

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

**Submissions**

**On behalf of Kevin Corcoran PSM**

1. These submissions address five main topics the subject of the Submissions of Counsel Assisting (CAS):
  - a. the alleged change in policy about reporting complaints in the Resolution of 11 September and email of 12 September 2017;
  - b. the suspension of Holman and Paddison;
  - c. Mr Shearer's training;
  - d. 'Discord': the relationship between Ms Martin and Management; and
  - e. the removal of Ms Martin and understandings about options.
2. Mr Corcoran, it is submitted, was a truthful witness. He worked, for most of the relevant time covered by the Inquiry's Terms of Reference, as Assistant Commissioner in an organisation which, it is respectfully anticipated, will be found to have been suffering long-standing internal difficulties. Since he assumed the role of Commissioner, much has been done and put in train.
3. The submissions of Counsel Assisting that direct criticism to Mr Corcoran do not allege serious wrongdoing. They do not allege misconduct, and for good reason.
4. For the reasons set out below, the most that can be found against of Mr Corcoran is that his suspension of Holman and Paddison was rushed and based upon information which was unsatisfactorily recorded, and in respect of which the engagement with professional standards was not as it ought to have been. These criticisms, in the end, however, concern a decision which is regularly reviewable, and about which the evidence suggests no complaint was made by the affected staff.
5. The other criticisms directed at Mr Corcoran are not ones which can give rise to any blame on his part. Not ensuring that Mr Shearer had undertaken recruit training at or

shortly after the time Mr Shearer commenced employment, and there being discord in the relationship between Ms Martin and management are catalogues of imperfections in work relationships, and criticisms that go to not acting more quickly or decisively with respect to a poor-performing prison Governor and Director, the former with respect to her potential sacking and the latter in equipping him to do the job he was employed to do (after a career at the most senior levels of the defence force). These, however, are matters which involve industrial relations aspects that were not explored in any depth during the oral evidence, and about which Mr Corcoran says he took advice internally. He was entitled to act upon that advice (being neither a lawyer nor an industrial relations expert himself). His evidence was that he believed, on the strength of this advice, that it was not possible to remove Ms Martin from her position.

6. As to the other criticism: that Mr Corcoran ‘potentially’ contributed to confusion in reporting of complaints by the so-called change in policy in mid-September 2017, that is put (appropriately) in this qualified way. But too much was made of this. It effected no great change, and was consistent anyway with the prevailing Managing Misconduct Policy.
7. We deal below which each topic upon which our client is criticised.

### **The alleged change in policy – Resolution of 11 September and email of 12 September 2017**

#### The Allegations

8. Counsel Assisting have submitted that the Resolution and email effected a change to a subsisting procedure or protocol whereby each employee would decide to report a matter to the Professional Standards Branch (that this created a ‘barrier’ to matters being reported to PSB (CAS[713]) and that it this was done with a purpose of reducing the number of matters being so reported: CAS[714]. It is said that Mr Corcoran had a ‘poor attitude’ to corporate governance (CAS[722] and [735]). Mr Corcoran is criticised for ‘causing confusion’ as to what was reportable to PSB (CAS[726]) and being unaware, at the time he gave oral evidence, was contrary to the understanding of current and former PSB, IB and PSI staff (CAS[734]).
9. These criticisms, save for the last, are not made out on the material before the Inquiry. The last of them (without being entirely clear about who the staff are) is perhaps true, but for which blame cannot be attached to Mr Corcoran: he was aware of, and followed, the

governing Managing Misconduct policy. Neither the Resolution nor the email are in substance inconsistent with that Policy.

Terms of the email

10. Some aspects of the email itself are important to note which did not feature prominently in the oral evidence:

- a. *firstly*, it is directed only to Governors. It does not purport to bind or direct anyone else;
- b. *secondly*, it is cast in the first-person plural ( 'we' - ie Mr Shearer and the relevant Governor) will decide as to where the referral is to be directed. Any suggestion that the email makes the Director a decision-maker (Day 26 – T 3027.39 – 3028.20) needs to be seen in light of the fact that the email requires the decision about referral to be made *jointly*. This is not to stifle any person's capacity to refer a matter to PSB; it created no 'barrier' (contra CAS[713]), simply that the decision would be made by these senior people together;
- c. *thirdly*, the direction does nothing to limit or stifle the matters that might be referred to the Professional Standards Branch. Mr Corcoran was clear that the intent was that only 'low-level' matters would go to human resources (Day 26 – T 3024.13-18; T3026.33-46) and if more serious matters found themselves with HR, that HR would refer them to PSB: Day 26 – T 3028.16-20; T 3030.33-34. This is not undesirable. Mr Corcoran was clear in his oral evidence about this when he said: 'It [the email] does not prevent information getting through to either HR or Professional Standards' (Day 26 – T 3032.13-14; T 3029.7-8); and
- d. *fourthly*, as Mr Corcoran explained in his oral evidence, there was a logical rationale for the approach. One purpose was to ensure that complaints would come to the knowledge of the Director (a person outside the prison) about which they would otherwise not know (Day 26 – T 3025.10-12; T 3024.37-42). As Mr Corcoran explained (Day 26 – T. 3029.7-13):

MR CORCORAN: So it does not prevent anything going through to Professional Standards, and what we're - we're in a situation where anything going to Professional Standards in this era would not be then revealed to operational people - Directors, Assistant Commissioners. In many instances, we would find out about quite serious misconduct that had been reported through at a lower level to Professional Standards 12 months, 18 months later when a document appeared on our desk as a decision-maker.

He explained why this was important (Day 26 – T 3049.36-41):

MR CORCORAN: Well, here we have a system where Directors, we have Assistant Commissioners, where even Governors were not aware of things going on in their Centres and weren't told either by Intelligence or by Investigations Branch or Professional Standards Branch of things that were going on in their Centres. So, incredibly difficult to manage risk in that sort of environment from an operational perspective.

11. The email, the submissions of Counsel Assisting fairly recognise (at CAS[702]), seeks to give effect to a decision of a committee: Day 26 – T 3024.4-8. It was a resolution to which Mr Shearer (a committee member himself) expressed no dissent: Day 23 – T2523.25-40; 2525.32-36; 2550.10-25; 2551.8-15. The failure to object is recognised by Counsel Assisting: (CAS[716]). The adoption of the policy was a resolution of all members - as recorded in the Minutes. Responsibility for it does not attach to Mr Corcoran alone.

