

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

**CLOSING SUBMISSIONS OF JUDITH BARRY, RENEE BERRY,  
RONALD BROWN AND SCOTT WESTLAKE**

## INTRODUCTION

1. On the first day of the Special Commission of Inquiry into Offending by Former Correctional Officer Wayne Astill at Dillwynia Women's Correctional Centre (**the Inquiry**), Mr Michael Burns of McNally Jones Staff Lawyers appeared and announced that he represented some seven correctional officers.<sup>1</sup>
2. Over the course of the Inquiry, Mr Burns came to represent many more correctional officers who were persons named to give evidence in the Inquiry. These officers included Judith (Judi) Barry, Renee Berry, Ronald Brown and Scott Westlake.
3. On 23 October 2023, owing to the need for separate representation, Mr Adam Guy of Counsel was granted leave and commenced appearing for officers Barry, Berry, Brown, and Westlake.<sup>2</sup> Throughout the Inquiry, Mr Guy remained instructed by McNally Jones Staff.
4. This document serves as the closing submissions for officers Barry, Berry, Brown and Westlake. Each section stands as a separate submission for each of the officers and should not be read jointly.

## JUDI BARRY

### Ms Barry as a Correctional Officer and Witness

5. Ms Barry was at the times relevant to the Inquiry, a Senior Correctional Officer and then a Chief Correctional Officer at Dillwynia Women's Correctional Centre (**DCC**).<sup>3</sup>
6. Ms Barry has had a lengthy career working for Corrective Services NSW, commencing in 1995 and receiving a number of promotions before moving to Mary Wade at the end of 2018 to accept a further promotion. Ms Barry has now returned to DCC in a promoted role.<sup>4</sup>
7. It is clear from her statement to the Inquiry, and the evidence that fell from Ms Barry under cross-examination that she did not hold Mr Astill in high regard and had a poor

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<sup>1</sup> Transcript (T) 3/14-26.

<sup>2</sup> T543/26-47.

<sup>3</sup> Ex 17, TB 2 Vol7. Tab 62A at [5].

<sup>4</sup> Ex 17, TB 2 Vol7. Tab 62A at [4]; T1174/26-1178/28.

relationship with him. Ms Barry describes Mr Astill as being a 'bully' and someone she avoided. She makes mention that *'I did not like how he conducted himself.'*<sup>5</sup>

8. The poor relationship between Ms Barry and Mr Astill is further corroborated by numerous witnesses who described Mr Astill's conduct toward Ms Barry as bullying.<sup>6</sup>
9. Ms Barry gave further evidence about 'Shari's Boys,' a clique of male corrections officers who were favoured by the Governor, Ms Shari Martin.<sup>7</sup>
10. Ms Barry was critical of Ms Martin's management style, noting that Ms Martin would use foul and abusive language directed at staff in staff meetings or while on parade.<sup>8</sup>
11. Ms Barry also gave evidence that as Manager of Security, Leanne O'Toole bullied staff and there was a poor culture around her management, using the email that Ms O'Toole sent in November 2015 as an example.<sup>9</sup>
12. Notwithstanding this obviously difficult workplace environment, Ms Barry discharged her duties as best she could, engaging in a process of attempting to investigate Mr Astill's inappropriate conduct of sharing a coke can with Witness C by trying to access CCTV footage. Ms Barry also instructed the relevant officer, Ms Anne O'Reilly to submit a report, and made a report to Ms Martin, both verbally and in writing.<sup>10</sup>
13. Ms Barry also reported to Ms Martin that she was concerned that Mr Astill was bringing contraband into DCC.<sup>11</sup>
14. There has been no evidence led to suggest that Ms Barry was the subject of performance management by Corrective Services NSW or that she had ever been subject to misconduct allegations.
15. There is also significant evidence to suggest that Ms Barry was not properly trained in respect of the legislation governing the reporting of allegations of misconduct, or the

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<sup>5</sup> Ex 17, TB 2 Vol 7. Tab 62A at [20].

<sup>6</sup> Closing Submissions of Counsel Assisting dated 6 December 2023 (**CACS**) at [402] and the references contained therein.

<sup>7</sup> Ex17, TB 2 Vol 7. Tab 62A at [15], [17], and [97]; See also CACS at [391].

<sup>8</sup> CAS at [1108] and the references therein.

<sup>9</sup> T1199/15-20.

