

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

**SUBMISSIONS ON BEHALF OF TIMOTHY PEEK**

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**Background**

1. Timothy Peek (**Mr Peek**) was a Senior Correctional Officer at Dillwynia Correctional Centre (**Dillwynia**) in the periods 2008 – 2013, and 2015 – 2019.<sup>1</sup>
2. The actions, and evidence, of Mr Peek are relevant in relation to two specific matters:
  - a. the receipt of a complaint by Mr Peek, whilst working under the supervision of Wesley Giles (**Mr Giles**), from Witness O concerning her observations of an interaction between Wayne Astill and Trudy Sheiles;<sup>2</sup> and
  - b. the attendance of Mr Peek at a mediation or pseudo-mediation involving Wayne Astill conducted at Dillwynia<sup>3</sup>.

**Compliance with Reporting Obligation**

3. Mr Peek embraces the submissions of Counsel Assisting at [1174] that, by conveying the report from Witness O to Mr Giles, Mr Peek complied with his reporting obligation under cl 253(1) of the *Crimes (Administration of Sentences) Regulation 2014*.

**Mediation**

4. Mr Peek embraces the submissions of Counsel Assisting at [1205] that mediation processes should not be used to address allegations of serious misconduct. Two parts of Mr Peek's oral evidence reinforce those submissions.

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<sup>1</sup> (Ex 21, TB2, Vol 8, TAB 73 at [4])

<sup>2</sup> Tender Bundle 2, Volume 8, Tab 73, Witness Statement of Timothy Peek [53-57] but then clarified at [70-73]; Transcript, 1 November 2023, P-1379, Line 10. It is noted that in examination in chief by Senior Counsel Assisting, it was clarified by Mr Peek that his references to Witness J, P and G was in error, and it was in fact witness O and P.

<sup>3</sup> Tender Bundle 2, Volume 8, Tab 73, Witness Statement of Timothy Peek [75-76],

5. In response to questioning by the Commissioner he said in respect of the mediation:<sup>4</sup>

*I don't believe it was genuine.*

...

*I think it was to appease the situation but I don't know if anything was actually solved during the mediation.*

6. In answer to a question by Counsel Assisting following the Commissioner's questions, Mr Peek said of mediations:<sup>5</sup>

*It's not unheard of but it is unusual.*

7. Clearly the mediation that Mr Peek observed was not intended to get to the bottom of the very serious issues raised – which Mr Peek properly reported, as noted by Counsel Assisting.

### **Extent of Disclosure by Witness O**

#### ***Framing the Factual Controversy***

8. Counsel Assisting has identified a factual controversy in respect of whether Witness O disclosed to Mr Peek and Mr Giles that she had seen Mr Astill touch Ms Sheiles on the bottom.<sup>6</sup> The touching of an inmate's bottom in the manner observed by Witness O (**Sexual Touching**) constituted the offence of indecent assault<sup>7</sup> at the time of the report, and now constitutes the offence of sexual touching.<sup>8</sup> The Inmate Application prepared by Mr Peek on behalf of Witness O does not include the allegation of Sexual Touching.<sup>9</sup>
9. In addressing that controversy Counsel Assisting has adopted a binary approach – either Witness O was telling the truth in her evidence where she gave evidence that the disclosure was made or she was not. Unfortunately this approach does not consider whether Witness O's disclosure (or attempted disclosure) may have been miscommunicated due to:
- a. Witness O's poor spoken and written English; and
  - b. a lack of expertise on the part of Mr Peek and Mr Giles to taking evidence from inmates from culturally and linguistically diverse (**CALD**) backgrounds.

<sup>4</sup> Transcript 1 November 2023, 82, 44; 83, 2 – 3.

<sup>5</sup> Transcript 1 November 2023, 82, 44; 83, 2 – 3.

<sup>6</sup> Counsel Assisting Submissions at [948].

<sup>7</sup> S 61L *Crimes Act 1900*.

<sup>8</sup> S 61KC *Crimes Act 1900*.

<sup>9</sup> Ex. 3, TB1, Vol 5, Tab 15, Annexure A.

10. The Commission should consider:

- a. the evidence that there may have been such a miscommunication; and
- b. what steps should be taken to ensure that reports and evidence are properly taken from inmate CALD inmates.

### **Evidence – Sexual Touching**

11. In her oral evidence Witness O said:<sup>10</sup>

MS DAVIDSON: *So you say you told him exactly what you saw. Did you describe - do you remember whether you described where Trudy was, where the perpetrator was? What sort of - do you remember anything about the description that you gave him?*

WITNESS O: *As I remember, I told him everything, what I saw, where Trudy was and the perpetrator and everything that's happened between them.*

MS DAVIDSON: *Do you remember whether you told him that the perpetrator had touched Trudy on the bottom, or on the butt as you said before?*

WITNESS O: *As I remember, yes, I did.*

12. In his oral evidence Mr Peek, contrary to the submissions of Counsel Assisting,<sup>11</sup> denied that Witness O reported to him that she observed the Sexual Touching. The transcript states:<sup>12</sup>

MR LLOYD: *Witness O has told this Commission that what she had seen 30 included Astill putting his hand on Trudy Sheiles' bottom. Do you remember her saying that?*

...

MR PEEK: *In her testimony or to me?*

MR LLOYD: *To you?*

MR PEEK: *No. I remember her not saying that.*

MR LLOYD: *You are sure she didn't say that to you?*

MR PEEK: *I'm very sure of what was said in that room despite the fact that I may be unsure about some of the inmates that initially made the report, I'm sure that was not reported to me.*

MR LLOYD: *What about Astill touching her on her thigh or inner thigh?*

...

<sup>10</sup> Transcript, 24 October 2023, T611.2-16.

<sup>11</sup> Counsel Assisting Submissions at [948].

<sup>12</sup> Transcript 1 November 2023, 1388.30 – 1389.11.



17. It is apparent that Mr Peek rather than Mr Giles completed the form. In his oral evidence Mr Peek confirmed he took the report from Witness O without summarisation or elaboration,<sup>21</sup> consistent with the Commission Statement of Witness O.
18. The detailed description of the manner in which the Inmate Application Form was completed is not contradicted by any other evidence. The Commission should find that Mr Peek was diligent in undertaking that task and completed it based on what he understood was communicated to him.
19. However, the absence of a report of the Sexual Touching in the Inmate Application Form is at odds with the evidence of Witness O that she disclosed witnessing the Sexual Touching to Mr Peek. That could lead to a conclusion, either direct or by inference, that Mr Peek failed to record that key detail.
20. There is every possibility that whilst Witness O may have intended to communicate a particular fact, it was not recorded because:
  - a. it did not happen;
  - b. of Witness O's poor command of English; and/or
  - c. of an (unsurprising) absence of specialist skills in taking evidence from a CALD inmate.
21. It is not necessary, for the purpose of the Inquiry, to resolve the factual controversy of exactly what was said given that it is clear that Mr Peek discharged his responsibilities diligently and correctly. However, the practices of Corrective Services in relation to CALD Inmates do warrant attention.

### ***CALD Inmates***

22. CALD inmates are vulnerable due to their poor English language skills. For that reason, Counsel Assisting has recommended that CALD inmates receive information in their first language.<sup>22</sup>
23. Consistent with that recommendation the Commission should consider:
  - a. what training and resources are provided to staff regarding taking reports from CALD inmates; and
  - b. the skills and resources needed for investigative staff to take evidence from CALD inmates.

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<sup>21</sup> Transcript 1 November 2023, p1404-1405.

<sup>22</sup> Counsel Assisting Submissions at [657 b)].



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