The email did not, in substance, change the approach

12. There are other important matters to note about what the evidence did and did not establish because it shows the September 2017 email to have effected no large change, and one in any event that did not contribute (despite what is alleged) to the confusion alleged in Counsel Assisting's submissions: at [726]: or to the 'potential' prevention of relevant matters being reported to professional standards: (CAS [713]).
13. First, Mr Corcoran's acceptance in oral evidence of a 'change in approach' about referrals going directly to Professional Standards (Day 26 - T 3025.14-18) must be seen in light of the actual evidence.
14. The Managing Misconduct Policy conferred a clear discretion whether to report to the PSB or the Strategic Human Resources Business Partner. When Counsel Assisting's submissions refer to a 'change in approach', that approach is not one referred to in this written formal policy.
15. The submission assumes the correctness of evidence given by Mr Greaves, a relatively junior staff member, and never (despite some suggestions to the contrary *the* manager of PSB). His evidence that there was an established procedure that all matters would be reported to PSB *contradicts* the written Policy. His evidence (upon which considerable reliance is placed by Counsel Assisting (eg CAS[685], [686], [718], [723], [724]) needs to be understood in the context of his being a co-ordinator, not the Manager of PSB (and

relatively junior): Day 26 – T 2995.39-43; Day 26 - T 3008.32-46; Day 26 - T 3009.9-14; Day 27 - T 3218.10-29.

16. Neither the Email nor the Resolution departed in any material way from the written policy or, indeed, the alleged established procedure (contrary to what was suggested to him: Day 27 – T 3112.34-3113.22). As Mr Corcoran explained, its effect was to ‘involve the Directors in the first report’ (Day 27 – T 3113.12). He went on to say (quite correctly) (Day 27 – T 3113.18-22):

... it didn't change the fact that it could have been - that it should have been reported through to the either strategic business partner - HR business partner or the divisional Professional Standards. All it meant was that it was being reported through, in the first instance, to the Director so that that information was known to the Director and could then be reported through.

17. It follows that to suggest (as Counsel Assisting did in hearings) that the Email ‘also effected a change to what you understood to be the system which had grown up, that is, requiring reports of serious misconduct to go to Professional Standards or the Investigations Branch in the first instance’ (Day 27 – T 3113.25-27) was incorrect and, directed to some undefined ‘system’ (presumably the one about which Mr Greaves spoke) rather than the formal, written, and established Policy.
18. The only relevant procedure here is that which the written policy (and then only fairly new) required. The regime of which Mr Greaves spoke is different from that. So too is that attributed to Ms Zekanovic at CAS [733]. Ms Zekanovic’s evidence included the Managing Misconduct Policy. Her evidence is perfectly consistent (despite what is submitted at CAS [733]) with that of Mr Corcoran on this point.
19. The Email was, it can be seen, consistent with that Policy. That was the evidence of Mr Corcoran: (Day 26 – T.3029.42-44; T 3030.15 – 22).
20. The Email was clear in its terms.

The Email did not contribute to confusion about what was reportable to PSB and created no ‘barrier’ to doing so

21. The Email does not preclude or curtail the reporting of matters by staff direct to PSB. The most that can be said of it is that Governors (only Governors) are to decide *together* with the Director whether to report to HR or the PSB.
22. It is suggested that the understanding of PSB, IB or PSI staff was different: (CAS[734]). Presumably, staff mentioned are those who gave evidence. Mr Corcoran cannot be

responsible for their accuracy of understanding. The fact he might have remained unaware when he gave oral evidence (a point he is criticised for) is immaterial. He was not, as Assistant Commissioner, responsible for those staff.

23. To the extent Ms Zekanovic is included in the staff that had a different understanding to that of Mr Corcoran, her evidence simply does not establish that.

The Email had no causative influence on any failure to report the Astill allegations

24. If the submission at CAS[713] that ‘Mr Corcoran’s request to the Custodial Corrections Executive ... did potentially prevent the matter being reported to PSB’ is meant to suggest that Mr Corcoran is to be in part blamed for the failure of proper reporting of the Astill allegations, that submission ought to be rejected. Even this heavily qualified form (Counsel Assisting puts it as low as ‘potentially’) overlooks that what the Email sought to effect had no causative effect on any failure to report the Astill allegations:

- a. it did nothing to preclude or re-direct allegations of the kind made against Astill away from PSB (Day 26 – T. 3029.7-22); ‘it does not prevent anything going through to Professional Standards’ as Mr Corcoran pointed out;
- b. as Mr Severin explained (he seemed unaware of the Managing Misconduct Policy, and its terms were not put to him by Counsel Assisting), Mr Shearer decided to deal with ‘the matter’ (ie the Astill allegations such as they were) by mediation, something that the written policy did not contemplate. Thus Mr Shearer acted contrary not only to the written policy, but also the alleged ‘established procedure’ (if there was one) of which Mr Greaves spoke;
- c. Mr Shearer’s position in relation to the administration of the policy was that there would be no change. He said (Day 22 – T 2477.5-6) – ‘My position was always going to be that nothing would change in my region and that referrals would still go through PSB’
- d. Mr Shearer understood the Resolution to which the email sought to give effect in this way (Day 22 – T 2477.10-12): ‘... I believe the direction from the AC was that it needed to go to the Director but not that it needed to be managed as a - as a local matter’; and
- e. the failures in the reporting of the Astill allegations are more fundamental than being ‘confused’ about reporting them to PSB. The submissions of Counsel

Assisting make this clear by identifying the points of failure which are quite independent of any change the Email sought to effect, or any confusion it might be found to have caused.

The email did not sideline an entire established process

25. Something remains to be said of Counsel Assisting's assertion that the 12 September email had the effect of 'sidelining an entire established process' although not repeated in the written submissions (Day 24 - T 2713.7-10):
- a. the evidence was that in the North, Corrective Services was already doing what the Email sought to effect: Minutes dated 11 September 2017: Mr Severin - Day 24 – T 2702.14-17; Mr Corcoran Day 26 – T 3023.21-24; and
  - b. Mr Greaves' evidence, for the reasons given above, needs to be treated with caution: he was too junior to be an authoritative witness on this issue.

Mr Corcoran does not have a 'poor attitude' toward corporate governance

26. Counsel assisting contend that Mr Corcoran displayed a 'poor attitude' to corporate governance in September 2017 and presently (CAS[722] and [735]). No such proposition was put to Mr Corcoran. A finding to this effect cannot fairly be made.
27. In any event, it ignores the fact that Mr Corcoran was responding to, and operating within, an imperfect environment: eg Mr Severin Day 24 – T 2703.4-5. The procedure which was outlined in the September email was responsive to the circumstances at hand, namely an ineffective PSB with unacceptably slow processing times: Mr Corcoran – Day 26 T 3024.13-18; 3029.7-22).
28. PSB's failure to update Directors and Assistant Commissioners about allegations of misconduct resulted in a dangerous situation whereby there was no capacity to manage risk 'on the ground' in the various correctional facilities (Mr Corcoran Day 26 – T 3049.36-41; T 3029.7-22;).

