

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

CLOSING SUBMISSIONS FILED ON BEHALF OF MICHAEL HOVEY

Introduction

1. These submissions are filed on behalf of Michael Hovey in response to the submissions filed by Counsel Assisting.
2. Mr Hovey was at all material times an employee of Corrective Services NSW. In January 2014, he was appointed temporary Director of the Investigations Branch (**IB**), which branch had shared responsibility for investigating allegations of staff misconduct.¹ From late 2015 up until December 2022, he was in that role on a permanent basis.²
3. Mr Hovey agrees with Counsel Assisting's submission at [1226], accepting that there were serious problems with the operation of the IB during the relevant period. Mr Hovey respectfully commends that putative finding to the Special Commission. Mr Hovey submits that the impersonal formulation which is proffered is both fair and accurate.
4. Mr Hovey submits that his personal conduct and performance as Director of the IB should be considered by the Special Commission having regard to all the responsibilities imposed on him, the structures, and processes under which he worked, and the resources available to enable him to discharge his duties. My Hovey's considerable duties included managing and reviewing the work of intelligence analysts (in the relevant period he and 1 to 2 people dealing with approximately 200 complaints), he was member of the Professional Standards Committee (**PSC**), he managed the vetting of potential corrections officers (in itself a major task), he referred matters to the PSC and, in the absence of an Investigation Manger, he managed the investigations approved by the PSC, and he referred matters to Corrective Services Investigation Unit (**CSIU**) and provided assistance to CSIU investigators.

¹ Exhibit 32: Statement of Michael Hovey dated October 2014, paragraphs 5 and 15; T P1856.

² Exhibit 32: Statement of Michael Hovey dated October 2014, paragraph 6; T P1857.

5. Mr Hovey submits that the Special Commission should accept Counsel Assisting's submission at [1773] that he was a frank witness – even to a fault. During his evidence Mr Hovey was, at times, so willing to accept criticism of the performance of IB, that he agreed with personal criticism(s) without clarifying, or providing detail which would place the issues of his personal performance in its proper context.³ The Special Commission would, of course, understand that that Mr Hovey's failure to fully and properly explain his personal performance in those instance can be understood, in large part, by the absence of legal representation throughout the hearing.
6. As to the submissions Counsel Assisting direct at Mr Hovey which are personally critical of him, he submits that the Special Commission should be disinclined to publish findings in those terms. In Mr Hovey's submission, to criticise him personally rather than focus on the structural, systemic, and human factors affecting the work of the IB, are unnecessary, and would, in the circumstances of this case, be unfair.
7. Mr Hovey joins the submissions of Counsel Assisting at [28] to [30] regarding the staffing and procedures within the IB. He further joins the related submission at [1126] about the failure to review and act upon IRs in a timely way. However, while accepting that there were deficiencies in the IB's performance during the relevant period, Mr Hovey submits that an adverse finding in the form proffered by Counsel Assisting at [1187], to the effect "that he failed in the discharge of his duties" is unnecessary, having regard to his many roles and responsibilities and the chronic lack of resources available to assist him in the discharge of his duties.
8. Mr Hovey gave evidence at various stages in his examinations in relation to the challenges he and the IB faced examples include:

At T 1987.5:

MR HOVEY: As I said in my testimony on Wednesday, Ms Casey started as an Administration Officer within the branch and basically just due to the fact that I didn't have the intelligence cover and I can see from the dates here in the end of July 2018, she moved into the intelligence role, but, as you may recall, I did describe around that time she was also performing the function of screening for new officers starting at the academy. So it was probably a 80/20 per cent ratio, but only 20 per cent of the work she was doing was on intelligence. The majority of the work was on screening for new employees

³ T P 1917 – T P1984

At T 1987.25-.30.

MR LLOYD: But obviously, from what you told us on Wednesday, whatever she was doing in that proportion of her work, wasn't nearly sufficient to be able to read all the reports that were coming in.

