

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

**Submissions on behalf of Ms. Shari Martin**

**Introduction**

1. These written submissions respond to three parts of the written submissions of Counsel Assisting dated 6 December 2023.
2. The structure of these submissions is as follows. The first part of the submissions will address the submission of Counsel Assisting (“CA”), which relates to the alleged offence at common law of misconduct in public office in respect of Ms. Martin’s report to the Investigations Branch concerning Ms. Cox’s conversation with Ms. Martin in April/May 2028. The next part of the submissions will address the submission of Counsel Assisting, which relates to the alleged offence at common law of misconduct in public office, and pursuant to the *State Records Act* 1998, in respect of the allegation that Ms. Miskov’s report of criminal conduct by Mr. Astill against Ms. Miskov was torn-up by a female corrections officer “assumed” to be Ms. Martin. The third part of the submissions will address Counsel Assisting submissions that Ms. Martin was an unreliable witness.

**Part I**

**Reporting Ms. Cox’s allegations to IB: no bad faith on the part of Ms. Martin**

3. Ms. Martin first submits, with respect, that the Commission should not refer Ms. Martin to the Director of Public Prosecutions to seek advice about the commencement of criminal prosecutions for the common law offence of misconduct in public office supposedly because she reported the relevant allegation to the Investigations Branch but not also the New South Wales police force. It is highly unlikely that the mental element or fault element of the offence would be established beyond a reasonable doubt.

4. Dominating CA's submissions with respect to Ms. Martin is their most conspicuous feature: the submissions – entirely appropriately given the evidence before the Commission - fail to suggest any proscribed purpose or malign motivation, driving Ms. Martin's conduct with respect to Mr. Astill, during her dual tenure of the governor positions at Emu Plains Correctional Centre and Dillwynia Women's Correctional Centre.
5. The evidence before the Commission plainly established that there was no relationship between Mr. Astill and Ms. Martin that would cause Ms. Martin to conduct her public duty in bad faith with respect to Mr. Astill.
6. Despite Mr. Astill apparently falsely telling some inmates, and some correctional officers, that he had some sort of special protected relationship with Ms. Martin, it was pellucidly clear from the evidence that the two 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. In the email transmissions that are in evidence passing between Ms. Martin and Mr. Astill there is not a skerrick of evidence to suggest that Ms. Martin had any motivation or reason to exercise her duties with bad faith insofar as Mr. Astill was concerned.
7. Nor was there any suggestion whatsoever that Ms. Martin received any bribe, pecuniary or other benefit from Mr. Astill, or had any conflict between her duty and interests arising from her purely professional interactions with Mr. Astill. Ms. Martin and Mr. Astill had purely professional interactions and even those interactions were minimal. At no stage in his career at NSW corrections did Mr. Astill seek a reference from Ms. Martin.
8. Establishing a dishonest, corrupt or malicious *motivation* of the relevant public official is often relevant in establishing the common law offence of misconduct in public office: *Shum Kwok Sher v Hong Kong Special Administrative Region* [2002] HKCFA 27; (2002) 5 HKCFA 381 at [83], [63] and [73] per Sir Anthony Mason NPJ. That is because while the offence is not restricted to cases of corruption or dishonesty (none of which is of course suggested against Ms. Martin), the element of culpability must be such that the misconduct impugned is calculated to injure the public interest: *Shum Kwok Sher, supra* at [77] and *R v Dytham* [1979] 1 QB 722 at 728 (Court of Appeal).

9. The well-established and well-known legal principles applicable to the offence contemplated by CA should be borne in mind, with respect. Namely, a mistake by a public official, even a serious one, will not suffice to constitute the offence of misconduct: *Shum Kwok Sher v Hong Kong Special Administrative Region* [2002] HKCFA 30 at [75] per Sir Anthony Mason NPJ. Neglect or inadvertence on the part of a public official is not an element in the offence that CA have suggested might be considered in the case of Ms. Martin: see *R v Dytham* [1979] 1 QB 722 at 727 and *R v Llewellyn-Jones* [1968] 1 QB 429 at 436-437 (Court of Appeal). Simply because a particular decision might be seen to be wrong-headed, does not mean that the person who made it will be indictable: *R v Young* (1758) 1 Burr 556; 97 ER 447.
10. In the absence of any proscribed motivation on the part of Ms. Martin, the forensic implications are plain. It is highly unlikely that the mental element or fault element for the suggested common law offence would be established beyond a reasonable doubt.
11. Inadvertence, neglect or a mistake caused by confusion, erroneous assumption, exhaustion, mental illness, trauma, or simply the strains of working at two, geographically-separate correctional centres, with oversight of hundreds of high-needs female prisoners, hundreds of correctional officers and non-corrections staff, all in circumstances where there was no effective direction from her immediate chain of command (indeed, the gravamen of Mr. Shearer's own evidence before the Inquiry appeared to be that he was incompetent and not equipped by experience, training or personality for his role of Director) are all much more likely explanations for why Ms. Martin would report Ms. Cox's allegations to the Investigations Branch but not also go the further step of reporting the allegation to the NSW police force.
12. The offence is also unlikely to be established for the following additional reasons:
13. First, for the reasons set out at [1572] in CA's submissions, which are adopted in these submissions, there was in fact no clear policy in place in April/May 2018 that required Ms. Martin to make a report to the New South Wales Police force, in addition to the Investigations Branch. For the suggested offence to be established, the duty has to *exist* at the time of the alleged offending conduct: see *R v Quach* [2010] VSCA 106; (2010) 27 VR 310 at [36] per Redlich JA.

14. Secondly, within Mr. Hovey's command at the Investigations Branch, New South Wales police detectives were working, including in the Corrective Services Investigation Unit. Mr. Hovey could refer matters to CSIU<sup>1</sup> and had the authority to approve certain NSW police force operations being undertaken at corrections service property.<sup>2</sup> There is no logical reason why reporting to a State entity that included NSW police detectives serving within it, or whose director had the ability to refer matters to the NSW police, was not sufficient to discharge Ms. Martin's obligations. CA's implicit submission that Ms. Martin had to adopt a 'belt and braces' approach is a counsel of perfection, and is one framed with the benefit of hindsight. No pre-2018 contemporaneous policy in place requiring the 'belt and braces' approach to reporting ever existed. Moreover, and critically in the context of the offence suggested, there is no evidence to support a submission that such a policy was brought to Ms. Martin's actual attention at that time, such that a failure by her to make the supplementary report now suggested by CA, might be capable of amounting to *wilful* misconduct or assessed as being calculated to injure the public interest.
15. It was never put to Ms. Martin at the Inquiry that her conduct in causing a report about Elizabeth Cox's April/May 2018 allegations to be sent to the Investigations Branch, sitting within the Governance and Improvement Division of Corrective Services New South Wales could be conduct "calculated to injure the public interest." It was never put to Ms. Martin at the Inquiry that her failure to cause a report to go to the NSW police force involved conduct "calculated to injure the public interest." As a matter of fairness, the allegation should not be referred. Ms. Martin was not taken to any policy which she supposedly had ever read and understood; and it was not then put to her that she had acted in breach of the policy with the requisite mental element.
16. Ms. Martin would have been entitled to assume first, that the Investigations Branch, with its investigators and intelligence analysts was the appropriate repository of her report. Ms. Martin would further be entitled to assume that if the Investigations Branch were the wrong repository of the report of Elizabeth Cox's April/May 2018 allegations, that Investigations Branch would have forwarded the report to the correct place. Why it is the case that IB,

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<sup>1</sup> Transcript, 8 November 2023, p. 1863/1 – 10.

<sup>2</sup> Transcript, 8 November 2023, p.1863/24 – 34.

assuming IB should not have received the report, would then, upon receipt of the report, simply passively sit with the report and not refer it on to the NSW police force if IB thought that necessary, is an unpersuasive implicit assumption in CA's submissions, and a scenario that Ms. Martin could not have contemplated.