**The suspension of Holman and Paddison by Commissioner Corcoran**

Allegations

29. Counsel Assisting submit that a decision by Mr Corcoran (as Commissioner) to suspend these individuals on 20 September 2023 can be criticised in the following ways:

- a. he asked for a submission to be prepared by PSB (having already decided to suspend) to give a ‘vener of legitimacy on a final decision which he had already made’ (CAS[1315], [1320(c)]);
- b. Mr Corcoran did not truthfully convey his thinking when he said to Ms Snell that information needed to be pulled together about Holman and Paddison to let him (Mr Corcoran) consider it in light of what he had heard and for him then to consider the next steps (CAS[1320(b)]; and
- c. the decision departed in a range of significant ways from proper practice (CAS[1343]).

#### Overall response

30. This issue is beyond the Inquiry’s Terms of Reference. It does not fall within any of paragraphs A to G of them. The suspension of these officers cannot be said, fairly, to be a circumstance related to Astill’s offending in the sense paragraph F requires, ie, that it indicates inadequacies in the policies and procedures for professional oversight.
31. The submissions made below are made in the event this submission is not accepted, but reserving Mr Corcoran’s rights in that regard.
32. The submissions made by Counsel Assisting to some extent seek to split hairs in a decision-making process which was within the discretion of Mr Corcoran to make (it is not submitted otherwise) and between events that occurred over the course of about 24 hours. The point at which Mr Corcoran actually finally resolved in his mind to suspend these staff members is not entirely clear on the evidence (not only of Mr Corcoran but also that of Ms Snell and Ms Zekanovic).
33. The main criticism made by Counsel Assisting is that on one view Mr Corcoran decided to suspend on his way back from the prison on 19 September 2023, and on the other may have done so the next day, when he read the Submission dated 20 September 2023 in the company of Ms Snell.
34. It is submitted that these are not inconsistent propositions: a decision-maker might decide to do something, but at the same time seek advice or further material (as occurred here), take a night to think about matters and then decide in a formal sense the following day. That is what occurred here. There is nothing improper about this. Mr Corcoran exposed his actual thought process honestly in oral evidence. It is not, perhaps, the way a lawyer



might ‘decide’, but it is entirely appropriate that, for administrative decision-makers, that the process be, as it was here, pragmatic and not systematic.

Specific matters and responses to the allegations

35. Mr Corcoran was vested with the decision whether to suspend:

- a. Professional Standards, as Ms Zekanovic’s evidence showed, will prepare a matter for consideration by the PSC: (Day 25 – T 2822.6-20; see too T 2823.5-20). But the decision, she pointed out, rests with the ‘decision-maker who has responsibility for those staff, and the decision-maker will make the ultimate decision about whether a staff member gets suspended’.
- b. The Managing Misconduct Policy in Section 6 deals with the suspension from duty of employees. It states that ‘The decision to suspend a relevant employee rests with the appropriate Decision Maker’. There is no mention made in that section of the Policy of a need to seek or obtain the input of Professional Standards.
- c. The evidence elicited from Ms Zekanovic in this regard was general and was not (for the most part) put in terms of there being a difference between procedure for managing allegations of misconduct and suspension decisions. The Managing Misconduct Policy gives them separate treatment. When, for example, Ms Zekanovic spoke of decision-makers acting on advice from Professional Standards (at Day 25 – T 2833.26-31) she did so in response to questioning which did not seek to distinguish these matters. Even then, Ms Zekanovic was clear in the primacy afforded to the decision-maker (Day 25 – T 2833.26-31):

The decision-makers make their decisions based on the information that we provide in our submissions. Our submissions, I think, are quite thorough. But, ultimately, it's a matter for them whether they want to take on our recommendation or not, because while PSC throughout - PSI throughout the whole misconduct process we're purely making recommendations, we are not deciding on the outcomes.

- d. Consistently with the Managing Misconduct Policy’s treatment of suspensions specifically, Ms Zekanovic explained it was more of a risk assessment (Day 25 – T 2839.18-21):

At - at the time that we are suggesting suspension of someone, there is not always a lot of material to assess. As I mentioned earlier, we're really making -

doing a risk assessment about whether that person should remain in the workforce while we investigate.

36. Ms Zekanovic did not agree with the assertion put to her that Mr Corcoran had bypassed professional standards: (Day 25 – T 2888.23-29):

MS GHABRIAL: Did you think to challenge the Commissioner in respect of the route that he was taking in bypassing the PSC?

MS ZEKANOVIC: Again, I think I said earlier that, at that time, the Commissioner must - or was presented with information that, in his view, required immediate action. He is the head of the agency. He's entitled to take - take steps to reduce a risk that he sees.

and T 2892.8-9:

MS ZEKANOVIC: He didn't bypass Professional Standards all together; we still provided him with a submission.

37. Ms Zekanovic positively said that the Commissioner did not need the input of the PSC to make that decision and that his power to suspend was independent of anything Professional Standards can do: (Day 25 – T 2905.27-2906.9).
38. Nor did the decision-maker necessarily adopt the relevant recommendation (Day 25 – T 2834.16-17; Day 28 – T 3251.1-5).
39. Mr Corcoran was straightforward in his evidence that he had decided to suspend before he returned from visiting and interviewing staff at Dillwynia:
- a. the evidence shows, however, that there was a period of reflection during which Mr Corcoran sat with Assistant Commissioner Snell and read the Professional Standards submission and said (Day 28 – T 3237.3-5) ‘I think we need to review the files in relation to Michael Holman and Paddison and consider whether any further action needs to be undertaken’;
  - b. the contemporaneous documentary records support Assistant Commissioner Snell’s recollection. Her text message on 19 September to Ms Zekanovic (Day 28 – T 3237.23-30) stated:
 

"Hi Angela, out of the meeting at Dillwynia today, can we prepare all of the information we have on Paddison and Holman, please. There was further feedback that they were just as complicit as Giles, and KC would like to review tomorrow and consider urgent suspension. Thanks, Chantal.’

Assistant Commissioner Snell said (Day 28 – T 3238.41-44) that:

‘ ... I was trying to say, as reflected in the text messages, ‘If you could pull all the information together in relation to what's held about Holman and Paddison

and let him [Commissioner Corcoran] consider in light of what he had heard, then he would consider next steps’.

