

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

SUBMISSIONS ON BEHALF OF WESTLEY GILES & MISHELLE ROBINSON.

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A. Introduction:

1. These written submissions have been prepared on behalf of Westley Dennis Giles (**“Giles”**) and Mishelle Elena Robinson (**“Robinson”**).
2. These written submissions are written submissions in response¹ to the submissions of Counsel Assisting dated 6 December 2023 pursuant to the Orders made by the Honourable Peter McClellan AM KC (**“Commissioner”**) on 30 November 2023. Accordingly, these submissions have, to the extent practical, been prepared within the confines of the matters raised in Counsel Assisting’s submissions (**“CA”**).

B. The Special Commission:

3. Giles and Robinson adopt the background to the Special Commission set out at CA [1]-[9].

C. Representation of Giles & Robinson at the Special Commission:

4. On 28 September 2023 (Day 1), Giles and Robinson were represented by Mr Burns, Solicitor².
5. By 6 October 2023 (Day 3), Giles and Robinson appear to have been represented by Ms Ghabrial of Counsel³.
6. On 19 October 2023 (Day 6), the Commissioner appropriately raised the fact that: *“It’s conceivable that they won’t all have the same interests”*⁴. That is, it was conceivable that a conflict could arise between a large group of correctional officers represented by Ms Ghabrial of Counsel and Mr Burns, Solicitor.

¹ Transcript, 24 November 2023, T3306.30.

² Transcript, 28 September 2023, T3.15-20.

³ Transcript, 6 October 2023, T133.20.

⁴ Transcript, 19 October 2023, T340.20-25.

7. By 23 October 2023 (Day 8), the record reflects that Giles and Robinson were represented by Mr Burns, Solicitor, with the *assistance*⁵ of Ms Ghabrial of Counsel.
8. On 25 October 2023 (Day 10), Ms Ghabrial of Counsel advised the Commission that neither she nor Mr Burns acted for Giles and Robinson⁶.
9. Later on 25 October 2023 (Day 10), Mr Kadar, Solicitor, was granted leave to appear for Giles and Robinson⁷.
10. On 26 October 2023 (Day 11), Mr Christopher Watson of Counsel was granted leave to appear for Giles and Robinson⁸.
11. Mr Watson and Mr Kadar continue to act for Giles and Robinson.

D. Giles' Background:

12. Giles commenced his employment with Corrective Services in 1999⁹ at the age of 19¹⁰. It was, as he put it, his *"first proper job"*¹¹.
13. Giles commenced at Dillwynia Women's Correctional Centre ("**DCC**") in 2005¹² and excluding brief periods at other centres, remained employed at DCC until his suspension on 13 August 2023.
14. During the relevant period between 2015 and 2018, Giles held the rank of Senior Correctional Officer but regularly acted up as a Chief Correctional Officer¹³.

⁵ Transcript, 23 October 2023, T544.25-30; Transcript, 24 October 2023, T646.25-30.

⁶ Transcript, 25 October 2023, T726.40.

⁷ Transcript, 25 October 2023, T766.5.

⁸ Transcript, 26 October 2023, T871.10-35.

⁹ Exhibit 44 – Giles Commission Statement at [5].

¹⁰ Transcript, 17 November 2023, T2554.45.

¹¹ Transcript, 17 November 2023, T2555.5.

¹² Exhibit 44 – Giles Commission Statement at [5].

¹³ Exhibit 44 – Giles Commission Statement at [7].

15. Giles acted up as High Needs Chief (6:00am – 2:00pm¹⁴) and A-Watch Chief (8:00am – 4:00pm¹⁵). Astill was D-Watch Chief (11:00am to 7:00pm¹⁶).
16. Giles and Astill had respective offices within the Hub which were approximately 14 metres apart¹⁷.
17. Despite the close physical proximity between Astill and Giles in the Hub:
 - (a) There was an overlap between the hours they worked¹⁸;
 - (b) Only a subset of such overlapping hours was spent in their respective offices¹⁹; and
 - (c) There was no evidence of the time they each spent in their respective offices nor any regular period during which they would both be in their offices.
18. Insofar as the relationship between Giles and Astill is concerned, Giles' evidence is that: "*Wayne Astill and I were not friends*"²⁰. Such a firm view was held by Giles for a number of reasons, the most important of which relates to Astill's bullying of Robinson (See [23]-[24] below).
19. Giles' dislike of Astill is reflected in his Facebook post shortly after Astill's arrest wherein he condemned Astill's behaviour and those who had supported him²¹. Giles was subsequently counselled for the Facebook post²². Giles was never told of the source of the complaint about his Facebook post²³.

¹⁴ Transcript, 17 November 2023, T2570.42.

¹⁵ Transcript, 17 November 2023, T2570.42.

¹⁶ Transcript, 17 November 2023, T2571.5-10.

¹⁷ Transcript, 17 November 2023, T2571.10-25.

¹⁸ Transcript, 17 November 2023, T2571.25-40.

¹⁹ Transcript, 17 November 2023, T2571.25-40.

²⁰ Transcript, 17 November 2023, T2572.20.

²¹ Transcript, 17 November 2023, T2617-2619.

²² Transcript, 17 November 2023, T2618.40-45.

²³ Transcript, 17 November 2023, T2619.25-30.

E. Robinson's Background:

20. Robinson commenced her employment with Corrective Services at 18 years of age²⁴. She commenced at DCC in 2005 and worked there exclusively until 12 September 2023²⁵.
21. Robinson holds the rank of First-Class Correctional Officer²⁶.
22. Robinson and Giles have been married for 4 years²⁷.
23. Robinson was bullied by Astill in 2010²⁸. Robinson suffers from a number of auto-immune diseases which were treated by medication that caused her face to swell²⁹. She was subjected to verbal abuse by Astill including comments that³⁰:
 - (a) She *"looked pregnant"*;
 - (b) She *had* "gained weight"; and
 - (c) She needed to *"get over it"* and *"fucking get over it"*.
24. The bullying by Astill reduced Robinson to tears in the workplace³¹.