<sup>10</sup> T1194/5-37, Ex 17, TB 2 Vol 7. Tab 62A at [87]; Ex 17, TB 2 Vol 7. Tab 62A at [92]-[93].

<sup>11</sup> T1431/15-41.

policies, systems and procedures that applied to her,<sup>12</sup> all while facing bullying from Mr Astill and on the outer with other management staff.

16. For the reasons outlined in paragraphs [5]-[15] above, the Commission should be satisfied that Ms Barry was and remains an exemplary prison officer. During the time of Mr Astill's offending, she was subject to bullying and on the outer with management.
17. In spite of these incredibly difficult circumstances, Ms Barry remained committed to her role as a prison officer, ensuring the safety of inmates and doing what she could to both administer their sentences and to protect them. She also took an active role in investigating alleged misconduct in respect of Mr Astill and reporting rumours and allegations to senior management.
18. Ms Barry gave evidence on day 13 of the Inquiry, 30 October 2023 and was an impressive witness. She was honest and upfront with Counsel Assisting and made concessions in respect of failing to report allegations by Sarah Ward that Mr Astill had slapped her on the arse, and such contact was unwelcome (**the Sarah Ward Allegations**).<sup>13</sup> Her honesty and candour in the witness box should be recognised by the Inquiry.
19. In these circumstances, the Inquiry should accept the evidence of Ms Barry and in circumstances where there are differing versions of events, particularly where it involves witnesses such as Ms Martin and Ms O'Toole, the evidence of Ms Barry should be preferred.

#### Matters Arising out of Counsel Assisting's Submissions

20. Two matters arise out of Counsel Assisting's submissions. First, the failure by Ms Barry to report Sarah Ward Allegations, and secondly the submission that Ms Barry failed to properly report the can of coke incident between Mr Astill and Witness C (**the Coke Can Incident**).
21. Each of the above matters are addressed in turn below.

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<sup>12</sup> CAS at [1136] and Section 5.1.

<sup>13</sup> T1211/20-1212/33.

### Failure to Report the Sarah Ward Allegations

22. Ms Barry readily accepts that she had a duty to report the Sarah Ward Allegations and that she failed to do so. She also readily accepts and acknowledges that she '*let the girls down*' and has expressed genuine remorse for this failure.<sup>14</sup>
23. There is no doubt that this conduct is, as submitted by Counsel Assisting a breach of regulation 253(1) of the *Crimes Administration of Sentences Regulation 2014* (NSW) (**CAS Regulation**) and Ms Barry does not and cannot dispute that reality.
24. However, as submitted by Counsel Assisting, considering the lack of training afforded to Ms Barry as well as the incredibly toxic and isolating workplace and management environment Ms Barry was in, her failure to comply with r 253(1) of the CAS Regulation and any policies it would be unreasonable to make a finding that Ms Barry's conduct amounts to misconduct pursuant to section 69 of the *Government Sector Employment Act 2013* (NSW) (**the GSE Act**).

### The Can of Coke Incident

25. Counsel Assisting has submitted that Ms Barry failed to comply with r 253(2) of the CAS Regulations by failing to report the misconduct allegations to the Commissioner of Corrective Services NSW in relation to the Coke Can Incident.<sup>15</sup>
26. This submission must be accepted, however again it must be viewed in light of the lack of training afforded to Ms Barry as well as the incredibly toxic and isolating workplace and management environment Ms Barry was working within. Furthermore, Ms Barry reported the matter to Ms Martin in accordance with the understood practice of the Department of Corrective Services. The reporting of the Coke Can Incident to Ms Martin also relieved Ms Barry of her obligations under r 253(1) of the CAS Regulation by virtue of r 253(3)(c).
27. For these reasons, the Inquiry should find that insofar as Ms Barry did not strictly comply with r 253(2) of the CAS Regulation, it was at worst minor technical breach and reported in accordance with accepted practice and in a manner that partially relieved her of obligations under the CAS Regulation (in respect of r 253(1)), her conduct is not

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<sup>14</sup> T1212/19-23.

<sup>15</sup> CAS at [1144].

sufficient to warrant a finding that Ms Barry engaged in misconduct within the meaning of s 69 of the GSE Act.