17. Thirdly, there was the unchallenged evidence of Mr. Greaves that from "*time to time*", referrals were made directly to the Investigations Branch, apparently following a referral from a Governor or other person. Mr. Greaves did not suggest that CSNSW took any steps to discipline Governors who made such referrals.<sup>3</sup>
18. Fourthly, the admission and agreement of Mr. Greaves that during his time in PSB there was an "unsatisfactory situation" in terms of overlapping policy documents in relation to reporting misconduct<sup>4</sup> and no dedicated IT system for reporting allegations of misconduct,<sup>5</sup> makes it clear that the lines for reporting were not clear.
19. Fifthly, the submission of CA that relies on what Mr. Giles says, in 2023, he would have done (see CA submissions at [1569] and [1570]), is, with respect, a particularly flimsy and non-persuasive submission that the Commission should reject. Mr. Giles's claim in 2023 about reporting, stands in sharp contradiction to his own conduct and non-reporting of allegations of criminal conduct that CA suggests Mr. Giles knew about, at material times during Mr. Astill's term of employment at Dillwynia Women's CC. In addition, Mr. Giles is not qualified to give evidence about the scope of a governor's reporting obligation and a governor's knowledge of what policy was in place at the relevant time. Finally, his evidence cannot be relevant to the question whether Ms. Martin's failure to engage in 'belt and braces' reporting of Ms. Cox's allegation involved wilful misconduct on her part, for the purposes of the suggested common law offence.
20. The final point relevant to this topic relates to what Ms. Cox in fact told Ms. Martin. The focus of the preceding submission is on the unlikelihood of the metal element of the common law offence being established beyond a reasonable doubt. That submission applies even if CA's submission is accepted (and Ms. Martin respectfully submits that it

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<sup>3</sup> Transcript, 13 November 2023, p. 2124/26 – 35.

<sup>4</sup> Transcript, 13 November 2023, p. 2130/21 – 24.

<sup>5</sup> Transcript, 13 November 2023, p. 2129/42 – p. 2130/10.

should not be accepted) about what Ms. Cox told Ms. Martin. As to the underlying factual issue, Ms. Martin's evidence is that when Ms. Cox spoke to her, Ms. Cox told her that Mr. Astill had threatened her (Ms. Cox) and Ms. Cox spoke to Ms. Martin in a highly distressed or hysterical state.<sup>6</sup> (Ms. Martin gave the same evidence in her statement to the Inquiry and in her previous statement to the NSW police force in the context of the prosecution of Mr. Astill). Ms. Cox did not, orally to Ms. Martin, say anything about sexual assault allegations.<sup>7</sup> Ms. Martin did not read Ms. Cox's notes.<sup>8</sup> Ms. Martin's focus was to try to calm Ms. Cox down, ensure that Ms. Cox's written notes went to the intelligence officer who was going to evaluate the allegations in the notes, and Ms. Martin sent Ms. Cox to the clinic.<sup>9</sup>

21. It is submitted with respect that Ms. Martin's account should be accepted. There is an inherent implausibility that if someone has set out allegations in a document and handed that document to another person, that they would then also repeat all those details orally. Ms. Martin's account, on the other hand, is consistent with the probabilities of how a person in her position would have reacted when confronted with a distressed inmate stating that she had been threatened by Mr. Astill. Ms. Martin's account also tends to be supported or corroborated by the evidence which shows that Ms. Cox's notes were in fact handed to Ms. Wilson and dealt with by Ms. Wilson.<sup>10</sup>
22. Once it is appreciated that Ms. Martin's evidence about what she was in fact told by Ms. Cox is likely to be more credible than Ms. Cox's account, it will be seen that there is an additional basis for the submission that Ms. Martin's reporting to IB was appropriate, and could not be said to involve wilful misconduct.
23. Further, it is likely that if this matter were ever raised at a criminal trial, it is likely that a jury would accept either Ms. Martin's account or alternatively, the jury would at very least, accept that there was reasonable doubt about any claim that Ms. Cox said to Ms. Martin something more than the fact that Mr. Astill had threatened her.

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<sup>6</sup> Transcript, 14 November 2023, p. 2339/26 – 33.

<sup>7</sup> Transcript, 14 November 2023, p. 2343/12 – 15.

<sup>8</sup> Transcript, 14 November 2023, p. 2342/36.

<sup>9</sup> Transcript, 14 November 2023, p. 2342/36 – 42.

<sup>10</sup> Transcript 7 November 2023, pp. 1764/45 – 1765/9.

## Part II

### Ms. Miskov's allegation

24. In response to section 11.1 in CA's submissions, it is respectfully submitted that there is no basis for Ms. Martin to be referred to the Director of Public Prosecutions for anything in relation to Ms. Miskov. Amongst other things, it is highly unlikely that any factual allegation in relation to this matter would be established against Ms. Martin beyond reasonable doubt.

25. It is regrettable that CA has not fairly set out the evidence of Ms. Miskov in section 11.1 in CA's submissions. There is no factual basis for any submission that Ms. Martin tore up anything. At its highest, Ms. Miskov's evidence is that an unknown female in Mr. Paddison's office was present when Ms. Miskov's report was torn-up by someone, after a copy of the report had earlier been handed to the personal assistant of Ms. Martin at a time when Ms. Martin "*was not there.*"<sup>11</sup>

26. A number of aspects of this allegation merit attention.

27. First, the quality of the evidence on this allegation should be considered. Ms. Miskov merely said, in her signed statement, about the meeting where the report was alleged to have been torn up: "*I think Shari was there.*"<sup>12</sup> Earlier in her statement, Ms. Miskov spoke of another earlier meeting she says attended by Mr. Paddison, Mr. Astill and "*maybe Shari Martin.*"<sup>13</sup> It is clear from the terminology used by Ms. Miskov in her signed statement that the female at the two meetings did not identify herself as Ms. Martin. It is also clear that Ms. Miskov did not in fact know Ms. Martin.

28. The failure of Ms. Miskov to identify Ms. Martin became even more entrenched when Ms. Miskov gave evidence to the Inquiry. Ms. Miskov effectively conceded or admitted that she could not identify Ms. Martin when she stated she was merely "*assuming*"<sup>14</sup> it was Ms. Martin. Ms. Miskov conceded that the female "*didn't introduce herself.*"<sup>15</sup> Ms. Miskov

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<sup>11</sup> Transcript, 24 October 2023, p. 716/42.

<sup>12</sup> Exhibit 7, para 22.

<sup>13</sup> Exhibit 7, para 19.

<sup>14</sup> Transcript, 10 October 2023, p. 711/34.

<sup>15</sup> Transcript, 10 October 2023, p. 711/33.

later, once again, made it plain that she was merely “*assuming*” it was Ms. Martin.<sup>16</sup> The Commission should not, it is respectfully submitted, lightly embark on any referral to prosecutorial authorities where that referral is based on nothing more than assumption.

29. Secondly, there is a stark and glaring flaw in the submission by CA that Ms. Martin should be referred in relation to this allegation. CA submits that Ms. Martin “*knew [the report] disclosed an alleged assault by Astill.*”<sup>17</sup> How or why that assertion can fairly be made is not clear. There is no evidence at all to suggest who it was, if anyone, that had actually read the report of Ms. Miskov. There is no evidence at all to suggest that Ms. Miskov, Mr. Paddison or the unknown female at the meeting had any discussion about the topic of any alleged assault by Mr. Astill at this meeting. Ms. Miskov’s evidence about her discussion with the unknown female revolved around an entirely different topic, being whether Ms. Miskov had left the medium needs door open.<sup>18</sup>
30. There is no basis in Ms. Miskov’s evidence to suggest she ever spoke to Ms. Martin about an alleged sexual assault by Mr. Astill against Ms. Miskov. There is no basis in Ms. Miskov’s evidence to suggest she saw anyone read her report or that any female officer had told Ms. Miskov that she had read Ms. Miskov’s report.
31. On the evidence of Ms. Miskov, Ms. Martin did not know of an alleged assault by Mr. Astill.
32. Thirdly, in the circumstances where there is no basis in Ms. Miskov’s evidence to suggest she saw any female corrections officer read Ms. Miskov’s report or that any female officer had told Ms. Miskov that she had read Ms. Miskov’s report, Ms. Martin would be afforded a clear defence to any case based on s. 21 of the *State Records Act* 1998, pursuant to s. 21(5) of that Act. At the time of drafting these submissions I have been unable to locate CA’s submissions about how the defence provided for in s. 21(5) in this Act applies relevantly to this issue. Assume, for the purposes of argument only, that Ms. Martin was the unknown female corrections officer, based on Ms. Miskov’s own evidence, it is readily

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<sup>16</sup> Transcript, 10 October 2023, p. 717/21.

<sup>17</sup> CA submissions [1560].

<sup>18</sup> Please see her statement, Exhibit 7, para 19. But also her evidence at the Inquiry: Transcript 24 October 2023, p. 711/35 – 43.

apparent that if Ms. Martin ever were faced with a prosecution under s. 21 of this Act, that Ms. Martin would establish that she did not know and had no reasonable cause to suspect that Ms. Miskov's report was a "State record", as defined in this Act. On Ms. Miskov's evidence, the female corrections officer attending the meeting in Mr. Paddison's office knew nothing about the contents of the report, let alone that it was in truth a "State record."

