

Special Commission of Inquiry  
Into the Offending by the  
Former Corrections Officer  
Wayne Astill at Dillwynia  
Women's Corrections Centre  
Sitting in Sydney, NSW

### **Submissions in reply on behalf of Mr Michael Paddison**

#### **General Matters**

1. Through Letters Patent issued by the Governor of NSW under the Authority of the *Special Commissions of Inquiry Act 1983* an inquiry was established to inquire into the circumstances related to the sexual offences committed by Wayne Astill at Dillwynia Women's Correctional Centre and to report to the Governor of NSW the outcome of those inquiries.
2. The Letters Patent raised seven specific issues to be inquired into, as well as providing for a general inquiry into the circumstances related to the offending.
3. The Inquiry was empowered to call witnesses, examine evidence and to ultimately make recommendations to address the issues raised in the Letters Patent.
4. During the conduct of the Inquiry evidence was called from, and given about a number of Corrective Services NSW employees, including Mr Michael Paddison.
5. It is agreed that during the period subject of the Inquiry Mr Paddison performed the role, amongst others, of Principal Correctional Officer/Functional Manager<sup>1</sup> at Dillwynia Women's Correctional Centre. During that time Mr Astill was also an employee at Dillwynia Correctional Centre.

#### **Evidence**

6. Significant evidence was given by witnesses, both prisoners held at Dillwynia at the relevant times, employees of Corrective Services NSW, and others in relation to events that occurred during the relevant period.
7. Counsel Assisting has provided significant and comprehensive submissions detailing, in summary, the evidence given during the hearing.
8. In their submissions, Counsel Assisting outlines a number of incidents said to involve or relate to Mr Paddison. They are relevantly described as:
  - a. being part of *Shari's Boys*;
  - b. "File 13"
  - c. fear of reprisal from staff

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<sup>1</sup> Counsel Assisting sets out the functions of that role from [72] – [75].

- d. rumours about inappropriate relationships between Astill, Witness C and others;<sup>2</sup>
  - e. incident involving Julijana Miskov;<sup>3</sup> and
  - f. complaint by Witnesses R and V about Witness M<sup>4</sup>.
9. The Special Commission is invited by Counsel Assisting to make certain findings in relation to evidence given by the witnesses and determinations made as to what occurred in relation those events. Any findings or determinations made by the Special Commission in relation to those events should not be made in a vacuum. The whole evidence surrounding an event should be considered, rather than restricted to a bare consideration of the evidence specifically relating to that one specific instant or event.
10. It is conceded that Mr Paddison's evidence would not be considered as that of a retentive individual . He was not able to recollect matters with great clarity however, in relation to matters he did recall, he was forthright and tried to assist the enquiry truthfully and to the best of his ability. Mr Paddison's evidence would be appropriately characterised as honest, forthright, not combative (he did not seek to argue, and offered possible explanations on occasion as to reasons he may not remember certain matters) and overall should be accepted. It is conceded that where questioned about matters and his evidence was that he could not remember then the evidence of others who have a detailed memory, documentary evidence, and/or independent verification by another person's evidence may be preferred.

### **Potential CAS Regulation breaches**

#### *Incident involving Julijana Miskov*

11. Counsel Assisting submission directly address any potential allegations of breaches of CAS Regulations in relation to Mr Paddison.<sup>5</sup> Notably, on the factual findings as urged by Counsel Assisting, no submission is made that Mr Paddison breached any CAS Regulation in relation to the Incident involving Julijana Miskov.

#### *Complaints by R and V about Witness M*

12. The submissions from Counsel Assisting on the complaints about R and V and Witness M, does not allege any breaches in relation to Mr Paddison.<sup>6</sup> Where Counsel Assisting makes submission that Mr Paddison's participation in the investigation into the allegations made in relation to the assaults on Witness M we note the evidence of Ms Shari Martin, and the documentary evidence tendered and which would indicate a departure from the normal practice. This departure however, was not a departure caused by or referable to Mr Paddison but rather that it was due to a direction given to him by Ms Shari Martin in her role as Governor and his "Senior Correctional Officer".

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<sup>2</sup> 6.2.3 [888] onwards, [896] directly.

<sup>3</sup> 6.3.May 2016 [909] onwards, [914] – [915], 6.3.1 [917] – [922].