²⁴ Exhibit 24 – Robinson Commission Statement at [4].

²⁵ Exhibit 24 – Robinson Commission Statement at [4].

²⁶ Exhibit 24 – Robinson Commission Statement at [6].

²⁷ Transcript, 2 November 2023, T1512.5.

²⁸ Exhibit 24 – Robinson Commission Statement at [43]-[49].

²⁹ Exhibit 24 – Robinson Commission Statement at [46].

³⁰ Exhibit 24 – Notebook Attachment to the Robinson Commission Statement.

³¹ Exhibit 24 – Notebook Attachment to the Robinson Commission Statement.

F. Credit & Reliability of Giles:

i. Credibility & Reliability in a General Sense:

25. Credit and reliability cannot be assessed in a vacuum. They must be assessed having regard to all of the evidence given by a witness (both oral and written).
26. It is settled law that, broadly speaking, credibility concerns honesty (i.e., is the witness telling the truth?). Reliability, on the other hand, is different. A witness may be honest, but have poor memory or indeed be mistaken³².
27. Counsel Assisting do not submit that it is *open* to find that Giles was generally an unreliable witness or that he lacked credibility.
28. Giles should be assessed, generally, as a credible and reliable witness for the following reasons:
- (a) Giles willingly complied with the requests of the Commission in preparing an extensive statement (138 paragraphs) and appearing to give oral evidence;
 - (b) He was not evasive and was forthright in his responses;
 - (c) He gave frank answers that were, at times, adverse to his interests;
 - (d) He did not give conflicting evidence;
 - (e) He was not argumentative;
 - (f) His evidence was not inherently improbable;

³² *Pell v The Queen* [2019] VSCA 186 at [53] & Footnote [208].

- (g) He made a number of appropriate concessions when hypothetical scenarios were put to him³³; and
- (h) He was the only³⁴ witness to concede that he was a “swearer”³⁵.
29. Additionally, Giles became emotional (on the verge of tears) when recounting the manner in which Astill had manipulated inmates into believing Astill and Giles were friends. The effect of such manipulation being that inmates would not report to, or confide in, Giles about Astill’s offending. Giles’ raw emotion to that line of questioning gave rise to the following exchange³⁶:

MR LLOYD: *“That seems – recounting that particular incident seems to make you upset”.*

GILES: *“Yeah, it does”.*

30. Counsel Assisting then offered Giles the opportunity to take a short break which was respectfully declined³⁷.
31. In the circumstances, it is submitted that the Giles’ evidence should be received by the Commission as credible and reliable.

ii. Credibility & Reliability in Certain Events:

32. Counsel Assisting, at CA [1129]-[1134] contend that it is *“open to find that in the following respects Mr Giles was an unreliable witness”*:
- (a) The use of swearing and foul language at DCC (See Part J); and

³³ Transcript, 17 November 2023, T2587-2589; Transcript, 17 November 2023, T25992606; Transcript, 17 November 2023, T2607.15.

³⁴ Whilst there was a plethora of evidence that various Officers swore, Giles was the only witness called to give oral evidence who conceded that he did in fact swear.

³⁵ Transcript, 17 November 2023, T2581.40-45.

³⁶ Transcript, 17 November 2023, T2617.10-40.

³⁷ Transcript, 17 November 2023, T2617.40-45.

- (b) His recollection of the April/May 2018 meeting with Cox & Martin (See Part M).
33. Whilst Counsel Assisting contend that the said finding is “*open*”, they do not necessarily contend that the finding *should*³⁸ be made and certainly do not contend that Giles’ evidence as a whole ought to be rejected.
34. An adverse credibility finding is advocated for by Counsel Assisting against Martin (CA [1104]-[1128]). However, that finding is inherently different to that which it is contended is *open* against Giles. Such differentiation arises in circumstances where:
- (a) Giles is alleged to have been unreliable in respect of 2 events; and
- (b) Martin is alleged to have been unreliable in respect of 23 events.
35. It is respectfully submitted that the specified areas of alleged unreliability in Giles’ evidence should be rejected. The reasons for such rejection are set out in Part J (Swearing) and Part M (Cox incident).

G. Credit & Reliability of Robinson:

36. Whilst Robinson’s credibility and reliability was not the subject of critique by Counsel Assisting, it is submitted that the Commission should find her to be a reliable and credible witness in circumstances where:
- (a) Robinson willingly complied with the requests of the Commission in preparing a statement and appearing to give oral evidence;
- (b) She was not evasive;
- (c) She did not give conflicting evidence;

³⁸ That is, they do not positively advocate for same in CA.

- (d) She was not argumentative;
- (e) She was not, in any respect, dishonest;
- (f) Her evidence was not inherently inconsistent with that of any other witness; and
- (g) Her evidence was not inherently improbable on any subject.

37. Robinson ought to be assessed as a credible and reliable witness.

H. “Shari’s Boys” & the Cliques:

38. Counsel Assisting, at CA [382]-[401], discussed “*close friendships between staff members*”.
39. Giles appropriately gave evidence (consistent with that of other officers) that there were cliques at DCC. The rational basis for cliques arising was that officers spent a considerable amount of time together (including holiday periods at DCC) and as a result would become good friends³⁹.
40. There is evidence of a number of cliques, namely:
- (a) “*The Boys Club*”⁴⁰;
 - (b) “*Shari’s Boys*”⁴¹; and
 - (c) “*O’Toole’s Boys*”⁴².