33. Fourthly, the implications of the other major strand of Ms. Miskov's evidence are also important to grasp. Ms. Miskov does not suggest that the unknown female was the person who tore up the report. Ms. Miskov's evidence was:

*"To be honest, I can't tell you exactly who ripped the report, it just – I can't remember."*<sup>19</sup>

That admission alone means, almost certainly, that a criminal prosecution would not be able to establish facts necessary to prove this allegation beyond reasonable doubt against Ms. Martin.

34. Fifthly, Ms. Martin has emphatically denied that she said anything about 'dealing with this in-house' and denied tearing up any report of Ms. Miskov: *"No, I wouldn't - wouldn't have torn up a report."*<sup>20</sup> She is likely to do so at any criminal trial if the matter were referred and eventually reached trial. That clear denial, when the allegation was first put to Ms. Martin, is a circumstance that provides a separate and independent reason why it is unlikely that a criminal prosecution would be able to establish facts necessary to prove this allegation against Ms. Martin beyond reasonable doubt.

35. For completeness, it should be noted that in contrast to Ms. Martin's evidence, Mr. Paddison's evidence on this allegation had more of a flavour of not recollecting the alleged incident, rather than denial, although his evidence did suggest that if such a thing had happened, he would have remembered it.<sup>21</sup>

36. The prospects of a case being made out against Ms. Martin for tearing up a report, are poor, given Ms. Miskov's evidence, Mr. Paddison's evidence and Ms. Martin's evidence. Indeed,

<sup>19</sup> Transcript, 10 October 2023, p. 717/30 – 31.

<sup>20</sup> Transcript 13 November 2023, p. 2225/12.

<sup>21</sup> Transcript, 2 November 2023, p. 1528/47-48 and p. 1526/17 – 20.

they are more than poor when one considers, as explained above, that Ms. Miskov does not suggest that there was any discussion at the meeting where the report was torn-up (assuming for the purposes of argument only that it was torn-up) about an alleged assault by Mr. Astill, and Ms. Miskov does not purport to suggest that she saw the unknown female reading the report or saying that she had read the report.

37. Next, there is a likelihood and reasonable inference that the unknown female who attended the meeting in early 2016 where the report was allegedly ripped-up, was a member of the NSW corrections service executive team responsible for Dillwynia, other than Ms. Martin.

38. Ms. Miskov gives evidence of two meetings. The first one was said to be attended by attendees including herself, Mr. Astill and Mr. Paddison.<sup>22</sup> The second meeting was attended by herself and Mr. Paddison.<sup>23</sup> There is no suggestion that Mr. Astill attended the second meeting and so it is clear that two different meetings are being described. At both meetings, there is also present a female and Ms. Miskov speculates that that female is Ms. Martin.<sup>24</sup> Now the Special Commission is aware from Ms. Martin's statement before the Commission, and much other evidence before the Special Commission, that Ms. Martin split her time roughly 50/50 between Dillwynia Women's CC and Emu Plains Correctional Centre and, further, that Ms. Martin also attended a multiplicity of stakeholder/formal meetings at each gaol for much of her time. The Commission is also aware from Ms. Martin's statement before the Commission that she relied heavily on her executive team, who were 'on the ground' all day every day, and responsible at their gaol for dealing with issues that arose, all the more so when Ms. Martin was not present at either of the gaols or may have been present at a particular gaol but was already occupied with other meetings.

39. Ms. Miskov's evidence concedes that Ms. Martin "*was not there*"<sup>25</sup> when Ms. Miskov handed her report to Ms. Martin's personal assistant and that was later allegedly torn-up. Ms. Miskov's evidence also is that the meeting took place not in Ms. Martin's office (the likely location of the meeting if Ms. Martin had attended the meeting) but that she "*was called into Paddison's office.*"<sup>26</sup>

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<sup>22</sup> Exhibit 7, para 19.

<sup>23</sup> Exhibit 7, para 22.

<sup>24</sup> Exhibit 7, paras 19 and 22.

<sup>25</sup> Transcript, 24 October 2023, p. 716/42.

<sup>26</sup> Exhibit 7, para 22.

40. The most likely sequence of events in that context therefore is that when Ms. Martin was not present to deal with the issue that Ms. Miskov had wanted to bring to Ms. Martin's attention, that another member of the executive became involved and attended the meeting (being of course the second meeting referred to in Ms. Miskov's evidence). Further, that the other executive team member in attendance at the second meeting was the same female officer who had attended at the first meeting where Mr Astill had been present, either because, for example, Mr. Paddison saw an advantage in continuity when dealing with Ms. Miskov in having present the same female officer who had been present at the earlier meeting, or it was natural by virtue of the female officer's position (say, for example, the Manager of Security position) that the female officer also be present at this potentially important meeting in the absence of Ms. Martin. As Ms. Martin was not present for the meeting, so the meeting was not held in her office.
41. The final point that ought to be made is that (and assume for the purposes of the argument only that Ms. Martin was the unknown female and she actually read the report) no motivation is suggested by CA for why Ms. Martin would wish in 2016 to rip-up a report from Ms. Miskov about Mr. Astill allegedly assaulting her. There were no close social ties or family ties between Ms. Martin and Mr. Astill to suggest that she would do such a thing as ripping-up Ms. Miskov's report. It is entirely implausible that Ms. Martin would do such a thing.
42. Thus, it is respectfully submitted that when the Commission carefully studies the evidence relating to Ms. Miskov's allegation about her report being torn-up, it readily becomes apparent that the evidence does not support a referral of Ms. Martin for a criminal law prosecution. Both offences suggested by CA are likely to fail on the basis that the facts necessary to establish these offences would not be made out beyond reasonable doubt.
43. The offence suggested under the *State Records Act* is likely to fail for the additional reason that Ms. Martin (assuming again for the argument only that she was the unknown female) would likely succeed in establishing a defence under s. 21(5) of said Act. The common law offence of misconduct in public office is likely to fail, in addition to the factual

problems confronting any prosecution case, on the ground that, in the absence of the prosecution being able to establish any improper motive on the part of Ms. Martin, the mental element for the offence is unlikely to be established: *Shum Kwok Sher v Hong Kong Special Administrative Region* [2002] HKCFA 27; (2002) 5 HKCFA 381 at [83], [63], [73] and [77] per Sir Anthony Mason NPJ; and please see the other cases and submissions on this point set out above in these submissions.

### **Part III**

#### **Ms. Martin's credit**

##### *a) overview of Ms. Martin's submission on her credit*

44. In the next section of these submissions I will address the submission of CA, in section 6.17 of the CA written submissions, that Ms. Martin was not a reliable witness and that in some instances, she knowingly gave false evidence.

45. Ms. Martin's submission is that if her evidence is assessed fairly and objectively, she will be accepted by this Commission as a reliable witness. At no stage has Ms. Martin given evidence that was knowingly false.

46. CA's submissions about Ms. Martin's credit should be treated with great wariness by this Commission. The submissions by CA on Ms. Martin's credit, time and time again reveal, with respect, selectively not referring to important parts of the evidence or misstatements of the evidence. Perhaps the submissions were framed based on an initial case theory that was formulated by CA before the nuance or detail of the evidence was appreciated by CA, or have been framed by CA with a degree of complacency and a disinclination to consider the detail of the evidence. Illustrations supporting this submission are set out immediately below.

##### *b) three illustrations*

47. To illustrate the regrettable approach taken by CA with respect to Ms. Martin's credit, consider the following examples.

