duties at the time of the incident.
2069. The conduct alleged by Ms Miskov — namely, the tearing up of a report prepared by Ms Miskov which, on the evidence of Ms Miskov, the officers present knew disclosed an alleged assault by Astill — is capable of being characterised as wilful misconduct.
2070. However, I do not believe the evidence would enable a Court to be satisfied beyond reasonable doubt that Ms Martin was present. Furthermore, the evidence does not allow a finding as to whether it was Ms Martin or Mr Paddison who tore up the report. It is apparent that by tearing up the report, misconduct occurred but, in my opinion, the evidence does not warrant the prosecution of either Ms Martin or Mr Paddison.

2614 *Obeid v R* (2015) 91 NSWLR 226 [133], quoting *R v Quach* (2010) 201 A Crim R 522 [46]. See also *Blackstock v R* [2013] NSWCCA 172 [13]-[14]; *Maitland v R*; *Macdonald v R* (2019) 99 NSWLR 376 [67].

2071. If the female officer present was not Ms Martin, and someone of equal or lesser rank than Mr Paddison was present, different questions might arise as to his liability. Unless the female officer was a superior officer, he carried the responsibility to ensure that the report was appropriately secured and forwarded on to the relevant officer. However, the evidence does not enable the identity of the female officer to be confidently established.

2072. I have reached these conclusions with some hesitation.

2073. The destruction of the report was serious and merits criminal punishment. The evidence before the Special Commission does not disclose any reasonable justification for its destruction. It should never have happened.

11.1.3 *State Records Act 1998*

2074. As set out in Chapter 4, s. 21(1) of the *State Records Act 1998* (**State Records Act**) provides, relevantly, that a person must not:

- a) Abandon or dispose of a State record, or
- ...
- d) damage or alter a State record.

2075. Pursuant to s. 3, a 'record' means any document or other source of information compiled, recorded or stored in written form or on film, or by electronic process, or in any other manner or by any other means.²⁶¹⁵ A 'State record' means a record made or received by a person, whether before or after the commencement of this section —

- a) in the course of exercising official functions in a public office, or
- b) for the purpose of a public office, or
- c) for the use of a public office.²⁶¹⁶

2615 State Records Act, s. 3(1) (meaning of 'record').

2616 State Records Act, s 3(1) (meaning of 'State record').

2076. 'Public office' includes a department or agency exercising a function of a branch of the Government of the State and includes CSNSW.²⁶¹⁷
2077. 'Dispose of' means dispose of by destruction or by any other means.²⁶¹⁸
2078. I am satisfied Ms Miskov's report constituted a 'State record'. It was prepared for the purpose of instigating a complaint about the conduct of a CSNSW employee and was for the use of CSNSW in responding to that complaint.
2079. The destruction of such a report by tearing it up constituted damaging a State record (per s. 21(1)(d)) or disposing of a State record (per ss. 3 and 21(1)(a)).
2080. However, as discussed above, the evidence does not establish whether Mr Paddison or the woman present destroyed the report. Accordingly, even if it could be established that Ms Martin was present, the evidence as to who destroyed the report is inconclusive and could not sustain prosecution of either of them.

11.1.4 Assault against Ms Miskov committed by Astill

2081. I have found in Chapter 8 that I accept Ms Miskov's evidence that Astill walked up to her and rubbed his crotch against her face in (she believes) full view of other officers. It follows that there is sufficient evidence warranting the prosecution of Astill for an offence against Ms Miskov. As stated above, at its highest the appropriate offence would be one of aggravated sexual act contrary to s. 61KF of the Crimes Act.
2082. The discretion to prosecute lies solely with the relevant prosecuting authority, namely the NSW Police Force (**NSWPF**) or Director of Public Prosecutions. Ms Miskov has chosen not to report Astill's conduct to NSWPF. No doubt her views would be considered in determining whether a prosecution should be pursued. The fact that Astill is serving a lengthy sentence of imprisonment which would outlast any sentence he would receive for this offence unless prosecuted on indictment is also a relevant consideration for the appropriate authority.

2617 State Records Act, s 3(1) (meaning of 'public office').

2618 State Records Act, s 3(1) (meaning of 'dispose of').

11.2 Prosecution of Ms Martin for misconduct in public office

2083. In Chapter 8, I have set out what I describe as a catalogue of failures to address complaints made about Astill's conduct. Due to the extent and seriousness of Ms Martin's failures to discharge her obligations to adequately address reports of Astill's conduct, I have considered whether there is sufficient evidence warranting prosecution of Ms Martin for misconduct in public office.

2084. The complaints made to Ms Martin are summarised in chronological order in Chapter 8. As detailed in that Chapter, on various occasions, Ms Martin directed other persons to conduct 'investigations' or mediations, or to submit Intelligence Reports. For reasons it is unnecessary to repeat, I have found Ms Martin's response to be inadequate in relation to incidents reported to her.

2085. As Governor, Ms Martin was a public officer. Her duties as Governor of Dillwynia were to:

[p]rovide leadership and direction for the effective and accountability based management of all aspects of a correctional centre, including the safety and security of employees, inmates and visitors and other visiting persons in compliance with policy, duty of care requirements, defined service standards, key performance indicators and Management Agreements.²⁶¹⁹

2086. On each occasion a complaint about Astill's serious misconduct was made to her, Ms Martin was acting in the course of her duties. In my view there is sufficient evidence to establish that Ms Martin's actions, and inactions, in response to those complaints fell so far short of her duty of care towards inmates as to be capable of being characterised as misconduct.

2087. The difficulty in any contemplated prosecution is proving Ms Martin's actions and, more importantly, inactions were wilful. Any prosecution would confront the difficulty that Ms Martin was operating in a policy and regulatory environment that

2619 Ex. 3, TB 3, Vol 9, Tab 106, CSNSW.0001.0030.0053_0001.

was confusing and contradictory. Further, Ms Martin could rely upon the steps she took in causing some Intelligence Reports to be submitted and investigations to occur, inadequate as they were, as evidence that she was not wilfully failing to carry out her duties. Although I am satisfied that Ms Martin let down the inmates in her care, I do not believe the evidence warrants her prosecution for the offence of misconduct in public office in light of the insufficiency of evidence of wilfulness on her part.