³⁹ Transcript, 17 November 2023, T2560.39-2561.27.

⁴⁰ Transcript, 25 October 2023, T745.13-32; Transcript, 26 October 2023, T947.35-43.

⁴¹ Transcript, 27 October 2023, T1109.1-36; Ex. 18, TB2, Vol 7, Tab 49A, AST.002.013.0013_004-5 [18], 9 [42], 29 [189]; Ex. 17, TB2, Vol 7, Tab 62A, AST.002.013.0045_0002 [7], 3 [15], 9-10 [57]; Ex. 27, TB2, Vol 8, Tab 85, AST.002.013.0039_0002 [11], [16]. See also the evidence of Mr Jeans where he refers to those officers as Ms Martin’s favourites: Ex. 57, TB2, Vol 8, Tab 87, AST.002.013.0034_0006 [48]-[49].

⁴² Transcript, 30 October 2023, T1247.37.

41. With respect to Witness C's evidence on this topic (CA [396]-[398]), such evidence should be rejected along with the evidence of Witness C generally. Witness C is an unreliable witness. With respect, the evidence of Witness C, on any topic, must be assessed with scrutiny (if not scepticism) in circumstances where she has been tried and convicted of⁴³:

[REDACTED]

[REDACTED]

42. Witness C is, as her sentencing judgement makes clear, well-versed in the art of deception⁴⁴. Appropriate caution ought to be taken in assessing her evidence.
43. Counsel Assisting submit (at CA [400]) that it is not necessary to make findings as to the precise membership of the cliques or to resolve the matters raised by Witness C (at CA [396]-[398]). Giles adopts this submission.
44. At CA [400], Counsel Assisting appropriately submit that *"the evidence is not clear as to whether Mr Giles was one of 'Shari's Boys'"*. Giles adopts this submission.
45. Giles himself was confused by the varying evidence about his alleged membership in Shari's Boys or O'Toole's Boys, describing the conflicting evidence as *"a little bit home and away-ish"*⁴⁵.
46. Whilst accepting that cliques existed, Giles denied being part of Shari's Boys or O'Toole's Boys and further denied receiving any special treatment⁴⁶.

⁴³ Exhibit 6 – Serious Offender Review Council Report dated October 2017; [REDACTED]

⁴⁴ [REDACTED]

⁴⁵ Transcript, 17 November 2023, T2644.5.

⁴⁶ Transcript, 17 November 2023, T2644.5.

47. Insofar as the Shari's Boys controversy is concerned, it is submitted that the appropriate finding, in respect of Giles, is that he was not a member of such entity for the following reasons:

- (a) Shari Martin, the figurehead of the alleged group, once threatened to have Giles shot by her husband⁴⁷;
- (b) Giles was, in his capacity as an Officer and Union representative, on the receiving end of verbal tirades from Martin during what he described as "*robust discussions*"⁴⁸. For example, Giles gave the following evidence of his interactions with Martin:

GILES: *"But there's nobody – when I talk about myself, there's nobody in that gaol that was told to fuck off out of her office, you're not going to fucking do that, blah, blah, blah. There's no person that copped that more than I did at that gaol"*⁴⁹.

- (c) Whilst they maintained a professional relationship they were not social friends outside of DCC⁵⁰; and
 - (d) Giles' position as Union representative appears to have given rise to a *perception* that he was close with Martin⁵¹.
48. It is submitted that no adverse finding should be made against Giles on this issue.
49. Giles otherwise adopts CA [401] that the mere perception of a Boys Club contributed to the toxic environment at DCC.

⁴⁷ Transcript, 17 November 2023, T2559.5-45.

⁴⁸ Transcript, 17 November 2023, T2559.5.

⁴⁹ Transcript, 17 November 2023, T2643.15-25.

⁵⁰ Exhibit 44 – Giles Commission Statement at [77].

⁵¹ Transcript, 3 November 2023, T1647.45; Transcript, 3 November 2023, T1649.5-10

I. ***“Papering”***

50. Counsel Assisting, at CA [429]-[448], discussed *“fear of reprisal from staff”*. This topic adopted the colloquial term *“papering”*.
51. Giles gave evidence about reporting another officer⁵². His evidence on this topic is unique as he commenced working in Correctives at 19 years of age⁵³.
52. Giles confirmed that the culture in 1999 was that if you *“put officers on paper, you were a dog”*⁵⁴.
53. Giles’ evidence was that he had perceived a shift in the view on reporting other officers by 2015⁵⁵. However, it is conceded that Giles’ perception does not necessarily mean that all officers held the same view.
54. Dolly gave evidence of the culture against papering another officer and added that Giles was *“adamant”* that an officer was not to paper another officer⁵⁶.
55. Giles gave evidence that he wasn’t anti-papering⁵⁷. Giles had in fact papered another officer some 18-months before giving evidence⁵⁸. Giles was not challenged on this evidence.
56. With respect to Dolly, her evidence on this topic should be rejected.
57. It is submitted that, insofar as the Commission makes findings on this topic, Giles should be found to be an officer acutely aware of the historical connotations to papering but that such connotations clearly did not affect his willingness to paper other officers.

⁵² Transcript, 17 November 2023, T2560.23.

⁵³ Transcript, 17 November 2023, T2554.45.

⁵⁴ Transcript, 17 November 2023, T2559.40-2560.35.

⁵⁵ Transcript, 17 November 2023, T2560.30

⁵⁶ Transcript, 27 October 2023, T1113.16-T1114.15.

⁵⁷ Transcript, 17 November 2023, T2634.5-10.

⁵⁸ Transcript, 17 November 2023, T2633.45-2634.15.