## **RENEE BERRY**

### Ms Berry as a Correctional Officer and Witness

28. Ms Renee Berry was at the relevant times to the Inquiry, a Senior Correctional Officer at DCC. During this time, she was allocated to the role of reception, and then to visits.<sup>16</sup>
29. It was while working as a Senior Correctional Officer in reception that she had the most interaction with Mr Astill. It is obvious from Ms Berry's evidence that her relationship with Astill was poor and that she was subject to his bullying.<sup>17</sup>
30. Ms Berry was also specifically targeted by Mr Astill for failing to provide him with an inmate's identification, a request that was inappropriate.<sup>18</sup> Notwithstanding the seriousness of Mr Astill's conduct toward Ms Berry, she did not formally report the incident (in written format) as she genuinely feared that Mr Astill may assault her if he discovered a complaint was made about him.<sup>19</sup>
31. Ms Berry spoke of the poor culture under Governor Martin, that DCC was run on fear and how there were cliques, in particular 'Shari's Boys' of which Ms Berry was not a member of.<sup>20</sup>
32. Ms Berry gave evidence that she regularly made reports and disclosures. This was not challenged at the Inquiry. In particular, Ms Berry made the following reports and disclosures:
- a. reporting to Ms O'Toole and Ms Martin rumours about Mr Astill receiving 'head jobs' from Witness C. In response, Martin and O'Toole said that she should stop spreading rumours, and if she continued to do so, then she would lose her rank and job;<sup>21</sup> and

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<sup>16</sup> Ex 18 TB 2 Vol 7. Tab 49A at [6]-[8].

<sup>17</sup> CAS at [402] and the references therein.

<sup>18</sup> Tab 18 TB 2 Vol 7. Tab 49A at [106].

<sup>19</sup> T1262/15-43.

<sup>20</sup> Ex18 TB 2 Vol 7. Tab 49A at [18], [42], and [189].

<sup>21</sup> T1258/6-30.

- b. four Security Intelligence Unit (**SIU**) Reports. All the reports were made in relation to Mr Astill, three that were made while prior to his arrest, and one following his arrest.<sup>22</sup>

33. There has been no evidence led to suggest that Ms Berry was the subject of performance management by Corrective Services NSW or that she had ever been subject to misconduct allegations.

34. There is also significant evidence to suggest that Ms Berry was not properly trained in respect of the legislation governing the reporting of allegations of misconduct, or the policies, systems and procedures that applied to her,<sup>23</sup> all while facing bullying from Mr Astill and on the outer with other management staff.

35. What follows from paragraphs [29]-[34] is that Ms Berry was a prison officer who discharged her duties as required. She was not afraid to make reports and call out bad behaviour. The evidence suggests that Ms Berry had a tendency to report issues and to make them clear to senior management, in spite of management's unwillingness to engage with any of the reports.

36. Ms Berry gave evidence on day 13 of the Inquiry, 30 October 2023 and was an impressive witness. She was upfront with the Inquiry about her views and made concessions where appropriate.

#### Matters Arising out of Counsel Assisting's Submissions

37. Counsel Assisting has correctly submitted that where there is disagreement between Ms Berry and Ms Martin and Ms O'Toole over the rumour that Mr Astill was receiving 'head jobs' from Witness C, the Inquiry should accept the evidence of Ms Berry over that of Ms Martin and Ms O'Toole.<sup>24</sup>

38. However, Counsel Assisting makes findings that Ms Berry failed to report the Sarah Ward incident in contravention of r 253(1) of the CAS Regulations.<sup>25</sup> This submission should be rejected on the basis that Ms Berry's evidence should be preferred over that of Ms Ward's.

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<sup>22</sup> Ex18 TB 2 Vol 7. Tab 49A at [60]-[61].

<sup>23</sup> CAS at [1136] and Section 5.1.

<sup>24</sup> CAS at [906].

<sup>25</sup> CAS at [1088] and [1247].