11.3 Prosecution of Michael Hovey for misconduct in public office

2088. Mr Hovey commenced in the role of Director of the Investigations Branch (**IB**) on a temporary basis in January 2014. His appointment became permanent in late 2015.²⁶²⁰ The primary purpose of his role was to ‘Lead a team in the management of Corrective Services NSW (CSNSW) Investigations, preliminary investigations and intelligence gathering through a multidisciplinary/multi-organisational investigation team, contributing to the Department’s Governance & Continuous Improvement strategic framework and the principle of zero tolerance to corruption’.²⁶²¹

2089. The evidence establishes the following with respect to Mr Hovey’s awareness of reports regarding Astill’s conduct:

- a) On 14 November 2016, Mr Hovey reviewed Intelligence Report IR-16-2783, which detailed allegations made by Witness P in her intercepted letter to Witness HH. Mr Hovey’s evidence was that there was no investigation of the allegations made in IR-16-2783. He accepted that the allegations within the report required an investigation by IB or referral to the Corrective Services Investigation Unit (**CSIU**).²⁶²²

2620 Transcript, 8 November 2023, 1856.43-1857.10.

2621 Ex. 58, TB 3, Vol. 18, Tab 672, CSNSW.0001.0215.0001_0001.

2622 Transcript, 8 November 2023, 1916.28-1917.33; Transcript, 8 November 2023, 1932.21-46.

- b) On 27 September 2017, Mr Hovey reviewed IR-17-2051, which concerned the disclosures made by Witnesses V and R concerning Astill's conduct towards Witness M and the threatening behaviour of Astill towards Witness V.²⁶²³ Mr Hovey accepted that no steps were taken to facilitate any investigation into these allegations, by referring the allegations to the IB or to the CSIU for investigation.²⁶²⁴ He gave evidence that it was also incumbent on his branch to refer the matter to the Professional Standards Branch (**PSB**).²⁶²⁵
- c) On 15 August 2018, Mr Hovey discussed IR-18-1983 with IB Intelligence Analyst Sarah Casey.²⁶²⁶ This Intelligence Report concerned multiple allegations regarding Astill and noted he had been 'of interest to local intel for a period of time' and that this had 'escalated in the past six months'. In an email dated 16 August 2018, Ms Casey provided Mr Hovey with further information about delays in reporting the matters in the Intelligence Report to IB, arising from her discussions with Intelligence Officer Deborah Wilson. Ms Casey proposed a course of action in response to the Intelligence Report and stated, 'I will await your response.'²⁶²⁷ There is no evidence Mr Hovey responded to Ms Casey's email. His evidence was that he may have phoned or met with Ms Casey as that was his usual practice.²⁶²⁸ I am unable to find that he did this in the absence of any direct evidence to that effect. There is no evidence of any investigation conducted by IB, beyond Ms Casey contacting Ms Wilson on 17 August 2018 and Ms Wilson emailing further documentation to Ms Casey on 19 August 2018.²⁶²⁹
- d) On 21 August 2018, Mr Hovey prepared a Highly Confidential Briefing to the Commissioner which addressed the allegations in IR-18-1983 without naming Astill or referring to other intelligence about him held by IB.²⁶³⁰ While Mr Hovey suggested IB may have been in an 'information-gathering phase', which explained the failure to report the matter to NSWPF between August

2623 Ex. 3, TB 3, Vol. 10, Tab 170, CSNSW.0001.0021.1167_0002.

2624 Transcript, 8 November 2023, 1931.2-46; Transcript, 8 November 2023, 1933.1-15.

2625 Transcript, 24 November 2023, 3303.33-44.

2626 Ex. 56, AST.002.013.0092_0002.

2627 Ex. 56, AST.002.013.0092_0002.

2628 Transcript, 24 November 2023, 3290.1-8; Transcript, 24 November 2023, 3297.39-42.

2629 Ex. 56, AST.002.013.0092_0005-0041.

2630 Ex. 3, TB 3, Vol. 10, Tab 173, CSNSW.0001.0021.1181_0001-0006.

2018 and the time when NSWPF advised Mr Hovey it was investigating Astill in October 2018, he conceded that the information should have been referred to NSWPF.²⁶³¹

2090. Ms Casey's email to Mr Hovey on 16 August 2018 concerning IR-18-1983 stated: 'At this point in time, without collecting further information, all I have is an incident that occurred in Dec/Feb involving ASTILL and inmate [Witness JJ] (reported to IB by way of IR 15/08/2018) and very, general, non-specific hearsay from WILSON regarding the scale and seriousness of the matter.'²⁶³² That was not a correct statement as to the intelligence holdings of IB regarding Astill at that time, a fact Mr Hovey conceded.²⁶³³ Mr Hovey himself had personally reviewed the additional significant reports listed at (a) and (b) above. Mr Hovey did not correct Ms Casey's mistake. His evidence was as follows:

MR HOVEY: *There would have been further information, that's correct.*

MR LLOYD: *And if the agency was working properly at that time, it would have been identified within the agency that, in fact, there were allegations known to Investigations about Astill that were extremely serious?*

MR HOVEY: *Yes, that's correct.*

MR LLOYD: *And that earlier information, if the process was working properly, ought to have been taken into account in terms of what steps Investigations ought to have taken at this time?*

MR HOVEY: *Yes.*

MR LLOYD: *And you agree the failure for that information to have been taken into account in terms of working out what to do was a serious one?*

MR HOVEY: *As it transpired, yes.*²⁶³⁴

2631 Transcript, 24 November 2023, 3294.30-38.

2632 Ex. 56, AST.002.013.0092_0002.

2633 Transcript, 24 November 2023, 3295.12-26.

2634 Transcript, 24 November 2023, 3295.26-43.

2091. Mr Hovey was a public official. By failing to take steps to advance investigations with respect to the three Intelligence Reports listed above that came to his attention prior to the criminal investigation of Astill, Mr Hovey fell short of his duties in the fulfillment of his role. Mr Hovey's failure was serious and may have had significant consequences for those women who became victims of Astill's offending after those Intelligence Reports were made.
2092. However, in my view, the evidence falls short of establishing that Mr Hovey's neglect of his duty was wilful.
2093. Mr Hovey gave evidence that the material conveyed to him by Ms Casey on 16 August 2018 would not necessarily have stood apart from the usual material being received by IB because 'there was a high number of high profile and extremely serious allegations being dealt with at that particular time'.²⁶³⁵ That statement was not challenged by any party to the Special Commission.
2094. Mr Hovey also gave evidence of the following challenges to the operation of IB during the relevant period:²⁶³⁶
- a) Intelligence Analyst Andrew Tayler left in late 2017. Ms Casey was moved into the intelligence role in July 2018. In the intervening period, there was no Intelligence Analyst charged with the function of reviewing Intelligence Reports.²⁶³⁷ Once Ms Casey commenced in the role of Intelligence Analyst, she spent about 80 per cent of her time screening new employees, and only about 20 per cent on intelligence work. The volume of complaints coming in was too much for one person.²⁶³⁸
 - b) Mr Hovey was acting as Investigations Manager as well as fulfilling the role of Director, IB. He was not doing much, if any, analyst work during that period.²⁶³⁹