J. Foul Language:

58. Counsel Assisting, at CA [348]-[366], discuss inappropriate language.
59. The use of foul language is a topic upon which Counsel Assisting contend that Giles' evidence is open to a finding of unreliability (CA [1130]-[1133]).
60. Giles gave the following evidence with respect to the use of foul language:
- (a) He was a "swearer"⁵⁹ (notably, he was the only witness to make such a concession and made it knowing it was adverse to his interests⁶⁰);
 - (b) He had heard officers swear at inmates⁶¹;
 - (c) He had never heard officers swearing at inmates using the specific words: "whores", "dogs", "sluts", "fucking cunts" or "mutts"⁶². That is, he had heard officers using different foul language to swear at inmates;
 - (d) O'Toole swore⁶³;
 - (e) Martin swore⁶⁴;
 - (f) Officers swore at each other⁶⁵; and
 - (g) He made clear that he did not contend that officers hadn't sworn at inmates⁶⁶.

⁵⁹ Transcript, 17 November 2023, T2581.43; Transcript, 17 November 2023, T636.30-35.

⁶⁰ For example, some officers denied swearing at all: Transcript, 25 October 2023, T735.6-30; T855.16-47; Transcript, 26 October 2023, T920.40-921.13; T950.6-15; Transcript, 27 October 2023, T1052.21-1053.33; Transcript, 17 November 2023, T2581.38-2582.10; T2591.1-31.

⁶¹ Transcript, 17 November 2023, T2581.43.

⁶² Transcript, 17 November 2023, T2581.43.

⁶³ Transcript, 17 November 2023, T2590.44.

⁶⁴ Transcript, 17 November 2023, T2591.15-20.

⁶⁵ Transcript, 17 November 2023, T2591.5-10.

⁶⁶ Transcript, 17 November 2023, T2591.13.

61. The frankness of Giles' evidence on this topic extended to an explicit example of an occasion on which he would swear:

MR WATSON: *All right. Well, what's an example of how you used the word "fuck"? Was it something like, "What the fuck's going on?"*

MR GILES: *That - when you're going into a situation where there's somebody slashing up - a female slashing up, blood everywhere, a fight between two inmates, inmates throwing stuff at myself or my staff - a wide range of things that can happen in a gaol, you know, to the extreme of walking into a female that was deceased. So, yes, absolutely swore. Absolutely I swear.*

62. Critically, Giles' evidence on this topic was not evasive. Rather, his evidence was responsive.
63. In assessing Giles' credibility and reliability on this topic, it is imperative to have regard to the fact that he gave evidence adverse to his own interests on this topic and that he was the only witness do so. Upon making the appropriate and truthful concessions, he had no motive to lie about his hearing of the specified foul language.
64. The mere fact that he did not hear the specified foul language is not inherently improbable. After all, he did hear other foul language being used towards inmates.

65. It is submitted that the Commission should accept Giles' evidence on this topic. However, in so accepting Giles' evidence on this topic, it remains open (and appropriate) to accept the evidence of other witnesses that the specified foul language was in fact used. The acceptance of Giles' evidence and the evidence of other witnesses on this topic are not mutually exclusive. In a real sense, Giles' evidence complements the evidence of other witnesses on the topic of foul language.

K. May 2016 – The Miskov Incident:

66. Counsel Assisting, at CA [909]-[922] & [1163]-[1167], discuss the alleged incident involving Miskov and Astill in May 2016.
67. Giles and Robinson's interest in the Miskov incident is limited to the alleged incident at CA [913]: *"Ms Miskov described an occasion where she was eating lunch in the high needs officers' station at the same time as Astill and Ms Peek, Ms Robinson and Mr Giles. Her evidence is that while she was sitting eating her lunch, Astill walked up to her and rubbed his crotch against her face in what she believed was in full view of the other officers. This caused other CSNSW Officers present to laugh, although Ms Miskov could not be sure which CSNSW Officers. In response, Ms Miskov got up, and pushed Astill away, said to him "what the hell are you doing" and walked away"*.
68. Giles' evidence on this event was as follows⁶⁷:

MR LLOYD: *I understand what you're saying, Mr Giles, and I'm just going to see if I've got it right to see your response. Let's start with this. Part of what you're telling the Commissioner is that if you had been in a room and you had seen an officer rubbing his crotch in the face of a new recruit or, for that matter, any other person - if you*

⁶⁷ Transcript, 17 November 2023, T2566.35.

had seen it, you would remember and you would have reported it?

MR GILES: *100 per cent.*

69. In re-examination Giles gave evidence as follows⁶⁸:

MR WATSON: *And I know that you sort of went round and round in circles, with respect, when you were asked about this. But is this what, in effect, you're saying: That you never saw Mr Astill put his crotch in the face of either Officer Miskov or any other officer?*

MR GILES: *That's correct.*

70. Of particular note is the inherent unlikelihood of the alleged event occurring due to the forum in which it was said to have occurred. Giles gave evidence that he would not have been in the high needs office with Miskov, Astill, Robinson and Peek⁶⁹. The rational basis for such conclusion was because of the relatively small size of the room. As Giles said: *"With five people in there, I would remember - if I was that - in that office and that occurred, I would remember that, 100 per cent"*⁷⁰.

71. The Miskov incident was not put to Robinson and she wasn't provided with an opportunity to respond to same.

72. Counsel Assisting do not contend that any adverse findings should be made against Giles or Robinson with respect to the Miskov incident (as distinct from the consequent incident between Miskov, Martin and Paddison (CA [917]-[922])).

⁶⁸ Transcript, 17 November 2023, T2641.15.

⁶⁹ Transcript, 17 November 2023, T2566.5-20.

⁷⁰ Transcript, 17 November 2023, T2566.15.