40. Contrary to what is submitted by Counsel Assisting, this is not a case in which there has to be a choice between Mr Corcoran having finally (ie irrevocably) decided on his way back from the prison to suspend or having done so the next day. The evidence is that the decision making started in a final sense on the way back from the prison and was finalised the next day.
41. In answer, then to the specific allegations:
  - a. Mr Corcoran asked for a submission to be prepared by PSB. Certainly he had thought (rather than decided in a final sense) to suspend on his way back from the prison. Thus the request he asked be made of PSB for ‘suspension papers’ was part of a decision-making process that was continuing, (knowing in his own mind of course that he would probably suspend);
  - b. to ask for the submissions, then, was not to give some veneer of legitimacy to the final decision. Mr Corcoran could easily have acted without such a submission. It was his decision and, as all the evidence shows, it was a decision for him and him alone. He had no motive at all to seek the submission for the purposes of window-dressing;
  - c. what Ms Snell remembers Mr Corcoran saying to her in terms of pulling information together about Holman and Paddison to let him (Mr Corcoran) consider it in light of what he had heard and for him to consider is perfectly consistent with Mr Corcoran being of the view that he would likely suspend, but not putting from his mind the material that might exist and which could be put before him by others;
  - d. the process was (except in limited respects) proper. A decision-maker with the authority to decide considered that he ought to exercise a discretionary power to suspend. He formed a view which is not said to have been other than one that was open to him. He engaged with relevant staff and made a decision which is subjected to regular review, and about which there is no evidence at all that the affected staff have complained about. This was a decision to suspend on full pay, not a sacking or other decision with serious effects on reputation or livelihood;

- e. it is accepted that the letters sent to the staff members did not reflect the basis upon which the decision was made. They are wrong, and Mr Corcoran readily accepted this in his oral evidence (Day 27 – T 3087.6-15; Day 27 – T 3210.22-27) (which demonstrates his honesty and the unlikelihood of the allegations which attack his truthfulness).
42. The process was regular:
- a. Commissioner Corcoran saw the officers and spoke with them: (Day 27 – T 3119.45 – 3120.1; Day 27 - T 3208.37-41);
  - b. he told them they had been suspended for reasons that included for their own safety (Day 27 – T 3120.15-33) and he gave ‘additional reasons’ (to those given in the letter): (Day 27 – T 3208.37-41; see too Day 27 – T 3210.20);
  - c. Mr Corcoran had in mind at the time that some of the staff he spoke to that day at the prison were on workers' compensation for psychological injuries or claimed psychological injuries as a consequence of management inaction and still suffering trauma: (Day 27 – T 3210.44-3211.5; see too Ms Snell’s understanding at Day 28 – T 3278.13-33);
  - d. Mr Corcoran took responsibility for decision-making at the time for these matters to give some consistency to the process and due to ‘the sensitivities that were being presented to the organisation’, as Assistant Commissioner Snell explained: (Day 28 – T 3277. 34-43. See also Day 28 – T 3246.9-16) where she spoke of ‘heightened sensitivity to action that we wanted to ensure was prevented, particularly any retributive action ... We wanted to protect other staff, those staff, any victims and so on.’; and also (Day 28 – T 3279.15-18) ‘... heightened sensitivity and risk in - in the Centre; potential for retributive action that we were trying to mitigate and avoid; wanting to ensure that there were a minimal number of allegations that could arise; and also protecting staff who had allegations towards them.’
43. There are two respects in which the process is accepted to have been less than satisfactory:
- a. the letters prepared by Professional Standards and signed by Mr Corcoran alleged that each ‘may have engaged in serious misconduct’: Exhibit 59. That was not, of course, the basis upon which the decision was made. This departure is somewhat mitigated by the fact that the relevant reasons were provided orally

at the time of suspension (Day 27 – T 3120.15-33; Day 27 – T 3208.37-41; Day 27 – T 3210.20); and

- b. having engaged with Professional Standards, it would have been far preferable for Mr Corcoran to have advised the effect of the further information he obtained at the prison and for him to have had the benefit of consideration of that material also (and therefore the material as a whole) in the submission from Professional Standards.
44. The suspensions, in any event, are on full pay. The person is able to make representations in relation to the ongoing suspension at any time: (Day 26 – T 2928.14-17). There is no evidence of Paddison or Hollman doing so. There is a process by which such suspensions are reviewed: (Mr Corcoran: Day 27 - T 3121.6-9).

### **The relationship between Mr Corcoran and Mr Shearer and Mr Shearer’s training**

#### Allegations

45. Counsel Assisting submit that:
- a. what is said to be a ‘fractured’ relationship between Mr Shearer and Mr Corcoran affected their ability to create an environment of effective governance, most notably with respect to the change in reporting policy introduced by the 12 September 2017 email and in the alleged failure to properly manage Ms Martin’s performance (CAS[1372]);
  - b. without the foundational officer training, Mr Shearer was missing a critical piece of understanding of the custodial environment and the officers who work within it (CAS[1373]);
  - c. in the discharge of Mr Corcoran’s duties he was required to ensure that Mr Shearer had undertaken this training at or shortly after the time Mr Shearer commenced his employment (CAS[1375]).
46. Counsel Assisting submit that is not necessary or appropriate to resolve:
- a. the dispute between Mr Shearer and Mr Corcoran about their working relationship (CAS[1372]); or
  - b. the factual dispute about why Mr Shearer did not undertake his officer training in a timely way (CAS[1373]).

47. The first of these, it is accepted, need not be resolved. That is not so with respect to the second. If it is to be suggested that Mr Corcoran ought to have ensured that Mr Shearer had undertaken this training at or shortly after the time Mr Shearer commenced his employment, then it is necessary to explore the reasons why Mr Shearer did not complete that training (unlike many others) until only recently.

Impact of Shearer/Corcoran relationship on an environment of effective governance

48. In relation to Counsel Assisting's submission summarised at [45(a)] above, blame cannot attach to Mr Corcoran in relation to the 12 September 2017 email, nor can a link be drawn between the 12 September 2017 email and environment of governance, in circumstances where, as we have submitted above: (i) Mr Corcoran was aware of and followed the Managing Misconduct Policy; (ii) the email effected no large change in existing process or was causative of 'confusion'; and (iii) the email had no causative influence on any failure to report the Astill allegations.
49. Nor can a failure properly to manage Ms Martin's performance be sheeted home to Mr Corcoran, for the reasons articulated later in these submissions.
50. Any other suggestion of the impact of the relationship between Mr Shearer and Mr Corcoran on the environment of effective governance is not articulated with sufficient specificity such as founds the need for a response.