2635 Transcript, 24 November 2023, 3300.41-3301.2

2636 Transcript, 8 November 2023, 1949.39-1952.46; Transcript, 10 November 2023, 1986.15-1988.5.

2637 Transcript, 8 November 2023, 1949.39-1950.45; Transcript, 10 November 2023, 1986.15-1988.5.

2638 Transcript, 10 November 2023, 1987.5-30.

2639 Transcript, 8 November 2023, 1950.13-45.

- c) He recalled discussing this state of affairs with Assistant Commissioner James Koulouris.²⁶⁴⁰ He discussed with Mr Koulouris '[b]asically that we had no intelligence function, that we just couldn't fill the position. At the time, budget constraint, we were trying to save money across the organisation, recruitment freezes, problematic at filling that role.'²⁶⁴¹
- d) Once an Intelligence Analyst was deployed to the role, Mr Hovey made an operational decision that the analyst should start with the most recent intelligence and work backwards when the opportunity arose. This decision was based on his view that recent information would be the most relevant.²⁶⁴²

2095. It is plain that the practice of reporting misconduct via an Intelligence Report to the IB and not to the PSB was, at least during the period of Astill's offending, fundamentally flawed. There were insufficient staff to analyse those reports in a timely manner and insufficient consideration was given to the actioning or referral of Intelligence Reports, to both PSB and the CSIU.

2096. Mr Hovey's failures to act must be viewed in the context of the significant resourcing challenges and structural failures within IB during the relevant period. There is no evidence that they were wilful. It follows that there is insufficient evidence warranting prosecution of Mr Hovey for misconduct in public office.

2097. I have referred in Chapter 5 to CSNSW's submission that Mr Hovey's conduct and failure to act should be referred to another body for investigation. In my view, there is nothing in the evidence which justifies this submission.

2640 Transcript, 8 November 2023, 1951.1-14.

2641 Transcript, 8 November 2023, 1951.16-20.

2642 Transcript, 8 November 2023, 1952.40-46.



New South Wales
Australia

Appendices

Appendix A: Letters Patent

NEW SOUTH WALES

CHARLES THE THIRD, by the Grace of God, King of Australia and His other Realms and Territories, Head of the Commonwealth.

TO

The Honourable Peter McClellan AM KC

GREETING

By these Our Letters Patent, made and issued by Our Governor under the authority of the *Special Commissions of Inquiry Act 1983* with the advice of the Executive Council, We hereby authorise you as Commissioner to inquire into and report to Our Governor of the said State on the circumstances related to the sexual offences committed by Wayne Astill at Dillwynia Women's Correctional Centre including:

- A. Whether any other employee of Corrective Services NSW had knowledge or reasonable suspicion of the offending and if so, when, and what steps they took in relation to that knowledge or suspicion
- B. Whether any person engaged in the management of Dillwynia Women's Correctional Centre had knowledge or reasonable suspicion of the offending and, if so, when, and what steps that person took either alone or as a member of the management team in relation to that knowledge or suspicion
- C. The systems of supervision and oversight that applied in relation to Wayne Astill at Dillwynia Women's Correctional Centre, their adequacy, and how they could be improved to reduce the risk of serious offending
- D. The policies and processes available at Dillwynia Women's Correctional Centre for inmates or staff to raise complaints about misconduct, including sexual offending by correctional officers
- E. Whether the circumstances related to Astill's offending and your findings require further consideration of broader site or case specific or Corrective Services NSW wide investigations
- F. Whether the circumstances related to Astill's offending or any other matter revealed by this inquiry, related to the Dillwynia Women's Correctional Centre, indicates inadequacies in the policies and procedures for professional oversight and/or the conduct of professional standards investigations that apply to Corrective Services NSW, and whether, in particular, they are sufficiently independent and robust

ENTERED on the Record by me in Register of Patents No. 93 Page 394, this 13th day of September 2023.

For A SECRETARY
THE CABINET OFFICE



G. Whether any matters arising from the inquiry should be referred to the Independent Commission Against Corruption (ICAC) or the NSW Police Force for further investigation.

AND FURTHER, WE authorise you to make recommendations to address the issues raised.

AND hereby establish a Special Commission of Inquiry for that purpose.

AND We direct you, in conducting the inquiry to operate in a way that avoids prejudice to criminal investigations, any current or future criminal prosecutions, and any other contemporaneous inquiries.

AND pursuant to section 21 of the *Special Commissions of Inquiry Act 1983* (NSW) it is hereby declared that sections 22, 23 and 24 shall apply to and in respect of the Special Commission issued to you by Our Letters Patent.

AND OUR further will and pleasure is that you do, as expeditiously as possible, but in any case on or before 15 December 2023, deliver your final report in writing of the results of your inquiry to the offices of the Premier and Our Governor in Sydney.

IN WITNESS, We have caused these Our Letters to be made Patent and the Public Seal of Our State to be hereunto affixed.



WITNESS Her Excellency the Honourable Margaret Beazley,
Companion of the Order of Australia, King's Counsel, Governor of the
State of New South Wales in the Commonwealth of Australia.

Dated this 13th day of September 2023.

