

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



CLOSING SUBMISSIONS OF COUNSEL ASSISTING

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1. Background

1.1. Background to the Special Commission

1. On 31 March 2023, Wayne Astill was sentenced to an aggregate sentence of 23 years imprisonment, with a non-parole period of 15 years and four months, for 34 offences committed while undertaking his duties as a Correctional Officer at Dillwynia Correctional Centre (**DCC**).¹
2. The offences for which Astill was sentenced were committed between March 2014 and October 2018 upon 14 victims, all of whom were, at the time of the offending, inmates at DCC.² Those victims were witnesses B, C, F, O, G, M, I, J, E, D, S, N, Trudy Sheiles and Sarah Ward. Astill's offending occurred in various locations inside DCC.
3. On 25 August 2022, a jury convicted Astill of 26 criminal offences, comprised of: five counts of aggravated sexual assault without consent; 14 counts of aggravated indecent assault; three counts of aggravated act of indecency; and five counts of misconduct in public office.³
4. Prior to his trial, Astill had pleaded guilty to seven counts of misconduct in public office.⁴ All 12 of the misconduct in public office counts of which he was convicted concerned inappropriate personal or sexual relationships had between Astill and inmates at DCC.
5. The sentencing judge, Judge O'Rourke SC, further found that the offence of intimidation had been proved beyond reasonable doubt. That offence concerned conduct of Astill towards Witness B.⁵
6. On 28 July 2023, the NSW Government announced it had established a special ministerial inquiry (**the Inquiry**) into the circumstances surrounding the offences committed by Astill. The

¹ Ex. 3, TB1, Vol 4, Tab 2B, AST.002.010.0001_0050-51.

² Ex. 3, TB1, Vol 4, Tab 2B, AST.002.010.0001_0002-29.

³ Ex. 3, TB1, Vol 4, Tab 2B, AST.002.010.0001.0001.

⁴ Ex. 3, TB1, Vol 4, Tab 2B, AST.002.010.0001_0001-2.

⁵ Ex. 3, TB1, Vol 4, Tab 2B, AST.002.010.0001_0029-30.

Inquiry was established under s. 82 of the *Government Sector Employment Act 2013 (GSE Act)* at the request of the Minister for Corrections of NSW (**the Minister**).⁶

7. On 13 September 2023, the Inquiry was reconstituted as a Special Commission of Inquiry (**Special Commission**) pursuant to letters patent issued by her Excellency the Honourable Margaret Beazley AC KC, Governor of the State of NSW, under the *Special Commissions of Inquiry Act 1983*.
8. The letters patent authorise the Commissioner to inquire into, and report on, the circumstances related to the sexual offences committed by Astill at DCC including:
 - A. *Whether any other employee of Corrective Services NSW had knowledge or reasonable suspicion of the offending and if so, when, and what steps they took in relation to that knowledge or suspicion.*
 - B. *Whether any person engaged in the management of Dillwynia Women's Correctional Centre had knowledge or reasonable suspicion of the offending and, if so, when, and what steps that person took either alone or as a member of the management team in relation to that knowledge or suspicion.*
 - C. *The systems of supervision and oversight that applied in relation to Wayne Astill at Dillwynia Women's Correctional Centre, their adequacy, and how they could be improved to reduce the risk of serious offending.*
 - D. *The policies and procedures available at Dillwynia Correctional Centre for inmates or staff to raise complaints about misconduct, including sexual offending by correctional officers.*
 - E. *Whether the circumstances related to Astill's offending and your findings require further consideration of broader site or case specific or Corrective Services wide investigations.*
 - F. *Whether the circumstances related to Astill's offending or any matter revealed by this inquiry related to Dillwynia Women's Correctional Centre indicate inadequacies in the policies and procedures for professional oversight and/or the conduct of professional standards investigations that apply in Corrective Services NSW, and whether, in particular, they are sufficiently independent and robust.*
 - G. *Whether any matters arising from the inquiry should be referred to the Independent Commission Against Corruption (ICAC) or the NSW Police Force for further investigation.*
9. The Special Commission was further authorised to make recommendations in relation to the issues raised.

⁶ Terms of Reference, Special Ministerial Inquiry, 13 September 2023.

1.2. Corrective Services NSW

10. Corrective Services NSW (CSNSW) operates most correctional centres in NSW, including DCC.
11. The operation of correctional centres is, in part, regulated by the *Crimes (Administration of Sentences) Act 1999 (CAS Act)*.
12. The objects of the CAS Act are set out in s. 2A(1), and are as follows:
 - a) to ensure that those offenders who are required to be held in custody are removed from the general community and placed in a safe, secure and humane environment;
 - b) to ensure that other offenders are kept under supervision in a safe, secure and humane manner;
 - c) to ensure the safety of persons having the custody or supervision of offenders is not endangered; and
 - d) to provide for rehabilitation of offenders with a view to their reintegration into the general community.⁷
13. Within CSNSW, correctional officers are organised in a rank-based hierarchy, in which officers of a more junior rank report to officers of a more senior rank.
14. The Commissioner of Corrective Services (**Commissioner of CSNSW**) sits at the top of the hierarchy.
15. The CAS Act entrusts the Commissioner of CSNSW with, relevantly, the “care, direction, control and management of all correctional complexes, correctional centres and residential facilities” and “the care, control and management of all offenders” who are imprisoned by way of full-time detention.⁸ The exercise of the Commissioner of CSNSW’s functions is subject to the direction and control of the Minister.⁹

⁷ CAS Act s. 2A.

⁸ CAS Act s. 232(1).

⁹ CAS Act s. 232(2).

16. During the period of Astill's offending, the Commissioner of CSNSW was Peter Severin. The current Commissioner of CSNSW is Kevin Corcoran.
17. During the period of Astill's offending, CSNSW was comprised of six divisions, each headed by an Assistant Commissioner who reported to the Commissioner of CSNSW.¹⁰ The six divisions were:
- a) Custodial Corrections;
 - b) Offender Management and Programs;
 - c) Governance and Continuous Improvement;
 - d) Community Corrections;
 - e) Strategy and Policy; and
 - f) Security and Intelligence.¹¹
18. Most relevant to matters the subject of this Special Commission were the Custodial Corrections Division, headed by Assistant Commissioner Kevin Corcoran, and the Governance and Continuous Improvement Division, headed by Assistant Commissioner James Koulouris. Assistant Commissioner Koulouris was replaced sometime between July and October 2018 by Assistant Commissioner Carlo Scasserra.¹²

1.2.1 Custodial Corrections Division

19. Reporting to Assistant Commissioner Corcoran were a number of Directors of Custodial Operations assigned to different districts or clusters in NSW. DCC was the responsibility of the Director Custodial Operations Metro (**Director**). During the initial period of Astill's offending the Director had responsibility for six correctional centres.¹³ In around 2018, the role expanded

¹⁰ Ex. 58, TB3, Vol 9, Tab 105B, CSNSW.0001.0003.0040.

¹¹ Ex. 58, TB3, Vol 9, Tab 105B, CSNSW.0001.0003.0040.

¹² Ex. 58, TB3, Vol 9, Tab 105B, CSNSW.0001.0003.0040; Ex. 3, TB3, Vol 17, Tab 540, CSNSW.0002.0024.5175_0002; Ex. 58, TB3, Vol 9, Tab 105B, CSNSW.0001.0003.0040_0003.

¹³ Ex. 43, TB2, Vol 8A, Tab 98, AST.002.013.0061_0001 [4].

to become that of Director, Custodial Operations, Metro and Central West Region, and the Director assumed responsibility for four additional correctional centres.¹⁴

20. The primary purpose of the role of Director was to lead, manage, develop, and monitor the operational performance indicators, and to provide strategic advice and guidance to the senior management and Governors/General Managers, of correctional centres on operational matters in respect of all correctional centres falling within a particular district or cluster.¹⁵
21. During the period of Astill's offending, the role of Director was held, first, by Marilyn Wright, and upon her retirement in August 2016,¹⁶ Hamish Shearer.¹⁷

1.2.2 Governance and Continuous Improvement Division

22. Sitting within Governance and Improvement Division were the Professional Standards Branch (**PSB**) and the Investigations Branch (**IB**).¹⁸
23. PSB was headed by its Director, Peter Robinson.¹⁹ IB was headed by its Director, Michael Hovey.²⁰
24. PSB was responsible for receiving, recording, managing, and assisting in the resolution of reports or allegations in relation to wrongdoing by CSNSW staff. This included allegations of misconduct, criminal conduct, and corrupt conduct.²¹
25. PSB had access to the CSNSW Integrated Intelligence System (**IIS**). IIS was used by PSB to record the details of each matter it was dealing with. Searches of IIS could be undertaken by PSB to determine whether a person had come to the notice of PSB previously and in what circumstances.²²

¹⁴ Ex. 43, TB2, Vol 8A, Tab 98, AST.002.013.0061_0001 [5].

¹⁵ Ex. 42, TB2, Vol 8A, Tab 90, AST.002.013.0046_0001 [7]; Ex. 46, TB5, Vol 25, Tab 8, Annexure Tab 2, CSNSW.0001.0044.0047.

¹⁶ Ex. 42, TB2, Vol 8A, Tab 90, AST.002.013.0046_0001 [5]

¹⁷ Ex. 43, TB2, Vol 8A, Tab 98, AST.002.013.0046_0001 [4].

¹⁸ Ex. 58, TB3, Vol 9, Tab 105B, CSNSW.0001.0003.0040_0001-3.

¹⁹ Ex. 35, TB2, Vol 8A, Tab 91, AST.002.0013.0057_0002 [9].

²⁰ Ex. 32, TB2, Vol 8, Tab 86, AST.002.013.0054_0001 [5].

²¹ Ex. 35, TB2, Vol 8A, Tab 91, AST.002.013.0057_0003 [13].

²² Ex. 35, TB2, Vol 8A, Tab 91, AST.002.013.0057_0011-12 [53]-[54].

26. The IIS was also used by the IB and the Corrections Intelligence Group (**CIG**). Partitions existed between the records held on IIS for each of those entities.²³ However, it was possible for IB and PSB to share information via the IIS.²⁴
27. The function of the IB was to independently investigate such matters as escapes, deaths in custody and allegations of employee misconduct.²⁵
28. The Special Investigation Unit (**SIU**) was a sub-branch of the IB.²⁶ Correctional officers located within correctional centres were able to send Intelligence Reports (**IR**) to the SIU via the IIS.²⁷ This provided them with a means of reporting intelligence regarding other correctional officers outside of their particular correctional centre, and in a way that meant that the IR was not disseminated to the Governor.²⁸ This could include IRs concerning inappropriate conduct or possible misconduct by CSNSW employees. The intended procedure was that the IR would then be reviewed by the intelligence analyst in the SIU.
29. In addition to investigations officers, the IB was also staffed with one and, at times, two intelligence analysts. During the majority of the period of Astill's offending, these roles were performed by Andrew Tayler and Sarah Casey.²⁹
30. Misconduct matters were sent to IB from PSB, following a decision by the Professional Standards Committee (**PSC**) (see [35]-[37]) that a referral to IB for investigation was required.³⁰
31. The IB also received referrals through the SIU function on the IIS and, on occasion, referrals made directly to Mr Hovey via a telephone call.³¹

²³ Ex. 35, TB2, Vol 8A, Tab 91, AST.002.013.0057_0011 [53].

²⁴ Ex. 32, TB2 Vol 8, Tab 86, AST.002.013.0054_0005-6 [33].

²⁵ Ex. 32, TB2, Vol 8, Tab 86, AST.002.013.0054_0003 [15].

²⁶ Transcript, 10 November 2023, T1866.18-25; T994.36-46.

²⁷ Ex. 35, TB2, Vol 8A, Tab 91, AST.002.013.0057_0013 [60]-[61]; Ex. 9, TB2, Vol 7, Tab 64A, AST.002.012.0017_0005 [27].

²⁸ Transcript, 25 October 2023, T798.25-33.

²⁹ Ex. 58, TB3, Vol 9, Tab 105B, CSNSW.0001.0003.0040_0001-4.

³⁰ Ex. 35, TB2, Vol 8A, Tab 91, AST.002.013.0057_0006-7 [28]; Ex. 32, TB2, Vol 8, Tab 86, AST.002.013.0054_0003 [16].

³¹ Ex. 32, TB2, Vol 8, Tab 86, AST.002.013.0054_0003 [19].

32. If a report or complaint was communicated to IB via an IR, the intended procedure was that it would be dealt with first by an intelligence analyst in the IB. The intelligence analyst would review the information and determine whether the complaint could be substantiated. The matter could then be referred to the PSC.³²
33. When a correctional officer completed an IR, they could determine to what area it would be directed (CIG or SIU). For non-SIU reports, the Governor of the correctional centre from which the IR was sent would ordinarily be notified by an automatic dissemination list.³³
34. However, selecting the SIU option from the drop-down menu on the IIS had the effect of bypassing the Governor and sending the IR outside the correctional centre to the SIU.³⁴

1.2.3 Professional Standards Committee

35. The function of the PSC was to determine what action should be taken in relation to matters referred to PSB. The PSC would meet weekly for that purpose.³⁵
36. The PSC would assess the matter and then task PSB with the next steps. Those steps could include referring the matter to the IB and awaiting their report, referring the matter to Mr Hovey to refer to the Corrective Services Investigation Unit (CSIU), reporting the matter to the Independent Commission Against Corruption (ICAC), and, where the PSC's assessment was that there had been no wrong-doing and no further action was required, informing the reporter of the matter of this outcome.³⁶
37. During the period of Astill's offending, the membership of the PSC was comprised of Assistant Commissioner Koulouris and later Assistant Commissioner Scassera, Mr Robinson, Mr Hovey and the NSW Police Force (NSWPF) Commander of the CSIU.³⁷

³² Ex. 32, TB2, Vol 8, Tab 86, AST.002.013.0054_0006 [35].

³³ Ex. 9, TB2, Vol 7, Tab 64A, AST.002.013.0017_0005 [26]-[27].

³⁴ Ex. 9, TB2, Vol 7, Tab 64A, AST.002.013.0017_0005 [27]; Ex. 59, TB5, Vol 28, Tab 13, AST.002.013.0088_0008-9 [26(b)].

³⁵ Ex. 35, TB 2, Vol 8A, Tab 91, AST.002.013.0057_0009 [45].

³⁶ Ex. 35, TB 2, Vol 8A, Tab 91, AST.002.013.0057_0010-11 [49].

³⁷ Ex. 35, TB 2, Vol 8A, Tab 91, AST.002.013.0057_0009 [45], 10 [47].

1.2.4 Recent Developments

38. Relevantly, the current structure of CSNSW is as follows. Sitting below Commissioner Corcoran are three Deputy Commissioners: Deputy Commissioner, Strategy and Governance (Luke Grant), Deputy Commissioner, Security and Custody (Dr Anne-Marie Martin), and Deputy Commissioner, Community, Industry and Capacity (Leon Taylor).³⁸
39. Reporting to Mr Grant are the Assistant Commissioner Delivery, Performance and Culture, Chantal Snell, and the Assistant Commissioner Strategy and Policy, Jennifer Galouzis.³⁹
40. Reporting to Dr Martin are the Assistant Commissioner Custodial Metro, John Buckley, and the Assistant Commissioner Custodial Regional, Craig Smith.⁴⁰
41. The current Director, Custodial Operations Metro West, Emma Smith, reports to Mr Buckley. The current Governor of DCC, Nicola Chappell reports to Ms Smith.⁴¹
42. In February 2023, PSB and IB were formally merged to become Professional Standards and Investigations (**PSI**).⁴² PSI is presently headed by an Acting Director, Angela Zekanovic. Ms Zekanovic reports to the Assistant Commissioner Delivery, Performance and Culture, Ms Snell.⁴³
43. The implementation of the merger, termed ‘Project Merge’, remains ongoing. As part of the merger PSI is developing a new model for the management of misconduct allegations, addressed further below.⁴⁴

1.2.5 Corrective Services Investigation Unit

44. The CSIU is a unit of the NSWPF and is staffed by a number of NSWPF detectives.

³⁸ Ex. 3, TB3, Vol 9, Tab 105, CSNSW.0001.0022.0125_0001.

³⁹ Ex. 3, TB3, Vol 9, Tab 105, CSNSW.0001.0022.0125_0001.

⁴⁰ Ex. 3, TB3, Vol 9, Tab 105, CSNSW.0001.0022.0125_0001.

⁴¹ Ex. 3, TB3, Vol 9, Tab 105, CSNSW.0001.0022.0125_0001.

⁴² Ex. 47, TB5, Vol 21, Tab 1, CSNSW.0001.0076.0001_0005 [20].

⁴³ TB5, Vol 21, Tab 1, CSNSW.0001.0076.0001_0005 [19].

⁴⁴ Ex. 47, TB5, Vol 21, Tab 1, CSNSW.0001.0076.0001_0005 [20].

45. The CSIU operates independently of CSNSW. It is tasked with, among other matters, investigating alleged criminal offending by CSNSW employees.⁴⁵
46. Matters could be referred from the PSC to the CSIU, whose officers would determine independently whether they would pursue a criminal investigation, and if so, how that investigation would occur.⁴⁶
47. The Director of IB (Mr Hovey) was the secondment manager of the CSIU,⁴⁷ and was responsible for such matters as fleet management and budgeting. While Mr Hovey could not direct members of the CSIU to undertake particular work, or how to undertake that work, he could refer matters to them.⁴⁸ Mr Hovey also had delegated authority to approve certain NSWPF operations be undertaken on CSNSW property.⁴⁹

1.2.6 Corrections Intelligence Group

48. The CIG operated out of the Security and Intelligence Division. Their role was and is to analyse information and data regarding inmates.⁵⁰
49. Wrongdoing by inmates was recorded in IRs on the IIS which were then accessed by CIG. The CIG could also distribute IRs to operational units and external agencies.⁵¹
50. Where an IR concerning a staff member was incorrectly sent to the CIG, the CIG had capacity to send the matter across to SIU.⁵²

1.3. Dillwynia Correctional Centre

51. DCC opened in March 2004, and forms part of Francis Greenway Correctional Complex (formerly known as the John Moroney Correctional Complex). It is located at Berkshire Park,

⁴⁵ Ex. 35, TB 2, Vol 8A, Tab 91, AST.002.013.0057_0009 [42]-[43].

⁴⁶ Ex. 35, TB 2, Vol 8A, Tab 91, AST.002.013.0057_0009 [44].

⁴⁷ Transcript, 8 November 2023, T1861.16-24.

⁴⁸ Transcript, 8 November 2023, T1863.1-10.

⁴⁹ Transcript, 8 November 2023, T1863.24 - 34.

⁵⁰ Transcript, 8 November 2023, T1860.36-38.

⁵¹ Ex. 35, TB 2, Vol 8A, Tab 91, AST.002.013.0057_0013 [60]-[61]; Ex. 9, TB2, Vol 7, Tab 64A, AST.002.012.0017_0004 [24].

⁵² Transcript, 8 November 2023, T1911.20-42.

five kilometres south of Windsor. Presently, DCC has capacity to accommodate 531 inmates, with a staff count of approximately 263.⁵³ Of those 263, 172 are custodial staff.⁵⁴ DCC does not have determined ratios for custodial staff to inmates.⁵⁵ DCC was significantly expanded (by 248 beds) in 2020, after the period of Astill's offending. It is now split into "Area 1" and "Area 2", and other changes to the function of some of the spaces where Astill's offending occurred have been made.

52. As noted above at [13], correctional officers at DCC (in common with other correctional centres) were organised in a hierarchical structure.

53. In 2018, benchmarking reforms were implemented at DCC.⁵⁶ This had the effect of changing certain staff roles, the number of watches per day and staff numbers.

1.3.1 Governor

54. The most senior position at DCC was that of Governor, formally called the General Manager, including during some of the period of Astill's offending. For the purposes of these submissions this position will be referred to as the Governor. The Governor reported to the relevant regional Director.

55. The Governor of DCC was jointly the Governor of Emu Plains Correctional Centre (**EPCC**).

56. Shari Martin held the role of Governor of DCC and EPCC from approximately 2006 to 2012 and again from 14 July 2015 to 21 December 2018.⁵⁷ Following Ms Martin's departure, Adam Schreiber assumed the role of Acting Governor.⁵⁸

57. During the period of Astill's offending, Thomas Woods and Ian MacRae acted in the role of Governor for periods when Ms Martin was absent.⁵⁹

⁵³ Ex. 46, TB 5 Vol 25, Tab 8, CSNSW.0001.0175.0001_0006 [16].

⁵⁴ Ex. 46, TB 5 Vol 25, Tab 8, CSNSW.0001.0175.0001_0020 [103].

⁵⁵ Ex. 46, TB 5 Vol 25, Tab 8, CSNSW.0001.0175.0001_0006 [104].

⁵⁶ See below [67]-[69], [74].

⁵⁷ Ex. 38, TB2, Tab 59, AST.002.002.0071_0002 [5]; Ex. 3, TB3, Tab 107, CSNSW.0001.0014.0001_0001-2.

⁵⁸ Ex. 57, TB 2, Vol 7, Tab 57A, AST.002.013.0031_0002 [7].

⁵⁹ Ex. 3, TB3, Tab 107, CSNSW.0001.0014.0001_0001-2; Ex. 34, TB2 Vol 8A, Tab 97, AST.002.013.0058_0001 [4].

58. As stated above at [41], the current Governor of DCC and EPCC is Nicola Chappell.

59. The primary purpose of the role of Governor was to:

*Provide leadership and direction for the effective and accountability based management of all aspects of a correctional centre, including the safety and security of employees, inmates and visitors and other visiting persons in compliance with the policy, duty of care requirements, defined service standards, key performance indicators and Management Agreements.*⁶⁰

60. In relation to the Governor of DCC jointly having responsibility for EPCC, Ms Martin told the Special Commission that while she made attempts to share her time equally between the two centres, that was, at times, not possible.⁶¹

61. Ms Chappell told the Special Commission that she thought the role should be decoupled and agreed that running both correctional centres was too much for one person.⁶²

62. A briefing note has been submitted by CSNSW seeking executive approval for the Governor of DCC to be a standalone position and no longer be jointly responsible for EPCC: see below at [478].⁶³

1.3.2 Manager of Security

63. The Manager of Security (**MOS**) was the second in command of DCC. He or she reported to the Governor.

64. The primary purpose of the MOS was to:

*Provide leadership and direction for the operational management of a correctional centre ... including the coordination of the structured day, effective provision of security, inmate related services and for ensuring the maintenance of staff discipline and good order.*⁶⁴

⁶⁰ Ex. 50, TB5, Vol 27, Tab 11, Annexure Tab 2, CSNSW.0001.0003.0032.

⁶¹ Ex. 38, TB2, Tab 59A, AST.002.013.0059_0005 [25].

⁶² Transcript, 22 November 2023, T2931.36-48.

⁶³ Ex. 50, TB5, Vol 27, Tab 11, CSNSW.0001.0261.0001_0005 [15].

⁶⁴ Ex. 46, TB5, Vol 25B, Tab 8, Annexure Tab 153, CSNSW.0001.0030.0097.

65. Following the implementation of the benchmarking reforms at DCC in late 2018, the role of MOS was removed at DCC, however on 31 January 2019, the MOS role was re-established.⁶⁵
66. During the period of Astill's offending the role of MOS was initially performed by Leanne O'Toole. Ms O'Toole went on sick leave in October 2016 and was terminated on medical grounds in February 2017.⁶⁶ Brian Bartlett performed this role between December 2016 and July 2017, although he too was on sick leave for part of that time.⁶⁷ Suryanarayan Hariharan also acted in the role.⁶⁸

1.3.3 Principal Correctional Officers and Functional Managers

67. Prior to benchmarking, the next most senior correctional officer ranks at DCC were Principal Correctional Officers and Chief Correctional Officers. Principal Correctional Officer was a more senior rank than that of Chief Correctional Officer and was elsewhere in CSNSW termed Senior Assistant Superintendent. Chief Correctional Officer was otherwise known as Assistant Superintendent. The ranking structure at DCC differed from most other correctional centres due to the applicable industrial award, colloquially known as the "island" award.⁶⁹
68. Primarily, the role of Principal Correctional Officer was to manage a functional area in a correctional centre such as inmate accommodation or security related infrastructure. Principal Correctional Officers reported to the MOS or, in the absence of the MOS, the Governor.⁷⁰
69. When benchmarking was implemented in 2018, together with the initial removal of the role of MOS, four Chief Correctional Officer roles were replaced with six Principal Correctional Officer roles. The role of Principal Correctional Officer became known as Functional Manager.⁷¹

⁶⁵ Ex. 46, TB5, Vol 25B, Tab 8, CSNSW.0001.0175.0001_0008 [27].

⁶⁶ Ex. 30, TB2, Vol 8A, Tab 88, AST.002.013.0044_0003 [27].

⁶⁷ Ex. 20, TB2, Vol 8, Tab 65, AST.002.002.0079_0001 [3].

⁶⁸ Ex. 58, TB3, Vol 9, Tab 105A, CSNSW.0001.0002.0001_0003.

⁶⁹ Ex. 59, TB5, Vol 22, Tab 4, CSNSW.0001.0087.0001_0014-15, [65]. The "Island" award is used to describe the document at footnote 31 of this reference.

⁷⁰ Ex. 58, TB3, Vol 9, Tab 115A, CSNSW.0001.0003.0080.

⁷¹ Ex. 46, TB5, Vol 25, CSNSW.0001.0175.0001_0008 [27].

70. Functional Managers at DCC were split across five areas and rotated between them. Those five areas were:

- a) Purposeful Day - rosters, leave and staff movements;
- b) Classification Case Management - oversight and management of the Case Management Units and staff responsible to develop and support inmates achieve their case plan goals and inmate classification reviews;
- c) Security - matters related to the security of the correctional centre;
- d) Accommodation - oversight of operation of the accommodation areas, including management of inmates and staff; and
- e) Intelligence - obtaining, reviewing, and incorporating intelligence from internal and external sources to support the security and good governance of the correctional centre.⁷²

71. During the period of Astill's offending, the following persons performed the role of Principal Correctional Officer/Functional Manager in either a substantive or acting capacity: Mr Hariharan, Stephen Virgo, Neil Holman, Michael Paddison, Pamela Hotham, Pamela Kellett, Judy Barry and Anne Whitehead.⁷³

1.3.4 Chief Correctional Officers

72. The primary function of a Chief Correctional Officer was to coordinate the management, security, safety, and supervision of inmates, and staff administration, to contribute to the overall welfare, security, development and rehabilitation of offenders in accordance with CSNSW policies and procedures. The Chief Correctional Officer's tasks included controlling the structured day routines for inmates, the conduct of musters, and coordinating the urinalysis program.⁷⁴

⁷² Ex. 46, TB5, Vol 25, CSNSW.0001.0175.0001_0008 [28].

⁷³ Ex. 9, TB2, Vol 7, Tab 64A, AST.002.013.0017_0002 [10]; Ex. 58, TB3, Vol 9, Tab 105A, CSNSW.0001.0002.0001_0001-4.

⁷⁴ Ex. 46, TB5, Vol 25B, Annexure Tab 149, CSNSW.0001.0030.0092.

73. Chief Correctional Officers reported to Principal Correctional Officers.⁷⁵ Senior Correctional Officers reported to Chief Correctional Officers.⁷⁶ Correctional Officers reported to Senior Correctional Officers.⁷⁷
74. The implementation of benchmarking at DCC in 2018 had the effect that the role of Chief Correctional Officer ceased to exist at that correctional centre.⁷⁸
75. During the period of Astill's offending, the following persons performed the role of Chief Correctional Officer: Ms Barry, Mr Paddison, Ms Kellett and Mr Holman. Westley Giles and Astill acted in the role of Chief Correctional Officer,⁷⁹ with Astill acting as Chief Correctional Officer between 26 September 2016⁸⁰ and 1 October 2018.⁸¹

1.3.5 Intelligence Officer

76. The role of the Intelligence Officer at DCC (in common with other correctional centres) was to gather, report on, and disseminate intelligence.⁸²
77. Intelligence Officers performed tasks such as monitoring inmates, facilitating targeted urine samples, reviewing CCTV footage, monitoring for contraband, and monitoring of inmate phone calls and mail.⁸³
78. Prior to benchmarking, the Intelligence Officer at DCC held the rank of Chief Correctional Officer and was performed by Deborah Wilson.⁸⁴
79. From 3 September 2018, Mr Virgo performed the role which was then known as Senior Assistant Superintendent/Principal Correctional Officer – Intelligence.⁸⁵

⁷⁵ Ex. 46, TB5, Vol 25B, Annexure Tab 149, CSNSW.0001.0030.0093.

⁷⁶ Ex. 46, TB5, Vol 25B, Annexure Tab 149, CSNSW.0001.0030.0093.

⁷⁷ Ex. 46, TB5, Vol 25B, Annexure Tab 148, CSNSW.0001.0030.0016.

⁷⁸ Ex. 46, TB5, Vol 25, CSNSW.0001.0175.0001_0008 [27].

⁷⁹ Ex. 58, TB3, Vol 9, Tab 105A, CSNSW.0001.0002.0001_0001-4.

⁸⁰ Ex. 3, TB3, Vol 10, Tab 229, CSNSW.0001.0013.2808.

⁸¹ Ex. 3, TB3, Vol 12, Tab 402, CSNSW.0001.0013.3133_0001.

⁸² Ex. 29, TB2, Vol 8, Tab 83, AST.002.013.0035_0003 [16].

⁸³ Ex. 9, TB2, Tab 64A, AST.002.012.0017_0004 [23]-[24].

⁸⁴ Ex. 29, TB2, Vol 8, Tab 83, AST.002.013.0035_0002 [7].

⁸⁵ Ex. 9, TB2, Tab 64A, AST.002.012.0017_0001 [5].

80. As discussed further below (at [149]), Astill was approved to relieve in the position of Intelligence Officer and did so from time-to-time.

1.3.6 Watches at DCC

81. DCC used, and continues to use, a system of eight-hour watches or shifts.⁸⁶

82. During the initial period of Astill's offending, before the introduction of benchmarking, DCC had a system of four watches:

- a) A Watch – Day shift commencing at either 6:30am, 8:00am or 9:00am, and concluding at 2:30pm, 4:00pm or 5:00pm;
- b) B Watch – Night shift commencing at 10:30pm and concluding at 6:30am;
- c) C Watch – Afternoon shift commencing at 2:30pm and concluding at 10:30pm; and
- d) D Watch – Day shift commencing at 10:30am and concluding at 6:30pm.⁸⁷

83. Astill frequently worked C and D Watch as a Chief Correctional Officer.⁸⁸ On D Watch, the position of Chief Correctional Officer was the most senior person on the premises.⁸⁹

84. After benchmarking was implemented the following watch structure was adopted:

- a) A Watch – Day shift commencing at 6:00am, 7:00am, 8:00am or 9:00am and concluding at 2:00pm, 3:00pm, 4:00pm, or 5:00pm;
- b) B Watch – Night shift commencing at 10:00pm and concluding at 6:00am; and,
- c) C Watch – Afternoon shift commencing at 2:00pm and concluding at 10:00pm.⁹⁰

85. Staff were allocated to each watch, divided across areas of DCC, and tasked with supervising the areas allocated to them.⁹¹ During the period of Astill's offending, the DCC Roster Support Officer (also known as the Scheduling Clerk) and the Operations Scheduling Unit Scheduling

⁸⁶ Ex. 46, TB3, Vol 25, Tab 8, CSNSW.0001.0175.0001_0018 [96].

⁸⁷ Ex. 46, TB3, Vol 25, Tab 8, CSNSW.0001.0175.0001_0018 [98].

⁸⁸ Transcript, 17 November 2023, T2611.4-21; Transcript, 3 November 2023, T1652.1-2; Transcript, 27 October 2023, T1111.38-40.

⁸⁹ Transcript, 17 November 2023, T2611.4-21.

⁹⁰ Ex. 46, TB3, Vol 25, Tab 8, CSNSW.0001.0175.0001_0019 [99].

⁹¹ Ex. 46, TB3, Vol 25, Tab 8, CSNSW.0001.0175.0001_0019 [100].

Supervisor were responsible for preparing the monthly roster and daily schedule in conjunction with the MOS and/or Governor.⁹²

1.3.7 CCTV

86. Astill's offending took place in various locations on the DCC complex. There is no evidence that any of the offending was captured on closed-circuit television (CCTV).
87. The standards applicable to the use of CCTV in CSNSW correctional centres are set out in CSNSW's "Electronic Security Systems Functional Performance Specification" (**the Specification**).⁹³
88. The Specification states that the objectives sought to be achieved by CCTV include "identifying and tracking individuals throughout the Centre to support an investigation or prosecution if required", "post-event assessment and investigation" and "provision of evidence and use as forensic evidence".⁹⁴
89. Fergal Molloy, CSNSW Business Partner to Infrastructure and Assets Manager of Technical Security, gave evidence that he had looked at materials indicating the number and location of CCTV cameras at DCC in the period up to February 2019 and had formed the view that they were very inadequate and not meeting the functional performance specifications.⁹⁵ Mr Molloy estimated that shortfall to be around four to five hundred cameras.⁹⁶
90. Further, Mr Molloy gave evidence that, presently, the CCTV coverage at DCC remains inadequate and does not meet the standard set in the Specification.⁹⁷
91. As noted above, DCC has a new section and an older section. It was in the older section that Astill's offending occurred. There are currently 974 CCTV cameras or images⁹⁸ at DCC.⁹⁹ Of

⁹² Ex. 46, TB5, Vol 25, Tab 8, CSNSW.0001.0175.0001_0017 [85].

⁹³ Ex. 1, TB5, Vol 24, Tab 6, CSNSW.0001.0046.0014.

⁹⁴ Ex. 1, TB5, Vol 24, Tab 6, CSNSW.0001.0046.0046.

⁹⁵ Transcript, 6 October 2023, T142.27-37.

⁹⁶ Transcript, 6 October 2023, T145.16.

⁹⁷ Transcript, 6 October 2023, T142.33-43.

⁹⁸ A camera may be capable of capturing more than one image.

⁹⁹ Transcript, 6 October 2023, T143.1-5.

those 974, only 195 cameras are located in the older section. Of those 195, 77 have been installed since 2014, and around 20 have been installed subsequent to Astill's offending.¹⁰⁰ Very recently, in November 2023, an additional 13 CCTV cameras were installed at DCC.¹⁰¹

92. Notwithstanding the recent upgrades, Mr Molloy said that the number of cameras in the old section falls short by "a very significant amount".¹⁰² Mr Molloy gave evidence that additional funding was necessary to bring DCC up to the standard required.¹⁰³
93. Mr Molloy told the Special Commission that the issue of the inadequacy of the CCTV coverage is not unique to DCC and that there is an ongoing process of upgrading the electronic security of CSNSW correctional centres across NSW.¹⁰⁴ Mr Molloy further said that he did not believe there was presently enough funding to bring all correctional centres in line with the Specification.¹⁰⁵
94. In relation to the issue of the location of CCTV cameras, Mr Molloy agreed that CCTV cameras should be placed in offices where inmates met with correctional officers and in hallways leading to such offices.¹⁰⁶ Mr Molloy told the Special Commission "anywhere we have inmates, we should have cameras".¹⁰⁷
95. The retention period for CCTV footage as set out in the Specification is a minimum of 30 days.¹⁰⁸ During the period of Astill's offending, CCTV footage was retained for 28 days.¹⁰⁹ At the end of the relevant retention period, new footage is recorded over the old footage.¹¹⁰ Mr Molloy told the Special Commission that the technology was available to retain footage for longer periods, however, the issue was one of funding.¹¹¹

¹⁰⁰ Transcript, 6 October 2023, T143.1-6, T144.38-41.

¹⁰¹ Transcript, 22 November 2023, T2947.5-15.

¹⁰² Transcript, 6 October 2023, T143.17.

¹⁰³ Transcript, 6 October 2023, T143.17-20.

¹⁰⁴ Transcript, 6 October 2023, T147.8-20.

¹⁰⁵ Transcript, 6 October 2023, T147.40-44.

¹⁰⁶ Transcript, 6 October 2023, T142.4-25.

¹⁰⁷ Transcript, 6 October 2023, T142.8-9.

¹⁰⁸ Ex. 1, TB5, Vol 24, Tab 6, CSNSW.0001.0046.0048.

¹⁰⁹ Transcript, 6 October 2023, T157.8-13.

¹¹⁰ Transcript, 6 October 2023, T158.15-18.

¹¹¹ Transcript, 6 October 2023, T159.13-45.

96. CSNSW has commenced work to install additional CCTV cameras in key locations at DCC, being areas where Astill committed offences. It is anticipated that 33 additional cameras will be installed before the end of 2023.¹¹² Even with these additional cameras, it follows from the evidence of Mr Molloy that the degree of CCTV coverage at DCC would remain inadequate.
97. The number of CCTV cameras in place at DCC at the time of Astill's offending was significantly inadequate and, despite recent efforts to increase the number of CCTV footage, remains significantly inadequate. As stated in the Specification, CCTV serves an important evidentiary function, and can assist in the proper management of a correctional centre.
98. The areas covered by CCTV at DCC should be significantly expanded, in particular to include corridors to offices and offices where CSNSW staff routinely meet alone with inmates.
99. As discussed later in these submissions, the evidence before the Special Commission demonstrates that it is very challenging for an inmate who is the victim of an offence committed by a correctional officer to come forward to report that offence. Fear of retribution in such circumstances is reasonable and to be expected. Accordingly, it might be anticipated that there will be some delay between the time an offence occurs and the time an offence is reported. This would particularly be expected in circumstances where an inmate was the victim of a sexual offence, where delays in reporting are commonplace.
100. For those reasons, it is important that the retention period for CCTV footage not be too short. We submit that 30 days is not a long enough retention period for CCTV footage in correctional centres, having regard to advances in digital technology which mean that footage is no longer required to be stored on physical tapes.
101. **PROPOSED RECOMMENDATION: The Special Commission should recommend that CCTV coverage at DCC be brought up to the standard set out in the Specification as an urgent priority. It should further recommend that regardless of whether it is required by the Specification, CCTV cameras should be installed at DCC in all offices where officers**

¹¹² Ex. 55, TB5, Vol 28, Tab 12, Annexure CS-1, CSNSW.0001.0263.1558_0021.

potentially meet alone with inmates and in corridors leading to such offices. Finally, consideration should be given to recommending that CCTV footage in all correctional centres be retained for a minimum of 90 days before being overwritten. Funding should be made available to implement these recommendations.

1.4. Wayne Astill

102. Astill was born on 14 September 1965.¹¹³ He married in 1985 and has one biological child and one stepchild. Astill's wife was diagnosed with motor neurone disease in 2005. She attempted suicide in 2011. Following the suicide attempt, Astill moved his wife into a nursing home where she remained for four years until her death.¹¹⁴

103. Astill commenced a relationship with Tanya Hockey in 2006 which continues to this day. Ms Hockey was a friend of both Astill and his wife and assisted with his wife's care.¹¹⁵ Ms Hockey has known Astill since around 1991 to 1992 and acted as a referee for him when he first applied to be a correctional officer.¹¹⁶

104. During the period of Astill's offending, Ms Hockey was employed as a Correctional Officer at DCC. She remains employed as a Correctional Officer.¹¹⁷

1.4.1 Employment as a Police Officer

105. Prior to his employment at CSNSW, Astill was employed as a police officer in the NSWPF, known then as the Police Service of NSW. A statement of service from the Police Service of NSW indicates he was employed from 1 April 1987 to 27 March 1996, and states that "on resignation from the Service he held the rank of Detective Senior Constable".¹¹⁸

¹¹³ Ex. 3, TB1, Vol 4, Tab 2B, AST.002.010.0001_0001.

¹¹⁴ Ex. 3, TB1, Vol 4, Tab 2B, AST.002.010.0001_0037-38.

¹¹⁵ Ex. 3, TB1, Vol 4, Tab 2B, AST.002.010.0001_0038.

¹¹⁶ Ex. 58, TB3, Vol 19, Tab 761, AST.002.013.0068_0003.

¹¹⁷ Transcript, 1 November 2023, T1408.11-22.

¹¹⁸ Ex. 3, TB3, Vol 10, Tab 190, CSNSW.0001.0013.3775_0014.

106. The evidence before the Special Commission indicates that Astill resigned from the NSWPF in circumstances where there was evidence to support that he had engaged in “Gross Acts of Misconduct and Neglect of Duty”.¹¹⁹
107. On 21 November 2018, after reports had been made to NSWPF about Astill’s offending, Mr Hovey wrote to the then Commissioner of CSNSW, Mr Severin, as follows:

Regarding the investigation at Dillwynia.

Our target Wayne Astill has gone onto Workers Compensation which puts the investigation on hold at the current time.

We have warrants in play and are ready to go, but they are ineffective whilst Astill is not at work. The good thing is that whilst on WC the risk to female offenders is mitigated.

I have had the opportunity to read a copy of NSW Police Professional Standards file. This is a Highly Confidential document.

Astill joined CSNSW in October 1999 after resigning from Police on 27 March 1996. At the time of his resignation he was a Detective Senior Constable and evidence supported he had engaged in Gross Acts of Misconduct and Neglect of Duty. Of note, then Assistant Commissioner of NSW Professional Standards, Geoff Schuberg stated “It is in the public interest and the interest of this Service that the resignation be accepted ...The Detective Senior Constable is not entitled to a satisfactory Certificate of Discharge”.

FYI the following matters appear on Astill’s file:-

Theft of \$5000 cash during a house search – complaint received post resignation – allegation remains open.

Complaint that Astill demanded money with menace from a suspect – Sustained – Dealt with by way of admonishment.

Complaint that Astill was tasked with informing a lady that her brother had been murdered and failed to do so – Counselling.

Complaint that Astill parked a marked car illegally in the middle of Canterbury Road, blocking traffic, to issue parking infringement notices and that Astill abused members of the public during the process – Counselling.

Complaint that Astill was advised that a Person in need of Protection under a DVO was being harassed by her Partner and Astill failed to take action, leaving the PINOP in danger – Counselling.

Complaint by a female prisoner that Astill had harassed her and demanded and received \$3500 case – Allegation of Solicit/Accept Bribe x 2 – Sustained; Fail to Keep Records – Sustained and Fail to Properly Investigate – Sustained.

¹¹⁹ Ex. 3, TB3, Vol 17, Tab 542, CSNSW.0002.0024.7058.

The last complaint led to Astill's resignation.

Obviously Astill has been employed for 19 years so there is little we can do regarding the issues around recruiting someone who was allowed to resign before being dismissed from Police over serious misconduct issues.

I will advise once Astill returns and the investigation re-commences.

108. Mr Severin replied:

Thanks Mick,

[T]hat is disturbing to read, obviously our systems let people like that slip through at the time.

*Given that the person is on WC, I am ok for the investigation to continue as per current arrangements.*¹²⁰

109. Astill's personnel file reveals that when he first applied to CSNSW, a "Approval for Employment – Trainee Correctional Officer" checklist was completed. That checklist indicates that a criminal record check and reference checks were completed.¹²¹

110. The personnel file also contains documents completed by the persons who interviewed Astill for that role. The notes of one of the interviews record the notation, in answer to the question "what did you/do you like least about your recent/current job": "Hands became tied. Rules, regulations".¹²² It is further recorded that "This applicant requires a standard conduct + services check".¹²³ There are no records in the personnel file indicating that such checks were ever performed. We submit that they should have been and that if they had been, the circumstances of Astill's departure from NSWPF would have likely been disclosed.

111. Referee reports were provided by a Ms W Nelson and Ms Hockey. It is unclear from the report what Ms Nelson's relationship with Astill was, although it is likely, given her name, she was

¹²⁰ Ex. 3, TB3, Vol 17, Tab 542, CSNSW.0002.0024.7058.

¹²¹ Ex. 58, TB3, Vol 19, Tab 758, AST.001.013.0066_0001.

¹²² Ex. 58, TB3, Vol 19, Tab 758, AST.002.013.0067_0005.

¹²³ Ex. 58, TB3, Vol 19, Tab 758, AST.002.013.0067_0007.

the wife of Retired Detective Sergeant William Nelson who provided a written reference for Astill.¹²⁴ Ms Hockey indicated she knew Astill personally.¹²⁵

112. In his written reference, Retired Detective Sergeant Nelson stated he had worked with Astill at the Lakemba Detectives Office. Mr Nelson said he found Astill to be dependable, friendly, and reliable, and was a pleasure to have on staff.¹²⁶ It appears that no reference was ever obtained from a serving member of the Police Service of NSW.
113. Mr Corcoran told the Special Commission that the employment of Astill by CSNSW was “a huge failure”,¹²⁷ and that had Astill’s conduct whilst a police officer been known by CSNSW at the time, he would never have been employed.¹²⁸
114. The circumstances of Astill’s departure from the NSWPF were such that if inquiries were made by CSNSW into his conduct as a police officer, it is open to the Special Commission to find that these would have revealed that Astill was completely unsuitable to be employed as a correctional officer. No such enquires were made, and that is so despite one of Astill’s interviewers suggesting they should have been. We submit that this was a serious failure by CSNSW, ultimately with appalling consequences.
115. Mr Corcoran told the Special Commission that there is now a “very robust” system in place for checking the suitability of applicants to be correctional officers. He said that the bar was now so high that it was difficult to find persons who meet the requirements. Mr Corcoran said that he was confident that the employment of a person with an employment history such as Astill’s would not occur today.¹²⁹

¹²⁴ Ex. 58, TB3, Vol 19, Tab 760, AST.002.013.0068_0001-2.

¹²⁵ Ex. 58, TB3, Vol 19, Tab 760, AST.002.013.0068_0003-4.

¹²⁶ Ex. 58, TB3, Vol 19, Tab 768, AST.002.013.0070_0001.

¹²⁷ Transcript, 23 November 2023, T3215.22.

¹²⁸ Transcript, 23 November 2023, T3216.5-10.

¹²⁹ Transcript, 23 November 2023, T3215.26-33.

116. There is evidence before the Special Commission that the circumstances of Astill's cessation of employment as a Police Officer were the subject of a query from CSNSW to Police Service of NSW in 2002.
117. In around March to April 2002, Astill sought to have his service as a Police Officer recognised for the purposes of calculating his extended leave entitlements. As part of this process, the CSNSW Human Resources Branch wrote to the Police Service of NSW seeking, among other information, the reason for Astill's cessation of duty.¹³⁰
118. NSWPF produced to the Special Commission a document from the "Police Service Personnel System" printed on 19 April 2002. That document records the reason for Astill's termination being "RESIGNATION – DISCIPLINARY".¹³¹ Given the date of the letter from CSNSW and the date on the personnel system print out, it appears that the document was printed in response to the query from CSNSW.
119. On 19 April 2002, a Police Service of NSW Human Resources Officer replied to the letter from CSNSW, stating that the reason for Astill's cessation of duty was "Resignation". There is no reference to any disciplinary proceedings or process set out in the letter.¹³² The Special Commission has insufficient evidence to draw an inference based on these events in 2002 as to what would have happened had CSNSW made the recommended "service and conduct" checks with the Police Service of NSW at the time Astill was recruited in 1999.
120. Following his departure from the Police Service of NSW, Astill was employed as a court security officer at the Downing Centre in 1997.¹³³

¹³⁰ Ex. 58, TB3, Vol 18, Tab 649, NSWPF.012.001.0013.

¹³¹ Ex. 58, TB3, Vol 18, Tab 649, NSWPF.012.001.0015.

¹³² Ex. 58, TB3, Vol 19, Tab 750, AST.002.013.0063_0081.

¹³³ Ex. 3, TB3, Vol 10, Tab 190, CSNSW.0001.0013.3775_0001, 4.

1.4.2 Employment as a Correctional Officer

121. Astill commenced employment with CSNSW in October 1999.¹³⁴ He was appointed as a First Class Correctional Officer on 28 September 2002,¹³⁵ and a Senior Correctional Officer on 6 February 2006.¹³⁶
122. Astill was transferred to DCC in February 2009 from Parklea Correctional Centre¹³⁷ following that Centre's privatisation.¹³⁸ Astill remained at DCC until his employment was suspended in February 2019 following his arrest.¹³⁹

1.4.3 Appointment as Chief Correctional Officer

123. On 19 May 2016, Astill applied for the role of "Assistant Superintendent, 7 days, Metro, North and South regions, ongoing and temporary full time (for a period of up to 12 months)".¹⁴⁰ At the conclusion of the recruitment process, Astill was placed in the Assistant Superintendent talent pool.¹⁴¹
124. As part of the recruitment process for the Assistant Superintendent position, reference checks were obtained from Ms O'Toole, then MOS at DCC, and Mr MacRae, then Acting Governor of DCC. Both Ms O'Toole and Mr MacRae recommended Astill for the position.¹⁴²
125. An additional component of the recruitment process was a review of information concerning Astill, recorded on the IIS. Following the review, the PSB noted that it was "not aware of any current information that would preclude the recruitment of" Astill.¹⁴³

¹³⁴ Ex. 3, TB1, Vol 4, Tab 2B, AST.002.010.0001_0005.

¹³⁵ Ex. 3, TB3, Vol 12, Tab 397, CSNSW.0002.0025.9986_0068.

¹³⁶ Ex. 3, TB3, Vol 12, Tab 397, CSNSW.0002.0025.9986_0086.

¹³⁷ Ex. 3, TB1, Vol 4, Tab 2B, p. 5; Ex. 3, TB3, Vol 12, Tab 397, CSNSW.0002.0025.9986_0088.

¹³⁸ Ex. 46, TB5, Vol 25, Tab 8, CSNSW.0001.0175.0001_0012 [48]-[49].

¹³⁹ Ex. 3, TB3, Vol 11, Tab 281, CSNSW.0001.0013.3224.

¹⁴⁰ Ex. 46, TB5, Vol 25, Tab 8, CSNSW.0001.0175.0001_0012-13 [50]; Ex. 46, TB5, Vol 25, Tab 8, Annexure Tab 34, CSNSW.0001.0126.0028.

¹⁴¹ Ex. 46, TB5, Vol 25, Tab 8, CSNSW.0001.0175.0001_0013 [51]; Ex. 46, TB5, Vol 25, Tab 8, Annexure Tab 42, CSNSW.0001.0126.0012

¹⁴² Ex. 46, TB5, Vol 25, Tab 8, CSNSW.0001.0175.0001_0013 [50(c)]; Ex. 46, TB5, Vol 25, Tab 8, Annexure Tab 40, CSNSW.0001.0126.0032-33; Ex. 46, TB5, Vol 25, Tab 8, Annexure Tab 41, CSNSW.0001.0126.0034-35.

¹⁴³ Ex. 46, TB5, Vol 25, Tab 8, CSNSW.0001.0175.0001_0013 [52].

126. On 20 September 2016, Mr MacRae emailed CSNSW Human Resources advising that a position of Chief Correctional Officer was vacant at DCC and that Astill, having been accepted into the talent pool, could be placed in that role.¹⁴⁴ An email was subsequently sent to Ms Martin requesting her approval to activate the Assistant Superintendent talent pool to enable the filling of the position of Chief Correctional Officer by Astill for a period of up to four months.¹⁴⁵ Mr MacRae, then acting in the position of Governor during a period of leave by Ms Martin, approved the activation.¹⁴⁶ Accordingly, Astill was temporarily assigned to the position of Chief Correctional Officer from 26 September 2016 until 22 January 2017.
127. Astill's temporary assignment to the position of Chief Correctional Officer was subsequently extended multiple times. The initial extension was for a period of one month. In January 2017, Astill signed a letter of offer for the position of Chief Correctional Officer for the period 26 September 2016 to 26 February 2017.¹⁴⁷ While it is not clear from the records who approved the further extension, Mr MacRae was copied into the relevant emails sent between Human Resources and Astill.¹⁴⁸
128. Astill's temporary assignment was again extended in February 2017. On 27 February 2017, Shari Martin responded by email to a query from Astill about an email he had received concerning a "position change", stating "I sent something early last week. Extending you guys until JUL 2017."¹⁴⁹
129. Astill was then temporarily assigned to the position of Chief Correctional Officer on the following occasions:

¹⁴⁴ Ex. 46, TB5, Vol 25, Tab 8, CSNSW.0001.0175.0001_0013 [53]; Ex. 46, TB5, Vol 25, Tab 8, Annexure Tab 44, CSNSW.0001.0126.0039-40.

¹⁴⁵ Ex. 46, TB5, Vol 25, Tab 8, CSNSW.0001.0175.0001_0013[55]; Ex. 46, TB5, Vol 25, Tab 8, Annexure Tab 44, CSNSW.0001.0126.0039.

¹⁴⁶ Ex. 46, TB5, Vol 25, Tab 8, CSNSW.0001.0175.0001_0013[55]; Ex. 46, TB5, Vol 25, Tab 8, Annexure Tab 44, CSNSW.0001.0126.0039.

¹⁴⁷ Ex. 46, TB5, Vol 25, Tab 8, CSNSW.0001.0175.0001_0014 [59]; Ex. 46, TB5, Vol 25, Tab 8, Annexure Tab 49, CSNSW.0001.0013.2847.

¹⁴⁸ Ex. 3, TB3, Vol 11, Tab 242, CSNSW.0001.0013.2846_0001.

¹⁴⁹ Ex. 3, TB3, Vol 11, TB3, Tab 244, CSNSW.0001.0022.7407_0001.

- a) from 10 July 2017 to 1 October 2017;¹⁵⁰
- b) from 2 October 2017 to 24 December 2017;¹⁵¹ and
- c) from 25 December 2017 to 10 June 2018.¹⁵²

130. On each occasion the approver was Ms Martin.

131. In relation to the last of those assignments, the evidence is as follows.

132. On 23 November 2017, the DCC Finance and Administration Manager, Marivic Santos, emailed Ms Martin advising that Astill and Mr Giles' temporary assignments were due to expire on 24 December 2017 and asking whether Ms Martin wished to extend them for a further six months. Ms Martin replied that they could be extended.¹⁵³

133. The day prior to this email, Ms Martin and Mr Shearer had met with Astill in relation to complaints suggesting that Astill was playing inmates against each other, and that inmates were concerned about what they considered to be targeted searches of cells in the Special Management Area Placement (SMAP) area.¹⁵⁴ The complaints were raised with Astill in the meeting. Ms Martin told the Special Commission that she had "no idea why" she extended Astill's appointment as Chief Correctional Officer in these circumstances.¹⁵⁵

134. We submit that the decision to approve a further temporary assignment as Chief Correctional Officer was, in the circumstances, inexplicable. Having regard to what Ms Martin knew at that time about Astill's conduct with inmates, the decision to approve a further temporary assignment plainly should not have been made.

135. On 18 May 2018, the Scheduling Supervisor at DCC, Sarah Browne, emailed Ms Martin and Mr Paddison (then Acting MOS) noting Astill's temporary assignment was about to expire and

¹⁵⁰ Ex. 46, TB5, Vol 25, Tab 8, CSNSW.0001.0175.0001_0014 [63]; Ex. 46, TB5, Vol 25, Tab 8, Annexure Tab 51, CSNSW.0001.0013.2910; Ex. 46, TB5, Vol 25, Tab 8, Annexure Tab 52, CSNSW.0001.0013.2910.

¹⁵¹ Ex. 46, TB5, Vol 25, Tab 8, CSNSW.0001.0175.0001_0014 [65]; Ex. 46, TB5, Vol 25, Tab 8, Annexure Tab 53, CSNSW.0001.0013.2928; Ex. 46, TB5, Vol 25, Tab 8, Annexure Tab 54, CSNSW.0001.0013.2928.

¹⁵² Ex. 46, TB5, Vol 25, Tab 8, CSNSW.0001.0175.0001_0015 [67]; Ex. 46, TB5, Vol 25, Tab 8, Annexure Tab 55, CSNSW.0001.0013.2928; Ex. 46, TB5, Vol 25, Tab 8, Annexure Tab 56, CSNSW.0001.0013.2928.

¹⁵³ Ex. 3, TB3, Vol 11, Tab 256, CSNSW.0002.0023.1705_0001.

¹⁵⁴ Ex. 43, TB2, Tab 98, AST.002.013.0061_0010 [51]; Transcript, 16 November 2023, T2492.39-47.

¹⁵⁵ Transcript, 14 November 2023, T2306.37.

asked whether they wished to extend it. Ms Martin then emailed Mr Paddison and an administrative officer at DCC stating “I do want to extend these”.¹⁵⁶

136. On 24 May 2018, a CSNSW Human Resources Officer, Sophia Xie, sent Ms Browne an email, copying in Ms Martin, which stated:

*the temporary assignment without comparative assessment above level beyond 12 months is not GSE compliant. Both Giles and Astill have been on temporary assignment since Nov 2016. For their extension, you need to seek Director’ [sic] approval.*¹⁵⁷

137. Later that day, Ms Browne sent an email to Ms Martin, copying in Ms Xie, stating “as discussed I have provided the reference numbers to substantiate the Comparative assessment that took place for the Temporary Secondments of both Giles and Astill”.¹⁵⁸

138. On 28 May 2018, Ms Martin sent an email to Ms Brown approving the extension of Astill’s temporary assignment, which commenced on 11 June 2018.¹⁵⁹ Ms Martin told the Special Commission that she could not defend her decision and was not going to try.¹⁶⁰

139. In relation to the May 2018 extension, former DCC Governor, Saffron Cartwright, on behalf of CSNSW, stated that it was her understanding (based on the documents reviewed by CSNSW for the purposes of preparing her statement) that if a candidate has been offered a temporary appointment from a talent pool that is due to expire within 12 months, that staff member is eligible to remain in that temporarily appointed role for up to two years without the need to be reassessed via a comparative or suitability assessment. Ms Cartwright further stated that CSNSW had been unable to locate any records of any extension of the talent pool into which Astill had been placed following his application for Assistant Superintendent.¹⁶¹

140. Accepting that evidence, even if the process operated to permit a further temporary assignment, for the same reasons as set out above in relation to the approval of a temporary assignment

¹⁵⁶ Ex. 3, TB3, Vol 11, Tab 265, CSNSW.0002.0023.8692_0002-3.

¹⁵⁷ Ex. 3, TB3, Vol 11, Tab 266, CSNSW.0002.0023.8702_0001.

¹⁵⁸ Ex. 3, TB3, Vol 11, Tab 267, CSNSW.0002.0023.8702_0002.

¹⁵⁹ Ex. 3, TB3, Vol 11, Tab 267, CSNSW.0002.0013.3086_0001.

¹⁶⁰ Transcript, 14 November 2023, T2350.5.

¹⁶¹ Ex. 46, TB5, Vol 25, Tab 8, CSNSW.0001.0175.0001_0015 [73].

commencing 25 December 2017, we submit that the decision to approve a further temporary assignment as Chief Correctional Officer in May 2018 also plainly should not have been made.

141. On 31 August 2018 at 9:52am, Ms Browne emailed Mr Hariharan, then the MOS, copying in Ms Martin, noting that temporary assignments for four officers, including Astill and Mr Giles, were due to expire on 30 September 2018, and that she would need confirmation of their position for rostering purposes.¹⁶²

142. At 10:40am, Ms Martin replied stating “Harry we need to talk about Giles and Astill.” Mr Hariharan replied “Both of them won’t be here for one or two months, by that time we are hoping to implement Bench marking. I can’t see any point.”¹⁶³ As stated above, one of the effects of benchmarking was the removal of the role of Chief Correctional Officer at DCC.

143. Astill returned to his substantive position of Senior Correctional Officer on 1 October 2018.¹⁶⁴

1.4.4 Appointment as Manager of Security

144. On 31 October 2017 and 30 to 31 March 2018, Astill was temporarily assigned to the position of MOS.¹⁶⁵

145. Ms Cartwright gave evidence that:

*this acting appointment was most likely processed internally at DCC and managed by the Governor and/or the MOS rather than by Human Resources at CSNSW or DCJ. Based on my experience at CSNSW, an officer can ‘act up’ in a role higher than their current substantive or temporarily appointed rank classification ... for a short period of time ... to fill daily vacancies on the roster... This ‘acting up’ on a daily basis does not require an officer to be in a talent pool where a comparative assessment was usually required in order for admission into same.*¹⁶⁶

146. Ms Cartwright advised that CSNSW were unable to locate any documents regarding Astill’s acting appointment as the MOS.¹⁶⁷

¹⁶² Ex. 3, TB3, Vol 11, Tab 271, CSNSW.0002.0024.1107_1.

¹⁶³ Ex. 3, TB3, Vol 11, Tab 271, CSNSW.0002.0024.1107_1.

¹⁶⁴ Ex. 3, TB3, Vol 12, Tab 402, CSNSW.0001.0013.3133_0001.

¹⁶⁵ Ex. 46, TB5, Vol 25, Tab 8, CSNSW.0001.0175.0001_0016 [82].

¹⁶⁶ Ex. 46, TB5, Vol 25, Tab 8, CSNSW.0001.0175.0001_0016-17 [82]-[83].

¹⁶⁷ Ex. 46, TB5, Vol 25, Tab 8, CSNSW.0001.0175.0001_0017 [84].

147. Given the matters that had been raised with Ms Martin about Astill's conduct by that time (detailed at Section 6.7 to 6.11 of these submissions), the decision to appoint Astill to the second most senior position in the gaol, even for a period of a day or two, is inexplicable. Those appointments should not have occurred.

1.4.5 Appointment as Intelligence Officer

148. Appointment to the position of Intelligence Officer may occur from time to time on a short-term basis to fill the role when the permanent Intelligence Officer is absent.¹⁶⁸ As discussed above, Intelligence Officers are able to access the IIS, inmate mail and inmate telephone calls.

149. Astill completed two days of IIS training on 5 and 6 September 2016 and was cleared by CIG to relieve in the position of Intelligence Officer at DCC on an as needs basis.¹⁶⁹ Astill first relieved in the position of Intelligence Officer on 24 September 2016.¹⁷⁰

150. Astill subsequently acted as Intelligence Officer for one or two days at a time on multiple occasions up until August 2018.¹⁷¹

151. CSNSW were unable to locate, or produce to the Special Commission, any documents demonstrating the security and probity checks undertaken to ensure Astill was eligible to relieve in the role of Intelligence Officer.¹⁷² It is open for the Special Commission to infer that such checks were never conducted.

152. Appointing correctional officers to temporarily relieve in the position of Intelligence Officer is a decision taken locally by the Governor and/or the MOS.¹⁷³ Ms Martin gave evidence that she believed she was on leave when Astill was approved to relieve in the Intelligence Officer role. Ms Martin said she was "surprised" that Astill had cleared the probity checks required to

¹⁶⁸ Ex. 3, TB3, Vol 12, Tab 419, AST.500.002.0001_0001; TB5, Vol 25, Tab 8, CSNSW.0001.0175.0001_0016 [76].

¹⁶⁹ Ex. 46, TB5, Vol 25, Tab 8, CSNSW.0001.0175.0001_0016 [78].

¹⁷⁰ Ex. 3, TB3, Vol 12, Tab 420, CSNSW.0001.0020.0001_0003.

¹⁷¹ Ex. 3, TB3, Vol 12, Tab 420, CSNSW.0001.0020.0001.

¹⁷² Ex. 46, TB5, Vol 25, Tab 8, CSNSW.0001.0175.0001_0016 [80].

¹⁷³ Ex. 46, TB5, Vol 25, Tab 8, CSNSW.0001.0175.0001_0016 [76].

undertake the role, because by that point there had been “a couple of incidents” concerning his conduct and that he had been “counselled” about something.¹⁷⁴

153. While the identity of the original approver remains unclear, on 24 October 2016, a Master Access Form was completed varying Astill’s access to the Offender Integrated Management System (**OIMS**), a CSNSW system on which inmate information is stored. The variation was to provide Astill with equivalent access to that of Ms Deborah Wilson, then the permanent Intelligence Officer at DCC. The form indicates the variation was approved by Ms Martin with the comment “Relieving intell [sic] officer”.¹⁷⁵
154. The appointment and reappointment of Astill to senior positions, and as an Intelligence Officer, throughout the period of his offending, had significant consequences. It was exploited by him in various ways to facilitate his offending. Astill offended on numerous occasions in offices allocated to a Chief Correctional Officer.¹⁷⁶ Astill was also able to access inmate correspondence that referred to inappropriate behaviour between himself and inmates (detailed at Section 6.4 of these submissions below). His access (or the potential for him to have access) to IRs enabled him to intimidate inmates and staff alike, and in at least one instance led to a staff member shredding a report about Astill’s conduct¹⁷⁷ rather than submitting it to Astill.
155. The evidence before the Special Commission demonstrates that Astill continued to be appointed to positions of seniority long after the Governor had become aware of reports of Astill behaving inappropriately with inmates (detailed at Section 6.6 to 6.15 of these submissions). The Special Commission should find that the continued reappointment of Astill to positions of seniority, including Intelligence Officer, in circumstances where reports of him behaving inappropriately with inmates had been received by management at DCC obviously should not have occurred.

¹⁷⁴ Transcript, 14 November 2023, T2240.36-T2241.35.

¹⁷⁵ Ex. 3, TB3, Vol 10, Tab 238, CSNSW.0002.0022.4552_0001.

¹⁷⁶ See, eg, Ex. 3, TB1, Vol 4, Tab 2B, AST.002.010.0001_0005, 9-10; Ex. 3, TB1, Vol 5, Tab 9, AST.002.002.0025_0004 [14].

¹⁷⁷ Ex. 13, TB2, Vol 7, Tab 56A, AST.002.013.0032_0005-6 [30].

156. **PROPOSED RECOMMENDATION: The Special Commission should recommend that CSNSW create a standard of required conduct in relation to persons relieving as Intelligence Officers, including a process for PSI to conduct probity checks, and documentation requirements for the probity checks required to be conducted by PSI in relation to such persons, which should include requirements for probity checks to be documented on personnel files.**

1.4.6 Astill's suspension and termination

157. Astill was suspended from duty without pay from 22 February 2019.¹⁷⁸ This followed Astill being arrested and charged on 20 February 2019.¹⁷⁹ Astill's employment was terminated on 5 October 2022¹⁸⁰ following the conclusion of his trial and the entering of guilty verdicts.

158. Each month, in the period between his suspension and termination, in accordance with the GSE Act, Astill's suspension was reviewed, and he was sent written confirmation that his suspension without pay remained in place.¹⁸¹

159. Despite Astill having been suspended without pay, from May 2019, Astill was in receipt of paid leave. This arrangement ceased in September 2020, when Astill's leave was exhausted.¹⁸²

160. The payment of leave to Astill during the period of his suspension was approved by Mr Corcoran.¹⁸³ This followed a formal request from the Public Service Association of NSW to Mr Corcoran that Astill be allowed to access his accrued leave for the period of his suspension up until the leave was exhausted.¹⁸⁴ The letter stated:

There have been past suspensions of Correctional Officers without pay and in those matters the Association has sought the assistance of the Industrial Relations Commission to argue to have the pay reinstated. If that process failed in the

¹⁷⁸ Ex. 3, TB3, Vol 11, Tab 281, CSNSW.0001.0013.3224_0001.

¹⁷⁹ Ex. 3, TB1, Vol 4, Tab 2B; AST.002.010.0001_0002.

¹⁸⁰ Ex. 3, TB3, Vol 12, Tab 388, CSNSW.0001.0013.3873.

¹⁸¹ See, eg, Ex. 3, TB3, Vol 11, Tab 341, CSNSW.0001.0013.3613.

¹⁸² Ex. 3, TB3, Vol 11, Tab 352, CSNSW.0001.0013.3690.

¹⁸³ Ex. 3, TB3, Vol 11, Tab 291, CSNSW.0001.0013.3295.

¹⁸⁴ Ex. 3, TB3, Vol 11, Tab 287, CSNSW.0002.0025.0196.

*Commission, the Commission would recommend to the Department to allow the Officer to access their accrued leave.*¹⁸⁵

161. The evidence before the Special Commission indicates that Mr Corcoran was “usually supportive of these requests.”¹⁸⁶

1.4.7 The composition of Astill’s personnel file

162. Astill’s personnel file was tendered in its entirety. As discussed above, the following do not appear on file:

- a) any documents indicating the approver of the first of the extensions of Astill’s temporary assignment as Chief Correctional Officer;
- b) any records concerning Astill’s temporary assignments as MOS;
- c) any document identifying the approver of Astill’s assignment as an intelligence officer (although related documents suggest it may have been Ms Martin); and
- d) any record of the security and probity checks undertaken to ensure Astill’s suitability to perform the role of Intelligence Officer.

163. Most significantly, there is no record on the personnel file of any report or complaint about Astill’s conduct, whether sourced from an inmate or CSNSW staff member. This is so in circumstances where there is evidence that numerous reports were made, by various means, about Astill during his employment at DCC (detailed at Section 5

164. Further, other than with respect to Astill’s suspension in February 2019, and subsequent termination, Astill’s personnel file contains no record of any disciplinary process or outcome, notwithstanding that other documents record Astill had, on at least one occasion, been cautioned in relation to his interactions with inmates.

¹⁸⁵ Ex. 3, TB3, Vol 11, Tab 287, CSNSW.0002.0025.0196.

¹⁸⁶ Ex. 3, sTB3, Vol 11, Tab 288, CSNSW.0002.0025.0198.

165. We submit that the absence of records referred to above is evidence of a serious deficiency in the record-keeping practices at CSNSW.
166. **PROPOSED RECOMMENDATION: A record of any disciplinary process or outcome should be kept on an employee's personnel file so as to be readily accessible by human resources personnel both within CSNSW and within Department of Communities and Justice (DCJ) more broadly.**

2. Relevant law and policies related to reporting and general conduct

2.1. Framework governing the behaviour of CSNSW employees

167. The key statutes that govern the conduct of CSNSW employees are:

- a) CAS Act;
- b) *Crimes (Administration of Sentences) Regulation 2014 (CAS Regulation)*; and
- c) GSE Act.

168. In addition to specific requirements under legislation and policy applicable to CSNSW employees, under the criminal law, the conduct (including failure to act) of CSNSW employees may amount to an offence in some circumstances.

2.1.1 *Crimes (Administration of Sentences) Act 1999*

169. As set out above (at [12]), the objects of the CAS Act are:

- a) to ensure that those offenders who are required to be held in custody are removed from the general community and placed in a safe, secure and humane environment;
- b) to ensure that other offenders are kept under supervision in a safe, secure and humane manner;
- c) to ensure that the safety of persons having the custody or supervision of offenders is not endangered; and
- d) to provide for the rehabilitation of offenders with a view to their reintegration into the general community.¹⁸⁷

170. The Commissioner of CSNSW has the care, direction, control and management of all correctional complexes, correctional centres and residential facilities, and the offenders who are held in custody by way of full-time detention or intensive correction in the community.¹⁸⁸

¹⁸⁷ CAS Act s. 2A.

¹⁸⁸ CAS Act s. 232.

The governor of a correctional centre has the care, direction, control and management of the correctional centre.¹⁸⁹ The functions of the various ranks and classes of correctional officers are to be as determined from time to time by the Commissioner of CSNSW and these functions must be exercised in accordance with the directions of the Commissioner of CSNSW.¹⁹⁰ The CAS Act confers various powers on correctional officers.¹⁹¹

2.1.2 *Crimes (Administration of Sentences) Regulation 2014*

171. The CAS Regulation imposes a range of obligations on correctional officers, departmental officers or casual employees, discussed further below (at [2.2.2]). Clause 254 of the CAS Regulation provides that a correctional officer, departmental officer or casual employee who contravenes a provision of the Regulation is not guilty of an offence but the contravention may be dealt with under s. 69 of the GSE Act as misconduct, or any other applicable provision of that Act.

2.1.3 *Government Sector Employment Act 2013*

172. Section 69 of the GSE Act deals with misconduct by employees of government sector agencies, which includes CSNSW employees.¹⁹² If the employer finds that there was misconduct, the employer may take any of the various disciplinary measures outlined in s. 69(4), which are to:

- a) terminate the employment of the employee (without giving the employee an opportunity to resign);
- b) terminate the employment of the employee (after giving the employee an opportunity to resign);

¹⁸⁹ CAS Act s. 233.

¹⁹⁰ CAS Act s. 235.

¹⁹¹ See, in particular, pt 13A of the CAS Act.

¹⁹² Section 231 of the CAS Act makes clear that the Commissioner of CSNSW, governors of correctional centres, correctional officers and other staff as necessary for the purposes of the CAS Act are to be employed in the Public Service under the GSE Act. Further, “government sector agency” is defined to include a “Public Service agency”, which is defined to include a Department. The Departments are listed in sch. 1 pt. 1 and include the DCJ, which CSNSW employees are employed under.

- c) impose a fine on the employee (which may be deducted from the remuneration payable to the employee);
- d) reduce the remuneration payable to the employee;
- e) reduce the classification or grade of the employee;
- f) assign the employee to a different role; or
- g) caution or reprimand the employee.

173. “Misconduct” is defined non-exhaustively in s. 69(1) of the GSE Act and extends to a conviction or finding of guilt for a serious offence. “Serious offence” is described in s. 69(1), relevantly, as an offence punishable by imprisonment for six months or more.

174. The following is a non-exhaustive list of conduct by CSNSW employees which is capable of constituting misconduct for the purpose of s. 69 of the GSE Act:

- a) contraventions of the CAS Act or CAS Regulation;¹⁹³
- b) non-compliance with any code of ethics and conduct adopted pursuant to s. 8A of the GSE Act;¹⁹⁴ and
- c) non-compliance with CSNSW’s policies, codes of conduct, and procedures,¹⁹⁵ including:
 - i) non-compliance with the DCJ Code of Ethical Conduct;¹⁹⁶ and
 - ii) non-compliance with the Custodial Operations Policy and Procedures (COPP).¹⁹⁷

¹⁹³ CAS Regulation cl. 254.

¹⁹⁴ GSE Act s. 8A.

¹⁹⁵ GSE Act s. 8A.

¹⁹⁶ See, for example, *Eastwood v Industrial Relations Secretary on behalf of the Department of Communities and Justice (Corrective Services NSW)* [2021] NSWIRComm 1014.

¹⁹⁷ See, for example, *Wattie v Industrial Relations Secretary on behalf of the Secretary of the Department of Justice (No 2)* [2018] NSWCA 124; *Gallagher, Ma’a and Premutico v Industrial Relations Secretary on behalf of the Secretary, Department of Communities and Justice (Corrective Services)* [2019] NSWIRComm 1069.

175. Whether a contravention of a policy, code of conduct or legislative instrument is capable of constituting misconduct for the purpose of s. 69 will depend on the level of seriousness of the breach.¹⁹⁸

176. Specific obligations under these instruments that relate to reporting inappropriate behaviour, treatment of inmates and treatment of other staff are outlined in more detail below.

2.1.4 Criminal offences

177. At common law, the offence of wilful misconduct in public office is committed where a public official; in the course of, or connected to, his public office; wilfully misconducts himself by act or omission, for example, by wilfully neglecting or failing to perform his duty; without reasonable excuse or justification; and, where such misconduct is serious and meriting criminal punishment having regard to the responsibilities of the office and the officeholder, the importance of the public objects which they service, and the nature and extent of the departure from those objects.¹⁹⁹

178. Justice Beech-Jones has stated that “the essence of the offence concerns a breach of trust in the form of a deliberate or reckless breach of a duty owed by a public official to the public”.²⁰⁰ The Court of Criminal Appeal NSW (CCA) has endorsed²⁰¹ Doyle CJ’s description of the rationale for the offence in *Question of Law Reserved (No. 2 of 1996)* (1996) 67 SASR 63 at 66:

It is clear, I consider, that the offence ... strikes at the public officer who deliberately acts contrary to the duties of the public office in a manner which is an abuse of the trust placed in the office holder and which, to put it differently, involves an element of corruption. It may be that the mere deliberate misuse of information is sufficient to give rise to an offence, but the further allegation of an intent to receive a benefit clearly, in my opinion, brings the matter within the ambit of the common law offence.

¹⁹⁸ *Holland v Industrial Relations Secretary on behalf of the Department of Communities and Justice* [2022] NSWIRComm 1106 [9].

¹⁹⁹ *Obeid v R* (2015) 91 NSWLR 226 [133], citing *R v Quach* (2010) 201 A Crim R 522 [46]. See also *Blackstock v R* [2013] NSWCCA 172 [14] and *Maitland v R; Macdonald v R* (2019) 99 NSWLR 376 [67].

²⁰⁰ *R v Obeid (No 12)* [2016] NSWSC 1815 [79].

²⁰¹ *Blackstock v Regina* [2013] NSWCCA 172 [14].

179. More recently, the CCA has extracted with approval²⁰² Lord Millett NPJ’s description of the rationale for the offence in *Hong Kong Special Administrative Region v Wong Lin Kay* (2012) 15 HKCFAR 185 at [45]:

Every such power, duty, discretion or responsibility is granted for the benefit of the public and for a public purpose. For the person having such a power, duty or responsibility to exercise it or refrain from exercising it for his or her own private purposes, whether out of malice, revenge, friendship or hostility, or for pecuniary advantage is an abuse of power and amounts to the offence of misconduct in public office.

180. The offence covers a very wide range of "serious misconduct ... determined [by] having regard to the responsibilities of the office and the office holder, the importance of the public objects which they serve and the nature and extent of the departure from those responsibilities".²⁰³ The CCA has explained that it is unhelpful to attempt to divide the offence into “artificial sub-categories”, given the likely variance in the particular circumstances of a given offence and a given offender.²⁰⁴ That said, “the more senior the public official the greater the level of public trust in their position and the more onerous the duty that is imposed”.²⁰⁵
181. The term “public official” as not been exhaustively defined. However, employees of CSNSW fall comfortably within the scope of the term “public official”.²⁰⁶
182. “Misconduct” also has not been exhaustively defined. Courts have declined to delineate or exhaustively define what might constitute “misconduct” for the purposes of the offence of misconduct in public office,²⁰⁷ but it includes nonfeasance.
183. In *Regina v Philip Thomas Dytham*,²⁰⁸ a police officer who was on duty and in uniform was found guilty of misconduct in public office arising from his failure to intervene in a violent assault to which he was a witness. An issue arose as to whether some improper or corrupt or

²⁰² *Maitland v R; MacDonald v R* (2019) 99 NSWLR 376 [70].

²⁰³ *Shum Kwok Sher v HKSAR* (2002) 5 HKCFAR 381, 817 [84] - 818 [86].

²⁰⁴ *Jansen v R* [2013] NSWCCA 301 [64].

²⁰⁵ See *R v Obeid (No 12)* [2016] NSWSC 1815 [79].

²⁰⁶ Noting that, for example, Astill was found guilty of misconduct in public office as an employee of CSNSW.

²⁰⁷ *Obeid v R* (2015) 91 NSWLR 226 [69].

²⁰⁸ (1979) 69 Cr App R 387.

dishonest motive was required. The UK Court of Appeal found that, although prior judgments showed that many misconduct in public office cases did involve a dishonest motive:

*...the misconduct asserted involved some corrupt taint; but this appears to have been an accident of circumstance and not a necessary incident of the offence. Misconduct in a public office is more vividly exhibited where dishonesty is revealed as part of the dereliction of duty. Indeed in some cases the conduct impugned cannot be shown to have been misconduct unless it was done with a corrupt or oblique motive.*²⁰⁹

184. The UK Court of Appeal stated that the key test was whether “the misconduct impugned is calculated to injure the public interest so as to call for condemnation and punishment”.²¹⁰
185. The mental element of the misconduct in public office offence was considered by the CCA in *Maitland v R; MacDonald v R* (2019) 99 NSWLR 376. The CCA held that a person could only be found to have committed the offence (subject to the other elements being made out) if the power in question would not have been exercised, save for the illegitimate purpose.²¹¹ In other words, a “but for” test applies: but for the improper purpose, would the action have been taken (or would the inaction have occurred)?²¹²
186. In the course of its consideration, the CCA in *Maitland v R* quoted with apparent approval²¹³ the Supreme Court of Canada’s analysis in *Boulanger v The Queen*²¹⁴ of the mental element of the offence in s. 122 of the Canadian *Criminal Code* RSC 1985, c. C-46 (by reference to common law authorities concerning misconduct in public office), as follows:

In the early common law cases, the mental element of misfeasance in public office was imprecise and varied from case to case. However, common law judges consistently insisted on the presence of some variant of nefarious or dishonest intent. This was described using different terms: dishonesty, corruption, partiality and oppression. All reflected a central concern: that public officials, entrusted with duties for the benefit of the public, carry out those duties honestly and for the benefit of the public, and that they not abuse their offices for corrupt or improper purposes.

... In principle, the mens rea of the offence lies in the intention to use one’s public office for purposes other than the benefit of the public. In practice, this has been associated

²⁰⁹ *Regina v Philip Thomas Dytham* (1979) 69 Cr App R 387, 393.

²¹⁰ *Regina v Philip Thomas Dytham* (1979) 69 Cr App R 387, 394.

²¹¹ *Maitland v R; MacDonald v R* (2019) 99 NSWLR 376 [84].

²¹² *Maitland v R; MacDonald v R* (2019) 99 NSWLR 376 [87].

²¹³ *Maitland v R; MacDonald v R* (2019) 99 NSWLR 376 [77].

²¹⁴ *Boulanger v The Queen* (2006) 2 SCR 49 [55]-[56].

historically with using one's public office for a dishonest, partial, corrupt or oppressive purpose, each of which embodies the non-public purpose with which the offence is concerned.

187. As indicated in the above passage, the misconduct must have been wilful – that is, done with knowledge of the obligation not to use the officer's position in the manner that it was used, or with knowledge of the possibility of an obligation not to use the officer's position in that way but choosing to do so anyway.²¹⁵
188. There are a number of other offences that are applicable to CSNSW staff in their professional capacity, discussed at [2.2.1] – [2.2.4] below.

2.2. Reporting misconduct or inappropriate behaviour

189. Correctional officers are obliged to report criminal conduct or misconduct by other correctional officers in certain circumstances, under various legislation, regulations and policies, albeit that the evidence before the Special Commission indicates that these obligations are very poorly understood by officers.

2.2.1 *Crimes Act 1900*

190. CSNSW employees may be criminally liable for failing to report information about the commission of a serious indictable offence under s. 316(1) of the *Crimes Act 1900*. The elements of this offence are that:
- a) the accused was an adult;
 - b) the accused knew or believed that a person had committed a serious indictable offence;
 - c) the accused had information which might have been of material assistance:
 - i) In securing the apprehension of that person; or
 - ii) In the prosecution or conviction of that person for the offence; and

²¹⁵ See *Maitland v R; MacDonald v R* (2019) 99 NSWLR 376 [13] (setting out directions at trial on this element).

d) the accused failed, without reasonable excuse, to bring that information to the attention of a member of the police force or other appropriate authority.

191. The elements of the s. 316(1) offence were the same throughout the period of Astill's employment at DCC, although the maximum penalty was increased in November 2018. The prosecution does not need to prove that the accused knew that the offence was a serious indictable offence.²¹⁶
192. A serious indictable offence, for the purposes of s. 316, is an indictable offence carrying a term of life imprisonment or a maximum penalty of 5 years or more. All of the offences of which Astill was convicted were serious indictable offences. The maximum penalty for contravention of s. 316 is currently (and has been, since the penalties were increased in November 2018) dependent on the maximum penalty for the serious indictable offence that is not reported, and ranges between two and five years imprisonment.
193. This offence indirectly gives rise to an obligation on a person with knowledge or belief that another person has committed a serious indictable offence to report relevant information "to a member of the police force or other appropriate authority". Although the phrase "other appropriate authority" is not defined, an employee who has reported the information in accordance with departmental policies may be able to either assert that they have reported to an "appropriate authority" or otherwise argue that the failure to report to an appropriate authority was not "without reasonable excuse".
194. The accused bears the onus on the balance of probabilities of establishing a reasonable excuse for the purposes of the s. 316 offence. A variety of circumstances may be relevant to what constitutes a reasonable excuse, but one of them is the magnitude of the concealed offence. Section 316(1A) of the *Crimes Act 1900* (which commenced in September 2020, so after the period of Astill's offending) provides that a person has a reasonable excuse for failing to bring information to the attention of a member of the NSWPF or other appropriate authority if the

²¹⁶ *Crimes Act 1900* s. 313.

information relates to a sexual offence or a domestic violence offence against a person (**the alleged victim**); the alleged victim was an adult at the time the information was obtained by the person; and the person believes on reasonable grounds that the alleged victim does not wish for the information to be reported to police or another appropriate authority.

2.2.2 *Crimes (Administration of Sentences) Regulation 2014*

Clause 253

195. Clause 253(1) of the CAS Regulation provides that if:

- a) an allegation is made to a correctional officer that another correctional officer has, while carrying out his or her duties as a correctional officer, engaged in conduct that, in the opinion of the officer to whom the allegation is made, constitutes a criminal offence or other misconduct; or
- b) a correctional officer sincerely believes that another correctional officer has engaged in conduct of that kind,

the correctional officer must report the conduct, or alleged conduct, to a correctional officer who is more senior in rank than the officer making the report.²¹⁷

196. The obligation in cl. 253(1)(a) is triggered by the making of an allegation to a correctional officer of a particular kind. The officer's opinion about the veracity of the allegation is irrelevant. The obligation in cl. 253(1)(b) is triggered by the formation of a "sincere belief" of the relevant kind – which may be contrasted with the use of "believes" by itself in cl. 253(2).

197. Clause 253(2) of the CAS Regulation then requires the senior correctional officer to report the conduct, or alleged conduct, promptly to the Commissioner of CSNSW if the senior correctional officer believes that it:

- a) constitutes, or would constitute, a criminal offence by the correctional officer; or

²¹⁷ *Crimes (Administration of Sentences) Regulation 2008*, the predecessor to the CAS Regulation, imposed substantially the same obligation on correctional officers in cl. 262.

- b) would provide sufficient grounds for taking proceedings or action under s. 69 of the GSE Act against the correctional officer.
198. Clause 253(2) operates in relation to a belief (that is, a state of mind held by the more senior correctional officer) about alleged conduct as well as actual conduct. The ordinary or natural meaning of the words used in relation to the senior correctional officer's belief in relation to alleged conduct, that is, that it "would constitute" either a criminal offence or misconduct for the purpose of s. 69 of the GSE Act, refers to whether, *if made out*, the conduct "would" fall into either of those categories. In other words, as in cl. 253(1), the senior correctional officer is not required or expected to form a belief as to the veracity of "alleged conduct".
199. The obligation in cl. 253(2) to report to the Commissioner of CSNSW was not the subject of any delegation during the period of Astill's offending.²¹⁸
200. There are exceptions to the reporting obligation in cl. 253(1). Clause 253(3) provides that there is no obligation to report conduct or alleged conduct that:
- a) has been made the subject of any proceedings or action under s. 69 of the GSE Act;
 - b) has been made the subject of evidence or other material given, or submissions made, in the course of criminal proceedings; or
 - c) has already been reported to a more senior correctional officer.
201. The effect of cl. 253(3)(c) is that the obligation in cl. 253(1) does not apply if the alleged conduct has already been the subject of a report in accordance with cl. 253(1).
202. "Correctional officer" is not defined in the CAS Regulation, but s. 3 of the CAS Act defines the term as "a person who is employed within CSNSW as a correctional officer, as referred to in section 231". Section 231 of the CAS Act provides that correctional officers (among others) are to be employed in the Public Service under the GSE Act. Section 234 of the CAS Act provides that there are two classifications of correctional officers: commissioned and non-commissioned. Commissioned correctional officers are correctional officers of or above the

²¹⁸ Transcript, 22 November 2023, T3052.1-T3053.23.

rank of Assistant Superintendent. Clause 316(1) of the CAS Regulation provides the order of ranking of correctional officers (working from the Commissioner of CSNSW down, in descending order of seniority).

203. As a matter of statutory construction, the use of the definite article in cl. 253(2) “[t]he senior correctional officer” indicates that the senior correctional officer referred to is the one to whom a report has been made pursuant to cl. 253(1).

204. Correctional officers are protected from retaliation for reporting other officers by cl. 253. Clause 253(4) of the CAS Regulation provides that a correctional officer must not, in relation to any other correctional officer:

- a) fail to approve or recommend the promotion of the other officer;
- b) take, approve or recommend disciplinary action against the other officer;
- c) direct, approve or recommend the transfer of the other officer to another position in CSNSW;
- d) make, approve or recommend a decision which detrimentally affects the benefits or awards of the other officer;
- e) fail to approve or recommend that the other officer receive education or training which could reasonably be expected to improve the officer’s opportunities for promotion or to confer some other advantage on the officer;
- f) change, or approve or recommend a change to, the duties of the other officer so that they are not appropriate to the officer’s salary or position; or
- g) otherwise act to the detriment of the other officer,

in retaliation against the other officer because he or she has acted in accordance with this clause or has disclosed information relating to conduct contrary to law to any other correctional officer.

205. Contraventions by a correctional officer, departmental officer or casual employee of a provision of the CAS Regulation are not offences but may be dealt with under s. 69 of the GSE Act (as misconduct) or any other applicable provision of that Act.²¹⁹
206. There are some real difficulties with the operation of cl. 253 of the CAS Regulation, addressed further below from [800].

Clauses 174 and 251

207. Clause 174 of the CAS Regulation provides that the Governor of a correctional centre must take all reasonable steps to preserve any place within the centre where a serious indictable offence has been, or appears to have been committed, or where an incident involving serious personal injury or major property damage has, or appears to have, occurred.
208. Further, cl. 251 of the CAS Regulation provides that a correctional officer must at all times be honest and truthful and must not destroy or mutilate, or alter, or erase any entry in an official document.

2.2.3 Independent Commission Against Corruption Act 1988

209. The *Independent Commission Against Corruption Act 1988 (ICAC Act)* imposes obligations on the Commissioner of CSNSW to report corrupt conduct. The ICAC is responsible for investigating and inquiring into corruption involving or affecting public authorities and public officials. CSNSW employees are public officials who fall within the purview of ICAC.²²⁰
210. Under s. 11 of the ICAC Act, the Ombudsman, the Commissioner of the NSWPF, the principal officer of a public authority, an officer who constitutes a public authority and a Minister of the Crown are under “a duty to report to the Commission any matter that the person suspects on reasonable grounds concerns or may concern corrupt conduct”. The Commissioner of CSNSW is the principal officer of CSNSW for the purposes of this section.²²¹

²¹⁹ CAS Regulation cl. 254.

²²⁰ ICAC Act s. 3(1) (meaning of “public official”).

²²¹ *Independent Commission Against Corruption Regulation 2017* cl. 20(2)(e).

211. Although the ICAC Act does not explicitly impose the duty referred to in s. 11 on other CSNSW employees, the then Commissioner of CSNSW issued a Commissioner's Instruction (No. 10/2013) on 21 August 2013 which provided that employees have a duty to report suspected corrupt conduct and should report it in writing to their supervisor, manager, Branch Head or Divisional Head, or to the Director, PSB, Assistant Commissioner, Governance and Continuous Improvement, or to the Commissioner of CSNSW.²²²
212. Corrupt conduct is defined by ss. 7, 8, and 9 of the ICAC Act. Under s. 8(1) of the ICAC Act, corrupt conduct is:
- a) any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority; or
 - b) any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions; or
 - c) any conduct of a public official or former public official that constitutes or involves a breach of public trust; or
 - d) any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.
213. Pursuant to s. 8(2) of the ICAC Act, corrupt conduct is also conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, whether directly or indirectly, the exercise of official functions by any public official, any group or body of public officials or any public authority, and which could involve matters such as official misconduct, blackmail, fraud, perverting the course of justice or harbouring criminals.

²²² Ex. 3, TB3 Vol 9 Tab 146, CSNSW.0001.0032.0338_0001.

214. Conduct does not amount to corrupt conduct unless it could constitute or involve a criminal offence, a disciplinary offence, or reasonable grounds for dismissing, dispensing with the services of, or otherwise terminating the services of a public official by s. 9(1). “Disciplinary offence” is defined in s. 9(3) as “any misconduct, irregularity, neglect of duty, breach of discipline or other matter that constitutes or may constitute grounds for disciplinary action under any law.”

2.2.4 *State Records Act 1998*

215. The *State Records Act 1998* (SRA) prescribes certain requirements with respect to state records, which are defined as records made or received by a person:

- a) in the course of exercising official functions in a public office;
- b) for a purpose of a public office; or
- c) for the use of a public office.²²³

216. Public office is defined as including a department or agency exercising a function of a branch of the State of NSW,²²⁴ so would include CSNSW. Accordingly, records made by correctional officers in the course of their duties, such as making entries on the OIMS with respect to an inmate, or an officer report in respect to an incident within the gaol, would constitute state records. Inmate request or inmate application forms received by an officer would also constitute state records.

217. Section 21 of the SRA makes it an offence for a person to abandon, dispose, damage or alter a state record (among other things). The maximum penalty for this offence is 100 penalty units.²²⁵

218. There are a number of exceptions to the offence, including if the action was taken in accordance with normal administrative practice in public office.²²⁶ Something is considered to be done in accordance with normal administrative practice in a public office if it is done in accordance

²²³ SRA s. 3(1) (meaning of “state record”).

²²⁴ SRA s. 3(1) (meaning of “public office”).

²²⁵ SRA s. 21(1).

²²⁶ SRA s. 21(2).

with the normal practices and procedures for the exercise of functions in the public office.²²⁷

This provision expressly excludes things done corruptly or fraudulently, or done for the purpose of concealing evidence of wrongdoing, or done for any other improper purpose.²²⁸

219. It is a defence to a prosecution of this offence if the defendant can establish that they did not know or had no reasonable cause to suspect that the record was a state record.²²⁹

2.2.5 Department of Communities and Justice Code of Ethical Conduct

220. The DCJ requires its employees, including CSNSW employees, to comply with the current version of the DCJ Code of Ethical Conduct, which came into effect on 19 April 2021 (**2021 DCJ Code of Ethical Conduct**).²³⁰

221. The former Department of Justice (**DOJ**) Code of Ethics and Conduct Policy, which was operative from August 2015 until it was superseded by the current version (**2015 DOJ Code**),²³¹ provided that:

*If an employee witnesses wrong-doing or suspected wrong-doing they should discuss the matter with their supervisor or manager. If an employee witnesses wrong-doing or suspected wrong-doing of a serious nature, they may be required to complete a Summary of an Allegation or Complaint Against an Employee Form, which should be discussed with, and provided to, their manager for referral to the relevant Director, HR Business Partner.*²³²

222. The 2015 DOJ Code also imposed on employees a “public duty to report any corrupt conduct, maladministration and serious and substantial waste of public resources”.²³³ Maladministration was defined in the 2015 DOJ Code to be conduct or proposed conduct in the exercise of a function involving action or inaction of a serious nature that is contrary to law, unreasonable, unjust, oppressive or improperly discriminatory, or based on improper motives.²³⁴

²²⁷ SRA s. 22(1).

²²⁸ SRA s. 22(2)(a).

²²⁹ SRA s. 21(5).

²³⁰ Ex. 3, TB3, Vol 13, Tab 421, CSNSW.0001.0001.0079.

²³¹ Transcript, 28 September 2023, T66.40-67.25.

²³² Ex. 3, TB3, Vol 9, Tab 147, CSNSW.0001.0034.0122_0021 s. 9.

²³³ Ex. 3, TB3, Vol 9, Tab 147, CSNSW.0001.0034.0122_0022 s. 9.1.

²³⁴ Ex. 3, TB3, Vol 9, Tab 147, CSNSW.0001.0034.0122_0022-23 s. 9.4.

223. Further, section 4.2 of the 2015 DOJ Code required employees to report breaches of the 2015 DOJ Code by their colleagues to their supervisor or manager but provided that breaches should be reported to the next line manager if the breach is by their supervisor or manager.²³⁵
224. The current 2021 DCJ Code of Ethical Conduct includes a section entitled “Reporting suspected wrongdoing” which contains information regarding unlawful and criminal conduct, corrupt conduct, maladministration, fraud, and serious and substantial waste of public resources; however, provides little guidance on what types of conduct should be reported and to whom it should be reported.²³⁶
225. The 2021 DCJ Code of Ethical Conduct still requires employees to report breaches as per the former 2015 DOJ Code, but is worded differently such that:
- a) employees are required to report suspected breaches of the code of conduct;
 - b) these are to be reported to a manager or supervisor, meaning employees are not obliged to report it to their own direct manager or supervisor; and
 - c) where the manager or supervisor may be implicated in the suspected breach, it must be reported to another manager or supervisor (not necessarily the next line manager) and/or PSI.²³⁷
226. Between 2013 and 2016, a Workplace Ethics Module training staff on ethical conduct was available, but not mandatory, for all CSNSW employees to complete.²³⁸ In January 2016, this module became part of the mandatory CSNSW Integrated Induction Program and from 2019 included training in relation to the 2015 DOJ Code .²³⁹ All CSNSW employees were required as of March 2020 to complete this module every two years to refresh their understanding of

²³⁵ Ex. 3, TB3, Vol 9, Tab 147, CSNSW.0001.0034.0122_0006 s. 4.2.

²³⁶ The only clearly articulated requirement is for employees to notify their supervisor or manager if they are charged by police, receive a court attendance notice in relation to a serious offence, or are declared bankrupt: Ex. 3, TB3, Vol 13, Tab 421, CSNSW.0001.0001.0079_0016 s. 10.

²³⁷ Ex. 3, TB3, Vol 13, Tab 421, CSNSW.0001.0001.0079_0017 s. 11.

²³⁸ Ex. 59, TB5 Vol 24 Tab 7, AST.002.013.0085_0005 [24].

²³⁹ Ex. 59, TB5 Vol 24 Tab 7, AST.002.013.0085_0005-6 [24]-[26].

their obligations under the 2015 DOJ Code,²⁴⁰ and in 2021 changes were made to the module to reflect the updated version of the 2021 DCJ Code of Ethical Conduct.²⁴¹

2.2.6 CSNSW Guide to Conduct and Ethics (2010 Edition)

227. From 2010 to 2018, CSNSW employees were also required to comply with the CSNSW Guide to Conduct and Ethics (**2010 Guide**).²⁴² Section 3.1 of the 2010 Guide, which is entitled “Reporting Misconduct, including Corrupt Conduct”, provided that CSNSW employees have a duty to disclose alleged misconduct of other colleagues regardless of their position. This includes criminal offences, corrupt or unethical conduct, serious mismanagement, and substantial waste of public resources. The 2010 Guide also encouraged employees to challenge inappropriate and unprofessional behaviour.²⁴³
228. The 2010 Guide provided that misconduct can be reported either verbally or in writing to any employee of a more senior rank or grade, or to any of the contacts as listed in Appendix A, which included the Ethics Officers in the Corruption Prevention Unit of CSNSW, or the Executive Director of the PSB.²⁴⁴ It also provided that:

*Whilst it is preferable for the matter to be reported internally in the first instance, an employee can report corrupt conduct directly to the Independent Commission Against Corruption (ICAC), maladministration may be reported to the Ombudsman, matters involving serious and substantial waste of public money can be reported directly to the Auditor-General and any failure to comply with GIPA Act 2009 may be reported to the Information Commissioner. Criminal matters such as theft or assault can be reported directly to the Police.*²⁴⁵

²⁴⁰ Ex. 47, TB5 Vol 21 Tab 1, CSNSW.0001.0076.0001_0015 [50].

²⁴¹ Ex. 59, TB5, Vol 24, Tab 7, AST.002.013.0085_0006 [26(b)].

²⁴² Ex. 3, TB3, Vol 9, Tab 143, CSNSW.0001.0034.0090. On 19 February 2011, the then Commissioner of CSNSW issued Commissioner’s Instruction No. 01/2011, requiring all CSNSW employees to acknowledge they had read and understood this 2010 Guide and to agree to comply with it: Ex. 3, TB3, Vol 9, Tab 144, CSNSW.0001.0034.0067. See also Ex. 47, TB5, Vol 21 Tab 1, CSNSW.0001.0076.0001_0012 [40(c)] where she states that the 2010 Guide was in effect from approximately 2010 to 2018.

²⁴³ Ex. 3, TB3, Vol 9, Tab 143, CSNSW.0001.0034.0090_0025 s. 3.1(a). Commissioner’s Memorandum No. 2020/03 was published on 2 March 2020 noting this requirement: Ex. 3, TB3, Vol 13, Tab 424, CSNSW.0001.0034.0196.

²⁴⁴ Ex. 3, TB3, Vol 9, Tab 143, CSNSW.0001.0034.0090_0026-27 ss. 3.1-3.2, Appendix A.

²⁴⁵ Ex. 3, TB3, Vol 9, Tab 143, CSNSW.0001.0034.0090_0026 s. 3.1(b).

229. The 2010 Guide further specified that all information gained in the course of official duties should be treated with respect and confidentiality to protect the privacy and safety of others and for the proper security of the operations of CSNSW. Confidential information should only be disclosed to others on a “need to know” basis.²⁴⁶
- 2.2.7 The Custodial Operations Policy and Procedures (formerly the CSNSW Operations Procedure Manual)
230. The COPP was introduced in December 2017 and is a collection of policies in respect of CSNSW staff’s reporting obligations (among numerous other things). The Operations Procedure Manual (**OPM**) preceded the operation of the COPP and was operative during some of the period of Astill’s offending.²⁴⁷
231. In addition to the general obligation to report misconduct imposed by legislation and other policy documents, the COPP, and prior to this, the OPM, imposes obligations on correctional officers to:
- a) report allegations of an assault by a staff member on an inmate;²⁴⁸ and
 - b) record and pass on information likely to adversely affect the safety, security or the good order and discipline of a correctional centre.²⁴⁹
232. Section 13.4 of the OPM provided that allegations of assault by staff on an inmate were not to be reported to local police but instead “must be reported in writing to the PSB as soon as possible”. It noted that “if a response is required the Commander, NSW Police Force, CSNSW Investigations is to be contacted immediately”.²⁵⁰ Section 13.4 of the COPP similarly provides that allegations of an assault by a staff member on an inmate must not be reported to a local police station. However, by contrast to the OPM it provides that these allegations should be

²⁴⁶ Ex. 3, TB3, Vol 9, Tab 143, CSNSW.0001.0034.0090_0023 s. 2.10(f).

²⁴⁷ Ex. 47, TB5, Vol 21, Tab 1, CSNSW.0001.0076.0001_0013 [40(d)].

²⁴⁸ Ex. 3, TB3, Vol 10, Tab 164, CSNSW.0001.0027.0305; Ex. 58, TB3 Vol 18, Tab 631, CSNSW.0002.0024.3203_1249.

²⁴⁹ Ex. 58, TB3, Vol 18, Tab 621, CSNSW.0002.0020.8009; Ex. 58, TB3, Vol 18, Tab 626, CSNSW.0002.0024.2078.

²⁵⁰ Ex. 58, TB3, Vol 18, Tab 625, CSNSW.0002.0020.8214_0013 s. 13.4.10.

reported not to the PSB, but to the Director, CSNSW Investigations who will notify the Commander, CSIU, State Crime Command, NSWPF.²⁵¹

233. Section 12.1 of the OPM, titled “General matters affecting the safety, security, good order and discipline of a correctional centre”, which came into force in July 2007, provided that “all officers of CSNSW are obliged to record and pass onto the Manager Security (MOS), or in the manager’s absence, the next most senior officer on duty, any information which is likely to adversely affect safety, security, or the good order and discipline of a correctional centre, including information which may affect an inmate’s placement or classification”.²⁵² The officer was also obliged to make a written report and forward it to the MOS.²⁵³ The OPM further noted that if an inmate has provided any information to personnel that “relates to a criminal matter, an issue of serious staff misconduct, or an inmate volunteers information of moderate or high value that information must be sent to the [General Manager]”.²⁵⁴ The General Manager was to then inform the relevant Director, Custodial Corrections who was to determine the most appropriate course of action.²⁵⁵ It is unclear from the OPM but it appears that if staff received information otherwise than from an inmate which related to criminal conduct, they were to report it in writing to the MOS, who was to then report it to the General Manager and the NSWPF simultaneously.²⁵⁶
234. The OPM provided that original reports were to be retained on a confidential file in a secure cabinet in the office of the MOS or Intelligence Officer, or some other secure place with

²⁵¹ TB3, Vol 10, Tab 164, CSNSW.0001.0027.0305_0023-24 s. 13.2.

²⁵² Ex. 58, TB3, Vol 18, Tab 626, CSNSW.0002.0024.2078_0579 s. 12.1.3 (March 2016). See also Ex. 58, TB3, Vol 18, Tab 621, CSNSW.0002.0020.8009_0008 s. 12.1.1 (August 2015) which is in the same terms.

²⁵³ Ex. 58, TB3, Vol 18, Tab 626, CSNSW.0002.0024.2078_0579 s. 12.1.3 (March 2016). See also Ex. 58, TB3, Vol 18, Tab 621, CSNSW.0002.0020.8009_0008 s. 12.1.1 (August 2015) which is in the same terms.

²⁵⁴ Ex. 58, TB3, Vol 18, Tab 626, CSNSW.0002.0024.2078_0580 s. 12.1.3 (March 2016). See also Ex. 58, TB3, Vol 18, Tab 621, CSNSW.0002.0020.8009_0008 s. 12.1.1.1 (August 2015) which is in the same terms.

²⁵⁵ Ex. 58, TB3, Vol 18, Tab 626, CSNSW.0002.0024.2078_0580 s. 12.1.3 (March 2016). See also Ex. 58, TB3, Vol 18, Tab 621, CSNSW.0002.0020.8009_0008 s. 12.1.1.1 (August 2015).

²⁵⁶ Ex. 58, TB3, Vol 18, Tab 626, CSNSW.0002.0024.2078_0579 s. 12.1.3 (March 2016). See also Ex. 58, TB3, Vol 18, Tab 621, CSNSW.0002.0020.8009_0008 s. 12.1.1 (August 2015) which is in the same terms.

controlled access. If a report contained intelligence, the MOS was to ensure a report was recorded on the CIG's IIS.²⁵⁷

235. These obligations are replicated in section 16.12 of the COPP titled "Inmate informants" and section 16.2 titled "Information affecting security".²⁵⁸

2.2.8 Managing Misconduct Procedure

236. The DOJ Managing Misconduct Procedure (**the DOJ Managing Misconduct Procedure**) was introduced in February 2016 and was intended to supersede the policy entitled "Management of Professional Conduct in the Department of Corrective Services" dated September 2002.²⁵⁹

The DOJ Managing Misconduct Procedure applies to all employees and divisions of DOJ (now DCJ), including CSNSW, and remains in effect.²⁶⁰

237. Section 5 of the DOJ Managing Misconduct Procedure sets out the procedure for reporting misconduct. It prescribes that all allegations of misconduct are to be reported to the Strategic Human Resources Business Partner or the Divisional Professional Standards Unit in the first instance. It notes that any evidentiary material, such as files notes and CCTV footage, which will assist with the initial assessment process must be provided to the Strategic Human Resources Business Partner or the Divisional Professional Standards Unit as soon as possible. The purpose of the initial assessment is to determine whether or not the matter needs to be treated as an allegation of misconduct under s. 69 of the GSE Act. The DOJ Managing Misconduct Procedure notes that in some instances further inquiries may be necessary, such as obtaining statements or reports from relevant parties, which may be conducted with the assistance of an external investigator.²⁶¹

²⁵⁷ Ex. 58, TB3, Vol 18, Tab 626, CSNSW.0002.0024.2078_0579 s. 12.1.3 (March 2016). See also Ex. 58, TB3, Vol 18, Tab 621, CSNSW.0002.0020.8009_0008 s. 12.1.1 (August 2015) which is in the same terms.

²⁵⁸ Ex. 58, TB3, Vol 18, Tab 631, CSNSW.0002.0024.3203_1252-1253, ss. 2.1-2.2; Ex. 58, TB3, Vol 18, Tab 633, CSNSW.0002.0024.3203_1347 s. 1.1

²⁵⁹ Ex. 47, TB5, Vol 21B, Tab 3, CSNSW.0001.0253.0001_0017-18 [45]-[47].

²⁶⁰ Ex. 3, TB3, Vol 9, Tab 149, CSNSW.0001.0034.0043_0001; Ex. 47, TB5, Vol 21, Tab 1, CSNSW.0001.0076.0001_0017 [58].

²⁶¹ Ex. 3, TB3, Vol 9, Tab 149, CSNSW.0001.0034.0043_0007-8, ss. 5.1-5.2. See also T67.27-68.23.