At T 1987-1988.

MR HOVEY: The answer to that is yes. The volume of work that that unit has is too much for one person anyway. It needs more people. So to actually reduce the capacity of one person severely impacted the intelligence function within the branch. [T 1987.20]

MR LLOYD: How are we to reconcile those entries with no one performing the role in intelligence analysis of reading intelligence reports?

MR HOVEY: Yeah. It's - it's my recollection that Mr Tayler actually took up another position within the organisation and the way that - at that time, the way that some systems operated was - I suspect Mr Tayler was held against that position while he did duties elsewhere, but that's - that's my recollection. I - I'm not saying that is definitely the case.

MR LLOYD: So a misdescription in the sense that he remained technically employed as an intelligence analyst throughout this year but, in fact, was doing a different job; is that, in effect, what you're saying?

MR HOVEY: Yes.

9. The absence of legal counsel for Mr Hovey aside, the putative finding at [1187] does not do justice to the extensive organisational failures which led to Mr Astill's offending going unnoticed by the IB. Mr Hovey submits that the failures of IB should be understood by the Special Commission in the context of the problematic structure of the Governance and Continuous Improvement Division; the fractured system of reporting misconduct; the compartmentalisation of information flow; the IBs over-extended responsibility for a diverse array of functions; the under resourcing and understaffing affecting the IB.

Problematic corporate structure

10. The IB included the variously named Special Investigation Unit (**SIU**) as it was known until 2008, after which time it was renamed the Staff Intelligence Unit, and the CSIU. Although this structure was not the subject of extensive evidence from Mr Hovey, he wishes to make clear for the Special Commission that the SIU was an intelligence driven unit whose function was to analyse intelligence reports (**IRs**) received from facilities to identify matters for investigation, while the CSIU was an investigative unit whose function it was to investigate allegations of criminal conduct within corrective facilities.

11. The intelligence and investigative functions of the IB were separate from, but dependent upon the approval from the Professional Standards Committee (**PSC**) and, in the case of misconduct investigations, were closely related to the work of PSB. The intelligence analysis function which ought to have been the sole focus of the IB intelligence analysts, was separate from that of the Corrections Intelligence Group (**CIG**). The result was, as Counsel Assisting put it, an “elaborate system of referrals and cross referrals.”⁴ The submissions of Counsel Assisting at [30] recognise that Mr Hovey and the IB did not have authority to unilaterally commence an investigation into staff misconduct. Such decisions were made by the PSC and then matters for investigation referred by the PSB.
12. In a similar vein, the submission of Counsel Assisting at [764], does, with respect, correctly recognise that the SIU within the IB was responsible for referring to the PSB and PSC cases for investigation based on analysis of IRs. As Counsel Assisting submit, if an analyst made a judgement that an IR did not disclose misconduct, or relevant IRs were not reviewed, or relevant connections were not made between sequential IRs, then matters which ought to have been investigated were not, because no referral would be made to the PSB or PSC. Mr Hovey concurred with Counsel Assisting that the system was problematic.⁵
13. Yet, Counsel Assisting submit at [1185] that in September 2017, upon the IB becoming aware of the allegations contained in IR-17-2051, it became necessary for IB to refer the allegation to the CSIU. Mr Hovey’s gratuitous concurrence notwithstanding, the evidence reveals that the proper procedure at that time, as implicitly acknowledged by Counsel Assisting at [764] and [974], was referral to the PSB for consideration by the PSC. The SIU/IB did not have imprimatur to initiate investigations,⁶ it referred matters to the PSB and PSC for consideration of whether an investigation was warranted.
14. In any event, the submission which is advanced by Counsel Assisting at [1188], inviting the Special Commission to make the very serious finding that Mr Hovey failed in the discharge of his duties, proceeds from a misinterpretation of his evidence, and overlooks important detail. Mr Hovey’s evidence, on which Counsel Assisting relies in advancing the criticisms of Mr Hovey at [974] and [1188], explicitly distinguishes between the procedure for dealing with two different tasks: an intelligence focussed inquiry and a criminal investigation.⁷ The overwhelming preponderance of evidence received by the Special Commission, reveals that the latter type of matter required approval from PSC before a referral was made to the IB.