Margaret Beazley
Governor

By Her Excellency's Command,

[Signature]
Premier

NEW SOUTH WALES

CHARLES THE THIRD By the Grace of God King of Australia and His other Realms and Territories, Head of the Commonwealth:

TO

The Honourable Peter McClellan AM KC

GREETING

WHEREAS, by Letters Patent, made and issued in in the name of His Majesty King Charles the Third by Our Governor of Our State of New South Wales on 13 September 2023, We authorised you as sole Commissioner to inquire into and report to Our Governor of the said State on the circumstances related to the sexual offences committed by Wayne Astill at Dillwynia Women’s Correctional Centre,

AND WHEREAS it is desirable that the Letters Patent of 13 September 2023 be altered and varied to amend the date by which you are to report under the *Special Commissions of Inquiry Act 1983* (NSW),

NOW THEREFORE, by these Our Letters Patent, made and issued in Our name by Our Governor on the advice of the Executive Council and under the authority of the *Special Commissions of Inquiry Act 1983* (NSW) and every other enabling power, We hereby alter and vary the Letters Patent of 13 September 2023 by omitting “15 December 2023” in the paragraph beginning “AND OUR further will” and inserting instead “29 February 2024”.

AND IT IS FURTHER DECLARED that these Letters Patent are to be read with the Letters Patent constituting your Commission.

ENTERED on the Record by me in Register of Patents No. 93 Page 420, this 6th day of December 2023.

047
for SECRETARY
THE CABINET OFFICE

IN WITNESS, We have caused these Our Letters to be made Patent and the Public Seal of Our State to be hereunto affixed.



WITNESS Her Excellency the Honourable Margaret Beazley,
Companion of the Order of Australia, King's Counsel, Governor of the
State of New South Wales in the Commonwealth of Australia.

Dated this 6th day of December 2023.

Margaret Beazley
Governor

By Her Excellency's Command,

A handwritten signature in blue ink, appearing to be "Rob O'Connell".

Premier

Appendix B: Staff of the Special Commission

The Honourable Peter McClellan AM KC was appointed on 28 July 2023 to lead the Special Commission of Inquiry. He was assisted by his Associate, Jennifer Masina.

Counsel Assisting the Special Commission

David Lloyd SC

Joanna Davidson

Staff seconded from the NSW Crown Solicitor's Office

The Special Commission was assisted during its term by the following personnel who were seconded from the NSW Crown Solicitor's Office:

Lena Nash, Special Counsel

Amber Doyle, Principal Solicitor

Sophie Williams, Principal Solicitor

Stephanie Breen, Senior Solicitor

Amelia Cook, Senior Solicitor

Kate Lawrence, Graduate Solicitor

Jennifer Tsui, Graduate Solicitor

Luella White, Senior Secretary

Gabrielle Frost, Paralegal

Staff seconded from the NSW Police Force

The Special Commission was assisted by the following personnel who were seconded from the NSW Police Force as investigators:


Detective Senior Constable Courtney Barron

Detective Senior Constable Elyse Houldin

Appendix C: The Special Commission Website and Advertisements

For the Special Commission, a website was established at <https://astillinquiry.dcj.nsw.gov.au/> hosted by the NSW Department of Communities and Justice. The Commission's public hearings were streamed live and recorded on the website, and as soon as it became available, all significant information concerning the progress of the Commission was published on the website. This information included exhibits tendered and transcripts pertaining to public hearings, subject to any order of the Commissioner.

On 5 September 2023, three advertisements were placed in three major metropolitan newspapers, inviting those in the public with information pertaining to the offending of Wayne Astill and the response to his offending to come forward to the Commission anonymously or confidentially, via phone or email. The Special Commission was particularly interested in hearing from those who had or might have known, or were told, about Wayne Astill's offending, and what steps were taken in response to that knowledge. The Special Commission was also interested in the processes in place to address complaints made by inmates at Dillwynia Correctional Centre during the time of the offending.



**DO YOU HAVE INFORMATION ABOUT WAYNE ASTILL
RELATING TO HIS EMPLOYMENT AS A CORRECTIVE SERVICES
OFFICER AT DILLWYNIA CORRECTIONAL CENTRE?**

Wayne Astill has been convicted of sexual offences against a number of female inmates. The Special Inquiry is seeking to understand what anyone might have known, or was told, about Wayne Astill's offending, and what steps were taken in response to that knowledge. The Special Inquiry is also seeking information regarding the processes in place to address complaints by inmates at Dillwynia Correctional Centre at that time.

Any information you might have could provide a vital link in understanding what may have happened.

You can contact the Inquiry anonymously or confidentially in the following ways:

- by emailing Astill.Inquiry@justice.nsw.gov.au
- by calling +61 2 8061 9302 and leaving a voice message

Appendix D: The Approach of the Special Commission

Establishment

On 28 July 2023, the NSW Government announced that it had appointed the Hon Peter McClellan AM KC to lead a special ministerial inquiry into the circumstances surrounding the offences committed by former NSW Correctional Officer Wayne Astill.

On 13 September 2023, her Excellency, the Honourable Margaret Beazley AC KC, Governor of the State of New South Wales, issued Letters Patent appointing the Hon Peter McClellan AM KC as Special Commissioner, under the *Special Commissions of Inquiry Act 1983* (NSW) (“SCOI Act”), to conduct the Inquiry as a Special Commission.

In conducting his inquiries, the Commissioner was to have regard and report on the circumstances related to the sexual offences committed by Wayne Astill at Dillwynia Women’s Correctional Centre and whether any other employees had any knowledge or reasonable suspicion of the offending and what steps those persons took in relation to that knowledge, the systems of supervisions and oversight and any inadequacies of them, the policies and processes available to inmates who raised concerns, whether there were any inadequacies to the policy and procedures for professional oversight or conduct of the professional standards investigations of CSNSW and whether any matters arising out of the inquiry should be referred for further investigation.

Terms of Reference

The issues that the Commissioner was required to consider are set out in the terms of reference. A copy of the terms of reference is within the Letters Patent at **Appendix A** to this Report.

Accommodation

Following the announcement of the Special Commission on 28 July 2023, arrangements were made for the staff of the Special Commission to be accommodated at Level 5, Chief Secretary’s Building, 50 Phillip Street, Sydney. The Commission’s public and private hearings were conducted at Level 4, Chief Secretary’s Building, 121 Macquarie Street, Sydney. Members of the public were able to attend all public hearings at this address, and the Special Commission designated a media room with access to a live stream of the hearing, for media personnel to attend in person.