48. First, CA's "seventeenth" so-called "incident" (see CA submissions at [1123]). The submission is a serious one that Ms. Martin not only did not recall a conversation with Ms. Deborah Wilson, but that her lack of recollection is knowingly false. The CA submission, oddly, cites no transcript or other evidence from Ms. Deborah Wilson that supports the premise of this allegation. That is, CA does not reference or set out some conversation between Ms. Wilson and Ms. Martin, vividly recalled by Ms. Wilson, but not recalled by Ms. Martin.
49. When one looks at the actual evidence, it is transparently clear that the submission at CA's submissions [1123] is specious. Ms. Martin was asked about whether she remembered, some occasion in November 2017, where Ms. Wilson had told Ms. Martin of an allegation about Mr. Astill touching Ms. Sheiles "on the arse or breast as he brushed past."<sup>27</sup> Ms. Martin's evidence was that she didn't remember.<sup>28</sup> When one goes to Ms. Wilson's evidence on this topic, not only does she not suggest ever reporting this allegation to Ms. Martin, Ms. Wilson herself does not recall Ms. Sheiles telling her (Ms. Wilson) about Mr. Astill touching her "on the arse or breast as he brushed past."<sup>29</sup> The whole premise of the allegation made by CA at [1123] is flawed. To repeat, Ms. Wilson does not suggest she had a conversation with Ms. Martin about this topic. Indeed, Ms. Wilson could not suggest it as she can't even recall Ms. Sheiles telling her about this allegation. The Commission should be troubled by CA making such a serious allegation as that made in [1123] given Ms. Wilson's evidence. Ms. Wilson's evidence on the matter, and the absence of any suggestion she even had had a conversation with Ms. Martin in this topic, should have been brought to the Commission's attention.
50. The submission at CA submissions [1123] should be rejected.
51. Another illustration which highlights CA's approach to the topic of Ms. Martin's credit is the submission about the "sixteenth" so-called incident at CA submissions [1121]. The allegation is that Ms. Martin made a statement in 2017 that she was liaising with Mr. Hovey about an investigation. The allegation by CA is that when she made the statement about the investigation it was "false to her knowledge."

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<sup>27</sup> Transcript, 14 November 2023, p. 2311/20 – 29.

<sup>28</sup> Transcript, 14 November, p. 2311/30.

<sup>29</sup> Transcript, 7 November 2023, p. 1759/18.

52. The submission is plainly bad on a number of levels.
53. First, the Commission has no direct evidence about what Ms. Martin actually said or the words she used and their particular context. There is triple-hand hearsay. That is, there is an email transmission dated 13 October 2017 sent at 2.07 p.m.<sup>30</sup> which records Mr. Greaves, telling Mr. Robinson, what Mr. Shearer had told him, about a communication which Mr. Shearer had had with Ms. Martin! There is nothing stated in the email transmission about the words Ms. Martin actually said either in an email transmission from her to Mr. Shearer or in a telephone conversation between them. The email transmission in fact reflects Mr. Greaves' own interpretation or summary of things that Mr. Shearer had told Mr. Greaves. That it is Mr. Greaves' interpretation or summary is clear from the phrase "It appears" which begins the second sentence in the email transmission. Accordingly the email transmission supplies a remarkably flimsy basis on which to make the serious allegation about Ms. Martin knowingly making a false statement.
54. Secondly, the submission by CA that Ms. Martin stated there was an investigation she was liaising with Mr. Hovey about, is plainly factually wrong.
55. Contrary to CA submissions at [1121], Ms. Martin did not say there was an investigation. That is the whole point of the 13 October 2017 email sent at 2.07 p.m. The whole point of what Mr. Greaves is telling Mr. Robinson is that Ms. Martin communicated to Mr. Shearer that there was not an investigation. That should have been obvious even on the most cursory reading of the email transmission dated 13 October 2017 sent at 2.07 p.m.
56. One clue is that Mr. Greaves puts double inverted commas around the word "investigation" in the second sentence of the email transmission. Another clue is the word "*wasn't*" used in that sentence. There is nothing ambiguous about the meaning of the word "not" in "*wasn't*". The next clue is that the third sentence begins with the word "Instead." "Instead" is an adverb that means "as a substitute for or in alternative to." That is, Ms. Martin did not suggest that there was any investigation being conducted by Mr. Hovey. Having first conveyed to Mr. Shearer that there was no investigation, Ms. Martin then made an

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<sup>30</sup> Exhibit 3, TB3, Vol 14, Tab 452, CSNSW.0001.0032.0130.

alternative and separate point that “there was some information about an officer” and Ms. Martin had liaised with Mr. Hovey about that information.

57. The gravamen of Mr. Greaves’s communication to Mr. Robinson is that Ms. Martin had told Mr. Shearer that no investigation had been undertaken.
58. CA’s willingness to make a serious allegation on assumptions about the meaning of evidence but without considering the actual evidence even at a cursory level, is disturbing.
59. The only person who was suggesting that there was an investigation - and therefore the person making the false statement on CA’s submission - was Mr. Greaves who had stated, in the email transmission sent at 9.57 a.m. on 11 October 2017<sup>31</sup> to Mr. Shearer and Mr. Robinson, that “*MOS Michael Paddison has been tasked to undertake an investigation*” and Mr. Greaves also stated “*Governor Shari Martin is aware of this investigation.*”
60. Thirdly, there is simply no logical reason why Ms. Martin would knowingly making a false statement to Mr. Shearer in October 2017 about liaising with Mr. Hovey about “some information about an officer.” Does CA seriously suggest that in October 2017, Mr. Shearer could not contact Mr. Hovey by telephone or email transmission or meet with him in person? Is there evidence that the NSW telephone and email network infrastructure was not working at that time or that Mr. Shearer and Mr. Hovey were not on speaking terms, to Ms. Martin’s knowledge? For what possible reason would Ms. Martin lie to Mr. Shearer about liaising with Mr. Hovey about “some information about an officer”? Mr. Shearer could easily and readily check with Mr. Hovey the accuracy of anything Ms. Martin had said to Mr. Shearer about her dealings with Mr. Hovey on this topic. Ms. Martin was communicating to Ms. Shearer that there had not been an investigation and thus, one needed to take place, which would necessarily involve Mr. Hovey’s bailiwick of IB.
61. Other evidence before the Commission showed that Mr. Hovey was almost immediately made part of the email chain (see the email transmission sent to Mr. Hovey and Mr. Koulouris at 10.05 a.m. on 11 October 2017) with the same subject “*Local investigation into serious misconduct*” following on from Mr. Greaves’ 11 October 2017 9.57 a.m. email

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<sup>31</sup> Exhibit 3, TB3, Vol 14, Tab 452, CSNSW.0001.0032.0130.

transmission.<sup>32</sup> Unfortunately, CA did not discuss that email transmission in this part of the CA submissions despite the serious allegation sought to be made against Ms. Martin.

62. When Mr. Hovey gave evidence to the Inquiry he at no stage gave evidence that Ms. Martin had lied in 2017 about he and Ms. Martin liaising in 2017 about “some information about an officer.” When he was shown the relevant email transmission he not only failed to suggest that Ms. Martin had lied about him, he in fact stated “... *given this email was closer in time, I would say it’s more accurate than my memory.*”<sup>33</sup>

63. Ms. Martin never said in October 2017 there was an investigation. Ms. Martin never said in October 2017 that she was liaising with Mr. Hovey in relation to an investigation.

64. The submission at CA submissions [1121] should be rejected.

65. The next illustration of CA’s approach to Ms. Martin’s credit is that which emerges from CA submissions at [1117].

66. A very serious allegation is being made here by CA, once again about a witness knowingly given false evidence, but frankly, and with respect, the meaning of the submission is impenetrable. I cannot understand and I cannot follow the submission. The submission relates to something that Ms. Martin had said. But no part of Ms. Martin’s police statement during the Astill criminal investigation, her written statement before the Inquiry or her oral evidence is cited by CA. Text actually appears to be missing from the first sentence of the submission. The meaning of the second sentence is opaque. A “CSNSW Officer locating a letter written containing very serious allegations against the officer” could mean any number of things based on the wide range of incidents in the evidence before the Inquiry. Text also appears missing after the word ‘false’ in the final sentence of the written submission.

67. An allegation about knowingly making a false statement should not be made lightly. The particular statement should be identified clearly. The reasoning behind the allegation

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<sup>32</sup> CSNSW.0001.0032.0132\_0001.

<sup>33</sup> Transcript 8 November 2011, p. 1941/32 – 33.

should be set out. With respect, Ms. Martin, and this Special Commission too, are entitled to expect something a little better than what appears at CA submissions [1117].

68. The submission at CA submissions [1117], whatever it might mean, should be rejected.

69. The point of setting out the three examples mentioned above is that the Commission should be very wary of CA's submissions when it comes to Ms. Martin's credit. The absence of any suggestion in Ms. Deborah Wilson's evidence that she had any conversation with Ms. Martin about the particular allegation that Ms. Martin is attacked for not recollecting, the misreading by CA of the 13 October 2017 2.07 p.m. email transmission from Mr. Greaves to Mr. Robinson, and the obscure [1117] in the CA written submissions, shows, with respect, that CA's submissions with respect to Ms. Martin's credit have not been carefully and soberly checked, for meaning, for accuracy and to test whether the premise on which the submission is made actually exists, and (in the case of the 13 October 2017 email transmission) the submissions distort the evidence to such an extent that the witness is attacked for something that was completely to the contrary of what the witness had in fact conveyed.