2.2.9 The Code of Ethics and Conduct for NSW government sector employees

238. On 19 August 2022, the Public Service Commissioner issued a direction to the head of each government sector agency to implement the Code of Conduct and Ethics for NSW government sector employees on and from 1 November 2022 (**2022 NSW Code**), and to require employees of each agency to comply with the 2022 NSW Code.²⁶² This direction replaced a direction made by the former Public Service Commissioner on 20 April 2015, which required the implementation of an older version of the 2022 NSW Code.²⁶³ The older version of the 2022 NSW Code was incorporated into the 2015 DOJ Code (see 2.2.5 above).
239. The 2022 NSW Code applies to all employees acting in the course of, or in connection with, NSW government sector employment.²⁶⁴ It notes that Departments and agencies may supplement the 2022 NSW Code with requirements and advice specific to their organisation’s operating environment and business risks, but they are not permitted to alter or subtract from it.²⁶⁵
240. The 2022 NSW Code imposes a duty on all government sector employees to “report possible breaches of the *Ethical framework for the government sector* to relevant officers” and all managers and executives to “act promptly and with due process to prevent and address any breaches of the *Ethical framework for the government sector*”.²⁶⁶ The Ethical Framework is established by Part 2 of the GSE Act and comprises a set of core values that all government sector employees are expected to uphold, including:
- a) acting professionally with honesty, consistency, and impartiality;
 - b) placing the public interest over personal interest; and
 - c) upholding the law.²⁶⁷

²⁶² Ex. 47, TB5, Vol 21, Tab 1, Annexure AZ-3 Tab 5, CSNSW.0001.0063.0002.

²⁶³ Ex. 47, TB5, Vol 21, Tab 1, Annexure AZ-3 Tab 5, CSNSW.0001.0063.0002.

²⁶⁴ Ex. 47, TB5, Vol 21, Tab 1, Annexure AZ-3 Tab 5, CSNSW.0001.0063.0004.

²⁶⁵ Ex. 47, TB5, Vol 21, Tab 1, Annexure AZ-3 Tab 5, CSNSW.0001.0063.0004.

²⁶⁶ Ex. 47, TB5, Vol 21, Tab 1, Annexure AZ-3 Tab 5, CSNSW.0001.0063.0007.

²⁶⁷ GSE Act s. 7.

241. The 2022 NSW Code specifies that if a staff member sees another staff member act in a way that is contrary to the 2022 NSW Code, they should, in the first instance, discuss the issue with their immediate supervisor or manager, or any member of the agency’s executive. If the staff member believes that the behaviour is “not just unethical” but may also be corrupt, a serious and substantial waste of government resources, maladministration, or a breach of government information and privacy rights, then they are to report their concerns to the agency’s Public Interest Disclosures Coordinator or Disclosures Officer, the head of the agency, or the relevant investigation authority such as ICAC or the Ombudsman.²⁶⁸ This differs from the 2015 DOJ Code, which had incorporated the preceding NSW government-wide code, which provided that serious misconduct was to be reported to the HR Business Partner.²⁶⁹

2.3. Obligations towards inmates

242. CSNSW employees have a range of obligations towards inmates, including with respect to their general treatment of inmates or assistance that they are expected to proffer to inmates.

2.3.1 Intimate and sexual relationships with inmates

243. Since 22 November 2018, it has been an offence for correctional officers to engage in sexual conduct or an intimate relationship with inmates if that conduct or relationship has particular effects. Section 236Q of the CAS Act provides that it is a criminal offence if a correctional officer engages in sexual conduct or an intimate relationship with an inmate or a person who is on a community-based order and the conduct or relationship:

- a) causes a risk or potential risk to the safety or security of a correctional centre or correctional complex or to good order and discipline within a correctional centre or complex; or
- b) compromises the proper administration of a sentence.

²⁶⁸ Ex. 47, TB5, Vol 21, Tab 1, Annexure AZ-3 Tab 5, CSNSW.0001.0063.0011.

²⁶⁹ Ex. 3, TB3, Vol 9, Tab 147, CSNSW.0001.0034.0122_0021 s. 9.

244. The offence carries a maximum penalty of 20 penalty units and/or imprisonment for two years.
245. On 16 November 2018, Mr Severin circulated a Commissioner’s Memorandum informing staff of the passage of the legislation which introduced this offence. The Memorandum stated that “[s]exual and intimate relationships between staff members and offenders compromise the safety, security, good order and discipline of correctional facilities and result in the improper administration of sentences, both in custody and in the community. These amendments ensure that there are serious consequences for this type of misconduct”.²⁷⁰
246. As already noted, the provision commenced on 22 November 2018. The then Minister for Corrections, David Elliott, in the second reading speech for the Bill introducing the offence explained that this offence was enacted in response to “community concerns about the small minority of staff within the correctional system who engage in inappropriate relationships with offenders”.²⁷¹ That reference was explained in the Legislative Assembly debate on the Bill, in which it was noted that in late July 2018 there were a number of media reports about sexual and other inappropriate relationships between CSNSW employees and offenders at the Mid North Coast, Long Bay, Lithgow and Silverwater Correctional Complexes.²⁷² There was reference in the debate to newspaper coverage of an allegation that a female officer had “had an affair with a convicted cop killer” and to the then Minister having “put his job on the line over the issue, vowing that he would change the laws”.²⁷³
247. The introduction of the offence was described by the then Minister in his second reading speech as increasing “opportunities for successful detection and prosecution because it is not limited

²⁷⁰ Ex. 3, TB3, Vol 9, Tab 151, CSNSW.0001.0034.0184.

²⁷¹ New South Wales, *Parliamentary Debates*, Legislative Assembly, 13 November 2018, 999 (David Elliott, Minister for Corrections).

²⁷² New South Wales, *Parliamentary Debates*, Legislative Assembly, 13 November 2018, 1003 (Melanie Gibbons).

²⁷³ New South Wales, *Parliamentary Debates*, Legislative Assembly, 13 November 2018, 1003 (Ron Hoenig).

to sexual conduct and includes intimate relationships. An intimate relationship can be a precursor to sexual conduct as it can, for example, include physical expressions of affection”.²⁷⁴

248. The offence is framed so that there is a need to prove the conduct/relationship *and* the existence of risk of the kind referred to in s. 236Q(1)(a) or a compromise to the proper administration of a sentence or community-based order. It is not clear what the policy rationale was for requiring such effects to be proven in order for sexual contact or an intimate relationship with an inmate to constitute an offence. The then Minister for Corrections stated in his second reading speech that “sexual conduct between a correctional employee and an inmate that occurs while an inmate is in custody would always—I repeat, always— be seen to result in a risk or a potential risk to the safety, security or good order and discipline of a correctional facility and as such would be covered under this bill.”²⁷⁵ However, that this was what the then Minister intended in relation to the operation of the provision obviously does not control the proper process of statutory interpretation.

249. **PROPOSED RECOMMENDATION: The Special Commission should recommend that s. 236Q of the CAS Act be amended so that there is no longer a need to prove both the conduct/relationship and the existence of risk of the kind referred to in s. 236Q(1)(a) or a compromise to the proper administration of a sentence or community-based order to establish the offence.**

2.3.2 Duty of care

250. CSNSW owes a duty of care towards inmates to prevent injury arising, among other things, from self-harm and assaults.

251. Section 8.27 of the COPP, operative from December 2017 to date, provides that all staff need to be aware of the term “duty of care” and their responsibility to maintain this duty towards

²⁷⁴ New South Wales, *Parliamentary Debates*, Legislative Assembly, 13 November 2018, 999 (David Elliott, Minister for Corrections).

²⁷⁵ NSW, *Parliamentary Debates*, Legislative Assembly, 13 November 2018, 999 (David Elliott, Minister for Corrections).

inmates, other employees and visitors.²⁷⁶ This section of the COPP provides staff with information regarding negligence and notes that disciplinary action may be taken against CSNSW officers who are in breach of their duty of care towards inmates and fellow employees. It notes that while it is difficult to provide “more than general guidance and the general principles from which a duty of care arises”, staff should have regard to their obligation to:

- a) comply with all relevant legislative, industrial or administrative requirements;
- b) accurately notate inmates' records;
- c) be familiar with all relevant material relating to inmates, with particular reference to their disabilities and inclinations to self-harm;
- d) keep up to date with advances and changes in their areas of employment;
- e) document and maintain records affecting important decisions made in relation to inmates and other members of staff; and
- f) ensure that information gained during the course of employment is only used for proper and appropriate purposes.²⁷⁷

2.3.3 Treating inmates with dignity and respect

252. CSNSW employees are required to treat inmates with respect and dignity.

253. The CAS Regulation imposes a number of obligations on staff in their actions towards inmates.

254. Clause 46 of the CAS Regulation provides that a correctional officer may, at the direction of the Governor or as the officer considers appropriate, search an inmate (including by way of strip-search) and their cell and property. It states that except in the case of an emergency, an inmate must not be strip-searched by or in the presence of a person of the opposite sex. It further provides that the searching of an inmate and the inmate's cell must be conducted with due

²⁷⁶ Ex. 58, TB3, Vol 18, Tab 622, CSNSW.0002.0024.2078_0340-341 s. 8.27.2.

²⁷⁷ Ex. 58, TB3, Vol 18, Tab 622, CSNSW.0002.0024.2078_0342 s. 8.27.2.

regard to dignity and self-respect and in as seemly a way as is consistent with the conduct of an effective search.²⁷⁸

255. Clause 129 provides that a correctional officer must endeavour to control inmates by showing them example and leadership and by enlisting their willing co-operation. It states that at all times, inmates are to be treated in a way that encourages self-respect and a sense of personal responsibility.
256. Clause 249 of the CAS Regulation provides that a correctional officer, departmental officer, medical officer or nursing officer must not:
- a) use insulting or abusive language to any other officer, to any inmate or to any person visiting a correctional officer;
 - b) say or do anything that is calculated to undermine discipline at a correctional centre or to prejudice the efficiency of, or to bring discredit on, CSNSW; or
 - c) act deliberately in a way calculated to provoke an inmate.
257. The 2021 DCJ Code of Ethical Conduct similarly imposes obligations on staff in their interactions with inmates. Section 7 requires employees to remain “fair and impartial at all times and must demonstrate respect and courtesy towards inmates, offenders and detainees, even in difficult and challenging circumstances” and stresses that “acts of intimidation, harassment, insults or abuse towards any Departmental client is a serious breach of this Code which may result in misconduct action”.²⁷⁹ Section 8.12 provides that employees must ensure that personal or sensitive information about clients (being inmates in the case of CSNSW) or colleagues, remains confidential and private. Staff are to exercise caution and sound judgment in discussing, searching or accessing the personal information of others.²⁸⁰ Section 18.1 notes that all people have the right to be treated fairly, and that the treatment of offenders must encourage their self-respect, sense of personal responsibility and pro-social behaviour.²⁸¹

²⁷⁸ CAS Regulation cl. 46(3).

²⁷⁹ Ex. 3, TB3, Vol 13, Tab 421, CSNSW.0001.0001.0079_0009 s. 7.

²⁸⁰ Ex. 3, TB3, Vol 13, Tab 421, CSNSW.0001.0001.0079_0013 s. 8.12.

²⁸¹ Ex. 3, TB3, Vol 13, Tab 421, CSNSW.0001.0001.0079_0020 s. 18.1.

258. Annexure A to the 2021 DCJ Code of Ethical Conduct prescribes additional obligations to employees of CSNSW. Within this annexure, section 18.2 prohibits employees from using “insulting, abusive, obscene or sexualised language to any colleague, offender or visitor to a CSNSW workplace” and requires employees who witness such language or behaviour to report it.²⁸² The 2021 DCJ Code of Ethical Conduct recognises that offensive language towards offenders is unacceptable as it “normalises and reinforces such behaviour and it could provoke conflict and retaliation”.²⁸³ It further notes that the use of such language by a senior officer is particularly unacceptable.²⁸⁴ Section 18.3 prescribes that the decisions and actions of employees must be reasonable, fair, justifiable and appropriate to the circumstances and employees must create and keep relevant records and be able to communicate their decisions clearly to those impacted.²⁸⁵
259. Prior to this, the 2015 DOJ Code included similar requirements, however, did not contain an express provision detailing that acts of intimidation, harassment, insults or abuse towards inmates was a serious breach which could result in misconduct action, as contained in section 7 of 2021 DCJ Code of Ethical Conduct.²⁸⁶
260. The 2010 Guide also required employees who work with offenders to be accountable, impartial, consistent and fair in their contact with offenders, and to act with integrity and compassion.²⁸⁷ The 2010 Guide noted that the treatment of offenders should encourage their self-respect and a sense of personal responsibility.²⁸⁸

²⁸² Ex. 3, TB3, Vol 13, Tab 421, CSNSW.0001.0001.0079_0021 s. 18.2.

²⁸³ Ex. 3, TB3, Vol 13, Tab 421, CSNSW.0001.0001.0079_0021 s. 18.2.

²⁸⁴ Ex. 3, TB3, Vol 13, Tab 421, CSNSW.0001.0001.0079_0021 s. 18.2.

²⁸⁵ Ex. 3, TB3, Vol 13, Tab 421, CSNSW.0001.0001.0079_0021 s. 18.3.

²⁸⁶ Ex. 3, TB3, Vol 9, Tab 147, CSNSW.0001.0034.0122_0011 s. 6.3.

²⁸⁷ Ex. 3, TB3, Vol 9, Tab 143, CSNSW.0001.0034.0090_0016 s. 2.8.

²⁸⁸ Ex. 3, TB3, Vol 9, Tab 143, CSNSW.0001.0034.0090_0016 s. 2.8.

2.3.4 Maintaining professional boundaries and managing conflicts of interest

261. CSNSW employees are required to maintain professional boundaries with inmates by disclosing conflicts of interest and not engaging in sexual conduct or intimate relationships with inmates.
262. The 2021 DCJ Code of Ethical Conduct requires departmental employees to recognise and disclose any actual, potential, or perceived conflict of interest to their supervisor/manager or, where appropriate, a more senior manager.²⁸⁹ The 2021 DCJ Code of Ethical Conduct also notes “departmental employees must never derive any personal benefit from the skills or labour of the Department’s clients” and that this is “particularly important in relation to inmates, offenders and juvenile detainees”.²⁹⁰ The 2021 DCJ Code of Ethical Conduct also prohibits employees from seeking personal benefit or reward for the work they undertake or make improper use of their work, status, power or authority to gain personal benefit.²⁹¹
263. Annexure A to the 2021 DCJ Code of Ethical Conduct imposes additional obligations on CSNSW employees with respect to their interactions with offenders. It requires that CSNSW employees maintain professional boundaries with offenders, by:
- a) being impartial, consistent and fair in their contact and interaction with offenders;
 - b) acting with integrity and compassion towards offenders, without bias, prejudice or discrimination; and
 - c) being professional and transparent at all times and not overstepping boundaries established for the performance of their role.²⁹²
264. Annexure A to the 2021 DCJ Code of Ethical Conduct requires CSNSW staff to disclose to their supervisor or manager all current and former personal relationships and social or off-duty

²⁸⁹ Ex. 3, TB3, Vol 13, Tab 421, CSNSW.0001.0001.0079_0010 s. 8.1.

²⁹⁰ Ex. 3, TB3, Vol 13, Tab 421, CSNSW.0001.0001.0079_0010 s. 8.1.

²⁹¹ Ex. 3, TB3, Vol 13, Tab 421, CSNSW.0001.0001.0079_0010 s. 8.2.

²⁹² Ex. 3, TB3, Vol 13, Tab 421, CSNSW.0001.0001.0079_0020 s. 18.1.

contact with offenders.²⁹³ It notes that “this prevents incorrect assumptions about the nature of the contact and allows any actual, potential or perceived risks to be managed.”²⁹⁴ It provides that any failure to report such contact, or misrepresenting its nature, may give rise to a presumption of misconduct, leading to further investigation and possible disciplinary action.²⁹⁵ Annexure A notes that the DCJ Conflicts of Interest Policy and Procedure describes the obligation of employees when they have an actual conflict of interest. However due to the special role of CSNSW employees, they must also report potential and perceived conflicts of interest, which could include:

- a) social or personal contact with, or a family connection to, an offender;
- b) offers or receipt of gifts or other benefits; and
- c) offers to buy items from offenders or sell items to them.²⁹⁶

265. The 2010 Guide also required employees who worked with offenders to be professional and transparent at all times and to not overlap boundaries established for the performance of their role.²⁹⁷ It provided that such conflict must be reported to the employees’ manager.²⁹⁸ The 2015 DOJ Code similarly required employees to report conflicts to their supervisor, and additionally specified that it was both real and perceived conflicts that were to be reported.²⁹⁹

266. The CSNSW Contact with Offender Policy (**Contact with Offender Policy**), issued in May 2010, only required employees to report “significant” off duty or social contact with offenders and did not require the reporting of casual or unintentional meetings, such as in the local supermarket, “regardless of their frequency”, which were noted to be possibly a regular occurrence in country locations.³⁰⁰ The Contact with Offender Policy prescribed that staff were

²⁹³ Ex. 3, TB3, Vol 13, Tab 421, CSNSW.0001.0001.0079_0024 s. 18.8.

²⁹⁴ Ex. 3, TB3, Vol 13, Tab 421, CSNSW.0001.0001.0079_0024 s. 18.8.

²⁹⁵ Ex. 3, TB3, Vol 13, Tab 421, CSNSW.0001.0001.0079_0024 s. 18.8.

²⁹⁶ Ex. 3, TB3, Vol 13, Tab 421, CSNSW.0001.0001.0079_0023 s. 18.6.

²⁹⁷ Ex. 3, TB3, Vol 9, Tab 143, CSNSW.0001.0034.0090_0016 s. 2.8(a).

²⁹⁸ Ex. 3, TB3, Vol 9, Tab 143, CSNSW.0001.0034.0090_0011 s. 2.6.

²⁹⁹ Ex. 3, TB3, Vol 9, Tab 147, CSNSW.0001.0034.0122_0008-9 s. 5.

³⁰⁰ Ex. 59, TB5, Vol 22C, Tab 4G, Annexure JB-6 Tab 56, CSNSW.0001.0034.0060_0004-5, ss. 9-9.2.

to report contact with offenders via the Contact with Offender Declaration which was to be provided to their manager.³⁰¹

267. The Contact with Offender Policy noted that with respect to contact with offenders, misconduct included failing to identify or declare any personal involvement, relationship or significant social or off-duty contact with an offender and failing to comply with any agreed-upon strategy to manage contact with any offenders.³⁰² The Contact with Offender Policy noted that staff needed to keep in mind the perception of improper conduct or existence of an improper relationship that can arise if routines, regulations and other protocols were not strictly and consistently followed.³⁰³ It further stated that employees needed to be aware that inappropriate contact with offenders can leave them open to exploitation and manipulation and that appropriate action would be taken against any employee who leaves themselves vulnerable in this way.³⁰⁴

268. It is unclear from the evidence when the Contact with Offender Policy ceased to be operative.³⁰⁵

2.3.5 Staff contact with inmates

269. There are a number of CSNSW policies and procedure documents which prescribe the number of staff required to be present with inmates in different circumstances.

270. On 30 August 2016, DCC Acting General Manager Mr MacRae issued a local order prohibiting staff members at DCC from entering inmate accommodation areas alone, unless all inmates had been locked out of the area (**the Local Order**). The Local Order prescribed that should a staff member need to enter an accommodation area, such as to intercept contraband or intervene in event of aggressive behaviour, radio assistance should be called and responded to prior to entry.³⁰⁶ In the event of a duress alarm, any staff member was permitted to enter the

³⁰¹ Ex. 59, TB5, Vol 22C, Tab 4G, Annexure JB-6 Tab 56, CSNSW.0001.0034.0060_0004 s. 9.1.

³⁰² Ex. 59, TB5, Vol 22C, Tab 4G, Annexure JB-6 Tab 56, CSNSW.0001.0034.0060_0003 s. 8.

³⁰³ Ex. 59, TB5, Vol 22C, Tab 4G, Annexure JB-6 Tab 56, CSNSW.0001.0034.0060_0005 s. 9.4.

³⁰⁴ Ex. 59, TB5, Vol 22C, Tab 4G, Annexure JB-6 Tab 56, CSNSW.0001.0034.0060_0006 s. 9.4.

³⁰⁵ Ex. 59, TB5, Vol 22, Tab 4, CSNSW.0001.0087.0001_0016 [71].

³⁰⁶ Ex. 3, TB3, Vol 14, Tab 448, CSNSW.0001.0032.0110_0001.

accommodation area during the daily operations for the possible preservation of life, with the expectation that the second officer will attend within seconds.³⁰⁷ The Local Order required male staff to announce they are entering the unit so inmates could ensure they are appropriately attired.³⁰⁸ In the event of accommodation being searched with inmates present, the order required that a female staff member be part of the search, and that body searches be completed by a female staff member unless in an emergency and with the approval of the General Manager or MOS.³⁰⁹

271. The Local Order was introduced after several instances where staff had entered an accommodation unit and it resulted in disturbances between inmates, or allegations being made involving staff.³¹⁰ Most notable of these instances was a report made in May 2016 regarding allegations that, among other things, an officer was providing inmates with cigarettes in return for head jobs, that two inmates were pregnant from officers, and that a group of inmates had sexually assaulted another inmate.³¹¹ Mr MacRae noted in an email to the Director of the IB, Mr Hovey, that the unit where the conduct was said to have occurred was not covered by CCTV.³¹² It appears that the Local Order duplicated one previously given by Mr MacRae at EPCC.³¹³
272. Section 5.5 of the COPP, “Cell Security and Alarm Calls”, was introduced on 16 December 2017, and prescribes that when responding to a cell call alarm while inmates are locked-in, two officers must be present to open a cell door, including in the event of an emergency.³¹⁴
273. On 5 November 2019 (that is, after Astill’s arrest), section 15.1 of the COPP, “Safe Work Practices”, was amended with the addition of the Sight or Sound principle.³¹⁵ The Sight or Sound principle applies in maximum security correctional centres and requires that an officer

³⁰⁷ Ex. 3, TB3, Vol 14, Tab 448, CSNSW.0001.0032.0110_0001.

³⁰⁸ Ex. 3, TB3, Vol 14, Tab 448, CSNSW.0001.0032.0110_0001.

³⁰⁹ Ex. 3, TB3, Vol 14, Tab 448, CSNSW.0001.0032.0110_0001.

³¹⁰ Ex. 3, TB3, Vol 14, Tab 448, CSNSW.0001.0032.0110_0001.

³¹¹ Ex. 3, TB3, Vol 14, Tab 444, CSNSW.0001.0032.0098_0002.

³¹² Ex. 3, TB3, Vol 14, Tab 447, CSNSW.0001.0032.0108_0001.

³¹³ Ex. 3, TB3, Vol 14, Tab 447, CSNSW.0001.0032.0108_0001.

³¹⁴ Ex. 46, TB5, Vol 25A, Annexure Tab 140, CSNSW.0001.0027.1615-1617, ss. 2.3-2.4.

³¹⁵ Ex. 46, TB5, Vol 25B, Annexure Tab 141, CSNSW.0001.0027.0571.

always be either within sight or within earshot of another officer when dealing with inmates, or in an area, which at that time, is accessible to inmates.³¹⁶ This principle applies to centres which house inmates of maximum security and other classifications, including DCC, and applies throughout the centre and is not limited to where maximum security inmates are housed.³¹⁷

274. Ms Cartwright gave evidence that it was her practice to never speak with an inmate or staff member by herself and explained that the Sight or Sound principle increased accountability, transparency and safe work practices. Her evidence was that the Sight or Sound principle was a way of mitigating the risks involved for staff when responding to incidents and was a way to manage allegations.³¹⁸ In her view, it underpinned most interactions between officers and inmates.³¹⁹

2.3.6 Facilitating inmates' access to external services

275. On 7 October 2020, a Local Operating Procedure (**LOP**) was introduced at DCC relating to the reception, screening and induction of inmates. Among other things, its purpose was to ensure that inmates were informed of their rights and responsibilities upon transfer to DCC.³²⁰ It prescribes that a Services and Programs Officer (**SAPO**) is responsible for coordinating an orientation meeting for all inmates within 72 hours of arriving to the centre.³²¹

276. The CAS Regulation prescribes a number of services to which staff are to facilitate inmates' access and the way in which such access is to be facilitated.

277. Clause 113 of the CAS Regulation provides that as soon as practicable after receiving from an inmate any letter or parcel addressed to an exempt body or exempt person, an officer must post the letter or parcel to the addressee, without opening, inspecting or reading it and vice versa. Additional requirements apply in relation to Category 5 female inmates (among others).³²²

³¹⁶ Ex. 46, TB5, Vol 25B, Annexure Tab 141, CSNSW.0001.0027.0562 s. 1.1.

³¹⁷ Transcript, 20 November 2023, T2751.14-43.

³¹⁸ Transcript, 20 November 2023, T2751.14-43.

³¹⁹ Ex. 46, TB5, Vol 25, Tab 8, CSNSW.0001.0175.0001_0020 [106].

³²⁰ Ex. 46, TB5, Vol 25B, Annexure Tab 185, CSNSW.0001.0111.0004 s. 2.4.

³²¹ Ex. 46, TB5, Vol 25B, Annexure Tab 185, CSNSW.0001.0111.0005 s.4.5.

³²² CAS Regulation cls 113(5), 115.

278. Clause 119B of the CAS Regulation provides that a telephone call made or received by an inmate may be monitored or recorded unless the telephone call is with an exempt body or person.
279. The exempt bodies and persons are defined in cl. 3 of the CAS Regulation (see also COPP section 8.1) and include the NSW and Commonwealth Ombudsman, the Inspector of Custodial Services, ICAC, Legal Aid NSW, legal practitioners and NSWPF officers.³²³
280. Clauses 165 to 167 of the CAS Regulation prescribe requirements in respect of inmates' access to the Official Visitor, referred to at [4.2.1] below.
281. Clause 168 of the CAS Regulation provides that a correctional officer to whom an oral or written request by an inmate for permission to speak with the governor is addressed or delivered must, without unreasonable delay, convey it to the Governor. In turn, the Governor must give the inmate an opportunity to speak with them on the day in which the request was conveyed or made, or as soon as practicable after that day. The Governor must consider what the inmate has to say, and, having done so, must orally inform the inmate of any action that they have taken or propose to take, or inform the inmate that they do not propose to take any action.
282. Clause 169 imposes similar obligations on correctional officers who receive a request from an inmate to speak with the Minister, the Commissioner of CSNSW or the Official Visitor. Such a request is to be provided to the Governor for consideration. The Governor must dispose of the matter as soon as practicable by taking the action they consider appropriate and making a written record of the action taken.
283. The ICAC Act also imposes certain obligations on the Governor of a correctional centre if an inmate wishes to make a complaint to ICAC. Section 10(4) of the ICAC Act provides that if an inmate informs the Governor that they wish to make a complaint to ICAC, the Governor must take all steps necessary to facilitate the making of the complaint and send immediately to ICAC, unopened, any written matter addressed to ICAC.

³²³ Ex. 59, TB5, Vol 22A, Tab 4G, Annexure JB-6 Tab 5, CSNSW.0001.0011.0001_0542 s. 7.

2.4. Obligations of CSNSW staff towards other staff

2.4.1 Treating other correctional officers with respect and dignity

284. The CAS Regulation imposes a requirement as to how correctional officers are to act towards each other. Clause 249 provides that a correctional officer must not, among other things use insulting or abusive language to any officer.
285. The 2010 Guide noted that the use of coarse, obscene, insulting or abusive language to a colleague, offender or visitor to a CSNSW workplace is inappropriate, as is sexual banter and suggestive behaviour.³²⁴ The 2010 Guide noted that such behaviour may constitute harassment.³²⁵ It specified that the use of such language by a senior officer to a subordinate was particularly unacceptable as senior officers have a duty to promote professional conduct in the workplace and to eradicate unacceptable behaviour.³²⁶ It also provided that employees are to relate professionally and respectfully with colleagues and to act with courtesy and fairness.³²⁷
286. The 2010 Guide also provided that all employees should understand the importance of managing issues consistently, promptly and fairly.³²⁸ This involved dealing with matters in accordance with approved procedures, in a non-discriminatory manner, and consistent with the rules of natural justice.³²⁹ It specifically noted that acts of unfairness involving favouritism, inconsistency or discrimination adversely affect morale and good working relationships.³³⁰ With respect to recruitment, it also noted that employees were required to comply with established procedures for recruitment, selection, promotion and conditions of employment, which are based on equal employment opportunity and anti-discrimination legislation.³³¹

³²⁴ Ex. 3, TB3, Vol 9, Tab 143, CSNSW.0001.0034.0090_0019 s. 2.9(d).

³²⁵ Ex. 3, TB3, Vol 9, Tab 143, CSNSW.0001.0034.0090_0019 s. 2.9(d).

³²⁶ Ex. 3, TB3, Vol 9, Tab 143, CSNSW.0001.0034.0090_0019 s. 2.9(d) (referencing Commissioner's Memorandum 02/2007; Use of Inappropriate Language and Sexual Banter in the Workplace (*Crimes (Administration of Sentences) Regulation 2008* cl. 258)).

³²⁷ Ex. 3, TB3, Vol 9, Tab 143, CSNSW.0001.0034.0090_0018 s. 2.9(a).

³²⁸ Ex. 3, TB3, Vol 9, Tab 143, CSNSW.0001.0034.0090_0018 s. 2.9(b).

³²⁹ Ex. 3, TB3, Vol 9, Tab 143, CSNSW.0001.0034.0090_0018 s. 2.9(b).

³³⁰ Ex. 3, TB3, Vol 9, Tab 143, CSNSW.0001.0034.0090_0018 s. 2.9(b).

³³¹ Ex. 3, TB3, Vol 9, Tab 143, CSNSW.0001.0034.0090_0018 s. 2.9(b).

287. Section 7 of the 2021 DCJ Code of Ethical Conduct provides that discrimination, bullying, harassment and other inappropriate behaviour will not be tolerated in any form and may constitute misconduct.³³² Among other things, it provides that employees must use courteous, respectful and appropriate language at all times and not discriminate against, bully or harass any person in their dealings with them.³³³

288. Section 18.2 of Annexure A to the 2021 DCJ Code of Ethical Conduct (which prescribes additional obligations on employees of CSNSW) titled “Respectful language in the workplace” replicates the requirements with respect to language towards other officers contained in the 2010 Guide described at [285] above.³³⁴

289. The 2021 DCJ Code of Ethical Conduct does not prescribe conduct related to recruitment practices.

2.4.2 Managerial obligations towards other staff members

290. Section 5 of the 2021 DCJ Code of Ethical Conduct provides that managers and supervisors are required to provide advice and guidance to employees on issues relating to the 2021 DCJ Code of Ethical Conduct, and to ensure compliance with the code by all employees, including by taking appropriate action in relation to suspected breaches by prompt consultation with Senior Executives or PSI.³³⁵ Section 5.2 requires managers to model acceptable standards of behaviour and demonstrate high ethical standards at all times.³³⁶

291. Section 5.3 indicates that Senior Executives are required to ensure all employees are aware of, and understand, their obligations in relation to the 2021 DCJ Code of Ethical Conduct, model acceptable standards of behaviour, demonstrate high ethical standards at all times, and refer suspected non-compliance to PSI.³³⁷

³³² Ex. 3, TB3, Vol 13, Tab 421, CSNSW.0001.0001.0079_0009 s. 7.

³³³ Ex. 3, TB3, Vol 13, Tab 421, CSNSW.0001.0001.0079_0009 s. 7.

³³⁴ Ex. 3, TB3, Vol 13, Tab 421, CSNSW.0001.0001.0079_0021 s. 18.2.

³³⁵ Ex. 3, TB3, Vol 13, Tab 421, CSNSW.0001.0001.0079_0007, ss. 5.1-5.2.

³³⁶ Ex. 3, TB3, Vol 13, Tab 421, CSNSW.0001.0001.0079_0007 s. 5.2.

³³⁷ Ex. 3, TB3, Vol 13, Tab 421, CSNSW.0001.0001.0079_0008 s. 5.3.

292. Section 18.4 of Annexure A to the 2021 DCJ Code of Ethical Conduct provides that managers must:³³⁸

- a) ensure that their employees clearly understand the duties and responsibilities of their positions;
- b) periodically review their employees' work performance; and
- c) provide their employees with constructive feedback.

293. Section 18.4 further notes that employees must comply with every direction or instruction they receive from their superiors that is lawful and reasonable, and failure to do so may result in sanctions, including termination of employment.³³⁹ Employees are also prohibited from preventing, obstructing or hindering another employee's performance of their duties, or doing anything that will distract them in the performance of their duties.³⁴⁰

³³⁸ Ex. 3, TB3, Vol 13, Tab 421, CSNSW.0001.0001.0079_0021-22 s. 18.4.

³³⁹ Ex. 3, TB3, Vol 13, Tab 421, CSNSW.0001.0001.0079_0021 s. 18.4.

³⁴⁰ Ex. 3, TB3, Vol 13, Tab 421, CSNSW.0001.0001.0079_0022 s. 18.4.

3. Culture issues at DCC

294. The evidence of numerous current and former inmates and officers at DCC raises serious issues about the culture at the centre, which do not appear to be confined to the period of Astill's offending. DCC is known by inmates to be a difficult place.³⁴¹ It was described by the Inspector of Custodial Services, Fiona Rafter (**the Inspector**), in her 2017 report of her inspection of DCC, among other centres, to be a place where there are high rates of inmate drug use, coupled with limited work and education opportunities (particularly for women on remand).³⁴²
295. The treatment of inmates by staff raises serious issues about the culture of DCC, particularly with respect to:
- a) the use by staff of information about inmates derived from monitoring their calls and mail;
 - b) a lack of confidentiality;
 - c) threats of retaliation if inmates made complaints;
 - d) favouritism by staff towards inmates, to the disadvantage of others; and
 - e) being subject to inappropriate language and harassment.
296. Likewise, the Special Commission heard evidence raising concerns as to workplace culture at DCC, including:
- a) inappropriate language towards other staff;
 - b) high levels of intimate relationships between staff at the centre;
 - c) a "boy's club"; and
 - d) rampant rumours and gossiping.

³⁴¹ Ex. 3, TB1, Vol 5, Tab 8A, AST.002.012.0001_0001 [5]; Transcript, 19 October 2023, T413.4-6; Transcript, 20 October 2023, T445.10-17; Ex. 3, TB1, Vol 6, Tab 27A, AST.002.009.0099_0007 [86].

³⁴² Ex. 45, TB5, Vol 26, Tab 10, FER-11, AST.002.013.0060_0286, 290, 313.

297. The treatment of inmates by staff, and the workplace culture, fed into an environment where it was very difficult for both inmates and staff at DCC to make complaints of serious misconduct.

Factors inhibiting complaints included:

- a) a widespread “joke” relating to the shredding of documents;
- b) a culture where staff feared reprisal from other staff and were pressured not to “dog” on or “paper” other officers; and
- c) significant shortfalls in the ways in which correctional officers and senior management at DCC handled the complaints that were made, by both inmates and staff.

298. These issues are addressed in turn below.

3.1 Treatment of inmates by staff

299. The evidence from inmates at DCC consistently was that they were regularly treated with aggression and disrespect by officers. While some witnesses identified officers who did not treat them this way, these officers were regarded as exceptional. Evidence referred to a culture of “us and them”,³⁴³ or “blue” and “green”,³⁴⁴ between officers and inmates. This does not appear to be unique to DCC. At DCC, inmates are required to refer to officers as “Miss” or “Sir”;³⁴⁵ by contrast, the Special Commission received evidence that staff look at inmates as “crims” and “trash”.³⁴⁶ Comparatively, on the evidence of Trudy Sheiles, at Clarence Correctional Centre inmates and officers refer to each other using their first names.³⁴⁷

300. First Class Correctional Officer Mark Wilson gave evidence relating to the “us and them” culture at DCC. He stated that in his view, inmates were probably intimidated as “we’re in uniform” and as a result, inmates were not so trusting of officers.³⁴⁸

³⁴³ Transcript, 24 October 2023, T690.4-8.

³⁴⁴ Transcript, 17 October 2023, T224.22-32; Ex. 19, TB2, Vol 7, Tab 47A, AST.002.013.0047_0003 [15].

³⁴⁵ Ex. 3, TB1, Vol 5, Tab 6A, AST.002.013.0005_0012 [79].

³⁴⁶ Ex. 3, TB1, Vol 5, Tab 10B, AST.002.009.0081_0002 [43].

³⁴⁷ Ex. 3, TB1, Vol 5, Tab 6A, AST.002.013.0005_0012 [79].

³⁴⁸ Transcript, 2 November 2023, T1486.45-47.

301. Former DCC chaplain, Suellen Johnson, explained that “blue stuck together, and green stuck together” at DCC. She explained that it was not the same at EPCC, where she had also worked, where the line between officers and inmates was not so defined.³⁴⁹ SAPO Deborah Gaynor similarly gave evidence that there was a culture that women at DCC were “only” inmates and that inmates were liars.³⁵⁰

302. Witness B, who has been housed at DCC since 2015, explained that inmates at DCC have “no protection”. She stated:

*There are so many officers at Dillwynia who continuously do this every single day, degrade inmates, treat them like they are lesser people, treat them like they are just something like cattle. And, unfortunately, this happens across Dillwynia Correctional Centre. And after this Commission has finished... this is going to continue on. Unless we have something that ... is not attached to Corrective Services, we have no protection.*³⁵¹

303. Witness B’s evidence was that the officers at DCC who treated inmates like human beings do not seem to last long at the centre.³⁵²

304. Ms Sheiles’ evidence was similar. She gave evidence about the reasons why she delayed making a formal report about the conduct she was subjected to by Astill and stated:

*Well, my main reason for not coming forward was that I had no intention to until I had left the system. I was terrified. No matter who the officer was at that point, they were in blue, we were in green. I'm a crim, as far as they're concerned, and why would they believe a crim that this has been happening? And, unfortunately, that's the culture and the mentality that's bred in jail.*³⁵³

305. Other inmates gave evidence of being screamed at and subjected to aggressive behaviour by staff.³⁵⁴ Witness I, in her victim impact statement, said that officers treated her as “just an

³⁴⁹ Ex. 10, TB2, Vol 7, Tab 47A, AST.002.013.0047_0003 [15].

³⁵⁰ Ex. 14, TB2, Vol 7, Tab 58A, AST.002.002.0040_0009 [65].

³⁵¹ Transcript, 24 October 2023, T690.18-24.

³⁵² Ex. 3, TB1, Vol 6, Tab 23A, AST.002.013.0030_0010 [54].

³⁵³ Transcript, 17 October 2023, T224.22-32.

³⁵⁴ Transcript, 19 October 2023, T413.4-6.

inmate” or someone “sub-human”.³⁵⁵ Witness G, in her victim impact statement, stated that she was “treated terribly” at DCC.³⁵⁶

306. Witness C gave evidence that she was not a favoured inmate as she was considered to be high-profile and was in the protection unit. As a result, she perceived she was treated harshly by staff, and particularly so once they perceived her to be receiving preferential treatment by Astill. Her evidence was that “[e]very single day I was singled out, isolated, bullied, abused, hurt, disadvantaged, regressed.”³⁵⁷

307. The Special Commission should accept this evidence from inmates as to their treatment at DCC and should find that inmates at DCC were consistently treated with disrespect by correctional officers at DCC, with a “blue versus green” or “us and them” mentality among officers likely contributing to this culture.

3.1.1 Monitoring and the use of inmate information

308. Numerous inmates gave evidence about the effect of close monitoring of inmates by staff at DCC. As explained by Witness B, the impact of such monitoring is significant:

*[T]here's nothing today that can protect me from retaliation from officers within Dillwynia Correctional Centre. There is no way. I can't do it by mail. I can't do it by phone. I can't do it by Official Visitor. Everything is monitored. The tablets are monitored. And it says that at the beginning of the agreement you sign, that says that they can monitor everything except your legal calls. There's no - there's no way. And in the Official Visitor, it goes directly to the Governor. It does not leave the system.*³⁵⁸

309. Ms Sheiles’ evidence was that every call made by inmates was recorded, and that the “Arunta” system that inmates formerly used to make calls (now known as the Offender Telephone System (OTS)) included a pre-recorded message on each call, informing inmates of this. Her understanding was that even calls made to the Corrective Services Support Line (CSSL), to

³⁵⁵ Ex. 3, TB1, Vol 6, Tab 24A, AST.002.009.0090_0003 [39].

³⁵⁶ Ex. 3, TB1, Vol 6, Tab 27A, AST.002.009.0099_0007 [86].

³⁵⁷ Transcript, 19 October 2023, T394.7-16.

³⁵⁸ Transcript, 24 October 2023, T693.32-40.

which inmates were directed to make complaints, were recorded.³⁵⁹ Ms Sheiles' evidence was that while inmates were told that their calls to lawyers were not monitored, they didn't trust this.³⁶⁰ She described it as "next level non-trust" and that "it always comes back to the blue putting you in a position where it's not pleasant".³⁶¹ Witness C's evidence was similar. It was her understanding from the pre-recorded message on the OTS that all telephone calls, including those to the Ombudsman, were recorded and monitored.³⁶² Sarah Ward and Witness O similarly understood that calls to the Ombudsman were recorded, or monitored by staff.³⁶³

310. Elizabeth Cox gave evidence that she called the Ombudsman to report an officer who was aggressive and threatened physical harm. She was advised by the Ombudsman that as it was an "internal issue", she was to ring the CSSL, which Ms Cox understood to be an internal line that was not confidential.³⁶⁴
311. Ms Ward, Witness M, Witness N and Witness R all gave evidence that the monitoring of their calls and mail by staff prevented them from speaking out about what Astill was doing to them,³⁶⁵ due to a fear that the information would be leaked back to Astill.³⁶⁶
312. Ms Ward gave evidence about an occasion when she was on the phone to her mother, trying to explain why she was upset. About three days later, Astill approached her and said, "Your poor mother. What are you ... doing telling you mother what's going on in the wing. You shouldn't upset her about that". Her evidence was that staff intimidated inmates by letting them know that they were listening to their calls.³⁶⁷ Ms Ward's evidence was that it was not an option to contact a service like Legal Aid NSW's Prisoner's Legal Service to make a complaint about Astill, as

³⁵⁹ Transcript, 17 October 2023, T212.24-35.

³⁶⁰ Transcript, 17 October 2023, T239.26-29.

³⁶¹ Transcript, 17 October 2023, T212.24-35.

³⁶² Transcript, 19 October 2023, T401.5-20.

³⁶³ Transcript, 18 October 2023, T308.24-33; Ex. 3, TB1, Vol 5, Tab 17A, AST.002.013.0028_0008 [42].

³⁶⁴ Ex. 3, TB1, Vol 6, Tab 46, AST.002.013.0009_0010 [58].

³⁶⁵ Transcript, 18 October 2023, T278.38-T279.2; Ex. 3, TB1, Vol 5, Tab 10A, AST.002.013.0006_0003 [14]-[15].

³⁶⁶ Transcript, 23 October 2023, T604.22-34; Ex. 3, TB1, Vol 5, Tab 14A, AST.002.012.0003_0006-7 [29]; Ex. 3, TB1, Vol 6, Tab 32A, AST.002.002.0035_0006-7 [30].

³⁶⁷ Transcript, 18 October 2023, T278.38-279.2; Ex. 3, TB1, Vol 5, Tab 14A, AST.002.012.0003_0006-7 [29].

she knew that he was listening to her calls, or if not him, his wife, Ms Hockey, or other staff with whom he was friends, who would report the information back to Astill.³⁶⁸

313. Astill similarly informed Witness N that he was listening to her calls.³⁶⁹

314. Ms Sheiles gave evidence that inmates could not trust that their mail would get to the intended recipient.³⁷⁰ Witness C's evidence was that it was rare for her to receive her legal mail closed, and that officers would speak to her about things written in her mail.³⁷¹ She recalled that officer Ronald Brown would open her mail, including her legal documents, read them and hand them to her.³⁷² Similarly, Witness B gave evidence that when she was trying to lodge an appeal and collect evidence, her mail would go missing and all that she would receive was an empty envelope. Witness B spoke with Ms Barry who advised her to send mail marked as "legal", as Ms Barry was responsible for receiving legal mail for inmates. Witness B's evidence was that the interference continued, and even when her mail was marked as "legal", all she would receive was an empty envelope.³⁷³

315. Witness C gave evidence that her visits were heavily monitored, and that the supervising officer would stand next to her during the visit, rather than circulate through the visits area as normal. Afterwards, Mr Brown would repeat the contents of the visit back to Witness C, making her feel that she could not discuss anything private during the visit. She said it felt like an intimidation tactic.³⁷⁴

316. The Special Commission should find that inmates at DCC were consistently of the view that each of their calls, mail, visits and use of inmate tablets was monitored, notwithstanding what was intended to be the position in relation to legal calls, legal mail and calls to external agencies. This understanding appears to have resulted from telephone system messages and, more

³⁶⁸ Ex. 3, TB1, Vol 5, Tab 14A, AST.002.012.0003_0007 [31].

³⁶⁹ Ex. 3, TB1, Vol 6, Tab 32A, AST.002.002.0035_0006-7 [30].

³⁷⁰ Transcript, 17 October 2023, T212.24-35.

³⁷¹ Transcript, 19 October 2023, T359.19-27.

³⁷² Ex. 3, TB1, Vol 5, Tab 8A, AST.002.012.0001_0005 [19].

³⁷³ Ex. 3, TB1, Vol 6, Tab 23A, AST.002.013.0030_0005 [24].

³⁷⁴ Ex. 3, TB1, Vol 5, Tab 8A, AST.002.012.0001_0005-6 [21].

recently, messages on inmate tablets. Astill also systemically used information gleaned from monitoring inmate calls, visits and letters as a means of intimidation, a practice which appears to have persisted among some officers at DCC subsequent to Astill's arrest.

3.1.2 Lack of confidentiality

317. Witness C and Witness W both gave evidence that there was no confidentiality for inmates at DCC.³⁷⁵

318. Witness C's evidence was that officers would talk openly about inmates' health issues, legal issues and personal issues in front of the muster line, or their reasons for being in prison. Her evidence was that "without a care in the world", officers would leak details about an inmate's incidences of self-harm or mental health issues.³⁷⁶ She recalled that staff laughed at inmates who were distressed about upcoming court dates or their children, and that staff would talk loudly and laugh among themselves in earshot of inmates about the inmate's criminal proceedings.³⁷⁷

319. Witness C gave evidence that officers would leak information from an inmate's mail to another inmate with whom they had issues with. They would also read aloud letters that women wrote to men in other gaols and laugh about them in front of other inmates, saying things like "I heard what you said to your bloke at Long Bay, you dirty bitch".³⁷⁸

320. Witness C felt that she could not trust the Justice Health staff.³⁷⁹ She recalled that officers would make comments towards inmates, in the presence of other inmates, such as, "clinic said your heart medication isn't available, maybe that will be enough to get rid of you".³⁸⁰ She detailed an occasion when Justice Health staff conducted a health assessment through her cell window and the nurse spoke about Witness C's personal health information with numerous

³⁷⁵ Transcript, 19 October 2023, T358.37; Transcript, 18 October 2023, T332.35-38.

³⁷⁶ Transcript, 19 October 2023, T432.43-T433.20.

³⁷⁷ Ex. 3, TB1, Vol 5, Tab 8A, AST.002.012.0001_0002-3 [10]; Transcript, 19 October 2023, T358.28-37.

³⁷⁸ Ex. 3, TB1, Vol 5, Tab 8A, AST.002.012.0001_0004 [13].

³⁷⁹ Ex. 3, TB1, Vol 5, Tab 8A, AST.002.012.0001_0014 [56].

³⁸⁰ Ex. 3, TB1, Vol 5, Tab 8A, AST.002.012.0001_0002-3 [10].

inmates and an officer in earshot. On other occasions, she was required to participate in a health assessment with an officer standing right next to her.³⁸¹

321. Witness W's evidence was that there was similarly no confidentiality when disclosing information to the SAPOs at DCC,³⁸² who are responsible for providing support and interventions for inmates to facilitate their safe, secure and humane management in gaol.³⁸³
322. Numerous inmates gave evidence of their experience that complaints or issues raised with the Ombudsman or Official Visitor were not treated confidentially,³⁸⁴ and that the contents of the complaints would be fed back to the Governor and other staff.³⁸⁵
323. On the evidence of Witness C, in order to speak with the Ombudsman, inmates were required to inform a staff member and were then paraded in front of the compound to attend the appointment.³⁸⁶ Similarly, Witness C's evidence was that the Official Visitor generally spoke to inmates in open areas of the gaol, where officers and inmates could see or hear.³⁸⁷
324. Ms Cox gave evidence of an occasion when an inmate wrote a letter to the Ombudsman, and an officer left the letter for other inmates to read. She stated that the inmates mentioned in the letter were given copies of the letter, resulting in the inmate who wrote the letter getting physically assaulted.³⁸⁸
325. As further detailed at [4.2.1] below, the Inspector gave evidence that the Official Visitor can take a complaint or inquiry from an inmate in public or private, and in either case, the complaint can be taken confidentiality.³⁸⁹ Her evidence was that it was important that inmates were given options regarding this, as inmates may wish to speak to the Official Visitor about general

³⁸¹ Transcript, 19 October 2023, T401.30-46.

³⁸² Ex. 3, TB1, Vol 6, Tab 22A, AST.002.013.0008_0008 [45].

³⁸³ Ex. 3, TB3, Vol 9, Tab 129, CSNSW.0001.0025.0151.

³⁸⁴ See, eg, the evidence of Witness W: Ex. 3, TB1, Vol 6, Tab 22 A, AST.002.013.0008_0008 [44].

³⁸⁵ Transcript, 19 October 2023, T357.15-16; Ex. 3, TB1, Vol 5, Tab 14A, AST.002.012.0003_0006 [27]; Transcript, 20 October 2023, T515.33-41; Ex. 3, TB1, Vol 6, Tab 46, AST.002.013.0009_0009 [56]; Ex. 3, TB1, Vol 6, Tab 23A, AST.002.013.0030_0011 [58], 0012 [62]; Ex. 3, TB1, Vol 6, Tab 32A, AST.002.013.0006 [29].

³⁸⁶ Ex. 3, TB1, Vol 5, Tab 8A, AST.002.012.0001_0013-14 [54]; Transcript, 19 October 2023, T357.40-T358.5.

³⁸⁷ Transcript, 19 October 2023, T357.2-9.

³⁸⁸ Transcript, 20 October 2023, T515.37-41.

³⁸⁹ Ex. 45, TB5, Vol 26, Tab 10, AST.002.013.0060_0020 [127].

concerns and conditions within the centre which they may wish to do in public and without formality.³⁹⁰ The Inspector's evidence was that the role of the Official Visitor was limited by the CAS Regulation to resolve a complaint by advising the inmate or staff member of what action could be taken, by referring the matter only with the consent or agreement of the person making the complaint, or, if in the opinion of the Official Visitor that it could be resolved quickly internally, by bringing it to the attention of the Governor.³⁹¹

326. As further detailed at [4.2.2] below, the evidence of the Ombudsman, Paul Miller, was that depending on the layout of the centre and the number of people who want to speak to the Ombudsman's staff, discussions with inmates can occur in "yards, units, worksites, holding rooms, or interview rooms".³⁹² His evidence was that correctional officers are usually in line-of-sight but out of hearing.³⁹³ The Ombudsman's evidence was that an inmate's consent is required for the Ombudsman's staff to disclose the inmate's identity to CSNSW, however, in some instances this impacts their ability to handle or resolve the issues raised, and these implications will be discussed with the inmate making the complaint.³⁹⁴
327. Current DCC Governor Ms Chappell's evidence was that inmates were informed of the ability to contact the Ombudsman and Official Visitor, including that such contact is confidential and not monitored by CSNSW staff, via information contained in the Women's Handbook on the in-cell tablet,³⁹⁵ the physical copy of that handbook which is provided when an inmate is first inducted at DCC,³⁹⁶ and on posters at DCC.³⁹⁷
328. It is apparent that there is a disconnect between the intended processes of the Official Visitor and the Ombudsman and the reality as experienced by inmates at DCC. We submit that this

³⁹⁰ Ex. 45, TB5, Vol 26, Tab 10, AST.002.013.0060_0020 [128].

³⁹¹ CAS Regulation cl. 166(2); Transcript, 17 November 2023, T2647.31-T2648.5.

³⁹² Ex. 59, TB5, Vol 28, Tab 15, AST.002.013.0079_0005 [27].

³⁹³ Ex. 59, TB5, Vol 28, Tab 15, AST.002.013.0079_0005 [27].

³⁹⁴ Ex. 59, TB5, Vol 28, Tab 15, AST.002.013.0079_0004 [21].

³⁹⁵ Ex. 50, TB5, Vol 27, Tab 11, Annexure Tab 9, CSNSW.0001.0213.0010. See also Ex. 59, TB5, Vol 28, Tab 12, CSNSW.0001.0263.1558_0013 [61].

³⁹⁶ Ex. 3, TB3, Vol 13, Tab 431, CSNSW.0001.0091.0131.

³⁹⁷ Ex. 50, TB5, Vol 27, Tab 11, Annexure Tab 28, CSNSW.0001.0260.0001. See also Ex. 59, TB5, Vol 28, Tab 12, CSNSW.0001.0263.1558_0013 [61] and Ex. 59, TB5, Vol 28, Tab 14, Annexure Tab 5, CSNSW.0001.0266.0001-2.

disconnect, particularly with respect to the confidentiality of complaints made to those external agencies, clearly played a role in inhibiting inmates from reporting serious misconduct and played into the culture at DCC whereby inmates felt that they had nowhere to turn, and no one to trust.

3.1.3 Punishments and transfers

329. Numerous inmates gave evidence about the ways in which officers at DCC would make inmates' lives in gaol more difficult, particularly those inmates who raised issues about the running of the centre.

330. Witness R gave evidence that she saw that inmates' lives were made difficult by officers if they spoke up, even just for minor things, such as asking for an extra doona or pair of tracksuit pants. This ranged from small consequences, such as their buy-up sheets not being processed, phone money not going into their account, or visits not being booked, to more serious consequences, such as being "tipped" out of the gaol or regressed back to maximum security.³⁹⁸

331. Witness C recalled being sent from the J Unit, where she was housed, to the Behavioural Intervention Unit (**BIU**) (which has similar conditions to segregation) on multiple occasions without charge after she had made a complaint or asked for something to be improved.³⁹⁹ She also detailed that inmates would be placed in segregation after making a complaint or raising an issue.⁴⁰⁰

332. Witness P gave evidence that she was sent to the BIU but was never told the reasons for this. She was later placed on a management plan by Astill who told her, "if you open your mouth again you'll be back in BIU".⁴⁰¹ Witness S's evidence was that as a Senior Correctional Officer, Astill was able to make inmates' lives "hell" by putting them in segregation by charging them with "silly" things. Her evidence was also that Astill was able to regress inmates back to the

³⁹⁸ Transcript, 23 October 2023, T600.36-41; Ex. 3, TB1, Vol 6, Tab 21A, AST.002.013.0029_0004 [22].

³⁹⁹ Transcript, 19 October 2023, T397.5-20; TB 1 Vol 5 Tab 8A, AST.002.012.0001_0007 [25], 12 [45].

⁴⁰⁰ Transcript, 19 October 2023, T355.28-42.

⁴⁰¹ Ex. 3, TB1, Vol 5, Tab 12A, AST.002.013.0007_0002-3 [15]-[16].

High Needs area.⁴⁰² Ms Ward's evidence was that she was placed in segregation and was informed by an officer that she would remain in segregation until a new unit at the centre was built.⁴⁰³

333. Witness C's evidence was that her cell would be searched, or "ramped", far more regularly than other inmates. Officers would escort her to her visits late so that she would have less time with her visitors than she was entitled to, they would give out mail to the other inmates, but not to her and tell her that they had seen her mail in the office, and she would be excluded from opportunities, such as going to the library.⁴⁰⁴ Witness C's evidence was that there was constant uneven application of punishment and recalled an occasion when she got charged for having two pieces of bread in her cell, while her cellmate did not get charged for having two wooden skewers.⁴⁰⁵

334. DCC is the largest gaol for females in NSW, and one of only two large female gaols in the Sydney metropolitan area (the other being Silverwater Womens' Correctional Centre, formerly known as Mulawa). Silverwater Womens' Correctional Centre is the major reception centre for female inmates and is a maximum security facility. For women with children or family members in Sydney, the prospect of being moved from DCC carried with it a risk of either being taken far away from their children and family, or returning to a much more restrictive environment at Silverwater. Understandably, this led some inmates to fear being moved from DCC.

335. Witness P's evidence was that in around 2015, she raised a complaint with Ms Martin about what Astill had been doing to her and other inmates and was told by Ms Martin that if Witness P kept going, she would be moved from DCC.⁴⁰⁶ Witness V's evidence was similar. She said that Witness B spoke with Shari Martin who told her that if she did not drop her complaints

⁴⁰² Ex. 3, TB1, Vol 6, Tab 40, AST.002.002.0039_0001 [6].

⁴⁰³ Transcript, 18 October 2023, T308.7-15.

⁴⁰⁴ Ex. 3, TB1, Vol 5, Tab 8A, AST.002.012.0001_0009 [35].

⁴⁰⁵ Ex. 3, TB1, Vol 5, Tab 8A, AST.002.012.0001_0009 [35].

⁴⁰⁶ Transcript, 23 October 2023, T557.1-38, T565.37-38, T573.43-T574.5; Ex. 3, TB1, Vol 5, Tab 12A, AST.002.013.0007_0004 [30].

about Astill, she would be “tipped” out of the gaol and sent to another correctional centre.⁴⁰⁷

Witness V said she was scared to report Astill because inmates who raised issues were moved.⁴⁰⁸

336. Ms Sheiles gave evidence that Astill threatened her about speaking up by telling her that he would move her to Wellington Correctional Centre to get her head stomped in. Her victim impact statement explained that Astill was aware that Ms Sheiles knew there was a group of girls in Wellington that had a reputation for being aggressive and violent.⁴⁰⁹
337. Witness C stated that officers regularly threatened to move inmates, including herself, to other correctional centres after they complained, and would threaten country inmates with city gaol, and vice versa.⁴¹⁰
338. Ms Ward’s evidence was that as a Category 4 (or maximum security) inmate, she felt unable to complain about Astill, as she feared being transferred to another correctional centre. As a maximum security inmate, the only other centre she could be housed in was Silverwater Women’s Correctional Centre, where she had spent seven years and hated. DCC was comparatively a more pleasant correctional centre, where inmates lived in houses with trees and grass around.⁴¹¹
339. The Special Commission should find that the threat of being moved out of DCC was a regular means used by officers at DCC to intimidate inmates and contributed to a culture of fear among inmates inhibiting them from making requests or complaints.

⁴⁰⁷ Transcript, 20 October 2023, T461.30-35.

⁴⁰⁸ Ex. 3, TB1, Vol 5, Tab 11A, AST.002.013.0002_0007 [25]. See also Witness M’s evidence: Ex. 3, TB1, Vol 5, Tab 10A, AST.002.013.0006_0003 [12]-[13].

⁴⁰⁹ Transcript, 17 October 2023, T196.4-7; Ex. 3, TB1, Vol 5, Tab 6B, AST.002.009.0074_0001 [10].

⁴¹⁰ Ex. 3, TB1, Vol 5, Tab 8A, AST.002.012.0001_0012 [46]-[47].

⁴¹¹ Transcript, 18 October 2023, T279.11-20; Ex. 3, TB1, Vol 5, Tab 14A, AST.002.013.0003_0005 [22]. See also Ms Ward’s evidence about the transfer of Witness M from DCC: Transcript, 18 October 2023, T285.18-29.

3.1.4 Favouritism

340. Witness C's evidence was that DCC was known to be a place where inmates had to win over staff and fight for their place.⁴¹² Ms Sheiles, Witness C and Witness V gave evidence about the favouritism demonstrated by officers to the advantage and disadvantage of certain inmates.
341. Ms Sheiles' evidence was that management at DCC would turn a blind eye to SMAP inmates because of the seriousness of the crimes some of them had committed, and they would be neglected or not provided with food.⁴¹³ Ms Sheiles recalled an occasion when two SMAP inmates got into a fight when one inmate beat up Witness Y. Witness Y tried to have the inmate charged but was told that the cameras were broken that day.⁴¹⁴
342. Witness C's evidence was that staff would "green light" an inmate to physically assault another inmate. She states that officers would say things such as, "we'll turn a blind eye, give her a flogging",⁴¹⁵ or "give her a touch-up, I will give you the green light. She deserves a whack" and that officers would offer to put money in the inmates' buy-up account once they had physically assaulted the inmate.⁴¹⁶
343. Witness V gave evidence that Astill informed her that he had offered \$100 in buy-ups to the inmate that assaulted her.⁴¹⁷
344. Doug Greaves, former Professional Standards Manager, gave evidence that it was easy for an officer to harm an inmate's quality of life. He explained that this could be through petty acts, such as refusing to give them toilet paper, tearing up family photographs and letters, or something giving rise to a serious risk of injury, such as telling inmates that one of them is a "dog". He stated that "within the prison environment, the term 'dog' is a greater insult than any

⁴¹² Ex. 3, TB1, Vol 5, Tab 8A, AST.002.012.0001_0002 [8].

⁴¹³ Transcript, 17 October 2023, T238.5-10; Ex. 3, TB1, Vol 5, Tab 6A, AST.002.013.0005_0010 [68]. See also Ms Sheiles' evidence about the lack of services available to SMAP inmates at: Transcript, 17 October 2023, T213.9-16.

⁴¹⁴ Ex. 3, TB1, Vol 5, Tab 6A, AST.002.013.0005_0010 [69].

⁴¹⁵ Ex. 3, TB1, Vol 5, Tab 8A, AST.002.012.0001_0003 [12].

⁴¹⁶ Transcript, 19 October 2023, T387.31-T388.7.

⁴¹⁷ Ex. 3, TB1, Vol 5, Tab 11A, AST.002.013.0002_0007 [27].

obscurity. Being labelled a ‘dog’ creates real risks to an inmate’s safety”.⁴¹⁸ Other officers agreed that being labelled a ‘dog’ in gaol created risks to inmate safety.⁴¹⁹

345. Multiple officers gave evidence regarding the favouritism and preferential treatment demonstrated by Astill towards inmates. Officer Peter Barglik’s evidence was that in late 2018, Astill was biased towards some inmates and showed “extreme favouritism” towards inmates he liked.⁴²⁰ The Special Commission also heard evidence of favouritism shown by Astill to Ms Sheiles in him providing her with items such as tracing paper.⁴²¹ Officer Kim Wilson’s evidence was that she was aware that Astill would bring things in for his “favourite” inmates, such as colouring books.⁴²² Mr Giles also gave evidence that Astill would provide preferential treatment to Witness GG, and would often respond over the radio when Witness GG had failed to present at muster, that Witness GG was on the phone to the Consulate.⁴²³
346. Officer Darren Rowe gave evidence to the effect that favouritism towards inmates was similarly demonstrated by those in management, namely Ms Martin. Mr Rowe recalled an occasion where he had confiscated an inmate’s striped socks, which she was not permitted to have. The inmate stated that she would get the socks back, explaining that she was “like this with your boss, Shari Martin”, while crossing her two fingers together. A few days later Mr Rowe saw the inmate wearing the striped socks, who smiled at him and said, “I told you so”.⁴²⁴
347. The Special Commission should find that during the period of Astill’s offending, Astill displayed clear favouritism towards some inmates and disfavoured others. Management at DCC was ineffective insofar as this differential treatment of inmates by a senior officer was allowed to continue. The Special Commission should accept Mr Greaves’ (unchallenged) evidence as to the ease with which an officer can damage an inmate’s quality of life, and also

⁴¹⁸ Ex. 35, TB2, Vol 8A, Tab 91, AST.002.013.0057_0031-32 [149]-[151].

⁴¹⁹ Transcript, 26 October 2023, T881.35-T882.7; Transcript, 10 November 2023, T2093.28-T2094.17; Transcript, 16 November 2023, T2498.11-31.

⁴²⁰ Ex. 57, TB2, Vol 7, Tab 50, AST.002.002.0060_0002 [6].

⁴²¹ Ex. 20, TB2, Vol 8, Tab 65, AST.002.002.0079_0007.

⁴²² Ex. 22, TB2, Vol 8, Tab 71, AST.002.013.0018_0006 [49].

⁴²³ Ex. 44, TB2, Vol 8, Tab 66A, AST.002.013.0052_0011 [69].

⁴²⁴ Ex. 57, TB2, Vol 8A, Tab 96, AST.002.013.0043_0003 [24].

as to the level of insult conveyed by the term “dog” in the gaol environment and the real risks to inmate safety arising from being labelled a “dog”. Astill’s behaviour inflicted damage to inmates’ quality of life and subjected some inmates to the risk of harm associated with being labelled a “dog” (see [458] below).

3.1.5 Inappropriate language and harassment

348. As detailed above at [2.2.2], cl. 249 of the CAS Regulation prohibits a correctional officer from using “insulting or abusive language” to any other officer or to any inmate.

349. Sarah Ward, Elizabeth Cox and Witnesses C, N and B gave evidence about the everyday use of inappropriate and abusive language by officers at DCC. Witnesses C and B’s evidence was that officers at DCC routinely, and on an everyday basis, referred to inmates as “whores”, “dogs”, “sluts”, “fucking cunts”, “mutts”, “liars” and “fucking stupid”.⁴²⁵ Witness B stated that even senior officers, such as Functional Managers, referred to inmates in that way.⁴²⁶ Various officers similarly gave evidence that other officers would refer to inmates (including in the presence of, and towards, inmates) as “bitch”,⁴²⁷ and “cunt”.⁴²⁸ Officer Jean Dolly gave evidence that this occurred on a daily basis in the High Needs area, including by Mr Giles, who used such language towards officers and inmates.⁴²⁹ Other officers denied the use of such language in a manner that directly targeted inmates, and some officers denied swearing around inmates at all.⁴³⁰ Mr Giles’ evidence was that although he and other officers used foul language while working at DCC,⁴³¹ which included indirectly swearing around inmates, he did not use words such as “cunts” and “sluts” to refer to inmates, nor when talking to them.⁴³²

⁴²⁵ Transcript, 19 October 2023, T432.40-47; Ex. 3, TB1, Vol 5, Tab 8A, AST.002.012.0001_0004 [13]; Ex. 3, TB1, Vol 5, Tab 8A, AST.002.012.0001_0009 [35].

⁴²⁶ Transcript, 24 October 2023, T689.25-45.

⁴²⁷ Transcript, 27 October 2023, T1053.11-14, T1141.20-29.

⁴²⁸ Transcript, 27 October 2023, T1141.20-29.

⁴²⁹ Transcript, 27 October 2023, T1141.46-T1142.14.

⁴³⁰ Transcript, 25 October 2023, T735.6-30, T855.16-47; Transcript, 26 October 2023, T920.40-T921.7; T950.4-35; Transcript, 27 October 2023, T1052.21-T1053.38; Transcript, 17 November 2023, T2581.38-T2582.8, T2591.1-31.

⁴³¹ Transcript, 17 November 2023, T2591.1-31.

⁴³² Transcript, 17 November 2023, T2636.34-T2637.15, T2568.45-2569.17.

350. When asked about the language officers used when speaking to each other, Ms O’Toole explained:

*I've always said that officers tend to start to mirror inmate behaviours, and the mirroring is also in the inmate, you know, the types of language used. When I went through the academy, it was an accepted - part of the training that, you know, inmates understood - and excuse my language, sir, but inmates would understand, "Get the fuck out of here," or, "No, you're not fucking getting this," and, "No, you cunt, you're not having that." Because that's the way inmates spoke.*⁴³³

351. Ms O’Toole stated that later on, when she was a trainer at the Academy, officers were trained to “avoid putting themselves down onto the same level of language as inmates” so as to maintain a professional boundary between officers and inmates.⁴³⁴

352. Ms O’Toole gave evidence about the commonplace use of foul language by officers, particularly the men, at DCC, which they used towards both inmates and other officers, including to her.⁴³⁵ She described it as a symptom of a workplace that had inherent toxicity. Her view was that the culture and language used by officers would always occur because a gaol is a “community within a community”. She explained:

*You're working alongside inmates - the - it's toxic. It's toxic. It's negative. There's very rarely anything positive that you can take away from a correctional centre. I've taken away myself a few positive things in that I have helped inmates stay out of gaol.*⁴³⁶

353. Witness C gave evidence that staff would make inappropriate comments when strip searching inmates, such as “you have put on weight”, “have you lost weight”, “did you get those stretch marks giving birth” or commenting on the inmates’ private parts.⁴³⁷ She detailed occasions where officers who had strip searched her passed on to Astill details about her body, who would then make inappropriate comments to her, such as that he had heard she did not have any tan lines.⁴³⁸

⁴³³ Transcript, 7 November 2023, T1848.31-T1849.18.

⁴³⁴ Transcript, 7 November 2023, T1848.31-T1849.18.

⁴³⁵ Transcript, 7 November 2023, T1838.36-T1839.17.

⁴³⁶ Transcript, 7 November 2023, T1850.26-T1850.36.

⁴³⁷ Ex. 3, TB1, Vol 5, Tab 8A, AST.002.012.0001_0004-5 [16].

⁴³⁸ Transcript, 19 October 2023, T346.1-24; Ex. 3, TB1, Vol 5, Tab 8A, AST.002.012.0007 [28].

354. In respect to strip searching, it is noted that the Inspector, following her inspection in 2017 of DCC and other correctional centres which house women on remand, recommended that CSNSW review the use of routine strip searches on female inmates and consider a risk-based approach to strip searching utilising technology.⁴³⁹
355. Witness C detailed an occasion when Ms Martin called her into the office as there was something in the media about Witness C's criminal case. Witness C recalls that Ms Martin told her, in Mr Paddison's presence, to just "accept [her] sentence and fucking get on with it".⁴⁴⁰ She further recalls that Ms Martin told her that she should just give up on her case.⁴⁴¹
356. Witness B's evidence was that officers would scream and swear in inmate's faces and call them names. She said that staff treated inmates like cattle and did not listen to what they said.⁴⁴² She recalled an occasion when Astill, in the presence of other officers including Ms Robinson and a nurse, said that "some people should get the lethal injection in this place" while Astill was staring right at Witness B. Her evidence was that the other staff present laughed.⁴⁴³
357. Witness B gave evidence about the intimidation faced by inmates who spoke up or that officers otherwise had "personal vendettas" towards those who did.⁴⁴⁴ She stated:

*The intimidation is still going on. If an officer takes a dislike to you, they can do anything they want. They can put anything on your case notes. They can intimidate you. And it's still going on today.*⁴⁴⁵

358. Witness N similarly recalled an occasion in which Astill made inappropriate comments in the presence of other staff, who merely laughed. Witness N said that Astill said to Officer Ronald Brumwell that he would like Mr Brumwell to join him while he had sex with Witness E. Witness N recalls that Mr Brumwell laughed, and then left the office.⁴⁴⁶ Likewise, Ms Ward

⁴³⁹ Ex. 45, TB5, Vol 26, Tab 10, AST.002.013.0060_0014 [73(b)].

⁴⁴⁰ Ex. 3, TB1, Vol 5, Tab 8A, AST.002.012.0001_0011 [43].

⁴⁴¹ Transcript, 19 October 2023, T379.36-380.2.

⁴⁴² Ex. 3, TB1, Vol 6, Tab 23A, AST.002.013.0030_0010 [53].

⁴⁴³ Transcript, 24 October 2023, T660.36-T661.13; Ex. 3, TB1, Vol 6, Tab 23A, AST.002.013.0030_0003 [16].

⁴⁴⁴ Transcript, 24 October 2023, T689.13.

⁴⁴⁵ Transcript, 24 October 2023, T688.44-46.

⁴⁴⁶ Ex. 3, TB1, Vol 6, Tab 32A, AST.002.013.0004_0005 [24].

detailed an incident when she was on the floor cleaning in the BIU. Mr Brumwell was present, and the door was open. Astill came into the room and put his crotch in Ms Ward's face and said, "That's how I like you". It was a small room, so in Ms Ward's view, it was not possible that Mr Brumwell did not hear what Astill said, yet he did nothing.⁴⁴⁷

359. Ms Cox gave evidence that Astill would, in public areas such as on the volleyball court, make inappropriate comments about how inmates looked, and how they "needed a good fuck".⁴⁴⁸ Witness N's evidence was that Astill would make inappropriate comments to her about how Witness M looked.⁴⁴⁹ Witness CC's evidence was that Astill would make inappropriate comments towards Ms Sheiles and other girls in the unit.⁴⁵⁰ Witness R similarly gave evidence that Astill would make suggestive comments towards inmates.⁴⁵¹ Witness I's evidence was that she heard from other inmates that Astill had made inappropriate comments towards them as well.⁴⁵²
360. Mr Barglik's evidence was that in late 2018, Astill's inappropriate comments about inmates became more frequent and "were over the top".⁴⁵³
361. The overwhelming majority of the evidence before the Special Commission is that foul language was and is used by officers towards inmates at DCC. The Special Commission should find that foul and abusive language by officers towards inmates, including description of inmates as "bitches" and "cunts" and including as a means of intimidation, was and is commonplace at DCC. For the reasons stated below at [6.17], Ms Martin's and Mr Giles' evidence on their use of language should be rejected.

⁴⁴⁷ Transcript, 18 October 2023, T283.13-39; Ex. 3, TB1, Vol 5, Tab 14A, AST.002.012.0003_0005 [19].

⁴⁴⁸ Ex. 3, TB1, Vol 6, Tab 46, AST.002.013.0009_0006 [35].

⁴⁴⁹ Ex. 3, TB1, Vol 6, Tab 30, AST.002.002.0034_0005-6 [20].

⁴⁵⁰ Ex. 3, TB1, Vol 6, Tab 42, AST.002.002.0022_0003 [7].

⁴⁵¹ Ex. 3, TB1, Vol 6, Tab 21, AST .002.002. 0028_0004 [13].

⁴⁵² Ex. 3, TB1, Vol 6, Tab 24, AST.002.002.0032_0002 [5].

⁴⁵³ Ex. 57, TB2, Vol 7, Tab 50, AST.002.002.0060_0002 [6].

3.2 Workplace culture

3.2.1 Inappropriate language

362. Multiple officers gave evidence regarding the use of inappropriate or derogatory language used among staff members towards each other and by Ms Martin towards her subordinates. There is evidence that officers were referred to as “cunts” and “fucking idiots” by other officers, including in the presence of inmates and other staff,⁴⁵⁴ and were sworn at by other officers.⁴⁵⁵ As detailed at [912] below, Ms Miskov’s evidence was that she was verbally abused and called names like “cunt” in front of other officers and inmates during her first month at DCC as a new graduate of the Academy, including an incident where, while she was at the centre with a contract worker during a period of construction and where she was unable to obtain a safety vest, a senior officer yelled out to her, “Hey cunt, where’s your vest”.⁴⁵⁶
363. Numerous officers gave evidence that Ms Martin used inappropriate and demeaning language with staff and was aggressive.⁴⁵⁷ She was known to swear⁴⁵⁸ and to refer to staff members as “cunts”⁴⁵⁹ and “duds”⁴⁶⁰, including while addressing staff at a staff meeting,⁴⁶¹ albeit she denied having done so. Ms Martin was described as a “tyrant” of whom staff were scared; and as someone who was very “old school” and set in her ways.⁴⁶²
364. Mr Mark Wilson’s evidence was that if Ms Martin passed staff in the gaol, she would not acknowledge them, and she did not attend staff parades.⁴⁶³ Officer Glenn Clark gave evidence

⁴⁵⁴ Transcript, 27 October 2023, T1096.30-43; Transcript, 26 October 2023, T919.30-T920.9; Transcript, 30 October 2023, T1267.27-30.

⁴⁵⁵ Transcript, 17 November 2023, T2591.1-15.

⁴⁵⁶ Transcript, 24 October 2023, T708.5-T709.27; Ex. 7, TB2, Vol 8, Tab 76, AST.002.013.0024_0002-3 [14]-[18].

⁴⁵⁷ See, eg, Transcript, 1 November 2023, T1413.42; Ex. 23, TB2, Vol 7, Tab 52A, AST.002.013.0019_0005 [29], 6 [31]; Ex. 57, TB2, Vol 7, Tab 50A, AST.002.013.0037_0009 [73].

⁴⁵⁸ Ex. 23, TB2, Vol 7, Tab 52A, AST.002.013.0019_0005 [29], 5 [31].

⁴⁵⁹ Transcript, 27 October 2023, T1093.42, T1121.8-19.

⁴⁶⁰ Ex. 57, TB2, Vol 8A, Tab 87, AST.002.013.0034_0005 [48].

⁴⁶¹ Transcript, 1 November 2023, T1454.25-26; Transcript, 2 November 2023, T1484.6-1484.24.

⁴⁶² Ex. 15, TB2, Vol 8, Tab 70, AST.002.013.0012_0008 [63]; Ex. 57, TB2, Vol 8, Tab 79, AST.002.013.0038_0008 [55].

⁴⁶³ Ex. 23, TB2, Vol 7, Tab 52A, AST.002.013.0019_0005 [29], 6 [31].

that he would say “good morning” to Ms Martin and be grunted at in return. He said he did not have confidence in management and was of the view that there was a “club mentality” with senior management.⁴⁶⁴

365. Officer Davey Jeans’ evidence was that Ms Martin was a bully and would give staff a “serve” at the morning parade.⁴⁶⁵ Similarly, Mr Barglik’s evidence was that Ms Martin was unapproachable, rarely present on parade or musters, and on the occasions that she would address staff on parade, it was not in a positive manner and her language and demeanour was intimidating to staff.⁴⁶⁶

366. The Special Commission should find that the use of foul and inappropriate language among officers was commonplace at DCC during Shari Martin’s time as Governor and that such language was regularly used by Shari Martin herself. The Special Commission should accept the evidence that Ms Martin addressed DCC staff on parade as “cunts” during 2018. The use of such language by the Governor towards officers clearly fed into a culture where there was little respect between officers and which likely increased the lack of trust or confidence in Ms Martin’s leadership by officers she was responsible for managing. For the reasons stated below at [6.17], Ms Martin’s evidence on her use of language towards staff should be rejected.

3.2.2 Intimate relationships between staff members

367. On the evidence of numerous witnesses, the number of intimate relationships between officers at DCC affected the management and behavioural culture at the centre. It was and is common for officers to be in intimate relationships with each other.⁴⁶⁷

368. At the time of Astill’s offending, at least the following officers were in intimate relationships:

- a) Astill and Ms Hockey;⁴⁶⁸

⁴⁶⁴ Transcript, 25 October 2023, T742.21-38.

⁴⁶⁵ Ex. 57, TB2, Vol 8A, Tab 87, AST.002.013.0034_0006 [48]-[49].

⁴⁶⁶ Ex. 57, TB2, Vol 7, Tab 50A, AST.002.013.0037_0009 [73].

⁴⁶⁷ Transcript, 1 November 2023, T1409.4-11, T1465.42-45; Transcript, 27 October 2023, T1020.28-1020.39.

⁴⁶⁸ Transcript, 1 November 2023, T1408.32-44.

- b) Mr Giles and Ms Robinson;⁴⁶⁹
- c) Mr Mark Wilson and Ms Kim Wilson;⁴⁷⁰ and,
- d) Overseer Fiona Baker and Overseer Anthony Baker.⁴⁷¹

369. Mr Jeans, Ms Dolly and Ms O’Toole provided evidence about the volatile relationship between Astill and Ms Hockey while at work. Mr Jeans explained that Astill and Ms Hockey would be “very affectionate” and then a week later, Astill would yell out to “look at that cunt over there”, referring to Ms Hockey.⁴⁷² Ms Dolly’s evidence was that if Astill and Ms Hockey were fighting, it would be very uncomfortable for other staff on duty that day. On these occasions, she recalled that Ms Hockey would be in the clinic crying, and Astill would meanwhile be directing other junior staff to “tell that bitch, tell that cunt to go and get my dinner”.⁴⁷³ Ms Dolly also gave evidence that there were occasions when she saw Astill “dry humping” Ms Hockey over the kitchen bench in the night Senior’s office.⁴⁷⁴
370. Ms O’Toole gave evidence that Astill was “very, very harsh” with Ms Hockey, and while she did not witness him verbally attack her, he would demean her, requiring Ms O’Toole to intervene on one occasion.⁴⁷⁵
371. Ms Hockey’s evidence was that “work was work” and “home was home” so there were no issues with her reporting directly to Astill.⁴⁷⁶ Ms Kim Wilson similarly disagreed that she was ever placed in a position of a conflict of interest while working at DCC with her husband,⁴⁷⁷ and that they rarely worked together.⁴⁷⁸
372. Ms Robinson’s evidence was that she and Mr Giles had a rule where they did not talk about work outside the workplace.⁴⁷⁹ His evidence was that if he was next in the chain of command

⁴⁶⁹ Ex. 24, TB2, Vol 8, Tab 81, AST.002.013.0051_0003 [15]; Transcript, 2 November 2023, T1497.44-46.

⁴⁷⁰ Transcript, 1 November 2023, T1467.19-37.

⁴⁷¹ Ex. 57, TB2, Vol 8, Tab 68A, AST.002.013.0025_0004 [28].

⁴⁷² Ex. 57, TB2, Vol 8A, Tab 87, AST.002.013.0034_0006 [46].

⁴⁷³ Transcript, 27 October 2023, T1096.30-42.

⁴⁷⁴ Ex. 16, TB2, Vol 8, Tab 77, AST.002.013.0026_0002-3 [16].

⁴⁷⁵ Transcript, 7 November 2023, T1838.36-T1839.17.

⁴⁷⁶ Transcript, 1 November 2023, T1420.10-14.

⁴⁷⁷ Transcript, 1 November 2023, T1466.1-5.

⁴⁷⁸ Transcript, 1 November 2023, T1467.19-46.

⁴⁷⁹ Transcript, 2 November 2023, T1498.1-14.

to Ms Robinson, she would not report an issue to him, and would instead report to the person above him in the chain of command.⁴⁸⁰ Mr Giles was asked what he would anticipate would occur in the event that officers who were in relationships were unable to work at the same centre and gave evidence that he thought officers would lie, or not be forthcoming with information that they were in a relationship to avoid being moved.⁴⁸¹ He also suggested that officers be required to complete a declaration of conflict of interest if they were in a relationship with another officer, to ensure that they work in different areas of the gaol.⁴⁸²

373. Witness C said that officers discussed private matters, kissed and flirted in front of inmates.⁴⁸³

374. Witness C also said that as a result of there being various couples working at DCC, it made asking for assistance or making complaints really difficult, as inmates did not know whether the officer would share something the inmate had said with their partner, or other family members working at the centre.⁴⁸⁴ Witness B similarly gave evidence that she would try to go up the chain of command with issues she had, but it seemed to her that the officers' responses were affected by their friendships with those with whom they worked.⁴⁸⁵

375. Ms Ward gave evidence that Ms Hockey was always very difficult and unpleasant towards her, and she felt it was because Ms Hockey knew what Astill was doing to her.⁴⁸⁶

376. Witness C gave evidence that Ms Hockey was allocated as her caseworker, and that it soon became clear to her that Ms Hockey was feeding personal information about her to Astill.⁴⁸⁷ Ms Hockey was once overheard asking Witness C whether there was "anything going on" between her and Astill.⁴⁸⁸ Similarly, Witness N's evidence was that Ms Hockey once asked her

⁴⁸⁰ Transcript, 17 November 2023, T2624.26-31.

⁴⁸¹ Transcript, 17 November 2023, T2623.2-21.

⁴⁸² Transcript, 17 November 2023, T2626.23-33.

⁴⁸³ Ex. 3, TB1, Vol 5, Tab 8A, AST.002.012.0001_0014 [58].

⁴⁸⁴ Ex. 3, TB1, Vol 5, Tab 8A, AST.002.012.0001_0014 [58].

⁴⁸⁵ Ex. 3, TB1, Vol 6, Tab 23A, AST.002.013.0030_0007 [36].

⁴⁸⁶ Ex. 3, TB1, Vol 5, Tab 14A, AST.002.013.0003_0004 [17].

⁴⁸⁷ Ex. 3, TB1, Vol 5, Tab 8A, AST.002.012.0001_0008 [32].

⁴⁸⁸ Ex. 3, TB1, Vol 5, Tab 12A, AST.002.013.0007_0004 [32].

to tell her what Astill had been doing,⁴⁸⁹ and on a different occasion, asked if he was in a sexual relationship with Ms Fiona Baker.⁴⁹⁰

377. Officer Renee Berry gave evidence that following the incident involving Witness C's ring, referred to at [889Error! Reference source not found.] below, she spoke with Ms Hockey who said she had told Astill "off" as he was "looking bad" with Witness C. Ms Berry's evidence was that Ms Hockey also said that she had heard from an inmate that Astill was receiving blow jobs from Witness C and she was upset that she had not heard the rumour first from Astill.⁴⁹¹ Ms Hockey was asked about Ms Berry's evidence and denied that she had ever heard a rumour about any kind of sexual activity between Astill and Witness C.⁴⁹² She similarly denied that she had a conversation with Ms Berry about rumours of sexual activity between Astill and Witness C, or about his involvement in the Witness C ring incident making him look bad.⁴⁹³
378. In her evidence, Ms Hockey indicated that she recalled being allocated as Witness C's case manager at Witness C's request. Ms Hockey described the request as "unusual" as she did not have a rapport with Witness C. Ms Hockey denied that she had passed on confidential information provided by Witness C in the course of her case management to Astill.⁴⁹⁴ Ms Hockey confirmed that she directly reported to Astill in this period, in approximately 2016.⁴⁹⁵
379. It was no secret that Ms Hockey and Astill were in a relationship. Nevertheless, an arrangement was approved whereby Ms Hockey directly reported to Astill. There were also potential work allocations in which Ms Robinson was managed by Mr Giles. Such an arrangement would obviously have put the officers in positions of conflicts of interest. It does not appear that DCC management took any steps to avoid or manage the conflicts of interest created by intimate relationships between staff. The evidence before the Special Commission suggests that this is an issue at other correctional centres as well, and that particularly in regional areas (where a

⁴⁸⁹ Ex. 3, TB1, Vol 6, Tab 32A, AST.002.013.0005-6 [25].

⁴⁹⁰ Ex. 3, TB1, Vol 6, Tab 32A, AST.002.013.0005-6 [25].

⁴⁹¹ Ex. 18, TB2, Vol 7, Tab 48, AST.002.002.0055_0005 [25]-[26].

⁴⁹² Transcript, 1 November 2023, T1421.23-29.

⁴⁹³ Transcript, 1 November 2023, T1423.45-T1424.17.

⁴⁹⁴ Transcript, 1 November 2023, T1419.36-41, T1421.8-21.

⁴⁹⁵ Transcript, 1 November 2023, T1420.5-8.

particular correctional centre may be a significant employer in a regional town, for example) it would be unrealistic to impose a rule that officers in intimate relationships should not work in the same correctional centre. It does not appear that such a rule would present the same problem in urban areas, although in view of Mr Giles's evidence it would be sensible that it be accompanied by clear disclosure requirements carrying disciplinary consequences if not complied with.

380. The Special Commission heard some evidence that imposing such a rule may lead to industrial action. Obviously any new rule would need to be introduced in a manner consistent with the requirements of the GSE Act and relevant awards, but given the consequences for inmates of failure to manage the conflict of interest created by the relationship between Astill and Ms Hockey, the prospect of PSA members disagreeing with its introduction is an insufficient reason for rejecting the proposal. The intimate relationships between officers at DCC inhibited the reporting of complaints by inmates about Astill's conduct.

381. **PROPOSED RECOMMENDATION: The Special Commission should recommend that in urban areas, officers in intimate relationships with each other should not be permitted to work in the same correctional centres. In rural areas, where implementation of such a rule is not practical, clear and specific instructions accompanied by training in managing conflicts of interest should be mandatory for correctional centre management and officers themselves. There should be a requirement that such training be repeated at regular intervals.**

3.2.3 Close friendships between staff members

382. Close friendships between staff similarly had an effect on the management and workplace culture at DCC, on the evidence of numerous witnesses.⁴⁹⁶

⁴⁹⁶ See, eg, the statement of Ms Barry: Ex. 17, TB2, Vol 7, Tab 62A, AST.002.013.0045_0003 [7], 3 [15], 9-10 [57]. See also the statement of Mr Riddle: Ex. 15, TB2, Vol 8, Tab 70, AST.002.013.0012_0007 [56].

383. It was common knowledge that Ms Hockey was good friends with Ms O’Toole, and that Ms O’Toole was also friends with Astill.⁴⁹⁷ Ms O’Toole gave evidence that she would socialise with Ms Martin and her husband, along with Astill and Ms Hockey, and would often celebrate birthdays and New Year’s Eve, and attend barbecues together. Ms O’Toole stated that she and her family would attend camping trips with Ms Martin’s family, and that their husbands had worked together previously.⁴⁹⁸
384. Ms Hotham gave evidence that Astill was friends with Ms Martin, Ms O’Toole, Mr Giles and their partners, and that they attended barbecues together outside of work. Ms Hotham’s evidence was that staff could see that those staff members were friendly.⁴⁹⁹ It appeared to have been common knowledge among officers that Ms Martin, Ms O’Toole and Astill were friends.⁵⁰⁰
385. Mr Giles’s evidence (consistent with that of other officers) was that there were cliques at DCC. He explained that officers spent a lot of time together, and as a result would become good friends with each other and that this would result in cliques forming.⁵⁰¹
386. The Special Commission should accept the evidence that staff had formed cliques at DCC and should find that Ms Miskov’s evidence, whereby she characterised the centre’s culture as akin to a “cult” where staff looked after each other,⁵⁰² is accurate. This is particularly demonstrated through the failure by management to competently, impartially and swiftly deal with the complaints made by inmates against Astill, detailed in Section 6 of these submissions.

⁴⁹⁷ Transcript, 18 October 2023, T279.33-44, T289.28-33; Ex. 3, TB1, Vol 5, Tab 6A, AST.002.013.0005_0006 [37]; Ex. 3, TB1, Vol 6, Tab 32A, AST.002.013.0004_0004 [18]. See also Ms O’Toole’s evidence: T1808.5-20.

⁴⁹⁸ Ex. 30, TB2, Vol 8, Tab 88, AST.002.013.0044_0009 [82]-[84].

⁴⁹⁹ Ex. 27, TB2, Vol 8, Tab 85, AST.002.013.0039_0002-3 [16].

⁵⁰⁰ Transcript, 25 October 2023, T751.1-10; Transcript, 26 October 2023, T875.29-45, T947.35-43, T978.19-27; Transcript, 27 October 2023, T1017.17-44; Ex. 23, TB2, Vol 7, Tab 52A, AST.002.013.0019_0005-6 [29].

⁵⁰¹ Transcript, 17 November 2023, T2560.39-2561.27.

⁵⁰² Transcript, 24 October 2023, T719.19-24.

3.2.4 The “boy’s club”

387. Multiple witnesses gave evidence about the “boy’s club” at DCC.⁵⁰³ As Witness B explained:

*Those officers [who treat inmates like human beings and help inmates without asking for anything in return] do not seem to last long at Dillwynia. It seems to be a boy’s club, where the bad culture starts at the lowest level and goes right up the hierarchy.*⁵⁰⁴

388. Officer Cailla Barlow similarly reflected on the toxic culture of the centre so far as female officers were concerned:

*The culture at Dillwynia was very toxic. If you were female, casual, or showed any sort of ambition, it was abysmal. There were some overseers who had a dislike for female officers and did not like reporting to them.*⁵⁰⁵

389. Ms Miskov gave evidence, referred to at [910] to [911] that when she was a graduate correctional officer at DCC, Astill would make inappropriate sexualised comments towards her in the workplace in front of other officers. Her evidence was that at no time did the other officers who witnessed this conduct pull Astill up on his behaviour or intervene in anyway.⁵⁰⁶ She explained that there was constant name-calling and she was made to look stupid in front of inmates and staff, despite the fact that she was new to the centre and there to learn.⁵⁰⁷

390. Numerous officers gave evidence about a group of officers known as “Shari’s boys”, being Mr Giles, Mr Holman, Mr Paddison and Astill.⁵⁰⁸ Ms Berry’s evidence was that DCC was run on fear from Ms Martin and unless an officer was one of her “boys”, they had no options, opportunities or proper treatment. Her evidence was that she was bullied, harassed and treated

⁵⁰³ Transcript, 25 October 2023, T745.13-32; Transcript, 26 October 2023, T947.35-43; Ex. 8, TB2, Vol 7, Tab 63A, AST.002.013.0022_0003 [17]; Ex. 3, TB1, Vol 6, Tab 46, AST.002.013.0009_0008 [50].

⁵⁰⁴ Ex. 3, TB1, Vol 6, Tab 23A, AST.002.013.0030_0010 [54]. See also Transcript, 24 October 2023, T690.8.

⁵⁰⁵ Ex. 57, TB2, Vol 8, Tab 82, AST.002.013.0071_0008 [43].

⁵⁰⁶ Transcript, 24 October 2023, T706.5-34.

⁵⁰⁷ Transcript, 24 October 2023, T708.5-20.

⁵⁰⁸ 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].

badly by “Shari’s boys”. When questioned on this, Ms Martin said Ms Berry’s evidence was not correct.⁵⁰⁹

391. Ms Barry gave evidence that “Shari’s boys” could do no wrong in Ms Martin’s and Ms O’Toole’s eyes and that Mr Giles and Astill had more say over the day-to-day running of the centre than anyone else.⁵¹⁰

392. Mr Jeans’ evidence was that officers who were known favourites of Ms Martin, being Mr Holman, Mr Paddison and Astill, could “get away with a lot” and were her “minions”.⁵¹¹

393. When Ms Martin was asked about the group of officers who were known as “Shari’s boys” who were said to have received favourable treatment from her, she stated that she could not understand why that was said. Ms Martin explained that most of her dealings were with executive staff, being Ms O’Toole, Mr Hariharan, Ms Kellett, Ms Deborah Wilson, Mr Holman and Mr Paddison, though she did not see Ms Barry much despite her being an executive member. Ms Martin’s evidence was that when Mr Giles was a Senior Correctional Officer (prior to his appointment as a Chief Correctional Officer) she had dealings with him as the union delegate, and that she did not see Astill much.⁵¹² For the reasons stated below at [6.17], Ms Martin’s evidence on officers not receiving favourable treatment from her should be rejected.

394. Ms Dolly gave evidence about the group of officers who ran the High Needs area, being Mr Giles, Officer Steve Vella, Ms Robinson, Officer Dave Edwards, Officer Curtis Gaffney and Officer Patricia Peek. Ms Dolly’s evidence was that this group of officers were known as “the Golden Circle” because they got away with “so much”, including bullying and harassment of officers who were not part of that group. She described that Mr Giles had “free reign” of High Needs as he was good friends with Ms Martin.⁵¹³ Ms Dolly recalled an occasion when she spoke

⁵⁰⁹ Transcript, 13 November 2023, T2190.1-5.

⁵¹⁰ Ex. 17, TB2, Vol 7, Tab 62A, AST.002.013.0045_0002 [17], 3[15], 9 [57].

⁵¹¹ Ex. 57, TB2, Vol 8A, Tab 87, AST.002.013.0034_0006 [48]-[49].

⁵¹² Transcript, 13 November 2023, T2230.19-27.

⁵¹³ Transcript, 27 October 2023, T1109.33-36.

to Mr Giles about some issues that had arisen in the High Needs unit. In response, Mr Giles abused Ms Dolly and called her a “cunt” in front of inmates.⁵¹⁴

395. Similarly, Officer Grant Riddle gave evidence regarding Mr Giles’s clique. He explained that the officers in that group worked together and socialised together. Mr Riddle’s evidence was that officers who were not part of that group were ostracised.⁵¹⁵

396. Witness C gave evidence that Mr Giles was the manager of the High Needs unit, and there was a group of officers known by some inmates as “Giles’ gang”, which included Mr Brown, Ms Robinson, Mr Vella and Mr Gaffney. Witness C recalls that Mr Giles would say “I run this show” and she commonly heard DCC being referred to as “Giles’ gaol”.⁵¹⁶

397. Witness C’s evidence was that officers who helped inmates, followed through on basic requests or interacted with inmates, such as by playing sports, were treated poorly by other staff. She recalls that officers, including Mr Clark, Officer Paul Foster, Officer David Alessi and the Chaplain, Ms Johnson, would be ridiculed because they were seen to interact with, and help, inmates. She once overheard Mr Giles say to another officer, “don’t fucking help those crims, they are pieces of shit”.⁵¹⁷ Witness C explained that “crim lovers” were seen as weak.⁵¹⁸ New officers were spoken down to, sworn at, condescended to and subject to derogatory comments from other officers in the presence of inmates.⁵¹⁹

398. Witness C gave evidence that there was a clear division between the officers who held the most power and had the best roles, and those who were considered weak or soft.⁵²⁰ Inmates would be aware of which officers were getting the “shit shifts”, who were sent to the “crappy posts” and who could not get overtime. She once overheard Mr Giles speak about a “soft” officer, Mr Gaffney, and his plan to “fuck him off to a shitty post”.⁵²¹ Mr Giles was asked about Witness

⁵¹⁴ Transcript, 27 October 2023, T1108.29-44.

⁵¹⁵ Transcript, 27 October 2023, T1016.4-14.

⁵¹⁶ Ex. 3, TB1, Vol 5, Tab 8A, AST.002.012.0001_0002-3 [10].

⁵¹⁷ Ex. 3, TB1, Vol 5, Tab 8A, AST.002.012.0001_0004 [14], 14 [57].

⁵¹⁸ Transcript, 19 October 2023, T360.13-21.

⁵¹⁹ Transcript, 19 October 2023, T359.45-T360.11; Ex. 3, TB1, Vol 5, Tab 8A, AST.002.012.0001_0004 [15].

⁵²⁰ Transcript, 19 October 2023, T360.17-21.

⁵²¹ Ex. 3, TB1, Vol 5, Tab 8A, AST.002.012.0001_0004 [15].

C's evidence and denied that he had said that he would "fuck" another officer "off to a shitty post" and explained that Mr Gaffney was his best mate.⁵²²

399. Ms Johnson's evidence was that the officers, including Officer Jocelyn Ryan, Ms Barry and Officer Cathy Avery were given a hard time by other staff as they really tried to make a difference for inmates.⁵²³

400. While the evidence is not clear as to whether Mr Giles was one of "Shari's boys", Mr Giles accepted that there were cliques amongst officers at DCC. It is not necessary to make findings as to the precise membership of such cliques, or to resolve the conflicting accounts of Witness C and Mr Giles concerning him saying that he would "fuck" Mr Gaffney off to a "shitty post". The Special Commission should find that the officer clique in the High Needs unit was one exemplar of a "boy's club" culture at DCC during the period of Astill's offending, whereby disrespectful and exclusionary behaviour between officers was tolerated, or even condoned, by management.

401. The Special Commission should find that the perception of a "boy's club" culture at DCC during the period of Astill's offending contributed to a toxic environment whereby it was perceived that select male officers were permitted by management to engage in disrespectful and inappropriate conduct towards others, particularly female officers. We submit that this created cyclical issues, whereby good officers, who treated inmates and colleagues with respect, were treated poorly and intimidated into silence or compliance, leaving DCC to be run by the "boy's club" consisting of Ms Martin's favoured officers.

⁵²² Transcript, 17 November 2023, T2570.13-22.

⁵²³ Ex. 19, TB2, Vol 7, Tab 47A, AST.002.013.0047_0003 [17].

3.2.5 Rumours, gossip and bullying

402. Numerous witnesses gave evidence about the bullying of staff at DCC, particularly of Ms Berry, Ms Barry and Ms Dolly by Astill and other senior staff members, including Mr Giles and Ms O’Toole.⁵²⁴
403. Mr Clark gave evidence about a prevalent culture of bullying at DCC. His evidence was that he saw doors being closed by staff, as other members of staff were approaching, and other subtle behaviours.⁵²⁵
404. The evidence of multiple officers indicated that there was a significant amount of gossip and rumours circulating among staff at DCC about other staff, which resulted in a toxic culture.⁵²⁶ Ms O’Toole described it as a “viper pit”.⁵²⁷
405. Ms O’Toole gave evidence about an email that she sent to a large number of staff members at DCC on 3 November 2015 that stated:

A number of you have a considerable amount to say in relation to specific incidents that have taken place in this centre and the manner in which these incidents have come to my attention. I would like to reinforce the following:

- 1. If inmates wish to report staff for a variety of issues, they have every right to do so.*
- 2. If I deem that the information supplied to me by inmates is relatively factual, I will follow up with staff concerned not the general staff population of this centre.*
- 3. If staff are informed of issues from inmates & inmates request to speak to management about the same issue it is not "dobbing or a weak act" on the part of the officer. The officer is merely informing me that the inmates wish to see me & why.*
- 4. What you deem as acceptable behaviour in the work place does not necessarily mean it is acceptable. Management, policies & legislation deem what is acceptable in the workplace.*
- 5. If you have an issue with how management address certain issues please feel free to discuss with management, not every man & their dog.*
- 6. If any of you take offence to the contents of this email, then it is probably because you are one of the ones making comment.*

⁵²⁴ Transcript, 25 October 2023, T736.1-4; Transcript, 27 October 2023, T1016.4-14, T1019.5-8, T1170.1-2; Transcript, 30 October 2023, T1199.17-20; Ex. 29, TB2, Vol 8, Tab 83, AST.002.013.0035_0015-16 [141]; Ex. 9, TB2, Vol 7, Tab 64A, AST.002.013.0017_0011 [71]; Ex. 77, TB2, Vol 8, Tab 77, AST.002.013.0026_0009 [44]. See also the evidence of Ms O’Toole in relation to bullying involving Mr Giles and Ms Avery: Ex. 30, TB2, Vol 8A, Tab 88, AST.002.013.0044_0002 [11].

⁵²⁵ Transcript, 25 October 2023, T736.1-4.

⁵²⁶ Ex. 57, TB2, Vol 8, Tab 74, AST.002.013.0021_0006 [45].

⁵²⁷ Ex. 30, TB2, Vol 8A, Tab 88, AST.002.013.0044_0002 [11].

I have observed over a long period of time that the bulk of you in this centre have a great deal to say about management & I might add that little of it is positive - this really doesn't bother me because when I look around the majority of those making comment have never worked in another centre, moved out of their comfort zones, stood up to be counted as an individual or attempted to improve yourselves. I find it greatly amusing that those with such little experience at managing people have the audacity to pass comment. Perhaps if you all spent as much time & energy on doing your job as you do on 'slamming' each other & management, this centre would be a nicer place to work.⁵²⁸

406. Astill replied to Ms O'Toole's email with a single word: "GOLD".

407. When asked what she meant by "relatively factual" in this email, Ms O'Toole denied that the first thing she would do when she received a report from an inmate about misconduct was that she would determine whether the allegation was factual or relatively factual. She explained it was "just poor choice of wording" as she would follow up with the Governor, Intelligence Officer and other staff members as appropriate. When asked about the comment in the email to the effect that the staff had made negative comments about management, Ms O'Toole's evidence was that:

There was, again, a lot of rumour and innuendo. There was rumour and innuendo - as I said, it was rife at Dillwynia. There was finger-pointing, accusations, allegations. It was the - it was a place I referred to as the viper pit, simply because people had little to do with their time and, as we all know, idle hands are the devil's playground. But to - to stick knives in each other's backs and gossip and rumour-monger amongst themselves, and particularly they were highly critical amongst themselves and their gossiping about how management performed their roles. Like, they were very, very judgmental in relation to how the whole management team performed their roles.⁵²⁹

408. Ms O'Toole explained that DCC did not function well because the staff had no experience at any other correctional centre and were averse to change. She stated that when DCC was first opened, the staff were treated with "kid gloves" by management, which she explained to mean "softly". Ms O'Toole explained that staff became used to that treatment. Her evidence was that this was the reason why staff criticised management.⁵³⁰ Ms O'Toole's evidence was that because staff had been at DCC for long periods of time and, as a result, had formed "large

⁵²⁸ Ex. 3, TB3, Vol 17, Tab 588, CSNSW.0002.0001.2308_0001-2.

⁵²⁹ Transcript, 7 November 2023, T1819.2-10

⁵³⁰ Transcript, 7 November 2023, T1819.12-T1821.4.

cliques” and socialised together, this perpetuated a culture where officers felt unable to submit reports about the conduct of other officers. Ms O’Toole’s evidence was that it would have been “pointless” raising the issue as there was no tenure system in CSNSW requiring staff to move to a different role or location after a certain number of years.⁵³¹

409. Mr Riddle gave evidence regarding the email from Ms O’Toole on 3 November 2015 quoted above, to the effect that he recalled asking Ms O’Toole why she had not emailed only the person who was responsible for the behaviour she was raising, and queried why he had received the email, as he didn’t “chatter”.⁵³² He recalls that Ms O’Toole explained having sent the email so that everybody would know that gossiping was not permitted.⁵³³

410. Ms Barry’s evidence was that she did not take the email from Ms O’Toole personally, and that it was another example of her bullying approach.⁵³⁴

411. Ms Martin’s evidence was that she did not think that staff were treated with “kid gloves”, though she did agree that a number of staff members had only worked at DCC and had only experienced the management style of the centre when it opened. Ms Martin did not agree that all staff were unhappy and thought that they seemed to be working hard and working well, and that she did not receive complaints when she walked around the centre.⁵³⁵ For the reasons stated below at [6.17], Ms Martin’s evidence on DCC staff working happily and well together should be rejected.

412. Ms Martin was asked about the email sent by Ms O’Toole on 3 November 2015 quoted above. Ms Martin’s evidence was that it was not uncommon in a correctional centre for the bulk of officers to have things to say about management which were not positive.⁵³⁶ Ms Martin stated that she would have spoken to Ms O’Toole about the email as she agreed that it was an example

⁵³¹ Transcript, 7 November 2023, T1825.12-35.

⁵³² Ex. 15, TB2, Vol 8, Tab 70, AST.002.013.0012_0008 [70].

⁵³³ Transcript, 27 October 2023, T1068.25-43.

⁵³⁴ Transcript, 30 October 2023, T1199.15-20.

⁵³⁵ Transcript, 14 November 2023, T2236.16-39.

⁵³⁶ Transcript, 13 November 2023, T2195.25-36.

of poor management by Ms O'Toole, though she could not recall the specifics of what she would have said to Ms O'Toole.⁵³⁷

413. Both Ms Wright and Mr Severin gave evidence regarding the benefits of the rotation of correctional officers between correctional centres, referred to by Ms O'Toole above. Ms Wright agreed that officers staying in the same correctional centre for long periods of time can lead to behavioural problems and difficulties in management. Her evidence was that she would always encourage staff to move to different correctional centres, and that staff tended to become complacent if they remained in the one gaol longer than three years. Ms Wright's evidence however was that it was very difficult to get staff to agree to move. She also gave evidence regarding a rotation system she introduced where staff would transfer to different roles inside the gaol; however, that was ineffective in solving the behavioural problems and management difficulties.⁵³⁸

414. Mr Severin's evidence was that it would be ideal for CSNSW to have a rotation policy, similar to NSWPF. His evidence was that implementing a rotational system at CSNSW would be an involved process and explained how it would need to differ from the NSWPF system:

*There might be some differences, particularly when it comes to specialist roles. However, under the Government Sector Employment Act, that is not as simple - not as simple to be implemented. So police, obviously, have a different piece of legislation that governs that, but you can't do that.*⁵³⁹

415. When asked whether legislative change could or should be considered to mandate correctional officers rotating between correctional centres, Mr Severin responded:

Yes, I agree. And that would be the most robust way of achieving this. We tried with the Government Sector Employment Act to make it - not mandatory, but to make it sort of a condition of employment....and we were - failed at every juncture when it came to the Government Sector Employment Act in the context of not enforceable. So we even appointed a person to a region, from memory, rather than a prison, and - but the fact that they were in that prison - and I'm talking about not people being there 20 years, but during my time - gave them some rights in maintaining that workplace under the

⁵³⁷ Transcript, 13 November 2023, T2196.1-12.

⁵³⁸ Transcript, 16 November 2023, T2437.1-46.

⁵³⁹ Transcript, 20 November 2023, T2720.7-12.

*GSE, which no doubt is well intended, but it's not suitable for the custodial environment.*⁵⁴⁰

416. He gave evidence that CSNSW currently relies on, and encourages, staff voluntarily moving between correctional centres, which occurred particularly when old facilities closed down and new facilities opened. The downside with a voluntary system, however, as he explained was “you don't get the ones you may want to actually move or encourage to move.”⁵⁴¹
417. The 3 November 2015 email indicates an antagonistic relationship between Ms O’Toole (who was, as MOS, second in charge at DCC and on a day-to-day basis responsible for much of the running of the gaol) and DCC staff. It is unprofessional in tone, belittles staff and suggests a lack of experience in managing people. The Special Commission should find that DCC was beset by rumours and innuendo among staff during the period of Astill’s offending, which contributed to what was fairly described as a toxic working environment. The Special Commission should accept Ms Wright’s evidence that staff working at the same correctional centre for long periods of time can lead to behavioural problems and difficulties in management. The lengthy period of time over which many staff had worked at DCC contributed to the entrenched nature of the culture at the centre and inevitably made (and makes) that culture more difficult to shift.
418. Some other government agencies in NSW, such as the NSWPF, mandate staff mobility. Such mobility has the capacity to assist in broadening and deepening the experience of CSNSW officers and improving the problem of resistance to change within correctional centres.
419. **PROPOSED RECOMMENDATION: The Special Commission should recommend that DCJ consider what legislative amendments (to the GSE Act or otherwise) would be required in order to mandate correctional officers rotating between correctional centres after a period of 7-10 years.**

⁵⁴⁰ Transcript, 20 November 2023, T2721.15-18.