39. Ms Berry's evidence is that Ms Ward did not disclose the Sarah Ward Incident to her twice. Rather, Ms Berry's evidence is that Ms Ward only disclosed the incident in the presence of both her and Ms Barry. Further, Ms Berry gave evidence that she told Ms Ward to stay under cameras and informed Ms Ward of her own 'safety plan' in respect of Mr Astill.<sup>26</sup>
40. Ms Berry readily accepts that Ms Ward had previously told her that she did not like the attention she was receiving from Mr Astill, but this was not in the nature of the disclosure she made to Ms Barry and Ms Berry (that Mr Astill had touched her on the backside).<sup>27</sup>
41. Ms Berry had at the time and continues to have a track record of disclosing and reporting concerns that she had at DCC. Both internally and externally to the SIU. She did so in the face of threats from the Ms Martin and Ms O'Toole (in respect of internal complaints).
42. In this respect, it is unbelievable that if a disclosure of a sexual assault was made, Ms Berry would not have reported it. Further, Ms Berry not mentioning the alleged disclosure to Ms Barry when the incidents were reported to her is consistent with the submission that Ms Ward is mistaken, and no disclosure was made prior to Ms Ward making a disclosure to both Ms Barry and Ms Berry.
43. For the above reasons, the Inquiry should accept Ms Berry's evidence over that of Ms Ward's in respect of the alleged first disclosure. If this finding is made then it is not open to the Commission to find that Ms Berry contravened r 253(1) of the CAS Regulations.
44. If, however, the Inquiry does not accept this position, then it is accepted that Ms Berry would have contravened r 253(1) of the CAS Regulations. However, as submitted by Counsel Assisting, considering the lack of training afforded to Ms Berry as well as the threatening and hostile workplace and the management environment Ms Berry worked within, her failure to comply with r 253(1) of the CAS Regulation and any policies it would be unreasonable to make a finding that Ms Berry's conduct amounts to misconduct pursuant to section 69 of the GSE.

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<sup>26</sup> T 1271/31-1272/10.

<sup>27</sup> T1271/1-22.



**RONALD BROWN**

45. Mr Ronald Brown was a person of interest to the Inquiry but was not called and did not give evidence.
46. On day 28 of the Inquiry, Senior Counsel Assisting advised the Inquiry that they would not be making any submissions contrary to the interests of Mr Brown.<sup>28</sup>
47. In their submissions, Counsel Assisting makes a passing reference to Mr Brown. In particular, an allegation that Mr Brown would read Witness C's mail (including legal mail) and that Mr Brown would also stay near Witness C during visits and that he would repeat what was said during visits back to her, making her feel as if she could not discuss anything private during a visit.<sup>29</sup>
48. No findings are sought in respect of these allegations, and they are outside of the remit of the Inquiry. Further, Mr Brown was not given an opportunity to respond to the allegations and they have no relevance to the Inquiry and are not of any assistance. Accordingly, the allegations in respect of Mr Brown should not form any part of the Inquiry's findings.

**SCOTT WESTLAKE**

49. Finally, in respect of Mr Scott Westlake, Counsel Assisting has made a submission that the Inquiry should find that Mr Westlake was present at a meeting where disclosures of misconduct were made by Witnesses R and V. Present also at the meeting were Mr Paddinson and Mr Holman who were later joined by Ms Martin.<sup>30</sup>
50. Mr Westlake gave evidence on day 11 of the Inquiry, 26 October 2023. He stated that he did not recall the meeting with Witnesses R and V.<sup>31</sup> Mr Westlake admitted that his memory was poor as he was suffering from the effects of sleep apnoea at the time of the meeting occurring and he simply could not recall certain events. He further conceded that the Inquiry could not rely on his memory.<sup>32</sup>

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<sup>28</sup> T3286/45-3287/2.

<sup>29</sup> CAS at [314]-[315].

<sup>30</sup> CAS at [979(a)].

<sup>31</sup> T923/6-16, 924/9-19.

<sup>32</sup> T924/21-32.

51. Accordingly, it must be conceded that with the evidence available, Mr Westlake was at the meeting where disclosures of misconduct were made by Witnesses R and V, along with Mr Paddinson and Holman, and later Ms Martin.

52. The practical effect of that finding on Mr Westlake is however, not of much consequence. Counsel Assisting rightly submits that r 253(1) of the CAS Regulation was disapplied by virtue of r 253(3)(c) of the CAS Regulation as Mr Paddinson, a more senior officer was present.<sup>33</sup>

53. Accordingly, the Inquiry, in making any findings in respect of the meeting where disclosures of misconduct were made by Witnesses R and V should embrace the submissions of Counsel Assisting.



**ADAM GUY**

**COUNSEL FOR OFFICERS JUDI BARRY, RENEE BERRY,  
RONALD BROWN AND SCOTT WESTLAKE**

**H B HIGGINS CHAMBERS**

14 December 2023

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<sup>33</sup> CAS at [1182].