*c) Ms. Miskov's allegation: applying CA's logic*

70. The next point about the CA submissions on Ms. Martin's credit is that one argument that runs through this part of the written submissions is an argument along the lines of 'this was so significant, Ms. Martin was bound to remember it.' Step two in the argument is to leap to the conclusion that because the witness doesn't remember it, the witness is knowingly giving false evidence. The argument has a number of flaws. The logic of the argument frequently works in the reverse to undermine the evidence of the witness whose evidence is sought to be supported by such an argument. It is also a circular argument. It assumes the fact in issue and then uses that assumption to attack the credit of the witness who has put the contrary account.

71. Moreover, the beguiling, apparently simple logic of the first step in the submission does not accord with human experience of how memory works. Ordinary human experience shows that some aspects of an incident, even if those matters, on an objective view are significant, are simply not able to be recalled by witnesses years after the event. Mr. X may

have told Ms. Y something important, but because, for example, Ms. Y then immediately thereafter fielded a telephone call from someone else, or dealt with some other important issue or had a personal issue to attend to which diverted her, Ms. Y might not be able subsequently to recall the details of what Mr. X had said. Human memory is fallible, it can be affected by age, illness, stress, context, confusion, misunderstanding, and many other factors. Merely because something is not recalled does not mean the witness is unreliable, or worse, consciously not telling the truth to the Court, Tribunal or Inquiry.

72. Most of the well-known problems with the ‘this was so significant, Ms. Martin was bound to remember it’ argument are amply demonstrated by CA’s submissions at [1116].
73. This allegation by CA relates to Ms. Miskov’s allegation which has already been addressed above. Ms. Miskov first gave evidence in her statement that Mr. Paddison and the unknown female, apparently both or together, ripped-up her report.<sup>34</sup> The plural personal pronoun “they” was used by Ms. Miskov. By the time Ms. Miskov gave evidence to the Inquiry the obvious absurdity of Mr. Paddison and the unknown female both ripping-up the report appears to have been appreciated. When Ms. Miskov gave evidence at the public inquiry and was asked whom it was that is alleged to have ripped-up the report, her evidence was, it will be recalled, “*To be honest, I can’t tell you exactly who ripped the report, it just – I can’t remember.*”<sup>35</sup>
74. Now, using the logic used in the CA submissions: if Mr. Paddison or the unknown female sitting in Mr. Paddison’s office at the time had in fact ripped-up the report, that event would have been an event of such significance, that Ms. Miskov was bound to remember it, yet Ms. Miskov had no recollection of the person alleged to have done this. Ms. Miskov, having taken the trouble to prepare a written report about what she said was serious, *criminal* conduct from Mr. Astill, done *directly to her*, and seen the report ripped-up, cannot remember who ripped-up the report. On CA’s logic, Ms. Miskov’s account is unreliable.
75. On CA’s logic, it is also an account that is wrong “to her knowledge.” On the same logic used by CA in CA written submissions [1116], and throughout the section of the submissions dealing with Ms. Martin’s credit, because Ms. Miskov cannot recall that event

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<sup>34</sup> Exhibit 7, para 22.

<sup>35</sup> Transcript, 10 October 2023, p. 717/30 – 31.

of significance (if it were true), Ms. Miskov has given false evidence about this topic “to her knowledge.”

76. If Ms. Miskov’s failure to recall the identity of the person whom is alleged to have ripped-up her written report, is accepted, then it must also be accepted that Ms. Martin may not recall certain conversations or reports made to her when she was still employed by CSNSW. Ms. Martin had been retired from corrective services New South Wales for nearly five years at the time when she gave evidence to this Inquiry. Ms. Martin was 62 years old at the time when she gave evidence to this Inquiry. Over a career with NSWCS that stretched over decades, Ms. Martin was exposed to numerous traumatic events, and would have had countless conversations with many hundreds of corrective service officers and inmates, about a myriad of important matters. CA’s attack on Ms. Martin’s credit is unfair. It is an attack that is unbalanced. One cannot credibly accept Ms. Miskov’s failure to identify the person who ripped-up her written report about criminal conduct visited upon Ms. Miskov – a circumstance that must be seared in Ms. Miskov’s memory if it were true – but at the same time attack Ms. Martin’s recollection of conversations reported to her six years ago.

77. In further response to CA written submissions at [1116], Ms. Martin repeats all of the submissions above dealing with Ms. Miskov’s allegation. In short, and *inter alia*, even on Ms. Miskov’s own evidence, there is no evidence that Ms. Miskov made any report “*of the indecent assault by Astill*” to the female whose identity was unknown to Ms. Miskov. The submission at [1116] is also misleading because Ms. Martin denied that she would have ripped-up a report.<sup>36</sup> The submission at [1116] that Ms. Martin did not recall the incident is not consistent with Ms. Martin’s denial.

78. The submission at CA submissions [1116] should be rejected.

*d) other alleged ‘incidents’ relevant to Ms. Martin’s credit*

79. In response to the allegation made by CA at CA submissions [1106], that allegation should be rejected. Some witnesses before the Inquiry, such as Mr. Foster,<sup>37</sup> gave clear evidence that they did not observe any bullying or harassment behaviour. But even if there were “a

<sup>36</sup> Transcript 13 November 2023, p. 2225/12.

<sup>37</sup> Transcript 26 October 2023, p. 947/45 – 948/1.

large range” of CSNSW officers who were bullied and intimidated by Mr. Astill, then unless those allegations were, at the time, brought to Ms. Martin’s attention by union delegates like Mr. Giles, or by a proliferation of workers’ compensation claims, or by the particular CSNSW officers themselves, Ms. Martin could not have been aware of any “large range” of bullying or intimidation allegations. Ms. Martin dealt with hundreds of CSNSW staff during her dual tenure of the governor positions at Emu Plains Correctional Centre and Dillwynia Women’s Correctional Centre. There is no evidence that a “large range” or percentage of the total staff made bullying or intimidation allegations against Mr. Astill and actually communicated those allegations to Ms. Martin.

80. In response to the allegation made by CA at CA submissions [1107], that allegation should be rejected. The allegation is factually wrong.

81. Contrary to the assertion made in the third sentence of CA submissions [1107], Ms. Martin in truth never gave evidence that she had a “lack of awareness of this colloquial meaning of ‘dog’.” CA never asked Ms. Martin whether she had awareness of the colloquial meaning of ‘dog.’ The passage of transcript cited by CA does not support the CA submission. CA asked Ms. Martin one specific question about ‘dog.’<sup>38</sup> The question was not about the colloquial meaning of ‘dog’. The question was directed to Mishelle Robinson saying the mentality at Dillwynia was that if you dobed on an officer, you’re a dog. Ms. Martin’s answer responded to the report of Mishelle Robinson’s claim about the “mentality”. Contrary to Ms. Martin denying that she had awareness of the colloquial meaning of ‘dog’, Ms. Martin’s answer tends to suggest that she understood the colloquial meaning of ‘dog’. She most certainly did not profess any lack of awareness of the colloquial meaning of ‘dog’ when answering the question.

82. In response to the allegation made by CA at CA submissions [1108], that allegation should be rejected.

83. Using foul language in the course of conversation when addressing staff is not the same as directing foul language at staff. The submission at sentence one in CA submissions [1108] does not follow from, or is not supported by, the argument put at sentence two in CA

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<sup>38</sup> Transcript 13 November 2023, p. 2191/10-11.

submissions [1108]. Ms. Martin fully accepted that she swore: “*I swore*”<sup>39</sup> and Ms. Martin made it plain that she was not giving the impression that she didn’t swear.<sup>40</sup> Some witnesses, such as Mr. Clark, were clear in their evidence that they did not hear verbal abuse directed at staff.<sup>41</sup> Other witnesses gave evidence that they took a similar approach to Ms. Martin, that is, they did swear in conversations with other staff but did not direct the swearing at staff (e.g. Ms. O’Toole).<sup>42</sup> Ms. O’Toole gave evidence that Ms. Martin was known to swear but did not do so in everyday conversation with officers.<sup>43</sup>

84. In response to the allegation made by CA at CA submissions [1109], that allegation should be rejected.
85. The transcript reference cited by CA at footnote 1574 does not support the submission made. The question and answer at the transcript for 13 November 2023, p. 2190/35 – 40 was directed to the specific matter of Mr. Clark’s description of the workplace and what junior staff thought about “senior management.” Unsurprisingly, Ms. Martin rejected the specific question put to her about that topic. In the absence of survey evidence about the more junior corrections officers’ views of senior management coming to Ms. Martin’s attention, or information brought to Ms. Martin’s attention by the union delegates about the more junior corrections officers’ views of senior management, how could Ms. Martin be able to agree with Mr. Clark’s assessment.
86. Ms. Martin never suggested anything as broad as the proposition that she was not aware that there were any issues regarding the handling of complaints of misconduct by management at DCC. There were numerous parts of her evidence that show that Ms. Martin was plainly aware that there were issues regarding the handling of complaints of misconduct by management at DCC. For instance, Ms. Martin’s evidence about how Ms. Kellett and Ms. Wilson used Ms. Martin’s safe to store sensitive documents. Another example is the incident described in both Ms. Martin’s witness statement and her oral evidence, of being alerted by an officer at the gate to Dillwynia of a letter that had been

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<sup>39</sup> Transcript 14 November 2023, p. 2237/36.