⁵⁴¹ Transcript, 20 November 2023, T2720.8-27.

3.3 Reporting and complaint culture

3.3.1 File 13

420. Witness C's evidence was that it was common knowledge at DCC that when staff or inmates referred to a complaint or inmate request form being put in "File 13", that meant a document would be shredded.⁵⁴²

421. The evidence given by multiple inmates was that no one cared or believed what inmates said,⁵⁴³ nothing came of complaints that were made,⁵⁴⁴ and that officers would openly ridicule inmate's requests. Witness C's evidence was that once the reporting inmate had walked away, officers would say that the request was going to "file 13", in front of other inmates.⁵⁴⁵ Her evidence was that at DCC, each wing officer made their own determination about whether a request made by an inmate to speak to the Governor was valid and could refuse to take the complaint to the Governor. It was the same with respect to requesting to speak to a SAPO.⁵⁴⁶ Comparatively, on the evidence of Witness B, at Silverwater Women's Correctional Centre, wing officers progress any request to speak to the Governor to the Governor, irrespective of what is contained in the form or the reason for the request.⁵⁴⁷

422. Mr Westlake gave evidence about the possibility of "a lazy intel officer" shredding a report.⁵⁴⁸ Mr Westlake said while he was at DCC, he was not aware of intel reports being shredded, but was aware of other types of documents being shredded.⁵⁴⁹

423. Mr Paddison, Mr Giles and Ms Martin denied that "file 13" was a practice at DCC.⁵⁵⁰ Mr Paddison and Mr Giles gave evidence that the term "file 13" was used as a joke or urban legend

⁵⁴² Transcript, 19 October 2023, T356.6-24; Ex. 3, TB1, Vol 5, Tab 8A, AST.002.012.0001_0010-11 [42].

⁵⁴³ Ex. 3, TB1, Vol 6, Tab 23A, AST.002.013.0030_0010 [49]; Ex. 3, TB1, Vol 5, Tab 6B, AST.002.009.0074_0001 [15].

⁵⁴⁴ Ex. 3, TB1, Vol 6, Tab 46, AST.002.013.0009_0009 [52].

⁵⁴⁵ Transcript, 19 October 2023, T356.20-24; Ex. 3, TB1, Vol 5, Tab 8A, AST.002.012.0001_0010-11 [42].

⁵⁴⁶ Ex. 3, TB1, Vol 5, Tab 8A, AST.002.012.0001_0014 [55].

⁵⁴⁷ Transcript, 24 October 2023, T694.6-9; Ex. 3, TB1, Vol 6, Tab 23A, AST.002.013.0030_0011 [55]-[56].

⁵⁴⁸ Transcript, 26 October 2023, T912.19-24; Ex. 12, TB2, Vol 8, Tab 78, AST.002.013.0036_0004, [26].

⁵⁴⁹ Transcript, 26 October 2023, T913.38-T914.7.

⁵⁵⁰ Transcript. 2 November 2023, T1526.38-T1527.9; Transcript, 17 November 2023, T2562.32-T2563.29, Transcript, 13 November 2023, T2225.14-41.

to describe a place where missing paperwork must have gone.⁵⁵¹ When asked why it was a joke, Mr Giles explained that officers would shred documents that were duplicates and no longer required, or would shred documents, such as briefs, that inmates no longer required.⁵⁵² Mr Giles said that if an inmate asked for something to disappear, officers would joke “Do you want me to file 13 it?”⁵⁵³

424. Ms Martin’s evidence was that “file 13” was a phrase that referred to paperwork, including that which contained serious allegations, being destroyed. Her evidence was that she was not aware of a practice at DCC where documents containing allegations would be destroyed and denied that she had engaged in this conduct. Ms Martin agreed that had a report containing allegations been destroyed, it would be gross misconduct.⁵⁵⁴

425. Mr Foster gave evidence about a conversation he had with another Officer, Edward Scott, referred to at [6.14] below. His evidence was that Mr Scott said, “I learnt to shred my reports today”. Mr Scott explained that he had received information from inmates and put the information into a report, the contents of which was not disclosed to Mr Foster but which he understood to relate to Astill, and handed it to Ms Martin. Mr Foster explained that Mr Scott “was very, very strong in the viewpoint you never ever put an officer on paper. So for him to actually take that information and put that into a report was a massive barrier for him to overcome in the first place” so understood that the information must relate to serious misconduct. He recalled that Mr Scott recounted that Ms Martin read the report, handed it back to Mr Scott and told him to provide it to the intelligence officer. When he went to the intelligence office, he saw that Astill was the intelligence officer that day, so he went back to his office and shredded the report to avoid providing the allegations to the possible perpetrator, fearing for the inmates’ safety and wellbeing.⁵⁵⁵

⁵⁵¹ Transcript, 2 November 2023, T1526.38-44, T1587.37-42; Transcript, 17 November 2023, T2562.21-T2563.39.

⁵⁵² Transcript, 17 November 2023, T2562.21-T2563.39.

⁵⁵³ Transcript, 17 November 2023, T2562.43-T2563.4.

⁵⁵⁴ Transcript, 13 November 2023, T2225.14-T2226.3.

⁵⁵⁵ Transcript, 26 October 2023, T959.43-T962.31; Ex. 13, TB2, Vol 7, Tab 56A, AST.002.013.0032_0005 [29].

426. When asked about this, Ms Martin said she did not recall receiving a report from Mr Scott containing allegations of serious misconduct by Astill. She said it would not have been unusual for her to tell him to take the report to the intelligence officer, but she would not have known that Astill was the intelligence officer that day and would have assumed that Mr Scott would have returned to her to inform her of this.⁵⁵⁶
427. The Special Commission should accept Mr Foster’s account of the incident involving Mr Scott. It is not necessary to make a finding as to whether Ms Martin knew that Astill was the intelligence officer that day. Given her admitted knowledge that he relieved as intelligence officer, she should have been aware this was a possibility and should have checked before directing Mr Scott to provide his report to the intel officer.
428. The Special Commission should find that “file 13” did refer to documents being shredded, that it was understood by DCC inmates to have that meaning and that it was used as a means of inhibiting inmates and staff from reporting, because even the use of the term as a “joke” reflected a culture in which staff and inmates had no confidence that management took their reports seriously. The evidence that some officers regarded a term referring to shredding of documents as funny, in an environment where, at the time of Astill’s offending and subsequently, many reports were required to be “on paper” in order to be actioned, reflected an abysmally unprofessional approach to their workplace.

3.3.2 Fear of reprisal from staff

429. The culture at DCC had a significant impact upon both inmates’ and staff’s willingness to come forward with complaints.⁵⁵⁷ As explained by Ms Sheiles:

[T]he girls do not believe that they are safe to come forward and put in their complaint or put in a request, because as far as they're concerned in that mentality and that culture, it's blue will back blue. If you say something about an officer to another officer, they'll either tell the original officer or they won't do anything about it because it's

⁵⁵⁶ Transcript, 14 November 2023, T2331.1-43.

⁵⁵⁷ Transcript, 25 October 2023, T750.11-13.

*another officer. And, unfortunately, that's the culture that we're led to believe happens.*⁵⁵⁸

430. Witness M gave evidence that she was fearful of making a report about Astill's conduct towards her due to a fear of reprisal. Her evidence was that she did not feel safe.⁵⁵⁹ When Mr Paddison, who was involved in actioning a complaint that was ultimately made about Astill's conduct towards Witness M, referred to at [6.6] below, was asked about Witness M's reluctance to make a report due to a fear of reprisal, Mr Paddison agreed that her fear indicated a serious problem within the system.⁵⁶⁰
431. Mr Clark gave evidence that he was fearful about making a complaint on the basis of an allegation made by an inmate, like those made to him by Ms Sheiles, if that inmate was not prepared to put the allegation in writing. He explained that he feared for both himself and the inmate, which placed him in a very difficult position.⁵⁶¹
432. Similarly, Mr Riddle gave evidence that there could be retribution, such as bullying, harassment and ostracisation towards an officer who made a report about the conduct of another officer. He said that, as a result, it was "pushed down your throat, that you don't paper another officer". His evidence was that he would be surprised if there was any officer at any correctional centre who did not hold that fear of reprisal.⁵⁶²
433. Mr Foster also gave evidence about the culture of reporting. He said that another officer, Mr Scott, "was very, very strong in the view point you never ever put an officer on paper" (which, as referred to above, Mr Scott ultimately did in respect to Astill's conduct).⁵⁶³ Ms Gaynor also gave evidence that she was not "game" to put information on paper about conduct she had witnessed involving Witness E and Witness N.⁵⁶⁴ Ms Dolly's evidence was similar. Her

⁵⁵⁸ Transcript, 17 October 2023, T224.22-32.

⁵⁵⁹ Ex. 3, TB1, Vol 5, Tab 10A, AST.002.013.0006_0002 [7].

⁵⁶⁰ Transcript, 2 November 2023, T1553.14-32.

⁵⁶¹ Transcript, 25 October 2023, T750.25-38.

⁵⁶² Transcript, 27 October 2023, T1015.1-46, T1019.25-42. See also the evidence of Mr Greaves: Transcript, 13 November 2023, T2140.8-16.

⁵⁶³ Transcript, 26 October 2023, T969.40-T970.6.

⁵⁶⁴ Transcript, 26 October 2023, T994.16-26.

evidence was that there was a culture, at the time of Astill's offending, where it was frowned upon to "paper" another officer, by submitting a report about another officer's conduct to management. Her evidence was that the culture against papering another officer has been long held at DCC and was present when she commenced at the centre. She recalled Mr Giles being "adamant" that an officer was not to paper another officer.⁵⁶⁵ Some support for this is to be found in an Investigator's Note made during the course of an investigation into alleged misconduct by Overseer McCall. The note reads "Then spoke with Westley Giles re requirement of a report re McCall matter. Stated 'I won't do a report, do what you like'."⁵⁶⁶

434. Ms Berry's evidence was that there was a "bit of an old school mentality" whereby officers would not put another officer down on paper. Ms Berry gave evidence about an incident on 12 January 2017 when Astill requested that she provide an inmate a copy of an inmate's identification document. As this request was contrary to policy, Ms Berry refused to action it and as a result was yelled at by Astill.⁵⁶⁷ Ms Berry did not make a written complaint of the incident as she was scared for her safety and thought that Astill would physically assault her.⁵⁶⁸
435. Mark Wilson also gave evidence about an "old culture" whereby an officer would not put another officer down on paper, however when newer officers, such as himself, started working for CSNSW, they did not adopt that culture.⁵⁶⁹
436. Mr Shearer's evidence was that officers were scared to report things. He explained that "if you put your head above the parapet, you get it knocked off".⁵⁷⁰ Mr Shearer's evidence was that staff were often "stood over" by other officers not to report things, and that staff became "victims" when they raised complaints.⁵⁷¹

⁵⁶⁵ Transcript, 27 October 2023, T1113.16-T1114.15.

⁵⁶⁶ Ex. 3, Vol 491, Tab 491, CSNSW.0001.0032.4102_0337.

⁵⁶⁷ Ex. 18, TB2, Vol 7, Tab 49A, AST.002.013.0013_0018-19 [106].

⁵⁶⁸ Transcript, 30 October 2023, T1262.15-43.

⁵⁶⁹ Transcript, 2 November 2023, T1481.38-T1482.2.

⁵⁷⁰ Transcript, 16 November 2023, T2508.4-7.

⁵⁷¹ Transcript, 17 November 2023, T2542.1-29.

437. Mr Hovey also gave evidence about the culture against dobbing which existed earlier on his career, including early on in his appointment as the Director of the IB. He gave evidence that the culture changed around 2021 resulting in a large increase in referrals to the IB from correctional officers regarding concerns about the behaviour of other officers.⁵⁷²
438. When Ms Martin was asked about the evidence of numerous inmates and officers who wanted to make complaints about Astill's conduct and were bullied and intimidated by him against doing so, Ms Martin stated that she was not aware Astill was intimidating staff.⁵⁷³
439. The Special Commission should find there was a widespread culture at DCC where officers were pressured against reporting the misconduct of other officers. This culture had very real, and very damaging, impacts on the women at DCC, who were victimised, unabated, by Astill over a lengthy period of time. It is apparent that officers held a fear of reprisal in relation to the reporting of Astill, and that fear of putting other officers "on paper" is still held, though perhaps not to the same extent, by officers at DCC.
440. Relatedly, the Special Commission heard evidence of numerous officers that there was a stigma and shame associated with making a report about the conduct of another officer.⁵⁷⁴ Ms Kellett's evidence was that there was a cultural issue across a number of centres, including DCC, Long Bay, Silverwater Women's and Metropolitan Remand and Reception Centre (**MRRC**), that staff would not submit misconduct reports.⁵⁷⁵
441. Mr Greaves gave evidence that it was not at all surprising that inmates and junior staff were fearful, if not terrified, of the consequences of reporting misconduct by a senior officer who had the overt support from the executives. He also noted the physical risk of violence faced by inmates who made reports.⁵⁷⁶ Mr Greaves gave evidence about the ethical leadership training

⁵⁷² Transcript, 8 November 2023, T1859.14-21.

⁵⁷³ Transcript, 13 November 2023, T2219.15-20.

⁵⁷⁴ Ex. 57, TB2, Vol 8, Tab 74, AST.002.013.0021_0006 [43]; Transcript, 30 October 2023, 1262.21-44; Ex. 26, TB2, Vol 7, Tab 60A, AST.002.013.0048_0007 [46]; Ex. 14, TB2, Vol 7, Tab 58A, AST.002.013.0040_0009 [64].

⁵⁷⁵ Ex. 26, TB2, Vol 7, Tab 60A, AST.002.013.0048_0007 [46]-[48].

⁵⁷⁶ Ex. 35, TB2, Vol 8A, Tab 91, AST.002.013.0057_0031-32 [149]-[151].

that he conducted. He was concerned about the widespread mistrust of CSNSW's leadership in general and was aware that there was a "culture of cover-up" within the agency.⁵⁷⁷ His evidence was that he introduced the training to overcome concerns that officers would not "paper" another officer. He also gave evidence that the flat structure within Custodial Corrections and the intense competition for promotion, also created difficulties in respect of reporting the conduct of a more senior staff member.⁵⁷⁸ He gave evidence about broader cultural factors affecting reporting by officers, including that there were several overlapping policy documents which provided inconsistent instructions to staff on their obligations to report misconduct.⁵⁷⁹

442. Ms Robinson's evidence was that there was a mentality at CSNSW that officers who "dobbed" on staff were dogs, and even though DCC was a newer gaol, that culture existed there as well.⁵⁸⁰ Mr Giles similarly explained that reporting was seen as a "no go" as you would be labelled a dog.⁵⁸¹ When he first started at CSNSW as a 19-year-old in 1999, there was a general culture that an officer should not "paper" another officer, regardless of what the subject of the complaint was. He explained that by 2015 the culture had improved, and there was an expectation that misconduct be reported, however it still carried the risk of being labelled a dog.⁵⁸²

443. When asked whether there was a mentality at DCC that officers who dobbed on other officers were dogs, Ms Martin said that mentality was not evident to her.⁵⁸³ For the reasons stated below at [6.17], Ms Martin's evidence on this issue should be rejected.

444. Mr Shearer gave evidence that there was a deference to the 'old' model in CSNSW that officers keep their mouths shut. His view was this deference arose from the culture where young staff who commence at CSNSW "very fresh and bright-eyed with new ideas", get told to "shut up"

⁵⁷⁷ Ex. 35, TB2, Vol 8A, Tab 91, AST.002.013.0057_0019 [94].

⁵⁷⁸ Ex. 35, TB2, Vol 8A, Tab 91, AST.002.013.0057_0031 [147]-[148].

⁵⁷⁹ Ex. 35, TB2, Vol 8A, Tab 91, AST.002.013.0057_0014 [69].

⁵⁸⁰ Ex. 24, TB2, Vol 8, Tab 81, AST.002.013.0051_0004 [27]-[28].

⁵⁸¹ Ex. 44, TB2, Vol 7, Tab 66A, AST.002.013.0052_0014 [100].

⁵⁸² Transcript, 17 November 2023, T2559.45-2560.28.

⁵⁸³ Transcript, 13 November 2023, T2191.10-13.

until they have done their “time”. He said that it was a particularly misogynistic culture, making it tough for women.⁵⁸⁴

445. Ms Zekanovic gave evidence that there was a reluctance by CSNSW staff to speak to PSB staff and agreed that the attitude against “papering” another officer remained a cultural problem at CSNSW.⁵⁸⁵

446. Ms Chappell’s evidence was similar. She gave evidence regarding the culture that it was not acceptable to “paper” another officer. She said that concerns about that culture still existed, however “the narrative around it is changing”. Her view was that “those types of culture changes do take time”.⁵⁸⁶ Ms Chappell was asked about her knowledge of officers being at risk of retribution, bullying or intimidation if they made reports about other officers. Her evidence was:

*I think, historically, there have been reservations, and I would say that the team now do still report concerns around that. What we're trying to do at Dillwynia at the moment is to encourage an understanding around bullying and harassment and what that might look like and why sometimes, even if you mean a comment in a well-intended way, it could be misconstrued by someone who's put a complaint in.*⁵⁸⁷

447. Mr Corcoran also gave evidence about the retribution faced by officers who made reports, or “papered” another officer. His evidence was that culture “is a common feature of Corrective Services around the nation”. His evidence was that, in his experience in jurisdictions across Australia, including NSW, officers were reluctant to report other officers, including where the behaviour involved serious misconduct.⁵⁸⁸

448. The Special Commission should find that there remains an entrenched mentality or culture amongst correctional officers that officers should not report the misconduct of other officers, with an associated risk of being labelled a “dog”. The Special Commission should accept Mr

⁵⁸⁴ Transcript, 17 November 2023, T2542.11-22.

⁵⁸⁵ Transcript, 21 November 2023, T2819.18-38.

⁵⁸⁶ Transcript, 22 November 2023, T2934.10-27.

⁵⁸⁷ Transcript, 22 November 2023, T2934.45-2935.8.

⁵⁸⁸ Transcript, 22 November 2023, T2966.39-2967.17.

Greaves' evidence as to factors contributing to this mentality and associated fears of reporting other officers' misconduct. While the Special Commission heard some evidence that this mentality has shifted somewhat in the last few years, the number of officers who expressed their fears of reporting misconduct in terms revealing such a mentality indicates that it remains entrenched.

3.3.3 Correctional and senior correctional officers' handling of complaints

449. The Inspector gave evidence that women in custody may feel particularly vulnerable due to previous experience of abuse, violence, and trauma.⁵⁸⁹ Many also have particular needs and experiences as Aboriginal and Torres Strait Islander people, people with disability, people from culturally and linguistically diverse backgrounds and survivors of abuse that can contribute to a reluctance to make a complaint, particularly if they are in an environment where they feel those needs are not well understood.⁵⁹⁰

450. The Special Commission heard evidence from numerous inmates about their difficulties in making reports of misconduct by officers to correctional officers and senior correctional officers.

451. Witness C gave evidence about her experience making complaints to correctional officers and senior correctional officers. Witness C gave evidence about an occasion in 2015 where she spoke to Mr Rowe about other inmates being picked on. In response, Mr Rowe was verbally aggressive and abusive towards her in front of other inmates. Witness C said, "I have come to you for help and you are screaming at me".⁵⁹¹

452. Witness C also gave evidence about when she made complaints to Mr Giles and he would mostly brush her off, saying things like, "go away and come back later", "that's not that important compared to other things I have to do" or "don't worry you're not special".⁵⁹² If

⁵⁸⁹ Ex. 45, TB5, Vol 26, Tab 10, AST.002.013.0060_0027 [178].

⁵⁹⁰ Ex. 45, TB5, Vol 26, Tab 10, AST.002.013.0060_0027 [178].

⁵⁹¹ Ex. 3, TB1, Vol 5, Tab 8A, AST.002.012.0001_0006 [23].

⁵⁹² Ex. 3, TB1, Vol 5, Tab 8A, AST.002.012.0001_0009-10 [37].

Witness C asked to speak to a manager to action her complaint, she would be told that, either, they were too busy, or that actioning the complaint was the responsibility of the correctional officer she had initially approached.⁵⁹³ Witness C's evidence was that if she made a complaint to someone other than Mr Giles, she was accused as "officer shopping".⁵⁹⁴ She recalled an incident when she raised an issue with Mr Giles, and later raised the issue with another officer, following which Mr Giles punished her by cancelling her visits and increasing the number of cell searches.⁵⁹⁵

453. Mr Giles was asked about Witness C's evidence and denied that he had accused Witness C of officer shopping or had punished her after she had done so.⁵⁹⁶ He also said that Witness C's evidence in relation to him brushing her off when she tried to make a complaint and telling her that "she was not that special", was incorrect.⁵⁹⁷

454. Witness P gave evidence about an occasion when she asked Mr Giles to see Ms Martin about Astill's conduct. Mr Giles responded, "I can see what he's doing but I can't do anything."⁵⁹⁸

455. Ms Cox gave evidence that inmates were scared to make complaints due to fear of retribution by the officer who the complaint was against.⁵⁹⁹ She recalled an occasion where she submitted a complaint about an officer and was "pulled" into a room with that officer and told if she went any further with it, she would be charged with making a frivolous complaint.⁶⁰⁰

456. Witness O similarly recalled the difficulty she experienced in making complaints to Mr Giles, where he would tell her off and be rude.⁶⁰¹ She gave evidence that he said to her, "Suck it up and deal with it. You are an inmate".⁶⁰² Witness O also recalled occasions when Mr Giles would

⁵⁹³ Ex. 3, TB1, Vol 5, Tab 8A, AST.002.012.0001_0009-10 [37].

⁵⁹⁴ Ex. 3, TB1, Vol 5, Tab 8A, AST.002.012.0001_0003 [11].

⁵⁹⁵ Ex. 3, TB1, Vol 5, Tab 8A, AST.002.012.0001_0003 [11].

⁵⁹⁶ Transcript, 17 November 2023, T2568.21-43.

⁵⁹⁷ Transcript, 17 November 2023, T2582.20-36.

⁵⁹⁸ Ex. 3, TB1, Vol 5, Tab 12A, AST.002.013.0007_0004 [29].

⁵⁹⁹ Transcript, 20 October 2023, T503.26-40.

⁶⁰⁰ Transcript, 20 October 2023, T514.33-39.

⁶⁰¹ Ex. 3, TB1, Vol 5, Tab 17A, AST.002.013.0028_0002 [11].

⁶⁰² Ex. 3, TB1, Vol 5, Tab 17A, AST.002.013.0028_0002 [12].

yell, “shut the fuck up, don’t speak Arabic, speak English”, even though Witness O was unable to speak English very well.⁶⁰³

457. Mr Giles’ evidence was that Witness O did not make a complaint to him about Astill’s conduct towards her.⁶⁰⁴
458. As detailed below, Witness B, Witness R and Witness V were involved in making a complaint about Astill’s conduct towards Witness M. Following this, Astill and other officers, would refer to those involved in making the complaint as “dogs”.⁶⁰⁵ Numerous inmates gave evidence about an occasion when Astill said “this place smells like dogs” at muster which the inmates understood to be directed at those who that reported Astill’s conduct towards Witness M.⁶⁰⁶ This occurred in front of a number of officers, including Officers Mohtaj, Robinson, Hayley Davis and Holyoak, Mr Mohtaj did not recall this occurring.⁶⁰⁷
459. The following day, Witness V spoke with Ms Barry and informed her of the comment made by Astill the previous day at muster. Ms Barry told Witness V that she heard that a report had been made by Astill in the “last few days” so it must have “leaked” back to Astill.⁶⁰⁸ As noted above, the Special Commission heard evidence that being called a “dog” could carry significant risks for an inmate’s safety.
460. Mr Riddle gave evidence that officers did not believe it to be worthwhile to make reports about misconduct by other officers, as they believed that the reports would be pushed ‘under the rug’ by management. He recalled other officers telling him that they had submitted reports, and nothing would come of them.⁶⁰⁹ Mr Rowe’s evidence was similarly that junior officers were very reluctant to submit reports as they believed that they were not being dealt with properly.⁶¹⁰

⁶⁰³ Ex. 3, TB1, Vol 5, Tab 17A, AST.002.013.0028_0002 [12].

⁶⁰⁴ Transcript, 17 November 2023, T2614.34-2615.1

⁶⁰⁵ Ex. 3, TB1, Vol 6, Tab 23A, AST.002.013.0030_0003 [15].

⁶⁰⁶ Ex. 3, TB1, Vol 6, Tab 23A, AST.002.013.0030_0004 [21]; Ex. 3, TB1, Vol 5, Tab 11A, AST.002.012.0002_0003 [12].

⁶⁰⁷ Transcript, 26 October 2023, T880.20-33; T882.31-36.

⁶⁰⁸ Transcript, 20 October 2023, T459.29-39; Ex. 3, TB1, Vol 5, Tab 11A, AST.002.012.0002_0003-4 [13].

⁶⁰⁹ Transcript, 27 October 2023, T1056.34-37.

⁶¹⁰ Ex. 57, TB2, Vol 8A, Tab 96, AST.002.013.0043_0005 [60].

461. Mr Jeans' evidence was that there was a culture of fear around the time of Astill's offending, and simultaneously for the few reports that were submitted, no or very little action was taken. His evidence was that officers would not submit reports because of this.⁶¹¹ Mr Mark Wilson gave evidence that he heard of other officers who had submitted reports regarding officer misconduct and the reports were left on the desk, where other staff members could read them.⁶¹²
462. Ms Dolly gave evidence that she spoke to Ms Deborah Wilson in relation to the reports Ms Dolly had submitted and was advised that "management are taking care of it". Ms Dolly never heard from Ms Martin about any of the reports and never saw anything happen in relation to them.⁶¹³ Ms Dolly also gave evidence that she was aware she could make a complaint to the Official Visitor following the series of mediations she attended with Astill, however she was hesitant to speak to the Official Visitor as she believed that they would report back to Ms Martin, so there was no point.⁶¹⁴
463. Ms Martin was also asked about the comments made by various officers regarding the handling of complaints of misconduct by management at DCC. Her evidence was that she did not know why Mr Riddle gave evidence that officers did not believe it to be worthwhile to make reports as management would push them under the carpet.⁶¹⁵ She disagreed with Mr Clark's evidence that the lack of confidence in senior management hindered reporting of misconduct by officers.⁶¹⁶
464. Mr Greaves gave evidence that he was concerned, in his role as PSB Manager, about the widespread mistrust of leadership at CSNSW in general. Various staff informed him explicitly of the "cover-up" culture at the agency, and that if they reported misconduct or complained

⁶¹¹ Ex. 57, TB2, Vol 8A, Tab 87, AST.002.013.0034_0004 [32].

⁶¹² Transcript, 2 November 2023, T1482.10-15.

⁶¹³ Ex. 16, TB2, Vol 8, Tab 77, AST.002.013.0026_0004-5 [25]-[27].

⁶¹⁴ Transcript, 27 October 2023, T1147.27-39.

⁶¹⁵ Transcript, 13 November 2023, T2191.3-8.

⁶¹⁶ Transcript, 13 November 2023, T2190.35-40.

about problems, then management inaction and retribution would inevitably follow. Staff also informed him that nepotism and patronage were rife.⁶¹⁷

465. Mr Riddle and Mr Clark's evidence as to officers' perception of management at DCC and the impact this had on reporting should be accepted. The Special Commission should find that the failure by senior staff members and management to competently and respectfully deal with complaints made by officers and inmates alike, resulted in a situation where many staff understood that reporting was pointless and inmates, rightfully, understood that they would not be believed by those in management when making a report of serious misconduct by an officer and feared the consequences of doing so. The profound significance of this lack of trust for the women who were victim to offending by Astill cannot be understated and, we submit, created an environment whereby such conduct was able to continue.

3.4 Initiatives aimed at improving the culture at DCC after Astill's arrest

466. The Special Commission heard evidence from former and current DCC Governors, Saffron Cartwright and Nicola Chappell, respectively, and Assistant Commissioner Chantal Snell regarding initiatives recently, or currently being introduced at DCC aimed at improving the culture at the centre.
467. Ms Cartwright was Governor of DCC from September 2021 to July 2023.⁶¹⁸ She gave evidence regarding leadership training that was delivered as part of the benchmarking process throughout 2017 to 2019 and delivered to Governors and Managers of Security. It was mandatory for all staff in those roles to complete an Advanced Diploma in Leadership and Management to help them undertake their leadership and management roles.⁶¹⁹ She also gave evidence that it became clear to her while she was Governor at DCC that staff did not know how to report misconduct outside the chain of command, or outside the centre, so in response to that concern, over a number of staff parades, Ms Cartwright addressed staff to inform them that they were able to

⁶¹⁷ Ex. 35, TB2, Vol 8A, Tab 91, AST.002.013.0057_0019 [94].

⁶¹⁸ Transcript, 20 November 2023, T2741.40-2742.6.

⁶¹⁹ Transcript, 20 November 2023, T2742.23-33; T2744.1-29.

report misconduct directly to her, the Director of the Region or the Commissioner of CSNSW, as well as to external services including ICAC, the Ombudsman and NSWPF.⁶²⁰

468. Ms Cartwright also gave evidence that she arranged for PSI to attend DCC and present to managers about the misconduct process and supporting staff to make reports.⁶²¹
469. Ms Cartwright's evidence was that following the opening of the new area of DCC in 2020, she set up a working group which, among other things, involved her supporting staff in an effort to ensure DCC returned to the rehabilitative centre it once was. She gave evidence that she took staff to visit Macquarie Correctional Centre, which was a maximum-security male facility and a Centre of Excellence, to show staff how to manage inmates safely with a rehabilitative approach.⁶²²
470. With respect to the use of inappropriate language by staff, Ms Cartwright gave evidence that she directed her executive staff to watch their own language and call out the inappropriate use of language by others. Her evidence was that she, and her predecessor Emma Smith who was Governor while Ms Cartwright was MOS, called out any poor performance or poor behaviour, which included referral of staff, both executive and non-executive to the PSB for use of foul language. She also gave evidence regarding her open-door policy and how she ensured that any reports of misconduct were treated confidentially and sensitively. Her evidence was that she would always thank staff for their courage in making reports and would ensure to provide them with updates where she was able to do so.⁶²³
471. Ms Chappell commenced as Governor of DCC in October 2023. She gave evidence regarding a risk report that was being prepared by SafetyWorks Consulting involving a psychosocial risk assessment in respect of interpersonal hazards such as bullying, conflict or harassment; job-specific hazards such as work overload, job demands and ambiguity; and organisational hazards such as poor change management, poor organisational justice and work systems (among other

⁶²⁰ Transcript, 20 November 2023, T2744.45-2746.15.

⁶²¹ Transcript, 20 November 2023, T2757.10-24.

⁶²² Transcript, 20 November 2023, T2758.18-2759.8.

⁶²³ Transcript, 20 November 2023, T2758.10-38.

things).⁶²⁴ She also gave evidence regarding a Wellbeing Manager who has been located at DCC since 27 September 2023 to offer psychosocial support to staff, and to support the wellbeing strategy at the centre. Ms Chappell gave evidence that a staff survey was being designed to determine staff satisfaction with the Wellbeing Manager. Her evidence was that both male and female psychologists had been commissioned since October 2023 to provide psychosocial crisis support to staff at the centre, in respect to both work and personal issues.⁶²⁵

472. Ms Chappell also gave evidence that she intended, by December 2023, to implement a Wellbeing Consultative Group at DCC to identify themes and codesign solutions in relation to issues affecting staff wellbeing at the centre and identify Wellbeing Champions to work with the management team to ensure that staff and inmates feel supported.⁶²⁶

473. Ms Chappell informed the Special Commission about a number of training programs for staff aimed at improving the culture at the centre, among other things. She gave evidence regarding:

- a) the implementation of a training program, Managing Professional Boundaries, which was made mandatory for all CSNSW staff and facilitated face-to-face by the Academy, aimed at introducing the concept of personal and professional boundaries, defining what professional boundaries are and identifying the role of professional boundaries in the workplace, and describing influences on boundaries within different types of professional roles.⁶²⁷ Ms Chappell's evidence was that 210 out of 277 staff at DCC had completed the course as at 31 October 2023;⁶²⁸
- b) the Working with Female Offenders training program introduced in December 2021, which runs over three days and is delivered both face-to-face and virtually, aimed to provide an awareness on the specific needs of female offenders and aims to help staff build on their skills to become more effective in their work and dealings with female offenders. The training also emphasises the challenges of working with women in

⁶²⁴ Ex. 50, TB5, Vol 27, Tab 11, CSNSW.0001.0261.0001_0006 [16(a)].

⁶²⁵ Ex. 50, TB5, Vol 27, Tab 11, CSNSW.0001.0261.0001_0006 [16(b)].

⁶²⁶ Ex. 50, TB5, Vol 27, Tab 11, CSNSW.0001.0261.0001_0007 [16(c)].

⁶²⁷ Ex. 50, TB5, Vol 27, Tab 11, CSNSW.0001.0261.0001_0012 [19]-[20].

⁶²⁸ Ex. 50, TB5, Vol 27, Tab 11, CSNSW.0001.0261.0001_0013 [22].

custody and acknowledges the background of female inmates who are more likely to have experienced trauma, including being victims of physical and sexual violence.⁶²⁹ Ms Chappell's evidence was that her view was that the course should be mandatory for all staff working in female centres, but that staff should complete the program after they have worked in the centre for a short period, so that they have practical examples to apply and consider in the training. Her evidence was that 208 out of 277 of her staff had completed the program;⁶³⁰

- c) Five Minute Intervention training which DCC began to implement for all staff (custodial and non-custodial) from 25 February 2021. The program is a mandatory two-day course delivered face-to-face at the Academy, designed for staff to recognise everyday conversations with inmates as opportunities to promote change and encourage pro-social behaviour. The program focuses on training staff to focus on building positive relationships with inmates and overcome barriers to communicating. As of 31 October 2023, 269 out of 277 staff at DCC had completed the training;⁶³¹
- d) an Unconscious Bias online course delivered by Thrive which was introduced at CSNSW in September 2021. The course is designed to challenge understandings of bias and stereotypes and provide strategies to identify and manage biases in the workplace. As of 16 November, 91 out of 277 staff at DCC had completed the course;⁶³²
- e) Mental Health First Aid training offered externally by providers such as Mental Health First Aid Australia to better identify and equip staff with skills to respond to inmates who suffer psychosocial harm. This training has historically been offered to staff at

⁶²⁹ Ex. 50, TB5, Vol 27, Tab 11, CSNSW.0001.0261.0001_0019-20 [47]-[51].

⁶³⁰ Transcript, 22 November 2023, T2950.26-2952.5. See also Ms Snell's evidence that the program will be mandatory for all staff working in a female correctional centre: Transcript, 24 November 2023, T3267.40-3268.8.

⁶³¹ Ex. 50, TB5, Vol 27, Tab 11, CSNSW.0001.0261.0001_0020-22 [52]-[59]; Transcript, 22 November 2023, T2952.7-24.

⁶³² Ex. 50, TB5, Vol 27, Tab 11, CSNSW.0001.0261.0001_0022 [60]-[62]; Transcript, 22 November 2023, T2952.26-2953.2. See also Ms Snell's evidence: Transcript, 24 November 2023, T3268.10-39.

DCC and Ms Chappell is currently exploring training providers to reintroduce the training at the centre;⁶³³ and

- f) Ms Chappell also gave evidence that, in consultation with CSNSW, she was seeking to procure an external training provider to implement a training program to assist staff in identifying unethical and corrupt conduct. She intends the program to be mandatory for all CSNSW staff at DCC.⁶³⁴

474. Ms Chappell also gave evidence regarding a number of programs aimed specifically at managers and those in leadership positions, including:

- a) the Inclusive Leadership course developed and delivered by Strategic Delivery which is mandatory for the Governor, Managers of Security and Functional Managers to complete. The course is aimed at developing leadership capabilities for managing biases at work through the cultivation of an inclusive workplace culture. In 2022, six DCC staff, including the then Governor Ms Cartwright, the MOS and Functional Managers completed the program;⁶³⁵
- b) the DCJ Leadership Sessions for staff at DCC provided by SafetyWorks Consulting which commenced on 17 November 2023, aimed at providing staff (particularly Functional Managers, Managers of Offender Services and Programs, and Senior Psychologists) with one-on-one leadership support and coaching sessions regarding managing workloads, supporting staff, psychological safety and building trust;⁶³⁶ and
- c) the Pre-Promotional Leadership and Development Course (**PPLDC**) that Managers of Security, Functional Managers and Senior Correctional Officers can be nominated to participate in, run by the Commissioner of CSNSW's office which includes tailored training for staff members in those roles to enhance and strengthen their capabilities and skill-level on a range of topics, including, emotional intelligence and emotional

⁶³³ Ex. 50, TB5, Vol 27, Tab 11, CSNSW.0001.0261.0001_0007 [16(f)].

⁶³⁴ Ex. 50, TB5, Vol 27, Tab 11, CSNSW.0001.0261.0001_0008 [16(h)].

⁶³⁵ Ex. 50, TB5, Vol 27, Tab 11, CSNSW.0001.0261.0001_0018-19 [44]-[45].

⁶³⁶ Ex. 50, TB5, Vol 27, Tab 11, CSNSW.0001.0261.0001_0017-18 [41]-[43].

self-management. Ms Chappell's evidence was three of the seven members of the DCC management team had completed the training program.⁶³⁷ She gave evidence that the balance of the management team would complete the program when possible, however had been unable to do so to date due to leave and other staffing issues.⁶³⁸ Ms Snell's evidence was the course was not currently mandatory for staff in those roles, but is mandatory for all staff prior to promotion.⁶³⁹

475. Ms Chappell gave evidence that staff at DCC would benefit from training that explicitly linked the training material to operational practices, and proposed this could be done by working with the providers of the Working with Female Offenders program to incorporate practical scenarios into the training material.⁶⁴⁰ She also noted that staff would benefit from training that explored their personal views and how these aligned with the values of DCJ, to assist staff to understand when their values are misaligned with those of the Department.⁶⁴¹

476. In respect to other initiatives which have been introduced at the centre, Ms Chappell gave evidence regarding monthly senior correctional officer meetings which were implemented in 2019 aimed at encouraging leadership and coaching to address operational issues at DCC and to ensure a consistent approach among staff.⁶⁴² She also referred to the implementation of the DCJ Let's Talk toolkit, being a structured communication tool that assists people to communicate clearly when discussing difficult topics. The toolkit includes checklists, conversation guides and videos on how to have productive conversations and, used properly, is designed to enable respectful conversations to take place.⁶⁴³

477. Ms Chappell gave evidence about a Workplace Mentor Program which was launched at DCC on 10 May 2023 which is a peer support program designed to improve workplace culture and

⁶³⁷ Ex. 50, TB5, Vol 27, Tab 11, CSNSW.0001.0261.0001_0016-17 [35]-[40].

⁶³⁸ Transcript, 22 November 2023, T2943.12-24.

⁶³⁹ Transcript, 24 November 2023, T3266.30-3267.38.

⁶⁴⁰ Ex. 50, TB5, Vol 27, Tab 11, CSNSW.0001.0261.0001_0022 [63]; Transcript, 22 November 2023, T2953.4-27.

⁶⁴¹ Ex. 50, TB5, Vol 27, Tab 11, CSNSW.0001.0261.0001_0022 [65].

⁶⁴² Ex. 50, TB5, Vol 27, Tab 11, CSNSW.0001.0261.0001_0008 [16(i)].

⁶⁴³ Ex. 50, TB5, Vol 27, Tab 11, CSNSW.0001.0261.0001_0009 [16(l)].

enhance staff skills and knowledge within CSNSW. Ms Chappell's evidence was that the program covers topics including, dealing with inmates at risk of suicide and conducting a medical escort for female inmates. Ms Chappell gave evidence that her management team were workshopping other topics to be included in the program, including job expectations, professional standards and ethical conduct.⁶⁴⁴

478. Ms Chappell also gave evidence regarding a briefing note that had been submitted for executive approval for there to be a stand-alone Governor of DCC, rather than one Governor being responsible for DCC and EPCC. Her evidence was that following her appointment as Governor at both centres in October 2023, she expressed that there was too much work involved for one Governor to be responsible for both centres; however, her understanding was the briefing note had already been submitted prior to her assuming the role.⁶⁴⁵

479. The evidence before the Special Commission indicates that Ms Chappell's view in relation to the need for a stand-alone Governor of DCC should be accepted.

480. **PROPOSED RECOMMENDATION: The Special Commission should recommend that a stand-alone Governor for DCC should be implemented as a priority.**

481. Ms Chappell also gave evidence that the role of the intelligence officer at DCC was now filled using cyclical rostering, meaning that the role is filled on the basis of the preferences of staff and staff stay in the role for six months.⁶⁴⁶

482. Ms Chappell gave evidence regarding the Inmate Delegate Committee (**IDC**) and house meetings, referred to further at [4.1] below, that had been reintroduced at DCC which give inmates both formal (with respect to the IDC), and informal (with respect to the house meetings) mechanisms to raise issues with senior staff at the centre. Her evidence was that that house meetings were a way in which trust could be built between inmates and staff and were an essential way to build positive working relationships, thereby creating an environment where

⁶⁴⁴ Ex. 50, TB5, Vol 27, Tab 11, CSNSW.0001.0261.0001_0008 [16(j)].

⁶⁴⁵ Transcript, 22 November 2023, T2931.36-2932.17. See also, Ex. 55, TB5, Vol 28, Tab 12, CSNSW.0001.0263.1558_0021.

⁶⁴⁶ Transcript, 22 November 2023, T2940.30-34.

inmates felt able to come forward with complaints, including about serious misconduct towards them by staff.⁶⁴⁷

483. Ms Snell gave evidence about her involvement in a number of initiatives across CSNSW in her role as Assistant Commissioner, Delivery, Performance and Culture. She gave evidence regarding the development a New Training Model to support the ongoing professionalisation of CSNSW's workforce and focus on cultural reform by providing clarity on the standards expected of employees. Staff are currently being consulted on the new model, with a view to it being introduced by June 2024.⁶⁴⁸ It will involve all new staff attending a newly developed five-day induction program on topic areas including ethical standards, misconduct and trauma informed practice, followed by a practical placement in one business area of the agency. This would be followed by a common foundational training, which would be uniform to staff across all areas, including custodial, services and programs and community corrections, and a second practical placement. Her evidence was that it was anticipated that queries arising from the placement could then be addressed when staff returned to the Academy to complete their training.⁶⁴⁹

484. **PROPOSED RECOMMENDATION: The Special Commission should recommend that any training program for new recruits ensures they are made aware of the opportunity to raise concerns or complaints in relation to other CSNSW staff in a safe manner.**

485. Ms Snell also gave evidence regarding the development of pre-promotion training designed to enhance and strengthen the capability and skills of Managers of Security, Senior Assistant Superintendents and Senior Correctional Officers across areas including communication and modelling accountability. It is intended that the training will commence from June 2024.⁶⁵⁰

486. Ms Snell gave evidence regarding further additions to training programs for all staff, including:

⁶⁴⁷ Transcript, 22 November 2023, T2945.15-32. See also the evidence of Ms Snell: Transcript, 24 November 2023, T3266.2-28.

⁶⁴⁸ Ex. 55, TB5, Vol 28, Tab 12, CSNSW.0001.0263.1558_0010 [44].

⁶⁴⁹ Ex. 55, TB5, Vol 28, Tab 12, CSNSW.0001.0263.1558_0009 [39(d)].

⁶⁵⁰ Ex. 55, TB5, Vol 28, Tab 12, CSNSW.0001.0263.1558_0010 [41]; Ex. 55, TB5, Vol 28, Tab 12, CSNSW.0001.0263.1558_0026.

- a) embedding changes to primary training, as well as the ‘Doing the Right Things’ and ‘Managing Female Offenders’ courses so that sexual harassment and workplace bullying are issues that are fully explored;
- b) embedding training about managing complaints from inmates in a trauma informed manner into the Integrated Induction course, Trauma Informed Practice course, Working with Female Offenders and Respectful Workplace Relationships course;
- c) adding content to the Integrated Induction courses, primary training and ‘Doing the Right Thing’ course regarding appropriate behaviour around managing complaints and expectations in respect to complaints, including that retributive action is not tolerated and is a form of misconduct,⁶⁵¹ and
- d) the development of a new training package to teach staff how to manage misconduct, which would be delivered over two days to cover bullying and harassment, sexual harassment, misconduct management, and record keeping, among other things.⁶⁵²

487. Ms Snell also gave evidence regarding the establishment of the Staff Support, Culture and Wellbeing Directorate and its design of the Culture Framework and Wellbeing Framework aimed to address the culture and wellbeing challenges faced by CSNSW. Her evidence was that it is anticipated that the Directorate will be fully operational in the first quarter of 2024, with preliminary staff members having already commenced. The Culture Framework aims to enable the development of a rehabilitative culture in relation to offenders, focusing on fairness, working conditions, perceptions of management, teamwork, safety and wellbeing. The Wellbeing Framework focuses on the prevention of, and early intervention to resolve, workplace issues. The Directorate will also support staff who are involved in, or victims of, misconduct matters, aimed at providing greater transparency in the misconduct process.⁶⁵³

488. With respect to conflicts of interest between staff members at CSNSW, Ms Snell’s evidence was that CSNSW will release a Commissioner’s Broadcast Memorandum to recommunicate

⁶⁵¹ Ex. 55, TB5, Vol 28, Tab 12, CSNSW.0001.0263.1558_0021-22.

⁶⁵² Ex. 55, TB5, Vol 28, Tab 12, CSNSW.0001.0263.1558_0023.

⁶⁵³ Ex. 55, TB5, Vol 28, Tab 12, CSNSW.0001.0263.1558_0010-12 [45]-[52].

the conflicts of interest policy requiring staff to declare conflicts, including perceived conflicts, would include the declaration form in onboarding packages for new recruits and staff transferring between locations, the development of a training package to upskill managers to identify, address and manage conflicts of interest, and a review of the current arrangements for reporting and monitoring conflicts of interest within the workplace.⁶⁵⁴

489. With respect to the *Public Interest Disclosure Act 2022* which commenced operation in October 2023, Ms Snell's evidence was that CSNSW is working on an implementation plan and training course to implement the changes prescribed by this legislation, to encourage, as prescribed by the legislation, staff to disclose corruption, maladministration and privacy contraventions by (among other things) protecting people from detrimental actions simply because they have made a disclosure; and providing for disclosures to be properly investigated and dealt with.⁶⁵⁵ She also gave evidence that Public Interest Disclosure officers, as required by s. 18 as the person responsible for receiving voluntary public interest disclosures, had been nominated for each CSNSW office and those persons had been advised of their role.⁶⁵⁶

490. **PROPOSED RECOMMENDATION: The Special Commission should recommend that the training initiatives detailed by Ms Chappell and Ms Snell above relating to ethical standards, misconduct and trauma informed practice, be delivered to staff on an ongoing basis and not limited to induction training for new staff. The Special Commission should further recommend that such training be delivered in-person where possible and be required of all staff members, including those at senior and management levels.**

491. Mr Buckley gave evidence regarding the CSNSW policies and procedures relating specifically to female inmates. His evidence was that those policies and procedures were:

- a) COPP s. 4 relating to inmate property, including the clothing and other items female inmates are permitted to have;

⁶⁵⁴ Ex. 55, TB5, Vol 28, Tab 12, CSNSW.0001.0263.1558_0024.

⁶⁵⁵ Ex. 55, TB5, Vol 28, Tab 12, CSNSW.0001.0263.1558_0024-25.

⁶⁵⁶ Transcript, 24 November 2023, T3275.32-3276.12.

- b) COPP s. 6.7 relating to access to dental dams for female inmates;
- c) COPP s. 19.6 relating to the requirement that, where possible, a female correctional officer must escort a female inmate to medical appointments, and particularly for obstetric and gynaecological consultation;
- d) COPP s. 17 relating to the searching, including strip searching of female inmates; and
- e) COPP s. 19.1 relating to the general escort procedures for female inmates.⁶⁵⁷

492. Ms Snell also gave evidence regarding a number of strategy and policy initiatives that the CSNSW Strategy and Policy Branch intended to introduce to establish and maintain a rehabilitative culture at CSNSW. Her evidence was that those initiatives would include a Women's Strategy and a rehabilitation framework that provides guidance and support for rehabilitative practice.⁶⁵⁸

493. The evidence before the Special Commission indicates that there is no CSNSW policy or procedure regarding the management of female inmates specifically, beyond those particular sections of the COPP relating to procedures for female inmates identified by Mr Buckley.

494. **PROPOSED RECOMMENDATION: Consideration should be given to recommending that the strategy and policy initiatives specific to female inmates the subject of Ms Snell's evidence be put in place. These should include, as one aspect of a Women's Strategy, the development of a sexual misconduct policy and associated training for CSNSW staff.**

⁶⁵⁷ Ex. 59, TB5, Vol 22, Tab 4, Annexure JB-5, CSNSW.0001.0087.0001_0062-68.

⁶⁵⁸ Ex. 55, TB5, Vol 28, Tab 12, CSNSW.0001.0263.1558_0012-0013 [52]; Ex. 55, TB5, Vol 28, Tab 12, Annexure CS-3, CSNSW.0001.0263.1558_0027.

4. Inmate Complaint Mechanisms

4.1. Corrective Services mechanisms available internally at Dillwynia Correctional Centre

4.1.1 Inmate Application Forms

495. An inmate application form is intended to be an auditable document that is utilised by inmates to raise significant concerns and issues affecting their incarceration.⁶⁵⁹ Inmate application forms are not intended to be used for issues that can be resolved locally (contrast inmate request forms, discussed below) but rather are intended to be used for more significant issues that may extend externally from the correctional centre, for example, requests for police involvement, non-association with other inmates or reporting misconduct incidents that might require escalation, including to PSB/PSI.⁶⁶⁰ Functional Managers are responsible for the management and processing of these forms during normal business hours, otherwise the most senior officer on duty must oversee the issue of the forms.⁶⁶¹
496. The former OPM described an inmate application form as “the most important official document used by inmates to raise problems and issues relating to their lives while in custody. Such application forms are only to be used for significant issues affecting the inmate where it is important to record an official process.”⁶⁶² Generally, the officer receiving the application from the inmate would take it directly to the Governor.⁶⁶³

⁶⁵⁹ Ex. 3, TB3, Vol 10, Tab 156, CSNSW.0001.0024.0201_0001 [3.1.6]; Ex. 59, TB5, Vol 23, Annexure JB-1 Tab 10, CSNSW.0001.0112.0008 [1.1].

⁶⁶⁰ Ex. 58, TB3, Vol 18, Tab 623, CSNSW.0002.0024.2078_0349-350 [8.29.3]; Ex. 3, TB2, Vol 7, Tab 62A, AST.002.013.0045_0003 [10]; Ex. 3, TB2, Vol 7, Tab 63A, AST.002.013.0022_0002 [15]; Transcript, 1 November 2023, T1348.13-29; Ex. 3, TB2, Vol 7, Tab 49A, AST.002.013.0013_0005 [22(a)].

⁶⁶¹ Ex. 3, TB3, Vol 10, Tab 156, CSNSW.0001.0024.0201_0001 [4.1.2]; Ex. 59, TB2, Vol 8, Tab 79, AST.002.013.0038_0009 [64]; Ex. 59, TB5, Vol 23, Annexure JB-1 Tab 10, CSNSW.0001.0112.0008 [1.1].

⁶⁶² Ex. 58, TB3, Vol 18, Tab 623, CSNSW.0002.0024.2078_0349-350 [8.29.3].

⁶⁶³ Ex. 3, TB2, Vol 7, Tab 62A, AST.002.013.0045_0003 [10]; Transcript, 17 November 2023, T2555.38-T2556.6; Transcript, 30 October 2023, T1178.35-46. Cf the evidence of Mr Mohtaj: Transcript, 25 October 2023, T856.20-28 and the evidence of Mr Peek: Transcript, 1 November 2023, T1406.26-T1407.5.

497. The current LOP requires that when an inmate application form is issued to an inmate, it must include the inmate's location on the front of the form and a registration number on the back of the form.⁶⁶⁴ The latter must accord with the number recorded in the Inmate Application Register.⁶⁶⁵ The former OPM similarly provided that an inmate application was "not valid" until an identifying register number was recorded in the registration block on the back of the form.⁶⁶⁶
498. The intended process is that a copy of the application will be filed in a secure filing cabinet at the location where it was raised or saved electronically on the inmate's Case Management File.⁶⁶⁷ A copy should be provided to the inmate "where possible".⁶⁶⁸
499. The application should be actioned and resolved within 14 days, if possible.⁶⁶⁹ The intended process is that the progress of the application will be reviewed at 14 day intervals from the date of its submission and recorded in the Register.⁶⁷⁰
500. The outcome is to be recorded on the form and returned to the Functional Manager or authorised officer.⁶⁷¹ The inmate must be advised of the outcome and the inmate must acknowledge the outcome by signing the form.⁶⁷² The completed form is to then be stored in a secure filing

⁶⁶⁴ Ex. 3, TB3, Vol 10, Tab 156, CSNSW.0001.0024.0201_0002 [5.1].

⁶⁶⁵ Ex. 3, TB3, Vol 10, Tab 156, CSNSW.0001.0024.0201_0002 [5.1]; Ex. 58, TB3, Vol 18, Tab 623, CSNSW.0002.0024.2078_0349 [8.29.2], 350 [8.29.5].

⁶⁶⁶ Ex. 58, TB3, Vol 18, Tab 623, CSNSW.0002.0024.2078_0349 [8.29.2].

⁶⁶⁷ Ex. 3, TB3, Vol 10, Tab 156, CSNSW.0001.0024.0201_0002 [5.1]; Ex. 17, TB2, Vol 7, Tab 62A, AST.002.013.0045_0003 [10]; Ex. 59, TB5, Vol 23, Annexure JB-1 Tab 10, CSNSW.0001.0112.0009 [1.2]. See also the former OPM: Ex. 58, TB3, Vol 18, Tab 623, CSNSW.0002.0024.2078_0350-351 [8.29.6].

⁶⁶⁸ Ex. 3, TB3, Vol 10, Tab 156, CSNSW.0001.0024.0201_0002-3 [5.1]. See also the former OPM: Ex. 58, TB3, Vol 18, Tab 623, CSNSW.0002.0024.2078_0350-351 [8.29.6].

⁶⁶⁹ Ex. 3, TB3, Vol 10, Tab 156, CSNSW.0001.0024.0201_0003 [5.1]; Ex. 59, TB5, Vol 23, Annexure JB-1 Tab 10, CSNSW.0001.0112.0010 [1.2].

⁶⁷⁰ Ex. 3, TB3, Vol 10, Tab 156, CSNSW.0001.0024.0201_0003 [5.1]. See also the former OPM: Ex. 58, TB3, Vol 18, Tab 623, CSNSW.0002.0024.2078_0350 [8.29.5].

⁶⁷¹ Ex. 3, TB3, Vol 10, Tab 156, CSNSW.0001.0024.0201_0003 [5.1]. See also the former OPM: Ex. 58, TB3, Vol 18, Tab 623, CSNSW.0002.0024.2078_0351 [8.29.7]. If the application is a request for protective custody, the recording of the outcome is governed by s. 3.2 of the COPP.

⁶⁷² Ex. 3, TB3, Vol 10, Tab 156, CSNSW.0001.0024.0201_0003 [5.1]; Ex. 3, TB2, Vol 7, Tab 63A, AST.002.013.0022_0002 [15]. See also the former OPM: Ex. 58, TB3, Vol 18, Tab 623, CSNSW.0002.0024.2078_0351 [8.29.6].

cabinet or electronically, and at the end of each month, placed in storage at a location that is not the relevant accommodation area office.⁶⁷³

501. Two years after an audit, stored applications are forwarded to Silverwater.⁶⁷⁴ However, neither of the relevant COPP, LOP or former OPM set out how this audit is conducted or who is responsible for conducting the audit. Functional Managers are required to audit the Inmate Application Register every week,⁶⁷⁵ however, it seems unlikely that a correctional centre would forward audited documents to Silverwater every week (being two years after each week that the Register was audited).
502. Officer Stephen Virgo told the Special Commission that where an inmate wished to make a complaint about a serious incident, including the commission of a criminal offence, officers were required to fill out an “incident package”. While the policy source of the “incident package” is not known to the Special Commission, Mr Virgo stated that the package included “the inmate request form” (which the Special Commission takes to be a reference to the inmate application form, the terms commonly being confused among officers), Justice Health forms where applicable, incident report forms for officers to complete, and police indemnity forms.⁶⁷⁶ When completed, the package was to be escalated to the MOS for review and, where use of force or a serious incident was involved, escalated to the Security Manager (who has the rank of Senior Assistant Superintendent and reports to the MOS) and Governor.⁶⁷⁷ Mr Virgo also gave evidence that any officer misconduct reports or serious incident reports must be submitted to the Security Manager, who will liaise with the police and the Governor.⁶⁷⁸ If the incident is not serious enough for escalation, a determination is made (it is unclear by whom, on Mr

⁶⁷³ Ex. 3, TB3, Vol 10, Tab 156, CSNSW.0001.0024.0201_0002-3 [5.1]; Ex. 59, TB5, Vol 23, CSNSW.0001.0112.0010 [1.2]. See also the former OPM: Ex. 58, TB3, Vol 18, Tab 623, CSNSW.0002.0024.2078_0351 [8.29.7].

⁶⁷⁴ Ex. 3, TB3, Vol 10, Tab 156, CSNSW.0001.0024.0201_0003 [5.1]; Ex. 59, TB5, Vol 23, CSNSW.0001.0112.0010 [1.2]. See also the former OPM: Ex. 58, TB3, Vol 18, Tab 623, CSNSW.0002.0024.2078_0351 [8.29.7].

⁶⁷⁵ Ex. 3, TB3, Vol 10, Tab 156, CSNSW.0001.0024.0201_0005 [6.3].

⁶⁷⁶ Ex. 9, TB2, Vol 7, Tab 64A, AST.002.013.0017_0003-4 [18]; Ex. 21, TB2, Vol 8, Tab 73, AST.002.013.0033_0004 [28].

⁶⁷⁷ Ex. 9, TB2, Vol 7, Tab 64A, AST.002.013.0017_0004 [19]; Ex. 57, TB2, Vol 7, Tab 69, AST.002.013.0011_0003 [14].

⁶⁷⁸ Ex. 9, TB2, Vol 7, Tab 64A, AST.002.013.0017_0004 [20].

Virgo's evidence) that it can be dealt with within the correctional centre, so the complaint is not escalated to anywhere external to the centre.⁶⁷⁹

4.1.2 Inmate Request Forms

503. An inmate request form is used specifically for daily issues that are not deemed recordable, that is, issues that do not have a bearing on the inmate's incarceration and that relate to matters internal within the gaol.⁶⁸⁰ This includes an inmate requesting to meet with the Governor.⁶⁸¹ Functional Managers, Officers in Charge and Supervisors are responsible for the management and processing of these forms.⁶⁸²
504. The intended process is that all submitted requests will be recorded in the Inmate Request Register for the accommodation area, which should be reviewed daily to assess the progress of the request.⁶⁸³ The Officer in Charge of the area where the Register is maintained is responsible for the registration and action of inmate requests and Functional Managers are required to audit the Inmate Request Register every week.⁶⁸⁴ A request should be actioned by the appropriate person or office within 14 days where possible.⁶⁸⁵ The OIC or supervisor where the Inmate Request Register is kept must ensure all requests are actioned and finalised.⁶⁸⁶

⁶⁷⁹ Ex. 9, TB2, Vol 7, Tab 64A, AST.002.013.0017_0008 [45].

⁶⁸⁰ Ex. 3, TB3, Vol 10, Tab 156, CSNSW.0001.0024.0201_0001 [3.1.5]; Ex. 58, TB3, Vol 18, Tab 623, CSNSW.0002.0024.2078_0349-350 [8.29.3], 352 [8.29.10]; Ex. 3, TB1, Vol 5, Tab 17A, AST.002.013.0028_0007-8 [41]; Ex. 17, TB2, Vol 7, Tab 62A, AST.002.013.0045_0003 [11]; Ex. 3, TB2, Vol 7, Tab 63A, AST.002.013.0022_0002 [14]; Transcript, 25 October 2023, T739.29-45; Ex. 59, TB5, Vol 23, Annexure JB-1 Tab 10, CSNSW.0001.0112.0011 [2.1].

⁶⁸¹ Ex. 16, TB2, Vol 8, Tab 77, AST.002.013.0026_0011 [53]; Transcript, 20 October 2023, T500.42-T501.4; Transcript, 14 November 2023, T2285.35-37; Ex. 57, TB2, Vol 7, Tab 57A, AST.002.013.0031_0005 [21].

⁶⁸² Ex. 3, TB3, Vol 10, Tab 156, CSNSW.0001.0024.0201_0001 [4.1.3].

⁶⁸³ Ex. 3, TB3, Vol 10, Tab 156, CSNSW.0001.0024.0201_0004 [5.2.1]; Ex. 58, TB3, Vol 18, Tab 623, CSNSW.0002.0024.2078_0352 [8.29.8]; Ex. 3, TB1, Vol 5, Tab 8A, AST.002.013.0001_0010-11 [42]; Ex. 18, TB2, Vol 7, Tab 49A, AST.002.013.0013_0005 [22]; Ex. 17, TB2, Vol 7, Tab 62A, AST.002.013.0045_0003 [12].

⁶⁸⁴ Ex. 58, TB3, Vol 18, Tab 623, CSNSW.0002.0024.2078_0352 [8.29.10.1]; Ex. 3, TB1, Vol 5, Tab 8A, AST.002.013.0001_0010-11 [42]; Ex. 17, TB2, Vol 7, Tab 62A, AST.002.013.0045_0003 [11]; Ex. 8, TB2, Vol 7, Tab 63A, AST.002.013.0022_0002 [14]; Ex. 3, TB3, Vol 10, Tab 156, CSNSW.0001.0024.0201_0005 [6.3]; Ex. 18, TB2, Vol 7, Tab 49A, AST.002.013.0013_0006 [24], 14 [74].

⁶⁸⁵ Ex. 3, TB3, Vol 10, Tab 156, CSNSW.0001.0024.0201_0004 [5.2.1]; Ex. 59, TB5, Vol 23, Annexure JB-1 Tab 10, CSNSW.0001.0112.0012 [2.2].

⁶⁸⁶ Ex. 3, TB3, Vol 10, Tab 156, CSNSW.0001.0024.0201_0005 [6.2].

505. Once the request is actioned, the intended process is that the outcome is recorded on the form and the form returned to the Functional Manager or other authorised officer.⁶⁸⁷ The inmate must be notified of the outcome and the original form filed.⁶⁸⁸

506. Mr Virgo gave evidence that “95% of incidents that are reported will be dealt with by the Senior Correctional officer on the wing” by way of an inmate request form.⁶⁸⁹

4.1.2.1 Practical implications of Inmate Application and Request forms

507. In the evidence before the Special Commission, both an inmate request form and an inmate application form are sometimes referred to as a “bluey”.⁶⁹⁰ Officer Peter Barglik told the Special Commission that he now understands a “bluey” to be a medical form that an inmate can use to request to see Justice Health, but that it was previously an inmate request form.⁶⁹¹ The inmate request and inmate application forms were often confused with each other in evidence before the Special Commission.⁶⁹² That is, in practice, there appears to often have been no real distinction made between the two forms and their use was inconsistent and confused. There was similarly confusion among correctional officers as to whom they were to take an inmate application form to for actioning, particularly whether the application was to be provided directly to the Governor or sent up the chain of command.⁶⁹³

⁶⁸⁷ Ex. 3, TB3, Vol 10, Tab 156, CSNSW.0001.0024.0201_0004 [5.2.1].

⁶⁸⁸ Ex. 3, TB3, Vol 10, Tab 156, CSNSW.0001.0024.0201_0004-5 [5.2.1]; Ex. 59, TB5, Vol 23, Annexure JB-1 Tab 10, CSNSW.0001.0112.0012 [2.2].

⁶⁸⁹ Ex. 9, TB2, Vol 7, Tab 64A, AST.002.013.0017_0003-4 [16]-[18].

⁶⁹⁰ Ex. 9, TB2, Vol 7, Tab 64A, AST.002.013.0007_0007 [44]; Ex. 57, TB2, Vol 8, Tab 74, AST.002.013.0021_0002 [9]; Transcript, 29 September 2023, T125.41-44; Ex. 57, TB2, Vol 7, Tab 57A, AST.002.013.0031_0005 [21]; Ex. 21, TB2, Vol 8, Tab 73, AST.002.013.0033_0003 [20]; Ex. 57, TB2, Vol 8, Tab 74, AST.002.013.0021_0002 [9]; Ex. 29, TB2, Vol 8, Tab 83, AST.002.013.0035_0005 [38]; Ex. 57, TB2, Vol 7, Tab 55A, AST.002.013.0016_0004 [21].

⁶⁹¹ Ex. 57, TB2, Vol 7, Tab 50A, AST.002.013.0037_0004 [23].

⁶⁹² Ex. 9, TB2, Vol 7, Tab 64A, AST.002.013.0007_0007 [44]; Transcript, 25 October 2023, T739.1-T741.6; Transcript, 30 October 2023, T1179.1-18; Ex. 57, TB2, Vol 7, Tab 57A, AST.002.013.0031_0005 [21]; Ex. 17, TB2, Vol 7, Tab 62A, AST.002.013.0045_0003 [10]; Ex. 57, TB2, Vol 7, Tab 55A, AST.002.013.0016_0004 [21]; Ex. 13, TB2, Vol 7, Tab 56A, AST.002.013.0032_0009 [53].

⁶⁹³ Transcript, 25 October 2023, T740.1-5, T856.20-28; Transcript, 30 October 2023, T1178.35-46; Transcript, 1 November 2023, T1406.26-T1407.3; Transcript, 17 November 2023, T2555.38-2556.6; Ex. 18, TB2, Vol 7, Tab 49A, AST.002.013.0013_0005 [22]; Ex. 21, TB2, Vol 8, Tab 73, AST.002.013.0033_0003 [20]; Ex. 13, TB2, Vol 7, Tab 56A, AST.002.013.0032_0009 [53].

508. Officer Paul Foster recalled that there was a time previously at DCC where an inmate application form or “bluey” was the only way in which an inmate could make a request or complain in writing.⁶⁹⁴ Mr Foster opined that when the inmate request form was brought in, the precise time of which is unknown to the Special Commission, the process became simpler.⁶⁹⁵ In this context, and in the context of the other services available to inmates, such as the Official Visitor, Chaplain and Justice Health (see below), Mr Foster said:

*It used to be a green [inmate] line and a blue [officer] line, and no one crossed over, you had no grey area to work in. We now address individual needs more, we can find a solution to a unique problem, rather than a black and white yes/no.*⁶⁹⁶

509. The Special Commission heard that, in reality, the process for inmates making complaints at DCC was convoluted and inmates were burdened by fear and mistrust about the process.

510. Witnesses B and C gave evidence that they knew to make a complaint by filling out an inmate request form, but that it would go through the Wing Officer and then to the Wing Manager, even though that may be the person who is the subject of the complaint.⁶⁹⁷ Further, the fact that the Wing Officer could make their own determination about what to do with the request form was concerning for inmates. Witness B stated that on some occasions when she had requested that her complaint go to the Governor, this was refused, and that Wing Officers would want to know what it was about before they would do anything with the request.⁶⁹⁸

511. Witness C gave evidence that:

The inmate request form has a number on it, but you do not get a copy or ever get it back, so you never really knew if management higher up was aware of the complaint.

*Once you hand your request in, you have no oversight as to what happens with it. If your request is denied, you are asked to sign off on it, but otherwise, you don't see it again and you are not given a copy. I have no idea whether Governor Martin received my forms. I did not hand them to her directly.*⁶⁹⁹

⁶⁹⁴ Ex. 13, TB2, Vol 7, Tab 56A, AST.002.013.0032_0009 [59].

⁶⁹⁵ Ex. 13, TB2, Vol 7, Tab 56A, AST.002.013.0032_0009 [59].

⁶⁹⁶ Ex. 13, TB2, Vol 7, Tab 56A, AST.002.013.0032_0009 [59].

⁶⁹⁷ Ex. 3, TB1, Vol 5, Tab 8A, AST.002.013.0001_0010 [39]; Ex. 3, TB1, Vol 6, Tab 23A, AST.002.013.0030_0011 [56].

⁶⁹⁸ Ex. 3, TB1, Vol 6, Tab 23A, AST.002.013.0030_0011 [56].

⁶⁹⁹ Ex. 3, TB1, Vol 5, Tab 8A, AST.002.013.0001_0010 [39]-[40].

512. Witness W gave evidence that she did not know of any other method for making a complaint other than the inmate request form, which she knew an inmate could fill out and, in the Medium Needs Area, place in a box in the office.⁷⁰⁰
513. Officer Glenn Clark gave evidence that at the time rumours were circulating about Astill, he did not feel like he could raise an inmate's complaint about Astill with management without the inmate putting it in writing.⁷⁰¹ Mr Clark believed if he had put in a report unsupported by something in writing from the inmate, he would be "targeted".⁷⁰² Mr Clark feared Astill because Astill had acted in an intimidating manner towards Mr Clark, approaching him in the carpark and standing over him, and had mentioned that he used to be a policeman and knew Roger Rogerson.⁷⁰³ He also feared for the complaining inmate's safety.⁷⁰⁴
514. Officer Neil Holman told the Special Commission that although the proper process was to prepare an inmate application in the event that a verbal complaint made by an inmate needed to be escalated, he also said that if the complaint involved a serious allegation about a staff member, and the inmate felt uncomfortable or did not wish to write down their complaint, he would not press them to do so.⁷⁰⁵ Instead, he would furnish a report to the Governor himself.⁷⁰⁶
515. The Inspector of Custodial Services, Fiona Rafter (**the Inspector**), gave evidence that as recently as in 2022 at DCC, inmate application forms were still being processed on paper and were being placed into "big plastic tubs that were not secured" and that were left in the yards

⁷⁰⁰ Ex. 3, TB1, Vol 6, Tab 22A, AST.002.013.0008_0008 [42]; Transcript, 18 October 2024, T332.9-38.

⁷⁰¹ Ex. 8, TB2, Vol 7, Tab 63A, AST.002.013.0022_0003 [22]; Transcript, 25 October 2023, T749.7-36.

⁷⁰² Ex. 8, TB2, Vol 7, Tab 63A, AST.002.013.0022_0003-4 [22]-[23]; Transcript, 25 October 2023, T749.7-36.

⁷⁰³ Ex. 8, TB2, Vol 7, Tab 63A, AST.002.013.0022_0003 [22]; Transcript, 25 October 2023, T749.28-36, T750.25-38.

⁷⁰⁴ Transcript, 25 October 2023, T749.28-36, T750.25-38.

⁷⁰⁵ Ex. 28, TB2, Vol 8, Tab 80, AST.002.013.0053_0003-4 [10]; Transcript, 3 November 2023, T1683.36-T1684.12.

⁷⁰⁶ Ex. 28, TB2, Vol 8, Tab 80, AST.002.013.0053_0003-4 [10].

for a few hours each day.⁷⁰⁷ The Inspector was therefore not confident that there was an appropriate system in place to record and audit internal requests and complaints.⁷⁰⁸

4.1.2.2 Astill's misuse of inmate application and request forms

516. It is important to note evidence that one of the common reasons for inmates frequently attending Astill's office (other than being summoned there by him) was because the Chief Correctional Officer, the position Astill filled in an acting capacity for much of the period of his offending, was at that time the officer to whom inmates would be referred to submit a request, either orally or in writing.⁷⁰⁹ In her statement to the Special Commission, Witness N recalled an occasion where Astill was holding a pile of inmate request forms that he said other inmates had written about him. Astill was very angry and shredded the documents in front of Witness N.⁷¹⁰

517. The Special Commission also heard evidence that Astill misused inmate request forms on a number of occasions to allow inmates to keep contraband jewellery or to undertake other favours for inmates.⁷¹¹

4.1.2.3 Practical implications of Inmate Application and Request forms

518. As we have mentioned above, the Special Commission heard evidence that it was common knowledge that if someone referred to something as a "File 13" or that something would be going in "File 13", that something was going to be shredded.⁷¹² This was the case both at DCC and other gaols, such as Mulawa, where it might be called something different.⁷¹³ Witness C told the Special Commission that a common inmate experience at DCC was that application

⁷⁰⁷ Transcript, 17 November 2023, T2662.32-46; Inspector of Custodial Services Inspection of Silverwater Women's and Dillwynia Correctional Centres 2022 (not yet tendered) 76.

⁷⁰⁸ Transcript, 17 November 2023, T2662.32-46.

⁷⁰⁹ Ex. 3, TB1, Vol 6, Tab 21, AST.002.002.0028_0002-3 [5]; Ex. 3, TB1, Vol 6, Tab 21A, AST.002.013.0029_0001-2 [7]; Ex. 3, TB1, Vol 6, Tab 19, AST.002.002.0006_0001 [4]; Ex. 3, TB1, Vol 5, Tab 9, AST.002.002.0025_0001 [5], 3 [8], 4 [15]; Ex. 3, TB1, Vol 5, Tab 7, AST.002.002.0002_0003 [6]; Ex. 3, TB1, Vol 6, Tab 34, AST.002.002.0047_0001 [5]; Ex. 3, TB1, Vol 6, Tab 41, AST.002.002.0007_0001-2 [4]; Ex. 3, TB1, Vol 6, Tab 46, AST.002.013.0009_0005-6 [32]; Ex. 18, TB2, Vol 7, Tab 48, AST.002.002.0055_0012 [63].

⁷¹⁰ Ex. 3, TB1, Vol 6, Tab 32A, AST.002.013.0004_0004 [18].

⁷¹¹ Ex. 18, TB2, Vol 7, Tab 48, AST.002.002.0055_0006 [29]-[32], 7 [37], 14-15 [75]-[76].

⁷¹² Ex. 3, TB1, Vol 5, Tab 8A, AST.002.013.0001_0010-11 [42]; Transcript, 2 November 2023, T1526.28-44; Transcript, 13 November 2023, T2225.14-31; Transcript, 17 November 2023, T2562.21-26.

⁷¹³ Transcript, 19 October 2023, T356.26-38.

and request forms would go to “File 13”.⁷¹⁴ Witness C witnessed officers openly ridicule an inmate’s request in front of other inmates, and once the inmate who was making the request had walked away, the officers would state that the request was going to “File 13”.⁷¹⁵

519. “File 13” is discussed in more detail at [3.3.1] above.

4.1.3 Corrective Services Support Line

520. Another option available to inmates to make a complaint was the CSSL, which is a free support service available to inmates from Monday to Friday (excluding public holidays) between 9:00am and 3:30pm.⁷¹⁶ Calls to the CSSL are not monitored or recorded,⁷¹⁷ but it is not external to CSNSW. Its staff are CSNSW staff.

521. The CSSL is meant to be advertised via posters and cards either displayed near the OTS or provided to inmates.⁷¹⁸ CSSL representatives also visit correctional centres to meet with staff and members of the Inmate Delegate Committee (**IDC**) to provide information on the functions of the CSSL service.⁷¹⁹

522. The CSNSW “Avenues for Inmate Inquiries and Complaints” Fact Sheet (**the Fact Sheet**) was designed to provide CSNSW staff, rather than inmates, with information regarding the avenues for inmates to make inquiries and complaints.⁷²⁰ One avenue it lists is the CSSL.⁷²¹ The Special Commission was provided with various iterations of this document, the most relevant being the version issued in August 2016, because it was applicable during most of the period in which

⁷¹⁴ Ex. 3, TB1, Vol 5, Tab 8A, AST.002.013.0001_0010-11 [42]; Transcript, 19 October 2023, T356.6-24.

⁷¹⁵ Ex. 3, TB1, Vol 5, Tab 8A, AST.002.013.0001_0010-11 [42]; Transcript, 19 October 2023, T356.17-24.

⁷¹⁶ Ex. 59, TB5, Vol 28, Tab 14, Annexure Tab 3, CSNSW.0001.0108.0007-8; Ex. 59, TB5, Vol 28, Tab 14, AST.002.013.0082_0004 [18].

⁷¹⁷ Ex. 59, TB5, Vol 28, Tab 14, AST.002.013.0082_0004 [21].

⁷¹⁸ Ex. 47, TB5, Vol 21, Tab 1, Annexure AZ-2 Tab 9, CSNSW.0001.0027.1967; Ex. 47, TB5, Vol 21, Tab 1, Annexure AZ-3 Tab 21, CSNSW.0001.0034.0186; Ex. 47, TB5, Vol 21, Tab 1, Annexure AZ-3 Tab 22, CSNSW.0001.0034.0188.

⁷¹⁹ Ex. 47, TB5, Vol 21, Tab 1, Annexure AZ-2 Tab 9, CSNSW.0001.0027.1967.

⁷²⁰ Ex. 59, TB5, Vol 28, Tab 14, AST.002.013.0082_0006 [24].

⁷²¹ Ex. 59, TB5, Vol 28, Tab 14, AST.002.013.0082_0006 [24]-[27]; Ex. 59, TB5, Vol 28, Tab 14, Annexure Tab 3, CSNSW.0001.0108.0007-8.

Astill offended. The other historical (2009 and 2011) and current (2020) iterations of the document are identical in relation to the methods outlined for inmates to raise a concern.⁷²²

523. The Fact Sheet provided that except in an emergency, an inmate should try to resolve their matter locally before calling the CSSL, stating that an inmate will be asked whether they have done this when they call the CSSL.⁷²³ The Director of Parliamentary and Executive Services, Corrective Services, Jeremy Tucker, oversees the CSSL Team.⁷²⁴ He told the Special Commission that:

*The CSSL was not intended to field confidential calls from inmates in relation to complaints or concerns about potential misconduct by CSNSW officers. However, it is feasible that such complaints or concerns could be raised by inmates via the CSSL.*⁷²⁵

524. It is envisaged that inmates may directly contact the CSSL in exceptional circumstances where the complaint involves, among other things, threats or acts of violence or a security or safety issue.⁷²⁶ In such circumstances, the CSSL is to notify the Governor and Functional Manager of the issue.⁷²⁷
525. The Fact Sheet provided that upon receipt of a complaint (other than in exceptional circumstances), the CSSL will either provide an immediate answer, where possible, or email the details to staff at a designated email address at the inmate's correctional centre for action.⁷²⁸ The Functional Manager is responsible for ensuring that all referrals sent to the correctional centre are actioned and that the CSSL is advised of the progress of a matter and its resolution.⁷²⁹ The CSSL can also refer matters to other areas such as Justice Health.⁷³⁰ When a CSSL call is received from an inmate, the details of the call are recorded on the OIMS.⁷³¹ The Fact Sheet

⁷²² Ex. 59, TB5, Vol 28, Tab 14, AST.002.013.0082_0006-8 [26]-[29].

⁷²³ Ex. 59, TB5, Vol 28, Tab 14, Annexure Tab 3, CSNSW.0001.0108.0007-8; Ex. 47, TB5, Vol 21, Tab 1, Annexure AZ-2 Tab 9, CSNSW.0001.0027.1967; Ex. 59, TB5, Vol 28, Tab 14, AST.002.013.0082_0004 [19].

⁷²⁴ Ex. 59, TB5, Vol 28, Tab 14, AST.002.013.0082_0003 [16].

⁷²⁵ Ex. 59, TB5, Vol 28, Tab 14, AST.002.013.0082_0003 [16].

⁷²⁶ Ex. 47, TB5, Vol 21, Tab 1, Annexure AZ-2 Tab 9, CSNSW.0001.0027.1967.

⁷²⁷ Ex. 47, TB5, Vol 21, Tab 1, Annexure AZ-2 Tab 9, CSNSW.0001.0027.1968.

⁷²⁸ Ex. 59, TB5, Vol 28, Tab 14, Annexure Tab 3, CSNSW.0001.0108.0007.

⁷²⁹ Ex. 47, TB5, Vol 21, Tab 1, Annexure AZ-2 Tab 9, CSNSW.0001.0027.1968.

⁷³⁰ Ex. 59, TB5, Vol 28, Tab 14, Annexure Tab 3, CSNSW.0001.0108.0007.

⁷³¹ Ex. 47, TB5, Vol 21, Tab 1, Annexure AZ-2 Tab 9, CSNSW.0001.0027.1969; Ex. 59, TB5, Vol 28, Tab 14, AST.002.013.0082_0004 [18].

provided that once a matter has been actioned, the inmate should be advised of the outcome, or may call the CSSL to follow up if they have not heard anything.⁷³² A CSSL report is not to be provided to an inmate, including the inmate making the request; an application under the *Government Information (Public Access) Act 2009* (NSW) must be made for an inmate to receive a copy of the report.⁷³³

526. Inmates can only make a call to the CSSL on behalf of another inmate when that inmate is present when the call is made.⁷³⁴ If an inmate experiences any difficulties when using the CSSL, they are to tell either a member of the Inmate Development Committee or the Official Visitor, who will pass on the information to the CSSL Co-ordinator.⁷³⁵
527. Officer Renee Berry told the Special Commission that it was the Governor's responsibility to make sure that all CSSL complaints were dealt with in a timely manner. She was of the opinion that an inmate would not make a complaint about an officer via the CSSL because "all officers can read all complaints on OIMS".⁷³⁶
528. Although the CSSL was available for inmates, the Special Commission heard evidence that some inmates were not told about its existence or had difficulties using it.⁷³⁷ Witness O gave evidence that for the first three weeks after she arrived at DCC, she did not make any calls at all because she did not know how.⁷³⁸ Witness B said that 9 times out of 10 the CSSL phone line was unmanned and no one answered.⁷³⁹
529. The Fact Sheet also lists the Official Visitor (discussed further below) and writing to the Minister or Commissioner of CSNSW as available options to inmates to make a complaint.

⁷³² Ex. 59, TB5, Vol 28, Tab 14, Annexure Tab 3, CSNSW.0001.0108.0007.

⁷³³ Ex. 47, TB5, Vol 21, Tab 1, Annexure AZ-2 Tab 9, CSNSW.0001.0027.1968.

⁷³⁴ Ex. 59, TB5, Vol 28, Tab 14, Annexure Tab 3, CSNSW.0001.0108.0007.

⁷³⁵ Ex. 47, TB5, Vol 20, Tab 1, Annexure AZ-3 Tab 20, CSNSW.0001.0034.0205.

⁷³⁶ Ex. 18, TB2, Vol 7, Tab 49A, AST.002.013.0013_0014 [78].

⁷³⁷ Ex. 59, TB5, Vol 28, Tab 15, AST.002.013.0079_0016 [51].

⁷³⁸ Ex. 3, TB1, Vol 5, Tab 17A, AST.002.013.0028_0007-8 [41].

⁷³⁹ Ex. 3, TB1, Vol 6, Tab 23A, AST.002.013.0030_0011 [57].

4.1.4 Inmate Delegate Committee

530. The IDC is a representative body within a correctional centre comprised of inmate delegates, including an Aboriginal delegate, who meet with correctional centre management to discuss programs, services and activities.⁷⁴⁰ One Inmate Delegate from each accommodation unit is voted in by their peers.⁷⁴¹ The Inmate Delegate is able to consult directly with CSNSW staff in relation to issues that inmates are facing or grievances the inmates may have.⁷⁴² The IDC at DCC meets once a month with the Governor, MOS, Functional Managers, Justice Health representatives, Offender Services and Programs (**OSP**) representatives (including the psychologist), CSNSW Industry (including Education), administration and the Chaplain.⁷⁴³ The roles and responsibilities of the IDC extend to directing individual inmate's concerns to the appropriate channels, such as to the CSSL, Official Visitor, the Ombudsman or the Minister.⁷⁴⁴
531. Witness B is currently a delegate on the IDC at DCC. Although the meetings of the IDC are aimed at providing a space for inmates to raise issues for the Commissioner of CSNSW to consider, Witness B gave evidence that it was clear to her that amended minutes that were provided to the IDC after the Governor had reviewed them and passed them onto the Commissioner of CSNSW had been “sterilised”.⁷⁴⁵
532. Ms Chappell told the Special Commission that since she became Governor at DCC, there has been a renewed focus on the IDC meetings to allow inmates to provide input on issues affecting them and to assist in building trust between inmates and CSNSW staff.⁷⁴⁶ Ms Chappell also said that at her direction, the IDC will be reminded of the timing of the Official Visitor’s visit and its purpose (see below).⁷⁴⁷

⁷⁴⁰ Ex. 59, TB5, Vol 28, Tab 14, AST.002.013.0082_0008 [33].

⁷⁴¹ Ex. 50, TB5, Vol 27, Tab 11, CSNSW.0001.0261.0001_0010 [17(c)].

⁷⁴² Ex. 50, TB5, Vol 27, Tab 11, CSNSW.0001.0261.0001_0010 [17(c)]; Ex. 57, TB2, Vol 7, Tab 57A, AST.002.013.0031_0006 [29]; Ex. 3, TB3, Vol 13, Tab 431, CSNSW.0001.0091.0001_0010; Ex. 59, TB5, Vol 28, Tab 14, AST.002.013.0082_0008 [33].

⁷⁴³ Ex. 50, TB5, Vol 27, Tab 11, CSNSW.0001.0261.0001_0010 [17(c)]; Ex. 3, TB1, Vol 6, Tab 32A, AST.002.013.0004_0007 [31].

⁷⁴⁴ Ex. 59, TB5, Vol 22A, Tab 4G, Annexure JB-6 Tab 5, CSNSW.0001.0011.0001_0737.

⁷⁴⁵ Ex. 3, TB1, Vol 6, Tab 23A, AST.002.013.0030_0011 [59].

⁷⁴⁶ Ex. 50, TB5, Vol 27, Tab 11, CSNSW.0001.0261.0001_0010 [17(c)].

⁷⁴⁷ Ex. 50, TB5, Vol 27, Tab 11, CSNSW.0001.0261.0001_0024 [70(e)].

4.1.5 Local complaints to staff within Dillwynia Correctional Centre

533. The Fact Sheet states that inmates could make complaints or raise issues of concern by directly raising a query with correctional centre staff, which may include their Wing or Case Officer or the Senior Assistant Superintendent or Principal Correctional Officer. The Inmate Request Form and Inmate Application Form were listed in the Fact Sheet as options that inmates can use to raise an inquiry or complaint with correctional staff. The Fact Sheet stipulated that this internal avenue should be explored by inmates “in the first instance”.⁷⁴⁸
534. Ms Berry gave evidence that an inmate could make a report to someone they trusted and who was high ranking, being in the position of Chief or above.⁷⁴⁹ If inmates did not wish to put the complaint in writing, for example by way of an inmate application form, they could orally request to meet with the Governor, a practice considered by Ms Berry as “standard”.⁷⁵⁰
535. Officer Kim Wilson gave evidence that an inmate could speak to their Case Officer, who would have been assigned three or four inmates to case manage and speak with periodically.⁷⁵¹
536. Officer Jean Dolly stated that if an inmate came to an officer to report an incident, it was the officer’s responsibility to speak to their senior or submit an incident report to management.⁷⁵² If the issue was minor, officers would try to resolve the issue themselves or encourage the inmate to speak with the Functional Manager (previously, the Principal Correctional Officers) directly.⁷⁵³
537. However, the Special Commission heard evidence that the choice of which officer to approach to raise an issue with was difficult for an inmate.⁷⁵⁴

⁷⁴⁸ Ex. 59, TB5, Vol 28, Tab 14, Annexure Tab 3, CSNSW.0001.0108.0007. See also the evidence of Ms Zekanovic: Transcript, 28 September 2023, T74.10-43.

⁷⁴⁹ Ex. 18, TB2, Vol 7, Tab 49A, AST.002.013.0013_0005 [22].

⁷⁵⁰ Ex. 18, TB2, Vol 7, Tab 49A, AST.002.013.0013_0005 [22].

⁷⁵¹ Ex. 22, TB2, Vol 8, Tab 71, AST.002.013.0018_0004 [29].

⁷⁵² Ex. 16, TB2, Vol 8, Tab 77, AST.002.013.0026_0011 [52].

⁷⁵³ Ex. 16, TB2, Vol 8, Tab 77, AST.002.013.0026_0011 [52]; Ex. 28, TB2, Vol 8, Tab 80, AST.002.013.0053_0003-4 [15].

⁷⁵⁴ Ex. 3, TB1, Vol 5, Tab 17A, AST.002.013.0028_0007-8 [41].

538. Witness C told the Special Commission that when making a complaint, if she did not go to her Wing Officer first, she would be considered to be “officer shopping”.⁷⁵⁵ When she did go to her Wing Officer, Westley Giles, he would brush her off, so she would approach Mr Giles’ manager. However, Witness C struggled to get any traction with that manager because they were too busy or would put the complaint back on the Wing Officer to resolve, so the difficulties in getting her complaints dealt with persisted. Witness C also said:

*If, for example, I went to Medium Needs for help, they would just call up High Needs and say I was there and shouldn’t be, and send me back to my unit. I didn’t feel that there was an option to go to other units for help. Every unit ran their own shop. My belief was that what was happening in Officer Giles’ unit, for example, would not have been known to anyone in medium needs.*⁷⁵⁶

539. The Special Commission also heard evidence that inmates would not achieve the desired result if they made a verbal complaint. Witness C gave evidence that she was regularly told that she was “not special” and to “go away” and that sometimes she was laughed at when trying to raise an issue verbally to an officer, and the complaint process would stop there.⁷⁵⁷

4.1.6 Services and Programs Officer

540. The purpose of the SAPO role is to “provide services of assessment, case planning, case plan implementation and individual crisis and fundamental support interventions for offenders and remandees to facilitate their safe, secure, and humane management in a correctional centre and to reduce re-offending”, as well as to provide offenders with access to accredited or approved programs.⁷⁵⁸ The SAPO role was seen as a welfare option for inmates to utilise.⁷⁵⁹ A SAPO was expected to see a new inmate to DCC within the first 24 hours of them arriving at the gaol.⁷⁶⁰

⁷⁵⁵ Ex. 3, TB1, Vol 5, Tab 8A, AST.002.013.0001_0009-10 [37].

⁷⁵⁶ Ex. 3, TB1, Vol 5, Tab 8A, AST.002.013.0001_0010 [38].

⁷⁵⁷ Ex. 3, TB1, Vol 5, Tab 8A, AST.002.013.0001_0010 [41].

⁷⁵⁸ Ex. 3, TB 3, Vol 9, Tab 129, CSNSW.0001.0025.0151_00001.

⁷⁵⁹ Ex. 57, TB2, Vol 7, Tab 55A, AST.002.013.0016_0004 [23]; Ex. 9, TB2, Vol 7, Tab 64A, AST.002.013.0031_0006 [26]; Ex. 22, TB2, Vol 8, Tab 71, AST.002.013.0018_0003 [27].

⁷⁶⁰ Ex. 14, TB2, Vol 7, Tab 58A, AST.002.013.0040_0001 [7]; Transcript, 26 October 2023, T1003.31-47.

SAPOs were rotated throughout the gaol into different areas, allowing them time to work with different inmates on their different needs.⁷⁶¹

541. When an inmate wanted to speak with a SAPO, they would write down their details and a brief description of why they needed to see the SAPO, and the Wing Officer would enter a request in OIMS for the SAPOs' attention.⁷⁶² Officer Peter Barglik told the Special Commission that, in his view, a request for an inmate to see a SAPO was "always actioned".⁷⁶³
542. Adam Schreiber gave evidence that the SAPO would report to the Manager Offender Services and Programs or the Governor, and depending on the substance of the report they wished to pass on from an inmate, they would generally ask for a meeting to discuss the report.⁷⁶⁴ The Governor would then determine whether the report needed to be documented and/or referred to PSB/PSI.⁷⁶⁵
543. Deborah Gaynor was a SAPO at DCC from 2005 and throughout the period during which Astill offended. She noticed that after the rumours about Astill being "too nice" to the inmates started, inmates were not going to the SAPOs for assistance as much and would tell her in the compound that they had meant to put in a request to see her but had not.⁷⁶⁶ Ms Gaynor believed that they may have been too afraid to go to the SAPO office because it was opposite Astill's office, and he might assume that they were telling the SAPOs what he was doing to them.⁷⁶⁷
544. The practice of an inmate having to explain to the Wing Officer why they wished to see a SAPO was a deterrent for inmates in making such a request.⁷⁶⁸ Another difficulty was that the inmate had to trust that their Wing Officer would pass their request on, and that it would remain confidential.⁷⁶⁹ Witness C gave evidence that she made requests to speak to a SAPO but when

⁷⁶¹ Transcript, 26 October 2023, T986.21-32.

⁷⁶² Ex. 57, TB2, Vol 7, Tab 50A, AST.002.013.0037_0004 [28]; Ex. 22, TB2, Vol 8, Tab 71, AST.002.013.0018_0003 [27], 0005 [41].

⁷⁶³ Ex. 57, TB2, Vol 7, Tab 50A, AST.002.013.0037_0005 [33].

⁷⁶⁴ Ex. 57, TB2, Vol 7, Tab 57A, AST.002.013.0031_0006 [26].

⁷⁶⁵ Ex. 57, TB2, Vol 7, Tab 57A, AST.002.013.0031_0006 [26].

⁷⁶⁶ Ex. 14, TB2, Vol 7, Tab 58A, AST.002.013.0040_0008 [46]- [47].

⁷⁶⁷ Ex. 14, TB2, Vol 7, Tab 58A, AST.002.013.0040_0008 [46].

⁷⁶⁸ Ex. 3, TB1, Vol 5, Tab 8A, AST.002.013.0001_0014 [55].

⁷⁶⁹ Ex. 3, TB1, Vol 5, Tab 8A, AST.002.013.0001_0014 [55]; Ex. 3, TB1, Vol 6, Tab 22A, AST.002.013.0008_0008 [45].

she asked that SAPO why she had not heard anything from them, the SAPO did not know that she had requested to see them.⁷⁷⁰

545. Both Elizabeth Cox's and Witness C's experience was that often when inmates did speak to SAPOs, the response they received was that they could not help the inmate with their particular issue because it was considered not to be part of the SAPO's role.⁷⁷¹ This led to inmates lacking confidence in the SAPOs and the role being viewed as weak, invisible and hard to engage with. Ms Cox also told the Special Commission that now that the SAPOs are all ex-officers, rather than psychologists, counsellors or welfare officers, the inmates do not trust them.⁷⁷²

4.1.7 The Chaplain

546. Suellen Johnson was the Chaplain at DCC between 2013 and 2018, contracted through Anglicare.⁷⁷³ Ms Johnson's role as Chaplain was to offer support to both inmates and CSNSW staff.⁷⁷⁴ However, Ms Johnson told the Special Commission that she "had to walk a very fine line" because she would be approached by both inmates and officers to debrief, or would sit in the lunchroom with the officers and observe their conversations and behaviours, but still be expected to remain neutral and maintain confidentiality.⁷⁷⁵ Ms Johnson said:

*My role was extremely difficult. It was like watching a game of chess, white against black, and wondering who was going to make the next move. You were watching it, but you couldn't do anything about it.*⁷⁷⁶

547. Mr Foster told the Special Commission that the role of Chaplain was an important one. He said:

The chaplain is a resource. The chaplain can discuss matters that a male can't; can also be a confidential source, the person can share an inner feeling with. So if you can break down a barrier and put a person in front of a chaplain, that can be a solution to

⁷⁷⁰ Ex. 3, TB1, Vol 5, Tab 8A, AST.002.013.0001_0014 [55].

⁷⁷¹ Ex. 3, TB1, Vol 5, Tab 8A, AST.002.013.0001_0014 [55]; Ex. 3, TB1, Vol 6, Tab 46, AST.002.013.0009_0010 [61].

⁷⁷² Ex. 3, TB1, Vol 6, Tab 46, AST.002.013.0009_0010, [61].

⁷⁷³ Ex. 19, TB2, Vol 7, Tab 47, AST.002.002.0070_0001 [3]; Transcript, 30 October 2023, T1280.3-30.

⁷⁷⁴ Ex. 19, TB2, Vol 7, Tab 47A, AST.002.013.0047_0002 [10].

⁷⁷⁵ Ex. 19, TB2, Vol 7, Tab 47A, AST.002.013.0047_0002 [10]-[11], 0006, [33], 0010, [53]; Transcript, 30 October 2023, T1281.23-T1282.11; T1283.37-T1286.27.

⁷⁷⁶ Ex. 19, TB2, Vol 7, Tab 47A, AST.002.013.0047_0011 [57].

*that problem, at least open doors to other ways. Insofar as doing too much for people, chaplains have a habit of working hard.*⁷⁷⁷

548. Witness C gave evidence that the chaplain services at DCC were excellent, stating that Ms Johnson was “unbelievable” and “constantly pushed back on our [inmates’] behalf”.⁷⁷⁸
549. Ms Johnson was available to inmates and staff five days a week at DCC.⁷⁷⁹ Ms Johnson told the Special Commission that when she first commenced her role, she operated under an open-door policy, but that from approximately 2016, she was inundated with so many requests from inmates to speak with her, she had to implement an appointment system.⁷⁸⁰
550. Ms Johnson gave evidence that in 2017 and 2018, a number of inmates approached her to make disclosures about Astill that were “intimidating and sexual in nature” (see further at Section 6.9).⁷⁸¹ She was later requested to be part of a mediation between Astill and Witnesses P, V and B, discussed further below at Section 6.9 **Error! Reference source not found.** .⁷⁸²
551. Ms Johnson gave evidence about her understanding of her obligations as Chaplain. Although she was of the view that she must provide confidentiality to the inmates, she would warn them that if they spoke about certain offences, particularly an offence against a child or offences they had committed that were not already known to law enforcement, she would be required to disclose this.⁷⁸³ However, Ms Johnson stated that she never took it upon herself to read the offenders’ files, so unless she knew about their cases from the news or from others speaking about the subject, she generally was not aware of an inmate’s convictions.⁷⁸⁴
552. When questioned about the Chaplain’s role in reporting information brought to her by inmates about crimes perpetrated against them while they were in gaol, Ms Johnson said that she would

⁷⁷⁷ Transcript, 26 October 2023, T948.33-38.

⁷⁷⁸ Ex. 3, TB1, Vol 5, Tab 8A, AST.002.013.0001_0014 [57]

⁷⁷⁹ Ex. 19, TB2, Vol 7, Tab 47A, AST.002.013.0047_0003 [13].

⁷⁸⁰ Ex. 19, TB2 Vol 7 Tab 47A, AST.002.013.0047_0003 [13]; Transcript, 20 October 2023, T1280.32-41.

⁷⁸¹ Ex. 19, TB2, Vol 7, Tab 47, AST.002.002.0070_0001 [4]-[5]; Ex. 19, TB2, Vol 7, Tab 47A, AST.002.013.0047_0004 [26], 0009 [47]-[48].

⁷⁸² Ex. 19, TB2, Vol 7, Tab 47, AST.002.002.0070_0001 [7]; Ex. 19, TB2, Vol 7, Tab 47A, AST.002.013.0047_0004 [32]-[42].

⁷⁸³ Ex. 19, TB2, Vol 7, Tab 47A, AST.002.013.0047_0002 [11]; Transcript, 30 October 2023, T1283.42-T1284.41.

⁷⁸⁴ Ex. 19, TB2, Vol 7, Tab 47A, AST.002.013.0047_0002 [11]; Transcript, 30 October 2023, T1284.38-41.

tell the inmates that they needed to report what they had told her, and trusted that they would.⁷⁸⁵ Her evidence was that she would approach inmate reports to her in this way for a number of reasons: because the inmates would ask her not to tell anyone due to their fear of retribution and reprisal; because she was worried about the inmates' safety and putting them in danger; and because it did not occur to her to go to someone outside of DCC to report what she was hearing.⁷⁸⁶ Ms Johnson clarified that in the specific case of Witnesses B and V, once she had learned that they had reported the incident that they came to her about and it was being dealt with by gaol management, as discussed at Section 6.9 **Error! Reference source not found.** below, Ms Johnson stated that she did not feel the need to report it herself.⁷⁸⁷ She had trusted that when the inmates said they would report it, they would do so, and they had.⁷⁸⁸

553. Section 7.8 of the former DOJ Code of Ethics and Conduct Policy, operative from August 2015 (the **2015 Code**), provided that chaplains, among others not directly employed by CSNSW, must be aware of the Code and act in line with the conduct described in it.⁷⁸⁹ Where their contract or agreement refers to the 2015 Code, the Code applied.⁷⁹⁰ The 2015 Code provided that, among other things, if an employee witnessed or suspected wrong-doing of a serious nature, they should discuss the matter with their manager and may be required to complete a Summary of an Allegation or Complaint against an Employee Form, which would be referred to the relevant Director, HR Business Partner. Section 3 of the current DCJ Code of Ethical Conduct, which came into effect on 19 April 2021, similarly states that, among others, contractors must be made aware of the Code and the requirement for those persons to act in accordance with it for the period of their engagement.⁷⁹¹

⁷⁸⁵ Transcript, 30 October 2023, T1284.43-T1285.6; T1285.31-44. See also Ex 19, TB2, Vol 7, Tab 47A, AST.002.013.0047_0005 [31].

⁷⁸⁶ Transcript, 30 October 2023, T1285.31-T1287.33.

⁷⁸⁷ Transcript, 30 October 2023, T1286.29-T1287.33.

⁷⁸⁸ Transcript, 30 October 2023, T1286.29-T1287.33.

⁷⁸⁹ Ex. 3, TB3, Vol 9, Tab 147, CSNSW.0001.0034.0122_0019 s. 7.8.

⁷⁹⁰ Ex. 3, TB3, Vol 9, Tab 147, CSNSW.0001.0034.0122_0019 s. 7.8.

⁷⁹¹ Ex. 3, TB3, Vol 13, Tab 421, CSNSW.0001.0001.0079_0005-6.

554. Ms Johnson does not appear to have been aware of the 2015 Code and she proceeded on her own understanding of the correct approach to reporting. This represented another missed opportunity for Astill's offending to be detected.

4.2 Mechanisms external to Corrective Services

4.2.1 The role of the Official Visitor

555. The role of the Official Visitor was established in response to recommendations of the Royal Commission into NSW Prisons in 1978.⁷⁹² Since February 2014, following the commencement of the *Inspector of Custodial Services Act 2012* (NSW) and the recommendations of the 2009 inquiry into the privatisation of prisons and prison-related services, the Inspector has overseen the Official Visitor Program.⁷⁹³ The Official Visitor Program operates in accordance with s. 228 and sch 4 of the CAS Act and, in respect of adult custodial centres, the CAS Regulation.⁷⁹⁴

556. An Official Visitor is assigned to a specific correctional facility which they must visit at least once a month, but in practice, this tends to be either weekly or fortnightly,⁷⁹⁵ for the purpose of speaking to inmates and staff and to examine the facility.⁷⁹⁶

557. The Official Visitor is required to report to the Minister and Inspector at least once every six months to provide an independent view of, among other things, the types of issues that are of concern to inmates, as well as to report quarterly to the Commissioner of CSNSW on the number of complaints and inquiries received from inmates.⁷⁹⁷ Copies of such reports should be provided to the Governor.⁷⁹⁸ Official Visitors are not authorised to conduct investigations or to carry out audits.⁷⁹⁹

⁷⁹² Ex. 46, TB5, Vol 26, Tab 10, AST.002.013.0060_0015 [82].

⁷⁹³ Ex. 46, TB5, Tab 10, AST.002.013.0060_0004 [15], 0015 [82].

⁷⁹⁴ Ex. 46, TB5, Vol 26 Tab 10, AST.002.013.0060_0015 [83].

⁷⁹⁵ Transcript, 17 November 2023, T2653.33-45; Ex. 50, TB5, Vol 27, Tab 11, CSNSW.0001.0261.0001_0023 [66].

⁷⁹⁶ Ex. 58, TB3, Vol 18, Tab 630, CSNSW.0002.0024.3203_0833 s. 4.1; Ex. 13, TB2 Vol 7 Tab 56A, AST.002.013.0032_0008, [52]; TB5 Vol 26 Tab 10, AST.002.013.0060_0015, [85], [87].

⁷⁹⁷ Ex. 58, TB3, Vol 18, Tab 630, CSNSW.0002.0024.3203_0834 s. 4.2; Ex. 9, TB2, Vol 7, Tab 64A, AST.002.013.0017_0008, [45].

⁷⁹⁸ Ex. 58, TB3, Vol 18, Tab 630, CSNSW.0002.0024.3203_0834 s. 4.2.

⁷⁹⁹ Ex. 58, TB3, Vol 18, Tab 630, CSNSW.0002.0024.3203_0834 s. 4.1.

4.2.1.1 Inmate complaints to the Official Visitor

558. Part of the function of the Official Visitor is to receive and deal with complaints from inmates.⁸⁰⁰ Posters with a photo of the relevant Official Visitor should be placed in each accommodation unit at a correctional centre.⁸⁰¹ This is audited when the Inspector undertakes an inspection of a facility.⁸⁰² An inmate can make a request to see the Official Visitor via the OIMS system or by registering in a handwritten book kept in each wing.⁸⁰³ The current Governor of DCC, Nicola Chappell, told the Special Commission that her practice is to give a direction for inmates to be advised as to when the Official Visitor will visit, and once the Official Visitor is in attendance at the gaol, she makes an announcement over the loudspeaker system.⁸⁰⁴ Ms Chappell also said that details about the Official Visitor are in the Women's Handbook and inmates should be informed of the service in their induction.⁸⁰⁵ When the Official Visitor attends the correctional centre, meetings with inmates are conducted in the wing where the relevant inmate is housed.⁸⁰⁶

559. The Fact Sheet informed officers that inmates can make inquiries and complaints in person to the Official Visitor, if they are not satisfied by the action taken by CSNSW in the first instance. The Fact Sheet indicated that the Official Visitor is independent to CSNSW and discussions with the Official Visitor are confidential. It also indicated that the Official Visitor generally visits the centre fortnightly and inmates may request to register to see the Official Visitor.⁸⁰⁷ The Fact Sheet has been recently updated and is now aimed at providing information directly

⁸⁰⁰ Ex. 45, TB5, Vol 26, Tab 10, AST.002.013.0060_0015 [87]; Ex. 50, TB5, Vol 27, Tab 11, CSNSW.0001.0261.0001_0023 [66].

⁸⁰¹ Ex. 45, TB5, Vol 26, Tab 10, AST.002.013.0060_0020 [122]; Ex. 50, TB5, Vol 27, Tab 11, CSNSW.0001.0261.0001_0023 [70].

⁸⁰² Ex. 45, TB5, Vol 26, Tab 10, AST.002.013.0060_0020 [122].

⁸⁰³ Ex. 9, TB2, Vol 7, Tab 64A, AST.002.013.0017_0008 [46]; Ex. 45, TB5, Tab 10, AST.002.013.0060_0020 [126].

⁸⁰⁴ Ex. 50, TB5, Vol 27, Tab 11, CSNSW.0001.0261.0001_0024 [70], 0025 [70 (f)].

⁸⁰⁵ Ex. 50, TB5, Vol 27, Tab 11, CSNSW.0001.0261.0001_0024 [70], 0025 [70 (b)].

⁸⁰⁶ Ex. 9, TB2, Vol 7, Tab 64A, AST.002.013.0017_0008 [46].

⁸⁰⁷ Ex. 59, TB5, Vol 28, Tab 14, Annexure Tab 3, CSNSW.0001.0108.0007-0008.

to inmates.⁸⁰⁸ The updated version outlines how an inmate can arrange to speak with the Official Visitor about a complaint, noting that they are external to CSNSW.⁸⁰⁹

560. The Inspector told the Special Commission that on an inmate's reception and admission to a correctional centre, the Governor must ensure that the inmate is notified of their rights and obligations, including information about the role of an Official Visitor.⁸¹⁰ However, the Inspector was of the view that this did not always occur, nor was information about the complaints process provided to inmates upon their introduction to the centre.⁸¹¹ In fact, the Inspector informed the Special Commission that in 2017 during one of her inspections, it was clear to her that there was no induction process of any kind occurring at DCC, and that in 2022, it was "still very weak".⁸¹²
561. The Inspector also told the Special Commission that if an inmate complaint or inquiry related to general concerns and conditions within the centre, it was important that an inmate was able to speak to the Official Visitor about this in public and without formality.⁸¹³ However, if an inmate wished to speak to the Official Visitor in a private space and wanted the nature of the complaint to be kept confidential, the Official Visitor could arrange this.⁸¹⁴
562. In dealing with a complaint, the Official Visitor must not interfere with the management or discipline of a correctional centre, or give any instructions to, among others, any correctional officer, departmental officer or inmate.⁸¹⁵ The Official Visitor's role is limited by the CAS Regulation to attempting to resolve a complaint by advising the inmate or staff member of what action could be taken, by referring the matter (only with the consent or agreement of the person making the complaint), or, if in the opinion of the Official Visitor a complaint can be resolved

⁸⁰⁸ Ex. 59, TB5, Vol 28, Tab 14, AST.002.013.0082_0008 [34].

