

**SPECIAL COMMISSION OF INQUIRY INTO OFFENDING BY FORMER  
CORRECTIONS OFFICER WAYNE ASTILL AT DILLWYNIA WOMEN'S  
CORRECTIONAL CENTRE**

**SUBMISSIONS OF HAMISH SHEARER**

1. These submissions are made on behalf of Hamish Shearer in response to the Closing Submissions of Counsel Assisting dated 6 December 2023 (CSCA).
2. Mr Shearer volunteered a written statement to the Special Commission signed 13 November 2023 that annexed documents he produced: Exhibit 43 AST.002.013.0051\_0001-0027 (**Shearer**). He gave oral evidence under oath before the Special Commission over two days on 16 and 17 November 2023: T2443-2553.
3. Mr Shearer was an honest and forthright witness, who made significant concessions against his own interests. His evidence should be accepted without qualification.
4. Mr Shearer acknowledges and accepts the CSCA save the following submissions relating the *Events between November 2017 and January 2018* contained in sections 6.9 and 7.10.

**6.9 Events between November 2017 and January 2018**

5. Mr Shearer's involvement in these events commenced when he received a phone call from Ms Martin in November 2017: Shearer [51]. Mr Shearer made a contemporaneous handwritten note about that call (AST.002.013.0061\_0015):

*Chief on TA*

- *snippets from inmates*
- *playing inmates against each other*

*Q intel officer – SMAP inmates complained*

*– search that wing*

6. Mr Shearer described this telephone call in his statement at [51]:

*“Shari Martin telephoned me, requesting that I attend the centre to support her in a meeting with Wayne Astill. I remember being told he was a chief on a temp appointment, and complaints had been received suggesting that he was playing inmates against each other. She also advised me there were questions were being raised about the intelligence*

*officer who had directed searches on the cells of the SMAP inmates wing, that were seen as inappropriate or targeted. I got the impression from the telephone call that Shari Martin wanted me to attend the meeting because it would give her message to Wayne Astill more weight.”*

7. Ms Martin gave evidence about this telephone call claiming that she had mentioned “*I don’t know what to do about this man. We have put in reports in on him, but nothing is happening*”. As discussed below (see paragraphs 15(c)-(e)), there is significant evidence that Ms Martin did not have that attitude towards Mr Astill at this time, and therefore would not have said something like that to Mr Shearer. More generally Mr Shearer notes the submissions about credit findings against Ms Martin at CSCA section 6.17.2. Ms Martin’s evidence about her limited memory about these events from November 2017 to January 2018 was challenged (T2394-2398) and should not be relied upon by the Special Commission.
8. Mr Shearer has a recollection of the telephone call and he denied Ms Martin said the words Ms Martin recalled. The Special Commission should accept the evidence of Mr Shearer on this issue. In oral evidence, Mr Shearer explained “- *I recall from that conversation, was thinking the officer was heavy handed and she wanted me to come in to reinforce the message to give him a kick in the backside*”: T2491.39-41.
9. On 22 November 2017, Mr Shearer attended a meeting with Ms Martin and Mr Astill.
10. Mr Shearer in his statement at [52] gave evidence of his memory of the short meeting:
 

*I remember Wayne Astill was brought in Shari office [sic] and the complaints listed above were raised by Shari Martin, who led the meeting. After the allegations had been put to Wayne Astill by Shari Martin, I reinforced to him the importance of him being aware of his personal approach when dealing with female inmates. I also advised him that he needed to be mindful that a lot of these women had suffered physical and sexual abuse in the past and because of this he needed to manage the women differently because he was seen as heavy handed. I don’t recall Wayne Astill saying anything at this meeting. The meeting was short.*
11. On 16 November 2023, Senior Counsel Assisting put to Mr Shearer (T2492.29-2493.2) that on 22 November 2017 he was confronted with multiple allegations of misbehaviour by Astill in relation to a multitude of inmates with reference to a document Mr Astill

prepared dated 25 November 2017 (Exhibit 39, CSNSW.0002.0023.2977-2980): *“Is that what was discussed at the meeting, multiple allegations?”*