<sup>40</sup> Transcript 14 November 2023, p. 2237/32.

<sup>41</sup> Transcript 25 October 2023 p. 736/6 – 8.

<sup>42</sup> Transcript 7 November 2023, p. 1852/28 – 46.

<sup>43</sup> Transcript 7 November 2023, p. 1852/21.

intercepted which contained adverse information about Mr. Astill, and with Ms. Martin having to go and personally retrieve the letter from Mr. Astill.

87. In response to the allegation made by CA at CA submissions [1110], that allegation should be rejected.

88. There is, yet again unfortunately, a dissonance between the evidence cited by CA and the submission made by CA. The three transcript references cited in footnote 1575 in CA's submissions all relate to a specific allegation that Ms. Martin said to witness C, on or shortly after 23 February 2016, in the presence of Ms. O'Toole "*Either make a written complaint or get the fuck out of my office.*"

89. Ms. Martin's evidence rejecting that assertion by witness C should be accepted. The reliability of Ms. Martin's account is corroborated by Ms. O'Toole's evidence. Ms. O'Toole rejected the proposition about this matter that was put to her by CA when Ms. O'Toole gave evidence.<sup>44</sup> Ms. O'Toole's evidence was emphatic that both she and Ms. Martin did not, and would not, dismiss witness C's allegations peremptorily. Ms. O'Toole said:<sup>45</sup>

*"Well she [witness C] didn't – she never disclosed those matters to me. And if she did disclose those matters to me, I would have acted appropriately in relation to those matters. And I believe, knowing Shari Martin as I knew Shari Martin as a boss, she would have acted in exactly the same way as I would, and that would have been reporting it up for full investigation."*

90. The suggestion by CA that "this incident" is somehow "consistent" with Mr. Holman's 9 March 2016 incident report is a red-herring. Witness C does not suggest that Mr. Holman was present with Ms. Martin and Ms. O'Toole when Ms. Martin is alleged to have said "*Either make a written complaint or get the fuck out of my office.*" Mr. Holman wasn't there and Mr. Holman's incident report does not, and is not capable, of supporting witness C's claim that the alleged comment about making a written complaint or getting the 'f...' out of my office, was made to her by Ms. Martin in Ms. O'Toole's presence.

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<sup>44</sup> Transcript, 7 November 2023, p. 1830/34 – 32.

<sup>45</sup> Transcript, 7 November 2023, p. 1830/34 – 38.

91. In response to the allegation made by CA at CA submissions [1111], that allegation should be rejected. Ms. Martin's evidence should be preferred. Ms. Martin's evidence is corroborated, in emphatic terms, by Ms. O'Toole's evidence and Ms. Berry's evidence is contradicted by the same evidence from Ms. O'Toole.<sup>46</sup> Ms. Martin's evidence is in no way "inconsistent" with Mr. Holman's 9 March 2016 report. That submission, again, is a red herring. Mr. Holman was not present at any conversation involving Ms. Berry, Ms. Martin and Ms. O'Toole. Mr. Holman's incident report is only capable of recording what witness C told him a fortnight or so subsequent to the earlier conversation involving Ms. Berry, Ms. Martin and Ms. O'Toole. It can only amount to second-hand hearsay evidence.
92. In response to the allegation made by CA at CA submissions [1112], that allegation should be rejected. The submission misstates Ms. Martin's evidence. Ms. Martin expressly agreed that she had a concern about an inappropriate relationship between Mr. Astill and witness C.<sup>47</sup> Ms. Martin's evidence that she was aware of allegations of favouritism by Mr. Astill towards witness C but not a sexual relationship, was evidence that was consistent and "on all fours" with numerous other witnesses' evidence before the Inquiry, which witnesses gave evidence that they were not aware of a sexual relationship between Mr. Astill and witness C, such as:
- a) Pam Hotham,<sup>48</sup>
  - b) Chaplain Suellen Johnson,<sup>49</sup>
  - c) Glenn Clark,<sup>50</sup>
  - d) Paul Foster,<sup>51</sup>
  - e) and Mr. Paddison.<sup>52</sup>
93. In any event, if some other people were aware that Mr. Astill and witness C were having a sexual relationship, that does not mean that Ms. Martin was also aware of that. The submission at sentence one in CA submissions [1112] cannot follow from, and is not

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<sup>46</sup> Transcript 7 November 2023, p. 1829/42 – 1830/38.

<sup>47</sup> Transcript 13 November 2023, p. 2208/34 – 37.

<sup>48</sup> See Ms. Hotham's signed statement dated 5 October 2023, the question and answer at paragraphs 20 and 21, Exhibit 27, AST.002.013.0039\_0003.

<sup>49</sup> See Ms. Johnson's signed statement dated 23 October 2023, the questions and answer at paragraphs 59 – 62, AST.002.013.0047\_0011 and AST.002.013.0047\_0012.

<sup>50</sup> Transcript 25 October 2023 p. 752/19 – 31.

<sup>51</sup> Transcript 26 October 2023 p. 954/39 – 955/8.

<sup>52</sup> Transcript 2 November 2023 p. 1522/44 – 1523/1 and p. 1525/12 - 24.

supported by, the argument put at sentence two in CA submissions [1112]. Ms. Martin and Ms. O'Toole were both clear in their evidence that Ms. Berry had not reported to them anything about Mr. Astill receiving "head jobs" from witness C.

94. In response to the allegation made by CA at CA submissions [1113], that allegation should be rejected. Once again, disturbingly, Ms. Martin's evidence has been misstated. Ms. Martin did not say in her witness statement that she believed she had made a report to IB.<sup>53</sup> In her examination at the Inquiry Ms. Martin again clearly stated that she did not report or refer this incident out to IB or PSB.<sup>54</sup>
95. In response to the allegation made by CA at CA submissions [1114], that allegation should be rejected. Ms. O'Toole did not give any evidence about actual words or any statement by Ms. Martin to the effect that Ms. Martin had referred the relevant alleged incident to PSB. Ms. O'Toole's evidence was vague on the point.<sup>55</sup> CA's repeated questions to her, as disclosed in the transcript, amply demonstrate that submission. The better view of Ms. O'Toole's evidence is that Ms. O'Toole was giving evidence about her own understanding or knowledge, but that she eschewed giving evidence about something that Ms. Martin had actually said to her with respect to this point. But in any event, it was incumbent upon CA, as a matter of fairness, if the point now being made in CA written submissions [1114] were sought to be made, that CA would ask Ms. Martin, when she gave evidence, about whether she had in fact said anything to Ms. O'Toole about referring the incident to PSB. No such question was put to Ms. Martin. With respect, the CA submission should not be entertained by the Commission in the light of the failure to put to Ms. Martin the question about some alleged conversation with Ms. O'Toole.
96. In response to the allegation made by CA at CA submissions [1115], that allegation should be rejected. The allegation made is, with respect, difficult to understand. The transcript reference<sup>56</sup> relied upon by CA to make good the submission says nothing at all about Mr. Paddison or some meeting attended by Mr. Paddison and Ms. Martin where witness C is said to have made such a report. If CA intended with the questions at lines 27 – 43, p. 2210, transcript for 13 November 2023, to question Ms. Martin about some meeting or

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<sup>53</sup> See paragraphs 65 and 66 in the witness statement, Exhibit 38, TB2, Vol 7, Tab 59A, AST.002.013.0059.