⁸⁰⁹ Ex. 59, TB5, Vol 28, Tab 14, AST.002.013.0082_0008 [34]; Ex. 59, TB5, Vol 28, Tab 14, Annexure Tab 5, CSNSW.0001.0266.0001.

⁸¹⁰ Ex. 45, TB5, Vol 26, Tab 10, AST.002.013.0060_0020 [118]; see also CAS Regulation cl. 5(f).

⁸¹¹ Ex. 45, TB5, Vol 26, Tab 10, AST.002.013.0060_0020 [119]-[121]; see also CAS Regulation cl. 5(e).

⁸¹² Transcript, 17 November 2023, T2658.30-44.

⁸¹³ Ex. 45, TB5, Vol 26, Tab 10, AST.002.013.0060_0020 [128].

⁸¹⁴ Ex. 45, TB5, Vol 26, Tab 10, AST.002.013.0060_0021 [129].

⁸¹⁵ CAS Regulation cl. 166(3); Ex. 45, TB5, Vol 26, Tab 10, AST.002.013.0060_0016 [92]-[93].

quickly internally by bringing it to the attention of the Governor, by doing just that.⁸¹⁶ If a complaint is serious, an Official Visitor is expected to refer the matter to the appropriate body through the Inspector.⁸¹⁷

563. The Special Commission heard evidence that Official Visitors generally resolve inmate inquiries or complaints through discussion with staff, including the MOS or Functional Manager.⁸¹⁸ Various officers who work or worked at DCC said that at the end of the Official Visitor's visit, they would discuss the matters that had been raised with them with the Governor and between them would work out what complaints could be dismissed or verified and actioned.⁸¹⁹

564. The Special Commission heard from a number of inmates that they did not feel like they could talk to the Official Visitor because they feared retribution and reprisal and were of the understanding that anything they disclosed to the Official Visitor would be passed on to the Governor, in whom they had no trust.⁸²⁰ The Special Commission did not hear evidence from inmates of the Official Visitor obtaining consent to escalate matters to a person, other than the Governor, that the Official Visitor considered appropriate,⁸²¹ and it would be open to find that inmates during the period of Astill's offending did not understand the Official Visitor to be a means by which they could confidentially report any matter outside of DCC. Ms Chappell gave evidence that in more recent times, the Official Visitor at DCC, Helen Duggan, seeks consent from the inmates as to where and how the information they have provided to her is shared.⁸²²

⁸¹⁶ CAS Regulation cl. 166(2); Transcript, 17 November 2023, T2647.31-T2648.5.

⁸¹⁷ Ex. 45, TB5, Vol 26, Tab 10, AST.002.013.0060_0021 [136], 0022 [143].

⁸¹⁸ Ex. 58, TB3, Vol 18, Tab 630, CSNSW.0002.0024.3203_0833 s. 4.1; Ex. 45, TB5, Vol 26, Tab 10, AST.002.013.0060_0017 [97].

⁸¹⁹ Ex. 57, TB2, Vol 7, Tab 57A, AST.002.013.0031_0005 [24]; Ex. 18, TB2, Vol 7, Tab 49A, AST.002.013.0013_0014 [77]; Ex. 57, TB2, Vol 7, Tab 50A, AST.002.013.0037_0003-4 [21]; Transcript, 20 October 2023, T515.33-41.

⁸²⁰ Transcript, 20 October 2023, T515.33-41; Transcript, 24 October 2023, T644.18-44; Transcript, 24 October 2023, T693.32-39; Transcript, 27 October 2023, Transcript, 17 November 2023, T1147.27-39; T2655.39-T2656.6.

⁸²¹ CAS Regulation cl. 166(2)(c).

⁸²² Ex. 50, TB5, Vol 27, Tab 11, CSNSW.0001.0261.0001_0023 [69].

565. The Inspector told the Special Commission that complaints made by or about CSNSW staff must be resolved through CSNSW's internal procedures or through external bodies because they are not practically resolvable by agreement with an Official Visitor and will likely require investigation, placing those matters outside the scope of the Official Visitor's powers.⁸²³ Further, these sorts of complaints have the potential to interfere with the discipline of a correctional centre, triggering cl. 166 of the CAS Regulation.⁸²⁴ However, where it is not possible for a complaint to be resolved locally by the end of the quarterly reporting period, an Official Visitor can bring the complaint directly to the attention of the Commissioner of CSNSW.⁸²⁵
566. Even after Shari Martin ceased to be Governor at DCC, the Special Commission heard the Official Visitor has encountered difficulties communicating with Governors at DCC. In the Official Visitor half yearly report to the Commissioner of CSNSW, the Minister and the Inspector for the period 1 July to 31 December 2021, the Official Visitor at that time, Michelle Cole, reported that she found it difficult to meet with the Governor or acting Governor during her visits to DCC, which caused difficulties for establishing a professional working and trusting relationship.⁸²⁶ Ms Cole's experience was that she was "fobbed off" by the Governor to other staff, some of whom had complaints lodged against them to the Official Visitor.⁸²⁷ Ms Cole found that often in the first instance the response to complaints that she would witness by gaol management was defensive, and if the complaint was about staff, the response would be dismissive and seek to explain-away or excuse the situation.⁸²⁸ Ms Cole was told by the Governor that in raising the issues inmates had raised with her with the Governor, it was "unnecessary double up".⁸²⁹ Ms Cole witnessed resentment about this occurring and a lack of

⁸²³ Ex. 45, TB5, Vol 26, Tab 10, AST.002.013.0060_0016 [94].

⁸²⁴ Ex. 45, TB5, Vol 26, Tab 10, AST.002.013.0060_0016 [94].

⁸²⁵ Ex. 45, TB5, Vol 26, Tab 10, AST.002.013.0060_0017 [99]; Transcript, 17 November 2023, T2653.21-31; Ex. 50, TB5, Vol 27, Tab 11, CSNSW.0001.0261.0001_0023 [69].

⁸²⁶ Ex. 45, AST.002.006.0070_0217.

⁸²⁷ Ex. 45, AST.002.006.0070_0217.

⁸²⁸ Ex. 45, AST.002.006.0070_0217.

⁸²⁹ Ex. 45, AST.002.006.0070_0217.

awareness that an inmate's reason for raising a complaint in multiple forums was likely because they felt like they had not been heard.⁸³⁰

567. Saffron Cartwright gave evidence that when the Official Visitor attended DCC while she was Governor, she would ask them to meet with her before they left, so that she could hear the context behind what might be written in the Official Visitor's report.⁸³¹ She stated that she would also always ask the Official Visitor when they arrived at DCC to come and see her so that she could make sure the centre was opened up for the Official Visitor.⁸³² Ms Cartwright noted that sometimes she did not have the opportunity to meet with the Official Visitor in circumstances where she was not made aware of the visit or if she was working offsite, but that she welcomed what the Official Visitor had to say and appreciated the opportunity to be made aware of what was happening at DCC.⁸³³ Ms Cartwright's process was to forward the Official Visitor's report to the MOS so that they could manage the responses, but Ms Cartwright would ask for the report back because she understood the circumstances to be that there was a tendency by staff to be defensive in their responses.⁸³⁴ Similarly, Ms Cartwright did not include in the report that was passed on to the MOS the names of any staff that were reported to be problematic, because she wished to prevent any reluctance in staff approaching the Official Visitor with a complaint in the future.⁸³⁵

4.2.1.2 Inmates' experience with the Official Visitor complaints process

568. Witness C's evidence was that the process with the Official Visitor felt very dismissive and the role was not very well respected among the inmates.⁸³⁶ She told the Special Commission that she knew the Official Visitor was someone that she could make a confidential complaint to, but her experience was that when she made such a complaint, they never followed anything up or

⁸³⁰ Ex. 45, AST.002.006.0070_0217.

⁸³¹ Transcript, 20 November 2023, T2761.41-T2762.16.

⁸³² Transcript, 20 November 2023, T2761.41-45.

⁸³³ Transcript, 20 November 2023, T2761.44-T2762.16.

⁸³⁴ Transcript, 20 November 2023, T2762.2-24.

⁸³⁵ Transcript, 20 November 2023, T2762.18-33.

⁸³⁶ Ex. 3, TB1, Vol 5, Tab 8A, AST.002.013.0001_0013 [53].

got back to her.⁸³⁷ Witness O gave similar evidence, stating that with the Official Visitor, it was “talk talk talk” and the inmates would not hear anything further from them.⁸³⁸ Alarming, Witness O stated that when an inmate met again with the Official Visitor, the Official Visitor would pretend that they did not know them.⁸³⁹

569. A number of other inmate witnesses gave evidence that they did not know anything about the Official Visitor and how to make a complaint via that means, or thought their complaint would not, or indeed was not, taken seriously.⁸⁴⁰ Further, for those who were aware of the Official Visitor’s role, their evidence was that no warning about when the Official Visitor was going to visit was given to them, to allow them to make an appointment or arrange their duties around a meeting with the Official Visitor.⁸⁴¹

570. Witnesses N and C told the Special Commission that they did not feel that they could make a complaint about an officer to the Official Visitor because they would stand in the middle of the compound to speak with the inmate, in earshot of others, causing concerns about confidentiality.⁸⁴² There was a belief among inmates that if they were to speak to the Official Visitor, the subject of their conversation would be passed on to Shari Martin, who they did not trust with their personal information, nor did they believe they would get any traction or help with their complaint from her.⁸⁴³

571. Concerningly, Witness M told the Special Commission that on one occasion when she observed the Official Visitor walking around the compound at DCC, presumably on a visit which should have, among other things, provided inmates with an opportunity to speak with the Official

⁸³⁷ Ex. 3, TB1, Vol 5, Tab 8A, AST.002.013.0001_0013 [52]; see also Transcript, 23 October 2023, T603.1-T603.6.

⁸³⁸ Transcript, 24 October 2023, T644.18-44.

⁸³⁹ Ex. 3, TB1, Vol 5, Tab 17A, AST.002.013.0028_0008 [43].

⁸⁴⁰ Ex. 3, TB 1, Vol 6, Tab 22A, AST.002.013.0008_0008 [43]; Ex.3, TB1, Vol 5, Tab 10A, AST.002.013.0006_0004 [20]; Ex. 3, TB1, Vol 6, Tab 21A, AST.002.013.0029_0004, [27].

⁸⁴¹ Transcript, 17 October 2023, T254.22-T255.17; Transcript, 19 October 2023, T357.2-9.

⁸⁴² Ex. 3, TB1, Vol 6, Tab 32A, AST.002.013.0004_0006 [29]; Transcript, 19 October 2023, T357.2-29; Transcript, 19 October 2023, T398.16-T399.25; see also Transcript, 17 October 2023, T254.42-T255.6.

⁸⁴³ Ex. 3, TB1, Vol 5, Tab 8A, AST.002.013.0001_0013 [52]; Ex. 3, TB1, Vol 5, Tab 14A, AST.002.013.0003_0006 [27]; Ex. 3, TB1, Vol 6, Tab 23A, AST.002.013.0030_0011 [58]; Ex. 3, TB1, Vol 6, Tab 46, AST.002.013.0009_0009 [56]; Transcript, 18 October 2023, T277.9-T278.9.

Visitor, Astill was walking around with the Official Visitor.⁸⁴⁴ The effect of this was to scare away those inmates who wished to speak with the Official Visitor, especially those wishing to report Astill.

572. The Official Visitor did not, during the period of Astill's offending, provide a mechanism independent of CSNSW for inmates to complain about misconduct by officers. The limitations on the Official Visitor's role imposed by the CAS Regulation meant that inevitably any such complaint would need to be referred to CSNSW, and most likely that it would have been raised with the relevant Governor. To the extent that inmates at DCC were aware of the Official Visitor at all, they did not perceive the Official Visitor to be independent of the gaol's management. This compromised the Official Visitors' ability to perform their role and inhibited the making of complaints.

4.2.1.3 The role of the Inspector of Custodial Services

573. Under s. 6 of the *Inspector of Custodial Services Act 2012*, the Inspector is required to inspect each adult custodial centre at least once every five years and report on each inspection to the NSW Parliament. The Inspector seeks to identify and make recommendations on systemic issues, through thematic and individual centre inspections.⁸⁴⁵ The Inspector's reports to the NSW Parliament must include her advice or recommendations as to the efficiency, economy and proper administration of custodial centres and custodial services.⁸⁴⁶
574. The statutory functions of the Inspector do not include the receipt or management of complaints.⁸⁴⁷ The role is focused on seeking to identify and make recommendations on systemic issues observed in custodial centres by way of routine inspections.⁸⁴⁸ However, the Inspector receives complaints made by inmates or CSNSW staff when an Official Visitor passes them on to her office, as a consequence of visiting and inspecting facilities,⁸⁴⁹ or directly from

⁸⁴⁴ Transcript, 17 October 2023, T254.22-34.

⁸⁴⁵ Ex. 45, TB5, Vol 26, Tab 10, AST.002.013.0060_0007 [34]-[36].

⁸⁴⁶ Ex. 45, TB5, Vol 26, Tab 10, AST.002.013.0060_0010 [64].

⁸⁴⁷ Ex. 45, TB5, Vol 26, Tab 10, AST.002.013.0060_0005 [21].

⁸⁴⁸ Ex. 45, TB5, Vol 26, Tab 10, AST.002.013.0060_0007 [36].

⁸⁴⁹ Ex 45, TB5, Vol 27, Tab 11, CSNSW.0001.0261.0001_0023 [69].

inmates by way of telephone or letter.⁸⁵⁰ This aspect of the role is limited to referring any complaints received either from CSNSW staff or inmates during the course of carrying out her functions, including in overseeing the Official Visitor Program, to other appropriate bodies.⁸⁵¹

575. When the Inspector becomes aware of a complaint by an inmate or CSNSW staff member (the Special Commission was informed that the latter submitted complaints far less often than the former), the Inspector will generally request that an Official Visitor make contact with the person making the complaint to find out further information or assist in its resolution, and will, where appropriate, refer the complaint to, among others, the ICAC, the Commissioner of CSNSW, the “Professional Standards Unit” in CSNSW (this is understood to refer to PSB/PSI), or the Ombudsman.⁸⁵² The Inspector’s evidence was that since 2016 she has made approximately 19 referrals to Professional Standards and a number of referrals to the Use of Force Committee via the Commissioner of CSNSW.⁸⁵³ The Inspector’s evidence was that her office’s ability to receive individual complaints and refer those complaints on to other appropriate bodies for investigation is limited by funding.⁸⁵⁴
576. The Inspector told the Special Commission that the volume of complaints relating to DCC has increased significantly in recent years, from approximately 60 complaints each year in 2018-2020, to 449 complaints in 2021 and 378 complaints in 2022.⁸⁵⁵ In the Inspector’s view, that was not only because of the impact of COVID-19 but also because prior to 2020, CSNSW was responsible for training the Official Visitors, rather than the Inspector. At that time, her evidence was that inmates did not have the confidence in the Official Visitor system that they have had more recently.⁸⁵⁶
577. The types of matters that the Official Visitors are trained to bring directly to the Inspector are those which are not appropriate to raise with the Governor, instances where the Official Visitor

⁸⁵⁰ Ex 45, TB5, Vol 26, Tab 10, AST.002.013.0060_0005 [24]; Transcript, 17 November 2023, T2664.1-14.

⁸⁵¹ Ex 45, TB5, Vol 26, Tab 10, AST.002.013.0060_0005 [22]-[23].

⁸⁵² Ex 45, TB5, Vol 26, Tab 10, AST.002.013.0060_0005-6 [26].

⁸⁵³ Ex 45, TB5, Vol 26, Tab 10, AST.002.013.0060_00023 [151].

⁸⁵⁴ Transcript, 17 November 2023, T2657.8-2657.25.

⁸⁵⁵ Ex 45, TB5, Vol 26, Tab 10, AST.002.013.0060_0006 [31]; Transcript, 17 November 2023, T2648.7-12.

⁸⁵⁶ Transcript, 17 November 2023, T2648.14-34.

is concerned that the Governor is not going to act on the issue, or where there is an allegation of sexual assault.⁸⁵⁷ Since April 2016, only a small number of complaints have been made directly to the Inspector or have been escalated to the Inspector by an Official Visitor, five of which related to allegations of sexual assault of inmates by officers (and those five were brought to the Inspector's attention after Astill's arrest).⁸⁵⁸

578. The Inspector gave evidence that the activities of her office are constrained by the funding it receives.⁸⁵⁹ The Inspector has sought further funding for additional resources to complete outstanding inspection reports; undertake several thematic reviews regarding issues across correctional centres, including one with respect to the training of correctional officers; to support the Official Visitor Coordinator employed by the Inspector; and to fund the 2024 Official Visitor Conference.⁸⁶⁰ The Inspector's evidence was that ideally high-risk centres, such as remand and reception centres, or centres that are performing poorly, would be inspected more frequently than is currently occurring, however there is insufficient resources to do so.⁸⁶¹

4.2.1.3.1. Inspections of DCC

579. As referred to above at [560], the Inspector gave evidence that during her inspection of a number of correctional centres in 2017, which included DCC, she was concerned that the induction or orientation process was "less than ideal" particularly because women who were entering custody for the first time "were frequently unaware of the routines and procedures of prison life".⁸⁶² At this time, the inspection discovered that there was no handbook being provided to inmates at DCC, nor any other kind of induction process.⁸⁶³

⁸⁵⁷ Transcript, 17 November 2023, T2652.23-T2653.19.

⁸⁵⁸ Ex 45, TB5, Vol 26, Tab 10, AST.002.013.0060_0007 [32]-[33]; Transcript, 17 November 2023, T2648.36-T2649.2.

⁸⁵⁹ Ex 45, TB5, Vol 26, Tab 10, AST.002.013.0060_0005 [19].

⁸⁶⁰ Ex 45, TB 5 Vol 26 Tab 10, AST.002.013.0060_0005, [20]; Transcript, 17 November 2023, T2646.4-2647.29.

⁸⁶¹ Transcript, 17 November 2023, T2649.4-10.

⁸⁶² Ex 45, TB 5, Vol 26, Tab 10, AST.002.013.0060_0014 [74].

⁸⁶³ Ex 45, TB 5, Vol 26, Tab 10, AST.002.013.0060_0014 [74]; Transcript, 17 November 2023, T2658.30-44.

580. While there had been improvements on the induction process by the time of the Inspector's inspection of DCC in 2022, she told the Special Commission that at that time she still observed it to be "weak".⁸⁶⁴ Ms Chappell gave evidence that the OSP team at DCC are currently reviewing the inmate induction process because inmates would benefit from a training session during their induction, exploring information in the Women's Handbook and the complaints process generally.⁸⁶⁵ At the time of giving this evidence, the Inspector's report of her 2022 inspection of DCC had not yet been tabled in Parliament.⁸⁶⁶ The report has since been provided to the Special Commission on 1 December 2023, however, the report does not discuss the induction process, or lack thereof, at DCC.⁸⁶⁷
581. This is consistent with the evidence that the Special Commission heard from a number of inmate witnesses that they did not receive much, if any, information about how to make a complaint, in particular about an officer, when they arrived at DCC.⁸⁶⁸ This was despite the "Reception procedures" COPP, which came into effect on 16 December 2017 (i.e. following the Inspector's 2017 inspection at DCC), mandating that inmates were to be provided with the "Inmate handbook", "Inmate information booklet" and "Information about correctional centre discipline" documents upon their introduction to a correctional centre.⁸⁶⁹
582. The Inspector was also concerned at the 2017 inspection by the culture of the prison, particularly its punitive nature.⁸⁷⁰
583. The Inspector's suggestions for future improvements of complaint making mechanisms at DCC are addressed at [4.5.2] below.

⁸⁶⁴ Transcript, 17 November 2023, T2658.41-T2659.10.

⁸⁶⁵ Ex 45, TB5, Vol 27, Tab 11, CSNSW.0001.0261.0001_0025 [78].

⁸⁶⁶ Ex 45, TB5, Vol 26, Tab 10, AST.002.013.0060_0014 [76].

⁸⁶⁷ Inspector of Custodial Services, *Inspection of Silverwater Women's and Dillwynia Correctional Centres 2022*, AST.002.013.0093 (to be tendered).

⁸⁶⁸ Ex 3, TB1, Tab 8A, AST.002.013.0001_0002 [8]; Ex 3, TB1, Tab 14A, AST.002.013.0003_0006 [26]; Ex 3, TB1, Tab 11A, AST.002.013.0002_0008-0009 [31]; Ex 3, TB1, Tab 32A, AST.002.013.0004_0006 [28]; Ex 3, TB1, Tab 46, AST.002.013.0009_0009 [56].

⁸⁶⁹ Ex 59, TB5, Vol 22, CSNSW.0001.0011.0001_0025-26 9.2-9.3.

⁸⁷⁰ Transcript, 17 November 2023, T2654.39-T2655.3.

4.2.2 The Ombudsman

4.2.2.1 The role of the Ombudsman

584. The NSW Ombudsman is an independent statutory office established under the *Ombudsman Act 1974 (Ombudsman Act)*.⁸⁷¹ A core function of the Ombudsman is to receive and handle complaints about the conduct of public authorities and individual officials such as the Commissioner of CSNSW and staff of CSNSW.⁸⁷² In relation to custodial services and community corrections, the agencies that the Ombudsman receives complaints about, in addition to CSNSW, are the Justice Health and Forensic Health Network, Youth Justice NSW and private prison providers.⁸⁷³ Both inmates and staff of CSNSW are able to make complaints to the Ombudsman.⁸⁷⁴ The complaint handling functions of the Ombudsman in respect of custodial services are primarily undertaken by staff in the Detention and Custody Unit, which is within the Complaints and Resolution Branch.⁸⁷⁵
585. The Ombudsman can only deal with complaints about conduct “relating to a matter of administration”.⁸⁷⁶ The Ombudsman considers that sexual harassment or sexual assault of an inmate by a correctional officer would relate to a matter of administration and is something about which a complaint could be made under the Ombudsman Act.⁸⁷⁷ Similarly, the Ombudsman is able to deal with a complaint about the handling by CSNSW of alleged sexual harassment or assault.⁸⁷⁸
586. The Ombudsman’s evidence was that if his staff were to receive a complaint from an inmate disclosing sexual assault by a corrections officer, they would first determine whether the matter had been referred to police for investigation. His evidence was that where conduct may

⁸⁷¹ Ex 59, TB 5, Vol 28, Tab 15, AST.002.013.0079_0001 [4].

⁸⁷² Ex 59, TB 5, Vol 28, Tab 15, AST.002.013.0079_0002 [7].

⁸⁷³ Ex 59, TB 5, Vol 28, Tab 15, AST.002.013.0079_0002-3 [11]. This includes GEO, Serco Australia, MTC and St Vincent’s Health.

⁸⁷⁴ Ex 59, TB 5, Vol 28, Tab 15, AST.002.013.0079_0006 [30].

⁸⁷⁵ Ex 59, TB 5, Vol 28, Tab 15, AST.002.013.0079_0003 [16].

⁸⁷⁶ Ex 59, TB 5, Vol 28, Tab 15, AST.002.013.0079_0002 [8].

⁸⁷⁷ Ex 59, TB 5, Vol 28, Tab 15, AST.002.013.0079_0002 [8].

⁸⁷⁸ Ex 59, TB 5, Vol 28, Tab 15, AST.002.013.0079_0002 [8].

constitute both criminal conduct and maladministration (such as an assault of an inmate by an officer), it would generally be appropriate for the matter to be investigated by police and dealt with as a criminal matter rather than, or at least as a priority over, any administrative investigation. In practice, the Ombudsman's staff will provide the inmate with information about how to make a report to police, and if they did not wish to do so via staff at the correctional centre where they are housed, the Ombudsman's staff are able to contact an alternative at CSNSW to facilitate the report being made.⁸⁷⁹ The Ombudsman suggested it may also be appropriate for a referral to be made to another agency, such as the ICAC, if the complaint is about corrupt conduct.⁸⁸⁰

4.2.2.2 Making a complaint to the Ombudsman

587. CSNSW has a statutory responsibility, pursuant to s. 12(3)(a) of the Ombudsman Act, to take all steps necessary to facilitate the making of a complaint by an inmate to the Ombudsman. An inmate should be provided with information regarding access to the Ombudsman and the process for resolving a complaint via that avenue.⁸⁸¹ Inmates are meant to be informed about the ability to contact the Ombudsman by way of posters displayed in the gaol and, as the Special Commission heard, less reliably by way of a facility-wide message sent to all inmates about when the Ombudsman would visit the centre, in the Women's Handbook (in hard copy, although the Special Commission heard evidence that hard copies of this Handbook were scarce; and now on inmate tablets), and during their induction.⁸⁸² The Fact Sheet informed officers that inmates can make inquiries and complaints to the Ombudsman if they are not satisfied by the action taken by CSNSW in the first instance.⁸⁸³

⁸⁷⁹ Ex 59, TB 5, Vol 28, Tab 15, AST.002.013.0079_0002 [9].

⁸⁸⁰ Ex 59, TB 5, Vol 28, Tab 15, AST.002.013.0079_0002 [9].

⁸⁸¹ Ex 58, TB3, Vol 18, Tab 630, CSNSW.0002.0024.3203_0835, 5.1; TB3 Vol 18 Tab 629, CSNSW.0002.0024.320_0733, 1.1.

⁸⁸² Ex 50, TB5, Vol 27, Tab 11, CSNSW.0001.0261.0001_0024-25 [75].

⁸⁸³ Ex 59, TB5, Vol 28, Tab 14, Annexure Tab 3, CSNSW.0001.0108.0007-8.

588. The Fact Sheet has been recently updated and is now aimed at providing information directly to inmates. The updated version lists the Ombudsman as a free, impartial service an inmate can call to discuss a complaint.⁸⁸⁴
589. An inmate can make a complaint to the Ombudsman in writing, by telephone (although in practice this is difficult at DCC given the Ombudsman's telephone service closes for the day at 4pm, as discussed below) or in person when the Ombudsman's staff visits a correctional centre.⁸⁸⁵ An inmate can make a complaint to the Ombudsman regardless of whether the inmate has first attempted to resolve their complaint locally.⁸⁸⁶ The Ombudsman can also receive an inmate's complaint by referral from another body, such as the Inspector or the Health Care Complaints Commission.⁸⁸⁷ The Governor or a delegate must ensure that all inmates that have requested to see the Ombudsman's staff are readily available.⁸⁸⁸
590. Any communication between an inmate and the Ombudsman should not be monitored or read by staff.⁸⁸⁹ This includes mail addressed to the Ombudsman from an inmate or from the Ombudsman to an inmate, which is not meant to be opened, inspected or read.⁸⁹⁰
591. The Ombudsman's staff will inform the correctional centre in advance of a planned visit to enable staff to have time to display posters informing inmates as to when and how to speak to the Ombudsman. The Ombudsman's evidence was that inmates can either inform correctional officers in advance of the visit that they wish to speak to the Ombudsman's staff or approach the Ombudsman's staff without notice as they move throughout the centre. His evidence was that usually an announcement is made over a loudspeaker that they are available if inmates would like to speak to them.⁸⁹¹ Depending on the layout of the centre and the number of people who want to speak to the Ombudsman's staff, discussions can occur in yards, units, worksites,

⁸⁸⁴ Ex 59, TB5, Vol 28, Tab 14, AST.002.013.0082_0008 [34]; Ex 59, TB5, Vol 28, Tab 14, Annexure Tab 5, CSNSW.0001.0266.0002.

⁸⁸⁵ Ex 59, TB5, Vol 28, Tab 15, AST.002.013.0079_0004-5, [22]-[24], [28].

⁸⁸⁶ Ex 59, TB3, Vol 18, Tab 629, CSNSW.0002.0024.3203_0733 1.1.

⁸⁸⁷ Ex 59, TB 5, Vol 28, Tab 15, AST.002.013.0079_0006 [29].

⁸⁸⁸ Ex 58, TB3, Vol 18, Tab 630, CSNSW.0002.0024.3203_0835 - 0837 5.3.

⁸⁸⁹ Ex 58, TB3 Vol 18 Tab 630, CSNSW.0002.0024.3203_0835 5.1.

⁸⁹⁰ Ex 58, TB3, Vol 18, Tab 629, CSNSW.0002.0024.3203_0733 1.2.

⁸⁹¹ Ex 59, TB 5, Vol 28, Tab 15, AST.002.013.0079_0005 [25].

holding rooms or interview rooms. Correctional officers are usually in line-of-sight but out of hearing.⁸⁹² During the Ombudsman's visit to a centre, the Ombudsman's staff will often try to speak to members of the IDC as they have a good understanding of the types of issues at the centre and whether they are being resolved efficiently.⁸⁹³

592. The evidence of the Ombudsman was that when inmates make complaints to the Ombudsman's office, usually their name and MIN will be recorded. If the Ombudsman decides to contact an agency to make preliminary inquiries, with the consent of the inmate, he would usually inform the agency of the name of the individual who had complained. His evidence was that an inmate is able to remain anonymous; however, in some instances this impacts his ability to handle or resolve the issues, and these implications will be discussed with the person making the complaint.⁸⁹⁴

593. Officer Jacquelyn Brown told the Special Commission that the Ombudsman "was probably the safest way for them [inmates] to report something...because if it was in relation to Astill at the time, the inmate wouldn't know if their complaint would get back to Astill, or a report fall into his hands as he worked in the intel role on occasion".⁸⁹⁵

594. However, in seeking to resolve a complaint, the Ombudsman's staff may telephone the correctional centre or speak with staff and/or inmates during a visit to the centre.⁸⁹⁶ The Special Commission heard evidence from an officer that after the Ombudsman conducts his investigation, the Governor would be notified in writing about the nature of the complaint and the identity of the person making the complaint.⁸⁹⁷

⁸⁹² Ex 59, TB 5 Vol 28 Tab 15, AST.002.013.0079_0005, [27].

⁸⁹³ Ex 59, TB 5 Vol 28 Tab 15, AST.002.013.0079_0015, [26].

⁸⁹⁴ Ex 59, TB 5 Vol 28 Tab 15, AST.002.013.0079_0004, [21].

⁸⁹⁵ Ex. 57, TB2, Vol 8, Tab 79, AST.002.013.0038_0009 [64].

⁸⁹⁶ Ex. 58, TB3, Vol 18, Tab 629, CSNSW.0002.0024.3203_0733 s. 1.1.

⁸⁹⁷ Ex. 18, TB2, Vol 7, Tab 49A, AST.002.013.0013_0014 [76].

595. Witness N told the Special Commission that she would never call the Ombudsman because of the threats Astill was making toward her if she said anything about him and because he would listen to the inmates' calls.⁸⁹⁸ Sarah Ward's evidence was similar.⁸⁹⁹
596. Witness C gave evidence that if an inmate wished to speak to the Ombudsman, which she did on occasion, inmates had to indicate that fact to staff, and that when the Ombudsman visited, inmates were paraded in front of everyone on the way to or from the appointment.⁹⁰⁰ In Witness C's experience, when she did speak with the Ombudsman, it was clear that the Ombudsman had already been briefed by Governor Martin and was not independent.⁹⁰¹ Witness C said:
- For example, I told the Ombudsman that the inmates would like more employment opportunities. I was cut off and told "You have already been told by management that there will be more employment roles in 6 weeks' time".*⁹⁰²
597. Witness B also gave evidence that reports made to the Ombudsman would go to the Governor and make their way back into the facility.⁹⁰³
598. Witness O gave evidence that she was aware of the role of the Ombudsman and that the phone number was on the call list next to the OTS, however, she stated that although inmates are told that a call to the Ombudsman is confidential, inmates did not believe this and nothing in gaol was considered to be confidential.⁹⁰⁴
599. Witness W said that she knew inmates that had contacted the Ombudsman, but that the substance of their reports were not kept confidential and they were reprimanded by officers for raising the issue they had discussed with the Ombudsman.⁹⁰⁵
600. Elizabeth Cox gave evidence that she contacted the Ombudsman about a complaint she could not recall the substance of, waited three weeks to be sent a complaint form, and once she

⁸⁹⁸ Ex. 3, TB1, Vol 6, Tab 32A, AST.002.013.0004_0006-7 [30].

⁸⁹⁹ Transcript, 18 October 2023, T278-279.3; Transcript, 18 October 2023, T308.8-35.

⁹⁰⁰ Ex. 3, TB1, Vol 5, Tab 8A, AST.002.013.0001_0013-14 [54].

⁹⁰¹ Ex. 3, TB1, Vol 5, Tab 8A, AST.002.013.0001_0013-14 [54].

⁹⁰² Ex. 3, TB1, Vol 5, Tab 8A, AST.002.013.0001_0013-14 [54].

⁹⁰³ Ex. 3, TB1, Vol 6, Tab 23A, AST.002.013.0030_0011 [58]; Trudy Sheiles also gave evidence to this effect at Ex. 3, TB1 Tab 6A, AST.002.013.0005_0011 [70].

⁹⁰⁴ Ex. 3, TB1, Vol 5, Tab 17A, AST.002.013.0028_0008 [42].

⁹⁰⁵ Ex. 3, TB1, Tab 22A, AST.002.013.0008_0008 [44].

submitted it, she never heard anything further about her complaint.⁹⁰⁶ On another occasion, sometime in 2023, when Ms Cox and two other inmates called the Ombudsman to report an aggressive officer, they were told that the complaint was an “internal issue” and to call the CSSL.⁹⁰⁷ The inmates did not feel comfortable doing this because they knew that the CSSL was internal to CSNSW, so they did not feel that it was a confidential or independent option.⁹⁰⁸

601. Other inmates were unaware of the existence of the Ombudsman or their ability to make a complaint to the Ombudsman regarding the conduct of an officer.⁹⁰⁹

602. Ms Chappell told the Special Commission that inmates are able to contact the Ombudsman through a correctional centre phone or via the in-cell tablets. Her evidence was that the in-cell tablets provide inmates with the ability to discretely call the Ombudsman.⁹¹⁰

603. The Inspector gave evidence that in circumstances where inmates are often only provided the in-cell tablet after they are locked in their cells, usually at around 3pm, they can face difficulties in contacting the Ombudsman whose telephone contact services finished at 4pm, particularly if there are issues at muster or if there are delays with lock-in.⁹¹¹

4.2.2.3 Handling of complaints by the Ombudsman

604. The Ombudsman gave evidence regarding his complaint handling process. In the event of a person making a complaint to the Ombudsman regarding conduct that had not yet been raised directly with the agency involved, the Ombudsman can provide advice how best to do so, and in some cases, with the person’s consent, can directly refer the complaint to the agency.⁹¹² Where a complaint cannot be resolved directly with the agency, in some cases the Ombudsman will take further steps to assist in seeking a resolution. This may be done by contacting the agency to seek further information, or undertaking informal or formal conciliation, including

⁹⁰⁶ Ex. 3, TB1, Tab 46, AST.002.013.0009_0009 [57].

⁹⁰⁷ Ex. 3, TB1, Tab 46, AST.002.013.0009_0009 [58].

⁹⁰⁸ Ex. 3, TB1, Tab 46, AST.002.013.0009_0010 [58].

⁹⁰⁹ See, for example, the evidence of Witness W: Transcript, 18 October 2023, T322.43-323.40 and the evidence of Witness P: Transcript, 23 October 2023, T569.43-45.

⁹¹⁰ See also Transcript, 29 September 2023, T125.37-40.

⁹¹¹ Transcript, 17 November 2023, T2662.1-20.

⁹¹² Ex. 59, TB 5, Vol 28, Tab 15, AST.002.013.0079_0010 [37].

through the use of a professional internal or external mediator.⁹¹³ The Ombudsman is empowered to conduct conciliation under s. 13A of the Ombudsman Act, however, does not do so frequently, primarily due to inadequate resources.⁹¹⁴

605. After receiving a complaint, the Ombudsman may also make preliminary inquiries in accordance with s. 13AA of the Ombudsman Act for the purpose of determining whether to make particular conduct of a public authority the subject of an investigation. In practice, the Ombudsman explained that preliminary inquiries frequently result in a resolution of the complaint without proceeding to investigation, for example, because the agency is prompted by those inquiries to take appropriate action in response to the complaint, or because the agency provides an explanation for its action or inaction that indicates that an investigation is not warranted.⁹¹⁵

606. Pursuant to s. 12A of the Ombudsman Act, the Ombudsman is empowered to formally refer a complaint about a public authority to that public authority for it to investigate and report back to the Ombudsman. In so doing, the Ombudsman may make recommendation as to how the public authority investigates or otherwise deals with the complaint.⁹¹⁶ The Ombudsman gave evidence that after the agency has completed an investigation referred to him, the Ombudsman's staff will advise whether they are satisfied or unsatisfied with the outcome.⁹¹⁷ If the Ombudsman's staff are satisfied, they will monitor any undertakings made.⁹¹⁸ If they are not satisfied, they can ask for more information or action to be taken, or can themselves decide to take action, such as intervening in the investigation at any point.⁹¹⁹ PSI Director Angela Zekanovic gave evidence that most of the reports of misconduct received by PSI from inmates are received via the Ombudsman.⁹²⁰

⁹¹³ Ex. 59, TB 5, Vol 28, Tab 15, AST.002.013.0079_0010 [37].

⁹¹⁴ Ex. 59, TB 5, Vol 28, Tab 15, AST.002.013.0079_0012 [37]. For example, only one conciliation was conducted in 2022-23 which was successful.

⁹¹⁵ Ex. 59, TB 5, Vol 28, Tab 15, AST.002.013.0079_0010 [37].

⁹¹⁶ Ex. 59, TB 5, Vol 28, Tab 15, AST.002.013.0079_0011 [37].

⁹¹⁷ Ex. 59, TB 5, Vol 28, Tab 15, AST.002.013.0079_0011 [37].

⁹¹⁸ Ex. 59, TB 5, Vol 28, Tab 15, AST.002.013.0079_0011, [37].

⁹¹⁹ Ex. 59, TB 5, Vol 28, Tab 15, AST.002.013.0079_0011, [37].

⁹²⁰ Transcript, 28 September 2023, T73.30-40; T75.38-40.

607. Where the complaint received by the Ombudsman relates to conduct under s. 26 of the Ombudsman Act, including conduct that is contrary to law, unreasonable, unjust, oppressive or improperly discriminatory, or based wholly or partly on improper motives (among other things), the Ombudsman is empowered to commence a formal investigation.⁹²¹ The Ombudsman's evidence was that very few of the complaints received result in a formal investigation, and generally such an investigation will only be commenced where the suspected conduct is very serious or involves a systemic injustice, and where the investigation would not duplicate an appropriate alternative avenue for investigation or redress (such as a criminal investigation).⁹²²
608. The Ombudsman also gave evidence that in accordance with s. 25A of the Ombudsman Act (which commenced in August 2022), the Ombudsman may review the systems of a public authority for handling complaints, and in so doing, may require the head of the authority to provide information about those systems.⁹²³
609. The Ombudsman's staff attend monthly liaison meetings with executive staff at CSNSW to discuss current issues, recent complaints and to seek further information regarding particular operational or structural changes.⁹²⁴ Meetings are also held with the Governor or MOS during each visit to a centre and as required by individual complaints or issues.⁹²⁵
610. While the Ombudsman did have statutory power to conduct an investigation into Astill's misconduct, on the Ombudsman's own evidence it is very unlikely that such an investigation would have occurred, had complaints about Astill been brought to the Ombudsman's attention. Such an investigation would likely have been regarded as duplicating other alternative appropriate avenues for investigation. In any event, inmates did not perceive the Ombudsman

⁹²¹ Ex. 59, TB 5, Vol 28, Tab 15, AST.002.013.0079_0012 [37].

⁹²² Ex. 59, TB 5, Vol 28, Tab 15, AST.002.013.0079_0012-13 [37].

⁹²³ Ex. 59, TB 5, Vol 28, Tab 15, AST.002.013.0079_0013 [37].

⁹²⁴ Ex. 59, TB 5, Vol 28, Tab 15, AST.002.013.0079_0014 [44].

⁹²⁵ Ex. 59, TB 5, Vol 28, Tab 15, AST.002.013.0079_0014 [44].

to be an independent or effective means of resolving complaints. This inhibited the making of complaints.

4.3 Factors inhibiting inmates from making complaints

4.3.1 Hesitation to report to the Governor or DCC management

611. Witness N told the Special Commission that Astill told her that he would socialise with Ms Martin and Ms O’Toole, and they would “do as they’re fucking told”.⁹²⁶ Sarah Ward similarly said that it was not viable to make a complaint about Astill to those in management at DCC, including Ms O’Toole or Ms Martin, as it was clear that they were very close with Astill.⁹²⁷

Witness V felt that other officers were scared of reporting Astill as he was friends with Ms Martin.⁹²⁸

612. Trudy Sheiles told the Special Commission that inmates were told they could write a request to ask the Governor for something, but that “Shari Martin was the last person you would talk to at Dillwynia”.⁹²⁹ Ms Sheiles said that Shari Martin was particularly unhelpful to the inmates living in the SMAP unit because, in her experience, management at the gaol turned a blind eye to those inmates because of the crimes they had committed.⁹³⁰ Ms Sheiles gave evidence that on one occasion, when two SMAP inmates had engaged in a fight, she heard a Senior Officer say that one of the inmates “could have done a better job” on the other inmate, who was a convicted paedophile.⁹³¹

4.3.2 Fear of retribution from other inmates

613. Numerous inmates also gave evidence about fear of retribution from other inmates if they came forward with a complaint.

⁹²⁶ Ex. 3, TB 1, Vol 6, Tab 32A, AST.002.013.0004_0004 [18].

⁹²⁷ Transcript, 18 October 2023, T279.30-279.45; T289.28-289.34.

⁹²⁸ Ex. 3, TB 1, Vol 5, Tab 11A, AST.002.013.0002_0006 [23].

⁹²⁹ Ex. 3, TB1, Tab 6A, AST.002.013.0005_0010 [68].

⁹³⁰ Ex. 3, TB1, Tab 6A, AST.002.013.0005_0010 [68].

⁹³¹ Ex. 3, TB1, Tab 6A, AST.002.013.0005_0010 [69].

614. For example, Ms Sheiles' evidence was that she was physically assaulted at Berrima Correctional Centre by a person who was aware she had reported Astill's conduct.⁹³² The assailant referenced that Ms Sheiles' had "sucked Astill's dick" when punching her in the face.⁹³³
615. Witness W recalled an occasion where she informed Officer Wilson that Witness N was selling her monthly medication for buy up items from other inmates.⁹³⁴ Shortly after this, Witness N said to a group of inmates that she knew someone in their house had reported her and "I will find out who it is because you don't realise how much power I have".⁹³⁵ Witness N later told Witness W that she knew she reported her.⁹³⁶ Witness W later heard that Witness N had been saying that whoever bashed Witness W would get buy ups.⁹³⁷
616. Witness V gave evidence that she lived in fear every day that she would get bashed and that inmates never went anywhere alone because they feared a great deal for their safety.⁹³⁸ Witness V said that in this context, and in the context of where experience showed an officer would not provide help to inmates when they needed it, inmates did not feel supported to come forward with a complaint.⁹³⁹

4.4 Complaint making mechanisms made available to inmates at Dillwynia since Astill's offending

4.4.1 Inmate In-Cell Tablets

617. In October 2020, tablets were distributed to inmates at DCC.⁹⁴⁰ The tablets are issued to inmates when they are locked into their cells in the afternoon and they have access to them until

⁹³² Transcript, 17 October 2023, T213.32-50; Ex. 3, TB1, Vol 5, Tab 6A, AST.002.013.0005_0011-12 [77].

⁹³³ Transcript, 17 October 2023, T213.32-50; Ex. 3, TB1, Vol 5, Tab 6A, AST.002.013.0005_0011-12 [77].

⁹³⁴ Ex. 3, TB1, Vol 6, Tab 22A, AST.002.013.0008_0007 [38].

⁹³⁵ Ex. 3, TB1, Vol 6, Tab 22A, AST.002.013.0008_0007 [39].

⁹³⁶ Ex. 3, TB1, Vol 6, Tab 22A, AST.002.013.0008_0007 [39].

⁹³⁷ Ex. 3, TB1, Vol 6, Tab 22A, AST.002.013.0008_0007-8 [40].

⁹³⁸ Ex. 3, TB1, Vol 5, Tab 11A, AST.002.013.0002_0007 [27].

⁹³⁹ Ex. 3, TB1, Vol 5, Tab 11A, AST.002.013.0002_0007 [27].

⁹⁴⁰ Ex. 50, TB5, Vol 27, Tab 11, CSNSW.0001.0261.0001_0009 [17]. See also Ex. 59, TB5, Vol 28, Tab 12, CSNSW.0001.0263.1558_0017 [91].

approximately 10pm.⁹⁴¹ The tablets allow inmates to complete electronic forms, such as inmate application forms, inmate request forms and grievance forms.⁹⁴² The e-forms are processed by staff using the same procedure as the physical copies of the forms as prescribed by the COPP, and usually, Senior Correctional Officers are responsible for actioning request forms and application forms submitted electronically.⁹⁴³ If an Inmate Application Form is not resolved within 14 days, then it will be marked as overdue in the portal and it is the responsibility of the Functional Manager to check the overdue documents and take appropriate steps to action.⁹⁴⁴ Staff are able to advise inmates of the outcome of their application via the platform on the tablet.⁹⁴⁵ Section 9.1 of the COPP, “Inmate applications and requests”, prescribes that in facilities where e-form facilities are available, inmates must be directed to use these systems for processes relating to inmate applications and requests.⁹⁴⁶

618. Inmates are able to use the tablets to call family, friends, legal representatives, and external agencies such as the Ombudsman.⁹⁴⁷ The tablets also provide inmates access to other information, such as the Women’s Handbook.⁹⁴⁸
619. Ms Chappell’s evidence was that facility-wide messages, and messages specifically to inmate groups, can be sent to inmates using the tablets. Her evidence was that such messages are sent to inmates advising when the Official Visitor is attending DCC.⁹⁴⁹
620. Mr Tucker and Ms Snell gave evidence that an option that would allow inmates to use their in-cell tablet to make a confidential complaint to an external body is being considered.⁹⁵⁰

⁹⁴¹ Transcript, 29 September 2023, T126.26-32; Transcript, 25 October 2023, T794.36-40.

⁹⁴² Ex. 59, TB5, Vol 23, Tab 5, AST.002.013.0087_0004 [20], 5 [23]-[25].

⁹⁴³ Ex. 59, TB5, Vol 23, Tab 5, AST.002.013.0087_0006-7 [34].

⁹⁴⁴ Ex. 59, TB5, Vol 23, Tab 5, AST.002.013.0087_0007-8 [43]-[44].

⁹⁴⁵ Ex. 59, TB5, Vol 23, Tab 5, Annexure JB-1 Tab 10, CSNSW.0001.0112.0010-12.

⁹⁴⁶ Ex. 59, TB5, Vol 23, Tab 5, Annexure JB-1 Tab 10, CSNSW.0001.0112.0008.

⁹⁴⁷ Transcript, 19 September 2023, T125.23-39; Transcript, 18 October 2023, T304.37-305.4; Ex. 50, TB5, Vol 27, Tab 11, CSNSW.0001.0261.0001_0024 [73]-[74].

⁹⁴⁸ Ex. 50, TB5, Vol 27, Tab 11, CSNSW.0001.0261.0001_0009 [17].

⁹⁴⁹ Ex. 50, TB5, Vol 27, Tab 11, CSNSW.0001.0261.0001_0024 [70]. See also Ex. 45, TB5, Vol 26, Tab 10, AST.002.013.0060_0020 [123].

⁹⁵⁰ Ex. 55, TB5, Vol 28, Tab 14, AST.002.013.0082_0009 [35]; Ex. 55, TB5, Vol 28, Tab 12, CSNSW.0001.0263.1558_0014 [64].

621. However, the tablets have their drawbacks. Mr Buckley's evidence was that all staff at a centre with access to the portal regarding inmate application and requests can see that those documents have been submitted and agreed that it would not be an appropriate mechanism for an inmate to make an allegation regarding serious misconduct.⁹⁵¹

622. The Inspector gave evidence that when inmates are confined to their cells, they are not able to access phones in units and yards, and do not have in-cell charging facilities, despite tablets usually being distributed to inmates while they are locked in.⁹⁵² Further, the majority of inmates share cells, meaning cellmates can overhear each other's phone conversations.⁹⁵³

4.4.2 Information contained in the Women's Handbook

623. The Women's Handbook contains details of complaint making mechanisms (among other things), including how to contact the Ombudsman, ICAC, Health Care Complaints Commission and Official Visitor.⁹⁵⁴ The Special Commission had before it three versions of the Women's Handbook, from 2012, 2015 and 2019. Although the Women's Handbook has existed for (at least) a decade, the Special Commission heard evidence that inmates at DCC were not provided with the Women's Handbook, nor any other appropriate induction materials, upon their introduction to DCC during the period of Astill's offending.⁹⁵⁵

624. Witness V gave evidence that when she first came into custody at DCC she was not given a handbook of any sort. However, Witness V said that she was given a handbook a few months prior to the Special Commission commencing and is aware that they are now distributed to inmates.⁹⁵⁶ Witness V gave evidence that she can access the handbook on her tablet.⁹⁵⁷

⁹⁵¹ Transcript, 29 September 2023, T126.7-21.

⁹⁵² Ex. 45, TB5, Vol 26, Tab 10, AST.002.013.0060_0026 [175]; Transcript, 17 November 2023, T2662.24-26.

⁹⁵³ Ex. 45, TB5, Vol 26, Tab 10, AST.002.013.0060_0025 [170], 26 [176(d)].

⁹⁵⁴ Ex. 50, TB5, Vol 27, Tab 11, CSNSW.0001.0261.0001_0024 [70(b)], 25 [75]-[77]; Transcript, 22 November 2023, T2954.13-34; Transcript, 26 October 2023, T1004.18-38.

⁹⁵⁵ Ex. 3, TB1, Vol 5, Tab 8A, AST.002.013.0001_0002 [8]; Ex. 3, TB1, Tab 32A, AST.002.013.0004_0006 [28]; Ex. 3, TB1, Vol 5, Tab 11A, AST.002.013.0002_0008-9 [31]; Ex. 45, TB5, Vol 26, Tab 10, AST.002.013.0060_0014 [74].

⁹⁵⁶ Ex. 3, TB1, Vol 5, Tab 11A, AST.002.013.0002_0008-9 [31], [33].

⁹⁵⁷ Ex. 3, TB1, Vol 5, Tab 11A, AST.002.013.0002_0009 [33].

625. Ms Sheiles' evidence was that the Women's Handbook was "like hen's teeth", it was not distributed when inmates entered DCC, and "[y]ou were lucky to see it in your time at all".⁹⁵⁸ She told the Special Commission that she obtained a copy because another inmate was leaving DCC and "it was like gold, to have that".⁹⁵⁹ Her evidence was that much of the information in the handbook was obsolete or not correct, but it was useful as it contained the address of other gaols.⁹⁶⁰
626. Witness M similarly gave evidence that she did not receive a Handbook, nor participate in an induction session, when she arrived at DCC.⁹⁶¹
627. Ms Ward's evidence was that she saw copies of the Women's Handbook in her role as sweeper at reception. She informed the Special Commission that she used to try and get copies to give to women in their reception packs, however it was not easy to get copies of it to do so.⁹⁶²
628. Ms Chappell's evidence was that a physical copy of the Women's Handbook is now provided to inmates when they are first inducted at DCC or if an inmate requests a copy of the Handbook (albeit noting that Ms Chappell's time as Governor only commenced in October 2023).⁹⁶³ She also informed the Special Commission that the Handbook is now available to inmates using the in-cell tablets.⁹⁶⁴

4.4.3 Fact sheets and posters

629. The purpose of the previous four versions of the CSNSW Fact Sheet on "Avenues for Inmate Inquiries and Complaints" was to provide information to CSNSW staff about the options available to inmates to make a complaint or inquiry.⁹⁶⁵ However, the Special Commission received evidence from Mr Tucker that the document has recently been updated and is now

⁹⁵⁸ Transcript, 17 October 2023, T233.38-T234.10.

⁹⁵⁹ Transcript, 17 October 2023, T233.38-46.

⁹⁶⁰ Transcript, 17 October 2023, T233.38-T234.10.

⁹⁶¹ Transcript, 17 October 2023, T259.40-T260.1.

⁹⁶² Transcript, 18 October 2023, T306.29-T307.4.

⁹⁶³ Ex. 50, TB5, Vol 27, Tab 11, CSNSW.0001.0261.0001_0024-25 [75].

⁹⁶⁴ Ex. 50, TB5, Vol 27, Tab 11, CSNSW.0001.0261.0001_0024-25 [70]-[76]; Transcript, 22 November 2023, T2954.13-36.

⁹⁶⁵ Ex. 59, TB5, Vol 28, Tab 14, AST.002.013.0082_0006 [24].

aimed at providing information directly to inmates.⁹⁶⁶ The Fact Sheet has been simplified and includes a list of confidential free calls to external bodies and the CSSL that inmates can make.⁹⁶⁷ The new version of the Fact Sheet has been published on inmate tablets, along with a poster setting out how inmates can make a confidential complaint, and at the time of the Special Commission's hearings, physical copies of these documents were to be distributed to correctional centres imminently.⁹⁶⁸

630. Ms Snell also gave evidence that a communications campaign had commenced to encourage inmates to report misconduct and to increase awareness about the range of options available for making a complaint. Her evidence was that updated fact sheets and posters were in the process of being distributed to all correctional and transitional centres.⁹⁶⁹

4.4.4 The Corrective Services Support Line and Sexual Misconduct Reporting Line

631. Mr Tucker gave evidence that, from the conclusion of the week commencing 27 November 2023, the hours of the CSSL will be extended to 7:00am to 9:00pm, Monday to Friday, and staffing arrangements expanded accordingly.⁹⁷⁰ This was slightly different to Ms Snell's evidence, which was that the new operating hours of the CSSL will be 7:30am to 10:00pm.⁹⁷¹ The duration of the calls will be 10 minutes (as opposed to six).⁹⁷²

632. Mr Tucker and Ms Snell told the Special Commission that the scope of the CSSL will also be expanded to include a confidential Sexual Misconduct Reporting Line (**SMRL**) for inmates to report sexual misconduct by staff that the inmate has experienced or witnessed.⁹⁷³ Staff receiving calls on the SMRL will refer matters directly to the PSI Directorate. The Special

⁹⁶⁶ Ex. 59, TB5, Vol 28, Tab 14, AST.002.013.0082_0008 [34]; Ex. 59, TB5, Vol 28, Tab 14, Annexure Tab 5, CSNSW.0001.0266.0001-2.

⁹⁶⁷ Ibid.

⁹⁶⁸ Ex. 59, TB5, Vol 28, Tab 14, AST.002.013.0082_0008 [34]; Ex. 59, TB5, Vol 28, Tab 14, Annexure Tab 5, CSNSW.0001.0266.0001. See also Ex. 50, TB5, Vol 27, Tab 11, CSNSW.0001.0261.0001_0025 [76].

⁹⁶⁹ Ex. 59, TB5, Vol 28, Tab 12, CSNSW.0001.0263.1558_0014 [66].

⁹⁷⁰ Ex. 59, TB5, Vol 28, Tab 14, AST.002.013.0082_0009 [35].

⁹⁷¹ Ex. 59, TB5, Vol 28, Tab 12, CSNSW.0001.0263.1558_0013 [63]-[64].

⁹⁷² Ex. 59, TB5, Vol 28, Tab 12, CSNSW.0001.0263.1558_0013 [64].

⁹⁷³ Ex. 59, TB5, Vol 28, Tab 14, AST.002.013.0082_0009,[35]; Ex. 55, TB5, Vol 28, Tab 12, CSNSW.0001.0263.1558_0013-14 [63]-[64].

Commission heard that protocols and escalation procedures for the new phone line will be developed in due course.⁹⁷⁴

633. In view of the evidence as to inmates' difficulties contacting CSSL and perceptions regarding the ineffectiveness of CSSL as a means of making a complaint, it will be critical that inmates perceive the SMRL to have a distinct role and method of operation, as compared to CSSL, and that its staff are adequately trained.
634. **PROPOSED RECOMMENDATION: The Special Commission should recommend that all protocols, procedures and inmate communications regarding the SMRL make clear that it is distinct from CSSL and operates in a different manner.**
635. **PROPOSED RECOMMENDATION: The Special Commission should recommend that CSNSW staff operating the SMRL should be required to attend training in responding to disclosures of sexual assault, and in trauma-informed practice, prior to commencing on this telephone line.**
636. **PROPOSED RECOMMENDATION: The Special Commission should recommend that specialised, culturally appropriate support should be available to Indigenous inmates in accessing the SMRL and that CSNSW staff operating the SMRL should be trained in culturally appropriate practice for Indigenous inmates.**

4.4.5 Advocacy Service

637. Ms Snell gave evidence that CSNSW was, in November 2023, proposing to fund an advocacy service to provide accessible, independent and effective support for women in custody in navigating the systems for inmates to make complaints.⁹⁷⁵ Consideration was being given by CSNSW to the advocacy service advocating for inmates with a broad range of issues, including the legal system, domestic and family violence, barriers to housing, fines and debt, issues related to the care of their children, access to health care, and other related services.⁹⁷⁶

⁹⁷⁴ Ex. 59, TB5, Vol 28, Tab 14, AST.002.013.0082_0009 [35].

⁹⁷⁵ Ex. 55, TB5, Vol 28, Tab 12, CSNSW.0001.0263.1558_0014 [65].

⁹⁷⁶ Ex. 55, TB5, Vol 28, Tab 12, CSNSW.0001.0263.1558_0014 [65].

Ms Snell's evidence was that CSNSW had commenced consultations with experienced service delivery agencies with respect to the building and design of the advocacy service and would also engage with female inmates to ensure that the model reflects their expectations and needs.⁹⁷⁷

638. The evidence before the Special Commission as to inmates' difficulty in identifying and accessing appropriate complaint making mechanisms (both within and outside CSNSW) in relation to Astill's offending indicates that such an advocacy service could have real benefits for women in custody. It is important that any funding should be ongoing and not time-limited, and that the service is as accessible as possible to female inmates and includes advocacy in relation to the making of complaints about misconduct by CSNSW staff (as opposed to, for example, female inmates' interactions with government agencies outside CSNSW regarding issues such as housing and care of children).

639. **PROPOSED RECOMMENDATION: Consideration should be given to recommending that CSNSW fund such an advocacy service for female inmates, and that in designing the service, it maximises its accessibility to female inmates (including in particular its accessibility to Indigenous female inmates) and ensures that its scope extends to advocacy in the making of complaints about misconduct by CSNSW staff (rather than simply external issues such as housing, care of children etc).**

4.4.6 Individual house meetings

640. From November 2023, individual house meetings have been held within each accommodation unit at DCC with the intention to improve communication between senior staff and inmates and improve conditions for inmates.⁹⁷⁸ The meetings are to occur monthly and are chaired by either the Functional Manger or the Senior of the relevant area.⁹⁷⁹

⁹⁷⁷ Ex. 55, TB5, Vol 28, Tab 12, CSNSW.0001.0263.1558_0014 [65].

⁹⁷⁸ Ex. 50, TB5, Vol 27, Tab 11, CSNSW.0001.0261.0001_0010 [17].

⁹⁷⁹ Ex. 50, TB5, Vol 27, Tab 11, CSNSW.0001.0261.0001_0010 [17].

641. Ms Chappell's evidence was that low-level issues can often be resolved at individual house meetings, allowing the more strategic issues to be focused on at the IDC meetings. Her evidence was that the meetings are informal, with the idea that they will foster trust and build positive working relationships.⁹⁸⁰ She agreed that this model was one way to help create an environment and foster relationships to enable inmates to make complaints about serious misconduct.⁹⁸¹

642. Ms Snell gave evidence that both house meetings and the IDC are initiatives that warrant consideration to be implemented at all correctional centres.⁹⁸² The concept of "house meetings" will obviously only be applicable in correctional centres where inmates share living areas.

4.4.7 Changes relating to the Official Visitor

643. Ms Chappell told the Special Commission that on 16 November 2023, she spoke with the Official Visitor, Helen Duggan, who visits DCC weekly.⁹⁸³ Among other things, Ms Chappell raised the idea of a permanent office space for the Official Visitor to use at DCC, which would provide greater privacy for inmates in circumstances where currently, Ms Duggan usually has to make use of an interview room in the accommodation areas.⁹⁸⁴ Ms Chappell's evidence was that Ms Duggan was agreeable to this change.⁹⁸⁵

4.5 Recommendations to improve complaint mechanisms at DCC

644. The Special Commission heard from numerous inmate witnesses that inmates should have access to an external telephone line for making complaints about CSNSW staff conduct that is entirely independent from CSNSW and is unreservedly confidential.⁹⁸⁶

645. The overarching theme of the inmate witnesses' evidence was that inmates had no faith in the complaint-making mechanisms in place at DCC and did not trust that a complaint would be

⁹⁸⁰ Transcript, 22 November 2023, T2944.28-46.

⁹⁸¹ Transcript, 22 November 2023, T2944.18-2945.34; see also the evidence of Officer Grant Riddle: Transcript, 27 October 2023, T1012.2-33.

⁹⁸² Transcript, 24 November 2023, T3266.5-20.

⁹⁸³ Ex. 50, TB5, Vol 27, Tab 11, CSNSW.0001.0261.0001_0023 [68].

⁹⁸⁴ Ex. 50, TB5, Vol 27, Tab 11, CSNSW.0001.0261.0001_0023 [68].

⁹⁸⁵ Ex. 50, TB5, Vol 27, Tab 11, CSNSW.0001.0261.0001_0023 [68].

⁹⁸⁶ Ex. 3, TB1, Vol 6, Tab 23A, AST.002.013.0030_0011 [61]; Ex. 3, TB1, Vol 5, Tab 14A, AST.002.013.0003_0006 [29], [31]-[32]; Ex. 3, TB1, Vol 6, Tab 22A, AST.002.013.0008_0009 [48].

dealt with properly or kept confidential.⁹⁸⁷ Multiple inmate witnesses gave evidence that all complaint avenues that they knew of were, in effect, internal to CSNSW in their operation, or that they did not trust that external avenues for complaint weren't monitored or passed back to CSNSW.⁹⁸⁸ In an environment where there is a supremely imbalanced power dynamic, and where inmates find it extremely difficult to trust anyone, be that staff or other inmates, for fear of retribution, independent external reporting mechanisms in relation to officer misconduct must not only be made available to inmates, but their existence and operation clearly communicated to both inmates and staff.⁹⁸⁹

646. Ms Johnson gave evidence recommending that chaplains should be informed of the ways in which they can make a complaint about conduct occurring inside a correctional centre, including reporting back to the employer they are contracted by, such as Anglicare, so that a report can be escalated externally, such as to ICAC.⁹⁹⁰

647. The Special Commission also heard that inmates who are victims of sexual misconduct are in need of counselling options that are separate from CSNSW and totally protected and unmonitored by staff within the correctional centre.⁹⁹¹ The Special Commission was told that if a particular counselling arrangement did not work for an inmate, there would be nowhere else for an inmate to get this kind of help.⁹⁹² Further, and most concerning, the Special Commission heard that some of Astill's victims had requested sexual assault counselling, including from Justice Health, but did not receive such counselling in a timely manner, or were advised to talk to an internal psychologist on staff at DCC.⁹⁹³ Ms Snell gave evidence that access to confidential, external, specialised sexual assault trauma counsellors has been provided

⁹⁸⁷ Ex. 3, TB1, Vol 6, Tab 23A, AST.002.013.0030_0011 [62]-[63]; Ex. 3, TB1, Vol 5, Tab 6A, AST.002.013.0005_0011 [74]; Ex. 3, TB 1, Vol 5, Tab 14A, AST.002.013.0003_0007, [32].

⁹⁸⁸ Ex. 3, TB1, Vol 6, Tab 23A, AST.002.013.0030_0011 [58]; Ex. 3, TB 1, Vol 5, Tab 14A, AST.002.013.0003_0007 [33].

⁹⁸⁹ Ex. 3, TB1, Vol 5, Tab 6A, AST.002.013.0005_0011 [74], [77].

⁹⁹⁰ Transcript, 30 October 2023, T1306.1-17.

⁹⁹¹ Ex. 3, TB1, Vol 6, Tab 23A, AST.002.013.0030_0011 [65]; Ex. 3, TB1, Vol 5, Tab 6A, AST.002.013.0005_0011, [72]-[73].

⁹⁹² Ex. 3, Vol 6, TB1, Tab 23A, AST.002.013.0030_0011 [64].

⁹⁹³ Ex. 3, TB1 Tab 27A, AST.002.009.0099_0008 [89]; Ex. 45, AST.002.006.0070_0192; T2763.1-22; Ex. 3, TB1, Vol 6, Tab 24A, AST.002.009.0090_0004 [56]-[57].

to the victims of Astill's offending and other female inmates via the Uralla Cottage service provider and through a newly established Victims Services arrangement.⁹⁹⁴

648. At least some of this access to specialised sexual assault counselling appears to have been facilitated for Astill's victims as a result of the initiation of the Special Commission. It is critical that such access be maintained for Astill's victims, after the conclusion of the Special Commission.

649. **PROPOSED RECOMMENDATION: The Special Commission should recommend that CSNSW must ensure that access to confidential, external, specialised sexual assault trauma counsellors be provided in an ongoing manner to the victims of Astill's offending and other female inmate victims of sexual assault by CSNSW staff via the Uralla Cottage service provider, for so long as it is required (in the view of the specialist counsellors).**

4.5.1 Suggestions regarding the Ombudsman

650. The Ombudsman gave evidence that he has received feedback that the differing bodies overseeing custodial facilities in NSW, including the Ombudsman and Inspector, at times causes confusion for staff and inmates who can find it difficult to distinguish the respective roles of different agencies. The Ombudsman suggested that the functions of the Ombudsman and Inspector should be merged, or brought closer together, through co-located visitors, complaint handling and investigation functions. His view was that a merger would enhance the perceived independence of the Inspector's office, which is currently reliant on DCJ for internal office funding and corporate support, and its staff are employed by DCJ.⁹⁹⁵

651. The benefits of the proposed merger between the functions of the Ombudsman and Inspector are not clear to us, including in view of the Inspector's specialised functions concerning systemic issues in the correctional system. However, it is clear from the evidence that both the

⁹⁹⁴ Ex. 5, TB5, Vol 28, Tab 12, CSNSW.0001.0263.1558_0014 [68].

⁹⁹⁵ Ex. 59, TB 5, Vol 28, Tab 15, AST.002.013.0079_00017-18, [56]-[59].

Ombudsman's Detention and Custody Unit and the Inspector would benefit from additional resources to perform their respective statutory functions.

652. Ms Snell indicates in her evidence that in response to issues raised at the Special Commission, the CSNSW COPP team are reviewing the policy on inmate mail and developing an Inmate Mail Factsheet which will make clear the ability for inmates to send mail to exempt persons, including the Ombudsman and the Inspector, that will not be opened by CSNSW.⁹⁹⁶ She also gave evidence that work was underway to allow inmates to use their tablets to access the websites of select statutory and external oversight bodies safely and securely, such as the Ombudsman.⁹⁹⁷

653. **PROPOSED RECOMMENDATION: The Special Commission should recommend that, as a priority, CSNSW facilitate inmate access via tablet to the websites of statutory and external oversight bodies whose statutory functions include receiving complaints from inmates, including the Ombudsman, ICAC and the Inspector.**

654. The Special Commission received a submission from the Wirringa Baiya Aboriginal Women's Legal Centre (**Wirringa Baiya**) indicating that it was extremely unlikely that an Aboriginal woman would make a call to a service such as the Ombudsman and make a disclosure regarding sexual assault in custody in a ten-minute call, noting that the calls on the CADL are limited to ten minutes.⁹⁹⁸ They also recommended that Aboriginal women need to have culturally appropriate support to make a call to a service like the Ombudsman and to receive ongoing cultural support and healing in the time following, noting that by the time women are in custody, "their trust in systems has been so completely eroded it is unreasonable to suggest that a woman could, with no support, pick up the CADL phone and call the CSSL or the Ombudsman and report sexual assault."⁹⁹⁹

⁹⁹⁶ Ex. 55, TB 5, Vol 28, Tab 12, CSNSW.0001.0263.1558_0019.

⁹⁹⁷ Ex. 55, TB 5, Vol 28, Tab 12, CSNSW.0001.0263.1558_0026.

⁹⁹⁸ Ex. 59, TB 5, Vol 28, Tab 17, AST.002.013.0077_0006.

⁹⁹⁹ Ex. 59, TB 5 Vol 28 Tab 17, AST.002.013.0077_0007.

655. Ms Chappell gave evidence that in her view, female inmates would benefit from a training session during their induction and orientation to a correctional centre which explores information contained in the Women's Handbook and the complaints process generally, including how inmates can make a complaint to the Ombudsman.¹⁰⁰⁰ She agreed that some inmates cannot read or comprehend writing well, and that it can be traumatic for an inmate in their first days or week in gaol, so it was critical to have both induction training and a written handbook.¹⁰⁰¹ She also gave evidence that facility-wide messages can be sent to inmates routinely to remind inmates of the avenues available to them to make complaints.¹⁰⁰² This could similarly be done at accommodation meetings or via the IDC.¹⁰⁰³ She noted that at DCC the Offender Services and Programs team had commenced a review of the orientation training.¹⁰⁰⁴

4.5.2 Suggestions regarding, and made by, the Inspector of Custodial Services

656. The Inspector noted that, with additional resources, it would be appropriate to formalise the process currently in place where the Inspector receives and triages complaints from inmates and refers those complaints on to the appropriate investigative body.¹⁰⁰⁵

657. The Inspector's evidence was that in her experience, factors including a lack of knowledge of complaint mechanisms, privacy and confidentiality, a lack of access to complaint mechanisms, fear of not being believed and fear of reprisals, impact the ability of inmates to make a complaint about the conduct of CSNSW staff.¹⁰⁰⁶ The Inspector stated that inmates' understanding of the complaint mechanisms available to them could be achieved by implementing the following:

¹⁰⁰⁰ Transcript, 22 November 2023, T2954.5-2955.1; Ex. 50, TB 5, Vol 27, Tab 11, CSNSW.0001.0261.0001_0025 [78].

¹⁰⁰¹ Transcript, 22 November 2023, T2954.23-2955.4.

¹⁰⁰² Ex. 50, TB 5 Vol 27 Tab 11, CSNSW.0001.0261.0001_0023-5 [70]-[78].

¹⁰⁰³ Transcript, 22 November 2023, T2955.9-15.

¹⁰⁰⁴ Ex. 50, TB 5, Vol 27, Tab 11, CSNSW.0001.0261.0001_0025 [78].

¹⁰⁰⁵ Transcript, 17 November 2023, T2657.4-33.

¹⁰⁰⁶ Ex. 45, TB 5 Vol 26, Tab 10, AST.002.013.0060_0024 [162].

- a) all correctional centres should ensure that adequate information is provided during reception and induction in relation to complaint mechanisms, in accordance with the requirements of the Regulation, Inspection Standards and the COPP;¹⁰⁰⁷
- b) where an inmate is not fluent in English, all correctional centres should ensure that this information is provided in a language that the inmate understands;¹⁰⁰⁸
- c) all correctional centres should ensure that this information is repeated to inmates on admission, rather than assuming it has occurred at another centre;¹⁰⁰⁹ and
- d) CSNSW should conduct regular audits to ensure that correctional centres are complying with these requirements.¹⁰¹⁰

658. In relation to the lack of privacy and confidentiality in gaol impacting upon the ability of an inmate to make a complaint, the Inspector recommended:¹⁰¹¹

- a) an assessment of AVL suites be considered to ensure that noise from those suites cannot be heard in adjoining rooms or corridors;
- b) specific training be provided to staff in relation to which communications are privileged and confidential so that they cannot be intercepted or otherwise read or listened to by staff; and
- c) inmates must be provided with phone access during out-of-cell hours to enable private and confidential phone calls.

659. **PROPOSED RECOMMENDATION: The Special Commission should make recommendations reflecting the Inspector's proposals, quoted at [657657] and [658658] above.**

¹⁰⁰⁷ Ex. 45, TB 5, Vol 26, Tab 10, AST.002.013.0060_0024 [165].

¹⁰⁰⁸ Ex. 45, TB 5, Vol 26, Tab 10, AST.002.013.0060_0024 [167].

¹⁰⁰⁹ Transcript, 17 November 2023, T2660.20-45.

¹⁰¹⁰ Ex. 45, TB 5, Vol 26, Tab 10, AST.002.013.0060_0025 [168].

¹⁰¹¹ Ex. 45, TB 5, Vol 26, Tab 10, AST.002.013.0060_0026 [173]. See also Transcript, 17 November 2023, T2662.32-47.

660. In relation to increasing inmates' access to the mechanisms by which they can make a complaint, the Inspector recommended:¹⁰¹²

- a) that the multiple mechanisms for inmates to make complaints be maintained, enabling complaints to be made in-person, by phone, and by letter to different external organisations;
- b) increasing the frequency of visits by Official Visitors¹⁰¹³ and the Inspector's staff (including additional resources to enable this to occur), which would create more opportunities for inmates to make complaints and raise issues. The Inspector was of the view that this would enhance the oversight of correctional centres and increase opportunities for inmates to raise issues and concerns about their treatment in custody; and
- c) where possible, CSNSW should address the number of partial and full-day lockdowns occurring across correctional centres, because if inmates had greater time out of their cells, they would have more opportunity to access essential services including phone calls, AVL appointments with legal representatives, and engage in conversations with Official Visitors, without risking being overheard in their cells.

661. To ensure that inmates believe that their complaints will be handled in an effective and independent manner, the Inspector recommended that:¹⁰¹⁴

- a) all correctional centres should have an auditable system which can be inspected by CSNSW, the Ombudsman and the Inspector that records internal inmate requests and complaints, including the time taken to resolve a complaint; and
- b) additional training should be provided to CSNSW staff to ensure staff interact with inmates in a respectful way and in particular when handling complaints.

¹⁰¹² Ex. 45, TB 5, Vol 26, Tab 10, AST.002.013.0060_0026 [176]. See also Transcript, 17 November 2023, T2661.18-30; T2662.1-35.

¹⁰¹³ Transcript, 17 November 2023, T2661.32-47.

¹⁰¹⁴ Ex. 45, TB 5, Vol 26, Tab 10, AST.002.013.0060_0027 [181]-[182]; Transcript, 17 November 2023, T2663.1-40.

662. To reduce inmates' fear of reprisal in making a complaint, the Inspector recommended that:¹⁰¹⁵

- a) as part of the information provided to inmates during the reception and induction process, inmates be informed about the processes available to them to ensure that they are not exposed to reprisals. The processes drawn to the inmates' attention should include the ability to make complaints to external bodies not controlled by CSNSW; the ability to make complaints on a confidential basis; and the ability to raise any concerns in relation to reprisals with external bodies following the making of a complaint;
- b) specific training be provided to Correctional Services staff concerning the importance of communicating effectively with an inmate when they are making a complaint and avoiding any conduct by way of reprisal in respect of a complaint, informing staff that reprisal action is an offence under s. 20 of the Inspector of Custodial Services Act; and
- c) strong action be taken against staff who take reprisal action against inmates and other staff.

663. The Inspector also recommended that further training could be undertaken by all CSNSW staff, including those in executive and management positions, on the following topics:¹⁰¹⁶

- a) the behaviour that constitutes sexual harassment and sexual assault and identifying inappropriate and/or grooming behaviour towards inmates, such as special favours, introducing contraband, or providing access to information;¹⁰¹⁷
- b) obligations arising under the legislation, Code of Conduct and the duty of care staff owe to people in custody;
- c) the obligation of staff to report sexual assault and sexual harassment to Professional Standards (for new and existing staff); and

¹⁰¹⁵ Ex. 45, TB 5, Vol 26, Tab 10, AST.002.013.0060_0028 [187]; Transcript, 17 November 2023, T2663.41-T2664.10.

¹⁰¹⁶ Ex. 45, TB 5, Vol 26, Tab 10, AST.002.013.0060_0028 [192].

¹⁰¹⁷ Transcript, 17 November 2023, T2664.16-38.

- d) responding to complaints of serious staff misconduct, including how to keep victims safe and supported, the importance of confidentiality, the serious consequences of taking reprisal action, and the actions that must be taken to manage alleged perpetrators (including natural justice and suspending staff).

664. **PROPOSED RECOMMENDATION: The Special Commission should make recommendations reflecting the Inspector’s proposals, quoted at [661], [662] and [663] above.**

665. The Inspector also made numerous other recommendations regarding complaint making mechanisms, including:¹⁰¹⁸

- a) the introduction of a legislated, mandatory reporting requirement for CSNSW staff in relation to serious misconduct, with a view to removing any notion of there being a discretion to report;
- b) a Professional Standards phone line or email for staff to raise issues confidentially to alleviate chain of command concerns. The phone line should include a voicemail facility that enables staff to report concerns outside of business hours, given the nature of the shift work undertaken by custodial officers;
- c) that Professionals Standards staff develop effective triaging processes to ensure that serious complaints are addressed without delay, and consideration be given to additional resourcing within Professional Standards;¹⁰¹⁹ and
- d) giving consideration to independent oversight of the investigation of serious misconduct through expansion of the existing jurisdiction of the ICAC¹⁰²⁰ or giving this jurisdiction to another independent body such as the Law Enforcement Conduct Commission (LECC).¹⁰²¹

¹⁰¹⁸ Ex. 45, TB 5, Vol 26, Tab 10, AST.002.013.0060_0029 [193].

¹⁰¹⁹ Transcript, 17 November 2023, T2664.40-2665.11.

¹⁰²⁰ Transcript, 17 November 2023, T2656.25-2657.1.

¹⁰²¹ Transcript, 17 November 2023, T2665.13-30.

666. The Inspector's recommendations at (a)-(d) immediately above are all worthy of careful consideration. The proposals at (b) and (c) are likely to be addressed as part of the work of Project Merge, but the recommendations at (a) and (d) would require legislative reform (understanding that the Inspector contemplated a mandatory reporting requirement differing in content from cl. 253 of the CAS Regulation).
667. **PROPOSED RECOMMENDATION: Consideration should be given to recommending the introduction of a legislated specific mandatory reporting requirement for CSNSW staff in relation to sexual harassment and sexual assault within correctional centres.**
668. The Inquiry did not receive evidence in relation to the potential benefits of independent oversight of CSNSW's investigations of serious misconduct by an external body, such as the LECC. In those circumstances we are not in a position to propose a recommendation that there be oversight by the LECC. However, it is clear from the fact that Ms Snell has raised the issue of oversight by the LECC that she is concerned that external oversight may be required.
669. There was a significant volume of evidence with respect to historical problems concerning CSNSW officers being reluctant to report on other officers.¹⁰²² Of more concern, Mr Corcoran said that those cultural problems persist to this day,¹⁰²³ which is consistent with evidence the Special Commission heard from officers at DCC. Further, Ms Zekanovic said that there was a reluctance by some officers to speak with PSI.¹⁰²⁴ Mr Corcoran agreed that was a culture of not cooperating with PSI when PSI endeavoured to investigate a complaint.¹⁰²⁵
670. In those circumstances, we submit that in order for the system of managing misconduct to operate effectively, external oversight is necessary. Further, having regard to the importance of a properly functioning disciplinary system we submit that consideration should be given to the PSI being directly managed by a Deputy Commissioner. One form of external oversight would be oversight by a relevant officer of DCJ, who should be a senior executive.

¹⁰²² See [3.3.2] above.

¹⁰²³ Transcript, 23 November 2023, T3190.40 – T3110.1.

¹⁰²⁴ Transcript, 21 November 2023, T2819.40-44.

¹⁰²⁵ Transcript, 23 November 2023, T3110.10-14.

671. **PROPOSED RECOMMENDATION:** Consideration be given to the Director, PSI reporting directly to a Deputy Commissioner and that the Deputy Commissioner report regularly to a relevant officer of DCJ. Reports should include notification of any new allegations of serious misconduct and updates as to the status of ongoing complaints.

5. Managing misconduct allegations

5.1. Reporting allegations of misconduct and other inappropriate behaviour

672. The management of any misconduct or disciplinary process commences with a report. The issue of who reports should be made to, and about what type of conduct, was the subject of much evidence before the Special Commission, some of which was contested.

673. The reporting obligations that were applicable to CSNSW staff are set out earlier in these submissions at Section 2.2 of these submissions.

674. Those obligations applicable at the time of Astill's offending are summarised in the table below:

Conduct to be reported	To be reported to	Source	When in effect
Criminal offence or other misconduct	Correctional Officer more senior in rank	CAS Reg, cl. 253(1)	From 2014
Report of criminal offence or other misconduct received from a more junior officer	Commissioner of CSNSW	CAS Reg, cl. 253(2)	From 2014
Corrupt conduct	Supervisor, manager, Branch Head, Divisional Head, Director PSB, Assistant Commissioner, Governance & Continuous Improvement, Commissioner	Commissioner's Instruction No. 10/2013	From 2013
Wrong-doing or suspected wrong-doing	Supervisor or Manager	DOJ Code of Ethics and Conduct Policy (the 2015 Code)	August 2015 to April 2021
Wrong-doing or suspected wrong-doing of a serious nature	Discussed with Manager for referral to relevant Director, HR Business Partner	2015 Code	August 2015 to April 2021

Misconduct	Strategic HR Business Partner or Divisional PSB	DOJ Managing Misconduct Procedure	From February 2016
Breaches of the DOJ Code of Ethics and Conduct Policy	Supervisors or Managers or if breach is by supervisor or manager to next line manager	2015 Code	August 2015 to April 2021
Misconduct including criminal offences, corrupt or unethical conduct, serious mismanagement.	Any employee of a more senior rank or grade, Ethics Officer in the Corruption Prevention Unit, or Executive Director PSB	CSNSW Guide to Conduct and Ethics (2010 Guide)	2010 to approximately 2018
Assault by staff on inmate	PSB (noted not to report to local police)	OPM, s.13.4	June 1998 – December 2017
Assault by staff on inmate	Director, CSNSW Investigations to notify CSIU	COPP, s. 13.4	From December 2017
Any information likely to adversely affect the safety, security or good order and discipline of a correctional centre	MOS or in absence of MOS next most senior officer on duty	OPM, s. 12.1	July 2007 – December 2017
Report from an inmate of criminal matter or serious staff misconduct	General Manager with General Manager to inform Director, Custodial Corrections	OPM s. 12.1	July 2007 – December 2017
Any information likely to adversely affect the safety, security or good order and discipline of a correctional centre	MOS or in absence of MOS next most senior officer on duty	COPP, s. 16.2	From December 2017
Report from an inmate of criminal matter or serious staff misconduct	General Manager with General Manager to inform	COPP, s. 16.12	From December 2017

	Director, Custodial Corrections		
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675. Mr Greaves described the position this way:

*Several overlapping policy documents provided instructions and encouragement to CSNSW staff on their obligations to report misconduct and on other issues relating to reporting and governance. However, these documents were amended from time to time and they were not always, comprehensive, clearly expressed or completely consistent with one another.*¹⁰²⁶

676. We submit that Mr Greaves’ characterisation of the various reporting obligations is an accurate one, albeit something of an understatement. What conduct was to be reported and to whom was unclear, confusing and, contradictory. On Mr Greaves’ evidence, PSB staff attempted to provide guidance to staff wishing to report allegations of misconduct but this involved PSB staff attempting to “figure out the ‘line of best fit’ through these policies”, including because PSB did not “own” or issue any of the relevant documents after CSNSW ceased to be a separate department.¹⁰²⁷ The result of this confused situation was that it was not clear “precisely what frontline staff should actually do”.¹⁰²⁸ The obvious risk was that frontline correctional officers may find the array of policy documents and regulatory requirements impenetrable and either do nothing, or rely on their own understanding based on whatever form of instruction or training may have been given to them in relation to reporting misconduct. On the evidence, most correctional officers had very limited, if any, training in this area. Mr Buckley told the Special Commission, he could not recall any mandatory training that was in place prior to 2020.¹⁰²⁹ The risk of non-compliance with law and policy in relation to the reporting of misconduct was borne out by the evidence regarding reports of Astill’s conduct.

¹⁰²⁶ Ex. 35, TB2, Vol 8A, Tab 91, AST.002.013.0057_0014 [69].

¹⁰²⁷ Ex. 35, TB2, Vol 8A, Tab 91, AST.002.013.0057_0014 [70]-[71].

¹⁰²⁸ Ex. 35, TB2, Vol 8A, Tab 91, AST.002.013.0057_0014 [69].

¹⁰²⁹ Transcript, 29 September 2023, T112.44 – T113.15; Ex. 47, TB5, Vol 21, Tab 1, CSNSW.0001.0076.0001_0015 [50].

677. The lack of clarity with respect to where reports of allegations of misconduct should be made had real significance for the management of complaints made about Astill.
678. The evidence before the Special Commission establishes that during the period of Astill's offending Ms Martin received numerous complaints about his conduct. This included complaints that he was behaving inappropriately with, and assaulting, inmates. The evidence further establishes that PSB were not apprised of any complaints concerning Astill until around the time Ms Sheiles made her report to Mr Virgo and, subsequently, to NSWPF.
679. A number of witnesses who hold, or had held, senior positions within CSNSW gave evidence about how misconduct allegations should be reported and to whom.
680. Ms Martin's evidence was that if she became aware of misconduct on the part of one of her officers, she would go to Mr Shearer or ensure an IR was filled out and sent to the IB.¹⁰³⁰ Ms Martin could recall one occasion on which she rang Mr Shearer directly, and that report concerned Astill.¹⁰³¹
681. Ms Martin further said that she would not review those reports as they were sent by the Intelligence Officer using the SIU function, which had the effect of sending the report directly outside the gaol.¹⁰³²
682. Ms Martin said she may have mentioned allegations of serious misconduct to Mr Shearer, but not every time as she assumed he, or the Assistant Commissioner, would have seen the allegation due to their time on a committee.¹⁰³³
683. When asked by Counsel Assisting whether, in circumstances where an allegation of serious misconduct came to her attention, it was for her to refer the matter to the IB or PSB, or cause one of her staff members to do that, Ms Martin said:

*No. If it was a serious misconduct, I would have the report transcribed into an intelligence report, and they would send it off to the Investigations Unit.*¹⁰³⁴

¹⁰³⁰ Transcript, 13 November 2023, T2183.1-8.

¹⁰³¹ Transcript, 13 November 2023, T2184.30-37.

¹⁰³² Transcript, 13 November 2023, T2183.18-20.

¹⁰³³ Transcript, 13 November 2023, T2184.17-24.

¹⁰³⁴ Transcript, 13 November 2023, T2186.1-3.

684. Where Ms Martin obtained the understanding that this was the proper or primary way to report misconduct is unclear. It was not carryover from the earlier policy. The CSNSW policy, The Management of Professional Conduct in the Department of Corrective Services, which was in place between 2002 and 2016, did not state that misconduct allegations were to be referred to the IB via an IR.
685. It was not proper or sufficient for a Governor to report allegations of misconduct solely by causing one of her staff to submit an IR to the SIU. That that process was irregular is demonstrated by the fact that Mr Greaves did not even know such a system existed to submit reports of misconduct.
686. Mr Greaves gave evidence that he was not aware of the SIU function for receiving IRs about CSNSW staff. He said if he had been aware he would have encouraged the Director of PSB to liaise with the Director of IB to facilitate the sharing of that intelligence.¹⁰³⁵
687. It is astonishing that a Governor with the experience of Ms Martin could be so misguided about a fundamental aspect of the management of misconduct by staff, and hence of staff management overall. Essential to her task of managing her correctional centre safely and securely was the capacity to deal properly and appropriately with inappropriate behaviour by her staff. This included a proper understanding of how to report misconduct.
688. Ms Wright's evidence was that when she was Director, she had reports from Governors concerning officer misconduct and they would tell her they had sent those reports to PSB. Ms Wright said there was seldom cause for her to discuss misconduct allegations with Mr Corcoran because the allegations had gone to PSB to be dealt with there. In due course, decisions would be communicated back down the line, and it would be her job to speak to the relevant officer in relation to the findings that had been made.¹⁰³⁶ Ms Wright said it was open for a Governor

¹⁰³⁵ Transcript, 13 November 2023, T2124.24-41.

¹⁰³⁶ Transcript, 16 November 2023, T2427.20-34.

to contact PSB directly to report an allegation or, they might raise it with their Director, and then go to PSB.¹⁰³⁷

689. Mr Shearer's evidence was that his understanding was that reports of misconduct were to be forwarded to PSB.¹⁰³⁸

690. Mr Shearer said that he was in the job for some time before he came to understand how the misconduct process worked in further detail, including in respect of the relationship between PSB and IB.

691. Mr Shearer gave evidence that:

I received a letter from Peter Robinson, who was the Director of PSB, in late – I think it was 2019, and an email where he said “Everything should come through us at PSB, and we will – we will – we will triage it out to Investigations Branch.” That was probably the first time that I understood the – that arrangement.¹⁰³⁹

692. Mr Corcoran gave evidence that with respect to the DOJ Managing Misconduct Procedure he considered that the effect was an employee could report to either the Strategic Human Resources Business Partner or relevant Professional Standards unit in the first instance.¹⁰⁴⁰

693. Mr Corcoran's evidence was that the DOJ Managing Misconduct Procedure was the prevailing policy that set out where misconduct allegations were reported to.¹⁰⁴¹ Mr Corcoran further stated that this policy was still in place in CSNSW, and that employees were still able to make complaints to Strategic Human Resources rather than to PSI.¹⁰⁴² He said:

So there was two routes, you know, for people to report serious misconduct, either to the business partner – HR Business Partner or to Professional Standards. Now, if it's a PID [Public Interest Disclosure], it would definitely have to go to the HR Business Partner.¹⁰⁴³

¹⁰³⁷ Transcript, 16 November 2023, T2441.39-44.

¹⁰³⁸ Transcript, 16 November 2023, T2464.35-36.

¹⁰³⁹ Transcript, 16 November 2023, T2465.28-32.

¹⁰⁴⁰ Transcript, 22 November 2023, T2983.32-44, T2984.11-14.

¹⁰⁴¹ Transcript, 22 November 2023, T2985.11-16.

¹⁰⁴² Transcript, 22 November 2023, T2995.20-27.

¹⁰⁴³ Transcript, 22 November 2023, T3011.17-20.

694. Mr Corcoran’s evidence was that one way or the other, allegations should have been brought to the attention of PSB at an early stage.¹⁰⁴⁴
695. Mr Corcoran gave evidence that the fact that both Mr Hovey and Mr Greaves had told the Special Commission their understanding was that misconduct allegations should be reported to PSB at first instance was “a big problem”.¹⁰⁴⁵
696. Former Commissioner of CSNSW Peter Severin gave evidence that the main way that he was appraised of allegations of misconduct was through the Assistant Commissioner, Governance and Continuous Improvement, who would regularly update him on the matters under consideration or being investigated. He would receive regular status updates on such matters.¹⁰⁴⁶
697. The Assistant Commissioner, Governance and Continuous Improvement was the line manager and reported matters to Mr Severin as a matter of course. Mr Severin said that other Assistant Commissioners brought matters to him from time to time which were then channelled through the established processes.¹⁰⁴⁷ Generally, if another Assistant Commissioner brought a matter to him they would have already notified PSB and were just updating him in the course of their weekly meetings.¹⁰⁴⁸ In the event he received an allegation directly, he would refer it to PSB, via the Assistant Commissioner, Governance and Continuous Improvement. The line Assistant Commissioner would also be advised.¹⁰⁴⁹
698. Mr Severin’s understanding was that PSB were notified of an allegation either before or at the same time as IB. PSB might determine that that matter required investigation and refer it to IB for that purpose, with the matter then returned to PSB once the investigation was concluded.¹⁰⁵⁰

¹⁰⁴⁴ Transcript, 22 November 2023, T2986.10-15.

¹⁰⁴⁵ Transcript, 22 November 2023, T2996.4-11.

¹⁰⁴⁶ Transcript, 20 November 2023, T2671.11-18.

¹⁰⁴⁷ Transcript, 20 November 2023, T2671.24-29.

¹⁰⁴⁸ Transcript, 20 November 2023, T2672.40-44.

¹⁰⁴⁹ Transcript, 20 November 2023, T2673.5-9.

¹⁰⁵⁰ Transcript, 20 November 2023, T2673.18-32.

It was a critical feature of the system that PSB would become aware of every serious allegation.¹⁰⁵¹

699. When asked whether he had any rules around what type of issues he wanted reported to him, Mr Severin said:

*They were rules that were not necessarily kept very black and white, but there were rules – anything criminal that was not just the result of an incident like an assault, for example, but anything criminal relating to, for example, misconduct would automatically be reported to me, in either a formal way or informally through the regular communication I had with the Assistant Commissioner of Governance and Continuous Improvement.*¹⁰⁵²

700. Mr Severin's expectations were not reduced to writing but, rather, left as a matter of "professional judgment".¹⁰⁵³

701. The evidence before the Special Commission establishes that CSNSW staff, including very senior staff, had quite different understandings about where, and how, reports of misconduct were to be made. This had consequences for the manner in which Astill's misconduct was reported, including by Mr Shearer.

702. On 11 September 2017, a meeting of the Custodial Corrections Executive Committee was held. That meeting was chaired by Mr Corcoran and with Mr Shearer and other Directors in the Division in attendance.¹⁰⁵⁴ At that meeting the Custodial Corrections Executive Committee agreed to affect an alteration with respect to the process for staff in the Custodial Corrections Division reporting misconduct allegations to PSB. This alteration occurred at the request of Mr Corcoran.¹⁰⁵⁵

703. The minutes of that meeting record:

An instruction, issued by Director, North was issued to all his Governors stating that no more referrals were to be made to the PCMC without being forwarded to him in the

¹⁰⁵¹ Transcript, 20 November 2023, T2673.34-38.

¹⁰⁵² Transcript, 20 November 2023, T2671.35-40.

¹⁰⁵³ Transcript, 20 November 2023, T2672.4-11.

¹⁰⁵⁴ Ex. 58, TB3, Vol 19, Tab 725, CSNSW.0001.0229.1967.

¹⁰⁵⁵ Transcript, 16 November 2023, T2475.29-T2476.11, T2551.1-6; Transcript, 22 November 2023, T3023.24-T3024.1.

*first instance. Mr Scholes stated that there were probably only 5% that were worthy of being forwarded to the PCMC for action or further investigation. The other referrals are dealt with at a local level. AC Corcoran requested all Directors adopt this approach within their regions.*¹⁰⁵⁶

704. On 12 September 2017, Mr Shearer sent an email to managers of the correctional centres in his district (**12 September 2017 Email Policy**). The recipients included Ms Martin and Mr Paddison, who was, at that time MOS at Mary Wade Correctional Centre. The email was as follows:

The AC and Directors of Custodial Corrections are changing our approach with regard to referrals direct to PSB for investigation. This decision has been taken to enable Directors to better manage disciplinary and performance issues within their Districts, to provide greater transparency of key issues, and to not overburden the resources of PSB and its investigative staffing. Some matters referred to PSB may be more effectively managed under performance management.

*In future any incidents of a disciplinary or performance nature that warrant elevation are in the first instance to be raised with me and we will decide whether a performance or disciplinary investigative [sic] is most appropriate.*¹⁰⁵⁷

705. Mr Greaves told the Special Commission that he had seen a similar email from a Director of a different district.¹⁰⁵⁸

706. Mr Shearer said that he sent this email at Mr Corcoran's direction following the meeting of Custodial Corrections Executive Meeting.¹⁰⁵⁹

707. One effect of this change was that the Custodial Corrections Division would operate differently to the other divisions in CSNSW, in that there would be a filtering of matters that would be sent to PSB at the Director level.¹⁰⁶⁰

708. Mr Corcoran gave evidence that the effect of the email was to say:

We're changing our approach with – in relation to referrals. So instead of the Governor referring directly to PSB, they would advise the Director first that something was going on in the Centre. I think what you've got to understand is once that – if that

¹⁰⁵⁶ Ex. 58, TB3, Vol 19, Tab 725, CSNSW.0001.0229.1969.

¹⁰⁵⁷ Ex. 25, TB2, Vol 8, Tab 84, AST.002.013.0055_0034

¹⁰⁵⁸ Transcript, 10 November 2023, T2112.46-T2113.1.

¹⁰⁵⁹ Transcript, 16 November 2023, T2475.39-T.2476.3.

¹⁰⁶⁰ Transcript, 10 November 2023, T2111.18-22.

*Governor didn't tell a Director of a referral, that Governor would never know about the – sorry, that Director would never know about the referral.*¹⁰⁶¹

709. Mr Corcoran accepted that this reflected a change in approach with respect to referrals going directly to PSB.¹⁰⁶² However, he said that he expected that everything that needed to go to PSB would go to PSB, and this ensured that the Director would know that the referral has gone to PSB.¹⁰⁶³

710. If that was all that Mr Corcoran wished to achieve, it could have been achieved by an instruction to the effect that the Director be copied into any report of misconduct allegations to the PSB.

711. It was put to Mr Corcoran the effect of the email was to make the Director a decision-maker. The following exchange occurred:

MR CORCORAN: *No, it doesn't. It doesn't make them a decision-maker.*

COMMISSIONER: *Well, the words are clear:*

"...raised with me, and we will decide whether a performance or disciplinary investigation is most appropriate."

That's making a decision, isn't it?

MR CORCORAN: *It – it makes a decision on which pathway to go down.*

COMMISSIONER: *No, it doesn't. Just whether a performance or disciplinary investigation – it should be – is most appropriate. That's what it is saying.*

MR CORCORAN: *It makes – they are making a decision about which pathway to go down, human resources or referral to Professional Standards. If, indeed, it is a Professional Standards matter that's referred to human resources, then the strategic business partner would then make sure that went through the – as I mentioned before, make sure it went through the appropriate pathway.*¹⁰⁶⁴

712. When asked about whether he saw a conflict between the requirement in the DOJ Managing Misconduct Procedure to report to the Strategic HR Business Partner or PSB, and the direction

¹⁰⁶¹ Transcript, 22 November 2023, T3024.37-42.

¹⁰⁶² Transcript, 22 November 2023, T3025.14-18.

¹⁰⁶³ Transcript, 22 November 2023, T3025.27-28.

¹⁰⁶⁴ Transcript, 22 November 2023, T3028.1-20.

in the 12 September 2017 Email Policy to report all disciplinary or performance incidents first to the regional Director, Mr Corcoran said:

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.¹⁰⁶⁵

713. Mr Corcoran's request to the Custodial Corrections Executive (which resulted in the direction in the email from Mr Shearer above) did potentially prevent the matter being reported to PSB. Its effect was to create a barrier between the person reporting misconduct from a correctional centre and PSB. The "we will decide" language of the instruction made clear that the regional Director (potentially in conjunction with the Governor or MOS of a gaol) would now determine whether the report made its way to PSB. It made the Director a decision-maker.

714. We further submitted that it did so with the goal of reducing the number of matters being reported to PSB. That is the only logical conclusion that follows from the reference to "overburdening" PSB resources in the email.

715. In relation to the 12 September 2017 Email Policy, Mr Shearer said that he understood that its effect was to significantly alter the way misconduct complaints were to be managed.¹⁰⁶⁶ Mr Shearer's evidence was that he did not understand there was any policy or protocol set down in writing to govern how this new process was to work, and that he thought that was odd.¹⁰⁶⁷ Mr Shearer said he was not aware whether any efforts were made to inform PSB and IB of the change in process.¹⁰⁶⁸

716. Mr Shearer's evidence was that he did not consider that he had the resources, knowledge, or training to be the first port of call for management in relation to referrals of this kind.¹⁰⁶⁹ Mr

¹⁰⁶⁵ Transcript, 22 November 2023, T3029.7-13.

¹⁰⁶⁶ Transcript, 16 November 2023, T2476.13-17.

¹⁰⁶⁷ Transcript, 16 November 2023, T2476.19-27.

¹⁰⁶⁸ Transcript, 16 November 2023, T2476.29-33.

¹⁰⁶⁹ Transcript, 16 November 2023, T2477.45-T2478.1.

Shearer said he felt that that the effect of the email was to create some confusion on the part of Governors and others in management with respect to what they were supposed to do with misconduct complaints.¹⁰⁷⁰ Mr Shearer said he thought the direction that all matters go through the Director was a mistake,¹⁰⁷¹ albeit he did not object to the proposal at the Custodial Corrections Executive meeting.

717. Mr Hovey gave evidence that he was unaware that this change in process occurred. He considered it to be “significant” and “fraught with danger”.¹⁰⁷² Mr Hovey agreed that there would now be a level of triage before the matter reached the PSC and that the process would now be less transparent.¹⁰⁷³
718. Mr Greaves gave evidence that PSB became aware of the change sometime in 2017 or 2018. Mr Greaves was “very confident” that PSB were not consulted about the change in process because “it would have rung all sorts of alarm bells” if they had.¹⁰⁷⁴ Mr Greaves’ concerns with the new process are discussed further below.
719. Mr Severin gave evidence that he was not initially aware that Mr Corcoran had instituted such a change and that he become aware of it after the event through the Assistant Commissioner, Governance and Continuous Improvement. He said that he “was never included in it because it was clearly a complete breach with the singular way of dealing with complaints, wherever they came from, through the Professional Standards Committee”.¹⁰⁷⁵
720. Mr Severin gave evidence that he understood the motivation for the change was workload-based but that what was proposed was “completely inconsistent with proper processes and procedures as they were at the time”. Mr Severin accepted that the new system represented a

¹⁰⁷⁰ Transcript, 16 November 2023, T2478.44-T2479.1.

¹⁰⁷¹ Transcript, 17 November 2023, T2524.42-43.

¹⁰⁷² Transcript, 8 November 2023, T1936.16-25.

¹⁰⁷³ Transcript, 8 November 2023, T1936.37-38, T1937.16-19.

¹⁰⁷⁴ Transcript, 10 November 2023, T2110.29-41.

¹⁰⁷⁵ Transcript, 20 November 2023, T2702.28-35.

complete failure of corporate governance that had the effect of concentrating decision-making in the hands of one person.¹⁰⁷⁶

721. Mr Severin said that what was proposed was not sanctioned by official CSNSW policy and that the Custodial Corrections Executive Committee was not a governance body that was in a position to determine or change how disciplinary matters would be dealt with.¹⁰⁷⁷

722. We submit that the Special Commission should find that Mr Corcoran should not have taken it upon himself to alter a process of such significance to the proper management of CSNSW staff, with potential consequences for the safety of correctional centres and of inmates if misconduct allegations were not passed on to PSB. That he did so without consulting any person in PSB, IB, or Mr Severin indicates a poor attitude to corporate governance as of September 2017.

723. Mr Greaves identified several problems with the new process. First, that the change made the process less, rather than more, transparent.¹⁰⁷⁸ Secondly, that there needed to be a central repository of all misconduct matters, and that if matters were dealt with at a local level, PSB, as that central repository would no longer hold all misconduct information. This was concerning given officers will often move between correctional centres and because PSB had the function of performing conduct and service checks for the purposes of promotions and transfers.¹⁰⁷⁹ Mr Greaves' concerns in relation to the need for central knowledge and oversight of misconduct matters were valid ones, demonstrating the serious potential implications of the process change.

724. Thirdly, Mr Greaves perceived there to be a potential legal issue with the process change. He told the Special Commission:

Misconduct and unsatisfactory performance are different concepts under the GSE Act, sections 68 and 69 respectively, and the GSE Rules, part 7 and part 8 spell out different processes for those two things.

I believe this email was actually proposing to do something that is contrary to the legislation. Specifically, section 38(2) of the GSE Rules in part 8 say that after making an initial assessment of an allegation, the employer may decide not to proceed with the

¹⁰⁷⁶ Transcript, 20 November 2023, T2703.8-21.

¹⁰⁷⁷ Transcript, 20 November 2023, T2704.12-24.

¹⁰⁷⁸ Transcript, 10 November 2023, T2111.41-T2112-2.

¹⁰⁷⁹ Transcript, 10 November 2023, T2113.31-T2114.6.

matter if the employer is satisfied that it's vexatious or trivial, it doesn't amount to misconduct, or there is likely to be a difficulty in establishing the facts.

It doesn't say that the employer may decide not to proceed for any reason. And nor is there a part D saying the employer may decide not to proceed with the matter if there is a big backlog of work. So, from my perspective, that would have been a significant legal issue to address before issuing an instruction like that, and I'm very confident PSB wasn't consulted because we would certainly have raised that issue.¹⁰⁸⁰

725. That there was no opportunity for concerns of the kind identified by Mr Greaves to be raised, and grappled with, in advance of the process change, as a result of the lack of consultation referred to above, together with the concentration of power inevitably resulting from the change, leads to the conclusion that, as Mr Severin acknowledged, the process change represented a complete failure of corporate governance.

726. It is open to find that Mr Corcoran's direction had the effect of causing confusion as to what was reportable to PSB. On 27 November 2017, then Governor of Silverwater Correctional Centre, Tracey Mannix, emailed Mr Greaves as follows:

Just wondering if you are able to provide a list of matters that are required to [be] sent through to the PSB.

There seems to be a bit of confusion around of what is reportable to the PSB.¹⁰⁸¹

727. The timing of this email and the substance of the advice sought from Mr Greaves, indicates it was likely the effect of the process change requested by Mr Corcoran following the September 2017 meeting of the Custodial Corrections Executive.

728. Mr Severin's evidence was that the matter was brought to his attention by the Assistant Commissioner, Governance and Continuous Improvement, and that subsequently that Assistant Commissioner spoke with Mr Corcoran and told him that the new process would not be implemented. Mr Severin's understanding was that the process did not change.¹⁰⁸²

¹⁰⁸⁰ Transcript, 13 November 2023, T2116.30-46.

¹⁰⁸¹ Ex. 58, TB3, Vol 18, Tab 636, CSNSW.0002.0068.2986_0003.

¹⁰⁸² Transcript, 20 November 2023, T2703.31-39.

729. Mr Severin said he was “quite sure” the proposed process was not implemented and that he had had every expectation that the altered process would have been rescinded in the proper way. He said he could not recall whether he had given a direction to Mr Corcoran to ensure that it was understood that the change was not supported and should be rescinded but he did recall speaking to the Assistant Commissioner, Governance and Continuous Improvement and asking him to address it with Mr Corcoran.¹⁰⁸³
730. Mr Corcoran gave evidence that he was not aware that the direction given in the September 2017 email was ever rescinded and that Mr Koulouris never spoke to him about it.¹⁰⁸⁴
731. The Special Commission issued a summons to CSNSW seeking any communication rescinding or revoking Mr Corcoran’s September 2017 direction. CSNSW informed the Special Commission that they could identify no documents responsive to this request. In the absence of any documentary evidence of a rescission of the altered process, the Special Commission should find that it was never rescinded.
732. Mr Corcoran said that he did not know if it remained the process that misconduct matters were to first be reported to the regional Director, but he expected that it would be as it was “the most appropriate course of action”.¹⁰⁸⁵
733. This evidence is irreconcilable with the oral and documentary evidence of Ms Zekanovic that misconduct matters are to be reported to PSI, including by managers who should be referring allegations of misconduct to PSI “in a timely manner”.¹⁰⁸⁶ There should be no ambiguity about the reporting process for misconduct amongst the senior leadership of CSNSW. In particular, as Commissioner of CSNSW, it would be expected that Mr Corcoran would be familiar with the expectations of officers as to where, in the first instance, they should report allegations of misconduct.

¹⁰⁸³ Transcript, 20 November 2023, T2705.12-18.

¹⁰⁸⁴ Transcript, 22 November 2023, T3034. 17-47.

¹⁰⁸⁵ Transcript, 22 November 2023, T3035.12-23.

¹⁰⁸⁶ Ex. 47, TB5, Vol 21, Tab 1, CSNSW.0001.0076.0001_0009 [31]; Transcript, 28 September 2023, T52.40 – T53.7; Transcript, 21 November 2023, T2821.31-43.