Processes of Acquiring Information

Documents Produced by way of Summons

To obtain material needed to address the terms of reference, summons to produce were issued to various *government* agencies, organisations and individuals to produce specified documents and classes of documents. The Commissioner’s power to summon material is derived from the SCOI Act 1983 (NSW). In providing material pursuant to summons, individuals, organisations and government agencies were able to provide information and assistance to the Special Commission without breaching confidentiality or secrecy requirements that otherwise would have prevented them from providing material to the Special Commission.

From 15 August 2023 date to 24 November 2023, the Special Commission issued 26 summonses.

The Special Commission received a total of over 16,000 documents. All documents were analysed by the staff assisting the Commissioner and relevant documents were tendered in the hearings. A list of documents tendered can be found at **Appendix F**.

Summons to Attend

The Special Commission issued 59 summons to attend to individuals from whom Counsel Assisting sought to hear evidence at either a public or private hearing, in person or via audio visual link. Summons to attend were issued between 25 September 2023 and 10 November 2023. Six individuals who were issued with summons to attend were ultimately not called to give evidence before the Special Commission. Over the course of the hearings, the Special Commission heard from a total of 53 individuals.

Individuals who gave evidence at the hearings are listed at **Appendix E**.

Hearings of the Special Commission

Public hearings for the Special Commission commenced on 28 September 2023 and concluded on 24 November 2023 with the evidence being heard on the following dates:

- Friday, 29 September 2023
- Friday, 6 October 2023
- Tuesday, 17 October 2023 – Friday, 24 October 2023 (excluding 21 October, 6, 9 and 15 November 2023)

The Special Commission heard from a total of 53 witnesses in the public hearings, one of whom gave partial evidence in private. Certain witnesses gave evidence via Audio Visual Link (“**AVL**”) from Darlinghurst Courthouse, 138 Oxford St, Darlinghurst or from remote locations. Eight of the witnesses who gave evidence during the Special Commission were subject to non-publication orders regarding their identity. To ensure compliance with these orders, the Special Commission provided optional voice distortion and pixelation over the AVL and applied those to the in person, live stream and recorded version of the hearings. All other witnesses who were called to give evidence were invited to give evidence at the Chief Secretary’s Building in person. A complete list of public hearings, and the witnesses who gave evidence in those hearings is at **Appendix E**.

Legal Representation

Those with leave to appear and cross-examine

The following persons were authorised to appear at the substantive hearings and to cross-examine witnesses pursuant to s. 12 of the SCOI Act:

- Counsel assisting the Special Commission, David Lloyd SC with Joanna Davidson instructed by Lena Nash, Amber Doyle and Sophie Williams.
- Corrective Services New South Wales, represented by James Sheller SC with Christine Melis, instructed by Clayton Utz.
- A group of current and former inmates, represented by Dominic Villa SC with Thomas Buterin, instructed by Mills Oakley.

- Commissioner of NSW Police Force, represented by Ryan Coffey, instructed by Wotton Kearney.
- Commissioner of CSNSW, represented by Jonathan Horton KC with Stephanie Gaussen, instructed by Mitchell Lawyers.
- Former Commissioner of CSNSW, represented by Linda Barnes, instructed by Hughes and Taylor.
- Inspector of Custodial Services, represented by O Jones, instructed by Minter Ellison.
- A group of correctional officers, represented by Jehane Ghabrial, instructed by McNally Jones Staff Lawyers.
- A group of correctional officers, represented by Adam Guy, instructed by McNally Jones Staff Lawyers.
- Former Chaplain, represented by George Constantine.
- Two correctional officers, represented by Robert Deppeler, instructed by McNally Jones Staff Lawyers.
- Two correctional officers, represented by Andrew Wilson, instructed by AEN Legal.
- Two correctional officers, represented by Chris Watson, instructed by Jordan Djunja.
- One correctional officer, represented by Lisa Doust, instructed by Work Lawyers.
- One correctional officer, represented by Phillip Carr.
- One former correctional officer, represented by Geoffrey Watson, instructed by Carroll O'Dea.
- One correctional officer, represented by Evan James, instructed by One Legal Group.
- One correctional officer, represented by Julia Hickleton, instructed by Tohi Lawyers.
- One CSNSW member of staff, represented by Ian Latham, instructed by Taylor + Scott Lawyers.
- One former CSNSW member of staff, represented Matthew Tyson, instructed by JTA Law.
- One former CSNSW member of staff, represented by Dragan Gasic.
- One correctional officer, represented by Hugh White, instructed by Andrew Harris & Associates Lawyers.
- One CSNSW member of staff, represented by Barry Dean, instructed by BPH Legal.
- One former CSNSW member of staff, represented by Hunt and Hunt Lawyers.

Exhibits

A list of the exhibits tendered in the Special Commission can be found at **Appendix F** to this report.

Appendix E: Schedule of Hearings and Witnesses who appeared before the Special Commission

Witness	Role*	Transcript Reference
Day 1 – 28 September 2023		
Angela Zekanovic	Acting Director, Professional Standards and Investigations Branch (CSNSW)**	P-36 to P-93 and Day 25
Day 2 – 29 September 2023		
John Buckley	CSNSW Assistant Commissioner, Custody Metro, Security and Custody**	P-96 to P-127
Day 3 – 6 October 2023		
Fergal Molloy	CSNSW Business Partner to Infrastructure and Assets Manager of Technical Security**	P-133 to P-174
Day 4 – 17 October 2023		
Trudy Sheiles	Victim in relation to whom Astill has been convicted of offence(s)	P-183 to P-244
Witness M	Victim in relation to whom Astill has been convicted of offence(s)	P-244 to P-260
Day 5 – 18 October 2023		
Sarah Ward	Victim in relation to whom Astill has been convicted of offence(s)	P-266 to P-135
Witness W	Witness in Astill's trial	P-136 to P-336

Witness	Role*	Transcript Reference
Day 6 – 19 October 2023		
Witness C	Victim in relation to whom Astill has been convicted of offence(s)	P-341 to P-436
Day 7 – 20 October 2023		
Witness V	Witness in Astill's trial	P-441 to P-488
Elizabeth Cox	Victim	P-488 to P-539
Day 8 – 23 October 2023		
Witness P	Witness in Astill's trial	P-544 to P-585
Witness R	Witness in Astill's trial	P-585 to P-605
Day 9 – 24 October 2023		
Witness O	Victim in relation to whom Astill has been convicted of offence(s)	P-608 to P-651
Witness B	Victim in relation to whom Astill has been convicted of offence(s)	P-651 to P-700
Julijana Miskov	Correctional Officer	P-701 to P-723
Day 10 – 25 October 2023		
Glenn Clark	Correctional Officer	P-730 to P-788
Stephen Virgo	Senior Assistant Superintendent/Principal Correctional Officer – Intelligence	P-789 to P-851