⁴ T P1935.35

⁵ T P1872; Counsel Assisting Closing Submissions at [764].

⁶ T P1933.10-13.

⁷ T P1931.12-15.

15. Furthermore, the submissions of Counsel Assisting at [1185] to [1186], which seek to lay the foundation for the criticism of Mr Hovey at [1185], do not grapple with the detail of the evidence concerning the investigation conducted by officers within the correctional centre. There is no evidence that Mr Hovey was involved in the decision of Mr Paddison to conduct or participate in the investigation concerning Witness M. This is borne out in Counsel Assisting's analysis at [975], which is, with respect, the correct approach. Mr Hovey gave evidence that he would not have been aware of conversations between Mr Paddison and CIG,⁸ and said that such investigation practices should never occur.⁹ Mr Hovey was not challenged on any of that evidence, and the evidence does not contradict him.
16. Mr Hovey invites the Special Commission to infer that Corrective Services NSW recognises that the structure under which the IB was operating combined with a lack of resources were critical causative factors in the failure of IB to identify Mr Astill's offending. The evidence reveals that Corrective Services has since taken steps to rectify some of the obvious structural issues. That is, the evidence reveals that in February 2023, the IB and the PSB were merged to create the new Professional Standards and Investigations unit (**PSI**) and model for misconduct investigations.¹⁰

Fractured reporting lines and training issues

17. Although Mr Hovey is not aware of the detail of the new model under which PSI will conduct misconduct investigations, he respectfully submits that Corrective Services NSW and the PSI would be assisted by the Special Commission making findings about the fractured reporting lines which has been highlighted in the evidence.
18. As the submissions of Counsel Assisting identify at [930], there were occasions upon which allegations were not made known to the IB. Some reports were filed and dealt with locally within a corrective facility when reported to Governors. It follows that even if the IB had been fully resourced, including with adequate numbers of analysts devoted solely to identifying patterns of complaints and instances of misconduct, not all relevant information was being sent to the IB and the IB had no knowledge of, or authority to gain access to the information referred to the Governor.
19. Mr Hovey respectfully submits that the Special Commission should consider recommending a framework not dissimilar to that which is used in the management of police misconduct. That is, all information, intelligence and allegations of misconduct should be centrally filed

⁸ T P1934.10-15.

⁹ T P1934.17-30.

¹⁰ Exhibit 47; Counsel Assisting Closing Submissions at [42] and [43].

with the PSI, subjected to the scrutiny of dedicated staff who have the information, training and time to analyse relevant data. Where explicit allegations of misconduct are received, or intelligence which reveals patterns consistent with a risk of misconduct are identified, they should be investigated by suitably qualified and experienced independent investigators. Only where the data confirms that the alleged conduct is of a managerial nature, should cases be remitted to the Governor of a correctional facility for action.

20. The response by IB and Mr Hovey to IR-16-2783 is a case in point. Although the intelligence analyst was able to link IRs 16-2783 and 17-2051, they were dismissed on the basis that the reliability of the sources could not be assessed, and the validity of the information cannot be judged. Mr Hovey explained that part of the matter was the analyst he relied upon was trained.¹¹ This evidence highlighted some of the training issues disclosed by the evidence.

Compartmentalisation of information flow

21. As Counsel Assisting recognises at [33], when correctional officers completed an IR, they could determine whether to direct it to the CIG or SIU/IB. For non-SIU/IB reports, the Governor of the correctional centre from which the IR was sent would ordinarily be notified. In the result, the IB had an incomplete picture. The example of the “Poppy” issue in the complaint about Ms Dolly is an instructive example. As Counsel Assisting observes at [1068] to [1071], that information was compartmentalised at the DCC, the PSB and PSC. As Counsel Assisting notes at [1189], there was a similar failure by the PSB in October 2017.