734. We submit that the Special Commission should find that Mr Corcoran, was unaware at the time of his oral evidence that the policy he introduced in September 2017 and which, according to him, remains in place today, is contrary to the understanding of each of the current and former PSB, IB and PSI staff.

735. We further submit that this reflects a poor attitude to corporate governance by Mr Corcoran not only as at September 2017, but extending past then and to the present.

5.2. Processing of the report of misconduct

736. As discussed at [2.1.3] above, misconduct allegations made against CSNSW staff are dealt with in accordance with s. 69 of the GSE Act. Section 69 is supplemented by rr. 38, 39 and 40 of the *Government Sector Employment (General) Rules 2014 (GSE Rules)*. They relevantly provide:

38 Initial stage for dealing with allegations of misconduct

...

(2) After making an initial assessment of the allegation, the employer may decide not to proceed with the matter if the employer is satisfied that—

(a) the allegation is vexatious or trivial, or

(b) the incident or conduct concerned does not amount to misconduct, or

(c) there is likely to be difficulty in establishing the facts of the matter.

(3) If, after making an initial assessment, the employer decides to proceed with the matter, the relevant employee is to be advised—

(a) of the details of the allegation of misconduct, and

(b) of the action that may be taken under section 69 (4) of the Act against the employee.

(4) The relevant employee is to be given a reasonable opportunity to make a statement in relation to the allegation.

(5) The employer may, as a result of any such statement by the relevant employee—

(a) decide to proceed to deal with the matter in accordance with this Part, or

(b) decide not to proceed any further with the matter.

The relevant employee is to be notified of the employer's decision.

(6) *The person making an allegation of misconduct is to be informed of any decision by the employer under this rule not to proceed with the matter.*

39 Inquiries

(1) *The employer may, in dealing with an allegation of misconduct, conduct such inquiries as the employer thinks appropriate for the purposes of determining whether the misconduct has occurred.*

(2) *A formal hearing involving the legal representation of the relevant employee or any other person and the calling and cross-examination of witnesses is not to be held in relation to an allegation of misconduct and the taking of any action with respect to the employee.*

40 Findings by employer

(1) *The employer may, in dealing with an allegation of misconduct—*

(a) *make a finding of misconduct by the relevant employee (in which case the employee is to be notified of the finding in writing), or*

(b) *make a finding that misconduct by the relevant employee has not occurred (in which case the employer is to dismiss the allegation and advise the relevant employee in writing).*

(2) *The employer may not take any action under section 69 (4) of the Act in relation to an employee unless—*

(a) *the employee is notified of the proposed action to be taken, and*

(b) *the employee is given a reasonable opportunity to make submissions in relation to the proposed action, and*

(c) *if any such submissions are made, the employer has taken those submissions into consideration.*

(3) *If the employer makes a finding of misconduct in relation to an employee, the employer may, instead of taking action under section 69(4) of the Act, require the conduct of the employee to be monitored over a specified period notified to the employee.*

(4) *If, during that specified period, the employer is satisfied that the employee has engaged in misconduct of the same or similar kind as the misconduct the subject of the previous finding, the employer may take any action under section 69 (4) of the Act in respect of the employee.*

(5) *In that case, the employee is not required to be given an opportunity to make submissions in relation to the action proposed to be taken by the employer.*

737. Further guidance is provided by the DOJ Managing Misconduct Procedure.

738. Section 5.1 of that procedure supplements r. 38 and relevantly provides:

- a) all allegations of misconduct are to be reported to the Strategic Human Resources Business Partner or the Divisional Professional Standards Unit in the first instance. In instances where a Professional Standards Committee exists to assess and triage allegations, the Strategic Human Resources Business Partner should also be a member of that Committee and/or have the capacity to provide expert input into the management of matters when required. That input may include provision of advice about alternative resolution approaches where appropriate; or provision of strategic advice regarding industrial or health & safety risks/implications etc;
- b) any reports, file notes, emails, CCTV footage or any other evidentiary material which will assist with the initial assessment process must be provided to the Strategic Human Resources Business Partner or the Divisional Professional Standards Unit as appropriate, as soon as possible;
- c) the purpose of the initial assessment is to determine whether or not the matter needs to be treated as an allegation of misconduct in accordance with s. 69(4) of the GSE Act. As such, the time taken to conduct the initial assessment will vary according to the nature, seriousness and complexity of the matter;
- d) in some instances, it may be possible to undertake an assessment of the matter on the available materials. If an assessment of the matter is unable to occur on the available materials, further inquiries may be necessary (this may include obtaining statements/reports from relevant parties) and may be conducted with the assistance of an external investigator;
- e) the Decision Maker will consider the materials gathered during the course of the initial assessment, including any statements made by the relevant employee and will determine whether or not to proceed with the matter; and
- f) the Decision Maker may determine to take no further action if he/she is satisfied the allegation is vexatious or trivial, or does not amount to misconduct or there is likely to

be difficulty establishing the facts of the matter (s. 38(2) GSE Rules), The relevant employee and the complainant is to be notified of this decision in a timely and expeditious manner.

739. Section 5.2 deals with undertaking inquiries into allegations of misconduct and supplements r. 39. It relevantly provides:

- a) if, following consideration of the initial assessment, the Decision Maker decides to proceed with the matter, the relevant employee is to be advised of the details of the alleged misconduct in writing and the action that may be taken under s. 69(4) of the GSE Act;
- b) in dealing with an allegation of misconduct, the Decision Maker will conduct such inquiries as are considered necessary for the purposes of determining whether the misconduct has occurred [S39(1) GSE Rules]. The appropriate Manager/Director will be notified of the Decision Maker's decision to progress the matter as an allegation of misconduct;
- c) suitable internal staff or external investigators may be utilised to undertake inquiries into alleged misconduct according to the needs of the particular Division. In either case, it is essential to ensure the chosen person is suitably skilled to undertake inquiries into the particular alleged misconduct, e.g. reportable conduct, fraud, harassment, bullying etc; and
- d) the relevant employee will be provided with a reasonable opportunity to make a statement in relation to the allegation/s (s. 38(4) GSE Rules). This may occur in writing or by way of face to face interview with the internal staff member or external provider.

740. Section 5.3 deals with findings by the decision-maker and supplements r. 40. It relevantly provides:

- a) an inquiry report regarding an allegation of misconduct is to be submitted with findings and recommendations to the appropriate Decision Maker. This process will be

facilitated by the Strategic Human Resources Business Partners or Ethics, Safety and Industrial Relations, Strategic Human Resources (ESIR) or Professional Standards Units where these exist. Expert advice may be provided to the Decision Maker to assist him/her carry out the decision making function;

- b) in instances where a relevant employee has been convicted of a serious offence, relevant court documentation should be provided to the Decision Maker;
- c) if the Decision Maker finds that misconduct has not occurred, the allegations will be dismissed and the relevant employee notified of the outcome in writing;
- d) if the Decision Maker finds that misconduct has occurred, the matter will proceed pursuant to s. 69(4) of the GSE Act 2013;
- e) action cannot proceed under s. 69(4) unless the relevant employee is notified of the proposed action and given a reasonable opportunity to make submissions in relation to the proposed action;
- f) within DCJ the relevant employee will be provided with 14 days in which to make a written submission to the Decision Maker. It is open to the Decision Maker to meet with the relevant employee to hear their verbal submissions before making a decision in the matter. However, it is noted in accordance with the provisions of the GSE Act 2014 there is no formal obligation for the Decision Maker to do so and in some circumstances this will not be appropriate or necessary;
- g) the Decision Maker must take any such written or verbal submissions into consideration before making a decision as to the action to be taken; and
- h) if the Decision Maker makes a finding of misconduct in relation to a relevant employee, the Decision Maker may, instead of taking action under s. 69(4), require the conduct of the relevant employee to be monitored over a specified period.¹⁰⁸⁷

¹⁰⁸⁷ Ex. 59, TB5, Vol 29, Tab 18, Annexure Tab 17, CSNSW.0001.0072.4029.

741. In relation to the identity of the “decision maker” for the purposes of misconduct proceedings, during the period of Astill’s offending, the DCJ Secretary had, for matters concerning CSNSW, delegated that role to the Commissioner of CSNSW. The Commissioner of CSNSW had, in turn, delegated that role to each of the six Assistant Commissioners. Relevantly, the Assistant Commissioner for Custodial Corrections had delegated that role to the Directors of each region under his command.¹⁰⁸⁸
742. According to Ms Zekanovic, the DOJ Managing Misconduct Procedure was applicable to the management of misconduct within CSNSW for most of the period of Astill’s offending.¹⁰⁸⁹ It was during this period (that is, when no CSNSW-specific policy for managing misconduct was in force), that Mr Corcoran issued the direction, the subject of Mr Shearer’s 12 September 2017 email.
743. CSNSW had previously issued its own policy for managing misconduct allegations. The “Management of Professional Conduct in the Department of Corrective Services” policy was issued in September 2002.¹⁰⁹⁰ This policy ceased to have effect when the DOJ Managing Misconduct Procedure was introduced in February 2016.
744. In 2015, CSNSW created the Corrective Services NSW Misconduct Policy, however, this policy was never implemented.¹⁰⁹¹
745. No further CSNSW specific policies concerning the management of misconduct were introduced until the “PSC Referral Process” document was issued in around 2019 (the evidence is no more precise as to the date of this document) and the Investigators Manual was issued in 2021.¹⁰⁹² Each of those documents served different purposes and operated in conjunction with the DOJ Managing Misconduct Procedure.

¹⁰⁸⁸ Ex. 35, TB2, Vol 8A, Tab 91, AST.002.013.0057_0007-8 [34].

¹⁰⁸⁹ Ex. 47, TB5, Vol 21B, CSNSW.0001.0253.0001_0017 [45]-[46].

¹⁰⁹⁰ Ex. 47, TB5, Vol 21, Tab 1, CSNSW.0001.0076.0001_0015 [43]; Ex. 47, TB5, Vol 21B, CSNSW.0001.0253.0001_0017 [45]-[46].

¹⁰⁹¹ Ex. 47, TB5, Vol 21, Tab 1, CSNSW.0001.0076.0001_0015 [48].

¹⁰⁹² Ex. 47, TB5, Vol 21, Tab 1, CSNSW.0001.0076.0001_0030 [88]; Ex. 47, TB5, Vol 21, Tab 1, CSNSW.0001.0076.0001_0018 [60].

746. The Special Commission heard evidence of how the process of dealing with allegations of misconduct operated in practice during the period of Astill's offending. That process primarily involved the PSB, the IB and the PSC.

747. Mr Hovey described the process in this way:

*Professional Standards Branch ran the triage process for these complaints. If you had a complaint that could not be dealt with via policy, you would do a referral to the Professional Standards Committee. The committee was set up to triage all officer misconduct reports and establish how the complaints should be actioned.*¹⁰⁹³

748. That is, PSB would receive the initial report of misconduct and prepare the matter for consideration by the PSC, including drafting a proposed recommendation as to the next course of action.

749. The PSC is an integral part of the CSNSW misconduct process. It provides for a degree of independence with respect to determining whether a matter should proceed as a misconduct matter, and if so, what steps are necessary in that process. It also provides for an opportunity for persons from different areas of the organisation to have input into how each matter should be dealt with. That power is not concentrated in a single individual.

750. Evidence before the Special Commission suggests that for at least some of the period of Astill's offending and before 2018, the PSC operated more informally than it had in the past, and more informally than it does presently. An annexure to Ms Zekanovic's first statement depicting the current process for managing misconduct contains the annotation, "Prior to PSC being reinstated in 2018 there was a form of informal PSC that received papers for noting."¹⁰⁹⁴ It is unclear how the "informal PSC" process operated.

751. In around 2019, the PSC Referral Process document was issued. This document provided further guidance on the respective roles and responsibilities of PSC and members of PSB. Relevantly, each matter would be allocated to a Senior Professional Standards Officer (SPSO)

¹⁰⁹³ Ex. 32, TB2, Vol 8, Tab 86, AST.002.013.0054_0003 [16].

¹⁰⁹⁴ Ex. 47, TB5, Vol 21, Tab 1D, Annexure Tab 23, CSNSW.0001.0070.0001.

who would summarise the material and make a recommendation for further actions. These matters would be discussed at the PSC meeting and the relevant recommendation of PSC would be distributed to the SPSO to whom the matter was allocated. The SPSO would implement the recommendation including by way of initiating fact-finding inquiries, referring to CSIU, or preparation of a submission. The SPSO would be responsible for overseeing each case through to finalisation.¹⁰⁹⁵

752. The PSC had a range of options available to it including determining a matter was not misconduct, referring the matter for local management, or requesting a submission be prepared by PSB to go to the decision-maker to consider disciplinary options.

753. The PSC could also determine to assign the matter to the IB to undertake an investigation. Once that investigation was complete the investigation report would be forwarded to PSB.¹⁰⁹⁶

754. The IB undertook two forms of investigations.

755. First, fact finding inquiries, which were used to obtain or clarify information to assist PSB during its assessment of complaints. It could involve gathering information from CSNSW and also clarification of the information at hand by canvassing witnesses for better particulars.¹⁰⁹⁷

756. Secondly, misconduct investigations initiated to determine whether misconduct had occurred, and if so, what action should be taken. If such an investigation occurred, formal notice of the investigation was given to the subject officer. Inquiries would be undertaken, and a report submitted detailing: the inquiries conducted, the evidence collated, the investigator's view on the balance of probabilities whether the officer had engaged in misconduct and/or failed to comply with a policy or procedure, and any deficiency in existing policies or procedures identified during the course of the investigation.¹⁰⁹⁸

¹⁰⁹⁵ Ex. 47, TB5, Vol 21, Tab 1, CSNSW.0001.0076.0001_0030-0031 [88]; Ex. 47, TB5, Vol 21, Tab 1D, Annexure Tab 25, CSNSW.0001.0034.0200-0201; Ex. 3, TB3, Vol 13, Tab 426, CSNSW.0001.0034.0200.

¹⁰⁹⁶ Transcript, 10 November 2023, T2001.19-24.

¹⁰⁹⁷ Ex. 3, TB3, Vol 13, Tab 422, CSNSW.0001.0008.0014 [2.3].

¹⁰⁹⁸ Ex. 3, TB3, Vol 13, Tab 422, CSNSW.0001.0008.0014 [2.4].

757. Once the investigation was complete the investigation report would be forwarded to PSB.¹⁰⁹⁹
758. Once received by PSB, the investigation report would be reviewed to identify any deficiencies such as lines of inquiry not pursued or opinion being presented as fact.¹¹⁰⁰ A decision would then be made by PSB whether, even with the identified deficiencies there was enough material to ground a submission to the Director, or whether it needed to go back to IB.¹¹⁰¹
759. If the matter was to move forward, a lawyer within PSB would prepare a submission to go to the Director, who was the relevant decision-maker in the Custodial Corrections Division, attaching the investigation report.¹¹⁰²
760. The decision-maker would then determine whether to exercise any of the disciplinary options available in s. 69(4) of the GSE Act.
761. The evidence suggests that, during the period of Astill's offending, it was not intended, as a matter of procedure, that the IB receive reports of misconduct. Reporting allegations to the IB via an IR is not reflected in the terms of any policy that concerned reporting allegations of misconduct.
762. However, the evidence before Special Commission is that the IB did receive misconduct allegations that were not otherwise reported to the PSB. As discussed above, a number of IRs concerning Astill were reported to the IB via the SIU function on the IIS. Many of those reports were not analysed in a timely fashion or referred to PSB, as set out below at Section 6.
763. In relation to allegations about an officer being communicated via an IR to the SIU, Mr Hovey said that, in circumstances where an IR did not disclose direct information or direct evidence of misconduct, but rather something that might be considered suspicious, then it would form an

¹⁰⁹⁹ Transcript, 10 November 2023, T2001.19-24.

¹¹⁰⁰ Transcript, 13 November 2023, T2122.28-38.

¹¹⁰¹ Transcript, 13 November 2023, T.2123.1-6.

¹¹⁰² Transcript, 13 November 2023, T2123.12-14.

intelligence matter rather than evidence of misconduct, or criminal conduct, that would otherwise be referred to the PSB.¹¹⁰³

764. Accordingly, if the intelligence analyst in the SIU did not consider content of the IR to disclose misconduct or was unable to review the IR because of competing priorities, the IR would not be referred to PSB to then be provided to the PSC for consideration. Mr Hovey agreed that this system was problematic.¹¹⁰⁴

765. Plainly, it represented a very significant risk given Mr Hovey's evidence as to the competing priorities for the person filling the role of Intelligence Analyst during 2017 and 2018. Mr Hovey's evidence was that the analyst tasked with reviewing the IRs was also tasked with the screening of all new officers into the organisation. That screening was required to be completed before an officer was permitted to start their training at the Academy. Accordingly, screening for the purposes of recruitment was prioritised, which, in turn, impacted the number of IRs that could be read.¹¹⁰⁵

766. Mr Hovey accepted the possibility that, had Mr Virgo not telephoned him to alert him to the IR that had been, or would shortly be, submitted regarding Astill in October 2018, it may have joined the backlog of unreviewed IRs submitted via SIU.¹¹⁰⁶

767. Mr Hovey also requested that the backlog of IRs be reviewed from the most recent report backwards, that is the reports that had remained unreviewed for the longest would be reviewed last. His explanation for this was the most recent IRs contained intelligence that "was live and relevant".¹¹⁰⁷ This exacerbated the risks presented by the backlog, that serious misconduct would go unidentified for even longer than would have been the case if the oldest SIU reports in the backlog had been reviewed first.

¹¹⁰³ Transcript, 8 November 2023, T1867.33-41.

¹¹⁰⁴ Transcript, 8 November 2023, T1872.1-12.

¹¹⁰⁵ Transcript, 8 November 2023, T1871.6-17.

¹¹⁰⁶ Transcript, 8 November 2023, T1958.18-26.

¹¹⁰⁷ Transcript, 8 November 2023, T1871.17 -20.

768. Mr Severin said that he was not made aware of this resourcing issue in that level of detail. He did, however, have an understanding of the onerous nature of the background checks the Intelligence Analysts were required to conduct for new recruits and was aware that there was significant workload pressure on people in the IB.¹¹⁰⁸
769. We submit that the practice of reporting misconduct via an IR to the IB was, at least during the period of Astill's offending, fundamentally flawed. There were insufficient staff to analyse those reports in a timely manner and, significantly, at least some staff of PSB were unaware this practice was occurring.
770. The intelligence function previously undertaken by staff in the IB now sits within PSI. Intelligence analysts located in PSI access and analyse IRs submitted via the SIU function. That intelligence is now regarded as a complaint submitted to PSI for consideration and is captured on PSI's case management system.¹¹⁰⁹

5.3. Current process for managing reports of misconduct

771. The current process for managing misconduct allegations is as follows:
- a) an allegation is received by PSI usually via the PSI Mailbox or directly from a Director or Executive;
 - b) the matter is allocated to PSI staff to gather information and recommend a particular course of action for the PSC. PSI staff may discuss with HR staff and seek the input of staff wellbeing support. This latter aspect of the process commenced in May 2023;
 - c) the matter is reviewed by the Director, PSI before going to PSC;
 - d) PSC considers the matter and determines the next steps;
 - e) five options are available to the PSC:

¹¹⁰⁸ Transcript, 20 November 2023, T2676.1-10.

¹¹⁰⁹ Ex. 47, TB5, Vol 21B, Tab 3, CSNSW.0001.0253.0001_0003 [13]; Transcript, 20 November 2023, T2765.4-13.

- i) allocate the matter to in an investigator;
 - ii) allocate the matter to a legal officer in PSI to commence misconduct proceedings;
 - iii) refer the matter to CSIU;
 - iv) determine that no further action is to be taken;
 - v) determine that no misconduct action or investigation is required but send to the local manager to resolve using non-GSE actions (coaching, mentoring, letter of warning, training, counselling, PIP, mediation, culture and wellbeing workshop);
- f) if the matter is allocated to an investigator, the investigation would be undertaken, and the report provided to the Director, PSI to determine whether misconduct action should be taken. The Director allocates the matter to a legal officer to commence misconduct proceedings;
- g) If it is determined by that misconduct proceedings should commence, a submission is then prepared for the consideration of the decision maker (under the GSE Act); and
- h) the decision maker would then determine what action should be taken under the GSE Act (termination, fine, reduction in remuneration, reduction in classification or grade, assign to different role, monitoring, caution/reprimand).¹¹¹⁰

772. The PSC meets weekly and all CSNSW Assistant Commissioners, representatives from DCJ Human Resources as well as DCJ Conduct and Professional Standards are invited to attend the meetings.¹¹¹¹

¹¹¹⁰ Ex. 47, TB5, Vol 21, Tab 1D, Annexure Tab 23, CSNSW.0001.0070.0001.

¹¹¹¹ Ex. 47, TB5, Vol 21B, Tab 3, CSNSW.0001.0253.0001_0009 [22].

773. Ms Zekanovic is the Deputy Chair of the PSC. She told the Special Commission that she has recently taken steps to invite a representative from NSWPF to join future meetings.¹¹¹²

774. In relation to what is presently communicated to staff about the misconduct process, the CSNSW intranet provides some information. That information is located on the PSI Intranet page (**PSI Intranet**). The following information is provided:

CSNSW is committed to establishing and maintaining appropriate standards of conduct in accordance with NSW Government legislative requirements and ethical framework. Professional Standards and Investigations (PSI) manages staff compliance with those standards and ensures that allegations of misconduct are dealt with in a fair, transparent and consistent manner. The Professional Standards Committee (PSC) oversees staff misconduct. The PSI acts as the secretariat for the PSC.

The PSC oversees the management of professional conduct within CSNSW. It makes recommendations to PSI as to how allegations of misconduct should be processed. Allegations of misconduct are managed in accordance with the Government Sector Employment Act 2013 and the Government Sector Employment Rules 2014.

Allegations involving criminal conduct are referred to in the Corrective Services NSW (CSIU), a NSW Police Unit attached to CSNSW. Complex factual enquiries are referred to the Investigations Team. It is usual but not mandatory for CSNSW to await the outcome of the criminal process before initiating misconduct action.

PSI is responsible for ensuring CSNSW meets its reporting obligations to oversight bodies such as the NSW Ombudsman and the Independent Commission Against Corruption (ICAC). The Commissioner of CSNSW is required to report corrupt conduct to ICAC.¹¹¹³

775. The PSI Intranet also instructs staff as to what should be report and to whom. It provides:

Any allegation regarding conduct by CSNSW employees, that is outside the policy and procedure, direction, or the law must be reported to Professional Standards and Investigations (PSI).¹¹¹⁴

776. Examples of misconduct identified on the PSI intranet include: sexual harassment; bullying, violence or intimidating behaviour; excessive use of force; corrupt conduct; falsification of records; and, access to or misuse of confidential information.¹¹¹⁵

¹¹¹² Ex. 47, TB5, Vol 21B, Tab 3, CSNSW.0001.0253.0001_0009 [22].

¹¹¹³ Ex. 47, TB5, Vol 21, Tab 1, CSNSW.0001.0076.0001_0007-0008 [30].

¹¹¹⁴ Ex. 47, TB5, Vol 21, Tab 1, CSNSW.0001.0076.0001_0008 [31].

¹¹¹⁵ Ex. 47, TB5, Vol 21, Tab 1, CSNSW.0001.0076.0001_0008 [31].

777. Whilst the instruction above seems clear, in that it expressly states that staff *must* report to PSI, this message becomes somewhat confused by what follows:

Allegations of misconduct can be reported directly to PSI by any CSNSW staff member. Staff are encouraged to report misconduct to their line manager in the first instance. All reports by managers should be referred to PSI in a timely manner. Delays in reporting and failure to report may also result in misconduct action.

Any incidents or allegations involving possible misconduct must be reported via the PSI referral form ...

778. The shift from the word “must” to the word “can” appears to convert what was first stated as a requirement to report to PSI to an option. Staff are also now encouraged to report to their line manager in the first instance, and the duty of reporting to PSI is now seemingly upon “managers”.

779. The encouragement to report to a line manager in the first instance introduces unnecessary confusion into the process and the messaging. Further, its effect is problematic, insofar as it suggests a discretion on the part of the line manager as to whether to pass on the report to PSI (and does not refer at all to cl. 253 of the CAS Reg). Where a specialist unit exists to manage misconduct, all allegations should be reported to that unit directly.

780. The requirement to report to a line manager in first instance may result in a situation in which a misconduct allegation does not leave the relevant correctional centre or does not otherwise make its way to PSI. There are multiple examples of that occurring in relation to Astill (detailed at Section 5). It creates an unnecessary dependency of the reporter on the knowledge and professionalism of the person they report to. Evidence before the Special Commission indicates that the knowledge and professionalism of CSNSW line managers cannot always be relied upon.

781. Relatedly, it is to be expected that some staff may be reluctant to report an allegation if concerned about retribution. In those circumstances, encouraging staff to report first to their line manager may discourage the making of that report. The staff member may, rightly or wrongly, not trust that that allegations will be dealt in a way that protects them from retribution.

They may perceive that their line manager or managers have certain loyalties. They may perceive that reporting internally is futile due to how allegations have previously been managed. The Special Commission heard evidence from CSNSW staff of holding all of these types of concerns in relation to reporting Astill's conduct.

782. In circumstances where it is open to PSI to communicate to a Governor or MOS about an allegation that has been made against one of their staff, so as to ensure that allegation is appropriately dealt with in the short-term, and that any perceived risks (for example, to inmates or to the security of a correctional centre) are managed, there does not appear to be any particular reason why reporting an allegation of misconduct to a line manager at first instance should be encouraged. Whilst it should remain open to report to a line manager at the same time as a report is made to PSI, a report should be made to PSI in the first instance and that should be clearly communicated.
783. Also relevant to reform of reporting requirements is the need for clarification of cl. 253 of the CAS Regulation, as to which see [2.2.2] above.
784. **PROPOSED RECOMMENDATION: The Special Commission should recommend that CSNSW clarify the reporting requirement for allegations of misconduct, to make clear to staff and in policy documents that reports of misconduct are required to be made to PSI and/or the NSWPF (rather than line managers) in the first instance. All CSNSW and DCJ communications to staff, training materials and policy documents should be clear and consistent as to reporting requirements for correctional officers in relation to staff misconduct.**
785. Mr Greaves suggested that reporting misconduct would be significantly improved if a direct link was placed somewhere on the front page of the CSNSW Intranet, which would lead staff to the relevant PSI intranet page where the methods for reporting misconduct would be outlined.¹¹¹⁶

¹¹¹⁶ Ex. 35, TB2, Vol 8A, Tab 91, AST.002.013.0057_0014 [66].

786. **PROPOSED RECOMMENDATION: The Special Commission should recommend that a direct form or template for reporting misconduct to PSI be made available on the front page of the CSNSW Intranet, enabling reporting directly to PSI with an option to copy the report to the Governor of the relevant correctional centre, in the case of custodial corrections staff.**
787. In relation to allegations of misconduct made by inmates, s. 16.12 of the COPP, “Inmate informants”, which has been in effect since 16 December 2017, provides that if a CSNSW staff member was given information by an inmate that relates to a potential criminal matter, serious misconduct or corruption, the CSNSW staff member must submit an Incident Report to the MOS, Functional Manager Intelligence or delegated officer, who must then immediately inform the Governor and submit an IR to the CIG.¹¹¹⁷ It is the Governor’s responsibility to inform the Corrective Services Director, Investigations, and the relevant Director, Custodial Corrections, so that they can determine the most appropriate course of action.¹¹¹⁸
788. The COPP provides that any information received from an inmate of this nature must be treated in strictest confidence and the sharing of any of the confidential information could lead to misconduct proceedings resulting in disciplinary action.¹¹¹⁹
789. Given the IB is now located within PSI, it appears the process set out above would result in PSI receiving the allegation, even though there is no reference to PSI or PSB in the relevant section of the COPP. However, this section of the COPP, as presently drafted, does not appear to contemplate bypassing a Governor when sending a report outside the correctional centre.
790. **PROPOSED RECOMMENDATION: CSNSW should ensure that all sections of the COPP accurately reflect the current process for reporting allegations of misconduct and**

¹¹¹⁷ Ex. 58, TB3 Vol 18 Tab 633, CSNSW.0002.0024.3203_1347, 1.1

¹¹¹⁸ Ex. 58, TB3 Vol 18 Tab 633, CSNSW.0002.0024.3203_1347, 1.1-1.2, See also the superseded Corrective Services Operations Procedures Manual at Ex 58, TB3 Vol 18 Tab 621, CSNSW.0002.0020.8009_0008, 12.1.1.1.

¹¹¹⁹ Ex. 58, TB3, Vol 18, Tab 633, CSNSW.0002.0024.3203_1347, 1.1.

any change in process resulting from the implementation of Project Merge (discussed further below).

791. Astill engaged in sexual offending on multiple occasions whilst employed at DCC. An issue arises as to whether reports of misconduct which would constitute a criminal offence should be made directly to NSWPF and if so, whether it is sufficient or preferable that such a report be made to the CSIU. As noted above, one of the functions of the CSIU is to investigate alleged criminal conduct by CSNSW staff.
792. Ms Zekanovic told the Special Commission that if the alleged criminal conduct concerned the sexual assault of an inmate, it would be expected that the police would be notified immediately by CSNSW officers, in addition to a referral to PSI.¹¹²⁰
793. Ms Zekanovic conceded, however, that that course of action was not set out in any policy document, nor were CSNSW staff trained to that effect.¹¹²¹ This would appear to be an unrealistic expectation on Ms Zekanovic's part, including given the statement in s. 13.4 of the COPP, referred to below at [795].
794. Mr Greaves told the Special Commission that during his time, if PSB became aware of an alleged criminal offence, then that would be placed on the agenda of the PSC as soon as possible. If the matter was very serious or time-sensitive, the PSB would directly refer the matter to Mr Hovey, with a view to Mr Hovey deploying CSIU.¹¹²²
795. Section 13.4 of the COPP, which is presently in force, expressly states that an allegation of an assault of an inmate by a staff member "must not be reported to the local police station. The Governor or OIC must report the alleged assault to the Director, CSNSW Investigations who will notify the Commander, CSIU."¹¹²³

¹¹²⁰ Transcript, 28 September 2023, T78.4-10.

¹¹²¹ Transcript, 28 September 2023, T78.12-25.

¹¹²² Transcript, 13 November 2023, T2123.34-46, T2124.11-15.

¹¹²³ Ex. 3, TB3, Vol 10, Tab 164, CSNSW.0001.0027.0305_0023-0024.

796. The Special Commission has not heard evidence from NSWPF officers concerning the benefits (or otherwise) of referrals to the NSWPF in relation to alleged criminal conduct within correctional centres being made by CSNSW directly to specialised police units, such as sex crimes in relation to sexual offending, or to relevant Local Area Commands, rather than all being directed to the Commander of CSIU in the first instance.
797. However, the evidence is CSIU officers are effectively “embedded” within CSNSW and thus are not completely independent. They are conceivably more likely to be influenced by the views of CSNSW officers than other ‘external’ police. Mr Corcoran and Ms Snell accepted there would be advantages (in terms of independence) to allegations of criminal conduct by CSNSW staff being assessed by police who are completely external to CSNSW.¹¹²⁴
798. **PROPOSED RECOMMENDATION: Consideration should be given to recommending that allegations of criminal conduct by CSNSW officers be required to be referred to NSWPF commands rather than to the CSIU in the first instance.**
799. Any change to require referrals from CSNSW officers to NSWPF to be sent to other NSWPF commands (rather than to the Commander, CSIU) should be clearly communicated in CSNSW policy documents.
800. As noted above, cl. 253(2) of the CAS Regulation requires a senior correctional officer who has received a report of a criminal offence or other misconduct from a junior officer, and believes that the conduct constitutes or would constitute either a criminal offence or would provide sufficient grounds for taking action under s 69 of the GSE Act, to report that to the Commissioner of CSNSW.
801. On the first occasion she gave evidence to the Special Commission, Ms Zekanovic was asked about how compliance with cl. 253 was achieved. She could not answer how it was that reports made their way to the Commissioner of CSNSW but noted that they were received by PSI.¹¹²⁵

¹¹²⁴ Transcript, 23 November 2023, T3134.11-3135.16; Transcript, 24 November 2023, T3257.17-3258.18.

¹¹²⁵ Transcript, 28 September 2023, T51.31-38.

802. Ms Zekanovic subsequently told the Special Commission that, with respect to cl. 253 of the CAS Reg, a delegation by the Commissioner of CSNSW is now in place enabling misconduct reports to be received by the PSI Director and other members of the Executive.¹¹²⁶
803. The granting of a delegation by the Commissioner of CSNSW in relation to cl. 253(2) does not resolve the difficulties with the operation of cl. 253 of the CAS Regulation. CSNSW officers from the Commissioner of CSNSW down were apparently unaware of its requirements. The current drafting and intended operation of that clause is also unclear and problematic: see [2.2.2] above. For example, correctional officers are able to discharge their reporting obligations under the clause by reporting to a more senior officer, but the more senior officer is only required to take action if he or she forms a belief of the kind referred to in cl. 253(2). A senior correctional officer may claim that they had no obligation to report another officer's conduct because they simply did not turn their mind to the issues in cl. 253(2)(a) and (b). The obligation is imposed only on "correctional officers", as defined, excluding staff such as chaplains who may be employed by external agencies but are likely to receive allegations of criminal conduct.
804. **PROPOSED RECOMMENDATION: Clause 253 of the CAS Regulation should be amended to clarify the obligations of CSNSW staff (and potentially also other contractors, such as chaplains, employed in correctional centres) in relation to alleged criminal offending or misconduct by other officers. Consideration should be given to imposing a uniform reporting obligation (not differentiating between more junior and more senior correctional officers) and to requiring all reports to be made to the Commissioner of CSNSW (reflecting the importance of he or she becoming aware of alleged criminal conduct by CSNSW staff as soon as possible).**

¹¹²⁶ Transcript, 20 November 2023, T2784.46-T2788.3.

5.4. Volume of complaints and complaint profile

805. A summons to produce was issued to Mr Corcoran, Commissioner of CSNSW on 22 September 2023 seeking, *inter alia*, “all documents referring to, reporting on, or analysing the level or number of reports of misconduct, including but not limited to bullying, harassment and intimidation, or criminal conduct by any CSNSW employee towards any inmate for the period 1 March 2014”.
806. Despite the documents required to be produced by this summons, the material available to the Special Commission to assess the scope of misconduct issues at CSNSW remains piecemeal and limited.
807. On 6 May 2016, Megan Coughran, Senior Correspondence Officer, Executive Services Unit, DOJ wrote to Mr Robinson, regarding a question on notice as to “how many Prison Officers are currently suspended or under investigation by the Department?”. Leigh Costa, a Project Officer Workplace Behaviour with PSB wrote to Mr Robinson in relation to a suggested response. She stated that 19 correctional officers were currently suspended from duty, and 12 correctional officers were under formal investigation. She noted that this answer excluded ongoing criminal investigations by the CSIU (10), ongoing NSWPF criminal prosecutions in the courts (17), ongoing ‘fact finding’ inquiries (17), Apprehended Violence Orders (**AVO**) matters reported to PSB (2) and misconduct proceedings either following “fact finding” investigations or “direct to 38(3)/ ‘show cause’ letter” (81).¹¹²⁷ The figures also excluded suspended officers who were not correctional officers, any investigation that did not relate to custodial and “S&I” officers, and officers who were recently suspended but had since been terminated.¹¹²⁸
808. On 17 December 2018, Mr Greaves wrote to Robert Hollows, NSWPF, CSIU Detective Inspector. Mr Greaves noted that PSB had 324 active cases recorded in IIS at that time. He

¹¹²⁷ Ex. 58, TB3, Vol 18, Tab 644, CSNSW.0002.0106.4016_0001.

¹¹²⁸ Ex. 58, TB3, Vol 18, Tab 644, CSNSW.0002.0106.4016_0001.

noted that 18 cases were recorded as having been referred only to the CSIU (not jointly to both IB and CSIU). He sought an update on the status of those cases, noting “we’re a bit worried that some of these may have ‘fallen through the cracks’, in the sense that PSB believes that you are working on them [sic], when perhaps you never did, or perhaps you have completed your work but nobody told PSB”.¹¹²⁹ No response to this enquiry has been produced.

809. On 24 February 2020, Mr Scasserra wrote to Melanie Robinson, Acting Director PSB, requesting that PSB “prepare the number of cases including names and outcomes from those that claimed bullying and harassment.”¹¹³⁰ On 27 February 2020, Ms Melanie Robinson responded that she had prepared a document setting out bullying and harassment matters reported to PSB “in the past 5 years”.¹¹³¹ This data included matters that were reported as bullying and harassment but may not have met the threshold when considered by the PSC, and were therefore referred for local or Strategic Human Resources management.¹¹³²

810. Ms Melanie Robinson reported that there had been 160 referrals for alleged bullying between 2015 and 2020 (as at 27 February 2020). Ms Melanie Robinson reported that:

- a) in 2015, PSB received 21 referrals involving allegations of bullying, including conduct which was considered offensive, insulting or otherwise inappropriate. Of these, 13 were substantiated;
- b) in 2016, PSB received 33 referrals involving allegations of bullying. Of these, 21 were substantiated;
- c) in 2017, PSB received 22 referrals involving bullying, and 6 were substantiated;
- d) in 2018, PSB received 35 referrals involving allegations of bullying, and 14 were substantiated;
- e) in 2019, PSB received 39 referrals involving allegations of bullying, and 8 were substantiated; and

¹¹²⁹ Ex. 58, TB3, Vol 18, Tab 667, CSNSW.0002.0024.7356_0001.

¹¹³⁰ Ex. 58, TB3, Vol 18, Tab 637, CSNSW.0002.0025.9902_0001.

¹¹³¹ Ex. 58, TB3, Vol 18, Tab 637, CSNSW.0002.0025.9902_0001.

¹¹³² Ex. 58, TB3, Vol 18, Tab 637, CSNSW.0002.0025.9902_0001.

f) as at 27 February 2020, 10 referrals involving allegations of bullying were received. One had been referred for local management action, and another to Strategic Human Resources for assessment. 8 remained ongoing at the time of her report.¹¹³³

811. On 8 June 2021, Steven Dooley, from Corrections Executive Services, DCJ wrote to senior staff at CSNSW seeking a response to a Question on Notice from the Minister's Office in relation to employee tenure and misconduct.¹¹³⁴

812. Natalie Parmeter responded to the question on behalf of PSB on 17 June 2021. In her response, Ms Parmeter noted that she would cross check with HR, who also hold data on bullying and misconduct matters "to ensure we're not double reporting matters".¹¹³⁵

813. Ms Parmeter provided the following data concerning allegations of misconduct sourced from the PSB database and IIS:¹¹³⁶

CASES

2018	472
2019	507
2020	499

BULLYING

2018	27
2019	24
2020	37

HARASSMENT

2018	12
2019	18
2020	20

SEXUAL ASSAULT

2018	2
2019	4
2020	3

¹¹³³ Ex. 58, TB3, Vol 18, Tab 638, CSNSW.0002.0025.9904_0001-2.

¹¹³⁴ Ex. 58, TB3, Vol 18, Tab 639, CSNSW.0002.0027.8360_0003-4.

¹¹³⁵ Ex. 58, TB3, Vol 18, Tab 639, CSNSW.0002.0027.8360_0001.

¹¹³⁶ Ex. 58, TB3, Vol 18, Tab 639, CSNSW.0002.0027.8360_0001.

814. This data did not include death in custody matters where no misconduct occurred, civil legal matters or matters from privatised centres.¹¹³⁷
815. A single PSB Caseload Summary report has been produced to the Special Commission for the month of April 2020. In that month, 369 active matters were reported.¹¹³⁸ 282 of these were being managed within PSB, and 87 were “currently outside of PSB”.¹¹³⁹ Those outside of PSB were variously with external agencies, IB, Strategic HR, CSIU, courts and Use Of Force Review Committee. 65 new matters had commenced within the month, and 30 had been finalised.¹¹⁴⁰
816. Ms Zekanovic gave evidence that quarterly reports are prepared to ICAC, pursuant to CSNSW’s obligations under s. 11 of the ICAC Act. These provide some indication of the nature and variety of complaints about staff received by the PSI and its predecessor. The reports are limited to matters which concern or may concern corrupt conduct, and therefore do not capture all complaints. For the period 1 January 2020 to 30 April 2023, a total of 664 matters were reported to ICAC. 103 of those matters reported involved some kind of sexual misconduct, including sexual harassment.¹¹⁴¹
817. The Special Commission received evidence that during the period of Astill’s offending both the PSB and IB struggled to keep on top of the reports of misconduct and other inappropriate behaviour they received. This had the effect of creating a backlog.
818. There are currently 832 open complaints and 1,607 open complaint entries.¹¹⁴² Of the 832 open complaints, 98 are two or more years old. Of the 1607, open complaint entries, 222 are two or more years old. There are 13 complaints and 50 complaint entries that are over four years old.¹¹⁴³

¹¹³⁷ Ex. 58, TB3, Vol 18, Tab 639, CSNSW.0002.0027.8360_0001.

¹¹³⁸ Ex. 58, TB3, Vol 18, Tab 643, CSNSW.0002.0087.3187_0001.

¹¹³⁹ Ex. 58, TB3, Vol 18, Tab 643, CSNSW.0002.0087.3187_0001.

¹¹⁴⁰ Ex. 58, TB3, Vol 18, Tab 643, CSNSW.0002.0087.3187_0001.

¹¹⁴¹ See generally Ex. 58, TB3, Vo 19A, Tabs 770-789.

¹¹⁴² Ex. 47, TB5, Vol 21B, Tab 3, CSNSW.0001.0253.0001_0003 [12].

¹¹⁴³ Ex 47, TB5, Vol 21B, Tab 3, CSNSW.0001.0253.0001_0012 at [29].

819. Ms Zekanovic said that PSI are recruiting more staff to address the backlog.¹¹⁴⁴ Assistance has also been sought from the Crown Solicitor's Office (CSO) to assist with quantifying and analysing the backlog. The CSO is yet to commence work.¹¹⁴⁵ Ms Zekanovic told the Special Commission that a new model for triaging misconduct matters is expected to be implemented early next year.¹¹⁴⁶
820. With respect to the volume of complaints that were, and are, being made, between 1 January 2015 and 13 October 2023, there were 4,851 complaints made by staff, inmates and members of public to the PSI or its predecessor the PSB.¹¹⁴⁷
821. 7,688 entries were made in the PSI database in relation to these complaints. The number of entries exceeds the number of complaints as complaints usually involve multiple persons of interest.¹¹⁴⁸
822. The number of complaints being received by PSI has been increasing year on year. In 2020, 598 complaints were received. In 2021, 721 complaints were received. In 2022, 779 complaints were received.¹¹⁴⁹
823. The vast majority of these complaints were referred to PSI/PSB by email, although a number were received via an IR submitted to the SIU.¹¹⁵⁰
824. In relation to the categories of complaints in the period since 1 January 2015, the five categories with the most complaint entries were: failure to follow policy/procedure (2,186); inappropriate conduct (1,985); bullying/harassment (850); unlawful or excessive use of force (750); and, criminal matter (637).¹¹⁵¹ There were 240 complaints concerning sexual harassment and 232 concerning the trafficking of contraband.¹¹⁵²

¹¹⁴⁴ Transcript, 20 November 2023, T2781.32-36.

¹¹⁴⁵ Transcript, 20 November 2023, T2781.11-30.

¹¹⁴⁶ Transcript, 20 November 2023, T2780.17-36.

¹¹⁴⁷ Ex. 47, TB5, Vol 21B, Tab 3, CSNSW.0001.0253.0001_0003 [12].

¹¹⁴⁸ Ex. 47, TB5, Vol 21B, Tab 3, CSNSW.0001.0253.0001_0003 [12].

¹¹⁴⁹ Ex 47, TB5, Vol 21A, Tab 2, AST.002.013.0086_0001 [5].

¹¹⁵⁰ Ex. 47, TB5, Vol 21B, Tab 3, CSNSW.0001.0253.0001_0003 [13].

¹¹⁵¹ Ex. 47, TB5, Vol 21B, Tab 3, CSNSW.0001.0253.0001_0004 [16].

¹¹⁵² Ex. 47, TB5, Vol 21B, Tab 3, CSNSW.0001.0253.0001_0005 [16].

825. In relation to the 240 sexual harassment complaint entries reported above, Ms Zekanovic provided the following breakdown:¹¹⁵³

Complaint Type	2015	2016	2017	2018	2019	2020	2021	2022	2023	Total
Staff on staff	4	1	4	12	13	10	56	36	47	183
Staff on inmate	1	1	2	4	1	2	5	16	16	48
Staff on staff (secondary)	0	1	0	1	0	0	1	0	5	8
Staff on member of public	0	0	1	0	0	0	0	0	0	1
Total	5	3	7	17	14	12	62	52	68	240

826. In relation to complaints concerning sexual harassment the numbers have increased significantly over time. In 2015 there were five. In 2023 there were 68. Of those 68, 16 were complaints where a staff member was alleged to have sexually harassed an inmate. The remainder concerned staff on staff complaints.¹¹⁵⁴

827. Ms Zekanovic said that her understanding was that 75 per cent of the recorded complaints concerning sexual harassment occurred after 1 January 2021. Ms Zekanovic attributed this, in part, to the establishment of the PSB Support Unit in 2021, who had the key function of providing training to new recruits and staff about what constitutes misconduct. Ms Zekanovic also offered as an explanation the announcement of the Bathurst and Kirkconnell Review conducted by Jane Seymour which may have increased awareness of sexual harassment and led to an increase in reporting.¹¹⁵⁵

828. Notwithstanding Ms Zekanovic's evidence to the contrary, it is not clear from the statistics provided within her written statements that all recent complaints of sexual misconduct are being reported to CSIU. According to Ms Zekanovic's statement, PSI received 79 complaints of sexual harassment, in various forms, in 2023.¹¹⁵⁶ It is further recorded that PSI referred 25 cases

¹¹⁵³ Ex. 47, TB5, Vol 21B, Tab 3, CSNSW.0001.0253.0001_0014-15 [35].

¹¹⁵⁴ Ex. 47, TB5, Vol 21B, Tab 3, CSNSW.0001.0253.0001_0015 [35].

¹¹⁵⁵ Ex. 47, TB5, Vol 21B, Tab 3, CSNSW.0001.0253.0001_0015 [37].

¹¹⁵⁶ Ex. 47, TB5, Vol 21B, Tab 3, Annexure 5, CSNSW.0001.0253.0001_0026.

of sexual harassment to CSIU.¹¹⁵⁷ Ms Zekanovic told the Special Commission that an explanation for the disparity is that not all types of sexual harassment are referred to CSIU, for example, staff making inappropriate comments to each other would not necessarily be referred.¹¹⁵⁸ Ms Zekanovic said that PSI were now referring “most, not all, sexual matters to the CSIU” but could not provide an explanation for why that was not reflected in the data.¹¹⁵⁹

829. As of 10 November 2023, 96 CSNSW staff were suspended from duty on the basis of misconduct matters. This number has significantly increased from the 44 staff suspended as of 11 November 2022. Ms Zekanovic attributed the disparity to a more proactive approach to suspending staff who might pose a risk if they remained in a CSNSW workplace, including to an inmate. Ms Zekanovic also considered that the disparity may be due to a higher number of complaints being received and processed by PSI.¹¹⁶⁰
830. There is a serious question as to whether CSNSW properly understands the scale of the problem of sexual offending and sexual harassment engaged in by staff, whether committed against inmates or other CSNSW staff.
831. It is common knowledge that, in the general community, sexual offending is significantly underreported. Many of the barriers to disclosure that exist in the general community are applicable to the custodial environment. Further, it might be anticipated that in an environment where fear of retribution is high there may be even greater reluctance to report. It follows that the number of complaints received by PSI in this category is unlikely to accurately reflect the true scale of this problem.
832. In relation to better understanding the problem of sexual misconduct committed by staff against inmates, CSNSW proposes that be addressed through the conduct of a survey.
833. In 2007, CSNSW approved a research project undertaken by the University of NSW (UNSW) titled “Sexual Health and Attitudes of Australian Prisoners” (SHAAP1). This was, at the time,

¹¹⁵⁷ Ex. 47, TB5, Vol 21B, Tab 3, CSNSW.0001.0253.0001_0016 [39].

¹¹⁵⁸ Transcript, 20 November 2023, T2789.31-40.

¹¹⁵⁹ Transcript, 20 November 2023, T2790.9-17.

¹¹⁶⁰ Ex. 47, TB5, Vol 21B, Tab 3, CSNSW.0001.0253.0001_0011 [28].

the largest and most comprehensive population-based examination of inmates' sexual health, attitudes and risk behaviours undertaken in Australia.¹¹⁶¹ The report was published in 2008.¹¹⁶²

834. In March 2020, Mr Severin approved a further research project on the same topic undertaken by UNSW (**SHAPP2**).¹¹⁶³ This study remains ongoing and suffered some delay as a result of COVID-19.¹¹⁶⁴

835. The aim of SHAPP2 was to identify knowledge gaps in the sexual lives of prisoners to better inform evidence-based policy responses to these needs.¹¹⁶⁵

836. On 29 July 2023, Mr Corcoran wrote to the researchers requesting four further questions be added to the inmate survey. Those four questions were:

- a) Have you ever willingly had sex or sexual contact or touching with any prison staff in any prison?
- b) Have any prison staff ever threatened you with sexual assault in prison?
- c) Have any prison staff ever forced or frightened you into doing something sexually that you did not want to do?
- d) Have any prison staff offered you favours or special privileges in exchange for sex or sexual contact?

837. For each question the inmate is also asked whether that scenario occurred in the last 12 months and, if so, whether they reported it.¹¹⁶⁶

838. It is intended that 1,678 male and 301 female inmates in NSW be surveyed as part of SHAAP2.¹¹⁶⁷ It seems doubtful that a sample of this size would be sufficient to enable a proper understanding of the scope of staff on inmate sexual misconduct. The number of female inmates

¹¹⁶¹ Ex. 55, TB5, Vol 28, Tab 12, CSNSW.0001.0263.1558_0012 [53].

¹¹⁶² Ex. 55, TB5, Vol 28, Tab 12, CSNSW.0001.0263.1558_0012 [54].

¹¹⁶³ Ex. 55, TB5, Vol 28, Tab 12, CSNSW.0001.0263.1558_0012 [55].

¹¹⁶⁴ Ex. 55, TB5, Vol 28, Tab 12, CSNSW.0001.0263.1558_0012 [56].

¹¹⁶⁵ Ex. 55, TB5, Vol 28, Tab 12, CSNSW.0001.0263.1558_0012 [56].

¹¹⁶⁶ Ex. 55, TB5, Vol 28, Tab 12, CSNSW.0001.0263.1558_0012 [57].

¹¹⁶⁷ Ex. 55, TB5, Vol 28, Tab 12, CSNSW.0001.0263.1558_0013 [58].

it is proposed be surveyed is particularly small. Whilst it is noted that the female inmate population is smaller than the male inmate population, it might be expected that female inmates are at particular risk. Further, it does not appear that this survey would provide CSNSW with any sense of whether there are particular correctional centres where this issue might be more prevalent.

839. In relation to better understanding the problem of staff-on-staff sexual misconduct, a submission has been sent to the Commissioner of CSNSW proposing a further targeted review into the handling of allegations of CSNSW staff involved in sexual misconduct in 14 CSNSW workplaces.¹¹⁶⁸
840. It is proposed the review will cover the last seven years and its scope will be limited to sexual misconduct reported by CSNSW staff. It will not include reports from inmates.¹¹⁶⁹
841. Given the scale of the problem of alleged sexual impropriety by CSNSW staff (see [10.3] below), the reasons for confining this review in the manner set out above (only 14 workplaces, no reports from inmates) are unclear. For the reasons set out above, the proposal to better understand sexual misconduct experienced by inmates via the SHAAP2 survey is inadequate. The consequences and costs (both personal and economic) for CSNSW and for inmates of sexual impropriety by CSNSW staff continuing at current levels means that if the reasons for confining the scope of the review are cost-related, this is unpersuasive.
842. **PROPOSED RECOMMENDATION: Consideration should be given to recommending that the scope of the proposed targeted review into the handling of allegations of CSNSW staff involved in sexual misconduct in 14 CSNSW workplaces be expanded to include all NSW correctional centres, and to include reports from inmates, for the purpose of CSNSW obtaining an accurate understanding the scope of the problem of sexual misconduct by its staff.**

¹¹⁶⁸ Ex. 55, TB5, Vol 28, Tab 12, CSNSW.0001.0263.1558_0015 [73].

¹¹⁶⁹ Ex. 55, TB5, Vol 28, Tab 12, CSNSW.0001.0263.1558_0015 [74].

843. Ms Snell stated that, in June 2023, a decision was made to address the issues relating to sexual misconduct experienced by inmates via SHAAP2, the creation of the SMRL and increased clarity of how to report complaints outside of an inmate’s own correctional centre.¹¹⁷⁰

5.5. Project Merge and the new misconduct process

844. Ms Zekanovic gave evidence that CSNSW has recognised that “the current system for dealing with referrals around misconduct has needed an entire review of the entire process and all the systems that support it”.¹¹⁷¹ It has commenced developing the new process as part of Project Merge.

845. The new misconduct procedure will have the following overarching principles:

- a) a faster more streamlined approach to managing misconduct;
- b) an approach that does not compromise procedural fairness and is compliant with the GSE Act and GSE Regulations;
- c) improving CSNSW culture;
- d) empowering managers to better support staff to work as “one team”;
- e) being proactive and focussing on preventing misconduct;
- f) increasing transparency and awareness about PSI and its role within CSNSW; and
- g) improving overall staff well-being which will then improve the outcomes for inmates.¹¹⁷²

846. A new Assessment and Triage team within PSI will be created which will be multidisciplinary and focus on applying a new triage model to ensure all allegations are assessed against a set criteria.¹¹⁷³

¹¹⁷⁰ Ex. 55, TB5, Vol 28, Tab 12, CSNSW.0001.0263.1558_0015 [75].

¹¹⁷¹ Transcript, 28 September 2023, T39.41-43.

¹¹⁷² Ex. 47, TB5, Vol 21, Tab 1, CSNSW.0001.0076.0001_0036-0037 [102].

¹¹⁷³ Ex. 47, TB5, Vol 21, Tab 1, CSNSW.0001.0076.0001_0037 [107].

847. The proposed PSI operating model creates two new Directorates: the Misconduct Assessment and Prevention Directorate (**MAP Directorate**) and, the PSI Directorate.
848. Sitting within the MAP Directorate will be the Misconduct Assessment and Triage Team (**MATT**) and the Prevention, Education, and Development Team.¹¹⁷⁴
849. It is proposed that the MAP Directorate will support the implementation of:
- a) information on the intranet that provides guidance in relation to responding to suspect misconduct or any workplace issue;
 - b) clear pathways to refer allegations of misconduct via email, an intranet form or telephone to the MAP and then into a new PSI case management system;
 - c) a new Prevention, Education, and Development Team which will support the training of frontline staff in identifying, referring and managing misconduct matters that may be referred back to them; and
 - d) CSNSW is currently procuring training in targeting areas of misconduct, namely sexual harassment and assault, bullying and harassment, and discrimination.¹¹⁷⁵
850. Sitting within the PSI Directorate will be the Complex Cases Team, the Metro Team and the Regional Team.¹¹⁷⁶
851. These teams will be focused on managing the assessment and recommended outcomes for decision-makers concerning serious misconduct. The focus will be on serious misconduct with criminal matters being referred to the CSIU.
852. The Complex Case Team will focus on matters involving corruption, multiple persons of interest, and high priority matters such as sexual assault. The Metro and Regional Teams will manage serious misconduct matters relevant to their geographical areas that fall within their remit.¹¹⁷⁷

¹¹⁷⁴ Ex. 55, TB5, Vol 28, Tab 12, CSNSW.0001.0263.1558_0006 [30].

¹¹⁷⁵ Ex. 55, TB5, Vol 28, Tab 12, CSNSW.0001.0263.1558_0007-0008 [32].

¹¹⁷⁶ Ex. 55, TB5, Vol 28, Tab 12, CSNSW.0001.0263.1558_0008 [33].

¹¹⁷⁷ Ex. 55, TB5, Vol 28, Tab 12, CSNSW.0001.0263.1558_0008 [34].

853. As part of Project Merge, PSI are designing a new training package to teach staff how to manage misconduct effectively. It is proposed that the training incorporate interactive elements drawing on real experiences. Training modules will include, bullying and harassment, sexual harassment, misconduct management and cultural change.¹¹⁷⁸
854. CSNSW are also working on a plan to implement the new *Public Interest Disclosure Act 2022*.¹¹⁷⁹
855. Much of Project Merge is still at an early stage of development. Certain initiatives are more progressed than others. Ms Zekanovic told the Special Commission that a submission to implement the new model for triaging misconduct matters is with the Executive.¹¹⁸⁰ That submission is not in evidence before the Special Commission. Any proposed recommendations in relation to the new PSI operating model are thus necessarily framed at a high level at the time of preparing these submissions.
856. **PROPOSED RECOMMENDATION: The Special Commission should recommend that the minimum features of a new PSI model include:**
- a) **clear documentation of processes and outcomes;**
 - b) **expected time standards for the conduct of different types of investigations, with reporting against time standards so that the potential for any backlog to be developed is identified early;**
 - c) **improved communication of both process and outcome of complaints to complainants;**
 - d) **ensuring that records of any disciplinary process and outcome are included on staff personnel files, to inform human resources decision-making;**

¹¹⁷⁸ Ex. 55, TB5, Vol 28, Tab 12, Annexure CS-2, CSNSW.0001.0263.1558_0023.

¹¹⁷⁹ Ex. 55, TB5, Vol 28, Tab 12, Annexure CS-2, CSNSW.0001.0263.1558_0024.

¹¹⁸⁰ Transcript, 20 November 2023, T2780.17-31.

- e) **mandatory, face to face training for CSNSW staff in relation to the new PSI model;**
- f) **regular mandatory refresher training for staff in relation to their reporting obligations; and**
- g) **clear, auditable measures of PSI performance.**

857. A further issue identified as part of Project Merge is the case management system used by PSI to manage the misconduct process.

858. Mr Greaves' evidence was that in 2014, PSB had no case management system. Accordingly, there was no simple or efficient way to assess the workload of PSB staff, identify delays or process failures, compile statistics, or undertake research. The PSB staff created an internal 'database', using an Excel spreadsheet, to support their internal management and reporting functions. That spreadsheet remained in use until at least February 2022. Ms Zekanovic said that extracting and analysing the spreadsheet is a resource intensive exercise and not well-suited to performing particular types of statistical analysis.¹¹⁸¹ Ms Zekanovic said that storing the data in this form made it difficult to identify trends.¹¹⁸²

859. As part of Project Merge, CSNSW is in the process of developing and implementing a new complaints case management system. The new case management system will replace the PSI database and enable the SIU function to be deployed by PSI within its system.¹¹⁸³

860. Ms Zekanovic told the Special Commission that she anticipates the case management system being able to be deployed in 12 to 18 months' time.¹¹⁸⁴

861. As an interim solution, Ms Zekanovic's evidence was that PSI have commenced using software that enables better data integrity, analysis and reporting.¹¹⁸⁵

¹¹⁸¹ Ex. 47, TB5, Vol 21B, Tab 3, CSNSW.0001.0253.0001_0002 [7].

¹¹⁸² Transcript, 20 November 2023, T2770.13-22.

¹¹⁸³ Ex. 47, TB5, Vol 21B, Tab 3, CSNSW.0001.0253.0001_0002 [11]; Transcript, 20 November 2023, T2766.13-17.

¹¹⁸⁴ Transcript, 20 November 2023, T2767.20-23.

¹¹⁸⁵ Ex. 55, TB5, Vol 28, Tab 12, Annexure CS-1, CSNSW.0001.0263.1558_0020.

862. It will obviously be critical for the new case management system to be carefully designed to provide the maximum assistance to PSI staff in discharging their roles in the misconduct process, and for all CSNSW staff to be quickly trained in the existence and use of the replacement for the current SIU function.
863. **PROPOSED RECOMMENDATION: The new PSI case management system should be designed to enable rapid and clear collation by PSI of records concerning CSNSW staff the subject of misconduct allegations (including IRs not regarded as indicative of misconduct) and to assist PSI staff in recognising potential patterns of staff conduct. The replacement for the SIU function should be designed to be easy to use and once implemented, all CSNSW staff (not only those who are Intelligence Officers) should be trained in its intended function and how it should be used.**

6. Complaints about Astill and their management

864. The Special Commission heard evidence about a number of complaints about Astill's conduct at DCC, and about the response of CSNSW Officers at DCC, and from the PSB and IB to those complaints. In this section, we set out the relevant evidence and make submissions about the findings which we submit the Special Commission should make resolving factual controversies about that evidence.

6.1. January 2016 – Incident involving J Unit

865. Mr Clark said that he was working a night shift with Mr Mark Wilson in January 2016 when he observed Astill exiting J Unit alone after hours.¹¹⁸⁶ Mr Clark said that he saw Astill closing the door to J Unit and that while Astill gave a reason for why he had been inside, it was against protocol to enter a unit alone after hours.¹¹⁸⁷ Mr Clark was not aware of any reason why Astill would have been inside J Unit in apparent breach of the protocol.¹¹⁸⁸

866. Mr Mark Wilson gave evidence that he and Mr Clark were in K Unit facilitating medications when they observed Astill go around to the rear of J Unit and not come out immediately.¹¹⁸⁹ This was unusual. He recalled commenting to that effect to Mr Clark and the two of them going to J Unit to see what Astill was doing.¹¹⁹⁰ He then recalled observing Astill exiting J Unit and said that he confronted Astill about it. He said that Astill responded that he had gone to check the back door and heard a disturbance, so had gone inside J Unit to check it out, but that everything was ok. Mr Wilson further said that this explanation did not make sense to him, and that normal procedure would require two officers to attend. Mr Wilson said that he was not

¹¹⁸⁶ Ex. 3, TB2, Vol 7, Tab 63A, AST.002.013.0022_0011 [93].

¹¹⁸⁷ Ex. 3, TB2, Vol 7, Tab 63A, AST.002.013.0022_0011 [93]-[94].

¹¹⁸⁸ Transcript, 25 October 2023, T751.36-T752.01.

¹¹⁸⁹ Transcript, 2 November 2023, T1471.40-48; Ex. 3, TB2, Vol 7, Tab 52, AST.002.002.0062_0002 [7].

¹¹⁹⁰ Transcript, 2 November 2023, T1471.40-48; Ex. 3, TB2, Vol 7, Tab 52, AST.002.002.0062_0002 [8].

happy about the incident and made a notation about it in his work diary.¹¹⁹¹ Mr Wilson did not give evidence that he made any report of the incident to a more senior officer.

867. Ms Martin gave evidence about this incident. She was made aware of it although she did not identify how that occurred.¹¹⁹² In Ms Martin's statement to NSWPF, she said that Astill had given her an excuse about why he was there, but that she could not remember the details of the excuse.¹¹⁹³ In her oral evidence, Ms Martin said that Astill's excuse was something to do with the "hot boxes"; that Ms Barry had spoken to Astill and considered his excuse to be reasonable; and that Ms Martin had spoken to Astill and she thought that his excuse was reasonable.¹¹⁹⁴

6.1.1 Available findings

868. We submit that the Special Commission should find that Ms Martin became aware of the breach of protocol by Astill, that Ms Martin sought and was provided with an explanation from Astill, and that she was satisfied with that explanation. On being satisfied with the explanation, Ms Martin did not notify the IB or PSB or make any documentary record of the event.

6.2. Early 2016 – Incident involving Witness C

6.2.1 Coke Can Incident

869. In early 2016, an incident took place involving Astill, Witness C, and a can of Coca-Cola (Coke). As set out below, the incident was observed by a number of witnesses and was widely discussed amongst CSNSW Officers.

870. Witness C's evidence was that she and three other inmates were standing outside the library when Astill walked up to them with a can of Coke. Astill then opened the can and said they could share it.¹¹⁹⁵ Witness C said that it was not usual for CSNSW Officers to share items with

¹¹⁹¹ Transcript, 2 November 2023, T1471.40-48; Ex. 3, TB2, Vol 7, Tab 52, AST.002.002.0062_0003.

¹¹⁹² Ex. 3, TB2, Vol 7, Tab 59, AST.002.002.0071_0003 [13]; Transcript, 13 November 2023, T2200.42

¹¹⁹³ Ex. 3, TB2, Vol 7, Tab 59, AST.002.002.0071_0003 [13].

¹¹⁹⁴ Transcript, 13 November 2023, T2201.9-12.

¹¹⁹⁵ Transcript, 19 October 2023, T347.21-44; Ex. 3, TB1, Vol 5, Tab 8A, AST.002.013.0001_0008 [31].

inmates.¹¹⁹⁶ Witness C disputed accounts which suggested that it was only her and Astill who shared the can of Coke, stating that there were multiple inmates involved.¹¹⁹⁷

871. As set out below, this incident came to be well known within DCC and was widely discussed amongst CSNSW Officers. Mr Giles said in his evidence that everybody in DCC heard the rumour about the Coke can.¹¹⁹⁸ A number of CSNSW Officers gave evidence that they were told at the time that Astill and Witness C had been observed sharing a can of Coke between them (that is, in the absence of any other inmates).¹¹⁹⁹ Other CSNSW Officers gave evidence that they had heard a rumour that Astill shared a can of Coke with Witness C and that there was a sexual element to the interaction, with Witness C placing the can in and out of her cleavage, or running it across her breast, in the course of sharing it with Astill.¹²⁰⁰
872. Ms Barry gave evidence that she was informed about the Coke can incident by Officer Anne O'Reilly. Ms Barry recalled that sometime after early January 2016, Ms O'Reilly reported to her that she had observed Witness C and Astill on CCTV sharing a can of drink.¹²⁰¹ Ms Barry's evidence was that she and Ms O'Reilly attempted to access the footage of the incident shortly after it occurred in order to copy it as proof of Astill's inappropriate behaviour. However, when they tried to access the footage, it was gone. Ms Barry believed it had been deleted.¹²⁰²
873. Ms Barry said that she informed Ms Martin about the incident between around 22 and 26 February 2016. Ms Barry said that Ms Martin then called her in for a meeting and asked her

¹¹⁹⁶ Transcript, 19 October 2023, T347.41-44.

¹¹⁹⁷ Transcript, 19 October 2023, T391.38-46.

¹¹⁹⁸ Transcript, 17 November 2023, T2581.03-12.

¹¹⁹⁹ Transcript, 26 October 2023, T957.01-28; Transcript, 27 October 2023, T1036.29-1037.22; Transcript, 2 November 2023, T1524.44-1525.10; Ex. 3, TB2, Vol 8, Tab 84, AST.002.013.0055_0010 [59]; Transcript, 3 November 2023, T1652.17-25; Ex. 3, TB2, Vol 8, Tab 85, AST.002.013.0039_0003 [18]; Transcript, 3 November 2023, T1687.33-38; Ex. 3, TB2, Vol 8, Tab 80, AST.002.013.0053_0006 [29]; Ex. 3, TB2, Vol 7, Tab 51, AST.002.002.0061_0002 [11]; Transcript, 1 November 2023, T1455.42-45; Transcript, 2 November 2023, T1484.26-32.

¹²⁰⁰ Transcript, 27 October 2023, T1164.07-38; Transcript, 2 November 2023, T1495.16-20; Ex. 3, TB2, Vol 8, Tab 81, AST.002.013.0051_0008 [57].

¹²⁰¹ Transcript, 30 October 2023, T1193.26-35.

¹²⁰² Transcript, 30 October 2023, T1194.05-37; Ex. 3, TB2, Vol 7, Tab 62A, AST.002.013.0045_0014 [87].

what she knew about Astill and what he was doing. Among other things, Ms Barry said that she told Ms Martin about Astill sharing a drink with Witness C.¹²⁰³

874. Ms Barry said that on 25 February 2016, she received an email from Ms Martin asking her to complete a report setting out what they had discussed during their meeting. Ms Martin told her in the email that it would be sent further. Ms Barry completed a report that same day.¹²⁰⁴

875. Ms Barry also gave evidence that on 12 March 2016, she was at work speaking to Mr Foster when he told her that the then MOS, Ms O’Toole, had told him that the footage of the Coke can incident had been “dealt with”. Ms Barry understood this to mean that the footage had been deleted.¹²⁰⁵

876. Mr Holman gave evidence that he was told about the Coke can incident by Ms Barry. He said that he did not take any action in respect of the incident upon being told about it because he did not have direct knowledge of it, and he understood from his conversation with Ms Barry that the incident had been reported up to Ms O’Toole or Ms Martin.¹²⁰⁶

877. Ms O’Toole’s evidence was that she recalled receiving an incident report from a control room officer regarding Astill sharing a can of Coke with Witness C whilst walking across the compound. Ms O’Toole said that she took this report to Ms Martin, who informed her that she had referred it to the PSB, and that it was then returned to DCC with the comment “manage locally”.¹²⁰⁷

878. Ms O’Toole said that she and Ms Martin “counselled” Astill. Ms O’Toole said that “counselling” involved discussing behaviours that leave a person wide open for allegations. Her evidence was that she and Ms Martin told Astill that it was a stupid thing to do for health reasons and because his responsibility was to supervise inmates, not share cans of Coke with them. She said that they told Astill that it was “a really, really foolish thing on his part”. Ms

¹²⁰³ Ex. 3, TB2, Vol 7, Tab 62A, AST.002.013.0045_0015 [89]-[90].

¹²⁰⁴ Ex. 3, TB2, Vol 7, Tab 62A, AST.002.013.0045_0016 [92]-[93] and Annexure at AST.002.013.0045_0021.

¹²⁰⁵ Ex. 3, TB2, Vol 7, Tab 62A, AST.002.013.0045_0016 [95].

¹²⁰⁶ Ex.3, TB2, Vol 8, Tab 80, AST.002.013.0053_0011 [57]; Transcript, 3 November 2023, T1687.4-31.

¹²⁰⁷ Transcript, 7 November 2023, T1827.12-40; Ex. 3, TB2, Vol 8A, Tab 88, AST.002.013.0044_0002 [21].

O'Toole's evidence was that the incident "certainly didn't suggest to [her] that there was any inappropriate relationship" as it was not uncommon for CSNSW Officers to be walking around the compound talking to inmates.¹²⁰⁸

879. Ms Martin gave evidence that the Coke can incident was an "odd one". She described it as "odd" because of the health risks involved in sharing a drink with someone and because of the public nature of the alleged misconduct.¹²⁰⁹ Ms Martin could not recall if the incident was referred to the PSB or handled at the local level. She recalled that some sort of report was produced about the incident and that she "counselled" Astill about it in her office. Her recollection was that she and Ms O'Toole were involved in "counselling" Astill and that "counselling" involved Ms Martin, normally in the company of someone else, sitting in her office and asking the subject of the incident for their side of the matter, finding out why it happened, telling them about the various repercussions of such an incident and obtaining an acknowledgment from the person that what they had done was wrong.¹²¹⁰

880. Ms Martin in her oral evidence accepted that the incident involved misconduct by Astill which should have been referred by her to the IB or PSB, and she assumed that that referral was made.¹²¹¹ She further accepted that if that was not done, it was a failure by her not to have done so.¹²¹²

881. As to a record of the incident, Ms Martin said that she made a report about it which she placed in her filing cabinet. She said that no report was placed on Astill's personnel file.¹²¹³

6.2.2 Available Findings

882. For the most part the facts in relation to this incident are clear. In our submission, it is not necessary to resolve the difference in the evidence about whether the incident involved only

¹²⁰⁸ Transcript, 7 November 2023, T1828.07-28.

¹²⁰⁹ Ex. 3, TB2, Vol 7, Tab 59A, AST.002.013.0059_0014 [64].

¹²¹⁰ Ex. 3, TB2, Vol 7, Tab 59A, AST.002.013.0059_0014 [65]-[66].

¹²¹¹ Transcript, 13 November 2023, T2204.19.

¹²¹² Transcript, 13 November 2023, T2204.10-2205.11.

¹²¹³ Transcript, 13 November 2023, T2206.23-2207.10.

Witness C and Astill, or whether there were other inmates involved, or whether Witness C placed the can in her cleavage. All of the officers who gave evidence accepted the incident involved inappropriate behaviour by Astill, and Ms Martin accepted that the incident involved misconduct by Astill.

883. We do not consider it open to find that CCTV footage was deliberately destroyed by Ms O’Toole or anyone else. The CCTV footage was not available when Ms Barry and Ms O’Reilly searched for it, but the evidence does not explain why that was so.

884. To the extent that Ms Martin said in her evidence that she reported the incident to the PSB or IB, we submit that her evidence should be rejected for the following reasons.

885. First, we refer to our submissions on Ms Martin’s credit at [6.17.1] of these submissions.

886. Second, Mr Hovey, gave evidence as to systems by which IRs came to be sent to the IB. As we have set out above, the IB routinely received IRs, and there was evidence of a number of IRs submitted from DCC to the IB, which Ms Martin knew about (see below). There also was evidence of communications directly from Ms Martin to the IB. For example, in around March 2017, Ms Martin sent a letter to Mr Hovey following a telephone conversation she had had with him regarding a referral of inappropriate behaviour by a Senior CSNSW Officer.¹²¹⁴ Further, Ms Martin was aware that it was available to her to communicate directly with the IB about allegations of misconduct by CSNSW Officers.¹²¹⁵ CSNSW was required to produce all documents which recorded reports to PSB or IB “relating to any sexual or intimate relationship, or other misconduct or offending between or involving Wayne Astill and any inmate of DCC during the period of his employment at DCC”.¹²¹⁶ A number of documents recording such communication were produced, but no document recording any notification of the Coke can incident was produced. Other than Ms O’Toole, who relied on what Ms Martin had told her, the only witness who gave evidence that suggested such a report may have been made was Ms

¹²¹⁴ Transcript, 14 November 2023, T2261.01-2262.14; Ex. 39, TB4, Tab 17, CSNSW.0002.0001.6244.

¹²¹⁵ Transcript, 14 November 2023, T2263.27-47.

¹²¹⁶ AST.006.002_0002_0002 (not yet tendered).

Martin. To the extent that her evidence suggested that she made such a report, we submit that the Special Commission should reject that evidence. Ms Martin had no direct recollection of making any such report, and the documents produced support a conclusion that no such report was made.

887. Third, we submit that the Special Commission should prefer the evidence of Ms O'Toole to the evidence of Ms Martin about what Ms Martin told her about the report to the PSB. That is, we submit the Special Commission should find that Ms Martin told Ms O'Toole the incident had been reported to the PSB, and that that was not correct.

6.2.3 Rumours about inappropriate relationships between Astill, Witness C and others

888. During Witness C's incarceration at DCC, there were other rumours about an inappropriate relationship between her and Astill in addition to the specific incident addressed above with respect to the Coke can.

889. Ms Berry and Ms Barry gave evidence about an incident involving a silver ring. Both recalled an incident on 13 February 2016 where Witness C was said to be wearing a ring that was not on her property list and which she refused to remove when asked. Ms Barry recalled hearing a rumour at around this time that Astill had given a ring to Witness C.¹²¹⁷ Ms Barry prepared a report about this incident on 14 February 2016.¹²¹⁸ Ms Berry recalled that Astill became aware that there was an incident involving Witness C as it was taking place and came to their location, banged on the door until he was let in, then stood next to Witness C and demanded to know what was wrong.¹²¹⁹ The effect of Ms Berry and Ms Barry's evidence was that they considered that Astill's intervention on behalf of Witness C was suggestive of him treating her favourably.¹²²⁰

¹²¹⁷ Ex. 3, TB2, Vol 7, Tab 62A, AST.002.013.0045_0014-15 [88].

¹²¹⁸ Ex. 3, TB2, Vol 7, Tab 61, Annexure A, AST.002.0072_0006.

¹²¹⁹ Ex. 3, TB2, Vol 7, Tab 49A, AST.002.002.0013 [92]-[93].

¹²²⁰ Transcript, 30 October 2023, T1196.07-11; Ex. 3, TB2, Vol 7, Tab 49A, AST.002.002.0013 [92]-[93].

890. Witness C's evidence is that she believed that CSNSW staff would have been aware of rumours about her and Astill. She stated that she was regularly called out over the PA system to go and see Astill. The frequency with which she was called to see Astill led other inmates to heckle her with comments such as "your boyfriend wants you again" or "go down and get another favour". Witness C stated that such comments may have been made in the presence of CSNSW staff.¹²²¹ Witness C said that she would ask Mr Giles if she had to go, and he would tell her that "[Astill] is the manager so you have to go and see him if he wants to see you".¹²²² Witness C suspected many CSNSW Officers would have known how frequently she was being called out by Astill but did not ask her what Astill wanted or assist her in getting out of going to his office.¹²²³
891. Witness C gave evidence that when she attended Astill's office, the door would sometimes be left open and sometimes would be closed. The time that she remained in Astill's office would vary from a couple of minutes to around 15 to 20 minutes. She recalled that other CSNSW Officers were generally present when she attended Astill's office, because the main office was attached to Astill's office. She could not recall the specific CSNSW Officers who were present, but suspected that all high needs CSNSW Officers were aware of who was going in and out of Astill's office because their offices had windows that faced directly onto Astill's office.¹²²⁴
892. Witness C said that the attention she received from Astill led to her being treated differently by other CSNSW Officers. She describes being given a "hard time" by a number of officers.¹²²⁵ She said that because of the consistency and frequency of Astill's interactions with her, she felt that those officers thought that she was being favoured or getting preferential treatment, which led to their behaviour towards her changing.¹²²⁶

¹²²¹ Ex. 3, TB1, Vol 5, Tab 8A, AST.002.013.0001_0008, [34]; Transcript, 19 October 2023, T348.43-349.9.

¹²²² Transcript, 19 October 2023, T348.06-349.06; Ex 3, TB1, Vol 5, Tab 8A, AST.002.013.0001_0008 [34].

¹²²³ Transcript, 19 October 2023, T349.14-43; Ex 3, TB1, Vol 5, Tab 8A, AST.002.013.0001_0008 [34].

¹²²⁴ Transcript, 19 October 2023, T349.45-350.32.

¹²²⁵ Ex 3, TB1, Vol 5, Tab 8A, AST.002.013.0001_0009 [35].

¹²²⁶ Transcript, 19 October 2023, T351.01-11.

893. Witness C's evidence was that there were also rumours amongst DCC staff about her engaging in sexual activity with CSNSW Officers more generally. She recalled becoming aware of these rumours in early 2016.¹²²⁷ Witness C said she went to Ms Hockey about a rumour that she had apparently been giving blow jobs to managers. Witness C said Ms Hockey told her not to worry about it and that it related to a feud between Astill and Ms Barry.¹²²⁸ In her oral evidence, Ms Hockey said that she did not recall such a conversation with Witness C.¹²²⁹
894. Witness C gave evidence that she met with Ms Martin and Ms O'Toole on about 23 February 2016 and raised the subject of inappropriate behaviour between CSNSW Officers and inmates.¹²³⁰ Ms Martin denied any knowledge of this meeting.¹²³¹ Ms O'Toole said that she recalled meeting with Witness C but not with Ms Martin present. She said that Witness C did not refer to any specific officer behaving inappropriately around inmates. She further said that if Witness C had disclosed such matters to her, she would have acted appropriately by reporting the matters to the SIU.¹²³²
895. Witness C stated that she made similar disclosures to Ms Martin and Ms O'Toole on another occasion shortly after the 23 February 2016 meeting. She said that she told them about the gossip and rumours about "head jobs", staff openly discussing inmates sexually in the Night Senior's Office, staff in the high needs area going into inmates' rooms one on one, and staff commenting on inmates' bodies during strip searches.¹²³³ Witness C recalled that she got nowhere with Ms Martin and was told to "either put a request or complaint in, or get the fuck out of [her] office".¹²³⁴ Ms Martin disputed this as "incorrect" and did not provide any alternative account of this meeting.¹²³⁵ As with the earlier meeting, Ms O'Toole recalled

¹²²⁷ Transcript, 19 October 2023, T375.32-35.

¹²²⁸ Ex 3, TB1, Vol 5, Tab 8A, AST.002.013.0001_0009 [36].

¹²²⁹ Transcript, 1 November 2023, T1422.01-13.

¹²³⁰ Transcript, 1 November 2023, T368.31-369.47; Ex 3, TB1, Vol 5, Tab 7, AST.002.002.0002_0005 [19]; Ex 3, TB1, Vol 5, Tab 8A, AST.002.013.0001_0012 [51].

¹²³¹ Transcript, 13 November 2023, T2211.27-2212.10.

¹²³² Transcript, 7 November 2023, T1830.01-1831.14.

¹²³³ Transcript, 19 October 2023, T370.01-25; Ex 3, TB1, Vol 5, Tab 8A, AST.002.013.0001_0011 [44], 0012 [51].

¹²³⁴ Transcript, 19 October 2023, T373.28-35; Ex 3, TB1, Vol 5, Tab 8A, AST.002.013.0001_0011 [44].

¹²³⁵ Transcript, 13 November 2023, T2191.34-38; Transcript, 13 November 2023, T2212.37-44.

meeting with Witness C but not with Ms Martin present. However, Ms O’Toole denied any such disclosure by Witness C, stating “[t]hat did not happen”. As with the earlier meeting, she said that if Witness C had disclosed such matters to her, she would have acted appropriately by reporting the matters to the SIU.¹²³⁶

896. Witness C stated that she again reported these rumours to Ms Martin and Mr Paddison in early March 2016, and made a diary entry to this effect on 9 March 2016.¹²³⁷ She recalled informing Ms Martin and Mr Paddison that she had heard through various sources that CSNSW Officers were talking about inmates and, specifically, her, giving “head jobs” to managers. Witness C stated that Ms Martin did not respond verbally to this disclosure and instead gave the impression that Witness C was annoying her and Mr Paddison.¹²³⁸ In her oral evidence, Ms Martin said that she did not remember being told this by Witness C.¹²³⁹ Mr Paddison also said that he did not recall any such meeting.¹²⁴⁰

897. Ms Sheiles gave evidence that she discussed the relationship between Astill and Witness C with a number of different overseers around this time. She recalled discussing the relationship with Mr Douglas saying that they were intimate and inappropriate, and that Witness C had Astill “wrapped around her little finger”.¹²⁴¹

898. Witness P recalled Mr Clark commenting to her that Astill’s relationship with Witness C appeared to be intimate and inappropriate.¹²⁴² In his oral evidence, Mr Clark denied knowledge of any rumours about an inappropriate relationship between Astill and Witness C.¹²⁴³

899. Various other CSNSW staff also gave evidence about the rumours of an inappropriate relationship between Astill and Witness C:

¹²³⁶ Transcript, 7 November 2023, T1830.01-1831.14.

¹²³⁷ Transcript, 19 October 2023, T375.37-376.15; Ex 3, TB1, Vol 5, Tab 8A, AST.002.013.0001_0011 [43] 0012 [49].

¹²³⁸ Transcript, 19 October 2023, T376.17-377.46.

¹²³⁹ Transcript, 13 November 2023, T2210.27-36.

¹²⁴⁰ Transcript, 2 November 2023, T1523.31-43.

¹²⁴¹ Transcript, 17 October 2023, T188.41-189.05.

¹²⁴² Transcript, 23 October 2023, T555.11-16; Ex. 3, TB1, Vol 5, Tab 12A, AST.002.013.0007_0004 [28].

¹²⁴³ Transcript, 25 October 2023, T752.08-31; T757.31-46.

- a) Mr Riddle recalled being told of a rumour by another officer that Astill was entering J Unit after hours when he was the Senior Officer in charge of DCC and was going to Witness C's cell.¹²⁴⁴ He also stated that Astill would show more interest in Witness C during musters and was friendlier with her than with other inmates;¹²⁴⁵
- b) Ms Barry recalled hearing rumours that Astill was receiving "head jobs" from Witness C in exchange for contraband.¹²⁴⁶ She stated that the rumour of sexual activity between Witness C and Astill was widely discussed amongst officers and inmates at DCC;¹²⁴⁷
- c) Ms Berry recalled being told by Ms Hockey that there was a rumour Astill was receiving "head jobs" from Witness C. She stated that she raised this rumour in a meeting with Ms Martin and Ms O'Toole.¹²⁴⁸ She recalled being told by Ms Martin and Ms O'Toole that she needed to stop the rumours about Astill and that if the rumours continued, she would lose her rank and job.¹²⁴⁹ Both Ms Martin and Ms O'Toole denied such a conversation with Ms Berry;¹²⁵⁰
- d) Ms Johnson recalled "widely-discussed" rumours of an affair involving sexual activity between Astill and Witness C;¹²⁵¹
- e) Mr Holman recalled Witness C asking to speak to him about issues she was having within the unit. During Mr Holman's interview with Witness C, she asked him whether it would go on her record if inmates were discussing her giving an officer a "blow job". He responded that all matters that are serious are investigated but that if there was no substance to the rumour, then Witness C had nothing to worry about. He submitted an Incident Report about the matter on 9 March 2016 and assumed that an investigation

¹²⁴⁴ Transcript, 27 October 2023, T1033.21-25; Ex. 3, TB2, Vol 8, Tab 70, AST.002.013.0012_0007 [60].

¹²⁴⁵ Ex. 3, TB2, Vol 8, Tab 70, AST.002.013.0012_0006 [48].

¹²⁴⁶ Transcript, 30 October 2023, T1191.29-43; T1192.46-1193.03; T1202.27-29.

¹²⁴⁷ Transcript, 30 October 2023, T1191.45-1192.15.

¹²⁴⁸ Ex. 3, TB2, Vol 7, Tab 49A, AST.002.013.0013_0017-18 [99]-[100]; Transcript, 30 October 2023, T1257.14-1258.23.

¹²⁴⁹ Transcript, 30 October 2023, T1258.06-30.

¹²⁵⁰ Transcript, 7 November 2023, T1829.38-46; T2210.38-2210.1.

¹²⁵¹ Transcript, 30 October 2023, T1288.01-29.

would be undertaken, given the content of the report.¹²⁵² In her oral evidence, Ms Martin was asked if she remembered seeing the report prepared by Mr Holman. She said that she did not recall seeing the report and agreed that it was Mr Holman's usual practice to ensure that these sorts of Incident Reports reached her.¹²⁵³ Ms Wilson was asked about the incident report prepared by Mr Holman and stated that while she did not recall the report, it ought to have come to her attention as an Intel Officer and had that occurred, she would have referred the report to the SIU;¹²⁵⁴

- f) Ms Wilson recalled rumours about an inappropriate relationship between Astill and Witness C throughout 2016.¹²⁵⁵ Her evidence was that she was not aware of anything sexual but was aware of rumours that Astill and Witness C were too friendly in the way they were behaving towards each other. She stated that all relevant reports were sent on and were stored in a safe in Ms Martin's office so that Astill did not have access to them.¹²⁵⁶ She recalled receiving at least 12 reports about misconduct by Astill that were stored in Ms Martin's safe.¹²⁵⁷ Her evidence was that such reports largely related to Astill's bullying and harassment of inmates and bringing contraband into the gaol;¹²⁵⁸
- g) Ms Martin was also aware of rumours relating to Astill and Witness C in early 2016. Her evidence was that she received a complaint that Astill would be seen talking with Witness C at times and in a manner not proper to his duties as a CSNSW Officer and that he and Witness C were "up to no good". Ms Martin also recalled that other inmates in protection told staff that Astill had opened up the High Needs unit at night, which was not something done at night by a single officer.¹²⁵⁹ When examined about this evidence, Ms Martin denied that the effect of the rumours was that Astill and Witness

¹²⁵² Transcript, 3 November 2023, T1689.06-42; Ex 3. TB2, Vol 8, Tab 80, AST.002.013.0053_0001_0013 [71] and Annexure AST.002.013.0075_0001.

¹²⁵³ Transcript, 13 November 2023, T2221.45-T2222.25

¹²⁵⁴ Transcript, 7 November 2023, T1737.43-T1738.13.

¹²⁵⁵ Transcript, 7 November 2023, T1738.27-31.

¹²⁵⁶ Transcript, 7 November 2023, T1738.33-1739.08; Ex. 29, TB2, Vol 8, Tab 83, AST.002.013.0035_0010-11 [85].

¹²⁵⁷ Transcript, 7 November 2023, T1739.10-33.

¹²⁵⁸ Transcript, 7 November 2023, T1739.35-T1740.11.

¹²⁵⁹ Ex. 38, TB2, Vol 7, Tab 59, AST.002.002.0071_0003 [13].

C were having an inappropriate relationship and said she understood that “up to no good” could have meant “anything”;¹²⁶⁰

- h) Mr Clark gave evidence that at around several months prior to March or April 2018, he had heard rumours amongst DCC staff that Astill was a sleaze and was inappropriate with inmates.¹²⁶¹ This extended to rumours of improper behaviour with inmates;¹²⁶²
- i) Mr Virgo was aware of rumours amongst CSNSW Officers at DCC that Astill had not “done anything wrong” because any sexual activity between Astill and inmates was consensual;¹²⁶³
- j) Mr Foster gave evidence that he heard rumours that Astill had improper involvement with inmates. The rumours related to bringing contraband into DCC, including drugs and frilly underwear.¹²⁶⁴ He recalled that he raised the rumours directly with Astill some time before November 2018, stating “I’ve been hearing terrible things about you” and that Astill responded, “[i]t’s all bullshit”;¹²⁶⁵
- k) Ms Gaynor gave evidence that she heard rumours that Astill picked on inmates and engaged in unprofessional conduct, in that he was “too nice” to inmates and granted them favours;¹²⁶⁶
- l) Ms Dolly gave evidence of two staff meetings she attended, where Ms Martin told the staff present to stop the rumours about Astill;¹²⁶⁷
- m) Ms Barry recalled hearing inmates giggling and singing the lyrics, “[i]f you want to rub and tug, go to The Hub” before a muster.¹²⁶⁸ She understood the lyrics “rub and tug” to

¹²⁶⁰ Transcript, 13 November 2023, T2200.17-28.

¹²⁶¹ Transcript, 25 October 2023, T752.39-T754.36; Ex. 8, TB2, Vol 7, Tab 63A, AST.002.013.0022_0005 [29].

¹²⁶² Transcript, 25 October 2023, T756.14-20.

¹²⁶³ Transcript, 25 October 2023, T837.22-36.

¹²⁶⁴ Transcript, 26 October 2023, T950.37-951.10; Ex. 13, TB2, Vol 7, Tab 56A, AST.002.013.0032_0003 [18].

¹²⁶⁵ Transcript, 26 October 2023, T964.28-46, 965.32-37; Ex. 13, TB2, Vol 7, Tab 56A,

AST.002.013.0032_0003-4 [21].

¹²⁶⁶ Transcript, 26 October 2023, T989.23-T990.15; Ex. 14, TB2, Vol 7, Tab 58A, AST.002.002.0040_0003 [14].

¹²⁶⁷ Transcript, 27 October 2023, T1120.05-47; Ex. 16, TB2, Vol 8, Tab 77, AST.002.013.0026_0005 [27].

¹²⁶⁸ Transcript, 30 October 2023, T1189.11-14; Ex. 17, TB2, Vol 7, Tab 62A, AST.002.013.0045_0008 [44].

suggest sexual activity.¹²⁶⁹ To Ms Barry's knowledge, "lots" of other CSNSW Officers had heard the song being sung by inmates and it was talked and laughed about.¹²⁷⁰ At around the time Ms Barry heard inmates singing these lyrics, Astill was using an office within an area of DCC known as "The Hub". Ms Barry's evidence was that there was general talk that Astill was behaving inappropriately with inmates in The Hub and would have inmates in his office with the door closed over lunch time.¹²⁷¹ She confirmed that the rumours of sexual activity between Astill and inmates was widely discussed between CSNSW Officers and inmates at DCC.¹²⁷² Ms Barry also gave evidence that between around 2015 and October 2018, there were rumours that were widely discussed between CSNSW Officers that Astill was bringing contraband into DCC.¹²⁷³ She stated that she informed Ms Martin about this rumour during a meeting between 22 and 26 February 2016;¹²⁷⁴

- n) Ms Hockey recalled hearing of rumours that something was going on between Astill and Witness LL. She believed that this was because Witness LL was very flirtatious with Astill. She stated that she also heard general chitchat in the offices about what Astill was up to;¹²⁷⁵
- o) Ms Kim Wilson gave evidence of a CSNSW Officer parade prior to Astill's arrest, where DCC staff were told by either Ms Martin or Ms O'Toole that there were malicious rumours going around about Astill, that they needed to stop, and that anyone who was involved in spreading such rumours would be dealt with harshly;¹²⁷⁶ and
- p) Ms Deborah Wilson gave evidence that she had heard rumours about Astill bringing contraband into DCC and doing favours for inmates. She stated that she had also heard

¹²⁶⁹ Transcript, 30 October 2023, T1191.1-9.

¹²⁷⁰ Transcript, 30 October 2023, T1191.20-27.

¹²⁷¹ Transcript, 30 October 2023, T1189.29-T1190.3.

¹²⁷² Transcript, 30 October 2023, T1192.1-15.

¹²⁷³ Transcript, 30 October 2023, T1185.21-38.

¹²⁷⁴ Transcript, 30 October 2023, T1206.6-39; Ex. 17, TB2, Vol 7, Tab 62A, AST.002.013.0045_0015 [89]-[90].

¹²⁷⁵ Transcript, 1 November 2023, T1431.15-41.

¹²⁷⁶ Transcript, 1 November 2023, T1460.36-1462.44; Ex. 22, TB2, Vol 8, Tab 71, AST.002.013.0018_0009-10 [86].

“hearsay evidence” about “a couple of South American girls” performing sexual favours for Astill.¹²⁷⁷ By this, Ms Deborah Wilson meant that the information came from a third party and that there was no other information at the time to back it up. When questioned about this, Ms Deborah Wilson stated that she did not believe that she conducted further investigations into that information, although stated that she reported it up.¹²⁷⁸

900. Ms Martin gave evidence that she had no recollection of Ms Barry informing her of rumours that Astill was bringing contraband into DCC for inmates. Ms Martin further said she had no recollection of anyone ever telling her that they feared or suspected that Astill was bringing in contraband for inmates.¹²⁷⁹ This is to be contrasted with the evidence of Ms Kim Wilson and Ms Dolly we have set out above, who both recalled an occasion within the same timeframe, where Ms Martin addressed DCC staff and said words to the effect that the rumours about Astill had to stop.¹²⁸⁰ Ms Martin denied this evidence and said that it was not true, and that Ms Dolly was “making it up”.¹²⁸¹

6.2.3.1. Available findings

901. We submit that it is unnecessary to resolve whether CSNSW Officers treated Witness C differently because of the rumours about her relationship with Astill. There is little doubt that Witness C honestly held the view that she was treated differently.

902. On the question of what Witness C disclosed to Ms Martin and Ms O’Toole at the meeting on 23 February 2016, and the meeting between those three people shortly thereafter, we submit that the Special Commission should find that Witness C made allegations on those occasions about rumours of sexual activity between inmates and DCC staff. We also submit that the Special Commission should find that Ms Martin told Witness C to make a report or “get the

¹²⁷⁷ Ex. 29, TB2, Vol 8, Tab 83, AST.002.013.0035_0010-11 [93]-[94].

¹²⁷⁸ Transcript, 7 November 2023, T1740.22-40.

¹²⁷⁹ Transcript, 13 November 2023, T2215.19-40.

¹²⁸⁰ Transcript, 27 October 2023, T1120.05-11; Ex. 16, TB2, Vol 8, Tab 77, AST.002.013.0026_0005 [27]; Transcript, 1 November 2023, T1461.5-38; Ex. 22, TB2, Vol 8, Tab 71, AST.002.013.0018_0009-10 [86].

¹²⁸¹ Transcript, 14 November 2023, T2367.06-10.

fuck out of [her] office”. However, we do not consider that it is open to find that Witness C made any specific allegations about a particular event which disclosed misconduct on the part of either Astill or any particular officer on either of those occasions.

903. On the question of what Witness C disclosed at the meeting between her, Ms Martin and Mr Paddison in early March 2016, we submit that the Special Commission should prefer Witness C’s evidence to the evidence of Ms Martin and Mr Paddison. We submit that Witness C’s account receives some support from another contemporaneous event, namely the disclosure to Mr Holman followed by his incident report dated 9 March 2016 to which we have referred above. On the evidence of Mr Holman (which we submit should be accepted – see below), that incident report was provided to Ms Martin. The incident report itself contains an express reference to allegations made by Witness C that she had been giving an unidentified officer a “blow job”. In the circumstances, it appears likely that this report had come to the attention of at least Ms Martin around the time of the meeting Witness C described with Ms Martin and Mr Paddison. In our submission, the existence of this incident report by Mr Holman makes it entirely unremarkable (and more likely than not) that Witness C disclosed to Ms Martin and Mr Paddison at the meeting the same allegations she had made to Mr Holman.

904. As we have set out above, Mr Holman gave evidence that he submitted his 9 March 2016 report to Ms Martin. Ms Martin said that she did not recall seeing the report, although agreed that it was Mr Holman’s usual practice to ensure that these sorts of Incident Reports reached her. We submit that the Special Commission should find that Mr Holman did submit that report to Ms Martin.

905. Turning to the dispute about whether Witness P said to Mr Clark that Astill’s relationship with Witness C appeared to be intimate and inappropriate, we submit that the Special Commission should not be satisfied on the evidence that that occurred. Witness P was a witness with no motive to lie. However, she had a poor recollection of a number of events in her oral evidence. Further, there is no contemporaneous document which bears on this issue and Mr Clark was a witness who preferred to volunteer evidence contrary to his own interests (see [1042] below).

Whilst there was overwhelming evidence of knowledge of an inappropriate relationship between Witness C and Astill on the part of many CSNSW Officers, in the circumstances we do not submit that the Special Commission should reject Mr Clark's evidence that he did not make this comment to Witness P.

906. It is necessary to resolve the conflict between the evidence of Ms Berry that she raised the rumour of Astill receiving "head jobs" from Witness C with Ms Martin and Ms O'Toole, and the denials of that event by Ms Martin and Ms O'Toole. In our submission, the Special Commission should prefer the evidence of Ms Berry that she notified Ms Martin and Ms O'Toole of those rumours, for the following reasons:

- a) we refer to our submission at [1104]-[1128] below, on Ms Martin's credit; there were other occasions when Ms Berry made reports of allegations that she regarded as serious, and her conduct in that respect is consistent with what she said she did on this occasion;
- b) Ms O'Toole also had a poor recollection of a number of events (for example, she did not recall meeting with both Witness C and Ms Martin on about 23 February 2016 and again shortly after or the disclosures made by Witness C during those meetings,¹²⁸² and she did not recall being told by Ms Berry during a meeting with Ms Berry and Ms Martin that there was a rumour Astill was receiving "head jobs" from Witness C);¹²⁸³
- c) in circumstances where it is known that a documentary record (Mr Holman's report), which is similar in nature to the account that Ms Berry gave, became known at least to Ms Martin around 9 March 2016, it is entirely possible that a further oral account of the same allegation was made to Ms Martin but not remembered by her.

¹²⁸² Transcript, 7 November 2023, T1830.01-1831.14.

¹²⁸³ Transcript, 7 November 2023, T1829.38-46; T2210.38-2210.1.

907. Next, it is necessary to resolve the issue about whether Witness C made the disclosure she alleged to Ms Hockey. We submit that the Special Commission should prefer the evidence of Witness C to the evidence of Ms Hockey. Evidence was given by Mr Foster that there was an occasion where he rang Ms Hockey because she “didn’t seem quite right”, and asked her what was wrong. He recalled Ms Hockey responding that she did not think that she could go through “all the rumours” again. Mr Foster recalled that Ms Hockey made this comment at a time when there were rumours surrounding Witness C.¹²⁸⁴
908. Ms Hockey said that it was possible such a conversation took place but that she could not remember it.¹²⁸⁵ We submit that Mr Foster’s evidence should be preferred. He was an impressive and careful witness with no reason to invent that conversation. He volunteered a precise recollection of it. The statements made by Ms Hockey as recounted by Mr Foster are consistent with Witness C’s evidence of the discussion between her and Ms Hockey.

6.3. May 2016 – Incident involving Julijana Miskov

909. Officer Julijana Miskov gave evidence of a number of incidents involving her and Astill in around May 2016, shortly after she commenced employment as a correctional officer. Ms Miskov graduated from Brush Farm Academy on 16 May 2016. She commenced work as an Officer at DCC about one week after she graduated.¹²⁸⁶ As a result of the conduct of Astill set out below, Ms Miskov remained at DCC only for a short period before asking to be moved to another correctional centre.¹²⁸⁷
910. Ms Miskov’s first day at DCC was an induction day. As part of her induction, she and another CSNSW Officer were shown around DCC by Astill.¹²⁸⁸ Ms Miskov’s evidence is that Astill was inappropriate in his interactions with her from the moment they were introduced.

¹²⁸⁴ Ex. 13, TB2, Vol 7, Tab 56A, AST.002.013.0032_0011-12 [81].

¹²⁸⁵ Transcript, 1 November 2023, T1429.26-1430.32.

¹²⁸⁶ Transcript, 24 October 2023, T703.6-18; Ex. 7, TB2, Vol 8, Tab 76, AST.002.013.0024_0001 [5].

¹²⁸⁷ Transcript, 24 October 2023, T718.27-35; Ex. 7, TB2, Vol 8, Tab 76, AST.002.013.0024_0004 [23].

¹²⁸⁸ Transcript, 24 October 2023, T704.5-19; Ex. 7, TB2, Vol 8, Tab 76, AST.002.013.0024_0001 [7].

Specifically, Astill spent the duration of Ms Miskov's induction telling her that she reminded him of his "first love". This made her feel very uncomfortable.¹²⁸⁹

911. Following her induction, Ms Miskov commenced working at DCC. She was assigned to the high needs area and reported to Astill, who was then the Senior Correctional Officer within that area.¹²⁹⁰ Ms Miskov's evidence is that Astill continued to be inappropriate in his interactions with her. This included making further comments that Ms Miskov reminded him of his first love, together with inappropriate sexualised comments about her body that were made in front of other CSNSW Officers.¹²⁹¹
912. After several days of these comments, Ms Miskov confronted Astill and told him that his comments were too much. She said that Astill and his friends then gave her a hard time and treated her terribly.¹²⁹² This included verbally abusing Ms Miskov and calling her names like "cunt" in front of other officers and inmates. It also included attempting to trip up Ms Miskov in the performance of her duties and making false reports about her conduct in the workplace.¹²⁹³ One such example given by Ms Miskov, was an occasion where she was accused of leaving the medium needs door open and was called into a meeting with Astill, Mr Paddison and Ms Martin. Ms Miskov's evidence was that she had never worked in medium needs and was not rostered on to work on the date the door was allegedly left open.¹²⁹⁴
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,

¹²⁸⁹ Transcript, 24 October 2023, T704.24-29; Ex. 7, TB2, Vol 8, Tab 76, AST.002.013.0024_0001 [7].

¹²⁹⁰ Transcript, 24 October 2023, T705.1-23; Ex. 7, TB2, Vol 8, Tab 76, AST.002.013.0024_0002 [9].

¹²⁹¹ Transcript, 24 October 2023, T705.25-706.38; Ex. 7, TB2, Vol 8, Tab 76, AST.002.013.0024_0002 [11].

¹²⁹² Transcript, 24 October 2023, T707.5-20; Ex. 7, TB2, Vol 8, Tab 76, AST.002.013.0024_0002 [12]-[13].

¹²⁹³ Transcript, 24 October 2023, T708.20-711.8; Ex. 7, TB2, Vol 8, Tab 76, AST.002.013.0024_0002-3 [14]-[18].

¹²⁹⁴ Transcript, 24 October 2023, T711.18-43; Ex. 7, TB2, Vol 8, Tab 76, AST.002.013.0024_0003 [19].

Ms Miskov got up, and pushed Astill away, said to him “what the hell are you doing” and walked away.¹²⁹⁵

914. Ms Miskov said that she immediately wrote a report in relation to this incident, in which she described what happened and named the officers present using their nicknames, given that she was a new employee and did not know their full names. She then signed the report and took it to Ms Martin’s office where it was placed on Ms Martin’s desk.¹²⁹⁶ Ms Miskov describes being called into a meeting with Ms Martin and Mr Paddison a short time later to discuss the report. Her evidence is that during this meeting, the report was ripped up by either Ms Martin or Mr Paddison and Ms Miskov was told “we will deal with this in house”.¹²⁹⁷ After this incident, Ms Miskov went home sick and asked to be moved to another correctional centre. She did not return to DCC after this incident.¹²⁹⁸

915. Mr Paddison was asked about this incident in his oral evidence. He denied any memory of being told about Astill assaulting Ms Miskov, or meeting with Ms Miskov and Ms Martin in relation to it. As to Ms Miskov’s evidence about the ripping up of the report, Mr Paddison had no recollection of this taking place and said 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.¹²⁹⁹

916. Ms Martin was asked about this incident in her oral evidence. She denied any recollection of a meeting with Ms Miskov and stated that she would not have torn up a report.¹³⁰⁰

6.3.1 Available findings

917. We submit that the Special Commission should accept Ms Miskov’s evidence about Astill’s behaviour toward her. The allegations, in particular the one of assault by Astill, are serious and

¹²⁹⁵ Transcript, 24 October 2023, T712.26-7.15-25; Ex. 7, TB2, Vol 8, Tab 76, AST.002.013.0024_0003 [20]-[21].

¹²⁹⁶ Transcript, 24 October 2023, T715.27-717.15; Ex. 7, TB2, Vol 8, Tab 76, AST.002.013.0024_0004 [22].

¹²⁹⁷ Transcript, 24 October 2023, T717.17-718.3; Ex. 7, TB2, Vol 8, Tab 76, AST.002.013.0024_0004 [22].

¹²⁹⁸ Transcript, 24 October 2023, T718.23-40; Ex. 7, TB2, Vol 8, Tab 76, AST.002.013.0024_0004 [23].

¹²⁹⁹ Transcript, 2 November 2023, T1525.26-1526.26.

¹³⁰⁰ Transcript, 13 November 2023, T2223.10-T2225.12.

accordingly it is necessary to apply the principles stated in *Briginshaw v Briginshaw* (1938) 60 CLR 336 (*Briginshaw*). Astill was given notice of his substantial and direct interest in the subject matter of the Special Commission and elected not to participate.¹³⁰¹ Accordingly, Ms Miskov's allegations about that assault were untested. Having said that, it is necessary to approach Ms Miskov's allegations with care having regard to the gravity of them.

918. Noting the care with which allegations of this kind ought to be considered, we submit that the Special Commission should accept the evidence of Ms Miskov about the assault on her by Astill. We cite the following matters in support of that submission:

- a) Ms Miskov had no reason to give false evidence with respect to this issue. Her career in CSNSW continued with success after the incident and she gave a clear and cogent explanation as to why she did not wish to make allegations about Astill's conduct at the time¹³⁰²;
- b) Ms Miskov was impressive in the way that she gave her evidence and there was no motive for her to invent the allegations about the assault;
- c) Ms Miskov had a good recollection of events, and this particular event was one plainly that would have stuck in her mind; and
- d) the alleged conduct by Astill is consistent with the unchallenged evidence from a range of witnesses about rumours of Astill's preparedness to engage in inappropriate sexual conduct in his workplace,¹³⁰³ and his generally inappropriate sexualised behaviour towards other CSNSW officers.¹³⁰⁴

919. It is necessary to resolve the conflict between the evidence of Ms Miskov on the one hand and the evidence of Ms Martin and Mr Paddison on the other, with respect to the meeting at which

¹³⁰¹ Ex. 58, TB3, Vol 9, Tab 103, AST.002.013.0075.

¹³⁰² Transcript, 24 October 2023, T719.4-8.

¹³⁰³ Transcript, 30 October 2023, T1191.27-43; T 1192.46-1193.03; T1202.27-29; Ex. 18, AST.002.013.0013 [99]-[101]; Transcript, 30 October 2023, T1288.1-29; Transcript, 25 October 2023, T837.22-36; Ex. 17, AST.002.013.0045 [44].

¹³⁰⁴ Ex 16, TB2, Vol 8, Tab 77, AST.002.013.0026_0002-3 [16]-[17]; Ex 16, TB2, Vol 8, Tab 79, AST.002.013.0038 [19].

Ms Miskov said that her documentary report about Astill's assault was destroyed. Again, the allegations made by Ms Miskov about the conduct of Ms Martin and Mr Paddison are serious and attract the operation of the principles stated in *Briginshaw*. We have set out above at Section 6.3 of these submissions, relevant aspects of Ms Miskov's evidence, and in our submission, they apply equally to her evidence about this particular event.