The foundational officer training

51. The Commission received almost no evidence as to what was involved in foundational officer training.
- a. Mr Corcoran gave evidence that foundational officer training was a 'foundational course, teaches you how to handcuff people or do an escort; things of that nature. Lock a cell up' (Day 26 -T 3041.23-24);
  - b. Mr Shearer gave evidence that 'That course goes through a range of training; for instance, what is use of force, how you do searching, some of those sort of very basic officer roles, the expectations in the role, some of the legislation which is particular to them' (Day 22 – T 2451.2-4).
52. The training was, as Mr Corcoran said (Day 26 - T 3040.5-11), '*necessary to get a foundation*'. Mr Severin took a different view: (Day 24 – T 2706 24 – 26; Day 24 - T 2707.25-26; Day 26 - T 3039.4-5). Views differ on just how important the training of

that basic kind was for a manager, and someone who was experienced in the higher ranks of the armed forces.

53. And there is no evidence that foundational officer training (i) extended to the mechanics of how the complaint system worked, or (ii) how it would have assisted Mr Shearer in the performance of his role as to the management of complaints.
54. In any event, Mr Corcoran ensured that Directors received training from Professional Standards as decision-makers and Mr Shearer received this training (Mr Corcoran – Day 26 – T 3041.4-8). Mr Corcoran was clear that foundational officer training ‘would have no bearing on [Mr Shearer’s] understanding of Professional Standards’ (Day 26 – T 3041.22-23). He was not challenged on that.
55. Mr Shearer was, of course, inducted into his role. He received four weeks of training relevant to his role as a Director. In particular, he worked alongside Marilyn Wright for a period of four weeks on commencement of his role. Marilyn Wright was responsible for ‘handover’, including introducing Mr Shearer to his day-to-day responsibilities and the various policies and procedures which applied in the administration of his role (Corcoran witness statement dated 22 November 2023 at [129]). This is consistent with Mr Severin’s evidence that Mr Shearer was ‘...certainly made aware and provided with details about processes relevant to his role. And so I personally am not convinced that the absence of that [foundational officer] training resulted in some of the decisions that were subsequently made’ (Day 24 – T 2706.23 – 26). Also relevant is Mr Severin’s evidence which accepted that a person who was new to the organisation must be provided with training about processes ‘*relevant to his role*’ (Severin evidence – Day 26 – T 2706.22-35.) Mr Severin did not accept that ‘he [Shearer] didn’t get any of that’ (Day 26 – T 2707.25-26). He did not see the recruit training as something important to Mr Shearer’s role: (Day 24 – T 2706 24 – 26; Day 24 - T 2707.25-26; Day 26 - T 3039.4-5).
56. Counsel Assisting’s submission that Mr Shearer’s deficiencies can be linked to his failure to participate in foundational officer training is reliant on the truth and accuracy of Mr Shearer’s evidence. His evidence should be treated with caution and viewed through the lens of a person who was attempting to shift blame to others. By way of example, Mr Shearer gave evidence that he did not complete the foundational officer training because ‘I just didn’t have the ability to be able to do a course as well as do my day-to day functions’ (Day 22 – T 2450.23-25; see too Day 23 – T 2518.42 – 2519.1).

57. This is to be doubted:
- a. Mr Severin gave evidence that ‘there would have been every opportunity for Mr Shearer to participate in that training. There was no impediment to do so. It would have been clear that he wouldn't have had to do that in parallel to doing his job. Somebody else would have been acting up during him doing the training’ (Day 24 – T 2706.15-19);
  - b. Mr Corcoran gave evidence that ‘... you know, everybody else that came in, we gave them - we relieved them, gave the - you know, had someone else acting in the role. And certainly when Hamish did the course, somebody was acting in the role’ (Day 26 – T 3040.36 - 38).

Mr Corcoran was not required to ensure that Mr Shearer complete foundational officer training

58. Counsel Assisting’s submission that Mr Corcoran should have ensured that Mr Shearer completed foundational officer training at or shortly after the commencement of his employment goes too far.
59. **Firstly**, no such requirement can be found if the Commission accepts that there is insufficient evidence to link Mr Shearer’s deficiencies with his delayed participation in foundational officer training, as submitted above.
60. **Secondly**, there was no such process or requirement at the time (Mr Corcoran – Day 26 – T 3038.31-32). Nor is there any such policy at present. Mr Severin gave evidence that it was highly unusual for senior staff executives to complete foundational officer training (Day 24 – T 2706.39-41): ‘It is highly unusual, in my experience - that's not to say it's wrong, because people can do it - for senior members of staff executives to do base grade officer training...’ Any failure is therefore an institutional one, not one which can be attributed to Mr Corcoran.
61. **Thirdly**, Counsel Assisting’s submission rather overlooks the role of Mr Severin. Mr Corcoran gave evidence that Mr Severin ‘wasn’t a fan’ of foundational officer training (Day 26 – T 3038.41 – 45) and was ‘not a person who thought it should be a requirement’ (Day 26 – T 3039.4-5). This was an issue which Mr Corcoran escalated with Mr Severin (Day 26 – T 3039.7-38). Mr Severin was aware that Mr Shearer felt he was not properly equipped to complete certain tasks in his role and that he would require some remedial training. Mr Severin’s solution was not to suggest foundational officer training but to suggest a mediation between Mr Corcoran and Mr Shearer (Day 24 – T 2711.20-28).



62. **Fourthly**, Mr Shearer received appropriate and extensive training which was responsive to the actual requirements of his role, including by way of a four-week handover with Marilyn Wright on his commencement, as addressed above.
63. These facts show that Mr Shearer did receive training. He did have a period of handover from Ms Wright, and the failure to undertake the foundational course lies ultimately with him. It was not for Mr Corcoran to direct a senior manager to take steps which are ones which senior staff ought be expected to organise themselves.

#### Counsel Assisting's Recommendation

64. Mr Corcoran supports a mandate that foundational officer training be completed by external recruits (Mr Corcoran – Day 27 – T 3133.26-46).

#### **The relationship between Ms Martin and Management**

##### Allegation

65. Counsel Assisting submit that the evidence set out at CAS[1378] to [1401] establishes that the relationships between Ms Martin and Mr Shearer and between Ms Martin and Mr Corcoran had a high degree of discord, such that there should be a finding that those relationships contributed to the failure to address the culture at, and lack of effective management of, DCC (CAS[1402]).