<sup>54</sup> Transcript 13 November 2023, p. 2205/3 – 7.

<sup>55</sup> Transcript 7 November 2023/19 – 38.

<sup>56</sup> Transcript 13 November 2023, p. 2210/27 – 43.

conversation involving Mr. Paddison and Ms. Martin, it behoved CA for that to be put in clear terms. With respect, this CA submission also should not be entertained by the Commission in the light of the failure to put the question about Mr. Paddison's presence during such an alleged conversation, to Ms. Martin.

97. For completeness too, the attempt by CA to rely on Mr. Holman's incident report to support the submission in the first sentence of CA submissions [1115] should be recognised once more as a red-herring. Mr. Holman was not present at any conversation involving Mr. Paddison, Ms. Martin and witness C. Mr. Holman's incident report is only capable of recording what witness C told him subsequent to the alleged earlier conversation or meeting involving Mr. Paddison, Ms. Martin and witness C. It can only amount to second-hand hearsay evidence.
98. In response to the allegation made by CA at CA submissions [1118], that allegation should be rejected. The submission that is "inconceivable" that Ms. Martin did not consider that Mr. Bartlett was not asked with an investigation, is an extraordinary one. CA himself (as evinced by his questions to Mr. Bartlett) and the witness Mr. Bartlett both agreed that Mr. Bartlett was "*just to get enough information*"<sup>57</sup> that could then be 'actioned' by investigators outside the gaol.<sup>58</sup> The evidence at multiple points in the transcript makes it plain that Mr. Bartlett (and CA) agreed that Mr. Bartlett was performing an information gathering exercise as a precursor to a possible investigation.<sup>59</sup> Mr. Bartlett's evidence should have been cited at [1118] in CA's written submissions. Further, Mr. Bartlett never gave evidence that Ms. Martin gave him the task of performing an investigation. Ms. Martin's evidence on this point is corroborated by Mr. Bartlett's evidence.
99. In response to the allegation made by CA at CA submissions [1119], that allegation should be rejected.
100. Given the long career of Ms. Martin in the NSW corrections service, the countless number of important meetings attended by Ms. Martin over a very wide range of subjects, and Ms. Martin's time and attention being divided between two demanding correctional

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<sup>57</sup> Transcript, 1 November p. 1329/33.

<sup>58</sup> See transcript, 1 November p. 1329/32 – 45 and transcript, 1 November 2023/4 - 15.

<sup>59</sup> Transcript, 1 November 2023 p. 1326/40 – 1327 – 24, transcript, 1 November p. 1329/32 – 45 and transcript, 1 November 2023/4 – 15.

centres, it is hardly surprising that in November 2023, in the midst of Ms. Martin's retirement, that when questioned about something she is said to have heard more than six years earlier in July 2017, that Ms. Martin did not recall the meeting.

101. Ms. Martin's lack of recollection is parallel to, and entirely consistent with, either the lack recollection of others who attended the meeting<sup>60</sup> or their "very vague recollection"<sup>61</sup> and no "actual memory"<sup>62</sup> of it.

102. The 'event which would be expected to recall' submission is also not persuasive. As explained above, a witness may even forgot whom it was that tore up a written report the witness had written, about serious criminal conduct that had been directed at that witness.

103. CA is drawing a long bow to suggest that merely because one particular meeting, six and half years ago, cannot be recalled, that the witness's general reliability as a witness should be called into question.

104. Another important circumstance to take into account is the following. There were other senior corrections officers already present at the meeting – Messrs. Paddison, Holman and Westlake<sup>63</sup> – before Ms. Martin was called into the meeting. The meeting had plainly been arranged by, and was being conducted by, one of those officers for his purpose or purposes. That officer is likely to recall the details of it, rather than someone like Ms. Martin called into the meeting during a probably very busy day, split as her time was in July 2017 over two different and demanding correctional centres.

105. In response to the allegation made by CA at CA submissions [1120], that allegation should be rejected. The record of the meeting says that one of the two *male* officers present, during the initial part of the meeting, said "*inmates do lie.*"<sup>64</sup> Witness R's transposition of the comment from one of the male officers to Ms. Martin is plainly an error of her memory. The contemporaneous written record recording that one of the male officers said it, in the initial part of the meeting, should be preferred. It is not apparent why CA did not make reference to that evidence in the CA submission at [1120].

<sup>60</sup> Mr. Westlake, see transcript 26 October 2023 p. 925/16.

<sup>61</sup> Mr. Paddison, transcript 2 November 2023 p. 1542/25.

<sup>62</sup> Mr. Paddison, transcript 2 November 2023 p. 1542/43 - 45.

<sup>63</sup> Transcript 14 November 2023, p. 2278/31 – 36.

<sup>64</sup> Transcript, 3 November 2023, p. 1692/39 – 41.

106. Further, according to CA, there were six people present at the meeting when the comment alleged against Ms. Martin is said to have been made: witnesses R and V, Messrs. Paddison, Holman and Westlake and Ms. Martin. Witness R does not support witness V's allegation about what Ms. Martin is alleged to have said. Mr. Westlake, who gave evidence to the Inquiry, did not give any evidence supporting witness V's allegation about what Ms. Martin is alleged to have said. Mr. Westlake can't even remember the meeting take place.<sup>65</sup> Yet Mr. Westlake would surely remember both the meeting and the alleged comment based on the CA 'event which would be expected to recall' submission used immediately above in CA submissions [1119]. Mr. Holman, who gave evidence to the Inquiry, did not give any evidence supporting witness V's allegation about what Ms. Martin is alleged to have said.<sup>66</sup> Yet Mr. Holman would surely remember if Ms. Martin had made the alleged comment based on the CA 'event which would be expected to recall' submission used immediately above in CA submissions [1119]. Mr. Paddison, who gave evidence before the Inquiry, did not support witness V's allegation about what Ms. Martin is alleged to have said.<sup>67</sup>

107. Ms. Martin's denial that she made the alleged comment is reliable in the light of Mr. Holman's report and the evidence of witness R and Messrs. Paddison, Holman and Westlake.

108. In response to the allegation made by CA at CA submissions [1122], that allegation should be rejected. Given the long career of Ms. Martin in the NSW corrections service, the countless number of important conversations engaged in by Ms. Martin over a very wide range of subjects, and Ms. Martin's time and attention being divided between two demanding correctional centres, it is hardly surprising that in November 2023, in the midst of Ms. Martin's retirement, that when questioned about a conversation with Ms. Wilson said to have taken place many years earlier, that Ms. Martin did not recall the conversation.

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<sup>65</sup> Transcript 26 October 2023 p. 925/16.

<sup>66</sup> Mr. Holman was asked about the meeting at the Inquiry, see transcript 3 November 2023, pp. 1692 – 1693.

<sup>67</sup> Mr. Paddison was asked about the meeting, see transcript 2 November 2023 p. 1542/20 *et seq.*

109. It is submitted, with respect, that CA is drawing a long bow to suggest that merely because a conversation, which took place many years ago, cannot now be recalled, that the witness's general reliability as a witness should be called into question.
110. In response to the allegation made by CA at CA submissions [1124], that allegation should be rejected. There is a difference in the evidence from these two women about what was said in the conversation. It is plain that Ms. Johnson's account has changed over time and involves reconstruction rather recollection. In her witness statement to the NSW police made on 7 May 2020, Ms. Johnson made it clear that Ms. Martin did not say anything about Ms. Martin not believing the inmates but rather it was Ms. Johnson herself who "took" something she says Ms. Martin had said, to mean that Ms. Martin did not believe the inmates.<sup>68</sup> In addition, Ms. Johnson did not say anything either in the 7 May 2020 statement to the NSW Police or her 23 October 2023 signed statement to the Commission<sup>69</sup> anything about Ms. Martin saying inmates were "*in cahoots*."
111. Ms. Martin's account of the conversation does not suffer from the clear reconstruction and inconsistency just referred to; and Ms. Martin's account, on the probabilities, is more likely to be accurate than Ms. Johnson. That is because, as Ms. Martin explained during her examination "*I wouldn't talk to her about inmates in any – I know how passionate she was towards them. I would not talk to her disregarding inmates to her. I would – I wouldn't do that.*"<sup>70</sup> It is not likely that Ms. Martin would make any adverse comments about the inmates to Ms. Johnson, whom was known by Ms. Martin to be a passionate advocate for the inmates. The Commission is also aware from other evidence that the mediation was something that Ms. Martin had not agreed with but was a process that had been her boss, Mr. Shearer's, initiative. That circumstance tends to support the reliability of Ms. Martin's account of the conversation. Ms. Martin had no reason to support the mediation by criticising the two inmates.
112. Therefore, Ms. Martin's account of the conversation is more likely to be accurate. But in any event, it is submitted with respect, the Commission should be cautious and restrained

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<sup>68</sup> See paragraph 8 in Ms. Johnson's 7 May 2020 statement: AST.002.002.0070\_002.