Witness	Role*	Transcript Reference
Mirza Mohtaj	Senior Correctional Officer	P-852 to P-869 and Day 11
Day 11 – 26 October 2023		
Mirza Mohtaj	Senior Correctional Officer	P-872 to P-890
Scott Westlake	Senior Correctional Officer	P-890 to P-973
Paul Foster	Senior Correctional Officer	P-943 to P-983
Deborah Gaynor	Service and Programs Officer	P-983 to P-1006
Day 12 – 27 October 2023		
Grant Riddle	Senior Correctional Officer	P-1008 to P-1089
Jean Dolly	Correctional Officer and Senior Correctional Officer	P-1089 to P-1171
Day 13 – 30 October 2023		
Judith Barry	Principal Correctional Officer	P-1173 to P-1221
Renee Berry	Senior Correctional Officer	P-1221 to P-1277 and P-1309 to P-1320
Suellen Johnson	Chaplain	P-1277 to P-1398
Day 14 – 1 November 2023		
Brian Bartlett	Manager of Security	P-1322 to P-1365
Timothy Peek	Senior Correctional Officer	P-1365 to P-1407
Tania Hockey	Correctional Officer	P-1407 to P-1446

Witness	Role*	Transcript Reference
Kim Wilson	Correctional Officer	P-1466 to P-1468
Day 15 – 2 November 2023		
Mark Wilson	Correctional Officer	P-1470 to P-1489
Mishelle Robinson	Correctional Officer	P-1489 to P-1514
Michael Paddison	Principal Correctional Officer	P-1514 to P-1591
Pamela Kellett	Chief Correctional Officer and Principal Correctional Officer	P-1591 to P1609 and Day 16
Day 16 – 3 November 2023		
Pamela Kellett	Chief Correctional Officer and Principal Correctional Officer	P-1611 to P-1643
Pam Hotham	Principal Correctional Officer	P-1643 to P-1681
Neil Holman	Chief Correctional Officer	P-1681 to P-1722
Day 17 – 7 November 2023		
Deborah Wilson	Intelligence Officer	P-1726 to P-1802
Leanne O’Toole	Manager of Security	P-1803 to P-1853
Day 18 – 8 November 2023		
Michael Hovey	Director, Corrective Services Investigations Branch	P-1856 to 1984 and Day 19
Day 19 – 10 November 2023		
Michael Hovey	Director, Corrective Services Investigations Branch	P-1986 to P-2078 and Day 28

Witness	Role*	Transcript Reference
Thomas Woods	Acting Governor at Dillwynia Correctional Centre	P-2078 to P-2104
Douglas Greaves	Manager, Professional Standards*	P-2105 to P-2114 and Day 20
Day 20 – 13 November 2023		
Douglas Greaves	Manager, Professional Standards*	P-2116 to P-2172
Shari Martin	Governor at Dillwynia Correctional Centre	P-2173 to P-2230 and Day 21
Day 21 – 14 November 2023		
Shari Martin	Governor at Dillwynia Correctional Centre	P-2232 to P-2372 and Day 22
Day 22 – 16 November 2023		
Shari Martin	Governor at Dillwynia Correctional Centre*	P-2376 to P-2423
Marilyn Wright	Director, Custodial Corrections, Metropolitan Region	P-2423 to P-2443
Hamish Shearer	Director, Custodial Operations, Metro West	P-2443 to P-2511 and Day 23
Day 23 – 17 November 2023		
Hamish Shearer	Director, Custodial Operations, Metro West	P-2513 to P-2553
Westley Giles	Senior Correctional Officer and Chief Correctional Officer	P-2553 to P-2644

Witness	Role*	Transcript Reference
Fiona Rafter	Inspector of Custodial Services**	P-2644 to P-2666
Day 24 – 20 November 2023		
Peter Severin	Commissioner of Corrective Services New South Wales	P-2668 to P-2740
Saffron Cartwright	Director Custodial South Region (CSNSW) **	P-2740 to P-2763
Angela Zekanovic	Acting Director, Professional Standards and Investigations Branch (CSNSW)**	P-2763 to P-2799 and Day 25
Day 25 – 21 November 2023		
Angela Zekanovic	Acting Director, Professional Standards and Investigations Branch (CSNSW)**	P-2801 to P-2913 and Day 26
Day 26 – 22 November 2023		
Angela Zekanovic	Acting Director, Professional Standards and Investigations Branch (CSNSW)**	P-2915 to P-2928
Nicola Chappell	Governor at Dillwynia Correctional Centre**	P-2928 to P-2960
Kevin Corcoran	Commissioner of Corrective Services New South Wales	P-2960 to P-3066 and Day 27
Day 27 – 23 November 2023		
Kevin Corcoran	Commissioner of Corrective Services New South Wales	P-2068 to P-3225

Witness	Role*	Transcript Reference
Day 28 – 24 November 2023		
Chantal Snell	Assistant Commissioner, Delivery, Performance and Culture**	P-3229 to P-3284
Michael Hovey	Director, Corrective Services Investigations Branch	P-3289 to P-3304

* The role of a person refers to their substantive or temporary role in CSNSW during the offending or time of offending of Wayne Astill.