##### Response

66. That evidence focuses mainly on the relationship between Ms Martin and Mr Shearer, and to some degree on the relationship between Ms Martin and Mr Severin.
67. As to the relationship between Ms Martin and Mr Corcoran, it is put that:
- a. Mr Corcoran forwarded an email dated 30 November 2016 outlining concerns with Ms Martin's behaviour and attitude to Mr Severin (CAS[1385]) and generally provided Mr Severin with feedback about difficulties involving Ms Martin (CAS[1397]);
  - b. Mr Corcoran notified Mr Shearer of a critical incident at DCC in relation to which Mr Shearer was unaware (CAS[1388] and [1390]);
  - c. when Mr Shearer took over as Director, Mr Corcoran described Ms Martin as 'challenging' (CAS[1389]);

- d. Mr Corcoran had an awareness of management problems within DCC and that there were performance issues with Ms Martin, including problematic treatment of staff and inmates (CAS[1391] – [1392]);
  - e. Ms Martin gave evidence that she felt demoralised, ignored, bullied and belittled in her dealings with Mr Shearer and Mr Corcoran (CAS[1394] – [1400]). In support, Ms Martin recalled Mr Corcoran’s response to an incident when she made a decision about inmate underwear, which attracted media attention, without consulting Mr Corcoran (CAS[1394]);
  - f. Ms Martin gave evidence that she believed that she was not given the opportunity to act up in a Director position because she challenged Mr Corcoran (CAS[1395]) and that she watched junior Governors being offered more senior roles than her (CAS[1400]);
  - g. Ms Martin gave evidence that the real reason that she left her position was due to the poor relationship between herself and her superiors, namely Mr Shearer and Mr Corcoran (CAS[1399]);
68. As to the submissions summarised at [67](a)-(d) above, Mr Corcoran was clearly obliged, in the responsible execution of his role:
- a. to update Mr Severin as to Ms Martin’s performance issues;
  - b. notify Mr Shearer of critical incidents at DCC to which Mr Corcoran held awareness and Mr Shearer did not;
  - c. provide feedback on his various views as to each of the Governors within Mr Shearer’s responsibility, in order that Mr Shearer could be appropriately inducted; and
  - d. maintain some awareness of performance issues related to Governors.
69. This, however, is not a basis for saying there was discord in any sense that might attach blame to Mr Corcoran. To the contrary, he was doing his job by being involved in the way he was, and managing a personality that the evidence suggests was ‘challenging’.
70. As to the submissions summarised at [67](e)-(g) above, it is not possible on the evidence which is before the Commission to resolve any issue as to whether Mr Corcoran bullied or otherwise mistreated Ms Martin, or why Ms Martin eventually left her employment. Nor was an allegation that Mr Corcoran demoralised, ignored, bullied or belittled Ms

Martin put to him. For completeness, those suggestions are firmly rejected. There were clearly performance issues with Ms Martin such that she was not fit to act up as a Director.

71. The matters relied on by Counsel Assisting at CAS[1378] to [1401] cannot and do not support a finding that the relationship between Mr Corcoran and Ms Martin contributed to a failure to address the culture at, and lack of effective management of, DCC.

### **The removal of Ms Martin and understandings about options**

#### Allegations

72. Counsel Assisting submit that the Special Commission should make 11 findings with respect to Mr Corcoran's belief about the power to dismiss a Governor for performance issues (CAS[1487]). Each of those suggested findings is addressed in turn.

*a) For the entire period of Astill's offending at DCC, Mr Corcoran was of the view that Ms Martin was not up to performing the role of Governor at DCC*

73. This proposition is not supported by the evidence.

74. **Firstly**, Ms Martin was not the Governor of DCC for the entire period of Astill's offending. The offences for which Astill was sentenced were committed between March 2014 and October 2018 (CAS[2]). Ms Martin was Governor of DCC and Emu Plains Correctional Centre (**EPCC**) from approximately 2006 to 2012 and, relevantly, again from 14 July 2015 to 21 December 2018 (CAS[56]). Accordingly, the only relevant period during which Ms Martin was Governor of DCC was 14 July 2015 to October 2018.

75. **Secondly**, the transcript reference relied on by Counsel Assisting at (CAS[1417]) does not support that Mr Corcoran held this view for the 'entire period of Astill's offending'. It is limited to the period August 2016 to December 2018 (Day 26 - T 2997.1-10), as are other propositions to this effect put to Mr Corcoran (for example, Day 26 - T 2974.27-36). Counsel Assisting made clear that this period of time was put to Mr Corcoran 'because that's about when Mr Shearer started' (Day 26 - T 3007.28).

76. **Thirdly**, when asked about whether he formed a view that Ms Martin had an 'inability to do the job ... back before August '16', Mr Corcoran was clear that at that time 'I don't think I formed a view about whether she was capable of running a Correctional Centre or not'. He did not doubt her capacities at that time. 'It was more about her behaviours than her capacities' (T 26 - T 3007.32-47). The word 'behaviours' here needs not to be lost sight of.

*b) Mr Shearer informed Mr Corcoran of his intention to place Ms Martin on a PIP, and Mr Corcoran thought that that was necessary and appropriate*

77. It is accepted that Mr Shearer informed Mr Corcoran of his intention to place Ms Martin on a Performance Improvement Plan (**PIP**).

78. Mr Corcoran agreed with the decision to place Ms Martin on a PIP (Day 26 – T 2973.45 – 2974.5). Mr Corcoran considered that this appropriate, in the light of the tools which were available at the time (Day 26 – T 2997.43-45).

*c) Mr Shearer changed his mind and later elected not to place Ms Martin on a PIP*

79. Mr Corcoran gave evidence that:

- a. a PIP was launched (Day 26 – T 3006.37-38);
- b. that Mr Shearer sent him the PIP, and Mr Corcoran forwarded it to Mr Severin (Day 27 – T 3095.38-39; T 3096.19-20);
- c. it came to pass that Ms Martin was in fact put on a PIP (Day 26 – T 2974.7-10);  
and
- d. Mr Corcoran had a ‘belief that that [the PIP] had happened’: (Day 27 – T 3095.28-32).

80. Counsel Assisting ‘accept that there plainly was a basis for Mr Corcoran to believe that Mr Shearer intended to place Ms Martin on a PIP. It is clear from the 8 March 2017 email that Mr Shearer informed him that that was his intention’ (CAS[1452]). That submission ought to be accepted.