12. Mr Shearer responded *“No, it wasn't. I can recall the meeting. It was conducted in Shari's office. I was acting in the AC's 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.”*
13. The submission at CSCA [1011] does not reflect Mr Shearer's evidence to the extent it might be taken to suggest that he accepted that allegations of serious misconduct, as listed in [1010] were likely discussed at the meeting on 22 November 2017. At T2494.8ff, Mr Shearer was examined on Mr Astill's document. Mr Shearer gave evidence at T2494.9-10 that he did not dispute that the three numbered points were raised. This evidence is consistent with his earlier evidence that the meeting was short and that he was made aware of complaints that Astill was being heavy handed, wasn't showing the appropriate approach to managing female inmates, was playing inmates off each other and there were concerns that he had directed searches that were inappropriate or targeted. Mr Shearer gave evidence that when he read Mr Astill's document he *“can recall being shocked when I read this and thinking to myself I wasn't expecting it”*: T2494.8-9.
14. Mr Shearer's evidence, which the Special Commission should accept, directly contradicts the submission at CSCA [1034(a)] that a number of allegations against Mr Astill including all of those summarised at [1010] were discussed. The Special Commission should not accept Counsel Assisting's submissions on this issue or make this proposed finding.
15. There are further circumstances that strongly suggest that the Special Commission should not find that information disclosing numerous allegations of misconduct, other than that described in paragraphs 10-12 above, as detailed in CSCA [1010] were discussed at the 22 November 2017 meeting:

- a. First, Mr Astill’s document was commenced “*I would like to make you aware of certain matters*”. The inference from the document is that what follows is additional information not raised at the meeting. The information under “*Fear of reprisals*” (the most serious of the numbered points) suggests that all that was raised in the meeting was the targeted searches in the SMAP that inmates complained about referred to in the original telephone call.
  - b. Second, Ms Martin never forwarded Mr Astill’s document to Mr Shearer, despite not going on holiday until late December. This failure is completely contrary to the suggestion that allegations of serious misconduct were raised at the meeting. Mr Shearer does not receive the document until 3 January 2018 directly from Mr Astill and after a decision has been made to have a mediation.
  - c. Third, Ms Martin reappointed Mr Astill to his temporary higher duties on 24 November 2017: see CSCA [132]-[134].
  - d. Fourth, on 17 December 2017, Ms Martin sent an email to Mr Astill and Mr Thomas Woods (Exhibit 34, CSNSW.002.002.0399) about the mediation that was not copied to Mr Shearer. In that email Ms Martin wrote “*As discussed, to end the constant rumours, innuendoes and allegations, a mediation has been determined as one strategy to reduce the risk of further misunderstanding and complaints made against you by inmates*” suggesting that she did not believe the allegations in Mr Astill’s document.
  - e. Fifth, after the mediation Ms Martin told Ms Johnson that the inmates were making it up: see CSCA [1034(e)], [1035]. Counsel Assisting have submitted that this approach was consistent with Ms Martin’s response to complaints of inmates about Astill. It is inconsistent with these submissions to find that Ms Martin would have disclosed serious allegations in the meeting and treated the meeting as about the alleged misconduct rather than performance management as to Mr Astill’s manner towards inmates. The Special Commission should not be satisfied that Ms Martin was transparent with Mr Shearer about the allegations surrounding Mr Astill.
16. As to the mediation, the Special Commission should accept Mr Shearer’s denial (T2449.16) of the allegation that the mediation was his idea and should not make the proposed finding at CSCA [1034(b)] with reference to Mr Shearer:

- a. Ms Martin receives Mr Astill's document on or about 25 November 2017. It is unlikely that any decision as to next steps was taken before that document. Ms Martin did not forward that document to Mr Shearer, which is inconsistent with her evidence that Mr Shearer would have directed the mediation.
  - b. The discussion Ms Martin refers to in her 17 December 2017 email to Mr Astill to end the constant rumours, innuendoes and allegations, could not have occurred until after Mr Astill prepared his document detailing the so-called rumours and innuendos. Mr Shearer is not copied or forwarded Ms Martin's email, which would be expected if he had directed and mandated the mediation.
  - c. Directing a non-disciplinary or non-misconduct approach towards Astill is consistent with Ms Martin's apparent conduct in relation to the serious allegations in IR-16-2783: see CSCA section 6.4, particularly at [927]-[929], [932] in counselling Mr Astill. The non-misconduct approach, using mediation, is also consistent with Ms Martin's disbelief of the allegations and reappointment of Mr Astill to his temporary higher duties: see paragraphs 15(c)-(e) above.
  - d. There is evidence from Witness B that Ms Martin threatened her to participate in the mediation: CSCA [1015]. This conduct suggests a real investment that Ms Martin had in the mediation process.
17. Subject to the qualifications above as to [1034(a)-(b)], Mr Shearer supports the proposed findings in CSCA [1034].
18. As to CSCA [1034(d)], Mr Shearer supports the proposed finding as to the unsatisfactory outcome of the mediation which reflect the true state of affairs but notes that on 13 February 2018, he received a summary report from Mr Woods about the mediation: CSCA [1027]. That report (Exhibit 34, CSNSW.0002.0023.3543-44) claimed on its face that the issues the subject of the mediation were resolved.
19. Mr Shearer explained in his statement at [58]: *"I read the mediation outcome document and relied upon the in summary conclusion from Woods to conclude at the time that the issue had been resolved."*
20. In oral evidence Mr Shearer explained at T2502.22-30 that he allowed the mediation to proceed because:

*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.*

21. In oral evidence Mr Shearer explained at T2500.43-46, in agreeing that mediation was not a satisfactory resolution of the matters raised on 22 November 2017 or Mr Astill's document, that: *"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."* He added *"knowing, acknowledging that misconduct, the mediation process was not the right forum. It shouldn't have been dealt with ..."*.

#### **7.10 Events between November 2017 and January 2018**

22. In making submissions about the breaches of legislation, Mr Shearer first again acknowledges his personal and professional failure in not taking further steps to ensure that the complaints and information he was made aware of about Mr Astill in November 2017 to February 2018 were properly reported and investigated: see similar acknowledgments at T2501.1-2502.14.
23. Counsel Assisting submit that it is open for the Special Commission to conclude that Mr Shearer breached cl 253(2): CSCA [1200]. Mr Shearer understands that CSCA [1202] repeats the proposed finding at [1200] and does not relate to other conduct.
24. For the reasons outlined above, the Special Commission should only be satisfied that Ms Martin reported to Mr Shearer the matters described in paragraphs 10 and 12 above. Counsel Assisting in their submissions, however, proceed on their proposed finding, CSCA [1034(a)], that from 22 November 2017 Mr Shearer knew at least the information described in CSCA [1010] and that information had been reported to him by Ms Martin. There is no evidence of any communications between Ms Martin and Mr Shearer after 22 November 2017.