** Refers to current substantive role of persons who appeared before the Special Commission.

Appendix F: Exhibits Tendered in the Special Commission

Exhibit	Document	Date of Tender	Doc ID
1.	Statement of Fergal Molloy	6 October 2023	CSNSW.0001.0099.0001
2.	Document subject to non-publication order	-	-
3.	Tender Bundle of Documents		Various
	Tender Bundle 1: Vols 1-6	17 October 2023 (Vol 1-6)	
	Tender Bundle 2: Vols 9-17	2 November 2023 (Vol 9-17)	
4.	Corrective Services Report with respect to Witness "C" from 2019 (New version replaced on 23/10/23)	19 October 2023	AST.002.002.0002_0062-0070
5.	Corrective Services Report with respect to Witness "C" as at today 19/10/23 (New version replaced on 23/10/23)	19 October 2023	AST.002.013.0123
6.	Serious Offender Review Council Review Report dated October 2017	19 October 2023	AST.002.002.0002_0050
7.	Statement of Julijana Miskov dated 21 September 2023	24 October 2023	AST.002.013.0024
8.	Statements of Glenn Clark dated:	30 October 2023	
	- 7 September 2020		AST.002.002.0076
	- 28 September 2023		AST.002.013.0022

Exhibit	Document	Date of Tender	Doc ID
9.	Statements of Stephen Virgo dated:	25 October 2023	
	- 17 June 2020		AST.002.002.0078
	- 13 September 2023		AST.002.013.0017
10.	Documents in relation to the Commissioner's actions with respect to any intimidation of inmates	25 October 2023	AST.002.013.0122
11.	Statement of Mirza Mohtaj dated 19 September 2023	25 October 2023	AST.002.013.0020
12.	Statement of Scott Westlake dated 20 September 2023	26 October 2023	AST.002.013.0036
13.	Statements of Paul Foster dated:	26 October 2023	
	- 21 May 2019		AST.002.002.0066
	- 27 September 2023		AST.002.013.0032
15.	Statement of Grant Riddle dated 26 September 2023	27 October 2023	AST.002.013.0012
16.	Statement of Jean Dolly dated 25 September 2023	27 October 2023	AST.002.013.0026
17.	Statements of Judith Barry dated:	30 October 2023	
	- 11 September 2020		AST.002.002.0073_0002
	- 22 July 2022		AST.002.002.0073_0001
	- 26 October 2023		AST.002.013.0045

Exhibit	Document	Date of Tender	Doc ID
18.	Statements of Renee Berry dated:	30 October 2023	
	- 23 July 2019		AST.002.002.0055
	- 22 July 2022		AST.002.002.0056
	- 18 September 2023		AST.002.013.0013
19.	Statements of Suellen Johnson dated:	30 October 2023	
	- 7 May 2020		AST.002.002.0070
	- 23 October 2023		AST.002.013.0047
20.	Statements of Brian Bartlett dated:	1 November 2023	
	- 14 September 2020		AST.002.002.0079
	- 11 October 2023		AST.002.013.0041
21.	Statement of Timothy Peek dated 20 September 2023	1 November 2023	AST.002.013.0033
22.	Statement of Kim Wilson dated 18 September 2023	1 November 2023	AST.002.013.0018
23.	Statements of Mark Wilson dated:	2 November 2023	
	- 23 July 2019		AST.002.002.0062
	- 27 September 2023		AST.002.013.0019
24.	Statement of Mishelle Robinson dated 3 October 2023	2 November 2023	AST.002.013.0051

Exhibit	Document	Date of Tender	Doc ID
25.	Unsigned Statement of Michael Paddison dated 5 October 2023	2 November 2023	AST.002.013.0055
26.	Statements of Pamela Kellett dated: - 9 September 2020 - 28 October 2023	2 November 2023	AST.002.002.0072 AST.002.013.0048
27.	Statement of Pam Hotham dated 5 October 2023	3 November 2023	AST.002.013.0039
28.	Statement of Neil Holman dated September 2023	3 November 2023	AST.002.013.0053
29.	Statement of Deborah Gai Wilson dated 4 October 2023	7 November 2023	AST.002.013.0035
30.	Statement of Leanne O'Toole dated 23 October 2023	7 November 2023	AST.002.013.0044
31.	Document subject to non-publication order		-
32.	Statement of Michael Hovey dated October 2023	8 November 2023	AST.002.013.0054
33.	Intelligence Analyst Roles (timing and roles)	10 November 2023	AST.002.013.0121
34.	Statement of Thomas Woods dated 10 November 2023	10 November 2023	AST.002.013.0058
35.	Statement of Douglas Greaves dated 9 November 2023	10 November 2023	AST.002.013.0057

Exhibit	Document	Date of Tender	Doc ID
36.	USB containing videos of Ethical Conduct and Ethical Leadership lectures provided to members of CSNSW staff during period of Mr Greaves performing his role at the Professional Standards Branch	10 November 2023	Uncoded
37.	Briefing note titled 'Professional Standard Branch matters' dated July 2016	13 November 2023	CSNSW.0002.0052.9962
38.	Statements of Shari Martin dated: <ul style="list-style-type: none"> - 11 September 2020 - Undated 	13 November 2023	AST.002.002.0071 AST.002.013.0059
39.	Tender Bundle 4	13 November 2023	Various
40.	Bundle of CSNSW documents	16 November 2023	Various
41.	Additional emails between Shari Martin and Hamish Shearer	16 November 2023	Various
42.	Statement of Marilyn Wright dated 27 October 2023	16 November 2023	AST.002.013.0046
43.	Statement of Hamish Shearer dated 13 November 2023	16 November 2023	AST.002.013.0061
44.	Statements of Westley Giles dated: <ul style="list-style-type: none"> - 23 July 2019 - 2 November 2023 	17 November 2023	AST.002.002.0080 AST.002.013.0052

Exhibit	Document	Date of Tender	Doc ID
45.	Statement of Fiona Rafter dated 14 November 2023	17 November 2023	AST.002.013.0060
	Bundle of documents relating to Inspector of Custodial Services		Various
46.	Statement of Saffron Cartwright dated 25 October 2023 including an index to the annexures	20 November 2023	CSNSW.0001.0175.0001
47.	Statement of Angela Zekanovic dated:	20 November 2023	
	- 27 September 2023		CSNSW.0001.0076.0001
	- 18 September 2023		AST.002.013.0086
	- 17 November 2023		CSNSW.0001.0253.0001
48.	Bundle of material relating to Westley Giles, including Submission to Commissioner dated 20 September 2023	21 November 2023	Various
49.	Email chain between Stefan Skopelja and Angela Zekanovic dated 30 August, 19 and 20 September 2023	22 November 2023	AST.002.013.0090
50.	Statement of Nicola Chappell dated 20 November 2023	22 November 2023	CSNSW.0001.0261.0001
51.	Meeting notes made by Ms Chantal Snell at Dillwynia on 19 September 2023	23 November 2023	AST.002.013.0089
52.	Additional documents produced by Hamish Shearer	23 November 2023	CSNSW.0001.0275.0272