920. In contrast, we have set out at [1104]-[1128] below matters in support of our submission that Ms Martin's credibility as a witness is poor. Further, in a number of instances she demonstrated poor practices in following what she accepted were established requirements on her to make reports of allegations of misconduct.¹³⁰⁵ Further, there was a range of evidence of her poor treatment of staff at DCC.¹³⁰⁶

921. Mr Paddison accepted that the events described by Ms Miskov may have occurred.¹³⁰⁷ In fairness, it appeared that what Mr Paddison was saying, that, if what Ms Miskov had described was contrary to his usual practice, he considered it unlikely to have occurred. There is not the same evidence of poor practices with regard to reporting allegations of misconduct by him as there is with respect to Ms Martin, and that is a relevant factor in whether the evidence of Ms Miskov should be preferred to the evidence of Mr Paddison.

922. In all the circumstances, we submit that the Special Commission should find that Ms Miskov did disclose in her written report that she had been assaulted by Astill; that this report was provided to Ms Martin and Mr Paddison; that Ms Miskov repeated the allegation about the assault on her by Astill at the meeting with Ms Martin and Mr Paddison; and that in the presence

¹³⁰⁵ For example, Ms Martin's failure to report the Coke can incident (Transcript, 13 November 2023, T2204.6-2205.11); Ms Martin's failure to report the sexual rumours involving Astill and Witness C (Transcript, 13 November 2023, T2200.17-28); Ms Martin's failure to refer the incident involving Witness O in March and April 2017 for investigation (Transcript, 14 November 2023, T2267.7-27); and, Ms Martin's failure to refer the disclosures made by Witness R and V in June 2017 for investigation (Transcript, 14 November 2023, T2279.20-30).

¹³⁰⁶ See, eg, Transcript, 1 November 2023, T1413.42, T1454.25-26; Transcript, 27 October 2023, T1121.8-19; Ex. 15, TB2, Vol 8, Tab 70, AST.002.013.0012_0007-8 [56]; Ex. 57, TB2, Vol 8, Tab 79, AST.002.013.0038_0008 [55]; Ex. 23, TB2, Vol 7, Tab 52A, AST.002.013.0019_0005-6 [29], [31]; Ex. 57, TB2, Vol 8A, Tab 87, AST.002.013.0034_0006 [48]-[49]; Ex. 57, TB2, Vol 7, Tab 50A, AST.002.013.0037_0009 [73].

¹³⁰⁷ Transcript, 2 November 2022, T1525.26-1528.48

of Ms Miskov either Ms Martin or Mr Paddison tore up the report and said that the matter would be dealt with “inhouse”.

6.4. October 2016 – Witness P’s allegations about Astill and Witness C

923. Witness P entered custody was transferred to DCC on 13 August 2013. She made a statement for Astill’s criminal trial and also gave evidence at Astill’s criminal trial.¹³⁰⁸
924. In around October 2016, Witness P wrote a letter to her friend, Witness HH. In the letter, Witness P alleged that Witness C was having a “fling” with one of the male officers, and that it was a CSNSW Officer whose “wife/girlfriend works here too”.¹³⁰⁹ Witness P’s evidence was that she wrote the letter because “no one was listening” and she thought that Witness HH could get the information out to the media.¹³¹⁰ In the letter, Witness P said, “promise you I’ve seen it with my own eyes”.¹³¹¹ Witness P also said that she could tell that there was something going on between Astill, Witness C and Witness H, because of Astill’s body language, flirty behaviour, dirty jokes and the way he manipulated those inmates.¹³¹²
925. Witness P’s evidence was that at the time of writing the letter, she understood that CSNSW Officers read her mail.¹³¹³ Witness P recalled that after she attempted to send her letter, Astill got hold of it. While on muster, Astill said to her, “you’ve got creative writing don’t you?”. Astill then got another officer to search her room and check her handwriting.¹³¹⁴
926. Witness P stated that Ms Kellett later came and talked to her about the letter and stated that she would put the letter in her property so that it could be used at a later date.¹³¹⁵ Witness P understood from this that her letter would not be sent to Witness HH.¹³¹⁶

¹³⁰⁸ Ex. 3, TB1, Vol 5, Tab 12A, AST.002.013.0007_0001 [3]-[4].

¹³⁰⁹ Ex. 3, TB1, Vol 5, Tab 12, Annexure A, AST.002.002.0021_0004.

¹³¹⁰ Ex. 3, TB1, Vol 5, Tab 12A, AST.002.013.0007_0002 [9].

¹³¹¹ Ex. 3, TB1, Vol 5, Tab 12, Annexure A, AST.002.002.0021_0004. See also Ex. 26, TB2, Vol 7, Tab 60A, Annexure B, CSNSW.s001.0021.1153_0003.

¹³¹² Ex. 3, TB1, Vol 5, Tab 12A, AST.002.013.0007_0002 [10].

¹³¹³ Transcript, 23 October 2023, T559.20-23.

¹³¹⁴ Transcript, 23 October 2023, T561.19-47.

¹³¹⁵ Ex. 3, TB1, Vol 5, Tab 12A, AST.002.013.0007_0002 [11]-[12].

¹³¹⁶ Transcript, 23 October 2023, T562.24-38.

927. Ms Kellett gave evidence about this incident. She recalled that Astill had intercepted Witness P's letter, had taken it to Ms Martin and admitted that he was the CSNSW Officer referred to in the letter.¹³¹⁷ Because of the serious nature of the contents of the letter, Ms Kellett had submitted an IR in relation to it.¹³¹⁸ She recalled that the CIG rang her and she "filled CIG in a little bit more regarding all the things that were occurring in the gaol". She recalled that following that discussion, the "CIG" analyst changed the classification of the Intelligence Report from unreliable to "highly plausible". She was told that Ms Martin then spoke to the Regional Commander, and it was recommended that Astill be "counselled".¹³¹⁹ Ms Kellett explained that she put Witness P's letter into her property to ensure that Astill could not access and destroy it. She was concerned about storing the letter in the Intelligence Officer's room because Astill had access to that room as an Intelligence Officer.¹³²⁰
928. Ms Martin also gave evidence about this incident. She could not recall Astill coming to her with the letter.¹³²¹ Ms Martin was taken to IR-16-2783 and was asked to explain why it referred to her taking Witness P's letter to Regional Commander Ms Wright before determining to warn and caution Astill, in circumstances where Ms Wright was retired by the relevant time.¹³²² Ms Martin could not explain that part of the report.¹³²³ She could not recall whether she sat down with Astill and gave him a warning and caution as recorded in the IR.¹³²⁴ As for the notation that after Astill was given a warning and a caution the letter "was returned to the Intelligence Officer by GM MARTIN with an instruction to raise an IR so that the matter was transparent", Ms Martin accepted that the notation suggests that the incident "came to an end" by her giving a warning and caution, and that that should not have happened.¹³²⁵

¹³¹⁷ Transcript, 2 November 2023, T1603.45-46.

¹³¹⁸ Ex. 26, TB2, Vol 7, Tab 60A, Annexure B, CSNSW.001.0021.1153.

¹³¹⁹ Transcript, 2 November 2023, T1603.29-41.

¹³²⁰ Transcript, 3 November 2023, T1617.20-1618.13.

¹³²¹ Transcript, 14 November 2023, T2251.13-24.

¹³²² Transcript, 14 November 2023, T2251.26-2252.14.

¹³²³ Transcript, 14 November 2023, T2252.14-31.

¹³²⁴ Transcript, 14 November 2023, T2252.27-47.

¹³²⁵ Transcript, 14 November 2023, T2258.12-46.

929. Ms Wright also gave evidence about this incident. She stated that she did not recall any occasion where she was involved in giving Astill a warning or caution and confirmed that she had retired by the time of the events involving this letter.¹³²⁶
930. Mr Hovey gave evidence about IR-16-2783. There was no investigation of the allegations by the IB, and he also accepted that the statement entered by the IB analyst that, “[t]he reliability of the sources cannot be assessed, and the validity of the information cannot be judged”, was misleading in the absence of any investigation by the IB.¹³²⁷ Mr Hovey said that because this report was dealt with locally and Ms Martin raised the report for transparency,¹³²⁸ the process that was followed was not the same as during a normal referral to the IB from the PSB. However, he accepted that this did not detract from the serious allegations contained within the report and that the allegations required an investigation by the IB or a referral to the CSIU. He further accepted that the failure to properly investigate the allegations contained in the report represented a serious failure on the part of the IB.¹³²⁹ Mr Hovey’s evidence was to the effect that whilst he could not remember being made aware of the contents of the IR, the entry in that document next to “reviewer” (where his name appears), and the date reviewed (14 November 2016), revealed that he had access to that IR and reviewed it on that date. Accordingly, Mr Hovey had available to him by that date the information and the IR.

6.4.1 Available findings

931. In our submission, the resolution of the factual controversies with respect to this incident is straight-forward.
932. First, the reference in IR-16-2783 to Ms Wright being informed of Witness P’s allegations, and participating in counselling Astill along with Ms Martin, is plainly wrong. The letter was written by Witness P after Ms Wright had retired. It may be that the reference in the IR was

¹³²⁶ Transcript, 16 November 2023, T2431.1-15; Ex. 42, TB2, Vol 8A, Tab 90, AST.002.013.0046_0001 [5], 0002 [16].

¹³²⁷ Transcript, 8 November 2023, T1929.8-40.

¹³²⁸ Ex. 32, TB2, Vol 8, Tab 86, AST.002.013.0054_0009 [65].

¹³²⁹ Transcript, 8 November 2023, T1931.17-46.

thought by the source to be a reference to some earlier event involving counselling of Astill in which Ms Wright was involved, but there is no basis to make that finding and Ms Wright denied being involved in any counselling of Astill. In our submission her evidence should be accepted.

933. Second, the IR itself discloses very serious allegations of misconduct by Astill. It was necessary for those allegations to be reported (at least) to the IB, and this occurred.

934. Third, when that report was received by the IB, no investigation was conducted, no referral was made by the IB to the PSB or to the CSIU.

935. Fourth, Mr Hovey read the IR on 14 November 2016.

6.5. March and April 2017 – Incident involving Witness O and T

936. Witness O was transferred to DCC on 4 January 2016. While she was housed at DCC, she was a victim of offences perpetrated by Astill. She made two statements to NSWPF about Astill's offending against her and gave evidence at Astill's criminal trial.¹³³⁰

937. Separate to Witness O's evidence about Astill's offences against her, Witness O gave evidence of her disclosure of an incident she observed between Astill and Ms Sheiles and the response to that disclosure by correctional staff. That incident took place in March 2017. Witnesses O and T were walking past Astill's office, when they observed something "inappropriate". Witness O also alleged that she saw Astill touch Ms Sheiles on the bottom. At the time, Ms Sheiles was kneeling and changing the bin while vacuuming and Astill was sitting in a chair.¹³³¹

938. Witnesses O and T spoke to Officer Timothy Peek about the incident that same day. Witness O's evidence is that she told Mr Peek exactly what she had observed, namely, the locations of Ms Sheiles and Astill in the office and her observations of Astill touching Ms Sheiles on the bottom. She recalled Officer Peek responding, "leave it with me".¹³³²

¹³³⁰ Ex. 3, TB1, Vol 5, Tab 16, AST.002.002.0016; Ex. 3, TB1, Vol 5, Tab 17, AST.002.002.0017.

¹³³¹ Transcript, 24 October 2023, T611.2-16; Ex. 3, TB1, Vol 5, Tab 17A, AST.002.013.0028_0001 [6]; Ex. 3, TB1, Vol 5, Tab 16, AST.002.002.0016_0002 [6]-[8].

¹³³² Transcript, 24 October 2023, T612.42-613.5; Ex. 3, TB1, Vol 5, Tab 17A, AST.002.013.0028_0002 [7]-[8].

939. Either that same day or soon after, Witness O recalls being called to Mr Giles' office by Mr Peek. There, Witness O repeated to both Mr Peek and Mr Giles what she had earlier described to Mr Peek. In response, Mr Giles asked Witness O to put the complaint in writing so he could take it to Ms Martin. Witness O recalls being told that she would be safe and that no one would know about her making the complaint.¹³³³ Witness O's evidence is that an inmate application form was completed on her behalf in relation to the incident due to her limited English at the time.¹³³⁴ The form did not disclose details, but it expressly disclosed that she believed what had happened was inappropriate, recording "I believe that something inappropriate happened yesterday (28/3/2017) between [Trudy Sheiles] and Chief Astill. I believe I have witnessed this on previous occasions also".¹³³⁵
940. Witness O's evidence is that sometime after completing the inmate application form, she was approached by a different officer about the form, an officer who she thought was the then Acting Governor. From the available evidence, it appears likely that that officer was Acting MOS Brian Bartlett.¹³³⁶ Mr Bartlett was DCC's MOS between December 2016 and June 2017.¹³³⁷ Witness O recalled explaining to that officer what she had told Messrs Peek and Giles in the same level of detail. That officer then said, "leave it with me, I will investigate it".¹³³⁸
941. Witness O's evidence is that she did not hear anything from Mr Peek, Mr Giles or Mr Bartlett after she made her report. However, Astill's treatment of her changed and she began to experience bullying from him.¹³³⁹ She recalled that at a later time, Astill asked her to come into his office and told her that he was aware of her complaint and said, "don't do it again, next time there will be consequences".

¹³³³ Transcript, 24 October 2023, T619.32-620.17; Ex. 3, TB1, Vol 5, Tab 17A, AST.002.013.0028_0003 [15].

¹³³⁴ Transcript, 24 October 2023, T620.23-621.46; Ex. 3, TB1, Vol 5, Tab 17A, AST.002.013.0028_0003 [16]; Ex. 3, TB1, Vol 5, Tab 15, Annexure A, AST.002.002.0018_0043.

¹³³⁵ Ex. 3, TB1, Vol 5, Tab 15, Annexure A, AST.002.002.0018_0043.

¹³³⁶ Transcript, 24 October 2023, T626.12-628.05; Ex. 3, TB1, Vol 5, Tab 17A, AST.002.013.0028_0004 [18]-[19].

¹³³⁷ Ex. 20, TB2, Vol 8, Tab 65, AST.002.002.0079_0001 [3].

¹³³⁸ Ex. 3, TB1, Vol 5, Tab 16, AST.002.002.0016_0003 [11]; Ex. 3, TB1, Vol 5, Tab 17A, AST.002.013.0028_0004 [18]-[19].

¹³³⁹ Transcript, 24 October 2023, T628.45-629.15; Ex. 3, TB1, Vol 5, Tab 17A, AST.002.013.0028_0004 [22]-[23].

942. Mr Bartlett gave evidence about his investigation of Witness O and Witness T's allegations. Specifically, his evidence was that he received a request from Ms Martin to interview Witnesses O and T regarding the allegation of inappropriate behaviour by Astill.¹³⁴⁰
943. Mr Bartlett conducted an interview with Witness O on 3 April 2017.¹³⁴¹ He recalled that upon being questioned about what she had observed between Ms Sheiles and Astill, Witness O "started to retract".¹³⁴²
944. The typed Inmate Interview form completed by Mr Bartlett following his interview with Witness O recorded the following:
- a) Witness O observed Witness H kneeling on the floor of the Principal's office appearing to change the waste bin liner and vacuuming the floor. Astill was seated at the desk facing her and Witness H had her back to the door;
 - b) Witness O observed Astill bent over where Witness H was kneeling, and Witness H then stood up and Astill "appeared to take hold of the cord but placed his hand on her thigh instead";
 - c) Witness O was "disgusted" and walked away;
 - d) Witness O said there were past instances whilst on night shifts that Astill would go to the rear of Witness H's cell and talk with her; and
 - e) Witness O said that she is not friends with Witness H and that they had a serious falling out last year and do not talk.¹³⁴³
945. Mr Bartlett prepared a handwritten note of the interviews. His handwritten note records that Witness O told him she had seen Astill touch Ms Sheiles' inner thigh.¹³⁴⁴ Mr Bartlett's evidence was that upon conducting interviews with Witnesses O and T, he formed the opinion that they

¹³⁴⁰ Ex. 20, TB2, Vol 8, Tab 65, AST.002.002.0079_0001 [4].

¹³⁴¹ Ex. 20, TB2, Vol 8, Tab 65, AST.002.002.0079_0001-2 [5].

¹³⁴² Transcript, 1 November 2023, T1336.16-32.

¹³⁴³ Ex. 20, TB2, Vol 8, Tab 65, AST.002.002.0079_0016.

¹³⁴⁴ Ex. 20, TB2, Vol 8, Tab 65A, Annexure A, AST.002.013.0041_0009.

were looking to try and incriminate Ms Sheiles.¹³⁴⁵ Mr Bartlett later conducted an interview with Astill, who denied any inappropriate behaviour.¹³⁴⁶ Following the interviews with Witnesses O and T, and Astill, Mr Bartlett made a report to Ms Martin about his investigation, having determined not to interview Ms Sheiles.¹³⁴⁷

946. In his report, Mr Bartlett stated, “there appears to be insufficient evidence or information available to warrant further action or investigation, however I will closely monitor all parties concerned”.¹³⁴⁸ Mr Bartlett’s evidence was that he was dubious about what Witnesses O and T were saying and did not think that he had sufficient information to proceed.¹³⁴⁹

947. Ms Martin recalled that upon receiving the report from Witness O, she asked Mr Bartlett to “sit down” with the inmates and “find out more information”. She accepted that there was a possibility of “inappropriate conduct” by Astill, but did not accept that it required an “investigation” she instead said that Mr Bartlett’s role was to “find out more information”.¹³⁵⁰ Ms Martin said that she was content with Mr Bartlett’s conclusions and trusted his recommendation.¹³⁵¹ Ms Martin denied that it was necessary to escalate Witnesses O and T’s complaint to the IB. Specifically, she said:

*If information – if information comes to us, we speak to the inmate. We gather more information to add value. And then what we do is we make a determination whether that information should be in an information report – intelligence report to Investigations Branch or not. I asked the Manager of Security to look at this, to speak to the women, and his recommendation – I wasn’t at the meeting. His recommendation was such, and I respected that judgment.*¹³⁵²

¹³⁴⁵ Transcript, 1 November 2023, T1337.1-29.

¹³⁴⁶ Transcript, 1 November 2023, T1343.32-40; Ex. 20, TB2, Vol 8, Tab 65, AST.002.002.0079_0002 [8].

¹³⁴⁷ Ex. 20, TB2, Vol 8, Tab 65, AST.002.002.0079_0002 [10]; Ex. 20, TB2, Vol 8, Tab 65, AST.002.002.0079_0004.

¹³⁴⁸ Ex. 20, TB2, Vol 8, Tab 65, AST.002.002.0079_0003 [14].

¹³⁴⁹ Transcript, 1 November 2023, T1344.21-1345.27.

¹³⁵⁰ Transcript, 14 November 2023, T2267.7-30.

¹³⁵¹ Transcript, 14 November 2023, T2272.15-35.

¹³⁵² Transcript, 14 November 2023, T2275.10-16.

6.5.1 Available findings

948. The first factual controversy is whether Witness O disclosed to Mr Peek and Mr Giles that she had seen Astill touch Ms Sheiles on the bottom. As noted, Witness O said in her evidence that she had made that disclosure. Neither Mr Peek nor Mr Giles recalled whether she had disclosed that fact to them.

949. In the circumstances, we submit that the Special Commission should accept the evidence of Witness O. There was no reason for her to lie, and she had a clear recollection. That evidence is consistent with the reference in her complaint that what she had seen was inappropriate. It is true that this reference is inconsistent with the notes prepared by Mr Bartlett, but there is reason to doubt the reliability of Mr Bartlett's notes (see below).

950. Next, it is necessary to resolve whether Witness O disclosed to Mr Bartlett that she had seen Astill touching Ms Sheiles on the bottom. In our submission, the Special Commission should find that Witness O disclosed that particular detail to Mr Bartlett. We refer to the matters set out above with respect to Witness O. It is true that Mr Bartlett's notes of the meeting do not record this detail, and as a contemporaneous documentary record this deserves considerable weight. However, there is at least one critical detail which differs between Mr Bartlett's handwritten notes and his typed note, namely, in Mr Bartlett's handwritten notes, he details that Witness O reported that Mr Sheiles stood up and Astill appeared to take hold of the (vacuum cleaner) cord, and placed his hand on her inner thigh.¹³⁵³ Mr Bartlett's typed note omits the reference to "inner" thigh and just describes touching on the thigh. There is a significant difference between a touch on the thigh and inner thigh. In our submission that is a reason to doubt the accuracy of the details in Mr Bartlett's notes.

951. Next, it is clear that there was no intelligence report or any submitted to the IB or any other report of these allegations made to the PSB or to the CSIU or to NSWPF.

¹³⁵³ Ex. 20, TB2, Vol 8, Tab 65, AST.002.002.0079_0004.

952. Next, we note that in Witness T’s statement, she cast doubt about whether she met Mr Bartlett at all.¹³⁵⁴ In circumstances where it was not possible to call Witness T to give oral evidence, and where Mr Bartlett said that he did meet with her and had handwritten notes of that event, we do not consider it open to reject Mr Bartlett’s evidence that there was such a meeting.

6.6. June 2017 – Complaint by Witnesses R and V about Witness M

953. Witness V was transferred to DCC in February 2015. She made a statement in Astill’s criminal trial and gave evidence at his trial.¹³⁵⁵

954. Witness V was transferred to DCC in February 2015. She made a statement in Astill’s criminal trial and gave evidence at his trial.¹³⁵⁶

955. Between May and July 2017, Witness M disclosed to Witnesses V and R that Astill was touching her inappropriately.¹³⁵⁷ Witness R said that she had witnessed Astill touching Witness M.¹³⁵⁸ Witnesses V and R decided to make a report about this.¹³⁵⁹

956. Witness V recalled that Witness R asked her Overseer to arrange for them to speak to Ms Martin about Witness M’s disclosure. She recalls being taken to Ms Martin’s office and meeting with then Acting MOS Paddison and Mr Holman and Mr Westlake.¹³⁶⁰ Ms Martin initially was not present. Witness V’s evidence was that they asked for help to stop Astill harassing and intimidating them and relayed the details of what Witness M had disclosed about Astill. She recalls Witness R confirming that she had witnessed Astill’s conduct towards Witness M. She recalled Mr Paddison saying, “[d]ue to the seriousness, we have to call the Governor” and that Governor Martin then attended the meeting. She said that they then repeated what they had said about Astill in the presence of Ms Martin.¹³⁶¹

¹³⁵⁴ Ex. 3, TB1, Vol 5, Tab 15, AST.002.002.0018_0002 [9].

¹³⁵⁵ Ex. 3, TB1, Vol 5, Tab 11A, AST.002.012.0002_0001 [3].

¹³⁵⁶ Ex. 3, TB1, Vol 5, Tab 11A, AST.002.012.0002_0001 [3].

¹³⁵⁷ Transcript, 20 October 2023, T443.29-34; Ex. 3, TB1, Vol 5, Tab 11, AST.002.002.0030_0001-2 [6].

¹³⁵⁸ Transcript, 20 October 2023, T443.36-41; Ex. 3, TB1, Vol 5, Tab 11, AST.002.002.0030_0001-2 [6].

¹³⁵⁹ Ex. 3, TB1, Vol 5, Tab 11A, AST.002.013.0002_0001 [6].

¹³⁶⁰ Ex. 28, TB2, Vol 8, Tab 80, Annexure 1, AST.0002.013.0053_0019.

¹³⁶¹ Transcript, 20 October 2023, T450.29-455.44; Ex. 3, TB1, Vol 5, Tab 11A, AST.002.013.0002_0003 [11].

957. Witness V's evidence was that the first thing Ms Martin said to them in response was, "you do know inmates lie right?". She recalls Witness R immediately responding, "But I saw it. I witnessed it". She recalls that Ms Martin and Mr Paddison then told her and Witness R that they would look into it and get back to them.¹³⁶²
958. Witness V recalled that shortly after the meeting, she was in the muster line with Witnesses R, B and W and they were approached by Astill. Astill took a deep breath and said, "smells like dogs in here". She recalls him then saying, "[i]f anyone has anything to say, say it to my face". Witness V's evidence was that she felt Astill made that comment because "dogs" is a derogative term for an informant, and he knew that they had complained about him to Ms Martin.¹³⁶³
959. Witness V's evidence is that after she and Witness R spoke to Ms Martin about Astill, Astill's bullying and intimidation got worse.¹³⁶⁴
960. Witness R was housed at DCC from late 2016 until January 2019. She made a statement in Astill's criminal trial and gave evidence at his trial.
961. Witness R could not recall the exact circumstances about how the incident involving Witness M was reported to Ms Martin.¹³⁶⁵ As she recalled it, Witness M's disclosure related to Astill attempting to kiss her.¹³⁶⁶ Witness R recalled approaching Mr Holman to speak to him about what had happened to Witness M. She recalled that there were other officers present at the time, but could not recall who they were. Witness R's evidence is that she told Mr Holman that Astill had tried to kiss Witness M. She recalls being told several times by Mr Holman how serious the complaint was and the ramifications for an officer if these types of complaints are made. She recalls Mr Holman then stating that due to the serious nature of the allegation, Ms Martin would need to be called.¹³⁶⁷

¹³⁶² Transcript, 20 October 2023, T454.39-455.38; Ex. 3, TB1, Vol 5, Tab 11A, AST.002.013.0002_0003 [11].

¹³⁶³ Transcript, 20 October 2023, T457.6-458.29; Ex. 3, TB1, Vol 5, Tab 11A, AST.002.013.0002_0003 [12].

¹³⁶⁴ Transcript, 20 October 2023, T463.12-26.

¹³⁶⁵ Transcript, 23 October 2023, T595.40-47; Ex. 3, TB1, Vol 6, Tab 21A, AST.002.013.0029_0003 [13].

¹³⁶⁶ Ex. 3, TB1, Vol 6, Tab 21A, AST.002.013.0029_0003 [14].

¹³⁶⁷ Transcript, 23 October 2023, T597.9-598.43; Ex. 3, TB1, Vol 6, Tab 21A, AST.002.013.0029_0003 [16]-[17].

962. Witness R's evidence was that in the presence of Mr Holman, she then told Ms Martin exactly what she had told Mr Holman about Astill trying to kiss Witness M. When prompted, she also recalled providing Ms Martin with a photocopy of a letter she had received from Witness M detailing what had happened with Astill.¹³⁶⁸
963. She recalls Ms Martin stating that they would investigate the matter. Witness R said that nothing happened after the meeting, and she did not heard anything about it again.¹³⁶⁹
964. Mr Paddison stated that he had a very vague recollection of the meeting with Witnesses V and R. He did not recall what Witnesses V and R told him or Ms Martin speaking to him about the incident, or receiving an instruction from Ms Martin after the meeting to take any action. He stated that all he could recall was that inmates wanted to make a complaint about a staff member.¹³⁷⁰
965. Mr Paddison stated that following a meeting with representatives of the Special Commission, he searched his emails to try to find any documents he had in relation to this event. Through that process, he located an email he sent on 22 July 2017 regarding an investigation being undertaken at DCC in relation to alleged inappropriate interactions between a custodial staff member at DCC and Witness M.¹³⁷¹ His evidence was that email prompted a vague memory of calling the "CIG" on the day after receiving the complaint from Witnesses V and R. He could not otherwise recall the call.¹³⁷²
966. Mr Paddison also located an email he received from Mr Berry dated 27 July 2017 confirming the cancellation advice of Witness M's transfer from Silverwater Women's Correctional Centre to DCC. He stated that this came about after either Ms Martin or he made the decision to cancel

¹³⁶⁸ Transcript, 23 October 2023, T601.8-46; Ex. 3, TB1, Vol 6, Tab 21, AST.002.002.0028_0006 [19].

¹³⁶⁹ Transcript, 23 October 2023, T602.3-9; Ex. 3, TB1, Vol 6, Tab 21A, AST.002.013.0029_0003 [18]-[19].

¹³⁷⁰ Transcript, 2 November 2023, T1542.20-1545.11; Ex. 25, TB2, Vol 8, Tab 84, AST.002.013.0055_0005 [28]-[29].

¹³⁷¹ Ex. 25, TB2, Vol 8, Tab 84, AST.002.013.0055_0006 [32]; Ex. 25, TB2, Vol 8, Tab 84, Annexure D, AST.002.013.0055_0022-23.

¹³⁷² Transcript, 2 November 2023, T1545.2-27.

Witness M's transfer back to DCC in order to protect her, based on the information contained in the complaint.¹³⁷³

967. Mr Paddison stated that he had a very vague recollection that Mr Holman made attempts to have staff at Silverwater Women's Correctional Centre interview Witness M in relation to the complaint, but that he is not sure what the outcome was. He further stated that he believed that at some point an IR regarding this incident was submitted to CIG through the IIS but did not recall any further details about this report.¹³⁷⁴
968. Mr Holman stated that he had limited recollection of an occasion in around July 2017 where he was called to the office of the MOS and had a meeting with inmates regarding serious misconduct allegations against Astill.¹³⁷⁵ He located an IR dated 21 July 2017 that he had prepared in relation to this incident.¹³⁷⁶ This incident report largely accords with Witnesses V and R's accounts.
969. Mr Westlake had no recollection of attending any meeting with Witnesses V and R.¹³⁷⁷ However, Mr Holman's report records that he attended.
970. Ms Martin's evidence was that she could not recall any meeting with Witnesses V and R.¹³⁷⁸ Her evidence was that she would not have said "inmates lie", as she would have taken this complaint very seriously.¹³⁷⁹ She denied instructing Mr Paddison to conduct an investigation into the incident, instead stating that she would have said, "[w]e need to find out more information".¹³⁸⁰
971. Following the evidence of the disclosure by Witnesses V and R to Ms Martin, Mr Paddison, Mr Holman and Mr Westlake, it is clear that a further serious incident involving Astill came to

¹³⁷³ Ex. 25, TB2, Vol 8, Tab 84, AST.002.013.0055_0007 [37]; Ex. 25, TB2, Vol 8, Tab 84, Annexures G, H, AST.002.013.0055_0028-29.

¹³⁷⁴ Ex. 25, TB2, Vol 8, Tab 84, AST.002.013.0055_0007 [38]-[39].

¹³⁷⁵ Ex. 28, TB2, Vol 8, Tab 80, AST.002.013.0053_0005 [22].

¹³⁷⁶ Ex. 28, TB2, Vol 8, Tab 80, Annexure E, CSNSW.0001.0021.1167.

¹³⁷⁷ Transcript, 26 October 2023, T922.38-924.19.

¹³⁷⁸ Transcript, 14 November 2023, T2278.31-36.

¹³⁷⁹ Transcript, 14 November 2023, T2279.20-31.

¹³⁸⁰ Transcript, 14 November 2023, T2280.39-41.

the attention of Mr Holman. Mr Holman said in his evidence that he prepared a further IR on or about 24 July 2017, that is a few days after the meeting with Witnesses V and R. In that report, Mr Holman recorded allegations which he accepted in his evidence amounted (in part) to an attempt by Astill to bully or intimidate the women who had come forward and made the disclosures with respect to Witness M.¹³⁸¹

972. An IR was submitted recording the disclosures made by Witnesses V and R, IR-17-2051. That IR was submitted by Ms Kellett on or about 30 July 2017¹³⁸². In that report, there is a record in the information coming from DCC, which is consistent with the account of Witnesses R and V of what they disclosed to Ms Martin, Mr Paddison, Mr Holman and Mr Westlake at the meeting to which we have referred to above, relevantly including the allegations about Astill assaulting Witness M and that one of the women coming forward had witnessed at least some of that conduct. Further, that Intelligence Report included a reference to Mr Holman's second report which recounted the threatening behaviour of Astill towards one of the women who had come forward.¹³⁸³

973. The IR was reviewed by Intel Analyst Andrew Tayler from the IB on 26 September 2017 and was reviewed by Mr Hovey on 27 September 2017. The analysis inserted by Mr Tayler, records this:

This IR is related to IR-16-2783 [the report with respect to the allegations made by Witness P about Astill] ... [Astill] is accused of improper conduct with inmates held at DILLWYNIA CC. However, the same problem arises with this IR as did in the first, namely that the reliability of the sources cannot be assessed and the validity of the information cannot be judged. A lot of the accusations made are at least second hand, ie the person making the accusation is reporting that some other person has made an accusation. As such no reliable conclusion can be drawn from the information at hand.

¹³⁸⁴

¹³⁸¹ Transcript, 3 November 2023, T1697.32-1698.47; Ex. 28, TB2, Vol 8, Tab 80, AST.002.013.0053_0005 [21]-[22], 0013-14 [72]-[73]; Ex. 28, TB2, Vol 8, Tab 80, Annexure E, CSNSW.0001.0021.1167.

¹³⁸² Ex. 3, TB3, Vol 10, Tab 170.

¹³⁸³ Ex. 28, TB2, Vol 8, Tab 80, Annexure E, CSNSW.0001.0021.1167_0003.

¹³⁸⁴ Ex. 28, TB2, Vol 8, Tab 80, Annexure E, CSNSW.0001.0021.1167_0004.

974. Mr Hovey was asked about this IR in his oral evidence and he accepted that it appeared that no steps were taken by the IB to conduct any investigation into these allegations, nor did the IB refer these matters to the PSB or to the CSIU.¹³⁸⁵
975. In October 2017, the allegations about Astill assaulting Witness M received further attention. On 11 October 2017, Mr Greaves of the PSB sent an email to Mr Shearer copied to Mr Peter Robinson, Director PSB.¹³⁸⁶ Mr Greaves recorded that the PSB was currently co-ordinating some sensitive inquiries, and while doing so had come upon information to the effect that an officer at DCC had been accused of making sexual advances towards Witness M, and that the allegations at face value appeared to involve serious misconduct within the meaning of s .69 GSE Act. Therefore, Mr Greaves wrote, the allegation should have been reported to the PSC, which would have considered and initiated an investigation by the IB. The email reported that what had happened instead, was that Mr Paddison had been tasked to undertake an investigation into the allegations and that Ms Martin was aware of the investigation. Mr Greaves asked Mr Shearer whether this was correct and asked for advice about why the allegation was not referred to the PSC or the PSB.¹³⁸⁷
976. Two days later, Mr Greaves reported to Mr Robinson that he had spoken to Mr Shearer, and that Mr Shearer had made inquiries with Ms Martin.¹³⁸⁸ What was evidently reported by Mr Shearer to Mr Greaves was that Ms Martin had told Mr Shearer that there was not an investigation as such and that Ms Martin had liaised with Mr Hovey about the matter and the interview described below (that is, the interview Mr Paddison had been tasked to undertake) was “one step down path of assembling relevant information”. Mr Greaves said that if Mr Hovey was “still in ‘intelligence gathering’ mode, that it makes sense that the matter hasn’t yet been referred to the PSC. As a result, I don’t see a need for any further action on this one”.¹³⁸⁹

¹³⁸⁵ Transcript, 8 November 2023, T1931.2-46.

¹³⁸⁶ Ex 3, TB3, Vol 14, Tab 452, CSNSW.0001.0032.0130_0001.

¹³⁸⁷ Ex 3, TB3, Vol 14, Tab 452, CSNSW.0001.0032.0130_0001.

¹³⁸⁸ Ex 3, TB3, Vol 14, Tab 452, CSNSW.0001.0032.0130_0001.

¹³⁸⁹ Ex. 3, TB3, Vol 14, Tab 452, CSNSW.0001.0032.0130_0001.

977. Mr Robinson’s response was to thank Mr Greaves but note that “it still remains all a bit odd”.¹³⁹⁰

978. Nothing further appears to have happened with respect to Witness M’s allegations or the allegations of bullying or intimidation made by the women who had brought forward those allegations. That is, Witness M gave evidence that she was not spoken to by anyone about her allegations and nor was there ever any referral to the PSB or to the PSC or to the CSIU or to the NSWPF more generally.

6.6.1 Available findings

979. In resolving the factual controversies with respect to these matters, we submit that the Special Commission should make the following findings:

- a) Mr Westlake, along with Mr Paddison and Mr Holman and later Ms Martin were all present when Witness R and Witness V made the disclosures identified above;
- b) those disclosures by Witnesses R and V included allegations that Witness M had been assaulted by Astill and that Witness R had witnessed assaults;
- c) there was a subsequent written report made by Ms Holman that Astill had engaged in bullying and intimidation of Witness R and V;
- d) Astill was made aware of the fact that those women had come forward with those complaints, leading to the confrontation by him of Witnesses B, R and V, during muster, and Astill stating it smelt “like dogs in here” (Witness B had accompanied Witnesses V and R to the meeting but had remained outside¹³⁹¹);
- e) an investigation, of sorts, was commenced within DCC, but nothing came of that investigation;
- f) Witness M was not ever spoken to by anyone about her allegations;

¹³⁹⁰ Ex. 3, TB3, Vol 14, Tab 452, CSNSW.0001.0032.0130_0001.

¹³⁹¹ Ex. 3, TB1, Vol 6, Tab 23, AST.002.002.0029_0002 [9].

- g) the IB was notified of the allegations, but no action was taken by that branch in response;
- h) the statement by Ms Martin that she had liaised with Mr Hovey was not accurate; and
- i) Mr Shearer became aware of allegations of Witness M in October 2017, but took no action on the mistaken belief that there was an investigation under way by the IB.

6.7. Second half of 2017 – Disclosures to Deborah Wilson by Witnesses B and V

980. Witness B has been housed at DCC since February 2015. While housed at DCC, she was a victim of offences perpetrated by Astill. She made one statement to NSWPF about Astill's conduct towards her. She also gave evidence at Astill's criminal trial.¹³⁹²
981. Witness B gave evidence of an incident in the second half of 2017 relating to a disclosure that she and Witness V made to Ms Deborah Wilson related to a diary kept by Witnesses B and V recording incidents involving Astill.¹³⁹³ Witness B said that at some point, she and Witness V told Ms Deborah Wilson about the diary and showed it to her.¹³⁹⁴ This included explaining to Ms Deborah Wilson why they had started the diary and the fact that there had been a complaint about Astill's conduct towards Witness M, followed by bullying by Astill. Witness B's evidence was that she and Witness V told Ms Deborah Wilson "everything". This included telling Ms Deborah Wilson about every complaint regarding Astill and the fact that Astill referred to them as "dogs" upon becoming aware that they had made a complaint about him.¹³⁹⁵
982. Witness B's evidence was that she and Witness V started the diary following a comment made by Astill (which Witness B believed was directed at her) that "some people should get the lethal injection in this place".¹³⁹⁶ Witness B said that Ms Robinson overheard this comment and suggested that she write down Astill's comment.¹³⁹⁷ Witness B said that from then on, she and

¹³⁹² Ex. 3, TB1, Vol 6, Tab 23A, AST.002.013.0030_0001 [3]-[4].

¹³⁹³ Ex. 3, TB1, Vol 6, Tab 23A, AST.002.013.0030_0007 [33].

¹³⁹⁴ Transcript, 24 October 2023, 671.23-36; Ex. 3, TB1, Vol 6, Tab 23A, AST.002.013.0030_0007 [33].

¹³⁹⁵ Transcript, 24 October 2023, T670.16-T672.9.

¹³⁹⁶ Ex. 3, TB1, Vol 6, Tab 23A, AST.002.013.0030_0003 [16].

¹³⁹⁷ Ex. 3, TB1, Vol 6, Tab 23A, AST.002.013.0030_0003 [17]-[18].

Witness V would record an entry in the diary for anything that happened that they thought they needed to record. This included when they informed officers about something Astill had done.¹³⁹⁸ She said that the diary consisted of two small exercise books stuck together and contained a large number of entries.¹³⁹⁹

983. Witness B's evidence was that following their first meeting with Ms Deborah Wilson, she and Witness V had a number of further meetings with Ms Deborah Wilson and continued to make disclosures in relation to Astill.¹⁴⁰⁰

984. Witness B's evidence was that Ms Deborah Wilson took the diary away from her and Witness V and, at a later meeting with them, told them that she had shown it to Ms Martin.¹⁴⁰¹ She stated that she and Witness V asked Ms Deborah Wilson to speak to the inmates referred to in the diary and Ms Deborah Wilson responded, "if girls want to speak to [me], they can come and talk to [me]" and that she was not going to go and "look for them".¹⁴⁰²

985. Witness B recalled that after Ms Deborah Wilson told them she had shown the diary to Ms Martin, Ms Deborah Wilson suggested that they should get rid of the diary and offered to shred it for them.¹⁴⁰³ The apparent concern of Ms Deborah Wilson was that Astill might find the diary.¹⁴⁰⁴ Witness B stated that ultimately, Witness V arranged to send the diary to her lawyer.¹⁴⁰⁵

986. Ms Deborah Wilson gave evidence about these matters. She recalled Witnesses B and V showing her the diary and discussing its contents.¹⁴⁰⁶ Ms Deborah Wilson stated that she recalled their allegations about Astill as concerning bullying and harassment of inmates, and vaguely recalled Witness B informing her that she had reported Astill's assault of Witness M

¹³⁹⁸ Ex. 3, TB1, Vol 6, Tab 23A, AST.002.013.0030_0007 [31].

¹³⁹⁹ Ex. 3, TB1, Vol 6, Tab 23A, AST.002.013.0030_0007 [31].

¹⁴⁰⁰ Transcript, 24 October 2023, T671.10-13.

¹⁴⁰¹ Transcript, 24 October 2023, T673.7-20; Ex. 3, TB1, Vol 6, Tab 23A, AST.002.013.0030_0007 [33].

¹⁴⁰² Transcript, 24 October 2023, T672.7-26; T674.17-26.

¹⁴⁰³ Transcript, 24 October 2023, T674.31-41; Ex. 3, TB1, Vol 6, Tab 23A, AST.002.013.0030_0007 [34].

¹⁴⁰⁴ Transcript, 24 October 2023, T677.3-7.

¹⁴⁰⁵ Ex. 3, TB1, Vol 6, Tab 23A, AST.002.013.0030_0007 [35].

¹⁴⁰⁶ Transcript, 7 November 2023, T1752.38-1753.6.

and that they had been intimidated by Astill after coming forward.¹⁴⁰⁷ Ms Deborah Wilson accepted that she “possibly” told Witness B that “if girls want to speak to her, they can come and talk to” her and that she would not “go and look for them” as she found that a lot of the time, the inmates would not talk.¹⁴⁰⁸ Ms Deborah Wilson stated that she thought that it was “more than likely” that she discussed Witness B’s disclosure and the diary with Ms Martin and that she believed that she submitted a report to the SIU in relation to it.¹⁴⁰⁹

987. It emerged in some documents produced to the Special Commission after Ms Deborah Wilson gave oral evidence that Ms Deborah Wilson’s position in her oral evidence about her response to the disclosure of the diary comments was largely vindicated. The relevant sequence of events was that Ms Deborah Wilson caused IR-18-1983 to be submitted to the IB on or about 15 August 2018. That IR stated, among other things, that:

It is of concern that staff are raising the issue of inappropriate behaviour by a staff member and of even more concern is that it is only the one person that is mentioned. Staff were questioned as to why these reports have taken the time period to be reported and they state that they felt intimidated by Chief Astill previously however, more staff are coming forward and this inappropriate behaviour needs to be reported.

...

Wayne Astill has been of interest to local intel for a period of time however, this has escalated in the past six months with a number of staff making assumptions on their suspicions with his interactions with inmates. Inmates have also recently started calling Wayne Astill “poppy”, which is inappropriate. A number of reports have recently been submitted through SIU in relation to Wayne Astill and also introduction of tobacco/illicit drugs by a staff member and given the information coming forward, it cannot be discounted that this is the one person, if in fact, it is.¹⁴¹⁰

988. The day after Ms Deborah Wilson submitted IR-18-1983, Ms Casey, an Intelligence Analyst at the IB, sent an email to Ms Deborah Wilson asking for her to call her about that IR.¹⁴¹¹ It is clear from a subsequent email sent by Ms Casey to Mr Hovey on 16 August 2018 that contact was made between Ms Casey and Ms Deborah Wilson. In that email, Ms Casey noted a range

¹⁴⁰⁷ Transcript, 7 November 2023, T1753.5-23.

¹⁴⁰⁸ Transcript, 7 November 2023, T1754.16-22.

¹⁴⁰⁹ Transcript, 7 November 2023, T1756.07-11, T1757.23-34.

¹⁴¹⁰ Ex. 3, TB3, Vol 10, Tab 173, CSNSW.0001.0021.1181_0004.

¹⁴¹¹ Ex. 56, AST.002.013.0092_0001.

of matters arising from contact made with Ms Deborah Wilson, including an explanation for the delay in the submission of the IR and that:

*officers were apprehensive about coming forward and reporting any suspicious behaviour of ASTILL as he has publicly berated them for reporting him on prior occasions. I questioned this and stated that the attachments contained reports from BERRY, CURTAIN, BROWN and BARLING all dated February 2018 which Wilson stated would have been forwarded to the Governor with the covering report from BERRY dated 24 February 2018. WILSON was unaware of what happened with the submission of that information.*¹⁴¹²

989. Further, the email records that Ms Deborah Wilson “mentioned that there were a number of people interlinked and that ASTILL appears to be at the centre of it”. Ms Casey in the email to Mr Hovey recorded under a section “Proposed Action” the following:

*In speaking with WILSON, she believes that issues involving ASTILL and possible misconduct had been occurring for a while. As such I would propose that further information be collected and assessed to determine the nature of the matter. At this point in time, without collecting further information, all I have is an incident that occurred in Dec/Jan involving ASTILL an inmate [Witness JJ] (reported to IB by way IR 15/08/2018) and very general, non-specific hearsay from WILSON regarding the scale and seriousness of the matter. ... I will await your response.*¹⁴¹³

990. There is no evidence of any written response by Mr Hovey to that email. However, Ms Casey went back to Ms Wilson on 17 August 2018 by email and asked Ms Deborah Wilson to call her as a matter of urgency. Ms Deborah Wilson returned by email to Ms Casey on Sunday 19 August 2018 saying: “Hi Sarah, ... I have attached what I could find in this matter along with a summary and I will email General Manager to see what she has, if she has any more.”. Attached to that email was a summary document prepared by Ms Deborah Wilson along with a copy of the diary maintained by Witnesses B and R.¹⁴¹⁴

991. There is no evidence that there was any further response from the IB to the email communications from Ms Deborah Wilson or to IR-18-1983.

¹⁴¹² Ex. 56, AST.002.013.0092_0002.

¹⁴¹³ Ex. 56, AST.002.013.0092_0002.

¹⁴¹⁴ Ex. 56, AST.002.013.0092_0005-41.

992. Ms Martin's evidence was that if Ms Deborah Wilson had told the Special Commission that she had discussed Witness B's allegations with her and made reference to the diary, Ms Deborah Wilson's evidence would be correct.¹⁴¹⁵ Further, as noted, Ms Deborah Wilson asked Ms Martin in an email of 19 August 2018 to provide any further material to Ms Casey. There is no evidence that Ms Martin did ever provide any further material to Ms Casey.

6.7.1 Available findings

993. In our submission, whilst the evidence about these events was unclear for much of the oral hearing, in the end, based on the documentary material that was provided, it is clear what occurred. We submit the following findings should be made:

- a) Witnesses B and R did discuss the contents of the diary with Ms Deborah Wilson and did provide a copy of the diary to her. Ms Deborah Wilson made a copy of that diary and provided it to Ms Casey from the IB in mid August 2018;
- b) Ms Deborah Wilson disclosed the contents of that diary and the disclosures made by Witnesses B and R with Ms Martin, and asked Ms Martin to provide any reports to the IB that she had which were relevant to these disclosures;
- c) Ms Martin did not provide any further documents that she had with respect to these disclosures to the IB or take any other steps with respect to these disclosures; and
- d) upon Ms Deborah Wilson's report to the IB in the form of IR-18-1983 and Ms Deborah Wilson's subsequent email reports and attachments, no investigation into those matters was conducted by the IB other than the enquiries made of Ms Deborah Wilson by Ms Casey.

6.8. November 2017 – Meetings between J Unit inmates and Ms Deborah Wilson

994. Ms Sheiles was an inmate in the CSNSW system between 21 November 2014 and 18 July 2022. She was housed at DCC between 19 November 2015 and 24 June 2017, and again between 3

¹⁴¹⁵ Transcript, 14 November 2023, T2311.12-18.

August 2017 and 6 October 2018. While she was housed at DCC, she was a victim of offences perpetrated by Astill. She made four statements to NSWPF about Astill's offending against her.¹⁴¹⁶

995. Ms Sheiles gave evidence of an incident in November 2017 involving a number of inmates from the J Unit and Ms Deborah Wilson. Specifically, Ms Sheiles recalled that she arranged a meeting with the other J Unit inmates regarding Astill's inappropriate behaviour and language, and that approximately three quarters of the 22 inmates from J Unit spoke to Ms Deborah Wilson about Astill.¹⁴¹⁷

996. Ms Sheiles' evidence was that the inmates then went in one by one to speak to Ms Deborah Wilson. Ms Sheiles recalled telling Ms Deborah Wilson that Astill was verbally inappropriate and that he would touch her inappropriately on her "ass" or breast as he brushed past, making her extremely uncomfortable.¹⁴¹⁸

997. Ms Sheiles' impression was that Ms Deborah Wilson did not seem that interested in her disclosures and did not seem to believe her. Ms Sheiles stated that Ms Deborah Wilson's reaction was "like she was fobbing us off".¹⁴¹⁹ To Ms Sheiles' knowledge, the only outcome of the meetings between the J Unit inmates and Ms Deborah Wilson was that Astill was less frequently rostered on as the Chief Correctional Officer in the J Unit.¹⁴²⁰ After the meeting, Ms Sheiles did not try to raise any concerns about Astill because she did not think that anything would be done.¹⁴²¹

998. Ms Sheiles was not able to give evidence about the contents of disclosures made by the other inmates to Ms Deborah Wilson in their meetings, as she was not present for those meetings.

¹⁴¹⁶ Ex. 3, TB1, Vol 5, Tab 6A, AST.002.013.0005_0001 [3].

¹⁴¹⁷ Transcript, 17 October 2023, T218.6-31.

¹⁴¹⁸ Transcript, 17 October 2023, T220.31-221.15; Ex. 3, TB1, Vol 5, Tab 6A, AST.002.013.0005_0001 [48].

¹⁴¹⁹ Transcript, 17 October 2023, T221.21-28; Ex. 3, TB1, Vol 5, Tab 6A, AST.002.013.0005_0001 [48].

¹⁴²⁰ Transcript, 17 October 2023, T221.33-37; Ex. 3, TB1, Vol 5, Tab 3, AST.002.002.0011_0012 [23]; Ex. 3, TB1, Vol 5, Tab 6A, AST.002.013.0005_0007 [48].

¹⁴²¹ Ex. 3, TB1, Vol 5, Tab 6A, AST.002.013.0005_0008 [49].

999. Ms Deborah Wilson gave evidence about this incident. She recalled that a number of women came to speak to her about Astill and that she spoke to them one by one about their complaints.¹⁴²² She could not recall the details of her interview with Ms Sheiles.¹⁴²³ Ms Deborah Wilson did not deny that Ms Sheiles made a disclosure of the kind identified by Ms Sheiles to her, but said that she could not recall it.¹⁴²⁴ She accepted that she was required to report a disclosure of the kind Ms Sheiles said she made to the SIU if it was made, but thought that she may have instead made a report to Ms Martin.¹⁴²⁵

1000. Ms Martin was asked about this incident. Her evidence was that she did not remember Ms Deborah Wilson informing her about this disclosure by Ms Sheiles. She stated that she was sure that if Ms Deborah Wilson had told her about Ms Sheiles' disclosure, Ms Deborah Wilson would have compiled an IR and sent it to IB.¹⁴²⁶ When pressed, Ms Martin accepted that if Ms Sheiles' disclosure was brought to her attention by Ms Deborah Wilson, it would have been necessary for her to give Ms Deborah Wilson a direction to make an IR but stated that "I wouldn't necessarily have to if I wasn't there; she would just do it".¹⁴²⁷

6.8.1 Available findings

1001. We submit that it is not open to make a finding about the precise nature of the disclosures made by inmates other than Ms Sheiles to Ms Deborah Wilson. It is clear that there were meetings between a number of inmates and that the meetings involved complaints about Astill. However, there is no evidence about the precise nature of the complaints made by those inmates to Ms Deborah Wilson.

1002. As for the disclosure made by Ms Sheiles to Ms Deborah Wilson, Ms Sheiles was clear in her evidence that her allegations included Astill touching her inappropriately in a sexualised way, in conduct that likely amounted to assaults. Ms Deborah Wilson had no recollection of

¹⁴²² Transcript, 7 November 2023, T1758.28-46.

¹⁴²³ Transcript, 7 November 2023, T1759.1-18.

¹⁴²⁴ Transcript, 7 November 2023, T1759.1-18.

¹⁴²⁵ Transcript, 7 November 2023, T1759.40-1760.17.

¹⁴²⁶ Transcript, 14 November 2023, T2311.20-32.

¹⁴²⁷ Transcript, 14 November 2023, T2312.10-26.

receiving such a disclosure, but accepted that if it was made she was bound to report it to the SIU, but it may be that she instead made a report to Ms Martin.

1003. We submit that Ms Sheiles was an impressive witness. She had no reason to lie and gave clear evidence of the disclosure made to Ms Deborah Wilson. Ms Deborah Wilson did not deny that the disclosure was made. We submit that the Special Commission should find that Ms Sheiles did disclose to Ms Deborah Wilson that Astill had been assaulting her.
1004. Next, it is necessary to determine what Ms Deborah Wilson did in response to these allegations. Ms Deborah Wilson's conduct in a number of instances showed a preparedness by her to make reports to Ms Martin and then the IB (via IRs) about allegations involving misconduct by Astill. Her evidence was that her obligations were to report allegations of misconduct within the hierarchy at DCC, namely for her to report to Ms Martin.
1005. There is no evidence that these allegations were reported by Ms Deborah Wilson to the IB or SIU. As noted, there is documentary evidence that on other occasions, Ms Deborah Wilson caused IR's to be submitted to the IB and SIU. On the evidence, the Special Commission should find that no such report was made on this occasion.
1006. Ms Deborah Wilson said that if she did not lodge an IR, she would have passed the allegations on to Ms Martin. She had no recollection of doing so, but she said she either would report allegations of this kind to the SIU or Ms Martin. Ms Martin had no recollection of such a disclosure. We submit that the Special Commission should find that Ms Deborah Wilson did report Ms Sheiles' allegations about assaults by Astill to Ms Martin in accordance with her stated practice. Whilst Ms Martin had no recollection of such a report, as we have set out at [[1104]-[1128] below, this was one of many relevant events of which Ms Martin had no recollection.

6.9. Events between November 2017 and January 2018

1007. The Special Commission received a significant volume of evidence in relation to a sequence of events commencing in November 2017 with a meeting between Astill, Mr Shearer and Ms

Martin and culminating in three mediations involving Witnesses P, V and B in January 2018. These events are related and it is necessary to set out the relevant evidence about them in sequence.

1008. By November 2017, Ms Martin said that that reports continued to be made to the IB about Astill, but nothing was happening and she did not know how to deal with them. She said that she did not think the situation was satisfactory.¹⁴²⁸

1009. It is clear that there was a meeting attended by Astill, Ms Martin and Mr Shearer on 22 November 2017.¹⁴²⁹ Whilst neither Mr Shearer nor Ms Martin had a precise recollection of the matters discussed at that meeting, a document prepared by Astill bearing the date 25 November 2017 discloses at least some of things which were discussed at that meeting.¹⁴³⁰

1010. The document prepared by Astill contained “certain matters” which he wanted to make Ms Martin aware of and records the following matters:

- a) allegations made by Witness O and Witness T which Astill described as “false allegations” against him and Ms Sheiles. The document does not make any reference to the nature of those asserted “false allegations”;
- b) allegations made about an incident involving another inmate who had got hold of a camera and had taken nude photos of herself for Astill;
- c) fear of “reprisals” by inmates;
- d) allegations by Witnesses B and V. Astill alleged that these inmates had a vendetta against him and had made a written record of every word that he spoke. Astill recorded in the document that the attack went back to events earlier in the year. In Astill’s document, he made reference to a muster where he made a comment that the area where the inmates lined up smelled like “dog”; and

¹⁴²⁸ Transcript, 14 November 2023, T2305.3-21.

¹⁴²⁹ Transcript, 14 November 2023, T2298.19-27; Transcript, 16 November 2023, T2489.12-27.

¹⁴³⁰ Ex. 39, TB4, Vol 20, Tab 36, CSNSW.0002.0023.2977-2980.

- e) allegations about two women (one of whom was crying) approaching an Overseer and making allegations, which at a minimum, involved inappropriate sexualised conduct by Astill, namely putting his hand on one of their faces and telling her she had “beautiful eyes”.

1011. Mr Shearer in his evidence frankly accepted that at least some of the allegations the subject of Astill’s defence in this document and which were likely to be the subject of the discussion on 22 November 2017 involved allegations of serious misconduct which plainly had to be reported to the PSB or NSWPF through the IB.¹⁴³¹
1012. Ms Martin in her evidence said that Mr Shearer “would have” directed that mediations should take place between Witnesses P, V and B and Astill. Ms Martin said that mediations would not normally take place for this type of incident, and it was not something that she would have directed.¹⁴³² She accepted that given the allegations made by those inmates, it was completely inappropriate to hold mediations. She could not recall whether the meeting of 22 November 2017 resulted in a warning or caution being delivered to Astill or resulted in a further IR being submitted at her direction. Her explanation for this was that Mr Shearer was controlling the meeting, not her.¹⁴³³
1013. Mr Shearer did not accept that he directed those mediations occur.¹⁴³⁴
1014. Irrespective of the resolution of the dispute between Mr Shearer and Ms Martin about whose idea it was to conduct mediations, it is clear that a decision was made to conduct mediations involving three of the inmates who were making complaints about Astill. The mediations occurred at a time when Ms Martin was away, and were conducted by Mr Thomas Woods, the then acting Governor of DCC.

¹⁴³¹ Transcript, 16 November 2023, T2494.8-14, T2497.10-14, T2498.43-2499.4, T2501.30-47.

¹⁴³² Transcript, 14 November 2023, T2302.34-38; Ex. 38, TB2, Vol 7, Tab 59A, AST.002.013.0059_0016 [78].

¹⁴³³ Transcript, 14 November 2023, T2303.1-43.

¹⁴³⁴ Transcript, 16 November 2023, T2499.12-30.

1015. Witness B gave evidence of a “mediation” she participated in with Astill. Her recollection was that it took place at the end of 2017,¹⁴³⁵ however the documentary records suggest that it took place in early 2018.¹⁴³⁶ Witness B’s evidence was that Ms Martin made it clear to her that she had to participate in the mediation if she wanted to remain at DCC.¹⁴³⁷
1016. Witness B’s evidence was that before the mediation, she knew that Astill would be there, but she did not have any further information about what would be involved. She asked Ms Johnson to attend as her support person. Others present at the “mediation” were Astill and Mr Woods.¹⁴³⁸
1017. Witness B recalled that when the “mediation” started, Mr Woods said that “it was between [her] and Astill and did not do anything else to control the conversation”. She stated that the mediation was a “slanging match at [her] by Astill”, who said that none of the things she had been saying were real or true and that he had been collecting paperwork on her. She described the mediation as Astill “doing all the talking while the [Acting] Governor just sat there”.¹⁴³⁹ Witness B stated that she “said all the things that [she] had been saying”, including about Astill intimidating her, and said that all of the things she said happened did happen.¹⁴⁴⁰
1018. Witness B recalled that Mr Woods eventually stopped the mediation. She stated that he then asked her something to the effect of, “[a]re you not going to have a problem after this?” and she felt like she had to agree with him because Astill and the Acting Governor were there and “[t]here was nothing else [she] could say”.¹⁴⁴¹
1019. Ms Johnson also gave evidence about the mediations.¹⁴⁴² Ms Johnson stated that Witness B was “really distressed” and did not “hold it together” enough to be able to give her story as clearly as Witness V did during Witness V’s mediation. Ms Johnson recalled that Witness B “still got

¹⁴³⁵ Transcript, 24 October 2023, T684.26-34; Ex. 3, TB1, Vol 6, Tab 23A, AST.002.013.0030_0009 [42].

¹⁴³⁶ Ex. 34, TB2, Vol 8A, Tab 34, Annexure E, CSNSW.0002.0023.3544_0001.

¹⁴³⁷ Ex. 3, TB1, Vol 6, Tab 23A, AST.002.013.0030_0009 [42].

¹⁴³⁸ Ex. 3, TB1, Vol 6, Tab 23A, AST.002.013.0030_0009 [43].

¹⁴³⁹ Ex. 3, TB1, Vol 6, Tab 23A, AST.002.013.0030_0009 [44].

¹⁴⁴⁰ Ex. 3, TB1, Vol 6, Tab 23A, AST.002.013.0030_0009 [45].

¹⁴⁴¹ Ex. 3, TB1, Vol 6, Tab 23A, AST.002.013.0030_0009 [46].

¹⁴⁴² Ex. 19, TB2, Vol 7, Tab 47A, AST.002.013.0047_0007 [40]-[41].

out what happened” and her impression was that Astill would be held accountable as two inmates had given the same story.¹⁴⁴³

1020. Ms Johnson gave evidence that a few days after Witness B’s mediation, Witnesses B and V approached her and said that their house had been “ramped”. She took this as Astill taking retribution for them coming forward at the mediations.¹⁴⁴⁴

1021. Ms Johnson also gave evidence about the mediations involving Witnesses P and V. She said that the first mediation was on 17 January 2018 and involved her, Mr Woods¹⁴⁴⁵, Astill and Witness P. Her recollection was that Witness P was brought in first and the mediation was very quick. She said that Witness P said, “I have nothing to say. I’ve got another 17 years here, so I’m not saying anything”. She said that this was accepted by Astill and Mr Woods and Witness P was taken back to her room.¹⁴⁴⁶ On Witness P’s evidence, she recalled that at some point, she was told by Ms Martin that she was required to mediate with Astill and if she declined, she would be transferred to a different correctional centre.¹⁴⁴⁷ Witness P’s evidence was that during the mediation she raised Astill’s conduct towards her, including that he had called her a “cunt”. Witness P said that Astill told her it was all in her head. She recalled that she ended up having to leave the mediation as it was making her angry.¹⁴⁴⁸

1022. Ms Johnson said that the next mediation involved Witness V. Ms Johnson’s impression was that Witness V spoke really well and that her mediation went for at least an hour. She recalled that at one point, Witness V detailed something Astill had done, and Mr Woods said, “that’s not professional of an officer”. She further said that she thought that Witness V presented a very good case and that Astill was very intimidating towards her. She thought that Mr Woods “could see the real story” and came away thinking, “something is going to be done now and I know these girls are going to be safe”.¹⁴⁴⁹ On Witness V’s evidence, Ms Martin had asked her

¹⁴⁴³ Ex. 19, TB2, Vol 7, Tab 47A, AST.002.013.0047_0008 [42].

¹⁴⁴⁴ Transcript, 30 October 2023, T1298.32-36; Ex. 19, TB2, Vol 7, Tab 47A, AST.002.013.0047_0008 [46].

¹⁴⁴⁵ Mr Woods is also referred to as Mr Thomas.

¹⁴⁴⁶ Ex. 19, TB2, Vol 7, Tab 47A, AST.002.013.0047_0006 [36].

¹⁴⁴⁷ Transcript, 23 October 2023, T573.43-574.4; Ex. 3, TB1, Vol 5, Tab 12A, AST.002.013.0007_0003, [18].

¹⁴⁴⁸ Transcript, 23 October 2023, T575.13-20; Ex. 3, TB1, Vol 5, Tab 12A, AST.002.013.0007_0003 [18]-[21].

¹⁴⁴⁹ Ex. 19, TB2, Vol 7, Tab 47A, AST.002.013.0047_0007 [37]-[39].

to do a mediation with Astill, following the complaints that had been made of him intimidating and harassing her after she raised issues regarding his conduct towards Witness M. Witness V's evidence was that she responded, "I don't know how I feel about that" and was not consulted again by Mr Martin before the mediation occurred. Witness V's evidence was that "it was called a mediation but it's basically to cover Astill's arse, because a lot of reports were starting to pile up against him, and it was his way to save [him]". During the mediation, on Witness V's evidence, Astill made false allegations that she was putting strips into people's drinks.¹⁴⁵⁰

1023. Ms Johnson said that Mr Woods spoke to her about the mediation after it took place and said to her about Witness B and V, "they're best friends. I think they've just cahooted together to do this to Officer Astill". She understood from this that comment, Mr Woods did not believe Witnesses B and V.¹⁴⁵¹ Ms Johnson's evidence was that her "heart dropped" when Mr Woods said this to her, and she was "a little bit beside herself" thinking "[n]ow what are the girls going to do?".¹⁴⁵²

1024. Ms Johnson stated that she spoke to Ms Martin about the mediations when Ms Martin returned from leave. Her recollection was that Ms Martin said, "[h]ow did it go", and she responded, "Well, terrible. The two women weren't believed. So, you know, he's just got away with it".¹⁴⁵³ Ms Johnson recalled that Ms Martin then replied "[t]hey're two mates, they're, you know, they're going to – they're in cahoots with one another, they're just getting away with it". Ms Johnson said that she replied, "[w]hat if there's six [of them]", to which Ms Martin responded, "I don't believe it".¹⁴⁵⁴ Ms Johnson's evidence was that her "heart just dropped because [she] was again left helpless to help these women".¹⁴⁵⁵ Ms Johnson said that Ms Martin made no enquiry at all about what she meant by the reference to "what if there's six [of them]".¹⁴⁵⁶

¹⁴⁵⁰ Ex. 3, TB1, Vol 5, Tab 11A, AST.002.013.0002_0003-4 [3], [17]-[18]; Transcript, 20 October 2023, T460.24-462.30.

¹⁴⁵¹ Transcript, 30 October 2023, T1297.38-45.

¹⁴⁵² Ex. 19, TB2, Vol 7, Tab 47A, AST.002.013.0047_0008 [43].

¹⁴⁵³ Transcript, 30 October 2023, T1302.4-10.

¹⁴⁵⁴ Transcript, 30 October 2023, T1301.44-1302.21; Ex. 19, TB2, Vol 7, Tab 47A, AST.002.013.0047_0010 [55].

¹⁴⁵⁵ Ex. 19, TB2, Vol 7, Tab 47A, AST.002.013.0047_0010 [55].

¹⁴⁵⁶ Transcript, 30 October 2023, T1307.5-10.

1025. Mr Woods also gave evidence about the mediations. He said that the complaints that were raised ranged from Astill's demeanour, his comments and invasion of personal boundaries, and his initiation of searches. He recalled one complaint raised was that Astill approached an inmate sitting in a lounge chair and raised his leg and placed a foot on the chair, putting his crotch at eye level. He said that there was no issue of sexual assault or inappropriate sexual relationships raised during the mediations and that had there been, he would have stopped the mediation immediately and informed the NSWPF, PSB and Mr Shearer.¹⁴⁵⁷ He acknowledged that that power imbalance between an inmate and an officer could not be greater, and agreed, given the knowledge he now had, that the power imbalance was going to lead inevitably to great caution, if not reluctance, to disclose facts which may damage the officer and rebound upon the inmate.¹⁴⁵⁸ Mr Woods explained that he viewed the conduct of Astill putting his crotch at eye level of an inmate as intimidation, and that even though it could be seen to carry a sexual connotation, he did not see it that way, or otherwise see it as having sexual content at all.¹⁴⁵⁹ He likewise did not view that, or similar conduct, to be sexual harassment.¹⁴⁶⁰
1026. Mr Woods said that following the mediations, he had contact with the inmates to see if they had any further run-ins with Astill and none were reported. As to Ms Johnson's contention regarding a comment he made that the inmates had concocted a story, Mr Woods said that he did not recall the conversation with Ms Johnson, but he may have mentioned "that there may have been some collusion, but that was after the second or the third mediation, which was not a surprise that there was collusion".¹⁴⁶¹ Mr Woods said that "there were some statements that were kind of verbatim", which would have "given [him] the thought of collusion".¹⁴⁶² He said that as the inmates had prior notice about the mediations, it would not be unexpected that they

¹⁴⁵⁷ Ex. 34, TB2, Vol 8A, Tab 97, AST.002.013.0058_0002-3 [11]-[17].

¹⁴⁵⁸ Transcript, 10 November 2023, T2086.15-2086.30.

¹⁴⁵⁹ Transcript, 10 November 2023, T2087.29-2088.35.

¹⁴⁶⁰ Transcript, 10 November 2023, T2090.1-2090.47.

¹⁴⁶¹ Transcript, 10 November 2023, T2097.31-44; Ex. 34, TB2, Vol 8A, Tab 97, AST.002.013.0058_0005 [25] [29].

¹⁴⁶² Transcript, 10 November 2023, T2098.15-20.

would have discussed certain things and that it did not mean that he discounted their complaints.¹⁴⁶³

1027. Mr Woods said that his primary purpose in conducting the mediations was resolution, so that the parties involved could move on. He said that he was not conducting an investigation, or fact finding, for other purposes. After the mediations, he prepared a report to Ms Martin which he secured in the Governor's file drawer.¹⁴⁶⁴ He also emailed a report regarding the mediations to Mr Shearer on 13 February 2018 in which he recorded that the inmates had stated that they appreciated being heard and afforded the opportunity to address their issues and that the issue was of past events and "that in recent months there had been no further problem, they avoided Astill and he was rarely in their vicinity".¹⁴⁶⁵

1028. Ms Martin also gave evidence about the mediation process. She emailed Astill about the mediations with Witnesses P, B and V on 17 December 2017.¹⁴⁶⁶ Her email referred to the discussion with Mr Shearer, on 22 November 2017 and stated that she had spoken to Witnesses P, B and V with Astill's approval. She noted that all inmates had agreed to individual meetings in relation to their complaints against Astill and that Ms Johnson had agreed to support the inmates in the process and that Astill was also approved to have a support person. She noted that Mr Woods would be briefed on the mediations and that she would ask him to conduct the mediations as soon as possible. She stated, "to end the constant rumours, innuendoes and allegations, a mediation has been determine [sic] as one strategy to reduce the risk of further misunderstandings and complaints made against you by inmates."¹⁴⁶⁷

1029. Ms Martin recalled that Mr Woods was to be briefed, because she was about to go on leave. As noted, her evidence was that the mediation process was Mr Shearer's idea and that she did not agree that it was an appropriate process. She stated that she thought that the allegations were

¹⁴⁶³ Ex. 34, TB2, Vol 8A, Tab 97, AST.002.013.0058_0005 [29].

¹⁴⁶⁴ Ex. 34, TB2, Vol 8A, Tab 97, AST.002.013.0058_0005 [30].

¹⁴⁶⁵ Ex. 34, TB2, Vol 8A, Tab 97, Annexure E, CSNSW.0002.0023.3543-44.

¹⁴⁶⁶ Ex. 34, TB2, Vol 8A, Tab 97, Annexure A, CSNSW.002.002.0399.

¹⁴⁶⁷ Ex. 34, TB2, Vol 8A, Tab 97, Annexure A, CSNSW.002.002.0399.

such that it was not fair to the inmates to put them in that position.¹⁴⁶⁸ Ms Martin could not recall whether she raised her views on the mediations with Mr Shearer but stated that she usually would not have any hesitation in expressing her thoughts and views on something that she disagreed with. She gave evidence that she assumed that she would have expressed her view that the mediations were not a good idea but said that it was clear by the end of 2017 that her opinion was not valued by Mr Shearer such that she may not have expressed that view.¹⁴⁶⁹

1030. On 13 February 2018, Ms Martin was copied on an email from Mr Woods to Mr Shearer attaching a document entitled “Mediation Outcome”.¹⁴⁷⁰ Ms Martin was asked in her oral evidence whether, upon receiving this report and becoming aware of the record of the mediations, she understood that she was required to take steps to refer the allegations out to the IB for the allegations to be properly investigated. Ms Martin responded, “that’s the way the Director wanted it handled”. Ms Martin disagreed that it was part of her function to ensure that an IR was sent out following the mediations, on the basis that she was not present at the mediations. She further stated that she would not go against her Director in circumstances where she “had a number of issues with him as it was.”¹⁴⁷¹ She accepted that she had responsibility for managing the safety of the inmates but stated that she thought that taking steps independently of the mediation process had been done by Mr Woods and Mr Shearer.¹⁴⁷²

1031. Finally, Ms Martin disagreed with Ms Johnson’s account of their conversation following the mediations. She stated that she did not remember having such a conversation with Ms Johnson, denied that she would use the phrase “in cahoots”, stated that she did not recall telling Ms Johnson that the inmates were “making it up” and that she would not talk to Ms Johnson about disregarding inmates as she knew how passionate Ms Johnson was towards them.¹⁴⁷³ She

¹⁴⁶⁸ Transcript, 14 November 2023, T2313.29-2315.10.

¹⁴⁶⁹ Transcript, 14 November 2023, T2316.1-18.

¹⁴⁷⁰ Ex. 34, TB2, Vol 8A, Tab 34, Annexure E, CSNSW.0002.0023.3544_0001.

¹⁴⁷¹ Transcript, 14 November 2023, T2322.8-2325.40.

¹⁴⁷² Transcript, 14 November 2023, T2325.39-2326.34.

¹⁴⁷³ Transcript, 14 November 2023, T2327.9-45.

accepted that had she responded to Ms Johnson, as Ms Johnson contended, it would not be the correct way to respond and would be a serious failure.¹⁴⁷⁴

1032. Mr Shearer also gave evidence about the mediation process. He said that the only occasion of which he was aware that a mediation was conducted between inmates and staff were the mediations between Astill and Witnesses P, B and V.¹⁴⁷⁵ He said that he did not know how the idea of holding mediations between inmates and Astill came about and as noted above, he denied that it was his idea.¹⁴⁷⁶ He accepted that the mediations were not a suitable way to resolve Witnesses P, B and V's complaints about Astill.¹⁴⁷⁷

1033. When asked about his involvement in the mediations, Mr Peek gave evidence that he recalled attending as a witness or a neutral third party at the mediations with Witness P and Witness V and denied that he attended as a support person for Astill, as recorded in Mr Wood's letter to Mr Shearer reporting on the outcome of the mediations.¹⁴⁷⁸

6.9.1 Available findings

1034. We submit that the Special Commission should find as follows in relation to these events:

- a) on 22 November 2017, Mr Shearer, Ms Martin and Astill attended a meeting, and a number of allegations against Astill including those summarised at [1010] above were discussed;
- b) either Mr Shearer or Ms Martin proposed that some of the allegations be addressed by conducting mediations between three of the inmates and Astill;
- c) to the knowledge of Ms Martin and Mr Shearer, the mediation process was used;

¹⁴⁷⁴ Transcript, 14 November 2023, T2328.12-38.

¹⁴⁷⁵ Ex. 43, TB2, Vol 8A, Tab 98, AST.002.013.0061_0011 [60].

¹⁴⁷⁶ Transcript, 16 November 2023, T2499.12-30.

¹⁴⁷⁷ Transcript, 16 November 2023, T2499.32-41; Ex. 43, TB2, Vol 8A, Tab 98, AST.002.013.0061_0011 [60].

¹⁴⁷⁸ Transcript, 1 November 2023, T1402.8-1402.40; Ex. 34, TB2, Vol 8A, Tab 34, Annexure E, CSNSW.0002.0023.3544_0001.

- d) the mediations occurred in January 2018 and were not successful in addressing the complaints;
- e) after the mediation process, Ms Johnson told Ms Martin that the women weren't believed and that Astill had got away with it. Ms Martin responded to the effect that the inmates were making it up. Ms Johnson raised that there were also inmates making similar complaints and Ms Martin said she didn't believe it; and
- f) no report of the allegations was ever made to the IB or PSB or NSWPF.

1035. The submission at (e) above involves preferring the evidence of Ms Johnson to the evidence of Ms Martin. We submit that the Special Commission should do so because:

- a) Ms Johnson gave a clear account of this conversation. She plainly was affected by it and had every reason to remember the details;
- b) as set out at [1124] below, the kind of response she said she received from Ms Martin was consistent with Ms Martin's response to complaints of inmates about Astill; and
- c) As set out at [6.17.1] of these submissions, Ms Martin was not a credible witness.

6.10. March to June 2018 – Disclosures made to Mr Clark by Ms Sheiles

1036. Mr Clark's evidence was that in March and April 2018, Ms Sheiles made disclosures to him about Astill. He stated that he prepared an IR in relation to the circumstances of Ms Sheiles' disclosures around a year later, in March 2019.¹⁴⁷⁹

1037. Specifically, Mr Clark recalled that in around March 2018, Witness Z informed him that Ms Sheiles was scared of Astill, "found his attitude repugnant" and did not want to attend Astill's office when directed. Mr Clark stated that he saw Ms Sheiles near the Wing Office several days later and she told him that she was scared of Astill and that she did not want to attend his office

¹⁴⁷⁹ Ex. 8, TB 2, Vol 7, Tab 63, AST.002.002.0076_0011.

as directed. He said that he asked her why, and Ms Sheiles responded that she would tell him at a later date.¹⁴⁸⁰

1038. Mr Clark said that in around April 2018, Ms Sheiles approached him at the High Needs Office and made specific allegations of sexual assault against Astill. These allegations included that Astill made her drink his semen from a cup.¹⁴⁸¹ Mr Clark's evidence was that he advised Ms Sheiles that her allegations were extremely serious and that he needed to report them immediately. He recalled that Ms Sheiles told him that she was not mentally prepared to make a statement and pleaded with him, stating "I promise I will when I feel I can". Mr Clark said that because Ms Sheiles did not want to make a complaint at that time, he did not think that it was open for him to independently make a report to the NSWPF.¹⁴⁸² He said that he then agreed not to make a report, stating, "I told her if this is the case she has told me nothing".¹⁴⁸³ He stated that it was a serious allegation against a senior staff member and without any evidence, it would have been difficult for him to raise the complaint internally.¹⁴⁸⁴

1039. Mr Clark further stated that in around late June 2018, Ms Sheiles asked him to hold onto a piece of paper for her and that if something happened to her, to give it to the NSWPF. The piece of paper contained three handwritten dates on it, which Ms Sheiles informed him were the dates on which Astill raped her.¹⁴⁸⁵ He stated that he did as she asked, and kept the paper at home in his safe. He stated that once Ms Sheiles reported the complaint to the NSWPF, he gave the piece of paper to them.¹⁴⁸⁶

1040. Mr Clark's evidence is that it was not until Mr Virgo commenced at DCC as Intelligence Manager in September 2018, Ms Sheiles decided to report the complaint to NSWPF. He recalls that Ms Sheiles asked him if she could trust Mr Virgo, and he told her that she could trust him.

¹⁴⁸⁰ Transcript, 25 October 2023, T759.26-760.36; Ex. 8, TB 2, Vol 7, Tab 63, AST.002.002.0076 [12].

¹⁴⁸¹ Ex. 8, TB 2, Vol 7, Tab 63, AST.002.002.0076 [15]-[16].

¹⁴⁸² Transcript, 25 October 2023, T766.28-38.

¹⁴⁸³ Ex. 8, TB 2, Vol 7, Tab 63, AST.002.002.0076_0011; Ex. 8, TB 2, Vol 7, Tab 63, AST.002.002.0076 [18]; Ex. 8, TB 2, Vol 7, Tab 63A, AST.002.013.0022 [27].

¹⁴⁸⁴ Ex. 8, TB 2, Vol 7, Tab 63, AST.002.002.0076 [19].

¹⁴⁸⁵ Ex. 8, TB 2, Vol 7, Tab 63, AST.002.002.0076_0011; Ex. 8, TB 2, Vol 7, Tab 63, AST.002.002.0076 [20]-[21].

¹⁴⁸⁶ Ex. 8, TB 2, Vol 7, Tab 63, AST.002.002.0076 [21]; Ex. 8, TB 2, Vol 7, Tab 63A, AST.002.013.0022 [27].

Mr Clark said that he then arranged for Mr Virgo to speak to Ms Sheiles in an interview room of the BIU, where Ms Sheiles provided a statement.¹⁴⁸⁷

1041. Ms Sheiles' account of her disclosure to Mr Clark largely accords with that of Mr Clark, but for some inconsistencies regarding the timing of her disclosures. Ms Sheiles' evidence is that she only disclosed to Mr Clark what Astill had done to her the day before she saw Mr Virgo.¹⁴⁸⁸ This differs to Mr Clark's account, which is that Ms Sheiles first made a disclosure of sexual assault to him in April 2018 and again in June 2018, that it then took her a period of time before she determined to disclose that information to Mr Virgo.

6.10.1 Available findings

1042. We submit that the Special Commission should accept Mr Clark's evidence as to the disclosures made to him by Mr Sheiles, including as to the timing of those disclosures. As noted, that evidence was consistent with Ms Sheiles' evidence but for the timing discrepancy. Mr Clark's account was given in his statement to the NSWPF, dated 7 September 2020, and there was no reason for him to give that evidence dishonestly or inaccurately. Indeed, the evidence given by him (to his credit, voluntarily) was contrary to his own interests, which were better served by the disclosures coming later. Further, it was clear that Mr Clark was badly affected by the disclosures made by Ms Sheiles and Astill's sexual offending against her. He had every reason to accurately recall the details of these disclosures.

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

1043. Ms Cox has been an inmate in the CSNSW system at various times. She was housed at DCC between around Christmas 2005 and August 2010, and again from around January 2015.¹⁴⁸⁹
1044. She gave evidence of a meeting she had with Ms Martin and Mr Giles in 2018. It is clear from other evidence that the meeting was probably between April 2018 and before 22 May 2018 (see

¹⁴⁸⁷ Ex. 8, TB 2, Vol 7, Tab 63A, AST.002.013.0022 [28].

¹⁴⁸⁸ Ex. 3, TB 1, Vol 5, Tab 6A, AST.002.013.0005 [57].

¹⁴⁸⁹ Ex. 3, TB 1, Vol 6, Tab 46, AST.002.013.0009 [4]-[6].

below). Ms Cox's evidence was that she submitted an inmate request form to speak to Ms Martin. She stated that her request form did not have any information on it that referred to Astill. Ms Cox recalled that a day or two after she submitted her request form, she was called down to the "hole in the wall", which is where inmates went to be taken into the Governor's office. She assumed that she was being called to see Ms Martin because of her request form. However, when she arrived, she was informed that she was there because Astill had accused her of attempting to bribe him. Both Ms Martin and Mr Giles were present at the meeting.¹⁴⁹⁰

1045. Ms Cox's evidence was that she made a number of disclosures about Astill to Ms Martin and Mr Giles. Her disclosures included her suspicion that Astill had tampered with her urine sample, together with a range of complaints about Astill's conduct in respect of other inmates. Ms Cox stated that she did not discuss anything to do with herself because she knew that Ms Martin did not like her, so instead, tried to focus on what was happening to other inmates, albeit omitting the inmates' names.¹⁴⁹¹

1046. Ms Cox that she informed Ms Martin and Mr Giles about matters including that she had seen Astill bringing tobacco in, that Astill was having people collect "debts" for him, that he was receiving sexual favours, and that he was bringing in a range of contraband including jewellery, clothes, and make up.¹⁴⁹² She also reported to Ms Martin and Mr Giles that Astill was sexually harassing a number of young inmates.¹⁴⁹³

1047. Ms Cox's evidence was that she took with her to the meeting, notes she had been keeping of incidents involving Astill. She had four foolscap pages as well as a notebook in which she recorded the dates and times of incidents involving Astill.¹⁴⁹⁴ Her notebook also included details of the substance of the incidents, for example sexual harassment of inmates by Astill as well as the fact that Astill was bringing drugs into DCC that he was trading for sexual favours.¹⁴⁹⁵ Ms

¹⁴⁹⁰ Transcript, 20 October 2023, T501.18-34; Ex. 3, TB 1, Vol 6, Tab 46, AST.002.013.0009 [39]-[40].

¹⁴⁹¹ Ex. 3, TB 1, Vol 6, Tab 46, AST.002.013.0009 [40].

¹⁴⁹² Transcript, 20 October 2023, T502.15-28.

¹⁴⁹³ Transcript, 20 October 2023, T502.44-503.29.

¹⁴⁹⁴ Transcript, 20 October 2023, T504.01-33; Ex. 3, TB 1, Vol 6, Tab 46, AST.002.013.0009 [40].

¹⁴⁹⁵ Transcript, 20 October 2023, T504.26-46.

Cox stated that Ms Martin and Mr Giles did not read her notes during the meeting, but Mr Giles made a photocopy of them which were retained by Ms Martin after Ms Cox left.¹⁴⁹⁶

1048. Ms Cox stated that at the end of the meeting, Ms Martin said to her, “even if I didn’t believe you, I have to err on the side of caution”. She took this to mean that Ms Martin believed her and was going to do something about Astill. Ms Cox stated that following this meeting, she had to be escorted by two officers anytime she went anywhere outside of High Needs. She recalls that she was told by one of the officers that this was for Astill’s protection. Her evidence was that she did not notice anything different about how Astill was treated.¹⁴⁹⁷

1049. Ms Martin gave evidence about a meeting she had with Ms Cox. Her evidence was that a “hysterical” Ms Cox was brought to her office stating that she wanted an AVO against still because Astill had threatened her.¹⁴⁹⁸ Ms Martin recalled that Ms Cox appeared to be under the influence of an illicit substance. Ms Martin stated that she had known Ms Cox for a very long time and believed her.¹⁴⁹⁹ She recalled trying to calm Ms Cox down and having her escorted to the clinic.¹⁵⁰⁰

1050. In the course of her evidence, Ms Martin was shown an IR submitted on 6 June 2018 (IR-18-1378), authored by Ms Deborah Wilson. This entry records that Ms Cox provided paperwork to Ms Martin which involved various “points of interest” in respect of Astill.¹⁵⁰¹ It is likely that this paperwork is a reference to Ms Cox’s notes of incidents involving Astill. The allegations in the IR are extremely serious and include allegations of Astill requesting Ms Cox to assault another inmate; facilitating inmate moves with respect to inmates to whom Astill “talks dirty, touches with obvious sexual overtones [sic]”¹⁵⁰²; failing to act on allegations about inmates receiving drugs; filing false and misleading reports to Ms Martin; making inappropriate sexual comments to young inmates with sexualised touching and fantasy like desires being disclosed;

¹⁴⁹⁶ Transcript, 20 October 2023, T505.11-22.

¹⁴⁹⁷ Transcript, 20 October 2023, T507.12-T508.16.

¹⁴⁹⁸ Transcript, 14 November 2023, T2339.07-19.

¹⁴⁹⁹ Ex. 38, AST.002.013.0059 [67]-[68].

¹⁵⁰⁰ Ex. 38, AST.002.013.0059 [67]-[68].

¹⁵⁰¹ Ex. 3, TB 3, Vol 10, Tab 171, CSNSW.0001.0021.1172_0003.

¹⁵⁰² Ex. 3, TB 3, Vol 10, Tab 171, CSNSW.0001.0021.1172_0004.

threatening payback to inmates, who informed on him; allegations that he was bring tobacco in to the centre for inmates; allegations squarely suggesting that there was inappropriate sexual activity going on in Astill's office in the context of inmates incurring some kind of bill which needed to be paid.¹⁵⁰³ As is obvious, the record of the information in Ms Cox's "paperwork" is broadly consistent with Ms Cox's evidence of her oral disclosures to Ms Martin and Mr Giles.

1051. Ms Martin's evidence was that she could not recall the meeting as described by Ms Cox and could not recall any occasion where Ms Cox handed her notes recording allegations against Astill. However, she stated that she believed that she did recall a meeting with Ms Cox, and this was the same incident as the meeting described by Ms Cox.¹⁵⁰⁴ Ms Martin also accepted that IR-18-1378 and Ms Cox's notes appeared to concern the same material and stated, "[i]n this incident, I didn't read the notes, I would have given them to the intelligence officer".¹⁵⁰⁵ When clarification was sought, Ms Martin reiterated that she did not read the notes and would have given them to the intelligence officer, as Ms Cox was hysterical and she was more worried about trying to calm her down.¹⁵⁰⁶

1052. As to Ms Cox's evidence that after the meeting, she was escorted around DCC, Ms Martin accepted that she advised that Astill should not have any further formal contact with Ms Cox and stated that she took this step for Ms Cox's wellbeing.¹⁵⁰⁷

1053. Mr Giles gave evidence about this meeting. He recalled the discussion about the dirty urine results and Ms Cox's allegation that Astill had falsified the results. He also recalled Ms Cox's complaint about Astill going into units and treating certain inmates differently.¹⁵⁰⁸ Mr Giles was adamant on his evidence that Ms Cox did not in his presence report that Astill was bringing contraband (including tobacco, drugs and jewellery) into DCC or that Astill was having inmates collect debts for him, or that Astill was sexually assaulting or harassing inmates. He agreed that

¹⁵⁰³ Ex. 3, TB 3, Vol 10, Tab 171, CSNSW.0001.0021.1172.

¹⁵⁰⁴ Transcript, 14 November 2023, T2342.20-24.

¹⁵⁰⁵ Transcript, 14 November 2023, T2342.20-42.

¹⁵⁰⁶ Transcript, 14 November 2023, T2342.32-42.

¹⁵⁰⁷ Transcript, 14 November 2023, T2346.31-2347.08.

¹⁵⁰⁸ Transcript, 17 November 2023, T2599.11-2603.35.

Ms Cox provided her handwritten notes to Ms Martin and accepted that he made a copy of them. He said that he did not read the notes but understood that the notes recorded Ms Cox's complaints.¹⁵⁰⁹ Finally, he accepted that if Ms Cox had disclosed to him and Ms Martin what she said she disclosed, then it was necessary for the NSWPF to be notified.¹⁵¹⁰

1054. Mr Hovey gave evidence about IR-18-1378. The effect of his evidence was that no action was taken by the IB in response to that report until after Astill's arrest. Mr Hovey accepted that that was a failure by the IB, as it should have referred the matters to the PSB and notified the NSWPF.¹⁵¹¹

6.11.1 Available findings

1055. There are some critical differences between the accounts of the meeting given by Ms Cox on the one hand, and Ms Martin and Mr Giles on the other. In resolving this controversy, we consider that the Special Commission should prefer Ms Cox's account over the accounts of Ms Martin and Mr Giles for the following reasons:

- a) Ms Cox was an impressive witness. She plainly was doing her best to recall an event which was of particular significance to her. She clearly had a good recollection of the meeting;
- b) there was no reason for Ms Cox to give false evidence;
- c) Ms Cox's account derives a significant degree of support from the contemporaneous document, being Intelligence Report – IR-18-1378. That document records a range of serious allegations made by Ms Cox to Ms Martin, and also records that Ms Cox handing paperwork to Ms Martin. The allegations recorded in the Intelligence Report are consistent with the matters Ms Cox says she raised orally; and

¹⁵⁰⁹ Transcript, 17 November 2023, T2600.03-2603.35.

¹⁵¹⁰ Transcript, 17 November 2023, T2605.39-41.

¹⁵¹¹ Transcript, 8 November 2023, T1948.06-1949.37.

d) as set out below at [1104]-[1128], Ms Martin's recollection of important events generally was poor and there were problems with her credit as a witness.

1056. Mr Giles did not suffer from credit issues to the same extent as Ms Martin. However, for the reasons in Section 6.17.2 of these submissions at [1129] to [1134] below, Mr Giles' evidence on particular issues should be rejected on the basis that it was knowingly false. This is a reason to doubt the accuracy of his evidence of the disclosures made by Ms Cox at this meeting. We submit that the Special Commission should prefer the evidence of Ms Cox about the disclosures she said were made, over Mr Giles' evidence, because Ms Cox's evidence receives significant support from the contemporaneous documentary record to which we have referred above, and also because Ms Cox was an impressive witness and there were some problems with Mr Giles' credibility as a witness.

1057. As we have noted, both Ms Martin and Mr Giles denied reading Ms Cox's notes. That might be thought to be very surprising noting the gravity of the allegations she was making. However, in our submission it is not necessary to determine whether that evidence is accurate, because Ms Cox repeated the substance of the written allegations orally.

6.12. 28 June 2018 – Disclosure made by Elizabeth Cox to Mr Clark

1058. Ms Cox also gave evidence of an incident involving Astill which she disclosed to Mr Clark. The incident involved Astill paging her to attend his office at a time when he was seeking sexual favours from her. Ms Cox's evidence was that she did not respond to Astill's page and was approached by Ms Dolly to be taken to Astill's office due to her failure to respond. Ms Cox recalled that she told Ms Dolly that she did not want to go and that Astill was a predator. Her impression was that Ms Dolly was sympathetic but made her go to see Astill anyway.¹⁵¹²

1059. Ms Cox recalled that when she went into Astill's Office. Astill told her that she had a dirty urine result and wanted her to sign paperwork admitting the charge. Ms Cox stated that she

¹⁵¹² Transcript, 20 October 2023, T490.34-491.10; Ex. 3, TB1, Vol 6, Tab 46, AST.002.013.0009_0004 [26].

refused to sign the paperwork as she believed Astill had tampered with the result. She said that Astill then got really aggressive with her and grabbed her arm violently. Her evidence was that she then tried to leave Astill's office and was initially blocked by Mr Riddle, who then let her through. She stated that she believed that Mr Riddle realised that something was not right and let her out.¹⁵¹³ She then went straight from Astill's office to see Ms Dolly and was followed by Astill, who told Ms Dolly that she needed to be moved to High Needs. She stated that she later told Ms Dolly that Astill needed to be kept away from the inmates and got the impression that Ms Dolly was going to report what was happening.¹⁵¹⁴

1060. Ms Cox's evidence was that she spoke to Mr Clark about this incident. She recalled him asking her if she had been using drugs, which she denied. She then told Mr Clark that Astill was bringing drugs into DCC.¹⁵¹⁵ Ms Cox stated that it was widely known amongst inmates that Astill was bringing drugs into DCC and that she believed it was also widely known by officers.¹⁵¹⁶ She stated that Astill's requests for sexual favours "was the price he was selling [drugs] for".¹⁵¹⁷

1061. Ms Cox's evidence was that Mr Clark then rang Ms Martin in her presence and told her that he had an "inmate saying that Wayne is bringing in drugs". She had the impression that Ms Martin hung up on Mr Clark. Mr Clark then told Ms Cox that he was going to send Ms Martin an email about it.¹⁵¹⁸

1062. Mr Clark also gave evidence about this incident, which he recalled taking place on 28 June 2018.¹⁵¹⁹ He recalled seeing Ms Cox coming back from reception with all of her gear and that she was really upset. He asked her what was wrong and she said that she was "sick of being fucked around" and then disclosed to him that Astill was bringing drugs into DCC. He stated

¹⁵¹³ Transcript, 20 October 2023, T492.9-31; Ex. 3, TB1, Vol 6, Tab 46, AST.002.013.0009_0005 [27].

¹⁵¹⁴ Transcript, 20 October 2023, T492.33-492.40; Ex. 3, TB1, Vol 6, Tab 46, AST.002.013.0009_0005 [28]-[29].

¹⁵¹⁵ Transcript, 20 October 2023, T494.21-30.

¹⁵¹⁶ Transcript, 20 October 2023, T494.32-495.2.

¹⁵¹⁷ Transcript, 20 October 2023, T495.21-28.

¹⁵¹⁸ Transcript, 20 October 2023, T496.31-497.1; Ex. 3, TB1, Vol 6, Tab 46, AST.002.013.0009_0005 [30].

¹⁵¹⁹ Ex. 8, TB2, Vol 7 Tab 63A, AST.002.013.0022_0005 [30].

that he had no reason to doubt what Ms Cox was telling him and asked her to step into the office while he made a complaint.¹⁵²⁰

1063. Mr Clark said that he then telephoned Ms Martin in Ms Cox's presence and told her "I have an inmate sitting in front of me that's just advised me that one of your executive staff is bringing drugs and other contraband into the gaol".¹⁵²¹ He named Astill. His evidence was that Ms Martin responded "[o]h fuck" and said that she would "send Pammy up" (which he understood to be a reference to Ms Kellett).¹⁵²² He stated that he then saw Ms Kellett enter the unit and leave a short time later. He said that after this conversation, he did not receive any further information or communication about his complaint and did not notice any difference in the way Astill was treated within DCC.¹⁵²³

1064. Ms Kellett was questioned about this incident and did not have any recollection of it.¹⁵²⁴

1065. Ms Martin was questioned about this incident and stated that she did not recall it.¹⁵²⁵

6.12.1 Available findings

1066. We submit that the Special Commission should accept the sequence of events as described by both Ms Cox and Mr Clark in their evidence. Ms Martin had no recollection of this incident, but Mr Clark had a clear recollection of it, as did Ms Cox.

1067. Further, on the evidence, it is available to find that no IR was submitted about these allegations to the IB, and no other report was made to the PSB.

¹⁵²⁰ Transcript, 25 October 2023, T771.38-42; Ex. 8, TB2, Vol 7 Tab 63A, AST.002.013.0022_0005 [30]-[32].

¹⁵²¹ Transcript, 25 October 2023, T772.6-15; Ex. 8, TB2, Vol 7 Tab 63A, AST.002.013.0022_0005 [32].

¹⁵²² Transcript, 25 October 2023, T772.27-38; Ex. 8, TB2, Vol 7 Tab 63A, AST.002.013.0022_0005 [32].

¹⁵²³ Transcript, 25 October 2023, T772.40-773.47.

¹⁵²⁴ Transcript, 3 November 2023, T1633.38-7.

¹⁵²⁵ Transcript, 14 November 2023, T2352.13-20.

6.13. Complaint about Ms Dolly

1068. On 1 August 2018, Astill made a complaint to Ms Martin about Ms Dolly.¹⁵²⁶ The subject was Ms Dolly suggesting that Astill was bringing tobacco into DCC and was referring to him as Poppy.

1069. Ms Martin appointed Ms Kellett to investigate Astill's complaint. Ms Kellett provided a report to Ms Berry and Ms Martin dated 30 August 2018.¹⁵²⁷ In that report Ms Kellett said:

I investigated the "Poppy" allegation my finding it is common knowledge amongst staff and inmate's [sic] that Mr Astill is referred to as Poppy Astill some of the reasons I am led to believe is the colour of his hair, some inmate [sic] see him as a grandfather figure and that inmate [redacted] made up a in appreciate [sic] song regarding Mr Astill word to the affect as follows

"Astill and [Witness N] hanging in the hub"

"Astill and [Witness N] having a rub a tug."

*I am led to believe that Mr Astill is aware of this song as it was sung to him by inmates date unknown person unknown and he was very distressed about it.*¹⁵²⁸

1070. Ms Martin passed on Ms Kellett's report to the PSB.¹⁵²⁹

1071. The PSC determined that the complaint was one that should be managed locally.¹⁵³⁰

6.14. Mid to late 2018 – Disclosure made by Edward Scott

1072. Mr Foster commenced working at DCC in about 2004 as a CSNSW Officer. He remained employed at DCC at around the time of Astill's offending. At that time, he was stationed in the Independent Living Unit (ILU).¹⁵³¹

1073. Mr Foster gave evidence of an incident involving another CSNSW Officer, Edward Scott. The incident probably occurred in the second half of 2018. Specifically, Mr Foster gave evidence

¹⁵²⁶ Ex. 3, TB3, Vol 17, Tab 525, CSNSW.002.6992_0003.

¹⁵²⁷ Ex. 26, TB2, Vol 7, Tab 60A, CSNSW.0002.0024.6992_0005-7.

¹⁵²⁸ Ex. 26, TB2, Vol 7, Tab 60A, CSNSW.0002.0024.6992_0005.

¹⁵²⁹ Ex. 3, TB3, Vol 17, Tab 525, CSNSW.0002.0024.6992.

¹⁵³⁰ Ex. 3, TB3, Vol 17, Tab 526, CSNSW.0002.0024.6991.

¹⁵³¹ Ex 13, TB2, Vol 7, Tab 56A, AST.002.013.0032_0001-2 [5]-[9].

of a conversation he had with Mr Scott in which Mr Scott said “I learnt to shred my own reports today”. Mr Scott explained that he had received information about Astill from inmates, put it in a report and took it to Ms Martin. Mr Scott stated that Ms Martin looked at the report and told him to take it to the Intelligence Officer, which Mr Scott did.¹⁵³² However, the Intelligence Officer on that day was Astill, which caused Mr Scott to worry about the safety of the inmates named in the report. Accordingly, he shredded his report.¹⁵³³

1074. Mr Foster “believe[d]...putting two and two together” that Mr Scott’s report alleged serious misconduct by Astill involving Trudy Sheiles.¹⁵³⁴ He gave evidence that at this time, he was not aware of the option of making a report, such that it remained confidential from Ms Martin.¹⁵³⁵

1075. Ms Martin stated that she did not recall the incident, but that she would have told Mr Scott to take his report to the Intelligence Officer without knowing that the officer that day was Astill.¹⁵³⁶ She gave a non-responsive answer to the proposition that the report should not have gone to an Intelligence Officer in circumstances where Astill was working as an Intelligence Officer and that she ought to have taken responsibility for ensuring it properly went through the system.¹⁵³⁷

1076. Ms Deborah Wilson and Ms Kellett gave evidence that they complained to Ms Martin about Astill’s role as an Intelligence Officer. Specifically, Ms Deborah Wilson said that Astill’s role as an Intelligence Officer created “massive problems” in circumstances where reports started to be received about him. She said that she went to Ms O’Toole, at the time and asked for him to be taken out of the role and that she also spoke to Ms Martin about it a couple of times. She

¹⁵³² Transcript, 26 October 2023, T959.41-960.27, T961.38-962.03.

¹⁵³³ Ex. 13, TB2, Vol 56A, AST.002.013.0032_0005-6 [30].

¹⁵³⁴ Transcript, 26 October 2023, T960.25-961.4.

¹⁵³⁵ Transcript, 26 October 2023, T962.11-14.

¹⁵³⁶ Transcript, 14 November 2023, T2230.31-2231.19.

¹⁵³⁷ Transcript, 14 November 2023, T2332.18-46.

recalled being told by Ms O’Toole and Ms Martin that they would “look into it” but that Astill remained in the role.¹⁵³⁸

1077. Ms Kellett said that Astill’s role as an Intelligence Officer was problematic because he had access to the same systems to which that she and Ms Deborah Wilson had access. Because of this, she and Ms Deborah Wilson had to hide documents containing allegations against Astill in Ms Martin’s safe. Ms Kellett said that she asked Ms O’Toole for Astill’s access to be removed on more than one occasion because he would have access to the outcome of any report that would be submitted, making it extremely difficult for them to undertake their tasks. She recalled that this fell on deaf ears and that the lack of support and action was frustrating. Ms Kellett in her oral evidence said that she also approached Ms Martin regarding these concerns and that Ms Martin responded that both she and Mr Shearer had spoken to Astill.¹⁵³⁹

6.14.1 Available findings

1078. In our submission, it is open to find that the events recounted by Mr Foster occurred as he described them. Whilst his account of what Mr Scott had told him is hearsay as Mr Scott was not called, there was evidence that Mr Scott is deceased. Applying the rules of evidence in civil proceedings his evidence was admissible.¹⁵⁴⁰

1079. Accordingly, we submit that the Special Commission should find that as a direct result of Astill remaining in his position as the Intelligence Officer, Mr Scott was left in a position where he felt that his only choice was to destroy a report which is likely to have contained serious allegations about Astill’s sexual abuse, probably of Ms Sheiles.

1080. We also submit that the Special Commission should find that Ms Deborah Wilson and Ms Kellett complained on a number of occasions to Ms Martin about the problem caused by Astill

¹⁵³⁸ Transcript, 7 November 2023, T1736.6-43.

¹⁵³⁹ Transcript, 3 November 2023, T1620.14-1622.24; Ex. 26, TB3, Vol 7, Tab 60A, AST.002.013.0048_0008 [57]-[59].

¹⁵⁴⁰ Transcript, 26 October 2023, T959.16-19; Transcript, 24 November 2023, T3288.31-43; *Evidence Act 1995* (NSW), s. 63(2) and Dictionary pt. 2(4) (definition of “unavailability of persons”, (1)(a)).

performing the role of Intelligence Officer, and that Astill continued in that role despite those complaints.

6.15. Late 2018 – Sarah Ward’s disclosures about Astill

1081. Ms Ward transferred to DCC in 2015. While she was housed at DCC, she was a victim of offences perpetrated by Astill. She made two statements about Astill’s offending against her dated 18 December 2018 and 28 April 2021 and gave evidence at Astill’s criminal trial.¹⁵⁴¹

1082. Ms Ward’s evidence was that the first CSNSW Officer she informed about Astill’s inappropriate conduct towards her was Ms Berry.¹⁵⁴² At the time, Ms Ward was employed as a sweeper within DCC’s reception area and Ms Berry was the Senior Correctional Officer for that area. Ms Ward recalled telling Ms Berry that Astill had been grabbing her backside and touching her and she did not like it and wanted it to stop. Ms Ward recalled that Ms Berry appeared concerned, said “I know what he’s like”, and responded that if she told Ms Martin, Ms Martin would shut her down and not believe her. Ms Ward said that Ms Berry told her to stay close to her if Astill came around while Ms Ward was working.¹⁵⁴³

1083. Ms Berry did not recall this incident. She said that had Ms Ward disclosed to her that Astill had been grabbing her backside and touching her, she would have “pounced on” it and would have “tried helping her”.¹⁵⁴⁴ Ms Berry accepted that there was an occasion where she was told by Ms Ward that she did not like the attention she received from Astill and that she wanted it to stop.¹⁵⁴⁵ Ms Berry denied that she said that management would “shut her down”, saying “that’s not a statement I would say”.¹⁵⁴⁶

1084. Ms Ward recalled that on another occasion, she and Astill were in a storage room at the back of DCC’s reception area when Ms Barry walked through and observed them.¹⁵⁴⁷ After Astill

¹⁵⁴¹ Ex. 3, TB3, Vol 5, Tab 14A, AST.002.013.0003_0001 [2].

¹⁵⁴² Transcript, 18 October 2023, T273.29-44; Ex. 3, TB3, Vol 5, Tab 14A, AST.002.013.0003_0001 [4].

¹⁵⁴³ Transcript, 18 October 2023, T273.42-274.33; Ex. 3, TB3, Vol 5, Tab 14A, AST.002.013.0003_0001 [4].

¹⁵⁴⁴ Transcript, 30 October 2023, T1270.25-40.

¹⁵⁴⁵ Transcript, 30 October 2023, T1270.35-1271.5.

¹⁵⁴⁶ Transcript, 30 October 2023, T1271.1-22.

¹⁵⁴⁷ Transcript, 18 October 2023, T275.22-42; Ex. 3, TB3, Vol 5, Tab 14A, AST.002.013.0003_0001-2 [5].

left, Ms Ward walked into the reception area and Ms Barry said, “[a]re you alright Ward? You looked very uncomfortable”. Ms Ward’s evidence was that she told Ms Barry that she was not ok, and that Astill kept grabbing her backside and saying inappropriate things to her.¹⁵⁴⁸ She recalled that Ms Barry was also present and confirmed what she had said. Ms Ward stated that in response, Ms Barry said that she had issues with Astill in the workplace and that if she said anything to Ms Martin, Ms Martin would think that she was motivated by her personal issues with Astill.¹⁵⁴⁹

1085. In her evidence, Ms Barry accepted that this event occurred. She stated that she believed Ms Ward and agreed that by her statement, Ms Ward disclosed an assault which was sexual in nature by Astill. Ms Barry could not offer any explanation as to why she did not report it, beyond the fact that she was “barely coping” herself.¹⁵⁵⁰

1086. Ms Barry also accepted that this event occurred. She recalled walking in on Ms Ward discussing Astill with Ms Barry. She said that Ms Barry made a comment to the effect that, “Sarah’s just told me [Astill] taps on the bum [sic]”. Ms Barry recalled saying to Ms Ward, “[j]ust keep yourself under the camera” and telling Ms Ward about her own “safety plan”.¹⁵⁵¹ Ms Barry said that her understanding was that Ms Barry would do something about Ms Ward’s disclosure as the higher-ranking officer. Ms Barry said that she could not recall having a conversation with Ms Barry about who would action Ms Ward’s disclosure and that she should have checked this with Ms Barry.¹⁵⁵²

1087. Ms Ward recalled a later incident when Ms Deborah Wilson was DCC’s MOS. She stated that she was in the laundry in DCC’s reception area when Astill came in and closed the door. When she walked out, she was followed by Astill and was upset and nervous. Her evidence was that Ms Deborah Wilson stared at her “like [she] was the one who had done the wrong thing” and

¹⁵⁴⁸ Transcript, 18 October 2023, T275.37-42; Ex. 3, TB3, Vol 5, Tab 14A, AST.002.013.0003_0001-2 [5].

¹⁵⁴⁹ Transcript, 18 October 2023, T276.5-13; Ex. 3, TB3, Vol 5, Tab 14A, AST.002.013.0003_0001-2 [5].