73. It is respectfully submitted that the Miskov incident was untested as Astill was not confronted with same.
74. In the circumstances, the Commission need not make any factual findings on this issue.
75. In any event, it is submitted that no adverse finding should be made with respect to Giles or Robinson in respect of this incident.

L. March/April 2017 – The Witness O & T Incident:

76. Counsel Assisting, at CA [936]-[952] & [1174]-[1180], discuss the incident involving witness O & T in March/April 2017.
77. Giles adopts the factual background set out at CA [936]-[947] as accurate and adds the following material comments:
- (a) Witness O's inmate application form was completed by Peek based on the instructions of Witness O. That is, he was "*fundamentally told by her what to write on the Application*"⁷¹; and
 - (b) Notwithstanding Witness O's evidence that Giles and Peek told her no one would know about her making the complaint⁷², the inmate Application (written on her explicit instructions) states "*I would like to speak with the Governor about this*"⁷³. Accordingly, Witness O was well aware that other people would become aware of the complaint (such was conceded by Counsel Assisting in Giles' examination⁷⁴) and no criticism of Giles is warranted in this regard.

⁷¹ Transcript, 1 November 2023, T1405.40.

⁷² Transcript, 24 October 2023, T619.32-620.17; Ex. 3, TB1, Vol 5, Tab 17A, AST.002.013.0028_0003 [15].

⁷³ Exhibit 20 – Bartlett's Commission Statement (AST.002.0079_0017).

⁷⁴ Transcript, 17 November 2023, T2597.1.

78. Giles and Peek caused the inmate applications to be handed to Martin. To Giles' credit, he did not have a distinct recollection of handing the documents to Martin and conceded same in his statement⁷⁵. However, the evidence is clear that the documents went to Martin who, in turn, instructed Bartlett to conduct an investigation⁷⁶.
79. Giles gave evidence that his expectation upon forwarding the complaints to Martin was that the allegations would be properly dealt with⁷⁷. Giles agreed that Martin should have sent the complaint directly to PSB if not NSW Police⁷⁸.
80. With respect to the subsequent investigation conducted by Bartlett and Astill's confrontation of Witness O (which must be inferred to be a direct result of the Bartlett's investigation), Giles considered Bartlett's cursory investigation to be "*disgraceful*"⁷⁹.
81. At CA [948]-[949], Counsel Assisting deal with the factual dispute as to whether or not Witness O disclosed to Peek and Giles that she had seen Astill touch Sheiles on the bottom.
82. Counsel assisting contend that the appropriate finding is that Witness O did so disclose that specific allegation to Peek and Giles. Counsel Assisting's contention should be rejected for the following reasons:
- (a) As set out above, Witness O's inmate application was written by Peek upon the direct verbal instructions of Witness O⁸⁰. That is, what Witness O stated to Peek, was written on the Application.

⁷⁵ Exhibit 44 – Giles Commission Statement at [32].

⁷⁶ Ex. 20, TB2, Vol 8, Tab 65, AST.002.002.0079_0001 [4]; Transcript, 1 November 2023, T1326.5-25.

⁷⁷ Transcript, 17 November 2023, T2595.20-30.

⁷⁸ Transcript, 17 November 2023, T2595.30-40.

⁷⁹ Transcript, 17 November 2023, T2597.30.

⁸⁰ Transcript, 1 November 2023, T1405.40.

- (b) Witness O's recollection was not "*clear*"⁸¹ as suggested by Counsel Assisting. She gave evidence that she had been told no one would be told of her application⁸². Counsel Assisting, in the course of examining⁸³ Giles, conceded that Witness O made an explicit request⁸⁴ to see Martin. Clearly her evidence on this specific issue was incorrect.
- (c) Whilst it would not be appropriate for the Commission to make a *priori* negative assumption about Witness O's credibility, the Commission must nonetheless approach her evidence with a degree of caution (and even scepticism) in circumstances where:

- (i) [REDACTED]
- (ii) [REDACTED]
- (iii) [REDACTED]
- (iv) [REDACTED]

⁸¹ CA [949].

⁸² Transcript, 24 October 2023, T619.32-620.17; Ex. 3, TB1, Vol 5, Tab 17A, AST.002.013.0028_0003 [15].

⁸³ Transcript, 17 November 2023, T2597.1.

⁸⁴ Exhibit 20 – Bartlett's Commission Statement (AST.002.0079_0017).

⁸⁵ [REDACTED]

⁸⁶ [REDACTED]

⁸⁷ [REDACTED]

⁸⁸ [REDACTED]

83. In any event, the resolution of that distinct factual question is, with respect, entirely unnecessary in circumstances where:
- (a) There is no allegation that Giles and Peek failed to follow the required procedure and forward the inmate applications to Martin;
 - (b) The evidence reflects the inmate applications being in Martin's possession;
 - (c) Martin subsequently instructed Bartlett to complete an investigation of sorts; and
 - (d) Bartlett's Report was handed to Martin and her handwritten notes are inscribed on page 2⁸⁹.
84. The effect of the above being that Giles and Peek acted appropriately and within the required procedure. Whether a specific allegation was told to them and not written in the inmate application is inherently unlikely in the factual scenario and with respect, of no ultimate assistance in resolving and making recommendations on this issue.
85. It is respectfully submitted that it is not open to make any adverse findings against Peek or Giles with respect to this issue.

M. April/May 2018 – Meeting with Elizabeth Cox, Ms Martin and Mr Giles:

86. Counsel Assisting, at CA [1043]-[1057], [1216]-[1228] and [1563]-[1574], discuss the meeting between Cox, Martin and Giles in April/May 2018.