81. At the very least, it was reasonable for Mr Corcoran to believe that a PIP had been implemented because:

- a. Mr Shearer told Mr Corcoran he would raise a PIP: ‘I informed Kevin Corcoran that I was going to raise a performance improvement plan for her’ (Day 22 – T 2461.30-40);
- b. Mr Shearer sent Ms Martin a letter stating that she was going to be placed on a PIP (Day 20 – T 2181.35-38);
- c. Ms Martin and her union delegate met with Mr Corcoran to discuss the PIP (Day 20 – T 2181.35-2182.20);

- d. during the meeting with the union delegate, Mr Shearer was at Human Resources organising the PIP (Day 20 – T 2182.12-16);
- e. Mr Corcoran’s belief that the plan had been finalised and put into place was based on an email (Day 27 – T 3189.42-46);
- f. at the very least, the documentary evidence suggests that the PIP was drafted and well advanced:
  - i. Exhibit 41 – email dated 30 November 2016 from Mr Shearer to Mr Corcoran sending a lengthy email Mr Shearer had sent Ms Martin on 30 November 2016 about her performance. Mr Corcoran subsequently forwarded this email to Mr Severin (Day 27 – T 3192.36 – 3193.19). Mr Corcoran described this as ‘the start of a performance improvement plan’ (Day 27 - T 3193.46-47). Counsel Assisting agreed that ‘It’s certainly the foundation for what followed in March [the further draft PIP]’ (Day 27 – 3194.1);
  - ii. Exhibit 52 – an email dated 2 March 2017 from Mr Shearer to himself, annexing documents that include a draft PIP including a table with the columns titled “issues to be addressed” and “standards expected” filled out; and
  - iii. Exhibit 53 – email dated 8 March 2017 with a further draft of the PIP – with a further column filled out titled “action required”.
- g. Mr Shearer documented the PIP and it was sent through to Mr Severin (Day 26 – T 2975.26-28);
- h. any decision not to proceed with the PIP was that of Mr Shearer alone. No evidence was led that Mr Shearer consulted Mr Corcoran about the decision not to proceed with the PIP. Nor was this put to Mr Corcoran. Mr Corcoran seemed surprised in his oral evidence to hear of Mr Shearer’s statement evidence that he (Mr Shearer) had decided not to proceed with the PIP (Day 27 – T 3194.20-26):

MR LLOYD: What do you say about that?

MR CORCORAN: I'm not very happy about it.

MR LLOYD: News to you?

MR CORCORAN: Yes.

(Day 27 – T 3097.9-10)

MR CORCORAN: ... I was not aware that he had walked back on his plans to [not proceed with the PIP]

*d) The performance of Ms Martin was regularly discussed between Mr Corcoran and Mr Shearer throughout 2017 and 2018. Mr Corcoran must have become aware that Ms Martin had not in fact been placed on a PIP during that period. He failed to direct Mr Shearer to implement the plan*

82. It was not put directly to Mr Corcoran that he knew that Ms Martin had not been placed on a PIP in 2017 and 2018. The finding cannot fairly be made – it was necessary to explore this issue if Counsel Assisting were to invite the submission they now do. It is contrary also to the evidence addressed immediately above.
83. As the documentary evidence stands (Exhibits 41, 52 and 53), the PIP process was pursued for at least a three or four month period between 30 November 2016 and 8 March or April 2017<sup>1</sup>. This lengthy period speaks against an awareness on Mr Corcoran's part that the PIP did not proceed.
84. Mr Corcoran's oral evidence was that he 'remembered seeing an email from Hamish that had gone through what was included in the plan, which [Mr Corcoran] forwarded through' to Mr Severin (Day 27 – T 3096.27-41). Counsel Assisting point out that no such email was produced to the Commission: CAS [1441] and [1451]. No such inference should be drawn on this basis – especially in the light of the Commissioner's comments as to a lack of confidence that every relevant document was able to be retrieved (Day 28 – T 3307.18-19). Mr Corcoran was correct, it will be remembered, about his having forwarded an email to Ms Severin attaching a version of the PIP, which was produced to Counsel Assisting by Ms Corcoran himself.
85. In any event, Mr Corcoran had no obligation to direct Mr Shearer to implement the plan because:
- a. Mr Corcoran believed (not unreasonably) that the PIP had been implemented;
  - b. Mr Shearer unilaterally decided not to proceed with the PIP and the evidence does not support a finding that he communicated this to Mr Corcoran;
  - c. the performance management of Ms Martin was the responsibility of Mr Severin and not Mr Corcoran:

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<sup>1</sup> See paragraph [21] of Mr Shearer's statement dated 13 November 2023.

- i. Mr Corcoran: ‘...the Commissioner was responsible for taking action against any Governor that, you know, presented the problems’ (Day 26 – T 3006.1-2);
- ii. Mr Corcoran: ‘...the Commissioner took responsibility for managing Governors. So if there was any major misconduct or other matters involving, you know, Governors, that would have to go - necessarily have to go to the Commissioner for consideration’ (Day 26 – T 3006.7-10);
- iii. Mr Corcoran: ‘...I can only brief Peter Severin on, you know, the activities of various Governors, and it was up to Peter to make a decision on what he wanted to do with those Governors. As I said, it was something that he specifically wanted to do’ (Day 26 – T 2976.8-11);
- d. Mr Corcoran’s only obligation was adequately to inform Mr Severin of the performance issues in relation to which he was aware, and Mr Corcoran fulfilled this obligation:

(Day 24 – T 2717.47-2718.3)

MR LLOYD: I think you had concerns about Shari Martin's performance; correct?

MR SEVERIN: Yes ... And then, of course, I had feedback from Assistant Commissioner Corcoran at the time about matters that were difficult and exchanges between Mr Shearer and her that were brought to my attention by Mr Corcoran.

(Day 26 – T 3002.6-7)

MR CORCORAN: Yeah. Well, as I've said, you know, we - I conveyed information that I got from Hamish through to Peter Severin.

(Day 26 – T 2974.38-44)

MR LLOYD: What did you think was necessary for you to do to discharge your obligations to address that problem?

MR CORCORAN: I had to keep the Commissioner informed, because the Commissioner was responsible - or made himself responsible for managing Governors and the misconduct or performance with serious performance issues with Governors.

(Day 26 – T2975.1-28)

MR LLOYD: In this period, is what you're saying that then Commissioner Severin had the responsibility to intervene if there was a Governor who was not capable of discharging his or her functions?

MR CORCORAN: Yes, he took responsibility for that misconduct process or anything that, you know, moved into a misconduct process as a result of performance.

MR LLOYD: What about something short of misconduct but reflecting inability to discharge function -

MR CORCORAN: Yeah.

MR LLOYD: - through incompetence or something like that?

MR CORCORAN: That's right. So that would then go to Peter. I would be talking to Peter about those things.

MR LLOYD: Did you talk to him about Shari Martin's inability, in your view, to discharge her functions as Governor?

MR CORCORAN: Yes.

MR LLOYD: What did you say to him?

MR CORCORAN: Well, you know, we - we were letting her know that we were putting her on that performance improvement plan. I think Hamish documented that, and that was sent through to Peter, as I recall.