¹⁵⁵⁰ Transcript, 30 October 2023, T1211.20-1212.33.

¹⁵⁵¹ Transcript, 30 October 2023, T1271.31-1272.10.

¹⁵⁵² Transcript, 30 October 2023, T1271.31-1272.34.

did not question Astill about what he was doing in the laundry with an inmate with the door closed.¹⁵⁵³ Ms Deborah Wilson had no recollection of any such incident.¹⁵⁵⁴

6.15.1 Available findings

1088. We submit that the Special Commission should find that Ms Ward disclosed an alleged assault by Astill to Ms Berry and that Ms Berry failed to report this disclosure. We submit that it is open to prefer Ms Ward's account of this disclosure to that of Ms Berry for the following reasons:

- a) Ms Ward was an impressive witness who had a clear recollection of the event;
- b) Ms Ward had no reason to give false evidence of the event;
- c) Ms Berry recalled aspects of the incident as reported by Ms Ward (namely, that there was an occasion that Ms Ward complained to her about the attention she was receiving from Astill); and
- d) a failure by Ms Berry to report this incident is consistent with Ms Berry's failure to report the subsequent disclosure which was similar in nature made by Ms Ward to Ms Barry (and disclosed a short time later to Ms Berry).

1089. We submit that the Special Commission should find that Ms Ward disclosed an alleged assault by Astill to Ms Barry (which was reported to Ms Berry a short time later) and that Ms Barry believed Ms Ward's account of the alleged assault. Ms Barry accepted that she failed to report this disclosure.

1090. We do not consider it open to find that Ms Deborah Wilson observed or was aware of any misconduct by Astill involving Ms Ward. Ms Ward could not give direct evidence supporting that conclusion and Ms Deborah Wilson could not recall the incident.

¹⁵⁵³ Transcript, 18 October 2023, T281.9-22; Ex. 3, TB3, Vol 5, Tab 14A, AST.002.013.0003_0004-5 [18].

¹⁵⁵⁴ Transcript, 7 November 2023, T1745.9-1746.4.

6.16. October 2018 – Mr Clark observing Astill in Sarah Ward’s cell after lock down

1091. Ms Ward gave evidence of an incident which involved Astill coming to her cell and opening her door while she was being held in segregation in the BIU. She recalled that Astill came to her cell and opened her door two nights in a row after lockdown.¹⁵⁵⁵

1092. Ms Ward’s evidence was that on the second night, Mr Clark was at reception while Astill was in her cell. She stated that it was possible to see down to her cell in the Behaviour Intervention Unit from reception and that Mr Clark came down to her cell and asked what was going on and why Astill had the door to her cell open. Ms Ward’s impression was that Mr Clark was not impressed. She recalled that Astill told Mr Clark something to the effect that she wanted something from her property. She stated that Mr Clark then asked her if she was ok before closing her cell door and walking away with Astill.¹⁵⁵⁶

1093. Mr Clark’s evidence that this incident occurred on 3 October 2018. He recalled was that he was working in DCC’s reception on afternoon shift when he noticed that both the door to the BIU and the door to Cell 3 in that unit were open. He could see Ms Ward visible near the door and Astill in the doorway. Mr Clark then saw Ms Ward mouthing “help” to him, which caused him to challenge Astill about why he was there. He stated that he then asked Ms Ward if she was okay and to tell him what happened. Mr Clark recalled that Ms Ward responded that she was fine, but his impression was that she was shaken. He stated that that night, he made sure that Astill did not go back to the Behaviour Intervention Unit.¹⁵⁵⁷

1094. Mr Clark gave evidence that he reported the incident involving Astill and Ms Ward to Mr Virgo the following morning.¹⁵⁵⁸

1095. Ms Ward gave evidence that about two days after this incident, Mr Virgo and Ms Kellett came to her cell and took her into an office, where Mr Virgo said, “I believe you had a visitor the

¹⁵⁵⁵ Transcript, 18 October 2023, T286.03-4611; Ex. 3, TB 1, Vol 5, Tab 14A, AST.002.013.0003_000 [6].

¹⁵⁵⁶ Transcript, 18 October 2023, T286.39-287.11; Ex. 3, TB 1, Vol 5, Tab 14A, AST.002.013.0003_0002 [6].

¹⁵⁵⁷ Ex. 8, TB 2, Vol 7, Tab 63A, AST.002.013.0022_0006 [37]-[38].

¹⁵⁵⁸ Transcript, 25 October 2023, T782.30-783.17; Ex. 8, TB 2, Vol 7, Tab 63A, AST.002.013.0022_0006 [37]-[38].

other night”. Ms Ward’s evidence was that she was scared and did not want to say anything, so “played dumb”. She stated that she was scared because she had been told by Astill that he was friends with Mr Virgo.¹⁵⁵⁹ Ms Ward further stated that a few days later, Mr Clark approached her and encouraged her to speak to Mr Virgo so that Astill’s behaviour could be stopped.¹⁵⁶⁰

1096. A few weeks later, Ms Ward again spoke to Mr Virgo and, with his encouragement, told him that Astill had been assaulting her. In response, Mr Virgo encouraged Ms Ward to make a statement to NSWPF, “because Astill needed to be stopped”.¹⁵⁶¹

1097. Ms Ward recalled that Mr Virgo arranged a meeting at DCC with detectives from NSWPF, so that she could make a statement about Astill’s conduct. Her evidence was that when the time came for her to speak to NSWPF and make a statement, she was called into Ms Martin’s office and Ms Martin remained in the office during the interview. Ms Ward’s evidence was that she “freaked out” because she believed that Ms Martin was not helping women who spoke up. As a result, she told NSWPF detectives that Astill was “great” and that she did not want him to lose his job. Her recollection was that Ms Martin responded with words to the effect of “[g]ood on you Ward” and the interview was terminated.¹⁵⁶²

1098. Ms Ward’s evidence was that after she left Ms Martin’s office, Mr Virgo asked her if she spoke to NSWPF, and she explained that she had not and had walked out. He later arranged for her to be collected and taken to Windsor Police Station, at which time she made a statement to NSWPF.¹⁵⁶³

1099. Ms Ward’s evidence was that after she made a complaint to NSWPF in respect of Astill, she was informed that he would not return to DCC. However, there was a subsequent occasion when he approached her window at 3am when she was asleep and shined a torch on her and

¹⁵⁵⁹ Transcript, 18 October 2023, T287.33-46; Ex. 3, TB 1, Vol 5, Tab 14A, AST.002.013.0003_0002 [6].

¹⁵⁶⁰ Transcript, 18 October 2023, T288.06-12; Ex. 3, TB 1, Vol 5, Tab 14A, AST.002.013.0003_0002 [7].

¹⁵⁶¹ Transcript, 18 October 2023, T288.27-42; Ex. 3, TB 1, Vol 5, Tab 14A, AST.002.013.0003_0002 [8].

¹⁵⁶² Transcript, 18 October 2023, T290.24-38; Ex. 3, TB 1, Vol 5, Tab 14A, AST.002.013.0003_0003 [9].

¹⁵⁶³ Transcript, 18 October 2023, T291.04-14; Ex. 3, TB 1, Vol 5, Tab 14A, AST.002.013.0003_0003 [10]

spoke to her in an intimidating manner. Ms Ward recalled that she was “petrified” and informed Acting Governor Schreiber the following morning. Astill was arrested about three days later.¹⁵⁶⁴

1100. Ms Martin also gave evidence about this incident. Ms Martin stated that there was an occasion where Ms Ward was brought to her office and was hysterical because Astill had threatened her through the cell door when she was housed in the BIU. Ms Martin stated that she believed Ms Ward and called Ms Kellett to raise an intelligence report about the incident. She stated that she then arranged for Ms Ward to speak to NSWPF.

1101. Ms Martin’s evidence was that the NSWPF spoke to Ms Ward in the conference room, which was located near to, but separate from, her office. She recalled that one of the officers came to her and told her that Ms Ward did not want to talk to them and asked Ms Martin to help by getting Ms Ward to talk. Ms Martin stated that she then spoke to Ms Ward and undertook to Ms Ward that she would be safe. Ms Martin stated that after this, Ms Ward said “Ok Shari I will talk to them”. Ms Martin stated that she understood Ms Ward then gave statement to NSWPF.¹⁵⁶⁵

1102. Ms Ward’s version of the incident was put to Ms Martin during examination. Ms Martin denied the truth of Ms Ward’s account and denied being present during Ms Ward’s interview with NSWPF.¹⁵⁶⁶

6.16.1 Available findings

1103. We submit that it is open to prefer Ms Ward’s account of the interview with NSWPF to Ms Martin’s account for the following reasons:

- a) Ms Ward was an impressive witness who had a clear recollection of the event;
- b) Ms Ward had no reason to give false evidence;

¹⁵⁶⁴ Transcript, 18 October 2023, T294.29-T295.41; Ex. 3, TB 1, Vol 5, Tab 14A, AST.002.013.0003_0003 [12].

¹⁵⁶⁵ Ex. 38, TB2, Vol 7, Tab 59A, AST.002.013.0059_0016 [79]–0017 [88].

¹⁵⁶⁶ Transcript, 14 November 2023, T2370.06-2371.31.

- c) Ms Martin had a poor recollection generally and suffered from credit problems as a witness;
- d) the dismissive response of Ms Martin to Ms Ward was consistent with her response when faced with allegations made by a number of inmates; and
- e) Ms Ward's account is more consistent with the apparent sequence of the events, namely the subsequent step of her being taken to see NSWPF at Windsor Police Station.

6.17. Credit findings – Shari Martin and Westley Giles

6.17.1 Shari Martin's evidence

1104. We submit that it is open to find that Ms Martin was an unreliable witness and in multiple respects should be rejected. Where there are inconsistencies between Ms Martin's evidence and that of other witnesses, we submit that Ms Martin's evidence should generally be rejected. There were many significant events about which Ms Martin said she had no recollection. In multiple cases, for the reasons set out below, we submit that her statements that she had no recollection should be rejected. Further, there are a number of key events about which Ms Martin accepted she did have a recollection, but where her evidence was shown to be wrong by reference to other testimonial or documentary evidence. In some cases we submit that the evidence given by Ms Martin was knowingly false.

1105. There are twenty-three incidents which require consideration, as follows.

1106. First, Ms Martin said that she was not aware that Astill was bullying and intimidating staff.¹⁵⁶⁷ This is inconsistent with the knowledge held by a large range of CSNSW Officers who gave evidence about Astill's conduct.¹⁵⁶⁸ We submit that Ms Martin's evidence about her state of knowledge about Astill's conduct towards other staff was false to her knowledge.

¹⁵⁶⁷ Transcript, 13 November 2023, T2219.15-2219.20.

¹⁵⁶⁸ See, eg, Transcript, 30 October 2023, 1262.15-1262.40; Transcript, 25 October 2023, T750.25-750.44; Transcript, 27 October 2023, T1018.26-40; Transcript 26 October 2023, T993.45-994.26.

1107. Second, Ms Martin said that she was not aware of the mentality at DCC that CSNSW Officers who dobbed on other officers were labelled “dogs”.¹⁵⁶⁹ There was evidence before the Special Commission that this term was widely understood by officers and inmates to have that meaning.¹⁵⁷⁰ We submit that Ms Martin’s evidence of her lack of awareness of this colloquial meaning of “dog” and of this culture at DCC that officers who dobbed on other officers were “dogs” was false to her knowledge.
1108. Third, Ms Martin denied swearing at DCC staff.¹⁵⁷¹ This evidence was inconsistent with evidence from a large range of CSNSW Officers that Ms Martin regularly used foul language when addressing them.¹⁵⁷² That evidence includes the evidence of Ms Barry of Ms Martin using foul and abusive language when addressing the staff in a staff meeting or on parade, and of Mr Barglik that Ms Martin used intimidating language and would not address staff in a positive manner.¹⁵⁷³
1109. Fourth, Ms Martin said that she was not aware that there were any issues regarding the handling of complaints of misconduct by management at DCC.¹⁵⁷⁴ This was inconsistent with at least the evidence of Ms Kellett and Ms Deborah Wilson about the occasions when they informed her of the problems which existed in addressing complaints against Astill caused by him being an Intelligence Officer.
1110. Fifth, Ms Martin said that Witness C’s account of the meeting between Ms Martin, Witness C and Ms O’Toole on an occasion shortly after 23 February 2016 was “incorrect” and that Witness C did not make allegations about rumours of sexual activity between inmates and staff at DCC.¹⁵⁷⁵ This was inconsistent not only with Witness C’s evidence, but also with the Incident

¹⁵⁶⁹ Transcript, 13 November 2023, T2191.10-2191.12.

¹⁵⁷⁰ See, eg, Ex. 24, TB2, Vol 8, Tab 81, AST.002.013.0051_0004 [27]-[28]; Ex. 44, TB2, Vol 7, Tab 66A, AST.002.013.0052_0014 [100]; Transcript, 17 November 2023, T2559.45-T2560.28; Transcript, 26 October 2023, T881.35-882.7; Ex. 35, TB2, Vol8A, Tab 91, AST.002.013.0057_0031-32 [149]-[151].

¹⁵⁷¹ Transcript, 14 November 2023, T2237.29-44.

¹⁵⁷² Ex. 23, TB2, Vol 7, Tab 52A, AST.002.013.0019_0005 [29], 0006 [31]; Transcript, 27 October 2023, T1093.43; Transcript, 27 October 2023, T1121.8-1121.20; Ex. 57, TB2, Vol 8, Tab 87, AST.002.013.0034_0005 [48]-[49]. See also Transcript, 2 November 2023, T1484.6-1484.25.

¹⁵⁷³ Transcript, 1 November 2023, T1454.25-26; Ex. 57, TB2, Vol 7, Tab 50A, AST.002.013.0037_0009 [73].

¹⁵⁷⁴ Transcript, 13 November 2023, T2190.35-T2190.40.

¹⁵⁷⁵ Transcript, 13 November 2023, T2191.34-38; T2210.38-43; T2212.37-44.

Report prepared by Mr Holman shortly after that meeting, which referred to these events and which Mr Holman gave to Ms Martin. Ms Martin's evidence about this issue is unreliable.

1111. Sixth, Ms Martin said that Ms Berry did not report the rumour that Astill was receiving "head jobs" from Witness C during a meeting with her.¹⁵⁷⁶ This was inconsistent with Ms Berry's evidence and also was inconsistent with the report of Mr Holman. Ms Martin's evidence about this issue is unreliable.
1112. Seventh, Ms Martin said that she was not aware of rumours in early 2016 the effect of which was that Astill and Witness C were having an inappropriate relationship.¹⁵⁷⁷ That was inconsistent with a large volume of evidence from officers and inmates that was to the effect that this was widely known by staff and inmates at DCC.¹⁵⁷⁸ We submit that Ms Martin's evidence in this respect was false to her knowledge.
1113. Eighth, Ms Martin believed that she had made a report to the IB about Astill's conduct with Witness C in relation to the can of Coke.¹⁵⁷⁹ She was mistaken about that and in this respect her evidence was unreliable.
1114. Ninth, Ms Martin told Ms O'Toole that she had made a report about that incident to the PSB.¹⁵⁸⁰ This statement made by Ms Martin was not true.
1115. Tenth, Ms Martin denied that Witness C reported to her and Mr Paddison the rumours about her having a sex with officers.¹⁵⁸¹ As we have submitted, Witness C's evidence accorded with other evidence including the documentary evidence in the form of Mr Holman's report. Ms Martin's evidence in this respect was unreliable.

¹⁵⁷⁶ Transcript, 13 November 2023, T2210.38-43.

¹⁵⁷⁷ Transcript, 13 November 2023, T2200.17-28.

¹⁵⁷⁸ Transcript, 30 October 2023, T1196.7-11; Ex. 18, TB2, Vol 7, Tab 49A, AST.002.013.0013_0016 [93], 0017-18 [101]; Ex. 15, TB2, Vol 8, Tab 70, AST.002.013.0012_0006 [47]; Transcript 30 October 2023, T1191.45-1192.15; T1288.1-29; Transcript, 3 November 2023, T1689.6-42; Ex. 28, TB2, Vol 8 Tab 80, AST.002.013.0053_0013 [71]; Ex. 28, TB2, Vol 8 Tab 80, Annexure D, AST.002.002.0075; Transcript, 7 November 2023, T1738.27-36.

¹⁵⁷⁹ Ex. 38, TB2, Vol 7, Tab 59A, AST.002.013.0059_0014 [65]-[66]; Transcript, 13 November 2023, T2204.10-2205.11; T2206.23-2207.19.

¹⁵⁸⁰ Transcript, 7 November 2023, T1827.12-36; Ex. 30, TB2, Vol 8A, Tab 88, AST.002.013.0044_0002 [21].

¹⁵⁸¹ Transcript, 13 November 2023, T2210.27-43.

1116. Eleventh, Ms Martin gave evidence that she did not recall Ms Miskov making any report to her of the indecent assault by Astill, or of tearing up the written report.¹⁵⁸² We submit that that is an event of such significance that Ms Martin was bound to remember it, yet she said she had no recollection. We submit that Ms Martin's evidence that she had no recollection of this event was false to her knowledge.
1117. Twelfth, Ms Martin said that she had¹⁵⁸³ [redacted] Having regard to the gravity of the event, namely a CSNSW Officer locating a letter written containing very serious allegations against the officer, we submit that that is an event which would be recalled by any witness in Ms Martin's position. We submit that Ms Martin's evidence that she had no recollection about this was knowingly false .
1118. Thirteenth, Ms Martin gave evidence that Mr Bartlett in April 2017 was not tasked with performing an investigation into the allegations of Witnesses O and T.¹⁵⁸⁴ This evidence was given in the face of the report Ms Martin received from Mr Bartlett, which contained a section titled "interview findings", which expressed conclusions about the quality of the evidence and made a "recommendation" that there was insufficient evidence to warrant "further" action or investigation.¹⁵⁸⁵ We submit that it is inconceivable that Ms Martin did not consider that Mr Bartlett had conducted an investigation, and that the Special Commission should find that her evidence to the contrary was false.
1119. Fourteenth, Ms Martin said that she had no recollection of the meeting with Witnesses R and V in July 2017.¹⁵⁸⁶ It is worth remembering that this is a meeting where inmates disclosed that a senior officer within DCC had sexually or indecently assaulted an inmate. This is an event which it would be expected that any witnesses in the position of Governor of a gaol would remember. In this respect, Ms Martin was an unreliable witness.

¹⁵⁸² Transcript, 13 November 2023, T2223.10-T2225.12.

¹⁵⁸³ Ex. 3, TB1, Vol 5, Tab 12, Annexure A, AST.002.002.0021_0004.

¹⁵⁸⁴ Transcript, 14 November 2023, T2267.7-37.

¹⁵⁸⁵ Ex. 3, TB1, Vol 5, Tab 15, Annexure A, AST.002.002.0018_0032.

¹⁵⁸⁶ Transcript, 14 November 2023, T2278.31-36.

1120. Fifteenth, Ms Martin said that she would not have said to Witnesses R and V in response to their disclosures, words to the effect “you know inmates lie”.¹⁵⁸⁷ This was contrary to the account of Witness V.¹⁵⁸⁸ Witness V’s evidence about Ms Martin’s response was consistent with the evidence of other witnesses about Ms Martin’s response to complaints by inmates. We submit that in denying making this statement, Ms Martin’s evidence was unreliable.
1121. Sixteenth, in October 2017 there is evidence that Ms Martin informed Mr Shearer that she was liaising with Mr Hovey with respect to an investigation into Witness M’s allegations.¹⁵⁸⁹ We submit that this statement made to Mr Shearer was false to the knowledge of Ms Martin. There was no evidence that she was liaising with Mr Hovey about any such investigation. We submit that Ms Martin’s statement to Mr Sherer was false to her knowledge.
1122. Seventeenth, Ms Martin expressed no recollection of Ms Deborah Wilson discussing with her the content of the diaries maintained by inmates including Witnesses B and R.¹⁵⁹⁰ It is surprising that she had no recollection. We submit that this is another example of her unreliability as a witness.
1123. Eighteenth, Ms Martin expressed no recollection of Ms Deborah Wilson informing her of Ms Sheiles’ allegations that she had been sexually touched by Astill in late 2017.¹⁵⁹¹ It is inconceivable that she would have no recollection of such a significant event. We submit that this evidence by Ms Martin was knowingly false.
1124. Nineteenth, Ms Martin said that Ms Johnson’s account of their conversation following the “mediations” with Witnesses P, B and V was not correct (that is, that Ms Johnson told Ms Martin that the inmates were not believed and that Astill had got away with it and Ms Martin responded to the effect that the inmates were making it up).¹⁵⁹² Ms Martin’s evidence was

¹⁵⁸⁷ Transcript, 14 November 2023, T2279.20-30.

¹⁵⁸⁸ Transcript, 20 October 2023, T454.39-455.24; Ex. 3, TB1, Vol 5, Tab 11A, AST.002.012.0002_0003 [11]; Ex. 3, TB1, Tab 11, AST.002.002.0030_0017.

¹⁵⁸⁹ Ex. 3, TB3, Vol 14, Tab 452, CSNSW.0001.0032.0130.

¹⁵⁹⁰ Transcript, 14 November 2023, T2311.12-18.

¹⁵⁹¹ Ex 3. TB1, Vol 5, Tab 6A, AST.002.013.0005_0007 [48].

¹⁵⁹² Transcript, 14 November 2023, T2327.09-45.

contrary to the evidence of Ms Johnson, and Ms Johnson's account of her response was consistent with other evidence of Ms Martin's response to complaints by inmates. We submit that this evidence by Ms Martin was knowingly false.

1125. Twentieth, Ms Martin said that Ms Cox's recollection of the extent of the disclosures she made to her in April or May 2018 was not accurate.¹⁵⁹³ However, as we have submitted above, Ms Cox's account should be preferred including because of the support it receives from contemporaneous documents. This is another example of Ms Martin's unreliability as a witness.

1126. Twenty-first, Ms Martin expressed no recollection of the disclosure made by Mr Clark to her in late June 2018 about Ms Cox's allegations about Astill.¹⁵⁹⁴ The matters raised by Mr Clark were very serious. It is inconceivable that Ms Martin had no recollection of them. We submit that this evidence by Ms Martin was knowingly false.

1127. Twenty-second, Ms Martin expressed no recollection of the occasion on which Mr Scott presented her with a report containing allegations of serious misconduct by Astill.¹⁵⁹⁵ The matters raised by Mr Scott were very serious. It is inconceivable that Ms Martin had no recollection of them. We submit that this evidence by Ms Martin was knowingly false.

1128. Twenty-third, Ms Martin gave evidence to the effect that she encouraged Ms Ward to make her statement to NSWPF in late 2018 and was active in facilitating that process.¹⁵⁹⁶ This is directly contrary to the evidence of Ms Ward. Ms Ward's evidence is supported by the sequence of events, which seriously undermines the account given by Ms Martin. We submit that Ms Martin's evidence on this issue was false to her knowledge.

6.17.2 Westley Giles

1129. We submit that it is open to find that in the following respects Mr Giles was an unreliable witness.

¹⁵⁹³ Transcript, 14 November 2023, T2342.20-2343.15.

¹⁵⁹⁴ Transcript, 14 November 2023, T2352.13-20.

¹⁵⁹⁵ Transcript, 14 November 2023, T2330.31-2231.19.

¹⁵⁹⁶ Ex. 3, TB2, Vol 7, Tab 59A, AST.002.013.0059_0017 [79]-[88].

1130. First, Mr Giles gave evidence about the culture of swearing at DCC that was inconsistent with the evidence of a large number of inmates and other CSNSW officers. Specifically, Mr Giles said that, while CSNSW officers use foul language in the course of their work,¹⁵⁹⁷ he has never heard DCC staff verbally abuse inmates or refer to inmates using derogatory words like “whores”, “dogs”, “sluts”, “fucking cunts”, or “mutts”.¹⁵⁹⁸
1131. This was contrary to the overwhelming evidence given by a large number of inmates and other CSNSW officers. Specifically, Sarah Ward, Elizabeth Cox, Witness C, Witness N, and Witness B gave evidence about the everyday use of inappropriate and abusive language by officers. Witness C and Witness B’s evidence was that officers routinely, and on an everyday basis, referred to inmates as “whores”, “dogs”, “sluts”, “fucking cunts”, “mutts”, “liars” and “fucking stupid”.¹⁵⁹⁹ Witness B stated that even senior officers, such as Functional Managers, referred to inmates in that way.¹⁶⁰⁰ Various officers similarly gave evidence that other officers would refer to inmates (including in the presence of, and towards, inmates) as “bitch”,¹⁶⁰¹ and “cunt”.¹⁶⁰² Ms Dolly gave evidence that this occurred on a daily basis in the High Needs area, including by Mr Giles who used that language towards officers and inmates.¹⁶⁰³ Other officers denied the use of such language in a manner that directly targeted inmates, and some officers denied swearing around inmates at all.¹⁶⁰⁴
1132. Further, the evidence of the inmates and officers that foul and abusive language was used by officers towards each other is consistent with the evidence of Ms Miskov, to which we have referred in Section 6.3 above.

¹⁵⁹⁷ Transcript, 17 November 2023, T2590.39-2591.29.

¹⁵⁹⁸ Transcript, 17 November 2023, T2568.45-2569.17; T2636.09-32.

¹⁵⁹⁹ Transcript, 19 October 2023, T432.40-432.48; Ex. 3, TB 1, Vol 5, Tab 8A, AST.002.012.0001 [13], [35].

¹⁶⁰⁰ Transcript, 24 October 2023, T689.25-689.47.

¹⁶⁰¹ Transcript, 27 October 2023, T1053.10-1053.15; Transcript, 27 October 2023, T.1141.20-30.

¹⁶⁰² Transcript, 27 October 2023, T1141.46-T1142.15.

¹⁶⁰³ Transcript, 27 October 2023, T1142.1-1142.15.

¹⁶⁰⁴ 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.

1133. We submit that Mr Giles' evidence on this issue was untrue. It is falsified by overwhelming evidence to the contrary which we have set out above.
1134. Second, as we have set out above, the Special Commission should reject Mr Giles' evidence of what was disclosed in his presence at the meeting he attended with Ms Cox and Ms Martin in April/May 2018. As set out above, Mr Giles' evidence of this meeting differed from that of Ms Cox in several key respects, and Ms Cox's account is supported by the documentary evidence.

7. Breaches of policies, legislation, and procedures

1135. We have set out at Section 2 above the legislation, policies, systems and procedures relevant to the reporting of complaints of misconduct, which were in place during the time of Astill's offending. In this section we consider the available findings with respect to whether officers at DCC, and members of the IB and PSB breached the relevant legislation, policies, systems and procedures in the way in which they responded to alleged misconduct by Astill.

1136. In considering these issues, we wish to set out at the outset the following relevant matters:

- a) as we have said at Section 5.1, none of the officers at DCC received adequate training about the legislation governing reporting allegations of misconduct, or the policies systems and procedures which were applicable;
- b) as we have said at Section 5.1, the legislation, policies, systems and procedures in place during the period of Astill's offending were unclear; and
- c) as we have said at Section 3.3.2, there were a range of factors at DCC which inhibited officers making reports of misconduct by other officers.

1137. These matters are relevant to our consideration below of whether it is open to find that the officers at DCC breached the policies, systems and procedures in place in responding to allegations about Astill. And these matters are also relevant to whether it is open to find, to the extent there were breaches by officers of legislation, policies, systems or procedures, that the failures by officers could be misconduct within the meaning of s.69 GSE Act.

7.1. January 2016 Incident involving J Unit

1138. We have set out the factual findings we submit should be made at [6.1.1] above. Ms Martin was aware of Astill's breach of the protocol by entering the J Unit after lock down. She accepted his explanation and made no report to the PSB or IB.

1139. Astill's conduct may have amounted to "other misconduct" within cl. 253(1)(a) CAS Regulation. Mark Wilson certainly appeared to have that belief. It is unnecessary to make any finding about that, because even if the conduct fell within "other misconduct" in Mr Wilson's opinion, cl. 253(1) CAS Regulation was disapplied by cl.253(3)(c) CAS Regulation, because Ms Martin was aware of the alleged conduct.
1140. Ms Martin was bound by cl. 253(1)(a) CAS Regulation to report the allegations to an officer more senior than her, but, relevantly, only if she was of the opinion that the allegations fell within "other misconduct" within cl. 253(1)(a) CAS Regulation. Plainly, that was not her opinion. We do not consider it open to find that Ms Martin was in breach of cl. 253(1) CAS Regulation.
1141. For the same reasons, we submit that the Special Commission should not find that Ms Martin was required by the DOJ Managing Misconduct Policy to report the incident to the PSB.

7.2. Coke can incident

1142. As we have set out above, a number of officers became aware of the incident involving the Coke can, Witness C and Astill.
1143. Ms O'Reilly was aware of the incident. We submit that the allegations amounted to "other misconduct" within cl. 253(1)(a) CAS Regulation. Ms O'Reilly made a report to Ms Barry, who was more senior in rank to her. In so doing, Ms O'Reilly complied with cl. 253(1) CAS Regulation.
1144. Upon that report being made to Ms Barry, she became the "senior correctional officer" within cl. 253(2) CAS Regulation. It is clear that Ms Barry believed the allegations provided grounds for misconduct proceedings within the meaning of s. 69 GSE Act. No report was made by Ms Barry to the Commissioner of CSNSW. Accordingly, we submit that the Special Commission should find that Ms Barry breached cl. 253(2) CAS Regulation.

1145. In making that submission, we do not submit that it is open to find that Ms Barry engaged in “misconduct” within the meaning of s. 69 GSE Act by breaching cl. 253(2) CAS Regulation, for the reasons set out at [1136] above.
1146. Further, as noted below, Ms Barry in fact made a report of this event to Ms Martin, which accorded with the understanding of the procedure at DCC.¹⁶⁰⁵
1147. To the extent that Ms Barry was also bound by cl. 253(1) CAS Regulation, that sub clause is disappplied by cl. 253(3)(c) CAS Regulation, because she reported the incident to Ms Martin.
1148. In receiving the report of Ms Barry, Ms Martin was “the senior correctional officer” within cl. 253(2) CAS Regulation.
1149. Ms Martin accepted that she ought to have reported this incident to the IB. No report was made by her at all. We submit the Special Commission should find that Ms Martin breached cl. 253(2) CAS Regulation by failing to promptly report these allegations to the Commissioner of CSNSW.
1150. We also submit that it is open to find that Ms Martin failed to comply with the DOJ Managing Misconduct Policy by failing to report these allegations to the PSB. As noted, she accepted as much in her evidence.
1151. Ms O’Toole received a report about this incident. In so doing, she became the “senior correctional officer” within cl. 253(2) CAS Regulation for the purposes of that report. If she believed the alleged conduct fell within cl. 253(2)(a) or (b) CAS Regulation, she was bound to report the alleged conduct promptly to the Commissioner of CSNSW. As noted above, Ms O’Toole said she was told that Ms Martin had reported the matter to the PSB, which no doubt was consistent with Ms O’Toole’s belief about the proper course. However, that does not relieve Ms O’Toole of the obligation under cl. 253(2) CAS Regulation. We submit that the Special Commission should find that Ms O’Toole was in breach of cl. 253(2) CAS Regulation.

¹⁶⁰⁵ Ex. 3, TB2, Vol 7, Tab 62A, AST.002.013.0045_0015 [89]-[90].

7.3. Rumours about inappropriate relationships between Astill, Witness C and others

1152. We have set out above at [6.2.2.1] the factual findings which we submit the Special Commission should make with respect to this topic. We submit that the following findings should be made with respect to the conduct of the relevant officers.

1153. First, we submit that the Special Commission should find that Mr Holman became aware of an allegation that in his opinion constituted “other misconduct” within the meaning of cl. 253(1)(a) CAS Regulation. Accordingly, he was obliged to report that alleged conduct to a correctional officer who was more senior in rank to him. He complied with this obligation by preparing a written report and providing it to Ms Martin.

1154. Upon Ms Martin receiving that report, she became the “senior correctional officer” within the meaning of cl. 253(2) CAS Regulation. Having regard to the seriousness of the matters in Mr Holman’s report, we submit that the Special Commission should find that Ms Martin believed that that conduct would provide sufficient grounds for taking proceedings or action under s. 69 GSE Act. There is no evidence of any report by Ms Martin to the Commissioner of CSNSW and we submit that it is open to find that she was in breach of cl.253(2) CAS Regulation.

1155. Second, we have submitted above that the Special Commission should find that Witness C made a disclosure of sexual activity between inmates and unnamed officers to Ms Martin and Mr Paddison in or around March 2016. The alleged conduct the subject of that disclosure in our submission plainly would be “other misconduct” within the meaning of cl. 253(1)(a) CAS Regulation. Accordingly, Mr Paddison became bound to report the alleged conduct to a correctional officer who was more senior in rank than him. However, because the disclosure was made in the presence of a more senior officer, Ms Martin, the effect of cl. 253(3)(c) CAS Regulation is to disapply cl.253(1) CAS Regulation. Accordingly, we do not submit that it is open to find that there was any breach of cl.253(1) CAS Regulation by Mr Paddison.

1156. Ms Martin became aware of the allegations made by Witness C. We submit that Ms Martin was bound to report the alleged conduct to a “senior correctional officer” within the meaning of

cl. 253(2) CAS Regulation. There is no evidence of any report by Ms Martin to a more senior officer. We submit that it is open to find that Ms Martin breached cl. 253(1) CAS Regulation in failing to make such a report.

1157. We have referred above to the evidence of the reports made by Ms Berry to both Ms Martin and Ms O'Toole. The matters disclosed by Ms Berry plainly fell within cl. 253(1)(a) CAS Regulation in that they were at least "other misconduct". Accordingly, Ms Berry fell under the obligation to report the alleged conduct to a correctional officer who is more senior in rank than her. She complied with this obligation by making a report to Ms Martin and Ms O'Toole.

1158. On the report being made to Ms Martin and Ms O'Toole, we submit that each of Ms Martin and Ms O'Toole became the "senior correctional officer" within the meaning of cl. 253(2) CAS Regulation with respect to the report that each of them received. We submit that it is open to find that each believed that the matter would fall within the meaning of cl. 253(2)(b) CAS Regulation. There was no report by Ms Martin or Ms O'Toole to the Commissioner of CSNSW and we submit that the Special Commission should find that both Ms Martin and Ms O'Toole breached cl. 253(2) CAS Regulation.

1159. We have referred above to the contents of the discussion between Witness C and Ms Hockey. We submit that the Special Commission should find that an allegation was made to Ms Hockey that Astill had engaged "other misconduct" within the meaning of cl. 253(1)(a) CAS Regulation. Ms Hockey became bound by cl. 253(1) CAS Regulation to make a report of the alleged conduct to a correctional officer who is more senior in rank than her. There is no evidence of such a report, and we submit that the Special Commission should find that Ms Hockey was in breach of cl. 253(1) CAS Regulation.

1160. In saying that the Special Commission should make that finding, we note our submissions made at [1136].

1161. For those reasons, we do not submit that it is open to find that Ms Hockey engaged in misconduct within the meaning of s. 69 GSE Act, by failing to comply with cl. 253(1) CAS

Regulation. It was widely understood that the system within DCC for making reports of alleged serious misconduct by other officers was to report the allegation up the hierarchy within the gaol. Ms Hockey failed to do this. In that sense, we submit that it is open to find that Ms Hockey failed to comply with the system within DCC for making reports of alleged misconduct. Whilst that finding is open, we note the difficulties identified by us at [3.3.2] with officers making complaints about other officers at DCC. Those difficulties were compounded for Ms Hockey because the alleged misconduct was that of her partner, Astill. In the circumstances, we do not submit that it is open to find that she engaged in misconduct by not complying with the system at DCC for making reports of alleged misconduct.

1162. Next, we have set out above the evidence of a number of officers, in essence to the effect that they became aware in a number of different ways of rumours of inappropriate sexual activity between Witness C and Astill, and an inappropriately close relationship between Witness C and Astill. We have also set out a range of other rumours about which there is evidence, namely, that officers were generally aware of inappropriate activity by Astill within DCC. It is difficult to identify precisely whether these rumours related to allegations that were made to correctional officers about another correctional officer engaging in a criminal offence, or other misconduct within the meaning of cl. 253(1)(a) CAS Regulation. We do not submit that it is open to make a finding in relation to these rumours. However, it is relevant to consider whether information of that kind coming to the attention of those officers might fall within cl. 253(1)(b) CAS Regulation. As set out above, that subclause is difficult in that it imposes an obligation only if the correctional officer “sincerely believes that another correctional officer has engaged in conduct of that kind”. In the circumstances, we do not submit that it is open to find that any of the officers had a sincere belief that another correctional officer engaged in conduct of that kind on the basis of the rumours that we have identified above.

7.4. May 2016 - Incident involving Julijana Miskov

1163. We have set out the available factual findings regarding the incident involving Ms Miskov at Section [6.3.1] above.
1164. The allegation made by Ms Miskov is one which plainly falls within the meaning of cl. 253(1)(a) CAS Regulation. Upon that allegation coming to the attention of Mr Paddison, he became bound by cl. 253(1) CAS Regulation to report the alleged conduct to a more senior officer. However, as the disclosure was made in the presence of Ms Martin, cl. 253(3)(c) CAS Regulation disapplied cl. 253(1) CAS Regulation and so there is no breach of cl. 253(1) CAS Regulation by Mr Paddison.
1165. We submit that the Special Commission should find that Ms Martin was bound to report the allegations to a more senior officer by operation of cl. 253(1)(a) CAS Regulation. There is no evidence any such report was made. We submit that the Special Commission should find that Ms Martin breached cl. 253(1) CAS Regulation.
1166. It is clear that the DOJ Managing Misconduct Policy required these allegations to be reported to the PSB. Ms Martin did not do so. We submit that the Special Commission should find that she failed to comply with the DOJ Managing Misconduct Policy. For the reasons stated above, we do not consider that that finding is open with respect to Mr Paddison.
1167. We have considered below in Section 11 whether Ms Martin or Ms Martin's conduct may amount to a breach of s. 316 *Crimes Act*, s. 21 *State Records Act* or the common law offence of misconduct in public office.

7.5. Witness P's allegations about Astill and Witness C

1168. We have set out the available factual findings at Section [6.4.1] above.
1169. Ms Kellett became aware of the serious allegations against Astill by reading Witness P's letter and speaking to Witness P. She was bound by cl. 253(1) CAS Regulation to report the allegations to a more senior officer. However, the allegations already had been reported to Ms

Martin, and cl. 253(3)(c) CAS Regulation disapplied cl. 253(1) CAS Regulation. Accordingly, there is no breach of cl. 253(1) CAS Regulation by Ms Kellett.

1170. The alleged misconduct was also reported to Ms Martin, by Astill himself. In those circumstances, cl. 253(2) CAS Regulation did not come into operation, given the allegations which were made to Astill, were about him and not “another officer”. However, cl. 253(1) CAS Regulation applied to Ms Martin, and she was required to report the allegations to an officer more senior in rank to her. She failed to do so and breached cl. 253(1) CAS Regulation.
1171. We submit that the conduct of Ms Martin in causing IR 16-2783 to be sent to the IB did not comply with her obligations under the DOJ Managing Misconduct Policy, because that policy required a report to the PSB. However, we do note that the reference to “Professional Standards Unit” in the DOJ Managing Misconduct Policy was ambiguous.
1172. Upon receipt of IR 16-2783, the IB was required to refer the matter to the PSB or CSIU. Neither of these referrals happened. The IB took no action in response to IR 16-2783. We submit that that was a failure by the IB.
1173. Mr Hovey frankly accepted that he was aware of the contents of IR 16-2783 and took no action in response to it.¹⁶⁰⁶ He accepted that IR-16-2783 conveyed allegations of criminal conduct (which also amounted to serious misconduct) by Astill.¹⁶⁰⁷ Further, he accepted that he was obliged to refer those matters to the CSIU and PSB, and that he failed to do so. We submit that the Special Commission should accept his concession.

7.6. March and April 2017 – Incident involving Witness O and T

1174. The allegations made by Witnesses O and T about Astill plainly either were allegations which constituted a criminal offence or other misconduct within the meaning of cl. 253(1)(a) CAS Regulation. Those allegations were made to Mr Peek. He became bound by cl. 253(1) CAS

¹⁶⁰⁶ Transcript, 8 November 2023, T1931.1-46.

¹⁶⁰⁷ Transcript, 8 November 2023, T1915.1-21.

Regulation to report the alleged conduct to a correctional officer who was more senior in rank to him. He complied with this obligation by reporting the alleged conduct to Mr Giles.

1175. Upon Mr Peek's report being made to him, Mr Giles became the officer more senior in rank within the meaning of cl. 253(1) CAS Regulation and the "senior correctional officer" within the meaning of cl. 253(2) CAS Regulation. On the factual findings we have submitted should be made, Mr Giles must have held a belief that the allegations against Astill would constitute a criminal offence by him or would provide sufficient grounds for taking proceedings or action under s. 69 GSE Act. We submit that it is open to find that he had a belief at least that the allegations would provide sufficient grounds for taking proceedings or action under s.69 GSE Act, and as such he was required by cl.253(2) CAS Regulation to make a prompt report to the Commissioner of CSNSW. There is no question that he did not make any such report. Accordingly, we submit that the Special Commission should find he was in breach of cl.253(2) CAS Regulation.
1176. Having said that, we note the submissions we have made at [1136] above. Those matters apply to Mr Giles. Accordingly, we submit that it would be unreasonable to conclude that Mr Giles' failure to comply with cl. 253(2) CAS Regulation would amount to misconduct by him within the meaning of s.69 GSE Act.
1177. Upon receiving the report from Mr Giles of the allegations by Witnesses O and T, Ms Martin was the officer more senior in rank for the purpose of cl. 253(1) CAS Regulation and the "senior correctional officer" within the meaning of cl. 253(2) CAS Regulation. Ms Martin required Mr Bartlett to conduct an investigation into the allegations. We submit that the Special Commission should find that Ms Martin held the opinion that the alleged conduct would at least provide sufficient grounds for taking proceedings or action under s. 69 GSE Act. On this basis, we submit that the Special Commission should find that she breached her obligations under cl. 253(2) CAS Regulation by failing to report the matter promptly to the Commissioner of CSNSW.

1178. Upon the alleged conduct coming to the attention of Mr Bartlett, we submit that he was bound by cl. 253(1) CAS Regulation. However, cl. 253(1) CAS Regulation is disapplied by cl. 253(3)(c) CAS Regulation because the allegations had already been reported to Ms Martin.
1179. Turning to the compliance with the DOJ Managing Misconduct Policy, we submit that the Special Commission should find that Ms Martin breached that policy by failing to cause the allegations made by Witnesses O and T to be reported to the PSB. For Ms Martin to organise for an investigation to be conducted by Mr Bartlett into those allegations by interviewing the inmates and interviewing Astill in our submission was contrary to that policy. The proper agency to conduct any investigation was the IB or the NSWPF. However, there was no report made to the IB, which should have occurred by way of PSB, or to the NSWPF and so there was no proper investigation done. Mr Bartlett accepted in his evidence that he had no training to “look into the matter” as Ms Martin asked him to do, to the extent that “look[ing] into the matter” required an investigation or evaluation of the information.¹⁶⁰⁸ In the circumstances, we submit that the Special Commission should find that there was a clear breach by Ms Martin of the DOJ Managing Misconduct Policy in failing to report the allegations to the PSB.
1180. Whilst we have said above that officers more junior to Ms Martin could not reasonably be expected to have known of the DOJ Managing Misconduct Policy, the position of Mr Bartlett in relation to these issues deserves consideration. At the time, he was the MOS and, irrespective of any knowledge of the DOJ Managing Misconduct Policy, it might be thought that he ought to have been aware that it was inappropriate for him to investigate allegations of this kind within DCC as opposed to referring the matter to NSWPF. In his oral evidence, Mr Bartlett accepted that he was not trained in conducting investigations and was not trained in making evaluative judgments as to whether or not there was substance to allegations of inappropriate conduct, whereas officers within the CSIU and NSWPF were skilled and trained in this respect.¹⁶⁰⁹ He further accepted that to the extent that there was an investigation or evaluation of information

¹⁶⁰⁸ Transcript, 1 November 2023, T1329.18-1330.45.

¹⁶⁰⁹ Transcript, 1 November 2023, T1329.25-40.

required, the CSIU or NSWPF were the appropriate agencies to perform that function and that he was not in a position to make evaluative judgments in respect of information gathered.¹⁶¹⁰ In the circumstances, we submit the Special Commission should accept Mr Bartlett's concessions.

7.7. June 2017 – Complaints by R and V about Witness M

1181. The disclosures made by Witness V and R of Astill's assaults on Witness M plainly were allegations of criminal offences. The disclosures were made initially to three officers of varying seniority – Mr Paddison, Mr Holman and Mr Westlake. We submit that the Special Commission should find that each became obliged to make a report to a more senior officer by cl. 253(1) CAS Regulation.
1182. However, cl. 253(1) CAS Regulation was immediately disapplied for Mr Holman and Mr Westlake by cl. 253(3)(c) CAS Regulation because of the presence of a more senior officer, Mr Paddison. Mr Paddison remained bound by cl.253(1) CAS Regulation to report to a more senior officer. He immediately complied with that obligation by his report to Ms Martin.
1183. Upon Mr Paddison reporting to Ms Martin, Ms Martin became "Senior Correctional Officer" for the purposes of cl. 253(2) CAS Regulation and became bound to report the alleged conduct promptly to the Commissioner of CSNSW if she believed that the alleged conduct would constitute a criminal offence by Astill. We submit that the Special Commission should find that Ms Martin held that belief, and thereby became bound under cl. 253(2) CAS Regulation to promptly report to the Commissioner of CSNSW. She did not do so. Accordingly, we submit that the Special Commission should find that Ms Martin breached cl. 253(2) CAS Regulation.
1184. We submit that the Special Commission should find that Ms Martin did not comply with the DOJ Managing Misconduct Policy, because that policy required a report to the PSB. However,

¹⁶¹⁰ Transcript, 1 November 2023, T1329.47-15.

we do note that the reference to “Professional Standards Unit” in the DOJ Managing Misconduct Policy was ambiguous.

1185. Regarding Mr Paddison’s participation in the investigation into the allegations made in relation to the assaults on Witness M, we submit that the Special Commission should find that this was a departure from the proper practice. There was no practice which permitted or condoned investigations of this kind to be conducted by officers within a correctional centre.
1186. Mr Hovey in his evidence accepted that upon the IB being made aware of these allegations it became necessary to refer the allegation to the CSIU.¹⁶¹¹ This step was not taken, and Mr Hovey accepted that that was a failure.¹⁶¹²
1187. Mr Hovey accepted that the contents of Intelligence Report 17-2051 came to his attention on 27 September 2017 and that he did not cause any of the matters we have identified above to be done. We submit that the Special Commission should find that in failing to take any of those steps, Mr Hovey failed in the discharge of his duties.
1188. As we have set out above, by October 2017 Mr Shearer had become aware that an investigation was being conducted by officers at DCC, into the allegations made by Witness M of an assault committed upon her. It appears that he was informed by Ms Martin that she had been liaising with Mr Hovey about this, and that an interview, which Mr Paddison had been tasked to undertake with Witness M, was part of assembling relevant information. Whatever the accuracy of the information provided to Mr Shearer, we consider that the Special Commission should find that it was necessary for him to make further inquiries about the status of that investigation. Mr Shearer accepted as much in his evidence. Mr Shearer also accepted that he should have contacted Mr Hovey or made an inquiry about which officer was the subject of the allegations¹⁶¹³ and that it was a failure not to make an inquiry of the IB and Mr Hovey to find out what was happening.¹⁶¹⁴ We also submit that having regard to the gravity of the allegations, and the

¹⁶¹¹ Transcript, 8 November 2023, T1931.22-46.

¹⁶¹² Transcript, 8 November 2023, T1931.36-46.

¹⁶¹³ Transcript, 16 November 2023, T2487.35-46.

¹⁶¹⁴ Transcript, 16 November 2023, T2487.35-40.

apparent departure from the ordinary process by which an allegation of criminal assault would be referred to the CSIU and the PSB, Mr Shearer should have made inquiries as to whether these referrals had occurred.

1189. We have considered whether there is a similar failure by the PSB having regard to the information recorded in the email chains of 11 and 13 October 2017. We submit that the Special Commission should find that there was a failure by the PSB to properly address the matters which came to their attention on 11 and 13 October 2017. The PSB was provided with an explanation of sorts by Mr Shearer, evidently after a discussion with Ms Martin. However, as Mr Robinson correctly noted, even on that explanation “it still remains all a bit odd”.¹⁶¹⁵ In our submission that was an understatement. The situation as disclosed to the PSB in the email chain, reflected a serious departure from the established practice, namely that any allegations of a criminal offence ought to be made known to the PSB. In the circumstances, we consider that the Special Commission should find that the PSB failed to make proper inquiries about the status of any investigation into the allegations by Witness M.

7.8. Second half of 2017 – Disclosures to Deborah Wilson by Witnesses B and V

1190. We submit that the Special Commission should find that the allegations contained in the diary and disclosed by Witness B and V to Ms Wilson were allegations made to a correctional officer, Ms Wilson, that Astill had engaged in conduct that constituted at least “other misconduct” within the meaning of cl. 253(1)(a) CAS Regulation. That being so, Ms Wilson became bound by cl. 253(1) CAS Regulation to report the alleged conduct to a correctional officer more senior in rank than her. In our submission, Ms Wilson complied with that obligation by bringing the allegations to the attention of Ms Martin.
1191. Upon Ms Wilson bringing the matters to the attention of Ms Martin, Ms Martin became the correctional officer who was more senior in rank to Ms Wilson for the purpose of cl. 253(1) CAS Regulation and the “senior correctional officer” within the meaning of cl. 253(2) CAS

¹⁶¹⁵ Ex. 3, TB3, Vol 14, Tab 452, CSNSW.0001.0032.0130_0001.

Regulation. Ms Martin became bound to report the conduct or alleged conduct promptly to the Commissioner of CSNSW if she believed that it would constitute a criminal offence or would provide sufficient grounds for taking proceedings under s. 69 GSE Act. Ms Martin gave no evidence about her belief, because she could not recall whether she became aware of the matters disclosed in the diaries. However, in our submission, the Special Commission should find that the matters disclosed plainly must have supported a belief by Ms Martin that the allegations would at least provide sufficient grounds for taking proceedings or action under s. 69 GSE Act. Accordingly, we submit that it is open to find that Ms Martin was bound to report the alleged conduct to the Commissioner of CSNSW, and that she failed to do so, and thereby breached cl. 253(2) CAS Regulation.

1192. Ms Martin did not make any report of the matters in the diaries to the PSB. Further, there was no intelligence report submitted with respect to the diaries – there was only the email communications from Ms Wilson to Ms Casey (from the IB). By the time of Ms Martin’s knowledge of the allegations in the diaries, it is likely that the 12 September 2017 Email Policy was in place. Accordingly, Ms Martin was bound to report the alleged misconduct to Mr Shearer. There is no evidence that she did so, and we submit that Ms Martin breached the 12 September 2017 Email Policy.

7.9. November 2017 – Meetings between J Unit inmates and Ms Deborah Wilson

1193. We have set out the factual findings we contend are available with respect to this issue at Section [6.8.1] above. On those findings, the disclosure by Ms Sheiles to Ms Wilson of the assaults by Astill were allegations of a criminal offence or offences. Ms Wilson became bound by cl. 253(1) CAS Regulation to report the alleged conduct to a correctional officer more senior in rank to her.
1194. On the factual findings which we submit the Special Commission should make, Ms Wilson complied with her obligation under cl. 253(1) by reporting the alleged conduct to Ms Martin.

1195. Ms Martin thereby became bound to promptly report the alleged conduct to the Commissioner of CSNSW, if she believed the alleged conduct could constitute a criminal offence. We submit that the Special Commission should find that Ms Martin held that belief. No report was made to the Commissioner of CSNSW. Accordingly, we submit that the Special Commission should find that Ms Martin breached cl. 253(2) CAS Regulation.
1196. By the time of these events, the 12 September 2017 Email Policy had been introduced. Ms Martin was required by that policy to report the alleged conduct to Mr Shearer. No such report was made. We submit that the Special Commission should find that Ms Martin breached the 12 September 2017 Email Policy in failing to make this report.
1197. There is no evidence that Ms Wilson was aware of the 12 September 2017 Email Policy. However, she identified in her evidence that she understood that if an allegation of serious misconduct was made to her, she was required to report it by an IR being submitted to the IB.¹⁶¹⁶ This did not occur. We submit that the Special Commission should find that Ms Wilson failed to follow her own practice of reporting these serious allegations to the IB by lodging an IR.

7.10. Events between November 2017 and January 2018

1198. We have set out the available findings with respect to these events at Section [6.9.1] above.
1199. In our submissions, the allegations against Astill which came to the attention of Ms Martin at least amounted to allegations of “other misconduct” within the meaning of cl. 253(1)(a) CAS Regulation, and Ms Martin had that belief. She was obliged to report the allegations to an officer more senior in rank to her. She complied with this obligation by reporting to Mr Shearer.
1200. Upon that report being made, Mr Shearer became bound by cl. 253(2) CAS Regulation to promptly report the allegations to the Commissioner of CSNSW, if he relevantly believed that the allegations would provide sufficient grounds for taking proceedings under s. 69 GSE Act. Mr Shearer frankly accepted that these allegations were serious and that he was required to

¹⁶¹⁶ Transcript, 7 November 2023, T1758.28-1760.12.

report them to a more senior officer.¹⁶¹⁷ He did not report them to the Commissioner of CSNSW. We submit that the Special Commission should find that he breached cl. 253(2) CAS Regulation.

1201. By the time of these events, the 12 September 2017 Email Policy was in place. Ms Martin complied with that new policy by reporting the allegations to Mr Shearer.

1202. Mr Shearer accepted that he ought to have made a report in respect of these allegations to an officer more senior in rank and should have referred the allegations to the PSB, or the NSWPF (through the IB).¹⁶¹⁸ This was a concession properly made. We submit that the Special Commission should find that Mr Shearer breached cl. 253(2) CAS Regulation consistent with his concession.

1203. Mr Shearer accepted in his evidence that the 12 September 2017 Email Policy contributed to his failure to respond properly to the allegations which came to his attention in November 2017. As we have set out above, the allegations made by Witness M were reported to the IB in July 2017. The allegations made in November 2017 were not reported to the IB – rather, they were reported to Mr Shearer in the first instance. This was in accordance with the new 12 September 2017 Email Policy. Mr Shearer gave the following evidence about the circumstances of his admitted failure to respond properly to the allegations which came to his attention in November 2017:

***MR LLOYD:** In terms of pieces of the jigsaw, is what you're really talking about in this scenario, that in order for this system to operate properly, there should be one person or body who would have access to each of those pieces of information at the time decisions are made about what to do with it and what proper course to be taken?*

***MR SHEARER:** Absolutely.*

***MR LLOYD:** And so if you had one person or body with access to each of those matters, serious allegations going back to November '16, following through to the sexual assault and the intimidation in the middle part of 2017, coupled with what came to your attention in November '17, then I think what you're saying is that's the proper way to handle allegations of serious misconduct?*

¹⁶¹⁷ Transcript, 16 November 2023, T2501.18-47.

¹⁶¹⁸ Transcript, 16 November 2023, T2501.30-47.

MR SHEARER: *Absolutely.*

MR LLOYD: *And that is not what happened here?*

MR SHEARER: *No.*¹⁶¹⁹

1204. Having regard to this evidence, we submit that the Special Commission should find that the 12 September 2017 Email Policy contributed to the failure to properly deal with the allegations of misconduct against Astill which were made in November 2017. As we have set out in these submissions, many inmates were sexually abused after November 2017. The 12 September 2017 Email Policy in that way contributed to the circumstances which allowed those offences to be committed.
1205. We also submit that the Special Commission should find that the use of the mediation process to address allegations of serious misconduct against an officer was unreasonable and should not have occurred. Both Ms Martin and Mr Shearer accepted as much. In our submission, it does not matter which of them proposed that course. They both knew the process was being used and neither should have condoned or permitted it.
1206. We submit that the Special Commission should find that Ms Martin failed to respond adequately to the information disclosed to her by Ms Johnson after the mediations. Whilst this did not include details of allegations by the other women mentioned by Ms Johnson so as to trigger cl. 253(1) CAS Regulation, the details of what Ms Johnson raised with Ms Martin (namely that there were other women with complaints against Astill), ought to have been pursued by Ms Martin and she failed to do so.
1207. As noted, Mr Woods accepted that he was told during the mediations that Astill had approached an inmate who was seated and raised his leg with his foot on the chair putting his crotch at eye level.
1208. We submit that the Special Commission should find that that allegation was at least “other misconduct” within cl. 253(1)(a) CAS Regulation. The conduct was highly inappropriate in a

¹⁶¹⁹ Transcript, 17 November 2023, T2553.1-19.

range of ways – it was bullying, intimidation and involved sexual harassment. We submit that the Special Commission should find that Mr Woods was bound by cl. 253(1) CAS Regulation to report the conduct. His report to Mr Shearer contained no reference to this conduct and we submit that he failed to comply with cl.253(1) CAS Regulation.

7.11. March to June 2018 – Disclosures made to Mr Clark by Ms Sheiles

1209. We have set out the available findings with respect to this issue at [6.10.1] above.
1210. The disclosures made by Ms Sheiles to Mr Clark in April and June 2018 were allegations of serious criminal offences. Mr Clark was required by cl. 253(1)(a) CAS Regulation to report them to an officer more senior in rank to him. He did so, but not for about six months. The requirement imposed by cl. 253(1) CAS Regulation must be complied with in a reasonable period. In our submission, a delay of six months is not reasonable.
1211. Accordingly, we submit that the Special Commission should find that Mr Clark breached cl. 253(1) CAS Regulation by failing to report Ms Sheiles' allegations to a more senior officer within a reasonable period.
1212. We also consider that the Special Commission should find that Mr Clark breached what he understood the policy was at DCC and which required him to report complaints to a more senior officer.
1213. In making these submissions, we are mindful of the matters that we have set out at [1136] above. Mr Clark found himself in a very difficult situation he was not trained to manage. At DCC, he was operating in an environment which is properly described as hostile to officers making complaints about other officers. In the circumstances, we do not consider it open to find that Mr Clark engaged in misconduct within s. 69 GSE Act in failing to comply with cl. 253(1) CAS Regulation or what he understood was the policy for reporting complaints.

1214. We have set out at [2.1.4] above the elements of the offence of misconduct in public office. There is no prospect of the elements being satisfied with respect to Mr Clark, because there was no deliberate failure by him to discharge his duties as a public officer.

1215. We have set out at [2.2.1] the elements of the offence under s. 316 of the *Crimes Act 1900*. We submit that it is open to find that (a), (b) and (c) of the elements recorded at [190] above may be satisfied with respect to Mr Clark's failure to report the information he had about the alleged offences by Astill. However, we consider that Mr Clark plainly had a reasonable excuse for not making the report, because he believed on reasonable grounds that Ms Sheiles did not want the allegations reported.

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

1216. Before addressing the breaches of legislation, policies or procedures by Ms Martin, Mr Giles, Mr Hovey and the IB with respect to these events, something should be said about the nature of the matters disclosed by Ms Cox at the meeting with Ms Martin and Mr Giles and the circumstances in which those disclosures came to be made by Ms Cox.

1217. It is difficult to overstate the gravity of the allegations made by Ms Cox about Astill's conduct. They included allegations that Astill was sexually assaulting and harassing multiple inmates and was bringing a range of contraband into the centre. The written record of the allegations made by Ms Cox, as set out in IR-18-1378, involved allegations of Astill requesting Ms Cox to assault another inmate; facilitating inmate moves with respect to inmates to whom Astill "talks dirty, touches with obvious sexual overtones [sic]"¹⁶²⁰; failing to act on allegations about inmates receiving drugs; filing false and misleading reports to Ms Martin; making inappropriate sexual comments to young inmates with sexualised touching and fantasy like desires being disclosed; threatening payback to inmates who informed on him; allegations that he was bring tobacco into the centre for inmates; and, allegations squarely suggesting that there was inappropriate sexual activity going on in Astill's office in the context of inmates incurring some kind of bill

¹⁶²⁰ Ex. 3, TB 3, Vol 10, Tab 171, CSNSW.0001.0021.1172_0004.

which needed to be paid. Those allegations, if true, included allegations of criminal conduct in the form of sexual or indecent assault, corrupt conduct in the form of bringing contraband into the centre, evidently in exchange for sexual favours; inappropriate sexual contact between Astill and inmates; and Astill intimidating and bullying inmates who had threatened to report on him. Further, Ms Cox was prepared to make those allegations in circumstances where she obviously knew that it exposed her to considerable risk because of the very conduct disclosed by Astill, in the nature of bullying and intimidation. In the circumstances, the Special Commission should find that Ms Cox's willingness to come forward with those allegations and make them to Ms Martin and Mr Giles discloses an act of considerable courage and bravery on her part.

1218. The allegations by Ms Cox were made simultaneously to Ms Martin and Mr Giles. On receipt of those allegations, both Mr Giles and Ms Martin became aware of alleged conduct that plainly constituted a criminal offence or other misconduct within cl.253(1)(a) CAS Regulation. Both thereby became bound to report the conduct to an officer more senior in rank. However, for Mr Giles 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.
1219. Ms Martin was bound to report the alleged conduct to a correctional officer more senior in rank to her by cl.253(1) CAS Regulation. On Ms Martin's evidence she plainly believed that the allegations constituted or would constitute a criminal offence. She did not do so, and we submit she breached cl.253(1) CAS Regulation.
1220. Further, by the policy addressing reporting allegations of this kind as amended by the 12 September 2017 email, Ms Martin became bound to make a report of these allegations to Mr Shearer. There is no evidence that she did so. We submit the Special Commission should find that she failed to do so and thereby breached the 12 September 2017 Email Policy.
1221. The allegations that came to the attention of Ms Martin and Mr Giles included allegations of suspected corrupt conduct within the meaning of the Commissioner's Instruction No.

10/2013.¹⁶²¹ Mr Giles became bound to make a report of those allegations of suspected corrupt conduct to his manager or Mr Shearer, or the PSB, or the Assistant Commissioner, Governance and Continuous Improvement, or to the Commissioner of CSNSW. 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. 10/2013.

1222. By the Commissioner's Instruction No. 10/2013, Ms Martin became bound to report those allegations either to Mr Shearer, the Assistant Commissioner, Governance and Continuous Improvement, or to the Commissioner of CSNSW. We submit that the Special Commission should find that she failed to make a report to any of these people and thereby breached Commissioner's Instruction No. 10/2013.

1223. In accordance with the submissions we have made above it is not open to find that Mr Giles breached the 12 September 2017 Email Policy. He did not even know about the policy. However, Mr Giles was asked about what he considered to be his obligations in the event that Ms Cox made the disclosures, which she alleged she made at the meeting. He gave the following evidence:

MR LLOYD: *See, it's entirely impossible, I want to suggest to you, you are mistaken in your recollection she didn't mention the additional things, that is, contraband, sexual harassment or contact and sexual favours, that is, payment by inmates through sex in regard to tobacco and the like?"*

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 have had a good working relationship with a lot of Governors. But I would have – as a union delegate also – I would've said to her, 'the Police need to be called'. And if she didn't, I would've made it a union issue locally. I've had many union issues and shut the jail down and had strikes. That's what I would've done. She didn't say anything about sexual inappropriateness in that meeting that I was at."*¹⁶²²

¹⁶²¹ Ex. 3, TB 3, Vol 9, Tab 146, CSNSW.0001.0032.0338.

¹⁶²² Transcript, 17 November 2023, T2605.34-2606.2.

1224. Mr Giles said that if the disclosures that Ms Cox said she made at the meeting were made, NSWPF should have been called and that he would have contacted NSWPF himself or would have sent an email to Mr Hovey, the Deputy Commissioner or the Commissioner of CSNSW.¹⁶²³ Mr Giles accepted that if those disclosures had been made in his presence it would have been a serious failure on his part to have not passed those allegations on to Mr Shearer, the Deputy Commissioner, or to NSWPF.¹⁶²⁴
1225. We submit that the Special Commission should accept Mr Giles' evidence in this respect. Accordingly, 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.
1226. Intelligence Report 18-1378 was sent to the IB on 6 June 2018.¹⁶²⁵ Mr Hovey gave evidence accepting that IR-18-1378 did not appear to have been reviewed by anyone with the IB until 12 April 2019 and that he did not review it until 28 May 2019.¹⁶²⁶ His evidence was to the effect that there was a serious resourcing problem in the 2018 calendar year, such that there was no Intelligence Analyst charged with the function of reviewing IR's.¹⁶²⁷ Mr Hovey accepted that the failure by the IB to review IR-18-1378 prior to 28 May 2019 was completely unacceptable.¹⁶²⁸ Consistently with Mr Hovey's concession, we submit that it is open to find that there was a failure by the IB to review this report upon receipt of it.
1227. In our submission, the Special Commission should find that there was a serious problem with the operation of the IB at this time in reading IRs in a timely way, and that problem resulted in this IR not being acted on in the form of any investigation or referral to the PSB or CSIU in a timely way.

¹⁶²³ Transcript, 17 November 2023, T2606.34-46–T2607.23.

¹⁶²⁴ Transcript, 17 November 2023, T2607.23.

¹⁶²⁵ Ex. 3, TB3, Vol 10, Tab 171, CSNSW.0001.0021.1172_0008.

¹⁶²⁶ Transcript, 8 November 2023, T1947.14-41.

¹⁶²⁷ Transcript, 8 November 2023, T1950.13-1951.20.

¹⁶²⁸ Transcript, 8 November 2023, T1949.18-40, T1951.27-36.

1228. We have considered in Section 11.3 below whether Ms Martin’s conduct may have amounted to an offence under s. 316 of *Crimes Act 1900* or the common law offence of misconduct in public office.

7.13. 28 June 2018 – Disclosure made by Elizabeth Cox to Mr Clark

1229. The allegations reported to Mr Clark by Ms Cox plainly were allegations of (at a minimum) “other misconduct” within the meaning of cl. 253(1)(a). Mr Clark became bound to report the alleged conduct to a correctional officer who was more senior in rank to him. He immediately did so by making the report to Ms Martin, and thereby complied with his obligations under cl. 253(1).

1230. Upon receiving that report, Ms Martin became the “senior correctional officer” within the meaning of cl. 253(2). Ms Martin did not recall the disclosure, but as we have submitted above the Special Commission should find that Ms Martin must have had the belief that (at a minimum) the alleged conduct would provide sufficient grounds for taking proceedings or action under s. 69 GSE Act. That required her to promptly make a report to the Commissioner of CSNSW, and there is no evidence that she did so. We submit that the Special Commission should find that Ms Martin in failing to report the matter promptly to the Commissioner of CSNSW breached cl. 253(2) CAS Regulation.

1231. Further, there was no IR made to the IB or other notification to the PSB or IB or Mr Shearer of the alleged misconduct by Astill. We submit that the Special Commission should find that Ms Martin breached the 12 September 2017 Email Policy by failing to report the matter to Mr Shearer.

1232. Further, in relation to the allegations made by Ms Cox involved Astill bringing drugs into DCC, we submit that the Special Commission should find that allegations of that kind amount to a report of “suspected corrupt conduct”. Commissioner’s Instruction No. 10/2013 required employees to report that conduct relevantly to their manager. Mr Clark complied with this obligation by making the report to Ms Martin. Ms Martin, by the application of Commissioner’s

Instruction No. 10/2013 became bound to make the report either to Mr Shearer, the PSB, an Assistant Commissioner, Governance and Continuous Improvements or to the Commissioner of CSNSW. We submit that the Special Commission should find that she failed to make the report to any of these people and that she was thereby in breach of Commissioner's Instruction No. 10/2013.

1233. As for the position with respect to Ms Kellett, the evidence does not disclose what she was told about the nature of the allegations and in our submission is not open to make any adverse findings against Ms Kellett.

7.14. Complaint about Ms Dolly

1234. As we have set out above, Ms Martin became aware of an allegation contained in Ms Kellett's report of 30 August 2018 which suggested inmates had invented a song strongly suggestive of sexual activity between Astill and an inmate. That information also was known by Ms Kellett.

1235. An allegation of sexual activity between an officer and an inmate was at a minimum "other misconduct" with cl. 253(1)(a) CAS Regulation. Accordingly, Ms Kellett was obliged to report the alleged conduct to a more senior officer. She did so by her report to Ms Martin and complied with cl. 253(1).

1236. Upon that report being made, Ms Martin was obliged to promptly report the alleged conduct to the Commissioner of CSNSW if she believed that the alleged conduct would constitute a criminal offence or would provide sufficient grounds for taking proceedings under s.69 GSE Act. We submit that the Special Commission should find that this alleged conduct plainly fell at least within cl. 252(b) CAS Regulation.

1237. Ms Martin accepted that she made no report of the conduct.¹⁶²⁹ We submit that the Special Commission should find that she breached cl. 253(2) CAS Regulation.

¹⁶²⁹ Transcript, 14 November 2023, T2361.32-T2363.28.

1238. Further, Ms Martin was bound by the 12 September 2017 Email Policy to report these allegations to Mr Shearer. The evidence supports a finding that no such report was made. Rather, Ms Martin chose to report Astill's complaint about Ms Dolly to the PSB. We submit that it is open to find that Ms Martin breached the 12 September 2017 Email Policy by failing to report this allegation to Mr Shearer.

1239. Something should be said about the conduct of Ms Martin in making a referral directly to the PSB of Astill's complaints about Ms Dolly. As we have set out above, there were a large number of complaints of serious misconduct by Astill including alleged criminal and corrupt conduct in 2016, 2017 and 2018. The evidence reveals that on not one of those occasions did Ms Martin make direct contact with an officer from the PSB to report the allegations. That she went to the effort of making a direct referral to the PSB of an allegation made by Astill that on any view was at the lowest end of the disciplinary scale (if it was a disciplinary matter at all) is an astonishing event having regard to her failures to make such reports when considerably more grave allegations were made to her about Astill.

7.15. Disclosure made by Edward Scott

1240. We have set out the available findings with respect to this issue at [6.14.1] above. There is no evidence which discloses the precise contents of Mr Scott's written report. However, based on the available findings we have set out arising from Mr Foster's evidence, the report is likely to have contained allegations of sexual misconduct by Astill towards Ms Sheiles. That plainly fell within cl.253(1)(a) CAS Regulation.

1241. Mr Scott complied with his obligations under cl. 253(1) CAS Regulation by making a report to Ms Martin. Ms Martin was obliged to promptly notify the Commissioner of CSNSW if she believed the allegations would constitute a criminal offence or provide sufficient grounds for taking misconduct proceedings. We submit that the Special Commission should find that she must have had that belief. No such report was made and accordingly Ms Martin breached cl. 253(2) CAS Regulation.

1242. On the likely date of these events, Ms Martin was bound by the 12 September 2017 Email Policy. On the evidence, the Special Commission should find that she breached this policy.
1243. Mr Foster may have become an officer bound by the obligations in cl. 253(1) CAS Regulation. If that be so, the sub-clause is disappplied by cl.253(3)(c) CAS Regulation because of the report to Ms Martin.
1244. What is revealed by this incident is that Astill continuing in the role as an intelligence officer, caused a direct significant problem in a serious report not being dealt with properly. Ms Martin was aware of the fact that there was a report that Mr Scott wished to make, and on her evidence, she directed Mr Scott to provide that report to the intelligence officer. We submit that that was insufficient to comply with her obligations under either the DOJ Managing Misconduct Policy or the DOJ Managing Misconduct Policy, as modified by the 12 September 2017 Email Policy. She was bound to bring that matter to the attention of Mr Shearer in the period post 12 September 2017, and failed to do so.

7.16. Late 2018 – Sarah Ward’s disclosures about Astill

1245. We have set out the factual findings which we submit are available at [6.15.1] above.
1246. Dealing first with Ms Ward’s initial disclosure of an alleged assault by Astill to Ms Berry, we submit that on receipt of that allegation, Ms Berry became aware of alleged conduct that constituted a criminal offence or other misconduct within cl. 253(1)(a) and became bound to report the conduct to an officer more senior in rank. Ms Berry failed to make such a report and in so doing she breached cl. 253(1) CAS Regulation.
1247. As for Ms Ward’s disclosure to Ms Barry (which was reported to Ms Berry a short time later in Ms Ward’s presence), we submit that on receipt of those allegations, both Ms Barry and Ms Berry became aware of alleged conduct that plainly constituted a criminal offence or other misconduct within cl.253(1)(a). Both thereby became bound to report the conduct to an officer more senior in rank. However, for Ms Berry, because the allegation was relayed to her by Ms

Barry in Ms Ward's presence, cl. 253(3)(c) disapplied cl. 253(1) and accordingly Ms Berry was not bound to do anything more than she did.

1248. Ms Barry frankly admitted that Ms Ward disclosed to her an allegation of assault by Astill. Ms Barry was bound by cl. 253(1) CAS Regulation to make a report to a more senior officer, and she failed to do so. She breached cl. 253(1) CAS Regulation. Ms Barry also failed to comply with her understanding of the policy for reporting misconduct, by failing to report the allegations to a more senior officer.

1249. We observe that the failures by Ms Berry in respect of Ms Ward's first disclosure and Ms Barry in respect of Ms Ward's later disclosure must be seen in the context of the matters we have set out at [1136] above. In our submission, for these reasons, it would be unreasonable to find that either officer's failure to comply with cl. 253(1) CAS Regulation and the policy for reporting within DCC amount to misconduct under s. 69 GSE Act.

7.17. October 2018 – Mr Clark observing Astill in Sarah Ward's cell after lock down

1250. We have set out the findings we submit are available at [6.16.1] above. We submit that the Special Commission should find that Ms Martin did not facilitate or encourage Ms Ward to provide her account of complaints against Astill to NSWPF.

7.18. April-September 2023 – Suspensions of Mr Giles, Mr Paddison and Mr Holman

7.18.1 Initial allegations

1251. Allegations that officers at DCC may have been complicit in Astill's offending were formally raised on 26 July 2022, when the then Acting Coordinator of the PSB, Ms Karen Garrard, sent an email to the then head of PSB, Mr Steven Karras, outlining "historical allegations against managers who were present at the time of SCO Astill's employment." These allegations were contained in a number of reports made by Ms Barry and Ms Berry. The allegations included that Astill was "allowed to get away with inexcusable unprofessional behaviour from Senior

Management”; that “4 senior managers did nothing when [Ms Berry] was subjected to inappropriate behaviour by SCO Astill”; and that current management staff still “turn a blind eye to inappropriate behaviour at DCC”. Ms Barry and Ms Berry named Ms Martin and Ms O’Toole as two of the senior managers. No further details were provided about the “other managers” they alleged acted inappropriately or took no action against inappropriate behaviour by Astill.¹⁶³⁰

1252. Given Astill’s criminal prosecution was still on foot at the time of Ms Garrard’s email, it was appropriate that any investigation into the matters raised by Ms Barry and Ms Berry were put on hold until Astill’s guilt had been determined.¹⁶³¹

1253. The jury entered verdicts against Astill in August 2022, the month following Ms Garrard’s email. Ms Zekanovic explained that, following the guilty verdicts, the allegations detailed in Ms Garrard’s email required investigation, via a referral to the CSIU.¹⁶³²

1254. However, it appears that nothing occurred until 13 April 2023, when the ICAC made a written referral to CSNSW,¹⁶³³ which was reviewed by the Commissioner of CSNSW,¹⁶³⁴ in relation to allegations that “unnamed CSNSW officers [were] threatening other staff and inmates against speaking up in relation to allegations about former CSNSW officer, Wayne Astill”. The particulars of the complainant’s allegations were summarised as follows:

*The complainant advised that inmates and other CSNSW officers at Dillwynia had further information about Mr Astill but that inmates had been told to “keep their mouths shut” and officers have been told they would be sacked if they spoke up. The complainant claims CSNSW are trying to ‘sweep it under the carpet’.*¹⁶³⁵

1255. On the same date, in response to the ICAC referral, Senior PSI Officer Kurumi Todoroki sent an email to Legal Officer Joanna Wong recommending that the matter be referred to Investigations for fact finding, and, if criminality was identified during that fact finding, that

¹⁶³⁰ Ex. 3, TB3, Vol 17, Tab 568, CSNSW.0002.0029.1167_0001-2.

¹⁶³¹ Transcript, 22 November 2023, T3059.17-30.

¹⁶³² Transcript, 21 November 2023, T2803.30-34; T2804.29-33.

¹⁶³³ Ex. 48, Tab 3, CSNSW.0001.0024.0020-22.

¹⁶³⁴ Ex. 59, TB5, Vol 29, Tab 18, AST.002.013.0083_0026 [108].

¹⁶³⁵ Ex. 48, Tab 3, CSNSW.0001.0024.0020-23.

the matter be referred to CSIU. The email also recommended that, subject to the outcome of fact finding, misconduct papers be prepared for the consideration of the decision-maker.¹⁶³⁶

1256. In her evidence, Ms Zekanovic agreed these allegations were “plainly appropriate” for an investigation.¹⁶³⁷ It appears that the allegations were referred to CSIU following Mr Todoroki’s email.¹⁶³⁸

1257. Mr Corcoran was asked whether any disciplinary investigation in relation to officers who may have been complicit in Astill’s offending, or who were aware of it and failed to respond, occurred between August 2022 (when Astill’s verdict was delivered) and April 2023 (when the ICAC referral was received). Mr Corcoran stated that PSI had been “going through the police facts and the transcripts of the court to try and identify what had happened and whether there was any matters that [they] had to follow up”.¹⁶³⁹ Mr Corcoran also understood that NSWPF had launched an investigation into other people associated with Astill’s offending, including officers at DCC who had failed to act, and that this meant that the disciplinary process or investigations into other officers had to be suspended.¹⁶⁴⁰

1258. On 19 May 2023, Ms Wong sent an email to Ms Zekanovic outlining a number of further allegations of misconduct made by Ms Berry during a meeting on 17 May 2023.¹⁶⁴¹ The email notes an allegation by Ms Berry that Astill and “other staff” at DCC had “bullied, harassed and threatened her because she had reported about Astill’s sexual offending towards female inmates”. Ms Berry also reportedly alleged that, prior to Astill’s arrest, she had made at least four reports to the SIU about Astill’s sexual offending towards female inmates “but nothing was done about these until he was charged”. The email identified a number of staff who “should

¹⁶³⁶ Ex. 3, TB3, Vol 17, Tab 533, CSNSW.0002.0032.0571.

¹⁶³⁷ Transcript, 21 November 2023, T2810.16-19.

¹⁶³⁸ Transcript, 21 November 2023, T2807.37-T2808.2, T2810.21-20.

¹⁶³⁹ Transcript, 22 November 2023, T3060.18-T3060.35.

¹⁶⁴⁰ Transcript, 22 November 2023, T3061.40-3062.24.

¹⁶⁴¹ Ex. 48, Tab 3, CSNSW.0001.0024.0024.

be held to account about what they knew and how they handled the allegations of sexual assault”, including Mr Paddison and Mr Holman.¹⁶⁴²

1259. On 8 and 9 June 2023, Support Unit Advisors Michelle Young, Lucy Connolly and Belinda Gurney attended DCC to meet with, and support, staff who were identified as being adversely affected by Astill’s offending.¹⁶⁴³

1260. On 15 June 2023, Ms Connolly sent an email to Acting Director of PSB, Ms Garrard, and Acting Coordinator of PSI, Ms Leasha Michaelson, regarding the Support Unit Advisors’ visit and recording certain information that was passed onto the advisors during that visit.¹⁶⁴⁴ Relevantly, the email outlined specific allegations, evidently made by unnamed officers at DCC, against Mr Giles, Mr Paddison and Mr Holman. These allegations included:

- a) That it was “highly probable” Mr Giles was aware of Astill’s offending and failed to intervene or report the conduct;
- b) That Astill’s offending was “common knowledge” at DCC and that Mr Giles, Mr Paddison and Mr Holman had a conversation during which Mr Holman and Mr Paddison joked about not wanting to attend J Block due to “Wayne being balls deep”;
- c) That Mr Holman was aware of, and complicit in, Astill’s offending and was actively involved in allowing Astill to offend; and
- d) That Mr Paddison was complicit in actively covering up Astill’s offending and intimidating staff who attempted to report Astill’s offending.

1261. Ms Connolly’s email concluded that:

*given the seriousness of the allegations made and the documented detrimental impact of these staff continuing to be in the workplace, it is recommended that the PSC considers the suspension of SCO Westley Giles, FM Neil Holman and Business Operations Manager Michael Paddison during the misconduct process.*¹⁶⁴⁵

¹⁶⁴² Ex. 48, Tab 2, CSNSW.0001.0019.0001.

¹⁶⁴³ Ex. 48, Tab 3, CSNSW.0001.0024.0029-0030.

¹⁶⁴⁴ Ex. 48, Tab 3, CSNSW.0001.0024.0029-0030.

¹⁶⁴⁵ Ex. 48, Tab 3, CSNSW.0001.0024.0029-0030.

1262. During Ms Zekanovic’s oral evidence, she confirmed that the three officers who had given the information on which Ms Connolly’s email was based were Ms Berry, Ms Barry and Ms Dolly.¹⁶⁴⁶ The Special Commission was also advised that Ms Connolly’s email was the only documentary record of the information reported to the Support Unit workers.¹⁶⁴⁷

7.18.2 The first submission – 21 June 2023

1263. On 20 June 2023, the PSC considered the material available in respect of Mr Giles, Mr Paddison and Mr Holman and recommended that the matter be referred to CSIU and CSNSW Investigations concurrently. PSC further recommended the suspension of Mr Giles, Mr Paddison and Mr Holman with pay pending the outcome of those assessments.¹⁶⁴⁸

1264. On 21 June 2023, a Submission to the Assistant Commissioner and Director, being Custodial Director Emma Smith and Assistant Commissioner Steve Thorpe, was prepared by PSI recommending the suspension of Mr Giles, Mr Paddison and Mr Holman from duty with pay, “pending investigation into their alleged failure to report the serious misconduct of former CSNSW employee Wayne Astill, actively being complicit in the concealment of crimes of Astill and for intimidation, bullying and harassment of CSNSW colleagues to ensure the concealment of crimes committed by Astill whilst he was in the employ of CSNSW”.¹⁶⁴⁹

1265. Ms Zekanovic gave evidence that this recommendation, as endorsed by her, was based on the information provided by Ms Connolly in her email on 15 June 2023, in addition to the information in the ICAC referral, and the 19 May 2023 email recording Ms Berry’s allegations.¹⁶⁵⁰

¹⁶⁴⁶ Transcript, 21 November 2023, T2816.28-T2817.1.

¹⁶⁴⁷ Transcript, 21 November 2023, T2817.38-T2818.2.

¹⁶⁴⁸ Ex. 48, Tab 3, CSNSW.0001.0024.0008-0009.

¹⁶⁴⁹ Ex. 48, Tab 3, CSNSW.0001.0024.0007.

¹⁶⁵⁰ Transcript, 21 November 2023, T2827.6-T2828.15

1266. On 29 June 2023, Ms Snell sent an email to Mr Thorpe and Ms Smith, documenting the decision of Mr Thorpe and Ms Smith to reject PSI’s recommendation to suspend Mr Giles, Mr Paddison and Mr Holman.¹⁶⁵¹
1267. Ms Snell noted that Mr Thorpe and Ms Smith had determined that the matter could not progress “until further information [was] obtained by NSW Police Corrective Services Investigation Unit (CSIU) and/or PSI Investigations, which [was] likely to take several months”. The evident rationale for this decision was “that the indefinite suspension of the subject officers at this stage may hinder the investigation itself, in circumstances where the officers [were] not presently aware that they [were] persons of interest”.
1268. Ms Snell confirmed that in accordance with the decision of Mr Thorpe and Ms Smith, the suspensions would not progress at that stage, however the question of suspension could be revisited at any point.¹⁶⁵²

7.18.3 Further evidence gathered

1269. On 7 July 2023, an article was published in *The Australian* newspaper reporting that an unnamed officer who worked with Astill had been referred to the NSWPF.¹⁶⁵³
1270. PSI reviewed the NSWPF Brief of Evidence used in the prosecution of Astill to identify any additional evidence that went towards staff members’ complicity in, or knowledge of, Astill’s offending and prepared a briefing note which was considered by Mr Corcoran and approved on 17 July 2023.¹⁶⁵⁴
1271. On 19 July 2023, Mr Corcoran wrote to the ICAC referring other allegations for its attention following the review of the NSWPF Brief of Evidence and internal preliminary inquiries conducted by CSNSW. The allegations referred to the ICAC included the allegations referred to above, in addition to allegations contained in the Brief of Evidence regarding Mr Giles, Mr

¹⁶⁵¹ Ex. 48, Tab 4, CSNSW.0001.0052.1619.

¹⁶⁵² Ex. 48, Tab 4, CSNSW.0001.0052.1619.

¹⁶⁵³ Ex. 48, Tab 4, CSNSW.0001.0052.1795.

¹⁶⁵⁴ Ex. 59, TB5, Vol 29, Tab 18, Annexures Tab 40, CSNSW.0001.0023.0002-3. See also Ex. 59, TB5, Vol 29, Tab 18, AST.002.013.0083_0026 [109]-[110].

Paddison and Mr Holman (among others). Mr Corcoran requested he be advised whether the ICAC intended to investigate the referred allegations, and once advised of the ICAC's position said that he, would consider CSNSW's options, including pursuit of an external investigation.¹⁶⁵⁵

1272. On 24 July 2023, Legal Officer PSI, Stefan Skopelja, prepared a file note recording further discussions he had had with Ms Young and Ms Gurney (two of the Support Unit workers who attended on 8 and 9 June 2023) regarding their attendance at DCC and the information that had been provided to them. Mr Skopelja recorded that:¹⁶⁵⁶

- a) Mr Giles was named as someone who was “bullying, harassing, or threatening staff to not report Astill in order to prevent the offending from being investigated”, and was also identified as a contributing factor to two officers who were on workers compensation leave; and
- b) Mr Paddison and Mr Holman were identified by “a large number of staff” as “being aware of Astill's offending and as a part of the leadership team that failed to act on that knowledge”.

1273. On 28 July 2023, Detective Inspector John Bamford of the CSIU (**Detective Inspector Bamford**) verbally provided PSI with further information about Mr Giles, including an allegation that one inmate had disclosed to Mr Giles that she had been sexually assaulted by Astill, following which Mr Giles took that inmate to see Astill, told her to repeat the allegation, and then left the two alone, following which Astill sexually assaulted the inmate again.¹⁶⁵⁷ Detective Inspector Bamford provided written correspondence outlining this same information on 31 July 2023.

¹⁶⁵⁵ Ex. 58, TB3, Vol 18, Tab 616, CSNSW.0001.0024.0697_0001; Ex. 59, TB5, Vol 29, Tab 18, AST.002.013.0083_0026 [111].

¹⁶⁵⁶ Ex. 48, Tab 5, CSNSW.0001.0072.1148, p. 36.

¹⁶⁵⁷ Ex. 48, Tab 6, CSNSW.0001.0049.1796, p. 38.

7.18.4 The second submission – 31 July 2023

1274. On 31 July 2023, a Submission to the Acting Commissioner was prepared by PSI and endorsed by Ms Zekanovic. This submission noted the additional information obtained from the above further investigations, and identified a number of ‘risks’, including that “CSNSW is already under considerable scrutiny in respect of its handling of Astill’s offending. Further perceived inaction, particularly if hindsight demonstrated that inaction was an error, would exacerbate any criticisms.”¹⁶⁵⁸
1275. The submission recommended that Mr Giles be suspended for bullying and threatening and harassing colleagues to not report Astill’s misconduct and offending. It was also recommended that Mr Paddison and Mr Holman not be suspended from duty, pending further investigation into their alleged complicity and failure to report Astill’s serious misconduct.¹⁶⁵⁹
1276. Ms Zekanovic accepted that, prior to the preparation of this submission, the matter was not referred back to the PSC to reconsider its original recommendation on the basis of additional information available. Ms Zekanovic accepted that this was not the normal process, and it was, in fact, highly irregular that the matter would not go back to the PSC before PSI made a recommendation on the basis of new information. Ms Zekanovic stated that the PSI had taken the view that the matter should be escalated for consideration by someone at “DC level and above”¹⁶⁶⁰ because “there was some urgency” to this particular matter and there was a potential risk in keeping Mr Giles in the workplace.

7.18.5 Suspension of Mr Giles

1277. On 13 August 2023, following considered the 31 July 2023 submission from PSI, Deputy Commissioner of CSNSW Anne-Marie Martin signed papers providing for the suspension of Mr Giles from duty with pay.¹⁶⁶¹

¹⁶⁵⁸ Ex. 48, Tab 6, CSNSW.0001.0049.1780, p. 42.

¹⁶⁵⁹ Ex. 48, Tab 6, CSNSW.0001.0049.1795, p. 37.

¹⁶⁶⁰ Transcript, 21 November 2023, T2854.6-T2854.36

¹⁶⁶¹ Ex. 48, Tab 11, AST.002.013.0072_0001, p. 93.

1278. On 14 August 2023, an email was sent by Ms Snell to Mr Buckley and Ms Zekanovic confirming that a decision had been made to suspend Mr Giles. Ms Snell noted that “in discussing this matter with the A/Commissioner [who at that time was Leon Taylor] this evening, we will need to first ensure the Minister is briefed”. Ms Snell requested that the suspension papers be held until this briefing had been progressed.¹⁶⁶²
1279. On 15 August 2023, Mr Buckley responded to Ms Snell’s email, noting that Mr Giles had some support at the centre, though it was “unlikely to evolve in overt industrial action at Dillwynia”. Mr Buckley noted that if suspension was warranted, it should occur.¹⁶⁶³
1280. On 16 August 2023, Mr Taylor sent an email confirming that the suspension of Mr Giles was to remain on hold until further advised.¹⁶⁶⁴
1281. On 21 August 2023, Ms Zekanovic prepared a number of bullet points for Mr Taylor regarding the suspension of Mr Giles and the reason why a decision to suspend Mr Giles had only been made at that stage.¹⁶⁶⁵ Ms Zekanovic noted the various sources of allegations against Mr Giles at that time – being the Support Unit referral on 15 June 2023, the information received from Ms Berry on 19 May 2023, the additional information from the CSIU regarding Mr Giles on 31 July 2023, and the ICAC referral of 13 April 2023 – and noted that suspension was now being considered “because we weren’t aware of these allegations until recently and given that we have received them from multiple sources we consider it appropriate to do what we normally would in these circumstances and suspend [Mr Giles]”.
1282. In her oral evidence, Ms Zekanovic agreed that there was no further information available in relation to Mr Giles, Mr Holman or Mr Paddison at the time of the email on 21 August 2023, as compared to what was included in the 31 July 2023 submission to the Commissioner of CSNSW.¹⁶⁶⁶ Ms Zekanovic explained that it was a poorly worded email and should have said,

¹⁶⁶² Ex. 48, Tab 7, CSNSW.0001.0019.0381, p. 83.

¹⁶⁶³ Ex. 48, p. 82 CSNSW.0001.0019.0380.

¹⁶⁶⁴ Ex. 48, p. 82 CSNSW.0001.0019.0380.

¹⁶⁶⁵ Ex. 48, p. 85 CSNSW.0001.0072.2651.

¹⁶⁶⁶ Transcript, 21 November 2023, T2847.27-T2848.4.

“in terms of why we are considering suspension now, it is because we received additional information from the CSIU”, accepting that all the other evidence had been known for months at the time of this email.¹⁶⁶⁷ Ms Zekanovic also accepted that the additional information from the CSIU was the only thing which had changed from the time when the decision was made by Mr Thorpe and Ms Smith to reject the initial recommendation to suspend Mr Giles.¹⁶⁶⁸

1283. On 30 August 2023, Ms Smith sent an email to Legal Officer Cathy McInnes, Ms Zekanovic and Ms Snell recording the service of suspension documents on Mr Giles. The email records that on that date, Mr Giles met with Ms Smith and Mr Thorpe and was handed the letter advising him that he was suspended with pay, effective immediately.¹⁶⁶⁹

1284. Ms Zekanovic gave evidence that, to her memory, at the time Mr Giles was suspended, the recommendation in the 31 July submission not to suspend Mr Paddison and Mr Holman had been accepted.¹⁶⁷⁰

7.18.6 Meeting at DCC – 19 September 2023

1285. On 19 September 2023, Mr Corcoran and Ms Snell attended DCC to meet with the staff.¹⁶⁷¹

1286. Mr Corcoran stated that he attended DCC on that date to offer support to the staff in relation to Astill’s offending once the Special Commission was announced.¹⁶⁷² Mr Corcoran believed that, during his visit, he spoke to the whole staff of 70 or so officers during a town hall-style meeting, followed by a smaller meeting, and then separate meetings with six or seven officers, either in pairs or individually.¹⁶⁷³ Mr Corcoran could initially only remember two of the officers he met with, being Ms Berry and Ms Barry,¹⁶⁷⁴ however subsequently accepted that Ms Dolly and the Acting Governor, Mr Dean, may have also been present at the smaller group meeting.¹⁶⁷⁵ Mr

¹⁶⁶⁷ Transcript, 21 November 2023, T2849.18-T2849.46.

¹⁶⁶⁸ Transcript, 21 November 2023, T2850.1-T2850.4.

¹⁶⁶⁹ Ex. 48, Tab 10, CSNSW.0001.0025.0177-178.

¹⁶⁷⁰ Transcript, 21 November 2023, T2856.44-T2857.13.

¹⁶⁷¹ Ex. 59, TB 5, Vol 29, Tab 18, AST.002.013.0083_0028, [117(a)].

¹⁶⁷² Transcript, 23 November 2023, T3069.12-T3069.40, T3198.12-19.

¹⁶⁷³ Transcript, 23 November 2023, T3055.4-T3055.26; T3198.32-T3198.34.

¹⁶⁷⁴ Transcript, 23 November 2023, T3057.13; T3071.35-36.

¹⁶⁷⁵ Transcript, 23 November 2023, T3200.6-T3200.2.

Corcoran stated that he did not make a documentary record of any of the meetings, but that Ms Snell was also present at some of these meetings.¹⁶⁷⁶

1287. Ms Snell made handwritten notes of the smaller meeting which took place between herself, Mr Corcoran, and between six to ten officers at DCC.¹⁶⁷⁷ Ms Snell was taken through these notes during her evidence and we have further discussed this evidence below.

1288. Mr Corcoran could not recall whether his visit on 19 September 2023 was the first time he had visited DCC to support the officers since Astill's conviction.¹⁶⁷⁸ When it was put to Mr Corcoran that, at the outset of his meeting with staff on 19 September 2023, he was told by Ms Berry and Ms Barry that he had let them down, that the visit on that date was the first time anyone from the Department had spoken to them about Astill, and that they had received no support, Mr Corcoran agreed that Ms Berry and Ms Barry had said something to that effect. Notwithstanding this, Mr Corcoran stated that there had been a lot of support offered to the staff at DCC and his understanding was that Assistant Commissioners and Directors had been visiting DCC on a regular basis to offer support.¹⁶⁷⁹

1289. When Mr Corcoran was pressed on the issue of support, he agreed that the support offered to the staff at DCC had been inadequate,¹⁶⁸⁰ but he did not agree that he had attended DCC on 19 September 2023 to try and demonstrate in advance of the Special Commission that he had done something to support the staff.¹⁶⁸¹ Mr Corcoran gave evidence that he had visited DCC frequently since 19 September 2023.

1290. As a result of the visit to the DCC, instructions were conveyed to Ms Zekanovic to prepare "suspension papers". We have further considered the circumstances of this instruction below.

1291. That evening, Ms Zekanovic sent an email to Mr Skopelja requesting that he urgently "prepare the submission to the Commissioner giving him the option to consider suspension of Paddison

¹⁶⁷⁶ Transcript, 23 November 2023, T3055.33- T3055.44.

¹⁶⁷⁷ Ex. 51, CSNSW.001.0273.0001-3.

¹⁶⁷⁸ Transcript, 23 November 2023, T3069.18-T3069.40.

¹⁶⁷⁹ Transcript, 23 November 2023, T3140.4-T3140.42.

¹⁶⁸⁰ Transcript, 23 November 2023, T3155.13-T316.5.

¹⁶⁸¹ Transcript, 23 November 2023, T3151.1-T3151.13.

and Hollman [sic]” and noting her understanding that “the Commissioner became aware of further information in relation to these officers when he attended Dillwynia today”.¹⁶⁸² On 20 September 2023, Mr Skopelja responded to Ms Zekanovic asking whether there were any documents he should be aware of or whether anyone could brief him on the further information referred to.¹⁶⁸³

1292. Ms Zekanovic could not recall having a conversation with Mr Skopelja in response to his email, however thought it was probable that they had spoken on the phone in terms consistent with her email and the submission ultimately prepared.¹⁶⁸⁴

7.18.7 The third submission – 20 September 2023

1293. On 20 September 2023, a further Submission to the Commissioner of CSNSW was prepared by PSI (specifically, Mr Skopelja) and endorsed by Ms Zekanovic. The submission noted that on 19 September 2023, Mr Corcoran attended DCC, during which “conversations were had with staff where further concerns were expressed surrounding Astill’s offending”. The submission further noted that “[a]s a result, the Commissioner has expressed his intent to revisit whether it is appropriate to suspend SAS Holman and SI Paddison”.¹⁶⁸⁵ The submission states that PSI was not aware of the content of the concerns expressed by staff on 19 September 2023 and the submission was merely intended as a brief of information already known to PSI regarding Mr Paddison and Mr Holman.¹⁶⁸⁶ The submission recommended:

That the Commissioner acknowledge and consider the availability of the following options:

- 1. Suspend SAS Holman and SI Paddison. A letter can be drafted on short notice.*
- 2. Decline to suspend SI Paddison and SAS Holman.*¹⁶⁸⁷

¹⁶⁸² Ex. 49, p.1 (uncoded).

¹⁶⁸³ Ex. 49, AST.002.013.0090_0001.

¹⁶⁸⁴ Transcript, 22 November 2023, T2921.44-T2922.6.

¹⁶⁸⁵ Ex. 48, Tab 11, AST.002.013.0072_0001.

¹⁶⁸⁶ Ex. 48, Tab 11, AST.002.013.0072_0001.

¹⁶⁸⁷ Ex. 48, Tab 11, AST.002.013.0072_0004.

1294. The submission is signed by Ms Zekanovic. After it was received by Mr Corcoran, he made a handwritten note “Please action option 1”.
1295. Ms Zekanovic confirmed that the information recorded in the 20 September 2023 submission in relation to Mr Paddison and Mr Holman was not new and was previously recorded in the original (21 June 2023) submission and the 31 July 2023 submission.¹⁶⁸⁸ Ms Zekanovic also agreed that, prior to this submission, a decision had been made not to suspend Mr Holman and Mr Paddison in accordance with the recommendation in the 31 July 2023 submission.¹⁶⁸⁹
1296. Ms Snell gave evidence that Mr Corcoran reviewed the 20 September 2023 submission and “relevant papers” in her office, before signing the submission. Ms Snell did not recall exactly how long Mr Corcoran reviewed the documents for before he signed the papers, however stated that it would have been about 15 minutes or so.¹⁶⁹⁰ Ms Snell was also unsure what specific documents made up the “bundle of papers” Mr Corcoran was reviewing, however believed that the attachments would have been attached.¹⁶⁹¹
1297. Mr Corcoran initially agreed that when he received the submission to the Commissioner of CSNSW on 20 September 2023, the previous PSI submission of 31 July 2023, which recommended that Mr Paddison and Mr Holman not be suspended, was attached.¹⁶⁹² Mr Corcoran also agreed that whilst he did not positively recall reading the 31 July 2023 submission, he would have read it if it were attached.¹⁶⁹³ When Mr Corcoran was taken to the 31 July 2023 submission, he stated that he did not recall having seen or read that document and only recalled the two letters of suspension for Mr Paddison and Mr Holman being attached to the 20 September 2023 submission.¹⁶⁹⁴ Mr Corcoran did not have a recollection of requesting

¹⁶⁸⁸ Transcript, 21 November 2023, T2858.24-39.

¹⁶⁸⁹ Transcript, 21 November 2023, T2858.41-T2859.5.

¹⁶⁹⁰ Transcript, 24 November 2023, T3280.44-T3281.43.

¹⁶⁹¹ Transcript, 24 November 2023, T3282.1-12, 26-30.

¹⁶⁹² Transcript, 23 November 2023, T3076.4-35.

¹⁶⁹³ Transcript, 23 November 2023, T3076.46-T3077.7.

¹⁶⁹⁴ Transcript, 23 November 2023, T3077.31-T3079.15.

the 31 July 2023 submission, though he accepted it would have been important to read if it was intended to be attached to the 20 September 2023 submission.¹⁶⁹⁵

7.18.8 Review of Suspensions

1298. The review of Mr Holman and Mr Paddison’s suspensions are supposed to occur every 30 days. Mr Corcoran accepted that there should have been a review by the time he was giving evidence, however he had not seen any review and he did not recall turning his mind to the question of whether the suspensions should be continued.¹⁶⁹⁶ Mr Corcoran stated that in reviewing the suspensions, he would speak further to PSI and “other people” about the circumstances and whether he should make a decision in relation to the continuation of the suspension.
1299. Mr Corcoran stated that the normal process for reviewing a suspension is that Professional Standards would provide a submission to the decision-maker outlining what had happened in the past and request a decision as to whether the suspension was to be continued.¹⁶⁹⁷
1300. When it was put to Mr Corcoran that PSI did not know what had happened in the past, because he had not told them, Mr Corcoran agreed that was the case because he wanted to maintain confidentiality.¹⁶⁹⁸ Mr Corcoran stated that Ms Snell was aware, as she was present in the meetings on 19 September 2023 with him.¹⁶⁹⁹

7.18.9 Available Findings

1301. The evidence set out above with respect to the events culminating in the suspension of Mr Paddison and Mr Holman on 22 September 2023 gives rise to a number of questions. The questions include factual questions about what occurred and questions about the proper process to be followed where an interim suspension of officers during the course of a disciplinary

¹⁶⁹⁵ Transcript, 23 November 2023, T3079.17-T3080.36.

¹⁶⁹⁶ Transcript, 23 November 2023, T3121.38-T3122.15.

¹⁶⁹⁷ Transcript, 23 November 2023, T3123.4-12.

¹⁶⁹⁸ Transcript, 23 November 2023, T3123.14-T3124.34.

¹⁶⁹⁹ Transcript, 23 November 2023, T3124.39-47.

investigation is under consideration, and in particular whether that process was followed in these cases. It is convenient to address these matters by addressing the following questions:

- a) what information was known to Ms Zekanovic, Ms Snell and Mr Corcoran with respect to consideration of suspension of Mr Paddison and Mr Holman prior to the visit to DCC on 20 September 2023;
- b) what relevant information was conveyed by CSNSW Officers to Ms Snell and Mr Corcoran during the visit at DCC on 20 September 2023;
- c) what decision (if any) was made by Mr Corcoran to suspend and when that decision was made;
- d) what information about the decision made by Mr Corcoran was conveyed by him to Ms Snell and when;
- e) what information was conveyed to Ms Zekanovic by Ms Snell or Mr Corcoran about the decision to suspend and what request was made of PSI in relation to that;
- f) what steps did Ms Zekanovic take in response to those instructions;
- g) what occurred following the preparation of the submission by Ms Zekanovic; and
- h) to what extent did the process followed in the decision to suspend Mr Holman and Mr Paddison follow proper or accepted practice? Which, if any, of Ms Zekanovic, Ms Snell and Mr Corcoran departed from proper or accepted practice and in what respects.

7.18.9.1. Information known to Ms Zekanovic, Ms Snell and Mr Corcoran with respect to consideration of suspension of Mr Paddison and Mr Holman prior to the visit to DCC on 20 September 2023

1302. Obviously, Ms Zekanovic was aware of the contents of the submission she signed on 31 July 2023.¹⁷⁰⁰ As we have set out above, that submission included detailed consideration of the information known about allegations made against Mr Paddison and Mr Holman at that time, and came to a considered recommendation that those officers not be suspended. As accepted

¹⁷⁰⁰ Transcript, 21 November 2023, T2834.28-T2836.27; Ex. 48, Tab 7, CSNSW.001.0049.1795.

by Ms Zekanovic, that information included allegations against Mr Paddison and Mr Holman that they were complicit in covering up Astill's offending, and that that information at least in part came from Ms Berry and Ms Barry, being two of the CSNSW Officers to whom the support unit workers had spoken on 8 and 9 June 2023.¹⁷⁰¹

1303. Ms Zekanovic was aware that her recommendation had been accepted and a decision had been made not to suspend Mr Paddison and Mr Holman.¹⁷⁰²

1304. Ms Snell also was aware of the contents of the 31 July 2023 submission. She also was aware by the time of the visit to DCC on 19 September 2023 that a decision had been made not to suspend Mr Paddison and Mr Holman in line with that recommendation in the submission.¹⁷⁰³

1305. There was no evidence that prior to the visit to DCC Mr Corcoran was aware of the contents of the 31 July 2023 submission or any of the material that existed in documentary form to that date concerning the disciplinary investigation into Mr Paddison and Mr Holman. Plainly, having regard to the material set out below, by the time of the visit, he had become aware that there had been earlier consideration given by the PSB.

7.18.9.2. Relevant information conveyed by officers to Ms Snell and Mr Corcoran during the visit at DCC on 19 September 2023

1306. As we have set out above, Ms Snell was in attendance at the initial meeting involving a large number of staff and then a meeting involving between six to ten officers.¹⁷⁰⁴ After that meeting, there were a number of further meetings which only involved Mr Corcoran and individual officers or officers in pairs.¹⁷⁰⁵

1307. Ms Snell took three pages of notes at the meeting with six to ten officers.¹⁷⁰⁶ The first pages of those notes contain a reference to this effect:

¹⁷⁰¹ Transcript, 21 November 2023, T2814.34-T2815.4, T2815.46-T2816.2, T2816.38-T2817.2.

¹⁷⁰² Transcript, 21 November 2023, T2842.22-30, T2856.44-T2857.13.

¹⁷⁰³ Transcript, 24 November 2023, T3245.1-30.

¹⁷⁰⁴ Transcript, 24 November 2023, T3231.40-3232.10.

¹⁷⁰⁵ Transcript, 24 November 2023, T3232.12-20.

¹⁷⁰⁶ Ex. 51, CSNSW.0001.0273.0001-3.

“John Morony”

“Holman plus Paddison”

↓ *More involvement*

1308. Initially, Ms Snell said that this reference meant that what was being raised by the officers in that meeting was a concern that Mr Paddison and Mr Holman had been moved to the John Morony Correctional Centre, which was “really not very far from Dillwynia ... And so they could still have more involvement ...”.¹⁷⁰⁷
1309. Ms Snell was asked how it was that Mr Paddison and Mr Giles being moved out of DCC could possibly result in other officers being concerned they would have “more involvement in Dillwynia”. She accepted that, in fact, it “absolutely could be” that her record was instead intended to reflect concerns of the officers upon the perceived degree of the involvement of Mr Paddison and Mr Holman with Astill’s offending.¹⁷⁰⁸
1310. Ms Snell accepted that it was unlikely that anything was raised in her presence in the nature of concern by officers that Mr Paddison and Mr Holman would be coming into contact with inmates who were victims of Astill’s.¹⁷⁰⁹ There is no note to that effect in any of Ms Snell’s handwritten notes and she could not otherwise recall those matters being raised.
1311. As we have noted, Mr Corcoran in his evidence accepted that he made no documentary notes of any of the meetings that he attended. He did not have a good recollection of the precise matters which were being raised with him by the officers by way of concern about Mr Paddison and Mr Holman. There was evidence that at least some of the officers were very angry and were shouting at him.¹⁷¹⁰ In his evidence, Mr Corcoran said that the issue that was raised with him which “underpinned [his] decision” to suspend Mr Paddison and Mr Holman was that their continued presence at correctional centres, in the presence of female inmates, would be

¹⁷⁰⁷ Transcript, 24 November 2023, T3233.44-46.

¹⁷⁰⁸ Transcript, 24 November 2023, T3234.14-3235.26.