25. Mr Shearer did not make any concession in his evidence to qualify his evidence that his belief after the 22 November 2017 meeting, see paragraph 12 above, “*At that stage, I interpreted that to be a performance matter and that he wasn't showing the appropriate approach to managing female inmates.*” This evidence should be accepted, and the Special Commission should not be satisfied Mr Shearer held a belief at that time that the allegations he knew on 22 November 2017 would provide sufficient grounds for taking proceedings under s. 69 *Government Sector Employment Act 2013*. It is open for the Special Commission to conclude that Mr Shearer did not breach cl 253(2) at this time and the evidence available to the Special Commission does not support a finding that he did.
26. It is obviously a completely different factual circumstance, on and from 3 January 2018, when Mr Shearer read Mr Astill’s document. His evidence was he was “*shocked*” when he read Mr Astill’s document. The concessions Counsel Assisting have identified were made with respect to that document and Mr Shearer’s conduct and belief on and after 3 January 2018. Mr Shearer agrees that it is open for the Special Commission in light of those frank concessions to find that he had information about allegations of “*other misconduct*” within the meaning of cl 253(1) or information about allegations that would provide sufficient grounds for taking proceedings under s. 69 *Government Sector Employment Act 2013*.
27. On 3 January 2018, Mr Astill, not Ms Martin, provided his document to Mr Shearer.
28. A consequence of the statutory construction Counsel Assisting give to *senior correctional officer* at CSCA [203] is that the obligation under cl 253(2) depends on a report under cl 253(1). Counsel Assisting are plainly correct in their construction given to *senior correctional officer* in cl 253(2). A further consequence of this construction taking into account the phrase “*an allegation is made*” in cl 253(1) is that cl 253 in its natural and ordinary meaning mandates and regulates chain of command reportage and does not create a general obligation to report information known about such allegations.
29. Although, Mr Astill refers to allegations made about him and he makes various admissions in his document dated 25 November 2017 the provision of the document with such information to Mr Shearer as a retort to allegations does not appear to be either:
- a. *an allegation made to a correction officer* within the meaning of cl 253(1); or

- b. a *report* of the allegations made under cl 253(1), that is the precondition to cl 253(2).
30. Further, cl 253(1) creates an obligation on a correctional officer to report an allegation made to them about *another correctional officer*. Mr Astill's report, if the document be that, of allegations made against him could not constitute a report for the purposes of cl 253(1) or therefore cl 253(2).
31. It is clear, as Mr Shearer frankly admitted in his evidence, that Mr Astill's document and the information within should have been reported to PSB, the NSW Police and/or the Commissioner or Assistant Commissioner – these submissions are directed only to the issue if as a matter of statutory construction on the provable facts there has been a breach of cl 253.
32. It might be arguable that the receipt of Mr Astill's document means that with the benefit of additional information from Mr Astill about or in addition to the allegations reported to him by Ms Martin in November he had an obligation under cl 253(2) due to a belief formed at that time or an independent obligation under cl 253(1) as Mr Astill had made allegations against himself. As to the latter possibility, Mr Astill's document as a report or retort does not appear to make an allegation against himself to Mr Shearer within the meaning of *an allegation made to a correctional officer* in cl 253(1).
33. Further, cl 253, is drafted using language to regulate conduct after the making of an allegation to a correctional officer and the subsequent reporting by that correctional officer to a senior correctional officer. In its natural and ordinary meaning, the clause does not address the situation Mr Shearer faced where the reporting correctional officer withholds, misrepresents or does not have information that is subsequently disclosed by the accused to the more senior correctional officer. It is submitted 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.
34. Counsel Assisting have recognised at CSCA [800]-[803] that it was unclear at the time how cl 253(2) might be complied with from senior corrections officers like Mr Shearer and others. Similar observations could be made about someone in the position of Mr Shearer under cl 253(1) to whom allegations are made where the persons in PSB or IB to whom reports could be made would be the same, not higher, seniority. CSCA [1202]



records Mr Shearer concession that he should have reported the allegations to an officer more senior in rank and should have referred the allegations to the PSB, or the NSWPF (through the IB) – had he done so he would, based on the Counsel Assisting’s proposed findings, however, still have breached cl 253(2). The obligation under cl 253(2) would only be satisfied by reportage to the Commissioner. Proposed recommendation 28 recognises in general terms that cl 253 should be amended with a uniform reporting obligation, and presumably general reporting obligation, that may address these issues and the further matters raised in paragraphs 32-33 above.

35. Mr Shearer respectfully submits that its open for the Special Commission to find that he should have reported Mr Astill’s document to PSB, the NSW Police or his superiors but not find or report that he breached cl 253. Mr Shearer, otherwise subject to these submissions, acknowledges and accepts the findings Counsel Assisting submits should be made against him.

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