<sup>69</sup> See paragraph 55 in Ms. Johnson's 23 October 2023 statement: AST.002.013.0047\_0010.

<sup>70</sup> Transcript 14 November 2023, p. 2327/41 – 45.

before making so serious a finding that Ms. Martin “knowingly” gave false evidence about this conversation, merely because her recollection and Ms. Johnson’s recollections differ.

113. In response to the allegation made by CA at CA submissions [1125], that allegation should be rejected.

114. The issue has been addressed already above in these submissions. Please excuse the repetition, but it will be recalled that Ms. Martin’s evidence is that when Ms. Cox spoke to her, Ms. Cox told her that Mr. Astill had threatened her (Ms. Cox) and Ms. Cox spoke to Ms. Martin in a highly distressed or hysterical state.<sup>71</sup> Ms. Martin gave the same evidence in her statement to the Inquiry and in her previous statement to the NSW police force in the context of the prosecution of Mr. Astill. Ms. Cox did not, orally to Ms. Martin, say anything about sexual assault allegations.<sup>72</sup> Ms. Martin did not read Ms. Cox’s notes.<sup>73</sup> Ms. Martin’s focus was to try to calm Ms. Cox down, ensure that Ms. Cox’s written notes went to the intelligence officer who was going to evaluate the written disclosures, and Ms. Martin sent Ms. Cox to the clinic.<sup>74</sup>

115. It is submitted with respect that Ms. Martin’s account should be accepted. There is an inherent implausibility that if someone has set out allegations in a document and handed that document to a person, that they would then also repeat all those details orally. Ms. Martin’s account, on the other hand, is consistent with the probabilities of how a person in her position would have reacted when faced with a distressed inmate stating that she had been threatened by Mr. Astill. Ms. Martin’s account also tends to be supported or corroborated by the evidence which shows that Ms. Cox’s notes were in fact handed to Ms. Wilson and dealt with by Ms. Wilson.<sup>75</sup> There were no contemporaneous documents which recorded the conversation between Ms. Martin and Ms. Cox. Neither Ms. Martin nor Ms. Cox took a file note of the conversation, made a note in a diary of the conversation, nor are there contemporaneous email transmissions from either person alluding to what was said in their conversation. If the reference to “contemporaneous documents” is to be understood as a reference to Ms. Cox’s report that was handed to Ms. Martin, then plainly enough it

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<sup>71</sup> Transcript, 14 November 2023, p. 2339/26 – 33.

<sup>72</sup> Transcript, 14 November 2023, p. 2343/12 – 15.

<sup>73</sup> Transcript, 14 November 2023, p. 2342/36.

<sup>74</sup> Transcript, 14 November 2023, p. 2342/36 – 42.

<sup>75</sup> Transcript 7 November 2023, pp. 1764/45 – 1765/9.

cannot be a record of the conversation when Ms. Cox handed-over said report to Ms. Martin. Ms. Martin's account is inherently more plausible than Ms. Cox's account and her reliability cannot reasonably be traduced based on this issue.

116. In response to the allegation made by CA at CA submissions [1126], that allegation should be rejected.

117. What was most salient about Mr. Clark's evidence as to his recollection of the conversation is that it demonstrates that in June 2018, Ms. Martin continued to believe Ms. Cox, (after Ms. Cox had spoken to her earlier that year about Mr. Astill threatening Ms. Cox). Thus, in the conversation with Mr. Clark, Ms. Martin without demur, told Mr. Clark that Pam Kellett would be despatched to Mr. Clark to deal with the issue.<sup>76</sup> Ms. Martin acted on that advice and Pam Kellett arrived at the scene 10 or 15 minutes later.<sup>77</sup> The significance of that evidence is obvious but it has regrettably been missed by CA.

118. As to the credit point which CA seeks to make, it is submitted, with respect, that CA is drawing a long bow to suggest that merely because a conversation, which took place many years ago, cannot now be recalled, that the witness "knowingly" gave false evidence.

119. Given the long career of Ms. Martin in the NSW corrections service, the countless number of important conversations engaged in by Ms. Martin over a very wide range of subjects, and Ms. Martin's time and attention being divided between two demanding correctional centres, it is hardly surprising that in November 2023, in the midst of Ms. Martin's retirement, that when questioned about a conversation with Mr. Clark about an allegation involving contraband coming into the goal, which conversation is said to have taken place many years earlier, that Ms. Martin did not recall the conversation.

120. In response to the allegation made by CA at CA submissions [1127], that allegation should be rejected.

121. There is no basis for the CA submission that the report "contained allegations of serious misconduct." Mr. Foster's evidence was pellucidly clear that Mr. Scott did not tell Mr.

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<sup>76</sup> Transcript 14 November 2023, p. 2352/30 – 33.

<sup>77</sup> Transcript 25 October 2023, p. 772/34 – 38.

Foster what was in the report and that Mr. Scott did not share with Mr. Foster what was in the report.<sup>78</sup> The submission of CA is based on pure speculation.

122. Further, the foundation of the allegation is inadmissible hearsay. Mr. Scott has, it appears, passed away, but because he did not tell Mr. Foster what was in the report, there is no “*asserted fact*” and no “*previous representation*” for the purposes of the hearsay rule exceptions in Part 3.2 of the *Evidence Act* 1995. The Commission should, in Ms. Martin’s respectful submission, exercise moderation and restraint before making findings along the lines of that suggested by CA at CA submissions [1127], and be loath to make such findings on the basis of inadmissible evidence.

123. Finally, the allegation relates to a brief incident that is said to have taken place over the long stretch of time somewhere between 2016 and February 2019, or at least, December 2018.<sup>79</sup> The allegation appears to involve Mr. Scott telling Mr. Foster about handing a report from Mr. Scott to Ms. Martin which she said to give to the intelligence officer, who happened on the day in question to be Mr. Astill. Mr. Astill’s standing in for the substantive intelligence officer that day was unknown to Ms. Martin.<sup>80</sup> Given the long career of Ms. Martin in the NSW corrections service, the countless number of important conversations engaged in by Ms. Martin over a very wide range of subjects, and Ms. Martin’s time and attention being divided between two demanding correctional centres, it is hardly surprising that in November 2023, in the midst of Ms. Martin’s retirement, that when questioned about an alleged conversation with Mr. Scott, which conversation is said to have taken place many years earlier, that Ms. Martin did not recall the conversation.

124. In response to the allegation made by CA at CA submissions [1128], that allegation should be rejected.

125. The submission cannot, with fairness, be made without the evidence of the NSW police detective who spoke to Ms. Martin in her office at the gaol, after Ms. Ward had declined to make a statement and which detective was then involved initially in hearing and recording Ms. Ward’s complaint, following Ms. Martin’s helpful intervention. Ms. Martin’s

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<sup>78</sup> Transcript 26 October 2023, p. 960/8 – 13.

<sup>79</sup> Transcript 14 November 2023, p. 2330/31 – 37.

<sup>80</sup> Transcript 14 November 2023 p. 2331/17 – 19.

recollection is that the detective's surname was Cambridge, that recollection being based in part on handover notes that Ms. Martin gave her successor at the Emu Plains and Dillwynia women's correctional centres, alerting her successor to an ongoing issue involving Ms. Ward.

126. Further, it would be highly unusual that NSW police investigative procedure would have permitted a third-party like Ms. Martin to be present while Ms. Ward was giving her statement. That cornerstone of Ms. Ward's version of events just cannot be right. It is likely to involve re-creation by the witness, most likely inspired by the disturbing revelations during this Inquiry that Mr. Astill was deceiving inmates and junior corrections officers into believing he had some sort of special protective relationship from Ms. Martin, a most mendacious dissimulation that was patently false.

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127. In the submissions above, a number of instances have been pointed out where CA has not referred to critical parts of the evidence or has misstated the evidence. When all the evidence is looked at objectively and weighed carefully and with temperance, it becomes clear, it is respectfully submitted, that to the extent some of the so-called "available findings" set out in Section 6 of CA's submissions advocate for adverse findings about Ms. Martin's role in the course of the relevant events, none of those adverse findings should be made.



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