Exhibit	Document	Date of Tender	Doc ID
53.	Email from Hamish Shearer to Cathryn Hellams copying Kevin Corcoran dated 8 March 2017 attaching draft Shari Martin Performance Improvement Plan	23 November 2023	AST.002.013.0091
54.	Bundle of CSNSW documents relating to the suspensions of Mr Paddison and Mr Holman	23 November 2023	CSNSW.0001.0263.1158
55.	Statement of Chantal Snell dated 20 November 2023	24 November 2023	AST.002.013.0092
56.	Bundle of documents relating to Michael Hovey	24 November 2023	Various
57.	Statement of Peter Barglik dated: <ul style="list-style-type: none"> - 13 October 2020 - 18 September 2023 <p>Statement of Ronald Brumwell dated 9 September 2020</p> <p>Statement of Peter Barglik dated: <ul style="list-style-type: none"> - 13 October 2020 - 18 September 2023 <p>Statement of Ronald Brumwell dated 9 September 2020</p> <p>Statement of Dean Edwards dated 31 July 2019</p> </p>	24 November 2023	Various

Exhibit	Document	Date of Tender	Doc ID
	Statement of Rajbir Kaur dated 23 April 2019		
	Statement of Fiona Baker dated:		
		- 23 April 2019	
		- 14 September 2023	
	Statement of Adam Schreiber dated:		
		- 3 September 2020	
		- 15 September 2023	
	Statement of Nicola Brumwell dated 7 July 2021		
	Statement of Anthony Baker dated:		
		- 22 July 2022	
		- 14 September 2023	
	Statement of Catheryne Avery dated 21 September 2023		
	Statement of Patricia Peek dated September 2023		
	Statement of Erin Porter (nee McDonall) dated 11 October 2023		
	Statement of Jacquelyn Brown dated 25 September 2023		

Exhibit	Document	Date of Tender	Doc ID
	Statement of Cailla Barlow dated 4 October 2023		
	Statement of Davey Alexander Jeans dated 23 October 2023		
	Marilyn Wright's Notice of Resignation Form and Acknowledgment of Receipt		
	Statement of Scott White dated 30 October 2023		
	Statement of Andrew Tayler dated 27 October 2023		
	Statement of Darren Rowe dated 22 October 2023		
	Additional documents produced by H Shearer including NSW Public Sector Capability Framework		
58.	Tender Bundle 3 -Volume 9 - Tab 103, 104, 105A, 105B and 115A	24 November 2023	Various
	Tender Bundle 3 -Volume 16, Tab 506		
	Tender Bundle 3 -Volume 18		
	Tender Bundle 3 -Volume 19		
	Tender Bundle 3 -Volume 19A		
59.	Statement of John Buckley with annexures -28 September 2023	24 November 2023	Various

Exhibit	Document	Date of Tender	Doc ID
	Supplementary Statement of John Buckley with annexures - 25 October 2023		
	Statement of Michelle Micallef with annexures -27 September 2023		
	Statement of Malcolm Brown with annexures -2 November 2023		
	Statement of Bernd Kaschubs with annexures -20 November 2023		
	Statement of Jeremy Tucker		
	Statement of NSW Ombudsman Paul Miller, 21 November 2023		
	Women's Legal Service NSW Submissions		
	Wirringa Baiya Aboriginal Women's Legal Centre Submissions		
	Statement of Kevin Corcoran and annexures		
60.	Tender Bundle 6	15 December 2023	Various

Exhibit	Document	Date of Tender	Doc ID
61.	Bundle of documents produced by CSNSW concerning a report to the Commissioner made by M Hovey in August 2018 (Tendered in Chambers)	19 December 2023	CSNSW.0002.0119.0910
62.	Document subject to non-publication order	-	-
63.	Affidavit of Courtney Barron dated 21 December 2023 (Tendered in Chambers)	22 December 2023	AST.002.013.0124
64.	Bundle of correspondence concerning Carroll O'Dea Lawyers Letter (Tendered in Chambers)	22 December 2023	Various

Appendix G: Submissions

The Closing Submissions of Counsel Assisting the Special Commission were sent out to all legal parties on 6 December 2023. The below Closing Submissions and Submissions in Reply were received by the Special Commission.

Closing Submissions

1. Submissions on behalf of Hamish Shearer, 11 December 2023
2. Submissions on behalf of Timothy Peek, 13 December 2023
3. Submissions on behalf of Deborah Wilson, 13 December 2023
4. Submissions on behalf of Suryanarayan Hariharan, 13 December 2023
5. Submissions on behalf of Judith Barry, Renee Berry, Ronald Brown and Scott Westlake, 14 December 2023
6. Submission on behalf of Jean Dolly and Davey Jeans, 14 December 2023
7. Submissions on behalf of Thomas Woods, 14 December 2023
8. Submissions on behalf of Westley Giles and Mishelle Robinson, 14 December 2023
9. Submissions on behalf of Kevin Corcoran, 14 December 2023
10. Submissions on behalf of Michael Paddison, 14 December 2023
11. Submissions on behalf of NSW Commissioner of Police, 14 December 2023
12. Submissions on behalf of Michael Hovey, 14 December 2023
13. Submissions on behalf of Peter Barglik, Glenn Clark, Mirza Mohtaj, Stephen Virgo, Kim Wilson and Mark Wilson, 20 December 2023
14. Submissions on behalf of Corrective Services New South Wales, 20 December 2023
15. Submissions on behalf of Shari Martin, 22 December 2023
16. Submissions on behalf of Peter Severin, 16 January 2024

Submissions in Reply

1. Submissions in reply on behalf of Hamish Shearer, 23 January 2024
2. Submissions in reply on behalf of Michael Hovey, 25 January 2024
3. Submissions in reply on behalf of Peter Barglik, Glenn Clark, Mirza Mohtaj, Stephen Virgo, Kim Wilson and Mark Wilson, 29 January 2024
4. Submissions in reply on behalf of Shari Martin, 30 January 2024

Report of the Special Commission of Inquiry into
Offending by Former Corrections Officer Wayne Astill
at Dillwynia Correctional Centre

The Honourable Peter McClellan AM KC



New South Wales
Australia