⁸⁹ Exhibit 20 – Bartlett's Commission Statement (AST.002.0079_0007).

i. Assessing the Evidence of Cox:

87. It is axiomatic that Cox was convicted of a criminal offence which warranted her imprisonment. On the scarce evidence relating to her criminal antecedents, it appears that in 1999 Cox was sentenced following a plea of guilty to murder⁹⁰.
88. As submitted at [82(c)] above, whilst it would not be appropriate for the Commission to make a *priori* negative assumption about Cox's credibility and reliability, the Commission must nonetheless approach her evidence with a degree of caution (and even scepticism) in circumstances where she has been charged and convicted of murder (and potentially other offences).

ii. Counsel Assisting's Factual Contentions:

89. At CA [1043]-[1054], Counsel Assisting set out the competing evidence. Giles adopts same and adds merely that Giles was present as a witness (not a participant). Cox confirmed this state of events⁹¹.

iii. Giles Evidence:

90. With respect to the Cox incident, it is pertinent to recall that the subject event occurred some 5 years prior to Giles' evidence before the Commission. The effluxion of time ordinarily has a negative effect on the fallible mind of all humans, including Giles, Martin & Cox⁹².

⁹⁰ *R v Cox* [1999] NSWCCA 246.

⁹¹ Transcript, 20 October 2023, T532.30-45.

⁹² For example, in *Watson v Foxman* [1995] NSWCA 497; (1995) 49 NSWLR 315 at 318-319 McLelland CJ in Eq stated: "*human memory of what was said in a conversation is fallible for a variety of reasons, and ordinarily the degree of fallibility increases with the passage of time, particularly where disputes or litigation intervene, and the processes of memory are overlaid, often subconsciously, by perceptions or self-interest as well as conscious consideration of what should have been said or could have been said. All too often what is actually remembered is little more than an impression from which plausible details are then, again often subconsciously, constructed. All this is a matter of ordinary human experience*".

91. Giles recalled Cox fondly and considered her to be a reliable inmate with whom he had a good rapport⁹³.
92. Giles recalled the discussion about the dirty urine results and Cox's allegation that Astill had falsified test results. He also gave evidence of Cox's complaint about Astill going into units and treating certain inmates differently⁹⁴.
93. Giles gave evidence that Cox did not, in his presence, report that Astill was bringing contraband into DCC, that Astill was having inmates collect debts for him or that Astill was sexually assaulting and/or harassing inmates⁹⁵.
94. Giles agreed that he photocopied Cox's notes as directed by Martin. He gave evidence that he did not read the notes⁹⁶. Cox gave evidence that neither Giles or Martin read the notes during the meeting⁹⁷. The inference to be drawn, in circumstances where Cox retained the originals and Martin retained the copy, is that Giles never read the notes.
95. Giles conceded that the first time he recollected the meeting was following Cox's evidence⁹⁸.
96. Notwithstanding the divergence between the evidence of Giles and Cox, it is submitted that Giles' evidence on this subject should not be rejected in circumstances where:
 - (a) His evidence was reliable; and
 - (b) He made appropriate concessions as to his recollection of the meeting.

⁹³ Transcript, 17 November 2023, T2598.20-25.

⁹⁴ Transcript, 17 November 2023, T2599.11-2603.35.

⁹⁵ Transcript, 17 November 2023, T2600.03-2603.35.

⁹⁶ Transcript, 17 November 2023, T2600.03-2603.35.

⁹⁷ Transcript, 20 October 2023, T505.11-22.

⁹⁸ Transcript, 17 November 2023, T2603.45.

- (c) He gave evidence as to the steps which he would have taken in the event that Cox did so disclose to him allegations of a sexual nature:

MR GILES: *Mr Lloyd, if she would have said that whilst I was there, I would have said something to Shari to that effect - Ms Martin, Shari - that the police must be called. Not a "Let's send it off to PSB" or anything like that. Like I said at the start of the Commission. Did I have a good working relationship with Shari Martin? Absolutely. I've had good working relationship with a lot of Governors. But I would have - as a union delegate also, I would have said to her, "The police need to be called." And if she didn't, I would have made it a union issue locally. I've had many union issues and shut the gaol down and had strikes. That's what I would have done. She didn't say anything about sexual inappropriateness in that meeting that I was at⁹⁹.*

- (d) Critically, the evidence given by Giles in the preceding paragraph reflects, in a very real sense, the steps taken by him in relation to Witness P incident¹⁰⁰ and the incident involving Witness O (see Part L).
- (e) There is no allegation (nor evidence) of any conspiracy or joint enterprise between Martin and Giles to *bury* Cox's complaint.

⁹⁹ Transcript, 17 November 2023, T2605.38-2606.5.

¹⁰⁰ Exhibit 44 – Giles Commission Statement at [36]-[40].

**iv. Findings which it is contended by Counsel Assisting are
“Open to Find”:**

97. Giles appropriately made the following concession¹⁰¹:

MR LLOYD: *Is what you're saying - just take the assumption or just pretend for a minute that those things about - that I asked you about, sexual harassment or contact between Astill and inmates, bringing in tobacco in return for sex - those things have been raised in your presence, are you saying that one way or the other, it was part of your duty to ensure that the police were notified? I just pause there. I think I probably should take an objection.*

COMMISSIONER: *Yes, I require you to answer.*

MR GILES: *If I was there and she said that, yes.*

98. It is imperative to recall that the above concession was made as a hypothetical in circumstances where Giles was adamant that Cox did not raise any issues of a sexual nature in his presence.
99. At CA [1216]-[1228], Counsel Assisting set out the available findings with respect to the Cox incident.
100. Whilst Giles maintains that Cox did not raise any allegations of a sexual nature (and urges the Commission to make such a finding), Giles adopts the analysis of Counsel Assisting at CA [1218] that, in the event Cox did so raise the sexual allegations, “*because the allegations were made in the presence of Ms Martin, cl. 253(3)(c) CAS Regulation disapplied cl.253(1) CAS Regulation and accordingly Mr Giles was not bound to do anything more than he did*”.