(Day 27 – T3174.41 – 3175.6)

COMMISSIONER: Well, it was your responsibility to keep Mr Severin informed as to what was going on, wasn't it?

MR CORCORAN: I did.

COMMISSIONER: And did he refuse to take action, did he?

MR CORCORAN: Well, I kept him informed.

COMMISSIONER: No. Did he refuse to take action?

MR CORCORAN: I don't know if he refused to take action or he didn't want to take action, but he was - he was being kept informed.

- e. additionally, Page 1 of exhibit 41 establishes that the PIP (such as it then was) was forwarded by Mr Corcoran to Mr Severin;
- f. in relation to (c) above, which goes to Mr Severin's responsibility for Ms Martin's performance improvement and management:
  - i. Counsel Assisting's submissions do not engage with this evidence; nor do they invite a rejection of it;
  - ii. Counsel Assisting did not explore these issues with Mr Severin;
  - iii. it was not put to Mr Corcoran that the responsibility did not fall with Mr Severin;
  - iv. Mr Corcoran's evidence must be accepted.

*e) Mr Corcoran failed to make any or any proper enquiries of whether the PIP had been effective in improving Ms Martin's performance*

86. Mr Corcoran was candid in his oral evidence that he had no recollection of whether he did or did not revert to Mr Shearer about whether Ms Martin's performance had improved *as a consequence of* the PIP. However, Mr Corcoran was clear that he is sure that he would have had discussions about performance improvement generally because 'I had those discussions with every Director about their Governors' and that 'that would be the normal course of events' (Day 27 – T 3097.12-40).

87. This evidence speaks against the 'significant failing' contended for by Counsel Assisting. This is especially so in circumstances where (i) it was Mr Severin who was responsible



for Ms Martin's performance management and not Mr Corcoran, and (ii) Mr Corcoran kept Ms Severin apprised of what he knew on that front.

*f) Mr Corcoran believed throughout the period of Astill's offending and including until his oral evidence at the Special Commission that he did not have the legal right to dismiss a Governor who was incapable of discharging their functions unless it was via a misconduct process*

88. This is accepted.

*g) That belief was mistaken and unreasonable. It did not take into account the proper effect of the legislation and awards to which we have referred to above. From at least 2016 until the time he gave his evidence at the Special Commission Mr Corcoran had a mistaken belief that he had no means by which to remove a Governor for performance issues*

89. The belief was mistaken.

90. But it was not unreasonable for Mr Corcoran to hold that view.

- a. Internally within Corrective Services, the Strategic HR Business Partner and people working in industrial relations were responsible for giving advice about options in connection with employment under the GSE Act and various Awards (Day 27 – T 3218. 42-3219.10).
- b. It was Mr Corcoran's practice to take advice from the Strategic HR Business Partner about the effect of the Act and/or regulations in terms of what options were available to you in respect of senior employees (Day 27 – T 3219.12-16).
- c. Mr Corcoran and others agitated their dissatisfaction with respect to performance management with the Executive (Day 27 – T 3098.29-32; Day 27 – T 3109.30-31), which posed a serious problem, institutionally, for Corrective Services (Day 27 – T 3098.40-44; Day 27 – T 3099.1-8).
- d. It was incumbent on Corrective Services as an institution to ensure that the correct advice was available, especially in circumstances where the issues were known to the executive.

*h) Although Mr Corcoran was not expected to come to his own view about the legal effect of the legislation and awards, in the exercise of his duties as Assistant Commissioner of Custodial Corrections with oversight of DCC, he was required to inform himself of whether, and if so, how, a Governor could be removed if they were not capable of performing their job including by seeking legal advice. He failed to do so*

91. It was incumbent on Mr Corcoran to approach the Strategic HR Business Partner and people working in industrial relations for the relevant advice, and it was Mr Corcoran's practice to take that advice about available options in respect of senior employees.

92. Mr Corcoran held a belief about his capacity to effect removals based on advice. He cannot be expected, as neither a lawyer nor an industrial relations expert, to have acted contrary to that advice or sought to effect something he was being told was not possible.

*i) In the exercise of his duties as Commissioner of CSNSW, he was required to inform himself of whether, and if so, how, a Governor could be removed if they were not capable of performing their job including by seeking legal advice. He failed to do so*

93. This is rejected, for the reasons outlined at [90] to [92] above.

*j) if legal advice had been sought by Mr Corcoran as it should have been, Mr Corcoran would plainly have been advised that there were legal means available to remove Ms Martin from her role on the basis that she was not up to performing that role*

94. There was no obligation to seek legal advice, for the reasons outlined at [90] to [92] above. To say what such advice might have said is conjectural and entirely hypothetical. If this is the true legal position, then Counsel Assisting ought to establish the correctness of it, ie that such legal means actually existed. The evidence suggested that the Awards were important with respect to Governors, and that there was industrial relations history which bared upon available measures. Counsel Assisting's treatment of this issue does not take these factors into account in their conclusion that it is 'plain' that the GSE Act and GSE Rules contemplated disciplinary action including termination (CAS[1467]). Nor do Counsel Assisting's submissions identify with specificity the relevant award, other than what 'appears' to have applied.

*k) The management of DCC by Ms Martin failed, and Ms Martin's failures contributed to the environment which allowed Astill's offending to occur. Accordingly, the failure to take proper steps to have Ms Martin removed from her position during the period when Mr Corcoran had the view she was not capable of performing her role contributed to the environment which allowed Astill's offending to occur*

95. It is accepted that Ms Martin's failures contributed to the environment which allowed Astill's offending to occur.

96. The responsibility to take steps to performance manage Ms Martin did not lie with Mr Corcoran. The responsibility for incorrect advice (if that be the case) as to removal of senior executives lies with the institution, not an individual within it.

## **Conclusion**

97. Leaving to one side the suspension decision, the criticisms made by Counsel Assisting as a basis for making findings against Mr Corcoran are ones which should result in no adverse finding against him. He did what he believed he could with Ms Martin (upon advice), and he urged Mr Shearer (a staff member who came into the role with long

experience in a senior role in the defence force) to undergo training and thought he was performance-managing Ms Martin. He did as much as he reasonably could within a system and organisation which posed some impediments to staff management.

98. Mr Corcoran's involvement in the Committee decision in mid-September 2017 about Governors and the Director together making decisions about where to refer complaints was something which cannot be said to have contributed to confusion: it was not inconsistent with the formal written policy then in place.
99. And as for the suspension decision, it is accepted it was imperfect, but it must be borne in mind the true nature of it: a suspension on full pay, regularly reviewable, and about which the effected staff have made (on the evidence) no complaint.

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Counsel for Kevin Corcoran

14 December 2023

**STEPHANIE GAUSSEN**