<sup>4</sup> 6.6.June 2017 [953] onwards, [956]-[957], [964]-[967], [970],[975][976][979].

<sup>5</sup> Counsel Assisting Submissions at [1163] – [1167].

<sup>6</sup> Counsel Assisting Submissions at [1181]-[1189].

13. We accept and agree with Counsel Assisting's submission in relation to Mr Paddison's participation in the investigation,<sup>7</sup> and submit that the evidence would establish that that came about due to a direction from Ms Shari Martin. No adverse finding should be made against Mr Paddison in that regard, rather a recommendation should be made that Corrective Services NSW conduct additional training and education in regards to the proper practice to be followed by all staff in relation to roles, obligations and responsibilities of staff when reporting complaints as well as education as to the proper processes of investigation of those complaints.

### **Decision to Suspend Mr Paddison**

14. In relation to the decision to suspend Mr Paddison,<sup>8</sup> Counsel Assisting submits ultimately that it is open to the Special Commission to find that *"Mr Corcoran's decision to suspend Mr Paddison...departed in a range of significant ways from the proper practice set out above."*
15. Given the evidence of Mr Corcoran, Ms Zekanovic, Ms Snell in particular, as well as the other evidence relevant it is submitted that it the Special Commission should make a positive finding as urged by Counsel Assisting, and further, would make a positive finding that Mr Paddison should not, in fact, have been suspended had the proper practice been followed and proper considerations as required been given the proper and appropriate weight.

### **Referrals**

16. Counsel Assisting submits at [1560] that the conduct alleged by Ms Miskov in relation to the incident involving Ms Miskov – namely that either *"Ms Martin or Mr Paddison tore up a report prepared by Ms Miskov which, on the evidence of Ms Miskov, knew disclosed an alleged assault by Astill"* – *"would likely be found to constitute wilful misconduct that is serious and merits criminal punishment"*, and *"that careful consideration should be given to whether this evidence is sufficient to warrant the prosecution of Ms Martin and Mr Paddison for this common law offence (that being Misconduct in Public Office) in accordance with s 10(1) of the Special Commissions of Inquiry Act 1983"*.
17. On a proper consideration of the evidence given the Special Commission would decline to adopt that submission and find that the evidence is not sufficient to warrant the prosecution of Mr Paddison for this common law offence in accordance with s. 10(1) of the *Special Commissions of Inquiry Act 1983* or under s. 21(1) of the *State Records Act 1988*.
18. In relation to the common law offence of Misconduct in Public Office the following submissions are made:
- a. There is no electronic record of any report prepared by Ms Miskov in relation to these events in evidence, or electronic copy of any report in evidence;
  - b. There is no other evidence from any Corrective Services Officer said to be a witness to alleged assault by Wayne Astill on Ms Miskov confirming such assault took place;

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<sup>7</sup> Counsel Assisting Submissions at [1185].

<sup>8</sup> Counsel Assisting submissions at [1251] to [1343].

- c. There is no evidence, such as a calendar entry, meeting record, diary record or any other record of Ms Miskov being called into a meeting in relation to this incident;
  - d. The allegation of tearing up the report was denied by Ms Martin and Mr Paddison;
  - e. Ms Miskov evidence was that she could not say for certain who tore up the report;
  - f. Mr Paddison's evidence was that he had no recollection of the tearing up of the report taking place and *"that ripping up a report is "something that would be a very significant thing" that he strongly believed he would have a recollection of if it was done in his presence"*;
  - g. Mr Paddison was not found to be lacking overall credibility;
  - h. Given the credit findings against Ms Martin, it is accepted that her evidence can be generally characterised as lacking credibility.
  - i. The finding open to the Special Commission is that Mr Paddison lack of memory, confusion and uncertainty is his candour, honesty and truthfulness in assisting the Special Commission understanding the circumstances of the meeting.
19. In applying the *Briginshaw* standard, the Special Commission may accept the evidence of Ms Miskov as to the assault on her by Wayne Astill. The Special Commission may also accept that, given the lack of confirmatory evidence by those said to have witnessed the incident, that the incident, whilst generally consistent with *"rumours of Astill's preparedness to engage in inappropriate sexual conduct in his workplace, and his general inappropriate sexualised behaviour towards other CSNSW officers"*, is of a markedly different nature to those incidents proven to have taken place. Notably, this involves an allegation of an assault of a sexual nature, in the open, in front of a number of people, and against a fellow CSNSW employee as opposed to a prisoner and that the Special Commission would have great difficulty in accepting Ms Miskov's allegations rising to a level sufficient for a criminal prosecution.
20. The above is important when considering the allegation as to the ripping up of the report. It is conceded that Ms Martin's evidence does not assist the Special Commission in making a determination in relation to this allegation. Ms Martin's evidence was generally poor, and she accepted that on a number of occasions she did not follow, or poorly followed, the established requirements and practices required of her in relation to allegations of misconduct. Mr Paddison's evidence was, in essence, that had a report been ripped up in front of him during a meeting that such an event, being so out of the ordinary, would have stuck in his memory and that since he did not remember that it was unlikely to have occurred.
21. Accordingly, if the Special Commission was to accept Ms Miskov's evidence about the report being torn up, it is submitted that the Special Commission could not be satisfied of the following crucial matters for the following reasons:

- a. That Mr Paddison tore up the report, as opposed to Ms Martin – Ms Miskov’s own evidence is that she is unsure who tore up the report<sup>9</sup>;
  - b. That, if the Special Commission determines that Ms Martin tore up the report, that Mr Paddison was present when that occurred, noting Mr Paddison’s evidence that had such thing happened he would have remembered it, and his evidence and the supporting evidence of Mr Paddison acting on other allegations of misconduct by Astill;
  - c. That Mr Paddison has no reason to give false evidence with respect to this issue, Mr Paddison’s career equally continued after this incident and Mr Paddison did in fact upon further allegations about Astill’s conduct;
  - d. The lack of supporting evidence in relation to the incident giving rise to the creation of the report;
  - e. Ms Miskov’s evidence that, rather than *“this report (being) provided to Mr Paddison and Ms Martin<sup>10</sup>”*, Ms Miskov *“took it to Ms Martin’s office where it was placed on Ms Martin’s desk<sup>11</sup>”* there is the possibility that Ms Martin tore up the report in front of Ms Miskov prior to the arrival of Mr Paddison, or after the departure of Mr Paddison; and
  - f. Given Mr Paddison’s actions in reporting and acting on other allegations against Astill that, were he present when Ms Miskov repeated the allegation, it is more likely that he would have acted on such an allegation than ignored or discouraged any action.
22. Taking those matters into account it is submitted that the Special Commission would decline to make any recommendation in relation to Mr Paddison in regards to this incident.
23. Section 21(5) of the State Records Act 1998 provides that *“it is a defence to a prosecution for an offence under this section for the defendant to establish that he or she did not know and had no reasonable cause to suspect that the record was a State record”*. In the circumstances, noting the uncertainty that is acknowledged by Counsel Assisting as to whether or not the report would be considered a State Record pursuant to the Act, it is submitted that this defence would be open and available to any person referred in relation to this section.
24. s21(4) of the SRA also provides that *“anything done by a person (“the employee”) at the direction of some other person given in the course of the employee’s employment is taken for the purposes of this section not have been done by the employee and instead to have been done by that other person”*. Relevantly, noting Ms Miskov’s evidence that she left the report on the desk of Ms Martin prior to the meeting, if the Special Commission makes a finding that it was Mr Paddison as opposed to Ms Martin who tore up the report, that could have only taken place at the direction of Ms Martin, Mr Paddison’s superior and the person who, on Ms Miskov’s evidence, had to have physically given the report to Mr Paddison as it had been left in her effective control prior to the meeting.

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<sup>9</sup> Transcript, 24 October 2023, T717.17-718.3; Ex. 7, TB2, Vol 8, Tab 76, AST.002.013.0024\_0004 [22].

<sup>10</sup> [922] Closing Submissions

<sup>11</sup> Transcript, 24 October 2023, T715.27-717.15; Ex. 7, TB2, Vol 8, Tab 76, AST.002.013.0024\_0004 [22].

## **Proposed Recommendations**

25. Mr Paddison joins with the Counsel Assisting's submissions in relation to the Proposed Recommendations [1] – [34].

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