¹⁰¹ Transcript, 17 November 2023, T2606.15-25.

101. In a similar vein, whilst Giles urges the Commission to find that no sexual allegations were made in his presence, should the Commission find otherwise, Giles adopts Counsel Assisting's analysis at CA [1221] that *"the report was to his manager in the course of the meeting, and we do not consider it open to find that Mr Giles breached Commissioner's Instruction No. 10/2023"*.
102. At CA [1225], Counsel Assisting, in reference to Giles' concession set out above at [97], state: *"we submit that it was a serious failure on the part of Mr Giles to not report the allegations made by Ms Cox in his presence at this meeting to NSWPF, the IB, or the Deputy Commissioner or Assistant Commissioner or the Commissioner of CSNSW himself"*.
103. With respect, such a submission is apt to mislead in circumstances where it relates to a hypothetical scenario, the facts of which are disputed by Giles. Further, the submission fails to apply the same logic applied at CA [1218] & [1221], being that Giles duty/obligation (moral, legal or otherwise) did not arise in circumstances where the alleged complaint was made to Martin (the Governor)
104. Counsel Assisting, at CA [1563]-[1574], discuss the breaches in relation to the Cox incident.
105. Counsel Assisting do not make any adverse findings against Giles, nor do they recommend any referrals in respect of Giles. Giles adopts that position.

N. April-September 2023 – Suspensions of Mr Giles, Mr Paddison & Mr Holman:

i. The Suspension Process:

106. Counsel Assisting, at [1250]-[1343], discusses the suspension of Giles, Paddison and Holman. Giles adopts the factual background and contentions made by Counsel Assisting.
107. In particular, Giles adopts the submission that the process behind his suspension departed from the proper practice¹⁰². However, Giles concedes that it did not so depart to the same extent as the process behind the suspension of Paddison and Holman¹⁰³.
108. It is appropriate and necessary to note the following with respect to the suspension process:
- (a) Suspension is a serious action and one of last resort¹⁰⁴. There are a number of alternative actions that could have been taken in the circumstances, least of which was to transfer Giles, Holman and Paddison to another facility;
 - (b) The process gave rise to a denial of natural justice¹⁰⁵;
 - (c) Zekanovic conceded that Giles had been denied natural justice in the sense the allegations were not put to him for comment¹⁰⁶;

¹⁰² CA [1342].

¹⁰³ CA [1343].

¹⁰⁴ As conceded by Zekanovic (Transcript, 21 November 2023, T2876.25-35) & Corcoran (Transcript, 22 November 2023, T2994.25-30).

¹⁰⁵ *Kioa v West* [1985] HCA 81; (1985) 159 CLR 550.

¹⁰⁶ Transcript, 21 November 2023, T2872-2873.

- (d) Zekanovic conceded that Giles was suspended in the following circumstances¹⁰⁷:

COMMISSIONER: *You're not listening to me. You're making a report to the decision-maker, right? And in that report, you say, "It's open to you to suspend." But you make that decision or recommendation without knowing all of the facts yourself. Do you understand? Do you think that someone who's suffered suspension ultimately in those circumstances would think they'd been fairly treated when the report recommending the possibility of suspension was made without knowing all of the facts?*

MS ZEKANOVIC: *I can - I can absolutely see the unfairness in that. I can only assume that the information the Commissioner had at the time was so serious to warrant immediate action.*

COMMISSIONER: *Well, you don't know, do you?*

MS ZEKANOVIC: *No.*

- (e) The allegations against Giles¹⁰⁸ were in the broadest possible terms. For example: *"complicit in some capacity"*¹⁰⁹ & *"highly probable"*¹¹⁰ that he had knowledge. Zekanovic conceded that particular broad allegations against Giles were accompanied by a comment of *"no specifics"*¹¹¹.

¹⁰⁷ Transcript, 21 November 2023, T2880.20-35.

¹⁰⁸ Exhibit 48.

¹⁰⁹ For example, see Exhibit 48, Page 38.

¹¹⁰ For example, see Exhibit 48, Pages 7, 28 & 38.

¹¹¹ Transcript, 21 November 2023, T2873-2874; Exhibit 48, Page 38.

109. The suspension process gave rise to a practical injustice¹¹².
110. Corcoran's evidence that the decision to suspend Giles, Paddison and Holman was not an attempt to minimise the looming public relations issues caused by the announcement of this Special Commission should be rejected¹¹³.

ii. The Ongoing Failure:

111. The letter of suspension handed to Giles on 13 August 2023¹¹⁴ stated that:
"The decision to suspend you from duty with pay is subject to review every 30 days".
112. There was no evidence as to the steps being taken (if any) to investigate the allegations which gave rise to Giles' suspension.
113. One would have expected CSNSW to have paid close attention to the evidence given in the Commission. In particular, one would have expected close attention to be paid to evidence of those officers suspended and evidence that related to them. Such an expectation arises in circumstances where:
- (a) CSNSW purports to review the suspensions every 30 days;
 - (b) The Special Commission was livestreamed;
 - (c) The Special Commission made recordings of each day's evidence available for viewing (such remains the case as at the date of these submissions); and

¹¹² *SDCV v Director-General of Security [2022] HCA 32* at [50]: "Whether, taken as a whole, the court's procedures for resolving the dispute accord both parties procedural fairness and avoid practical injustice". The question is applicable to the extant process and must be answered in the negative.

¹¹³ Transcript, 23 November 2023, T3151.15-25.

¹¹⁴ Synonymous to Pages 55-56 of Exhibit 48.