Over-extended responsibility and under-resourcing

22. The substance of Mr Hovey’s evidence was that the IB was, in a word, overstretched. The vital function of intelligence analysis, through which Mr Astill’s offending might have been identified sooner, had split focus and was a unit in name only. As Counsel Assisting recognises at [29], the IB had limited staff to analyse IRs, typically having only one, but at times two, intelligence analysts.¹² An intelligence analyst would test the information contained in IRs to see if it was capable of substantiating a complaint, and if so, it would be reviewed by Mr Hovey before being referred to the PSC.¹³ If accepted by the PSC it would then ‘come full circle’ and be referred back to the IB and allocated to an CSIU investigator for investigation¹⁴

¹¹ T P1929.8-16.

¹² Exhibit 32: Statement of Michael Hovey dated October 2014, paragraphs 9 and 35 (Sarah Casey); T P1857.

¹³ Exhibit 32: Statement of Michael Hovey dated October 2014, paragraph 35.

¹⁴ Exhibit 32: Statement of Michael Hovey dated October 2014, paragraph 49.

23. As Counsel Assisting aptly put the issue at [764], the person in that role had “competing priorities”. The analysis of intelligence to identify patterns of serious misconduct, had to give way to employee screening for the purposes of recruitment, which resulted in IRs not being read and a back log.¹⁵ As the Special Commissioner noted,¹⁶ there were some 200 or more complaints received per annum and the evidence indicates there were only one or perhaps two Intelligence Analysts. As Counsel Assisting further submit at [764], the split focus of the intelligence analyst represented a very significant risk that misconduct would not be identified. Mr Hovey submits that the Special Commission should find that the failures of the IB were organisational in nature, as opposed to any disinclination on the part of the staff to refer serious criminal cases when they became known. As demonstrated in October 2018, and apparently accepted by Counsel Assisting at [765], when serious reports were explicitly brought to the attention of the IB, they were promptly and properly actioned on 9 October 2018 [T -2036 at 20 -25].
24. The response to IR 18-1378 is a case in point. As Counsel Assisting observe at [1226], there was a delay of 10 months between the submission of the IR (on 6 June 2018), and it being reviewed by the SIU/IB (on 12 April 2019) and 11 months before it was reviewed personally by Mr Hovey (on 28 May 2019). Mr Hovey accepted that the delay was unacceptable and explained that there was a serious resourcing problem. Mr Hovey submits that the resourcing issues he confronted is borne out by the evidence, identified by both the Special Commissioner and Counsel Assisting during the hearing.
25. Although Counsel Assisting’s submission at [766] are critical of Mr Hovey’s request that the backlog of IRs be reviewed from most to least recent, as exacerbating the risk that serious misconduct would go unidentified for even longer, whichever order was taken to the review of IRs there was an extant risk that misconduct would go unidentified given the limited, frankly insufficient resources available to the IB intelligence function. The only adequate solution, and the one which Mr Hovey implores the Special Commission to focus recommendations, is an increase in resources and staff.

Conclusion

26. Mr Hovey cooperated with the Special Commission throughout its investigation, including voluntarily providing a witness statement, and making himself available for hearing days at short notice. He appeared without legal representation, and readily accepted the failures of the IB and its sub-units while under his management.

¹⁵ T P1871.6-17

¹⁶ T P1921.25

27. Mr Hovey respectfully submits that publishing personal criticisms of him in a public report based on what he could or ought to have done are unnecessary. Such criticisms would not serve the public interest of ensuring that the systemic and organisational issues affecting Corrective Services NSW during the relevant period – which might have allowed Mr Astill’s offending to go unactioned – are prevented from occurring in the future. Furthermore, such criticism would not justly reflect the limitations placed upon him personally and the IB at the time.

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