- (d) The Special Commission published each day's transcript to the Special Commission Website.
114. Notwithstanding the considerable efforts of the Special Commission to ensure that "*justice is seen to be done*"¹¹⁵ in an Inquiry of significant public interest, Zekanovic conceded the following:
- (a) She had not listened to the evidence of Giles¹¹⁶;
- (b) She had not tasked anyone with listening to the evidence of Giles¹¹⁷; and
- (c) She wasn't sure if the evidence of or about Giles to the Special Commission would be considered at the next 30-day review ¹¹⁸.
115. It is submitted that the failure of CSNSW to undertake any investigation and/or to have regard to Giles' evidence to the Commission (amongst others) represents an ongoing failure within CSNSW's systems and processes.

O. Giles "*walking in*" on Astill:

116. Whilst this issue was not the subject of discussion in CA, it is necessary and appropriate that it be raised if for no other reason than to dispel the further circulation and publication of rumour and innuendo.

¹¹⁵ *Lehrmann v Network Ten Pty Limited (Livestream) [2023] FCA 1452 at [3]; R v Sussex Justices; Ex parte McCarthy [1923] EWHC KB 1; [1924] 1 KB 256 (at 259).*

¹¹⁶ Transcript, 21 November 2023, T2876.40-45.

¹¹⁷ Transcript, 21 November 2023, T2876.45-2877.5.

¹¹⁸ Transcript, 21 November 2023, T2878.30-45.

117. In his opening on 28 September 2023, Counsel Assisting made the following remarks:

MR LLOYD: *A significant issue which arises and needs to be explored from this is how conduct as brazen as that admitted by Astill, including having sex with inmates in the Chief Correctional Officer's Hub and Astill's admission that he was caught by another senior officer, Westley Giles, could have gone on at Dillwynia without action being taken.*

118. The basis of Counsel Assisting's representation appeared to be [32] of Brumwell's Police Statement which stated the following:

"Wayne said: Gilesy came in on us. Wayne explained that GILES came into that area of the gaol where they were and Wayne noticed and pretended to be telling her off for being somewhere she shouldn't be. Wayne said they had to get their clothes on real quick".

119. The comments made by Counsel Assisting during his opening were misleading and did not accurately reflect the oral evidence given by Brumwell in Astill's criminal trial¹¹⁹:

Q. *I'd asked you was there anything else said about an occasion where he was performing oral sex, based on what Mr Astill said to you.*

A. *Well, he said he nearly got caught once.*

Q. *Did he elaborate on that?*

¹¹⁹ Criminal Trial Transcript, 10 August 2022, T604.45-605.10.

- A. *Yes. He said, Officer Giles nearly caught us, because the area was called The Chief's Hub, or that's the description we used to use. Chief is a rank of officer at the time, I think that's gone now. But he said we were in the chief's hub, and Mr Astill - sorry, Mr Giles almost caught us one day when he came in, so I - we quickly got dressed when we heard the, you know, someone coming in, the door rapping or whatever. And then from memory, I think he said he - he used the excuse that he was telling her off, telling O off. When Mr Giles actually got into the building, and then told her to go.*
120. Assuming the factual scenario above was true, from Giles' perspective he could have had no knowledge of what was going on in a room whilst he was not there.
121. The above extract of Brumwell's evidence was put to Giles and he confirmed that Brumwell had advised him in words to similar effect following Astill's arrest¹²⁰.
122. Giles confirmed that he never walked in on Astill engaging in sexual activity with an inmate¹²¹. Giles was "*completely taken back*"¹²² by Counsel Assisting's opening.
123. It is submitted that the Commission should find that Giles never walked in on Astill engaging in sexual conduct with any inmate (or any person for that matter).

¹²⁰ Exhibit 44 – Giles Commission Statement at [110]; Transcript, 17 November 2023, T2629.20-2630.40.

¹²¹ Exhibit 44 – Giles Commission Statement at [111]; Transcript, 17 November 2023, T2630.20-35.

¹²² Exhibit 44 – Giles Commission Statement at [111].

P. Recommendations proposed by Counsel Assisting:

124. Giles does not take issue with any of the Proposed Recommendations of Counsel Assisting (CA – Part 12) and adopts them.
125. With respect to Recommendation 1 – CCTV, Giles also adopts this recommendation in the strongest possible terms in circumstances where he advocated for, and successfully obtained, an additional 20 CCTV Cameras at DCC following Astill's arrest¹²³.

Q. Proposed Findings of Fact in respect of Giles:

126. Giles submits that the following findings of fact should be made insofar as he is concerned:
- (a) Giles was not a member of Shari's boys;
 - (b) Giles was not hesitant to *paper* another Officer;
 - (c) The Miskov incident either did not occur, or Giles and Robinson did not witness the incident and Miskov is mistaken as to who was present;
 - (d) In respect of the Witness O & T incident, Giles acted appropriately and according to policy;
 - (e) In respect of the Cox incident, Giles acted appropriately and according to policy;
 - (f) Giles suspension (and the process behind it) gave rise to a denial of natural justice;

¹²³ Exhibit 44 – Giles Commission Statement at [125]-[128].

- (g) The decisions to suspend Giles, Holman and Paddison were made by Corcoran in an attempt to minimise the looming public relations focus brought about by the Special Commission;
- (h) The failure of CSNSW to consider the evidence given in the Special Commission as part of the 30-day review of Giles suspension is a serious and ongoing failure to not only address Giles' individual position as a long serving Senior Officer but also to ensure that all Corrections staff have confidence in their management and clarity in policy; and
- (i) Giles did not walk-in on Astill engaging in sexual activity with any inmate nor any person whatsoever.

Date: 14 December 2023.

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