¹⁷⁰⁹ Transcript, 24 November 2023, T3235.28-35

¹⁷¹⁰ Transcript, 22 November 2023, T3055.28-44; Transcript, 23 November 2023, T3201.3-29; Transcript, 24 November 2023, T3236.22-25.

distressing to Astill's victims.¹⁷¹¹ Mr Corcoran in his evidence disavowed any suggestion that it was concerns raised about Mr Paddison and Mr Holman being aware of Astill's offending which underpinned his decision making with respect to the suspensions.¹⁷¹²

7.18.9.3. Decision made by Mr Corcoran to suspend

1312. Mr Corcoran gave oral evidence about the timing of his decision to suspend Mr Paddison and Mr Holman. From the documents, it was apparent that Mr Corcoran had made his decision to suspend Mr Paddison and Mr Holman on 20 September 2023 when he selected 'option 1' presented to him in the submission document prepared by Ms Zekanovic. Mr Corcoran was asked whether, in doing so, that decision was made on the information recorded in the document. He responded: "It was consideration of the material in the document, as well as the material as – the information I was given, confidentially, by staff".¹⁷¹³ Mr Corcoran also agreed that he determined to exercise the option to suspend "arising from the submission" prepared by Ms Zekanovic.¹⁷¹⁴

1313. Later in his evidence, Mr Corcoran agreed with the proposition that he may have said to Ms Snell after leaving DCC on 19 September 2023: "I'm considering suspending Mr Paddison and Mr Holman."¹⁷¹⁵ He also agreed that he said to Ms Snell on that day that she should prepare paperwork associated with his "consideration of ... whether Mr Holman or Mr Paddison or both should be suspended".¹⁷¹⁶ The following answer that he immediately gave after that answer ought to be extracted:

MR SHELLER: *I think I'll ask this open. Had you on that occasion, that is, on 19 September while either at Dillwynia or on the way back into the CBD, formed a concluded view as to whether the officers should be suspended.*

MR CORCORAN: *That would have occurred while I was at the centre.*

MR SHELLER: *At the centre?*

MR CORCORAN: *Yeah.*

¹⁷¹¹ Transcript, 23 November 2023, T3085.35-3086.15, T3118.1-T3119.1, T3156.9-23.

¹⁷¹² Transcript, 23 November 2023, 3144.9-30.

¹⁷¹³ Transcript, 23 November 2023, T3089.1-8

¹⁷¹⁴ Transcript, 23 November 2023, T3089.31-34

¹⁷¹⁵ Transcript, 23 November 2023, T3202.44-3203.1.

¹⁷¹⁶ Transcript, 23 November 2023, T3203.3-12.

MR SELLER: *So by the time you were in the vehicle on the way back to the CBD, was your view finalised as to whether you should suspend those officers or not?*

MR CORCORAN: *Yes.*

MR SELLER: *And the final view was that you should; is that right?*

MR CORCORAN: *Yes.*¹⁷¹⁷

1314. It is very difficult to reconcile the evidence given by Mr Corcoran.¹⁷¹⁸ In the former evidence, discussed at [1312] above, the effect of Mr Corcoran's evidence is that he made the decision to suspend Mr Paddison and Mr Holman in consideration of the material in the submission as well as the information he had been given confidentially by staff. In the latter evidence, discussed at [1313] above, he said that he had made a final and concluded decision to suspend those officers while at DCC on 19 September 2023, that is before he had seen the submission prepared by Ms Zekanovic. We submit that the Special Commission should prefer the evidence that Mr Corcoran gave at T3203, namely that he had made a final decision to suspend Mr Paddison and Mr Holman while at DCC on 19 September 2023, and that that decision was based only on things which had occurred that day. In that context, it is relevant to also extract this part of the evidence of Mr Corcoran:

COMMISSIONER: *You'd just made up your mind that you were going to suspend, hadn't you?*

MR CORCORAN: *Yes.*

COMMISSIONER: *And the report was just to put a veneer of legitimacy upon that decision, wasn't it?*

MR CORCORAN: *No, it gave me information about what had transpired previously.*

COMMISSIONER: *And put a veneer of legitimacy on the decision which you had already made?*

MR CORCORAN: *Yeah, I had made a decision about this was the most appropriate thing to do in the circumstances to protect the victims, to protect the officers.*¹⁷¹⁹

¹⁷¹⁷ Transcript, 23 November 2023, T3203.14-32.

¹⁷¹⁸ Transcript, 23 November 2023, T3089; Cf Transcript, 23 November 2023, T3203.

¹⁷¹⁹ Transcript, 23 November 2023, T3094.15-31.

1315. In our submission, the Special Commission should find that that is what occurred when Mr Corcoran asked for a submission to be prepared. Namely that it was done to provide a veneer of legitimacy on a final decision which he had already made.

1316. The next question is whether Mr Corcoran's evidence that the basis of the decision he made was as he identified, namely concerns about the welfare of Astill's victims in being exposed to Mr Paddison and Mr Holman while they performed their roles at the correctional centres to which they had been moved, and concerns to protect Mr Paddison and Mr Holman from retribution.¹⁷²⁰ There is no documentary or testimonial evidence which supports Mr Corcoran's evidence that this was the basis of his decision. Whilst the subjective rationale of Mr Corcoran is a matter only he could know, there is no reference in Ms Snell's notes to this concern; Ms Snell (as set out below) does not say that Mr Corcoran communicated this rationale to her; there is no record of this rationale being communicated to Ms Zekanovic for the purpose of preparation of her submission; there is no reference to this rationale in the submission itself or any contemporaneous document authored by Mr Corcoran; and there is no reference to this rationale in the letters of suspension themselves. Indeed, Mr Corcoran's stated rationale for the decision to suspend the two officers was proffered for the first time by Mr Corcoran in the witness box.

7.18.9.4. Information about the decision made by Mr Corcoran conveyed by him to Ms Snell

1317. Ms Snell gave evidence that after Mr Corcoran finished speaking to the officers one on one or in pairs, she had a discussion with him about what had come out of those meetings. She said that Mr Corcoran told her of his views after the meetings.¹⁷²¹ Ms Snell said that Mr Corcoran said to her: "I think we need to review the files in relation to Michael [sic] Holman and Paddison and consider whether any further action needs to be undertaken".¹⁷²² As was pointed out to Ms Snell in her evidence, the effect of her evidence was that Mr Corcoran was not truthfully

¹⁷²⁰ Transcript, 23 November 2023, T3086.17-36; T3119.28-43; T3120.21-33.

¹⁷²¹ Transcript, 24 November 2023, T3236.41-46.

¹⁷²² Transcript, 24 November 2023, T3237.3-5.

conveying what he had said was in his mind with respect to the decision to suspend Mr Paddison and Mr Holman. That must be so because, as we have noted above, on the evidence of Mr Corcoran, he had already made that decision by the time of this conversation.

1318. Ms Snell said that her understanding of the position after her discussion with Mr Corcoran was that it was necessary for Ms Zekanovic to pull all the information together that was held about Mr Paddison and Mr Holman to let Mr Corcoran consider that information in light of what he had heard and for him then to consider the next steps.¹⁷²³ Again, if this was what was conveyed by Mr Corcoran to Ms Snell, it did not accurately convey the position that Mr Corcoran had reached – namely that a final decision had already been made. It might also be thought to be surprising that pulling together all the information that was held about Mr Paddison and Mr Holman would be necessary, when to the knowledge of Ms Snell that exercise had already been done in the comprehensive submission prepared on 31 July 2023.

1319. Mr Corcoran gave his account of what he communicated to Ms Snell. He said that if he was going to make a decision to suspend Mr Paddison and Mr Holman, it was necessary for him to get the advice of the relevant person from “Professional Standards” that he required letters to suspend and a submission and that that is what he asked for through Ms Snell.¹⁷²⁴ He said that he wanted a submission from “Professional Standards” and in the normal course the submission would come forward with letter of suspension so that if the decision maker would like to go down that path, those letters are already included in the submission.¹⁷²⁵ We have set out above what Mr Corcoran recalls he may have said to Ms Snell at [1313] above. We note Ms Snell’s evidence that it was not normal practice for draft letters to be included at that point until after a decision has been made.¹⁷²⁶

1320. In our submission, the Special Commission should find that:

¹⁷²³ Transcript, 24 November 2023, T3238.31-44.

¹⁷²⁴ Transcript, 23 November 2023, T3092.40-42.

¹⁷²⁵ Transcript, 23 November 2023, T3093.17-20.

¹⁷²⁶ Transcript, 24 November 2023, T3282.14-24.

- a) while at DCC or on the way back from DCC, Mr Corcoran did say to Ms Snell that he wanted a submission from PSI so that he could consider whether any further action needed to be taken including to suspend Mr Paddison and Mr Holman;
- b) what Mr Corcoran said to Ms Snell did not truthfully convey his thinking at the time, which was that he had already made a final decision to suspend Mr Paddison and Mr Holman; and
- c) the true purpose in Mr Corcoran seeking a submission from Professional Standards was not to assist his consideration of a decision to suspend, but rather was to provide a veneer of legitimacy on a final decision which he had already made.

7.18.9.5. Information conveyed to Ms Zekanovic by Ms Snell or Mr Corcoran about the decision to suspend and request made of Professional Standards and Investigations in relation to that

1321. Ms Snell said that after her discussion with Mr Corcoran, she sent a text message to Ms Zekanovic at 3.53pm AEST which said:

*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.*¹⁷²⁷

1322. Ms Snell said that in her text message to Ms Zekanovic, and in a conversation with her, she relayed to Ms Zekanovic “some of the information that was presented”.¹⁷²⁸ When asked about whether Ms Zekanovic had critical information namely the particulars that had come to the attention of Mr Corcoran on 19 September, Ms Snell said “Well, I believe she had some from my text message and my phone call with her”.¹⁷²⁹ Ms Snell was asked about why she believed Ms Zekanovic made the clear statement in the submission that “This submission is not aware of the content of the concerns expressed by staff on 19 September 2023”, and whether this statement was incorrect. Ms Snell said: “Well, I’m – I don’t – it would have been perhaps

¹⁷²⁷ Transcript, 24 November 2023, T3237.23-34.

¹⁷²⁸ Transcript, 24 November 2023, T3240.7-8.

¹⁷²⁹ Transcript, 24 November 2023, T3241.4-5.

helpful to reference the text message or the conversation”.¹⁷³⁰ Ms Snell said that she did not know why Ms Zekanovic said in the submission that she was not aware of the content of the concerns expressed to Mr Corcoran.¹⁷³¹

1323. Ms Snell later in her evidence said that she thought what was occurring was that “We were preparing some of the historic facts in relation to Holman and Paddison”.¹⁷³² However, Ms Snell accepted that those historic facts were already known because they had been recorded in the 31 July 2023 submission, and she agreed and that the 20 September 2023 submission contained no new facts at all.¹⁷³³

1324. Ms Snell’s evidence on the question of what was conveyed by her to Ms Zekanovic for the purposes of Ms Zekanovic preparing the submission culminated in this exchange:

***MR LLOYD:** And didn’t that make you pause to consider what was happening when the decision was different in September than it was when you first were involved in the decision makers – or we knew that the decision makers rejected the recommendation earlier and then Ms Zekanovic prepared the document recommending against suspension in July?*

***MS SNELL:** I think what was happening – I did – I did absolutely reflect at the time, and I think what was happening was that we were in a slightly different situation at that time in terms of some sort of heightened sensitivity to action that we wanted to ensure was prevented, particularly any retributive action. We knew that the Inquiry was going on, so it’s high profile. We wanted to protect other staff, those staff, any victims and so on. So I think that it was probably a series of emerging pieces of information, emerging sensitivity and new information to a new decision-maker.¹⁷³⁴*

1325. Ms Zekanovic gave evidence about what was conveyed to her by Ms Snell. She consistently maintained that she was not given any particulars of the information that had come to the attention of Mr Corcoran at DCC on 19 September 2023. For example, Ms Zekanovic:

a) made it clear that “PSI weren’t aware of that information”;¹⁷³⁵

¹⁷³⁰ Transcript, 24 November 2023, T3241.28-29.

¹⁷³¹ Transcript, 24 November 2023, T3241.24.

¹⁷³² Transcript, 24 November 2023, T3242.43-46.

¹⁷³³ Transcript, 24 November 2023, T3243.1-9.

¹⁷³⁴ Transcript, 24 November 2023, T3246.3-16.

¹⁷³⁵ Transcript, 21 November 2023, T2858.18-22.

- b) said that she was not aware of the content of any concerns expressed;¹⁷³⁶
- c) said that “I don’t know what the information was”;¹⁷³⁷
- d) said “I don’t know what the ultimate reason was to suspend”;¹⁷³⁸
- e) agreed that no information was made known to her on 19 or 20 September 2023 that was different from the decision made by the decision maker to follow the 31 July 2023 advice;¹⁷³⁹
- f) made it clear that she did not understand the details of the information that had come to the attention of Mr Corcoran at DCC on 19 September;¹⁷⁴⁰
- g) said “I’m not privy to that information”;¹⁷⁴¹
- h) said “We, as PSI, didn’t have information that would suggest suspension is warranted. However, we came to understand that the Commissioner was presented with information on 19 September in which he formed the view ...”;¹⁷⁴²
- i) said that she was not aware of whether anyone other than Mr Corcoran himself knew of what had been told to him at DCC on 19 September;¹⁷⁴³ and
- j) said in respect of the information that had come to Mr Corcoran at DCC on 19 September “Obviously we didn’t have that information”.¹⁷⁴⁴

1326. Further, Ms Zekanovic said that her understanding of what she was tasked to do on 19 September was that “the instructions were to prepare a submission to suspend these officers. However when we looked at the information, we obviously didn’t have the information of 19 September, so we put the options in”.¹⁷⁴⁵ Ms Zekanovic said that that direction came from Ms

¹⁷³⁶ Transcript, 21 November 2023, T2860.7-10

¹⁷³⁷ Transcript, 21 November 2023, T2861.32-40.

¹⁷³⁸ Transcript, 21 November 2023, T2862.11.

¹⁷³⁹ Transcript, 21 November 2023, T2862.29-33

¹⁷⁴⁰ Transcript, 21 November 2023, T2863.1-10.

¹⁷⁴¹ Transcript, 21 November 2023, T2863.20-23.

¹⁷⁴² Transcript, 21 November 2023, T2867.30-35.

¹⁷⁴³ Transcript, 21 November 2023, T2868.24- 34.

¹⁷⁴⁴ Transcript, 21 November 2023, T2871.9.

¹⁷⁴⁵ Transcript, 21 November 2023, T2869.8-10.

Snell, she thought orally.¹⁷⁴⁶ Ms Zekanovic was asked whether her understanding of her instructions was that she was to prepare papers or a submission about whether to suspend or a submission recommending suspension,¹⁷⁴⁷ and she said: “It was just suspension papers that were being asked to prepare. So I assumed that it was to make a recommendation of suspension. However, once we analysed all the information that we had, we obviously took the view to put the options in”.¹⁷⁴⁸ Ms Zekanovic confirmed that her understanding was that she was asked to prepare suspension papers, and that that came from Ms Snell.¹⁷⁴⁹ That was confirmed in the following exchange:

COMMISSIONER: *Well, Mr Lloyd, you need to explore that. I interpret at the moment suspension papers to be papers which recommended suspension. That’s my present understanding. Is that correct, Ms Zekanovic?*

MS ZEKANOVIC: *Yes*

COMMISSIONER: *Yes.*

MR LLOYD: *And my question is, what’s going on? Why – in terms of the decision-making process here, why do you have a situation where a direction is coming from Assistant Commissioner Snell for you to prepare a submission with an identified outcome? She is not the decision maker.*

MS ZEKANOVIC: *No, she is not, but she’s passing the message down from the Commissioner who had the information, which in his view, obviously, warranted the suspension.*¹⁷⁵⁰

1327. We submit that it is impossible to reconcile the evidence given by Ms Snell with the evidence of Ms Zekanovic and the contemporaneous documents in the following respects:

- a) we submit that the Special Commission should find that Ms Snell did not provide any relevant information to Ms Zekanovic on 19 September 2023 that was new or different to any of the information that to her knowledge Ms Zekanovic had when preparing the earlier submission of 31 July 2023;

¹⁷⁴⁶ Transcript, 21 November 2023, T2869.12-24.

¹⁷⁴⁷ Transcript, 21 November 2023, T2869.39.

¹⁷⁴⁸ Transcript, 21 November 2023, T2869.35-44.

¹⁷⁴⁹ Transcript, 21 November 2023, T2870.13-23.

¹⁷⁵⁰ Transcript, 21 November 2023, T2871.27-42.

- b) accordingly, we submit that the Special Commission should reject Ms Snell's evidence that in the text message and in a conversation with Ms Zekanovic she relayed some of the information that was presented.¹⁷⁵¹ True it is that her text message to Ms Zekanovic made reference to some concerns about the involvement of Mr Paddison and Mr Holman in Astill's offending, but as Ms Snell accepted, that information was not new;
- c) we submit that the Special Commission should reject the evidence of Ms Snell that her understanding of the purpose of preparing this submission was trying to present information that was held in relation to Mr Paddison and Mr Holman. Ms Snell knew on 19 September 2023 that that information was already known and had been presented in a comprehensive way in the 31 July 2023 submission;¹⁷⁵² and
- d) we submit that the Special Commission should reject the evidence of Ms Snell that her understanding that the decision made by Mr Corcoran to suspend Mr Paddison and Mr Holman was responsive to "some sort 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 ...".¹⁷⁵³ There is no support in testimonial or documentary evidence that Ms Snell believed or understood that Mr Corcoran's decision to suspend arose from concerns about retributive action or the protection of staff or victims of Astill.

7.18.9.6. Steps taken by Ms Zekanovic in response to the instructions she received

1328. As we have set out above, it is clear that Ms Zekanovic was directed to prepare "suspension papers". We submit that, to the credit of Ms Zekanovic, she did not comply with that direction. Instead, she prepared a submission which made some reference to the material in the earlier submission of 31 July 2023, and which attached that submission. That was entirely appropriate.

¹⁷⁵¹ Transcript, 24 November 2023, T3240.7-8.

¹⁷⁵² Transcript, 24 November 2023, T3240.42-44.

¹⁷⁵³ Transcript, 24 November 2023, T3246.9-16.

1329. Further, in the 20 September 2023 submission Ms Zekanovic made it plain that she was not given the information that had come to the attention of Mr Corcoran on 19 September 2023. Again, we submit that that was perfectly appropriate.

1330. Further, Ms Zekanovic refused to make a recommendation that Mr Paddison and Holman be suspended. Rather, because no new information had been disclosed to her, she simply left the options open to Mr Corcoran. We also submit that this was appropriate conduct by her in the face of a direction to prepare a document which contained a recommendation to suspend.

7.18.9.7. Events following the preparation of the submission by Ms Zekanovic

1331. The events following the preparation of Ms Zekanovic's submission are clear. As we have set out above, Mr Corcoran selected 'option 1' in that document, namely to suspend. Letters notifying Mr Paddison and Mr Holman of their suspensions were prepared by PSI. Relevantly, those letters are in identical terms and provide as follows:

I have received information alleging that you may have engaged in serious misconduct by failing to report the criminal conduct, of which you were aware, of another Corrective Services New South Wales (CSNSW) employee and further, for displaying threatening and intimidating behaviour towards your CSNSW colleagues. These allegations are currently the subject of further inquiry.

In view of the serious nature of these allegations, I have decided, in accordance with section 70 of the Government Sector Employment Act 2013 ("The Act"), to suspend you from duty, with pay, effective from the date of this letter.¹⁷⁵⁴

1332. The evidence was that Mr Corcoran signed these letters on 22 September 2023 probably in Ms Snell's office and that the letters were then provided to Mr Paddison and Mr Holman on that day effecting their suspension. The letters make it plain that the decision to suspend was made pursuant to s.70 of the GSE Act, which provides power to suspend pending the resolution of allegations of misconduct.

1333. It is clear that the letters did not accurately record the reasons for Mr Corcoran's decision to suspend the officers. The letters made no reference at all to the stated concerns about Mr

¹⁷⁵⁴ Ex 54, AST.002.013.0091_0007-9; Ex 54, AST.002.013.0091_0011-12

Paddison and Mr Holman being exposed to Astill's victims. Rather, the letters made reference to other factors on which Mr Corcoran disavowed reliance.

7.18.9.8. Compliance with accepted or proper practice

1334. Ms Zekanovic gave evidence about the proper process which ought to be followed in circumstances where a decision is made to suspend officers pending the resolution of a disciplinary complaint. She said that when new information was received that may be thought to be relevant to a decision to suspend officers pending the resolution of a disciplinary complaint, the normal and proper process is for that new information to go the PSC to be considered and for PSI to then prepare a submission in light of the recommendation of the PSC.¹⁷⁵⁵

1335. Ms Zekanovic said that in the process of preparing a submission about a suspension pending the resolution of a disciplinary complaint it was necessary for PSI to have all of the available information, and for that information also to be made available to the PSC.

1336. The following principles with respect to the proper process emerged from the evidence of Ms Zekanovic and Ms Snell with respect to decisions being made in the exercise of power by decision makers to suspend officers pending the resolution of the misconduct or disciplinary complaint.

1337. First, proper process requires that all relevant information should be available both to the PSC and to PSI before consideration about whether it is appropriate to suspend an officer pending the resolution of a disciplinary complaint.¹⁷⁵⁶

1338. Second, if a recommendation has been made by the PSC and the PSI about suspension, and new information comes to light, that new information should be made available to the PSC and the PSI to allow further consideration to be given by both of those bodies about what recommendations to make to the ultimate decision maker.

¹⁷⁵⁵ Transcript, 21 November 2023, T2855.04-T2856.18.

¹⁷⁵⁶ Transcript, 21 November 2023, T2855.34-2856.26; Transcript, 22 November 2023, T2994.35-45.

1339. Third, a decision maker acting properly ought to have the benefit on the considered position of the PSC about whether to suspend and the considered position in the form of a written submission by the PSI before the decision maker or in exercising that power to make the decision.
1340. Fourth, once the information is made available to the PSC and the PSI, and a submission has been prepared considering that material, it is then a matter for the decision maker to exercise his or her power to make the decision to suspend.
1341. This practice that was identified by both Ms Zekanovic and Ms Snell can be seen to operate in practice when consideration is given to the submission that was prepared on 21 June 2023.¹⁷⁵⁷ That submission records that the subject being addressed is whether to recommend suspension of Mr Paddison, Mr Holman and Mr Giles. It makes reference to the fact that the matter had been considered by the PSC and that the PSC had made a recommendation for the suspension of each of Mr Holman, Mr Giles and Mr Paddison. Following that recommendation, Ms Zekanovic prepared a three-page submission, which was consistent with the PSC's recommendation, namely the suspension of each of those officers. That submission went to the relevant decision makers, who in this instance after considering it determined not to suspend Mr Paddison and Mr Holman, but to suspend Mr Giles. In our submission, this reflects the proper practice which ought to be followed in this situation where consideration is given for an interim suspension of an officer pending the resolution of a disciplinary complaint.
1342. The process also was followed (albeit it not precisely) when it came to the further submission on 31 July 2023. There was additional information made available to PSI, and that further information was considered by Ms Zekanovic in a detailed further submission. The only departure from the practice identified above was that that additional information did not go back to the PSC. However, as we have noted it was reviewed by the PSI and a detailed submission was prepared.¹⁷⁵⁸ After consideration of all the relevant factors, the

¹⁷⁵⁷ Ex. 48, p. 6-8, CSNSW.0001.0024.0007-0009.

¹⁷⁵⁸ Ex. 48, pp. 37 – 42, CSNSW.0001.0049.1795-1800.

recommendation in that submission was that Mr Giles be suspended, but that the decision maker decline to exercise their discretion to suspend Mr Paddison and Mr Holman. That submission having being made, it plainly was considered by the decision maker and the decision maker determined to follow those recommendations. As a consequence, Mr Giles was suspended but a decision was made not to suspend Mr Paddison and Mr Holman. Save for, again, the fact that the new information was not referred back to the PSC, this reflected proper practice.

1343. We submit that it is open to find that Mr Corcoran's decision to suspend Mr Paddison and Mr Holman on 19 September 2023 departed in a range of significant ways from the proper practice set out above. We submit that the Special Commission should find that the departures were as follows:

- (a) Mr Corcoran did not provide the information which was new to him on 19 September 2023 to the PSI in order for that branch to consider that information in the process of making a recommendation;
- (b) accordingly, PSI was unable to prepare a submission which actually considered the relevant information;
- (c) Mr Corcoran in fact had made a decision to suspend Mr Paddison and Mr Holman before receipt of the submission in any event. There is no question that Mr Corcoran had the power to do so, but it is plain that proper practice required adherence to the practice identified above by Ms Zekanovic and Ms Snell. Making a decision to suspend without the benefit of a submission did not accord with that proper practice;
- (d) Further, on the evidence Mr Corcoran could not recall reading the earlier submission of 31 July 2023 which set out detailed reasons in support of why suspensions were not warranted in the view of Ms Zekanovic;
- (e) To the knowledge of Mr Corcoran, the submission did not state or even refer to the true reason behind his decision to suspend the officers; and

- (f) To the knowledge of Mr Corcoran, the letters recorded in the suspension wrongly recorded the reasons for the reasons for the suspension and made no reference to the true reason for the suspension.

8. Oversight of Management at Dillwynia Correctional Centre

8.1. Background and relationships between Shari Martin, Hamish Shearer and Kevin Corcoran

1344. During the period of Astill's offending, Ms Martin reported directly to Mr Shearer,¹⁷⁵⁹ who in turn reported directly to Mr Corcoran

1345. Ms Martin, Mr Shearer and Mr Corcoran all gave evidence about their working relationships during this time, and until Ms Martin's retirement at the end of December 2018. From the evidence provided to the Special Commission, as set out below, it was obvious that there were considerable issues between the three employees. These issues included Mr Shearer and Mr Corcoran having a difficult relationship; and difficulties they both experienced in managing Ms Martin.

8.1.1 Relationship between Mr Shearer and Mr Corcoran

1346. When Mr Shearer commenced in the role of Director in July 2016, he did not have any experience with CSNSW.¹⁷⁶⁰ At that stage, Mr Shearer's previous work experience was confined to positions within the New Zealand Army and Australian Federal Police (AFP).¹⁷⁶¹ Mr Shearer's role with CSNSW required him to manage, initially, six correctional centres and approximately 600 to 700 officers across the region, before expanding to ten centres in 2018.¹⁷⁶²

¹⁷⁵⁹ Ex. 43, TB2, Vol 8A, Tab 98, AST.002.013.0061_0002 [8].

¹⁷⁶⁰ Transcript, 16 November 2023, T2446.19-27; Ex. 43, TB2, Vol 8A, Tab 98, AST.002.013.0061_0003 [12].

¹⁷⁶¹ Transcript, 16 November 2023, T2445.32-T2446.17; Ex. 43, TB2, Vol 8A, Tab 98, AST.002.013.0061_0003 [12].

¹⁷⁶² Transcript, 16 November 2023, T2447.11-15; Ex. 43, TB2, Vol 8A, Tab 98, AST.002.013.0061_0001 [4]-[5], 0003 [14].

1347. Mr Shearer gave evidence that when he started with CSNSW, he completed a one-week Corrections leadership program,¹⁷⁶³ however he said that the policies and procedures were new to him, and he relied on the advice of others to give him an indication of how to manage certain matters.¹⁷⁶⁴ Mr Shearer agreed that he felt out of his depth in dealing with the “nuts and bolts” of CSNSW at this time,¹⁷⁶⁵ and was shocked by the poor culture within CSNSW.¹⁷⁶⁶ His evidence was that when he commenced in the role, he was struggling to do all that was required of him.¹⁷⁶⁷
1348. Mr Shearer recalled that immediately upon his commencement, he recognised that he did not have enough staff to run the region. Mr Shearer had an Assistant Superintendent seconded to assist him primarily with answering the volume of emails he received. This support included the Assistant Superintendent accessing Mr Shearer’s emails and identifying relevant matters to be actioned. Mr Shearer explained that Mr Corcoran directed him to cease that action due to the sensitivity of his emails,¹⁷⁶⁸ and from that time on, Mr Shearer had no direct resources to assist him to do his job effectively.¹⁷⁶⁹
1349. In mid-July 2017, Mr Shearer raised concerns with Mr Corcoran regarding his lack of support staff. Mr Shearer recalled that Mr Corcoran responded, “well maybe the role of Director isn’t right for you, you do have a young family”.¹⁷⁷⁰
1350. Mr Shearer also gave evidence that when he joined CSNSW, Mr Corcoran discussed training opportunities for him through the Academy, including a 10-week Custodial Recruit training course. Mr Shearer stated that it was not feasible for him to do that course in addition to his day-to-day functions and did not have the opportunity to complete it until late 2022, over 6 six

¹⁷⁶³ Ex. 43, TB2, Vol 8A, Tab 98, AST.002.013.0061_0003 [12].

¹⁷⁶⁴ Transcript, 16 November 2023, T2446.29-T2447.4.

¹⁷⁶⁵ Transcript, 16 November 2023, T2446.29-32.

¹⁷⁶⁶ Transcript, 16 November 2023, T2447.17-25.

¹⁷⁶⁷ Ex. 43, TB2, Vol 8A, Tab 98, AST.002.013.0061_0004 [15].

¹⁷⁶⁸ Transcript, 16 November 2023, T2448.26-T2449.19; Ex. 43, TB2, Vol 8A, Tab 98, AST.002.013.0061_0003 [14].

¹⁷⁶⁹ Transcript, 16 November 2023, T2448.26-T2449.19.

¹⁷⁷⁰ Ex. 43, TB2, Vol 8A, Tab 98, AST.002.013.0061_0004 [15].

years after commencing with CSNSW.¹⁷⁷¹ Mr Shearer agreed that there were numerous courses run between 2016 and 2022, however he said that the issue was not the availability of courses, but rather finding the time to fit the course in, given his heavy workload, i.e. finding a “clear window to do the program”.¹⁷⁷² Mr Shearer stated that he had requested to undertake the Custodial Recruit training from the outset of his employment and that it was not feasible for him to do the course until 2022.¹⁷⁷³ Mr Shearer told the Special Commission that when he raised the practical difficulties of doing the course with Mr Corcoran, Mr Corcoran referred Mr Shearer to the Academy to see what they could do.¹⁷⁷⁴

1351. Mr Shearer described his relationship with Mr Corcoran as “challenging” and that it had its “highs and lows” over the years.¹⁷⁷⁵ However, Mr Shearer also stated that in the past one to two years, the relationship had developed into one of professional respect.¹⁷⁷⁶

1352. Mr Shearer gave evidence that in 2017 or 2018, he raised concerns regarding bullying in the organisation with the Chief Director of Human Resources, Mr Michael Baldi. According to Mr Shearer, Mr Baldi then spoke with Mr Severin, the then Commissioner of CSNSW, about Mr Shearer’s concerns and Mr Baldi relayed to Mr Shearer that something would be done about the bullying. Mr Shearer was unsure whether anything had in fact been done in response to his concerns.¹⁷⁷⁷

1353. When pressed by the Special Commission as to the subject of his bullying complaint, Mr Shearer clarified that it was Mr Corcoran, and that his complaint not only related to Mr Corcoran’s treatment of him, but also related to Mr Corcoran’s treatment of other officers.¹⁷⁷⁸

¹⁷⁷¹ Transcript, 16 November 2023, T2450.1-33; Ex. 43, TB2 Vol 8A Tab 98, AST.002.013.0061_0003 [13].

¹⁷⁷² Transcript, 17 November 2023, T2518.18-T5219.12.

¹⁷⁷³ Transcript, 17 November 2023, T2522.24-T2523.1

¹⁷⁷⁴ Transcript, 17 November 2023, T2519.7-12; T2549.15-37.

¹⁷⁷⁵ Transcript, 16 November 2023, T2448.20-21.

¹⁷⁷⁶ Transcript, 17 November 2023, T2519.14-23.

¹⁷⁷⁷ Transcript, 17 November 2023, T2506.27-T2507.14.

¹⁷⁷⁸ Transcript, 16 November 2023, T2507.26-46.

1354. During Mr Shearer’s evidence, he stated that revealing Mr Corcoran’s name publicly in the context of those complaints “would be the end” of him (that is, Mr Shearer).¹⁷⁷⁹
1355. Mr Shearer stated that Mr Corcoran’s treatment of people made them scared to report concerns through the chain of command, as in his view reporters could become victims themselves.¹⁷⁸⁰
1356. Mr Shearer also gave evidence about a more general culture of bullying at CSNSW. He said, “It’s been there for a long time, but it’s getting better”. He was asked about the differences in culture between CSNSW, the AFP and the New Zealand Army. As noted, he had worked at the latter two agencies. He explained that those agencies were properly governed by those in senior management and were “a decade” in front of CSNSW. He explained that when he was deployed to Afghanistan, it was difficult, “but you knew who the bad guys were”, whereas at CSNSW “sometimes you don’t”.¹⁷⁸¹
1357. Mr Shearer recalled that in 2019 he was made aware by a Human Resources representative of an annual report that Mr Corcoran had submitted in relation to his performance. Mr Shearer stated that he contacted Mr Corcoran two or three times via email to request a copy of the report, and he received no response until he copied in Mr Severin to his request. After Mr Severin became aware of Mr Shearer’s request, Mr Shearer attended a meeting with the then Deputy Commissioner, Luke Grant, and told him that he could not “keep looking over [his] shoulder for a sniper on the hill” (referring to Mr Corcoran).¹⁷⁸²
1358. In relation to conversations he had with Mr Corcoran about his performance, Mr Shearer recalled one occasion in 2019 Mr Corcoran told him that he had been speaking to officers who did not believe that Mr Shearer was performing. Mr Shearer explained that Mr Corcoran refused to name those officers when asked. Mr Corcoran suggested that he would create a SurveyMonkey survey to send to those officers with questions about Mr Shearer’s performance. Mr Shearer was concerned that the survey would not be objective, as it would only be sent to

¹⁷⁷⁹ Transcript, 16 November 2023, T2506.19-2507.46.

¹⁷⁸⁰ Transcript, 16 November 2023, T2508.1-19.

¹⁷⁸¹ Transcript, 16 November 2023, T2505.4-39.

¹⁷⁸² Transcript, 17 November 2023, T2519.30-42.

the officers selected by Mr Corcoran and not those that worked directly with Mr Shearer. Mr Shearer stated that the survey did not proceed.¹⁷⁸³

1359. Mr Shearer also gave evidence in relation to a communication he received from Mr Corcoran via email in around 2019 noting that his technical knowledge had not improved sufficiently in the time since his commencement in 2016. In response to this, Mr Shearer raised a concern that he had not received any training on the technical knowledge required.

1360. Mr Shearer told the Special Commission that, whilst he had training in matters of senior executive management, he did not have training in the technical and operational expertise specific to CSNSW and their systems.¹⁷⁸⁴

1361. Mr Corcoran gave evidence about his professional relationship with Mr Shearer. He said that he hired Mr Shearer in July 2016 to take over the role of Regional Director from Ms Wright. Mr Corcoran believed that Mr Shearer was an attractive and highly qualified candidate for this senior executive role, due to Mr Shearer's experience in the New Zealand Army and the AFP, his qualifications in management, and his background outside of CSNSW.¹⁷⁸⁵

1362. Mr Corcoran gave evidence that Mr Shearer worked alongside Ms Wright for a period of four weeks upon his commencement, during which time Mr Shearer was introduced to his day-to-day responsibilities and relevant policies and procedures.

1363. Mr Corcoran recalled that throughout the recruitment process and from the commencement of his employment, Mr Corcoran encouraged Mr Shearer to participate in a 10-week Correctional Officer training course which, whilst not essential, he believed would be of assistance to Mr Shearer.¹⁷⁸⁶

1364. Mr Corcoran gave evidence that Mr Shearer strongly resisted participation in this course and continued to decline participation for six and a half years, until he eventually completed the

¹⁷⁸³ Transcript, 17 November 2023, T2519.44-T2520.7.

¹⁷⁸⁴ Transcript, 17 November 2023, T2520.28-T2521.8.

¹⁷⁸⁵ Ex. 59, TB5, Vol 29, Tab 18, AST.002.013.0083_0030-31 [125]-[128].

¹⁷⁸⁶ Ex. 59, TB5, Vol 29, Tab 18, AST.002.013.0083_0031 [130].

course in 2022. Mr Corcoran stated that Mr Shearer could have arranged for someone to act in his role for the duration of the training and that approximately 15 courses were run each year between 2016 and 2022. Mr Corcoran stated that he strongly encouraged Mr Shearer to participate in the course and formed the view that Mr Shearer was embarrassed to participate in this training because of his extensive experience, including in the Army, and that Mr Shearer felt it was beneath him.¹⁷⁸⁷

1365. Mr Corcoran gave evidence that over time, he became frustrated with Mr Shearer's performance and formed the view that he was underperforming. Mr Corcoran stated that he discussed these issues with Mr Shearer on numerous occasions.¹⁷⁸⁸

1366. Mr Corcoran explained that he received numerous complaints that Mr Shearer was outsourcing his role to other people.¹⁷⁸⁹ In relation to Mr Shearer granting an Assistant Superintendent access to his emails, Mr Corcoran considered that this was inappropriate given the sensitivity of Mr Shearer's emails, as well as Mr Corcoran's view that the Assistant Superintendent was substantively responding to matters instead of Mr Shearer. Mr Corcoran also referred to an incident in which the Assistant Superintendent had attended a correctional centre to conduct an inquiry and develop recommendations following a serious incident, which Mr Corcoran believed was Mr Shearer's job. Mr Corcoran considered that Mr Shearer was inappropriately delegating his duties on these occasions.¹⁷⁹⁰

1367. Mr Corcoran also gave evidence that, in his view, Mr Shearer ought to have developed his skills over time such that he could deliver in his role with relative independence, however, he was "a slow learner, who did not ... absorb or act on feedback". Mr Corcoran was frustrated by this and did not consider that Mr Shearer could act with the required independence. For this reason, Mr Corcoran stated that he commenced performance management of Mr Shearer in 2019.¹⁷⁹¹

¹⁷⁸⁷ Ex. 59, TB5, Vol 29, Tab 18, AST.002.013.0083_0031 [131]; Transcript, 22 November 2023, T3038.1-18.

¹⁷⁸⁸ Ex. 59, TB5, Vol 29, Tab 18, AST.002.013.0083_0031 [132].

¹⁷⁸⁹ Ex. 59, TB5, Vol 29, Tab 18, AST.002.013.0083_0031-32 [132].

¹⁷⁹⁰ Ex. 59, TB5, Vol 29, Tab 18, AST.002.013.0083_0031-32 [132]-[133].

¹⁷⁹¹ Ex. 59, TB5, Vol 29, Tab 18, AST.002.013.0083_0032 [134].

1368. Mr Corcoran agreed with Mr Shearer that there was a bullying culture in CSNSW at least as at late 2017/early 2018, however he did not agree that this included the top levels of the organisation.¹⁷⁹² Mr Corcoran denied that he bullied Mr Shearer or any other person in the workplace,¹⁷⁹³ although he recalled the complaint that Mr Shearer had made in relation to Mr Corcoran bullying him.¹⁷⁹⁴

1369. Mr Corcoran explained that the background to Mr Shearer's complaint was the conversations that Mr Corcoran was having with him about his approach to certain issues, including his technical knowledge and complaints that Mr Corcoran was receiving from General Managers about Mr Shearer telling them to ask other people for answers when they had questions, instead of Mr Shearer finding out the answer.¹⁷⁹⁵

8.1.1.1. Available findings with respect to relationship between Mr Corcoran and Mr Shearer and Mr Shearer's training

1370. In our submission, it is plain from the evidence given by both Mr Shearer and Mr Corcoran that there were considerable issues in the working relationship between the pair. On the one hand, Mr Shearer did not feel supported to do his role to the best of his ability. He was frustrated by the lack of training he had received and the practical hurdles that impacted his ability to complete the training, training which he perceived as necessary to do his role. He further felt unsupported in his role, not only due to its scope and by the lack of staffing support, but also by Mr Corcoran as his supervisor. He detailed an environment, at least in the early part of their working relationship, where he perceived Mr Corcoran to be unapproachable, culminating in his view that he was being bullied by Mr Corcoran.

1371. On the other hand, Mr Corcoran appears to have had high hopes for Mr Shearer following his successful recruitment, but was concerned at the pace with which Mr Shearer was acquiring his role-specific skills. He appeared frustrated that he had not completed the training that would

¹⁷⁹² Transcript, 22 November 2023, T2971.32-T2972.2.

¹⁷⁹³ Ex. 59, TB5, Vol 29, Tab 18, AST.002.013.0083_0032 [135].

¹⁷⁹⁴ Transcript, 22 November 2023, T2972.4-27.

¹⁷⁹⁵ Transcript, 22 November 2023, T2972.31-43.

have assisted Mr Shearer and was of the view that this option was available to him, had he taken up such an option. Mr Corcoran did not feel as though Mr Shearer was across the detail required for the job and specific to CSNSW.

1372. In our submission, it is not possible or necessary to resolve the disputes between Mr Shearer and Mr Corcoran about their working relationship. What is apparent however, is that the fractured relationship between the two men undoubtedly 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 Policy (which we have addressed above) and in the failure properly to manage Ms Martin's performance (which we have also addressed above).
1373. It is also not necessary to resolve the factual dispute about why Mr Shearer did not undertake his officer training in a timely way. Mr Shearer was in an executive role within CSNSW for six and a half years without having completed the basic training for a correctional officer working in the centres for which he was responsible. It is of course unknown whether the completion of the Correctional Officer training would have assisted Mr Shearer to better understand the environment within a correctional facility, and specifically DCC, however it is clear that without that foundational training, Mr Shearer was missing a critical piece of understanding of the custodial environment and the officers who work within it. It is difficult to imagine such a training program not being of value. Indeed, both Mr Shearer and Mr Corcoran agreed that this training should be mandated for executive staff entering the organisation.¹⁷⁹⁶
1374. Mr Shearer told the Special Commission that culture was of critical importance in a gaol, and that his role required him to understand the culture in the gaols he was responsible for, to identify and fix any problems in that regard, and to ensure the managers underneath him were doing their job properly.¹⁷⁹⁷ Mr Shearer also accepted that his lack of understanding about the

¹⁷⁹⁶ Transcript, 23 November 2023, T3133.26-46.

¹⁷⁹⁷ Transcript, 16 November 2023, T2458.16-41.

culture at DCC made it very difficult for him to perform satisfactorily in his management role of the centre.¹⁷⁹⁸

1375. Even accepting Mr Corcoran's account of events, namely that Mr Shearer was reluctant to undergo the training, we submit that the Special Commission should find that 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. It is clear on the evidence that Mr Corcoran failed to do so.

1376. Further, we submit that it was entirely unsatisfactory that Mr Shearer had not completed the Correctional Officer training before he commenced his role or at least at the outset of performing that role. The lack of training not only created a point of tension between Mr Corcoran and Mr Shearer, but it also contributed to Mr Shearer's lack of understanding of the custodial environment. This was essential to being able to manage the people charged with executing their duties within that environment.

1377. We submit that consideration should be given to making it mandatory that the entry-level correctional officer training be completed by an executive as part of any onboarding for their respective role, and prior to any substantive uptake of the executive position, if that employee has not already completed it.

8.1.2 Relationship between Ms Martin and Management

1378. The evidence provided to the Special Commission clearly indicated that Ms Martin did not have a good working relationship with Mr Shearer or Mr Corcoran (or with Mr Severin for that matter).

1379. Mr Shearer gave evidence that as Director he had an obligation to mentor and manage those who directly reported to him. At the time he commenced in the role, Ms Martin along with the other Governors at each centre in the Metro West Region reported to him. Following

¹⁷⁹⁸ Transcript, 16 November 2023, T2459.11-23.

benchmarking, in 2018, the Managers of Security at the small centres, including EPCC and Mary Ward Correctional Centre, also directly reported to him.¹⁷⁹⁹ Mr Shearer's evidence was that there was no expectation as to how often he would visit each centre, however he would aim to do so each fortnight. If he was unable to travel to the centre (which was increasingly difficult after he was made responsible for more centres, including in regional areas, in 2018), he would speak to the Governors on the phone.¹⁸⁰⁰

1380. As we have noted above, Mr Shearer reported directly to Mr Corcoran. Mr Shearer gave evidence to the Special Commission that he had regular meetings with Mr Corcoran, including one-on-one meetings every fortnight and weekly group meetings, including steering committees and executive committees.¹⁸⁰¹

1381. During his handover with Ms Wright, Mr Shearer was told by Ms Wright that Ms Martin could be difficult, used colourful language, and came across as aggressive.¹⁸⁰² Others within CSNSW also made comments to Mr Shearer to the effect that Ms Martin was challenging and difficult to work with.¹⁸⁰³

1382. This was also Mr Shearer's experience. Mr Shearer considered Ms Martin to be the most challenging Governor he had ever dealt with at CSNSW.¹⁸⁰⁴ In particular, Mr Shearer recalled that Ms Martin:

*was resistant to engagement, wasn't as open and forthcoming as the other managers in the region, often didn't dial into the Governor's teleconferences and on at least one occasion did not attend a yearly, in persons Governor's conference.*¹⁸⁰⁵

¹⁷⁹⁹ Ex. 43, TB2, Vol 8A, Tab 98, AST.002.013.0061_0002 [7]-[8].

¹⁸⁰⁰ Ex. 43, TB2, Vol 8A, Tab 98, AST.002.013.0061_0002 [9].

¹⁸⁰¹ Transcript, 16 November 2023, T2459.30-35.

¹⁸⁰² Ex. 43, TB2, Vol 8A, Tab 98, AST.002.013.0061_0004 [17].

¹⁸⁰³ Transcript, 16 November 2023, T2453.21-T2454.10; Ex. 43, TB2, Vol 8A, Tab 98, AST.002.013.0061_0004 [18].

¹⁸⁰⁴ Transcript, 16 November 2023, T2454.12-46; Ex. 43, TB2, Vol 8A, Tab 98, AST.002.013.0061_0004-5 [19].

¹⁸⁰⁵ Ex. 43, TB2, Vol 8A, Tab 98, AST.002.013.0061_0004 [19].

1383. Mr Shearer agreed that the above were severe criticisms of Ms Martin, and that they caused him to question her suitability to govern two gaols.¹⁸⁰⁶ However, he also told the Special Commission that he had no reason to question Ms Martin's robustness in reporting matters to him,¹⁸⁰⁷ notwithstanding that there were some challenges in his interpersonal relationship with Ms Martin.¹⁸⁰⁸
1384. Mr Shearer stated that the culture led by Ms Martin at DCC was "more command and control oriented" than the other centres he managed.¹⁸⁰⁹ When it was put to Mr Shearer that evidence heard by the Special Commission suggested the culture at DCC included a distrust of management, a fear of management, and a general belief that complaints of misconduct by officers would not be taken seriously, Mr Shearer stated that he had not drawn this conclusion.¹⁸¹⁰ Mr Shearer explained that he had only received two complaints from within DCC about Ms Martin during his time managing her, and he otherwise had "no understanding of the culture that existed there day to day".¹⁸¹¹
1385. On 30 November 2016, and following Ms Martin's attendance at a Regional Governor's meeting, Mr Shearer sent Ms Martin an email regarding concerns Mr Shearer had regarding Ms Martin's behaviour and attitude (the **30 November email**). In the 30 November email, Mr Shearer asked Ms Martin to "reflect on whether this challenging role [as General Manager] is one that [Ms Martin was] prepared to accept, and whether [she was] prepared to represent CSNSW as a GM in its representative and leadership roles".¹⁸¹² Mr Shearer further pointed to a number of issues on which he had sought Ms Martin's engagement over the last few months. He told Ms Martin that these issues were "examples of where I think your communication falls short of that expected from a GM".¹⁸¹³ Mr Shearer forwarded the 30 November email to Mr

¹⁸⁰⁶ Transcript, 16 November 2023, T2454.44-T2455.9.

¹⁸⁰⁷ Transcript, 16 November 2023, T2486.4-13; Ex. 43, TB2, Vol 8A, Tab 98, AST.002.013.0061_0005 [21].

¹⁸⁰⁸ Transcript, 16 November 2023, T2455.11-23.

¹⁸⁰⁹ Transcript, 16 November 2023, T2458.9-14.

¹⁸¹⁰ Transcript, 16 November 2023, T2457.19-30.

¹⁸¹¹ Transcript, 16 November 2023, T2458.43-T2459.9.

¹⁸¹² Ex. 41, CSNSW.0001.0244.0003.

¹⁸¹³ Ex. 41, CSNSW.0001.0244.0003

Corcoran on the same day he sent it. The following day Mr Corcoran in turn sent it to Mr Severin.

1386. With respect to Ms Martin’s operational ability, Mr Shearer told the Special Commission that the issues between himself and Ms Martin came to a head in February to March 2017, when there was a poor staff response to two separate operational incidents occurring at DCC.¹⁸¹⁴
1387. The first incident involved an inmate jumping into a sterile zone at the centre, which was not identified by the officers in the monitoring room.¹⁸¹⁵
1388. The second incident was an incident involving inmates gaining access to the roof of the administration building, as described further below. Mr Shearer gave evidence that he was notified of the incident by Mr Corcoran, who, in turn, had been advised of the incident by the Special Operations Group, who were responding at the scene. Mr Shearer stated that when he rang Ms Martin to ascertain what was happening and to determine whether additional resources were required, she was very flippant with him, stating “I’ve got time. I don’t have to tell you now.” Mr Shearer agreed that Ms Martin had not passed on critical information to himself, or anyone else in Custodial Operations, in a timely way, which was necessary for him to do his job.¹⁸¹⁶
1389. Despite the concerns outlined above by Mr Shearer, Ms Martin believed herself to have been a good Governor and to have had a good management style.¹⁸¹⁷ She felt that Mr Shearer belittled her and put her down. She also stated that Mr Shearer did not value her opinion and lacked confidence in her abilities.¹⁸¹⁸ She recalled that one of the first things Mr Shearer said to her when he took over as Director was that Mr Corcoran had described her as “challenging”¹⁸¹⁹,

¹⁸¹⁴ Transcript, 16 November 2023, T2460.16-45; Ex. 43, TB2, Vol 8A, Tab 98, AST.002.013.0061_0005 [20].

¹⁸¹⁵ Transcript, 16 November 2023, T2462.15.

¹⁸¹⁶ Transcript, 16 November 2023, T2462.18-42; Ex. 43, Ex. 43, TB2, Vol 8A, Tab 98, AST.002.013.0061_0005 [20].

¹⁸¹⁷ Transcript, 16 November 2023, T2389.38-T2390.5.

¹⁸¹⁸ Transcript, 13 November 2023, T2177.31-40; Transcript, 14 November 2023, T2316.16-18; Ex. 38, TB2, Vol 7, Tab 59A, AST.002.013.0059_0011 [51].

¹⁸¹⁹ Ex. 38, TB2, Vol 7, Tab 59A, AST.002.013.0059_0011 [47].

which accords with the description Mr Shearer was provided with regarding Ms Martin upon his commencement at CSNSW.

1390. Ms Martin provided details about a number of particular incidents, which she felt demonstrated that she received poor treatment by Mr Shearer, including the following:

- a) Mr Shearer would ask her to write reports on a monthly basis regarding the large number of positive drug tests consistently collected from inmates at EPCC. Ms Martin stated that whilst Mr Shearer believed that the drug tests were evidence of her staff not doing their job effectively, she regularly told him that the positive results were evidence of her staff targeting the correct inmates during urine testing. Ms Martin also stated that she put in numerous business cases for additional cameras to be installed at the correctional centre in response to the concerns about the positive drug tests, however no additional resources were provided, and Mr Shearer continued to request that Ms Martin produce reports explaining the “dirty urines”,¹⁸²⁰
- b) Ms Martin would get into trouble from Mr Shearer when she did not report issues to him in a timely manner.¹⁸²¹ For example, Ms Martin recounted an incident during which inmates had climbed onto the roof of one of the buildings at DCC, and she was managing the situation by calling a muster, negotiating with the inmates to come down from the roof, and instructing one of her executives to call the specialist security unit. Ms Martin gave evidence that approximately 12 minutes into the incident, she received a phone call from Mr Shearer during which she was berated for not having personally reported the incident to himself or Mr Corcoran first. Mr Shearer told Ms Martin that he had been informed about the incident by others and took issue with not being told about the situation by Ms Martin. Ms Martin thought this was unreasonable and told Mr Shearer that the incident had started only 12 minutes ago and that “I have at least half an hour for a death in custody to report”,¹⁸²²

¹⁸²⁰ Transcript, 13 November 2023, T2177.35-T2178.41.

¹⁸²¹ Transcript, 14 November 2023, T2316.36-38.

¹⁸²² Transcript, 14 November 2023, T2317.1-24.

- c) in November 2016, Ms Martin stated that she attended a Regional Governor’s meeting and had prepared a briefing note in relation to converting the external area outside of DCC into a mother and children’s area. During the meeting, Mr Shearer asked her a question about the briefing, and Ms Martin told him that it had already been sent to the Commissioner of CSNSW and he would have to ask him for it. Ms Martin explained that after the meeting, Mr Shearer asked to speak with her privately and that he told her that she did not deserve the privilege of being a Governor.¹⁸²³ Subsequent to the meeting, Ms Martin received the 30 November email,¹⁸²⁴ which Ms Martin forwarded to another Governor, Tracey Mannix, noting various issues she took with Mr Shearer’s email;¹⁸²⁵
- d) Ms Martin recalled an occasion where Mr Shearer met with her to show her a management pyramid and she found this conversation to be patronising and insulting. She also worried that Mr Shearer genuinely believed that a simple management diagram would assist her to manage hundreds of inmates and staff across two correctional centres;¹⁸²⁶ and
- e) Ms Martin was also concerned that there was a lack of action by the director, and head office, when she would request funding for additional security measures, such as CCTV cameras, lighting and radios.¹⁸²⁷

1391. Mr Corcoran gave evidence that, during his time as Assistant Commissioner, he too was aware of management problems within DCC and that there were significant performance problems with Ms Martin. He told the Special Commission that he was not impressed with the way Ms Martin operated and said that in his assessment, she was not managing DCC properly or effectively.¹⁸²⁸ He later explained that he thought “her treatment of staff and inmates was a

¹⁸²³ Transcript, 14 November 2023, T2410.27-T2411.44.

¹⁸²⁴ Ex. 41, CSNSW.0001.0244.0002.

¹⁸²⁵ Ex. 41, CSNSW.0002.0229.0735.

¹⁸²⁶ Transcript, 16 November 2023, T2390.16-41; Ex. 38, TB2, Vol 7, Tab 59A, AST.002.013.0059_0011 [49].

¹⁸²⁷ Ex. 38, TB2, Vol 7, Tab 59A, AST.002.013.0059_0004 [20].

¹⁸²⁸ Transcript, 22 November 2023, T2973.25-43.

problem, and, ... some of the activities that were going on at [DCC] at the time”.¹⁸²⁹ These “activities” included inmates who were unemployed being placed into the yard all day with nothing to do, which he viewed as problematic.¹⁸³⁰

1392. Mr Corcoran initially told the Special Commission that he did not personally receive any reports from staff about the way Ms Martin treated them during her time at DCC, but that he understood that reports had been submitted to Mr Shearer.¹⁸³¹ However, he subsequently told the Special Commission that he went and talked to officers and inmates about the problem at DCC, and how they were being treated at that point in time, and that he asked Mr Shearer to start addressing those issues.¹⁸³²

1393. Similar to her relationship with Mr Shearer, Ms Martin gave evidence that she felt demoralised and belittled in her dealings with Mr Corcoran.¹⁸³³

1394. Ms Martin recalled an incident involving a sophisticated drug secretion scheme where drugs were entering one of her correctional centres in pairs of underwear. Ms Martin stated that she responded to this issue by providing a three-week opportunity for inmates to have underwear sent into the centre, after which inmates were to receive gaol-issued underwear. Ms Martin recalled that the media became aware of this decision, and she received a phone call from Mr Corcoran “blasting [her] for making such a decision without consulting him” and telling her to reverse the decision. Ms Martin reversed the decision, and then a month or so later, an instruction was given to female-inmate centres that underwear would be provided by the centres.¹⁸³⁴ Ms Martin understood that this instruction had come from Mr Corcoran.¹⁸³⁵

¹⁸²⁹ Transcript, 22 November 2023, T2998.35-36.

¹⁸³⁰ Transcript, 22 November 2023, T3000.11-13.

¹⁸³¹ Transcript, 22 November 2023, T3000.21-22.

¹⁸³² Transcript, 22 November 2023, T3000.37-46.

¹⁸³³ Ex. 38, TB 2, Vol 7, Tab 59A, AST.002.013.0059_0011 [51].

¹⁸³⁴ Transcript, 13 November 2023, T2181.7-30.

¹⁸³⁵ Transcript, 13 November 2023, T2181.27-30.

1395. Ms Martin recalled that, in response to her questioning as to why she had not been given the opportunity to act up in a Director position, Mr Shearer told her that it was because she challenged Mr Corcoran.¹⁸³⁶
1396. Whilst Mr Severin did not have significant direct contact with Ms Martin during his time as Commissioner of CSNSW, he also gave evidence that he held some concerns about Ms Martin and pointed to difficult behaviour that she displayed, and of which he was aware. During the course of his oral evidence, Mr Severin agreed that, whilst he was Commissioner of CSNSW, a culture existed at DCC, as a result of which officers lacked trust in management and that complaints about other officers would be dealt with properly.¹⁸³⁷ In explaining this “failure of culture” at the centre, Mr Severin stated that that there were certainly leadership challenges with Ms Martin, which were only resolved when she left in 2018 and Emma Smith was appointed as Governor.¹⁸³⁸
1397. Mr Severin told the Special Commission that Ms Martin was “quite obstructionist” in meetings that he had attended with her, and that he formed the view that she believed she knew better than others. Mr Severin stated that he had also received feedback from Mr Corcoran at the time about difficulties involving Ms Martin and exchanges between Ms Martin and Mr Shearer.¹⁸³⁹
1398. Mr Severin stated that he never observed Ms Martin to be inappropriate with staff or inmates during his visits to DCC, however he accepted that Governors would be on their best behaviour whilst the Commissioner of CSNSW was visiting. Mr Severin accepted that he had failed in his oversight of the management of DCC during the time when Ms Martin was Governor, and that his oversight should have included performance management, which may have consisted of providing direct feedback, undertaking formal performance management and/or removal from the position.¹⁸⁴⁰

¹⁸³⁶ Transcript, 13 November 2023, T2179.39-T2180.5.

¹⁸³⁷ Transcript, 20 November 2023, T2716.24-43.

¹⁸³⁸ Transcript, 20 November 2023, T2717.6-19.

¹⁸³⁹ Transcript, 20 November 2023, T2717.38-T2718.3.

¹⁸⁴⁰ Transcript, 20 November 2023, T2717.29-36; T2718.19-28.

1399. Ms Martin left the role of Governor of DCC on 21 December 2018, having taken a voluntary redundancy package. However, Ms Martin gave evidence to the Special Commission that the real reason that she left her position was due to the poor relationship between herself and her superiors at that time, being the Mr Shearer and Mr Corcoran.¹⁸⁴¹
1400. Following her retirement, Ms Martin wrote a letter to the Secretary for DCJ in which she describes being belittled, ignored and bullied by Mr Shearer and Mr Corcoran. She details that she was never given an opportunity to act in a capacity higher than Governor and watched junior Governors being offered more senior roles over her. Ms Martin recalled being questioned about her position as a manager by senior management and at one staff meeting was told that she did not deserve the privilege of being a Governor. Ms Martin detailed that after she accepted her redundancy, Mr Shearer thanked Ms Martin for her service. Ms Martin responded that she was leaving because she could no longer endure working for him and others.¹⁸⁴²
1401. In her letter to the Secretary for DCJ, Ms Martin also detailed that she felt she could not go to Mr Severin about the issues she was experiencing and found him to be disconnected from staff.¹⁸⁴³

8.1.2.1 Available findings

1402. We submit that the evidence set out above supports a finding that the relationships between Ms Martin and Mr Shearer and between Ms Martin and Mr Corcoran had a high degree of discord. The discord between all three employees, in our submission, contributed to the failure to address the culture at, and lack of effective management of, DCC.

8.1.3 Ms Martin's inability to do her job and Mr Shearer's management of her performance

1403. Following the incidents in February and March 2017, Mr Shearer told the Special Commission that he had concerns about Ms Martin's operational performance, in addition to his existing

¹⁸⁴¹ Transcript, 13 November 2023, T2177.3-10; Ex. 38, TB2, Vol 7, Tab 59A, AST.002.013.0059_0001 [4].

¹⁸⁴² Ex. 38, TB2, Vol 7, Tab 59A, AST.002.013.0059_0021.

¹⁸⁴³ Ex. 38, TB2, Vol 7, Tab 59A, AST.002.013.0059_0021-22.

concerns about the culture at DCC and Ms Martin’s management style. He considered that, without improvement, Ms Martin would not be capable of discharging her functions.¹⁸⁴⁴ He formed the view that Ms Martin “wasn’t up to the job” of Governor, however he was not able to specify exactly when he reached this view.¹⁸⁴⁵

1404. When asked whether there were any discussions between Mr Shearer and his superiors in relation to the problems at DCC and Ms Martin’s performance, Mr Shearer stated that he could not recall DCC’s performance being raised, however it was “common knowledge that Shari was difficult to work with”.¹⁸⁴⁶ He also agreed that Ms Martin’s performance had been discussed at meetings he had attended.

1405. Mr Shearer subsequently informed Mr Corcoran and Ms Martin separately that he intended to prepare a Performance Improvement Plan (**PIP**) for Ms Martin.¹⁸⁴⁷

1406. Ms Martin gave evidence that in around 2018 (although she was not entirely sure about the date), Mr Shearer sent her a letter/email indicating his intention to place her on a PIP.¹⁸⁴⁸ Ms Martin did not understand why she would be placed on a PIP.¹⁸⁴⁹

1407. According to Ms Martin, in response to this letter/email, she met with Mr Corcoran, in the company of her union delegate, to discuss the PIP and the reasons for its implementation.¹⁸⁵⁰ Ms Martin gave evidence that during this meeting, she told Mr Corcoran that Mr Shearer had told her about Mr Corcoran describing her as “challenging”, which she says Mr Corcoran denied. Ms Martin also explained that she advised Mr Corcoran about Mr Shearer’s behaviour and attitude toward her during his period as Director, and how she was not satisfied with the way in which Mr Shearer was handling certain issues.¹⁸⁵¹ Ms Martin stated Mr Corcoran

¹⁸⁴⁴ Transcript, 16 November 2023, T2461.6-26.

¹⁸⁴⁵ Transcript, 16 November 2023, T2456.1-21.

¹⁸⁴⁶ Transcript, 16 November 2023, T2459.37-44.

¹⁸⁴⁷ Transcript, 16 November 2023, T2461.30-40; Transcript, 14 November 2023, T2317.40-T2318.3.

¹⁸⁴⁸ Transcript, 14 November 2023, T2317.40-T2318.7; T2181.35-38.

¹⁸⁴⁹ Transcript, 14 November 2023, T318.16-32.

¹⁸⁵⁰ Transcript, 13 November 2023, T2181.32-38.

¹⁸⁵¹ Transcript, 14 November 2023, T2319.22-42.

responded by telling her that Mr Shearer was with Human Resources organising her PIP and he did not otherwise take any action in relation to her concerns.¹⁸⁵²

1408. Ultimately, Mr Shearer told the Special Commission that he prepared a draft of Ms Martin’s PIP, however decided not to implement it as he considered it to be a punitive approach that was not appropriate at the time.¹⁸⁵³ Two versions of a draft PIP were in evidence.¹⁸⁵⁴

1409. Mr Shearer explained that the reason he withdrew the PIP was because he reflected on the incidents of February and March 2017, and his responsibility as a Director to grow the management team, rather than adopt a punitive approach. Mr Shearer also stated that Ms Martin was in the twilight of her career and the PIP would have been a “bad mark” on her.¹⁸⁵⁵

1410. Instead of going ahead with the PIP, Mr Shearer met with Ms Martin on 5 April 2017 to discuss “each other’s needs”. Mr Shearer considered that Ms Martin appeared to be more engaged with him following that meeting,¹⁸⁵⁶ and that he felt his relationship with Ms Martin improved following their meeting in April and he found her to be more forthcoming.¹⁸⁵⁷ Mr Shearer was clear in his evidence that he did not actually go ahead and implement the PIP.

1411. Ms Martin explained that, for reasons unknown to her, the PIP was “cancelled” and did not go ahead.¹⁸⁵⁸ She recalled that Mr Shearer subsequently came to speak with her at DCC and, at Mr Shearer’s initiation, they had a frank conversation about how she was feeling and why she was feeling that way, and they “listened considerately” to each other’s concerns. Ms Martin stated that, whilst she appreciated the meeting, her understanding was that Mr Shearer had been encouraged, or told, to come and talk to her, although she did not say by whom.¹⁸⁵⁹

¹⁸⁵² Transcript, 13 November 2023, T2181.35-T2182.16.

¹⁸⁵³ Transcript, 16 November 2023, T2461.11-2462.43; Ex. 43, TB2, Vol 8A, Tab 98, AST.002.013.0061_0005, [21].

¹⁸⁵⁴ Transcript, 16 November 2023, T2461.11-2462.6; Ex. 43, TB2, Vol 8A, Tab 98, AST.002.013.0061_0005 [21]. See also TB2, Vol 8A, Tab 98A, AST.002.013.0089_0004-9.

¹⁸⁵⁵ Transcript, 16 November 2023, T2461.42-T2462.6; Ex. 43, TB2, Vol 8A, Tab 98, AST.002.013.0061_0005 [21].

¹⁸⁵⁶ Ex. 43, TB2, Vol 8A, Tab 98, AST.002.013.0061_0005 [21].

¹⁸⁵⁷ Transcript, 16 November 2023, T2486.4-13; Ex. 43, TB2, Vol 8A, Tab 98, AST.002.013.0061_0005 [21].

¹⁸⁵⁸ Transcript, 13 November 2023, T2182.10-16.

¹⁸⁵⁹ Transcript, 16 November 2023, T2391.10-21; T2392.10-30.

8.1.3.1 Available findings

1412. When it was put to Mr Shearer that the decision not to progress the PIP meant that, in the absence of self-improvement, Ms Martin remained in a position where she was not capable of discharging her duties, Mr Shearer agreed that this was the case. Mr Shearer also agreed that this was not effective management and, whilst he believed at the time it would be a better outcome for Ms Martin, it was not ultimately a better outcome for the women at DCC.¹⁸⁶⁰
1413. In circumstances where Mr Shearer had considerable misgivings about Ms Martin's ability to perform her duties, the decision not to place Ms Martin onto a PIP was significant and, as Mr Shearer himself conceded, detrimental to the women of DCC.
1414. Given the feedback Mr Shearer had received regarding Ms Martin upon his commencement in his role, the difficulties he was having with Ms Martin by November 2016 and the subsequent incidents in February/March 2017, it is difficult to understand the decision to retreat from the implementation of the PIP. Mr Shearer noted that one of the reasons he ultimately decided against the implementation of the PIP, and thereby a formal performance management tool, was that he did not want to "adopt a punitive approach" and that the PIP would have been a "bad mark" on the summary of Ms Martin's career. However, the purpose of a PIP is to provide an employee with an oversight of areas in which their performance is lacking and it provides them with an opportunity to improve their performance against articulated standards. This approach may ultimately result in a sanction that could be punitive if the employee is not able to meet the requisite performance standard that is expected from them, but equally it can provide that employee with important tools to try and improve their performance. When considering whether or not to implement a PIP, the fact that the end result may be punitive should not be a consideration. The PIP is either required or not. Equally, it should not matter whether the person may have a "bad mark" against their name after any action is taken in

¹⁸⁶⁰ Transcript, 16 November 2023, T2463.32-45.

relation to a completed PIP, prior to its implementation. Again, this presupposes a negative outcome and undermines the reason as to why PIPs are used.

1415. Most importantly however, without recording an employee's performance which is considered unsatisfactory, a picture may emerge of an employee that is not consistent with their actual performance. For example, Ms Martin did not have any records in her personnel file that would suggest she had been subject to performance management, notwithstanding a view by a number of executives across different parts of CSNSW that she was challenging and that there were concerns regarding her ability to undertake her role (as expanded upon below)¹⁸⁶¹ In our submission, having informal, undocumented discussions regarding serious performance concerns is an ineffective way to manage employees. Poor performance must be documented, and the implementation of a PIP should not be contingent on any particular result possibly arising.

1416. **PROPOSED RECOMMENDATION: Consideration should be given to CSNSW undertaking additional training regarding performance management and ensure that senior executives are trained as to the purpose of a PIP and the importance of documenting performance that is unsatisfactory.**

8.1.4 Kevin Corcoran's Awareness of the Performance Improvement Plan

1417. Mr Corcoran repeatedly accepted in his evidence that throughout the period of Astill's offending, Ms Martin was not up to doing her job as Governor of DCC properly.¹⁸⁶²

1418. Mr Corcoran was taken to some examples of the types of behaviour that Ms Martin displayed during her role as Governor, including that Ms Martin, in a parade of officers, called the officers "fucking cunts".¹⁸⁶³ Mr Corcoran was aware of this type of behaviour, but was of the view that

¹⁸⁶¹ Relevant documents from Ms Martin's personnel file were included in Ex. 58, TB3, Vol 18, Tabs 668-671.

¹⁸⁶² See, eg, Transcript, 22 November 2023, T2997.1-T2997.10.

¹⁸⁶³ Transcript, 22 November 2023, T2970.32-35.

such behaviour was not widespread. He was of the view that the “vast majority of Governors are very competent and do the job very well.”¹⁸⁶⁴

1419. Mr Corcoran was asked about his understanding of which measures were being used to manage Ms Martin. Mr Corcoran was of the belief that Ms Martin had been placed onto a PIP, and that he communicated this step to the then Commissioner of CSNSW, Mr Severin.¹⁸⁶⁵

1420. Mr Corcoran told the Special Commission that he did not think that PIPs were very effective and that there were much more effective ways of managing “low-level” behaviours other than to “hover on misconduct or performance”.¹⁸⁶⁶ He later clarified that the reason he thought PIPs were ineffective was because you are trying to manage a person, “who is... basically a senior executive, that you can’t be on site to supervise them all the time, it makes it incredibly difficult to make those – get proper results out of performance improvement”.¹⁸⁶⁷

1421. When asked about the type of complaints he was receiving, Mr Corcoran said that the complaints he heard when he went out to visit DCC were “low level”, but that he did receive higher-level complaints through Mr Shearer about other types of behaviours, which were then included in Ms Martin’s PIP. These higher-level complaints included complaints about how Ms Martin was managing DCC and her relationships with staff.¹⁸⁶⁸

1422. Mr Corcoran was of the view that the then Commissioner of CSNSW, Mr Severin, was responsible for managing Governors and the misconduct or serious performance issues with Governors¹⁸⁶⁹ and that Mr Severin had the responsibility to intervene if there was a Governor not capable of discharging their functions.¹⁸⁷⁰

1423. Mr Corcoran recalled speaking to Mr Severin about Ms Martin’s inability to discharge her functions as a Governor. He told Mr Severin that Ms Martin was informed that she would be

¹⁸⁶⁴ Transcript, 22 November 2023, T2971.4-5.

¹⁸⁶⁵ Transcript, 22 November 2023, T2973.45-2974.10.

¹⁸⁶⁶ Transcript, 22 November 2023, T2974.15-18.

¹⁸⁶⁷ Transcript, 22 November 2023, T3001.9-14.

¹⁸⁶⁸ Transcript, 22 November 2023, T3004.18-32.

¹⁸⁶⁹ Transcript, 22 November 2023, T2974.41-44.

¹⁸⁷⁰ Transcript, 22 November 2023, T2975.1-3.

placed onto a PIP. He also thought that Mr Shearer had documented this and that it was sent through to Mr Severin.¹⁸⁷¹

1424. Mr Corcoran gave evidence that he had spoken to Ms Martin about the way she was managing, and her behaviours, on multiple occasions over the years, and that he reported this through to Mr Severin. However he could not recall whether he made any reports in writing.¹⁸⁷² When asked whether he should have been documenting his discussions with Ms Martin, he told the Special Commission that he had been documenting them through Ms Martin's PIP, but accepted that he did not document specifically his interviews with her, as this would have made the conversations with Ms Martin, in his mind, a "formal process".¹⁸⁷³ Mr Corcoran was unable to explain why he did not record his meetings with Ms Martin, during which he pointed out to Ms Martin her problems.¹⁸⁷⁴

1425. When he was later pressed on when he had discussions with Ms Martin about her behaviours, Mr Corcoran conceded that these discussions occurred whilst Ms Martin was at Dawn de Loas Correctional Centre, which was prior to her time at DCC, and that he never had any discussions with Ms Martin whilst she was at DCC.¹⁸⁷⁵ When asked whether this was a failure, Mr Corcoran said he did not regard this as a failure, as a PIP had been launched.¹⁸⁷⁶ He also pointed to the fact that Ms Martin directly reported to Mr Shearer and that it was very difficult, at that time, to deal with problematic General Managers.¹⁸⁷⁷ He also told the Special Commission that prior to being at DCC, he did not think that he had formed a view about Ms Martin's capability to run a correctional centre and that it was "more about her behaviours than her capacities".¹⁸⁷⁸

1426. However when he was asked subsequently about the decision to transfer Ms Martin from Dawn de Loas Correctional Centre into the position of Governor at DCC and EPCC, thereby making

¹⁸⁷¹ Transcript, 22 November 2023, T2975.19-28.

¹⁸⁷² Transcript, 22 November 2023, T3001.21-40.

¹⁸⁷³ Transcript, 22 November 2023, T3002.3-27.

¹⁸⁷⁴ Transcript, 22 November 2023, T3002.39-41.

¹⁸⁷⁵ Transcript, 22 November 2023, T3005.7-30.

¹⁸⁷⁶ Transcript, 22 November 2023, T3006.37-38.

¹⁸⁷⁷ Transcript, 22 November 2023, T3007.10-19.

¹⁸⁷⁸ Transcript, 22 November 2023, T3007.36-47.

Ms Martin responsible for two correctional centres (when it was clear at that time that there were concerns regarding her behaviour), Mr Corcoran pointed to the award for Governors and Managers of Security, and that the award required that they rotate around correctional centres.¹⁸⁷⁹

1427. Mr Corcoran also pointed to the fact that DCC and EPCC were smaller facilities at the time,¹⁸⁸⁰ but other than that he was unable to explain why he did not consider placing her in a different correctional centre.¹⁸⁸¹

1428. Mr Corcoran reiterated that he did not think that the measures, or tools, that were available at the relevant time of Ms Martin's employment were effective in managing people who were "uncooperative".¹⁸⁸² He further explained that what was really needed was:

*an ability to have conversations with people and - and engage with them (indistinct) so they are aware of, you know, what behavioural limits they can be involved with. If they continue to misbehave or, you know, engage in inappropriate behaviour, we will then issue a first warning. If they continue it, a second and final warning. And then we move to a misconduct process.*¹⁸⁸³

1429. Mr Corcoran told the Special Commission that this process was not something that was available to him at the time.¹⁸⁸⁴ He further explained that at a senior executive level [SES level], you were able to remove managers that were not "up to the job". However, in his view for award employees, a particular process would have to have been engaged, as was applicable to such an award employee.¹⁸⁸⁵

1430. Mr Corcoran explained that he could warn such an employee that they were not behaving properly, but that, again, the "tools" [for their dismissal] were not available at the time. He confirmed that the misconduct path was in relation to "something that was serious" and that if

¹⁸⁷⁹ Transcript, 22 November 2023, T3063.5-12.

¹⁸⁸⁰ Transcript, 22 November 2023, T3064.15-17.

¹⁸⁸¹ Transcript, 22 November 2023, T3065.2-13.

¹⁸⁸² Transcript, 22 November 2023, T2975.32-33.

¹⁸⁸³ Transcript, 22 November 2023, T2976.20-25.

¹⁸⁸⁴ Transcript, 22 November 2023, T2976.25-26.

¹⁸⁸⁵ Transcript, 22 November 2023, T2976.34-39.

someone was simply not up to the job, they could not be removed.¹⁸⁸⁶ However when he was squarely asked whether he had ever recommended to Mr Severin that Ms Martin be issued with a formal warning, Mr Corcoran said that the PIP was basically such, that it “is a formal warning of your behaviour”.¹⁸⁸⁷

1431. Mr Corcoran was further asked about his understanding about Ms Martin’s PIP. He was taken to evidence that Ms Martin had provided to the Special Commission, as follows:

*There was an instance when Hamish Shearer had sent me a letter saying he was going to place me on a performance improvement plan, which I couldn't understand why. And with my union delegate, I met with Assistant Commissioner Corcoran to discuss the situation.*¹⁸⁸⁸

1432. Mr Corcoran did not remember this meeting, nor did he remember that Ms Martin told Mr Corcoran during that meeting, that Mr Shearer had been told by him that she was a “challenging” Governor.¹⁸⁸⁹ He also did not remember telling Ms Martin during the meeting that Mr Shearer was “down at human resources, HR, as [they] were speaking, organising to have an improvement plan done”.¹⁸⁹⁰

1433. Mr Corcoran was then also asked about Ms Martin’s evidence to the Special Commission during which she said that whilst a PIP was discussed, it was never actually implemented. In response to Ms Martin’s evidence that she was never on a PIP, Mr Corcoran noted that Mr Shearer sent him the PIP, which he forwarded to Mr Severin.¹⁸⁹¹

1434. Two summonses to produce were issued by the Special Commission in this regard (Summons 24 and Summons 25).

1435. Summons 24 called for the following documents to be produced to the Special Commission:

1. *Any performance improvement plan concerning Shari Martin in place between 2015 and 2018 (Summons 24, Category 1).*

¹⁸⁸⁶ Transcript, 22 November 2023, T2976.41-2977.10.

¹⁸⁸⁷ Transcript, 22 November 2023, T3003.23-31.

¹⁸⁸⁸ Transcript, 13 November 2023, T2181.35-2182.20; Transcript, 23 November 2023, T3094.43-3095.6.

¹⁸⁸⁹ Transcript, 23 November 2023, T3095.10-20.

¹⁸⁹⁰ Transcript, 23 November 2023, T3095.21-26.

¹⁸⁹¹ Transcript, 23 November 2023, T3095.34-39.

2. *Any briefing note, email or other record of communication from Kevin Corcoran to Peter Severin relating to Shari Martin’s performance as Governor/General Manager of Dillwynia Correctional Centre (Summons 24, Category 2).*¹⁸⁹²

1436. Summons 25 called for the following documents to be produced to the Special Commission:

1. *Any email correspondence between Hamish Shearer and Kevin Corcoran between 2015 and 2018 referring to a performance improvement or performance management plan to Shari Martin (Summons 25, Category 1).*¹⁸⁹³

1437. In response to Summons 24, Category 1, CSNSW produced a draft PIP in relation to Ms Martin (this was also provided by Mr Shearer’s legal representative and became Exhibit 52).

1438. In response to Summons 24, Category 2, those assisting CSNSW produced the 30 November email. This email pre-dates the date of the draft PIP. No other correspondence was produced responsive to Category 2.

1439. In response to Summons 25, one email was produced dated 8 March 2017, being an email from Hamish Shearer to Cathryn Hellams, copying in Mr Corcoran. The email reads as follows:

Cathy,
Here is the draft I intend to forward to her later this week for her input before I formerly present it to her during the Governor’s Conference next Tuesday.
Any thoughts would be greatly appreciated.
Regards
*HS*¹⁸⁹⁴

1440. A further draft PIP was attached to the email, with the watermark “Draft” across the document, which became Exhibit 53.¹⁸⁹⁵ No other emails were produced as part of this category.

1441. Mr Corcoran was first taken to Exhibit 52, which was one of two versions of the draft PIP in relation to Ms Martin. The draft PIP had the title “Performance Management Plan” and detailed

¹⁸⁹² Summons 24, dated 22 November 2023, AST.002.006.0089.

¹⁸⁹³ Summons 25, dated 23 November 2023, AST.002.006.0090.

¹⁸⁹⁴ Ex. 53, CSNSW.0001.0275.0272_0001.

¹⁸⁹⁵ Ex. 53, CSNSW.0001.0275.0272_0004-12.

that it was for Ms Martin. It also recorded that the officer conducting the review was Mr Shearer. Mr Corcoran was asked whether this was the document he had recalled seeing. He said it did not match his memory and that he just “remember[ed] seeing an email from Hamish that had gone through what was included in the plan, which [Mr Corcoran] forwarded through” to Mr Severin.¹⁸⁹⁶ No such email between Mr Corcoran and Mr Severin was produced to the Special Commission.

1442. The draft PIP (Exhibit 52) that Mr Corcoran was shown consisted of a table with a series of columns as follows: “Issues to be addressed”; “Standards expected”; “Action required”; “Reviews”; and “Officers comments”. The only two columns that had any content in them were the “Issues to be addressed” and “Standards expected” columns, which supports the conclusion that the document was indeed a draft, given it was incomplete, and also unsigned.¹⁸⁹⁷
1443. The “Issues to be addressed” column included headings such as “develop personal attributes”; “improve your self-management”; “work more collaboratively”. These headings appear to relate to areas for suggested behavioural improvement. The “Standards expected” column is largely self-descriptive and sets out behaviours that seem to be expected of a person in the role of Governor.
1444. Mr Corcoran was subsequently taken to Exhibit 53, which attached a further draft PIP that had additional details in the “Action required” column. Mr Corcoran was asked whether the email attaching this further draft PIP was the email he had in mind. He answered no. He then outlined his recollection of what the purported email contained.¹⁸⁹⁸
1445. Mr Corcoran was taken through the further draft PIP in Exhibit 53 and in particular was taken to the “Action required” section which included various improvements that were deemed to be necessary and that the items that were in the “Actions required” column, had a relationship, or were directly relevant, to some of Ms Martin’s management failures at DCC.¹⁸⁹⁹

¹⁸⁹⁶ Transcript, 23 November 2023, T3096.27-41.

¹⁸⁹⁷ Ex. 52, TB2, Vol 8A, Tab 98A, AST.002.013.0089_0004-9.

¹⁸⁹⁸ Transcript, 23 November 2023, T3190.36- T3192.14.

¹⁸⁹⁹ Transcript, 23 November 2023, T3195.43- T3197.22.

1446. When it was suggested to Mr Corcoran that there was no final PIP and that he was mistaken about that, Mr Corcoran reiterated that he had forwarded the PIP he had seen onto Mr Severin and that he otherwise “was not aware that [Mr Shearer] had walked back on his plans” to implement the PIP.¹⁹⁰⁰
1447. Although Mr Corcoran did not think that the PIP that he was shown in court was the document that he had previously seen, when taken to the contents of the PIP, he was asked to provide comment about it and whether it presented a catalogue of failures. Mr Corcoran responded by saying that the PIP just set out “things that are in a general manager’s [Governor’s] role description”,¹⁹⁰¹ which he accepted was the level of performance that was expected of a Governor of a gaol.¹⁹⁰²
1448. It was put to Mr Corcoran that the document suggested that Ms Martin was not meeting the expectations of a Governor, which Mr Corcoran did not accept. He also did not accept the proposition that the document represented a “catalogue of failures”, but rather he noted that the document was a “role description”.¹⁹⁰³
1449. Mr Corcoran reiterated that he had not seen the first version of the draft PIP (Exhibit 52) before and that what he had seen was an email from Mr Shearer “which outlined what he was talking about with Ms Martin”.¹⁹⁰⁴ He accepted that he would have looked at the updated version (Exhibit 53).¹⁹⁰⁵ When it was put to him, and consistent with what was produced under Summonses 24 and 25, that there was no email, Mr Corcoran replied that the was “pretty sure” that there was an email.¹⁹⁰⁶
1450. Mr Corcoran was asked whether he went back to Mr Shearer to make inquiries after he believed the PIP was implemented about how Ms Martin was going and whether her performance was

¹⁹⁰⁰ Transcript, 23 November 2023, T3097.3-10.

¹⁹⁰¹ Transcript, 23 November 2023, T3115.22-33.

¹⁹⁰² Transcript, 23 November 2023, T3116.7-17.

¹⁹⁰³ Transcript, 23 November 2023, T3115.21-3116.21.

¹⁹⁰⁴ Transcript, 23 November 2023, T3116.41-44.

¹⁹⁰⁵ Transcript, 23 November 2023, T3193.31.

¹⁹⁰⁶ Transcript, 23 November 2023, T3117.9-27.

improving. Mr Corcoran said “I’m sure I did have those discussions with every Director about their Governors”.¹⁹⁰⁷ When it was suggested to him that in fact he did not go back and ask Mr Shearer about whether Ms Martin’s performance had improved as a consequence of any PIP, Mr Corcoran told the Special Commission that he had no recollection of “going there or not going there”.¹⁹⁰⁸ However Mr Corcoran accepted that it was necessary to check on Ms Martin’s performance given the state he had reached regarding her capabilities and that if he hadn’t checked on how Ms Martin’s performance, he should have.¹⁹⁰⁹

8.1.4.1 Available findings with respect to Mr Corcoran’s knowledge of the PIP

1451. We submit the Special Commission should find that Ms Martin was never actually placed on a PIP. The evidence to that effect is powerful. Mr Shearer and Ms Martin were consistent in their evidence regarding the implementation of a PIP – they both told the Special Commission that although a PIP was discussed, and a draft prepared, it was never implemented. Further, there is no documentary evidence that the PIP was ever finalised. The fact that CSNSW was required to produce a finalised version and none was produced is also supportive of a conclusion that Ms Martin was not placed on a PIP.

1452. Accordingly, we submit that Mr Corcoran’s evidence about seeing a finalised PIP should be rejected. In making that submission, we 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. As we have set out above, Mr Corcoran said that he did follow up Mr Shearer about whether Ms Martin’s performance was improving against the matters in the PIP. The problem with that evidence is that if that occurred, Mr Corcoran of course would have immediately been told that Ms Martin had not in fact been placed on the PIP there is no evidence to that affect. We submit that in the

¹⁹⁰⁷ Transcript, 23 November 2023, T3097.12-17.

¹⁹⁰⁸ Transcript, 23 November 2023, T3097.18-24.

¹⁹⁰⁹ Transcript, 23 November 2023, T3097.27-40.

circumstances, Mr Corcoran's evidence that he followed up Mr Shearer about the PIP should be rejected.

1453. We submit that the Special Commission should find that the Mr Corcoran was obliged to ensure that Ms Martin had been placed on a PIP in the discharge of his duties, and that he failed to do so. The role of Governor at DCC involved important and onerous obligations, including for the safety of inmates. As noted, for the duration of the period of Astill's offending Mr Corcoran had the view that she was not up to performing her important obligations. The one "management" tool Mr Corcoran believed he had available was a PIP.
1454. Notwithstanding that Mr Corcoran held the view it was Mr Shearer who was responsible for Ms Martin's management, in circumstances where Mr Corcoran had formed a view that she was not able to satisfactorily perform her duties, we submit that the Special Commission should find that it was incumbent upon him, as a senior leader in CSNSW (and as part of his role as Assistant Commissioner of Custodial Corrections with oversight of DCC), to ensure that he understood what was occurring with respect to the management of Ms Martin's performance. It was also incumbent upon him to provide information regarding Ms Martin's performance to the then Commissioner of CSNSW, Mr Severin, so that he was able to make appropriate and informed decisions regarding her employment. It is plain that this did not occur, because he was mistaken about Ms Martin having been placed on a PIP. Mr Corcoran's failure to ensure that this had occurred contributed to the catastrophic consequences for the women of DCC, because Ms Martin continued in her role as Governor there and the management failures we have described in these submissions continued to occur.
1455. Further, we submit that the failure to follow up regarding the PIP, and the broader issue of performance management of Ms Martin, was a significant failing by Mr Corcoran which contributed to the catastrophic consequences for the women of DCC. This is because Ms Martin continued in her role as Governor at DCC and the management failures we have described in these submissions continued to occur.

1456. It is also relevant that the updated version of the PIP contains actions in areas where Ms Martin’s management and performance was deficient in performing her role as Governor. Mr Corcoran accepted that some of the areas where Ms Martin’s failure were directly relevant to the failure in management at DCC that contributed to the circumstances which allowed Astill’s offending.¹⁹¹⁰

8.1.5 Kevin Corcoran’s understanding of statutory tools regarding the performance management of public sector employees

1457. Mr Corcoran gave evidence of his belief that there was nothing he could do in a situation where a governor, on the award Ms Martin was on, was not performing in their role satisfactorily. On the first day of his evidence, Mr Corcoran told the Special Commission that he had recently sought advice from the Crown Solicitor’s Office (CSO) regarding the GSE Act. It appears that the advice from the CSO confirmed that the GSE Act provided the ability to manage, and ultimately remove someone, who was not capable of doing their job. Mr Corcoran noted that this advice:

*will be a significant game changer in terms of behaviour right across the organisation. You know, we will be in a position where we can, you know, get people to do mandatory training on things like bullying, harassment, sexual harassment, racism, integrity. And then if something happens, we can put them onto a - a mentoring course (indistinct) and we can take misconduct action.*¹⁹¹¹

1458. It was pointed out to Mr Corcoran that it appeared that the “tools” he had labelled as “game changing” related to misconduct or misbehaviour and not performance.¹⁹¹² He explained that he was proposing to use these particular tools (and which he reiterated were in his opinion not available at the time of Ms Martin’s employment), for employees whose performance was not adequate or who were not up to the job. He told the Special Commission that the performance improvement programs, would run for “maybe, you know, 12 to 18 months”.¹⁹¹³

¹⁹¹⁰ Transcript, 22 November 2023, T3192.14-3197.43.

¹⁹¹¹ Transcript, 22 November 2023, T2977.20-27.

¹⁹¹² Transcript, 22 November 2023, T2977.29-30.

¹⁹¹³ Transcript, 22 November 2023, T2977.41-44.

1459. When Mr Corcoran was taken to the topic of performance management during his second day of evidence, he confirmed that given Ms Martin’s role, the award constrained his and CSNSW’s ability to take any action to remove Ms Martin even on the basis that she was incapable of performing her role. He reiterated that he thought Ms Martin was not up to the job, but he had no recollection of seeking or obtaining advice from a lawyer about what legal options were available to him (and CSNSW) to deal with her inability to perform her role. He pointed towards a broader dissatisfaction “by a number of us on our executive” about “how things were travelling with respect to performance management, misconduct, and we raised these things in executive”.¹⁹¹⁴ He also explained that this dissatisfaction with “the processes” resulted in a review of PSB and how it operated.¹⁹¹⁵ When he was reminded that his view was that Ms Martin’s conduct was not significant enough to warrant engaging a disciplinary process, and therefore changes to PSB would not have a role to play in terms of disciplinary oversight in instances where a Governor was simply not performing, Mr Corcoran agreed.¹⁹¹⁶
1460. Mr Corcoran reiterated his opinion that the difficulties with dealing with an employee that simply was not performing still existed today, but that it was being addressed. That is, at the time Mr Corcoran entered the witness box, he still believed that he or CSNSW had no power to remove a Governor who was incapable of performing their role.¹⁹¹⁷
1461. Mr Corcoran was repeatedly pressed about what had been put in place to deal with employees who are not doing their job properly, given his view that senior award employees could not be removed due to unsatisfactory performance. Mr Corcoran pointed to additional training programs that had been implemented, including an advanced diploma of leadership and management, and pre-promotion courses, to try and ensure that senior members of CSNSW had the requisite skills.¹⁹¹⁸

¹⁹¹⁴ Transcript, 23 November 2023, T3098.6-33.

¹⁹¹⁵ Transcript, 23 November 2023, T3099.5-10.

¹⁹¹⁶ Transcript, 23 November 2023, T3099.5-45.

¹⁹¹⁷ Transcript, 23 November 2023, T3100.19-36.

¹⁹¹⁸ Transcript, 23 November 2023, T3102.35-44.

1462. Section 68 of the GSE Act relevantly provides as follows:

68 Unsatisfactory performance of government sector employees

- (1) The government sector employment rules may deal with the procedural requirements for dealing with unsatisfactory performance (consistently with procedural fairness).
- (2) If the performance of an employee of a government sector agency is determined to be unsatisfactory in accordance with those rules, the head of the agency may (without limitation on relevant action) take any of the following actions:
 - (a) terminate the employment of the employee (after giving the employee an opportunity to resign),
 - (b) reduce the remuneration payable to the employee,
 - (c) reduce the classification or grade of the employee,
 - (d) assign the employee to a different role.

1463. Rule 36(1) of the GSE Rules provides for the following when dealing with unsatisfactory performance:

36 Dealing with unsatisfactory performance

- (1) The head of a government sector agency may not take any action under section 68 (2) of the Act in relation to an employee unless:
 - (a) the employee's performance is determined by the agency head to be unsatisfactory in accordance with the agency's performance management system, and
 - (b) reasonable steps have been taken to advise the employee that the employee's performance is unsatisfactory and the basis on which it is unsatisfactory, and
 - (c) the employee is notified that the agency head is proposing to take specified action under section 68 (2) of the Act in respect of the employee, and
 - (d) the employee is given a reasonable opportunity to respond to the notice, and
 - (e) the agency head has taken any such response into consideration.

1464. Section 67(1) GSE Act provides:

67 Performance management systems

- (1) The head of a government sector agency is responsible for developing and implementing a performance management system with respect to employees of the agency.
- (2) The government sector employment rules may deal with the core requirements of any such performance management system.

1465. Finally, r. 35 GSE Rules provides the following in relation to the core requirements of performance management systems:

35 Core requirements of performance management systems

- (1) The core requirements of a performance management system are as follows—
 - (a) to set and clarify expectations for employees,
 - (b) to guide and review employee performance,
 - (c) to develop employee capability,
 - (d) to recognise employee achievements,
 - (e) to improve employee performance,
 - (f) to resolve unsatisfactory employee performance,
 - (g) to evaluate and strengthen practices.
- (2) The Commissioner may determine the essential elements of those core requirements.

1466. The above provisions, in substance, existed throughout the period of 2016 until Mr Martin's retirement at the end of 2018.

1467. In our submission, it is plain that at the relevant times of Ms Martin's employment, both the GSE Act and the GSE Rules contemplated disciplinary action against government sector employees whose performance was unsatisfactory, including termination pursuant to s. 68(2) GSE Act. Combined, the GSE Act and GSE Rules set out a procedure that appears entirely regular, when dealing with an employee who is not performing as required. Rule 36(1) of the GSE Rules mandates that no action under s. 68(2) GSE Act can be taken in relation to an employee unless certain steps are taken first. However, before such steps are able to be taken, an employer must have formed a view that an employee's performance was unsatisfactory in accordance with the employer's performance management system. Thereafter, the steps required by an employer include advising the employee of the employee's unsatisfactory performance and the basis for the assessment (rule 36(1)(b)); notifying the employee that specific action under s. 68(2) GSE Act is proposed (rule 36(1)(c)); providing the employee with an opportunity to respond (rule 36(1)(d)); and the decision maker taking any response from the employee into consideration (rule 36(1)(d)).

1468. In our submission, it follows that in order to advise an employee of the employee's unsatisfactory performance and the basis for it, this performance must be captured in some form of performance management system. Indeed, rule 35 GSE Rules provides requisite detail regarding the core requirements of such a performance management system. This includes

setting out and clarifying expectations (rule (1)(a)); guiding and reviewing an employee's performance (rule (1)(b)); improving employee performance (rule (1)(e)); and resolving unsatisfactory employee performance (rule (1)(f)).

1469. Mr Corcoran repeatedly told the Special Commission that he had formed the view that Ms Martin was not up to doing the job properly¹⁹¹⁹, and that the only tool he had available to manage her was a PIP, notwithstanding his belief that such a plan was ineffective. He further repeatedly stated that he had an inability to remove a Governor, who was clearly not up to the job.¹⁹²⁰

1470. We submit that the Special Commission should find that Mr Corcoran did have the belief he expressed about the inability to remove a Governor who was not capable of performing their role, as surprising as it may be that an Assistant Commissioner or Commissioner of CSNSW would have no right to cause the removal of a Governor who could not perform the duties required by that important role. However, we submit that this belief was clearly mistaken. His belief is inconsistent with the legislative scheme that was available to Mr Corcoran at the time. The relevant portions of the GSE Act and GSE Rules clearly set out how to deal with an employee whose performance is not satisfactory. These steps include implementing a performance management system that sets out the areas for improvement, against which an employee could be measured. Failing requisite performance improvement, it was available to the employer to take a range of actions against the employee, including termination. The draft PIP clearly aligns with the legislative scheme. It details the "Issues to be addressed"; "Standards Expected"; "Actions required"; "Reviews" and "Officer's comments". The completed PIP would have clearly laid the foundation for formalising Ms Martin's performance issues and setting up consideration of her termination had she not met the requisite standards expected of her throughout the performance management process.

¹⁹¹⁹ See, eg, Transcript, 22 November 2023, T2978.16-27.

¹⁹²⁰ See, eg, Transcript, 22 November 2023, T2977.1-10; T2979.1-21.

1471. When Mr Corcoran was taken to the legislative provisions during his second day of evidence, he opined that the “only way you can exercise those sort of options is going through a performance management plan”.¹⁹²¹ This was new information provided to the Special Commission. Prior to this point in his evidence, Mr Corcoran had told the Special Commission repeatedly that there were no options available to remove an award Governor who was not performing their job satisfactorily (other than a misconduct process). He had thus far pointed to the implementation of the PIP and that it was the only tool available to manage a senior employee who was not performing, however he never explained that a PIP laid the foundation for disciplinary action, including termination, according to the relevant legislative scheme.

1472. *The following exchange from the evidence makes this position plain:*

COMMISSIONER: *You mean - very well. You appreciate that creates a difficulty for me in accepting this account, don't you?*

MR CORCORAN: *That I communicated to Peter Severin about this –*

COMMISSIONER: *Well, you've been saying to us for some days that you had no power to do anything because of the status of this - of a Governor as an employee. That's what you've been saying to us?*

MR CORCORAN: *I said the award employee, it's very difficult. It's not difficult if they were an SES role. There's a contract with the Secretary of the agency, and it has specific (crosstalk) –*

COMMISSIONER: *I understand what you've been saying. I do understand what you've been saying.*

MR CORCORAN: *Yeah.*

COMMISSIONER: *But this document [Rule 36 GSE Rules], together with section 68 [GSE Act], tells me that you, or ultimately Mr Severin, had the power to remove Ms Martin from your employment.*

MR CORCORAN: *That's right.*

COMMISSIONER: *So it's not the case that you were bound to keep her in this gaol, is it?*

MR CORCORAN: *That's right. Not the case.*

COMMISSIONER: *So what you've been telling me now for a day isn't correct, is it?¹⁹²²*

¹⁹²¹ Transcript, 23 November 2023, T3168.1-13.

¹⁹²² Transcript, 23 November 2023, T3175.23-3176.5.

1473. Mr Corcoran repeatedly pointed to Ms Martin’s award throughout his evidence and that it created hurdles to removing Ms Martin. After the above exchange, Mr Corcoran’s legal representative pointed out that the applicable award and its interaction with the GSE Act and GSE Rules had not been explored to date, and that “the award claims primacy in its provisions over the Act and regulations, that they apply only to the extent the award does not expressly provide for something. So it's a more nuanced than might otherwise”.¹⁹²³
1474. Mr Corcoran was taken to two awards during his oral evidence, namely the Crown Employees (General Managers, Superintendents, Managers Security and Deputy Superintendents, Department of Justice – Corrective Services NSW) Award 2009 dated 2 August 2016¹⁹²⁴ (the **2 August 2016 Award**) and the Crown Employees (Correctional Officers, Corrective Services NSW) Award 2007 for Kempsey, Dillwynia, Wellington and John Morony Correctional Centres dated 3 November 2017 (the **2017 Award**)¹⁹²⁵.
1475. A further award, namely the Crown Employees (Custodial Executive Rank Officer - Department of Communities and Justice- Corrective Services NSW) Award dated 3 June 2022 (the **2022 Award**)¹⁹²⁶ was provided to the Special Commission on 23 November 2023 by those assisting Mr Corcoran. However, the 2022 Award, appears to post-date Ms Martin’s retirement, given its date. Further, “General Manager/ Governor” is defined in cl. 3 as “a commissioned officer occupying a role at the rank of General Manager/Governor in charge of Correctional Centres or other custodial operations, other than Mid North Coast, John Morony, Dillwynia or Wellington, or other positions designated by the Division Head”. It appears that the 2022 award did not and does not apply to Governors at DCC.

¹⁹²³ Transcript, 23 November 2023, T3176.7-28.

¹⁹²⁴ NSW Industrial Relations Commission, ‘Crown Employees (General Managers, Superintendents, Managers Security and Deputy Superintendents, Department of Justice - Corrective Services NSW) Award 2009’, *Industrial Gazette*, No. C8603, 2 August 2016, 380.

¹⁹²⁵ NSW Industrial Relations Commission, ‘Crown Employees (Correctional Officers, Corrective Services NSW) Award 2007 for Kempsey, Dillwynia, Wellington and John Morony Correctional Centres’, *Industrial Gazette*, No. C8782, 3 November 2017, 664.

¹⁹²⁶ NSW Industrial Relations Commission, ‘Crown Employees (Custodial Executive Rank Officer - Department of Communities and Justice- Corrective Services NSW) Award’, *Industrial Gazette*, No. C9457, 1.

1476. It also appears that the 2 August 2016 Award shown to Mr Corcoran during his evidence also did not apply to Ms Martin's employment as Governor/General Manager at DCC. Whilst the position of 'General Manager' appears in the Ranking Structure which governs the application of the Award, cl. 3 relevantly excludes a 'General Manager' in charge of DCC from the award's application in the same manner as the 2022 Award.
1477. In respect of the correct Award that applied to Ms Martin's employment prior to the 2017 Award, CSNSW provided the Special Commission with the Crown Employees (Correctional Officers, Corrective Services NSW) Award 2007 for Kempsey, Dillwynia and Wellington Correctional Centres dated 1 February 2016 (the **1 February 2016 Award**)¹⁹²⁷ on 6 December 2023. It appears that this is the award that was applicable to the General Manager/Governor of DCC up until the commencement of the 2017 Award, and accordingly governed Ms Martin's employment during the relevant period.
1478. In relation to performance management, the 1 February 2016 Award and the 2017 Award both provide as follows:

16. Performance Management

16.1 CSNSW's Performance Management System shall be used as a process of identifying, evaluating and developing the work performance of all officers. This will ensure CSNSW meets its corporate objectives and, at the same time, will benefit officers by way of providing information, establishing agreed targets, providing performance feedback and enhancing rapport with supervisors.

16.2 Officers occupying roles of General Manager, Manager Security, Principal Correctional Officer, Chief Correctional Officer, Principal Industry Officer and Chief Industry Officer shall enter into a performance agreement with CSNSW.

1479. The clause regarding performance management would not appear to be inconsistent with the legislation.
1480. Mr Corcoran was asked whether he had read the 2 August 2016 Award and the 2017 Award prior to him giving evidence at the Special Commission to which Mr Corcoran answered

¹⁹²⁷ NSW Industrial Relations Commission, 'Crown Employees (Correctional Officers, Corrective Services NSW) Award 2007 for Kempsey, Dillwynia and Wellington Correctional Centres', *Industrial Gazette*, No. C8517, 1 February 2016.

“yes”.¹⁹²⁸ He was then further asked whether at the time that Ms Martin was Governor of DCC and EPCC he knew what these two awards actually said, to which he also answered “yes”.¹⁹²⁹ In this regard, we submit that the 2 August 2016 Award actually did not apply to Ms Martin’s employment at all, and it was the 1 February 2016 Award that applied during the relevant period. Mr Corcoran did not appear to identify this error.

1481. Given Mr Corcoran’s repeated assertions that the award relevant to Ms Martin precluded a Governor from being removed, and in light of neither award he was taken to actually providing any limitation in that regard, it is puzzling as to how Mr Corcoran reached the state of satisfaction he identified in his evidence. That was especially so in circumstances where Mr Corcoran told the Special Commission that he had read the awards and was aware of them at the time of Ms Martin’s employment.

1482. Mr Corcoran was asked specifically whether the option to dismiss people under the GSE Act and GSE Rules was “always there”. Mr Corcoran agreed that it was. He also agreed that this option was available during the relevant period of Ms Martin’s employment, and that this was not a recent occurrence “at all”.¹⁹³⁰

1483. Accepting Mr Corcoran’s evidence about his mistaken belief that there was no power to remove a Governor on the basis that he or she was incapable of performing their role, we submit that it is extremely concerning that Mr Corcoran had a lack of understanding about the relevant legislative provisions applicable in relation to performance management, but that he then also incorrectly cited the award applicable to Ms Martin as being the reason why he was not able to remove Ms Martin for unsatisfactory performance.

1484. Further, in a similar vein, Mr Corcoran also told the Special Commission that the award demanded that award employees be rotated around and that was the reason Ms Martin was

¹⁹²⁸ Transcript, 23 November 2023, T3179.43-45.

¹⁹²⁹ Transcript, 23 November 2023, T3180.1-4.

¹⁹³⁰ Transcript, 23 November 2023, T3181.43-3182.10.

moved from Dawn de Loas Correctional Centre in 2014 (at which time Mr Corcoran already had concerns about Ms Martin’s behaviour) to DCC.¹⁹³¹

1485. When it was put to Mr Corcoran that neither of the two awards he was shown demanded the rotation of an employee, he conceded that the “awards had a provision in there that every three years or so, we could rotate Governors or General Managers around in positions”.¹⁹³² He also conceded that that the evidence he gave previously noting that the award “demanded” the rotation occur, was not correct.¹⁹³³

1486. It is clear that Mr Corcoran lacked in-depth knowledge about what information was contained in the awards and that there was no requirement to rotate officers anymore. Something that Mr Corcoran did not appear to be across.

8.1.5.1 Available findings with respect to Mr Corcoran’s belief about the power to dismiss a Governor for performance issues

1487. We submit that the Special Commission should make the following findings with respect to the evidence we have set out above:

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

¹⁹³¹ Transcript, 22 November 2023, T3064.11-30.

¹⁹³² Transcript, 23 November 2023, T3181.1-3.

¹⁹³³ Transcript, 23 November 2023, T3181.5-9.

- e) Mr Corcoran failed to make any or any proper enquiries of whether the PIP had been effective in improving Ms Martin's performance;
- 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;
- 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;
- 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;
- 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;
- 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; and
- k) as we have submitted elsewhere, 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.

9. Culture at DCC throughout the Special Commission

1488. On 14 October 2023, Mr Corcoran issued Commissioner's Instruction 2023/20, "Special Commission of Inquiry – Staff Conduct" to caution staff that certain types of conduct obstructing the work undertaken by the Special Commission would not be tolerated. The Instruction specified that such conduct included:

- a) asking staff or inmates whether they had involvement in the Special Commission;
- b) refusing staff or inmates access to support services, or delaying their ability to receive such support services;
- c) intimidating or attempting to intimidate, staff or inmates in relation to any evidence they may give at the Special Commission; and
- d) actions of any kind against staff or inmates that would be seen as punishment or retribution for having some involvement in the Special Commission.¹⁹³⁴

1489. Witness B gave evidence at the Special Commission on 24 October 2023 and explained that during the course of the Special Commission, officers at DCC had been asking inmates, "Are you testifying?" and telling inmates that they were "full of shit" for doing so.¹⁹³⁵ Numerous officers told Witness B that there would be retribution if she gave evidence at the Special Commission. She felt pressure not to participate. She said that officers have submitted false bad case notes about her. Witness B, as all inmates do, relies on what is written in her case notes for things such as parole and classification.¹⁹³⁶ Similarly, Witness V heard from other officers,

¹⁹³⁴ Ex. 59, TB5, Vol 29, Tab 18, AST.002.013.0083_0027-28 [115]; Ex. 59, TB5, Vol 29, Tab 18, Annexure Tab 43, CSNSW.0001.0128.0001.

¹⁹³⁵ Transcript, 24 October 2023, T690.36-693.7.

¹⁹³⁶ Transcript, 24 October 2023, T692.29-692.47.

including Ms Berry and Mr Clark, that they were told by the “big boss” to be silent, and not say anything about Astill, even following the commencement of the Special Commission.¹⁹³⁷

1490. Later, on 24 October 2023, the Commissioner of the Special Commission informed CSNSW that he expected those in senior management to provide the Special Commission with assurance of the steps taken to ensure that no inmate would suffer retribution, bullying, criticism, or any form of misbehaviour by reason of their participation in the Special Commission.¹⁹³⁸

1491. On 25 October 2023, in response to the concerns raised by the Special Commission, a document was prepared on behalf of CSNSW detailing the measures taken, including:

- a) on 24 October 2023, Mr Corcoran and Dr Anne-Marie Martin met with staff at DCC regarding the concerns raised by inmates in respect to their participation at the Special Commission;
- b) also on 24 October 2023, Mr Corcoran emailed the staff at DCC regarding the evidence that retributive action and intimidation of some people participating in the Special Commission was occurring, and advised that attempting to interference or influence any person in relation to their participation in the Special Commission was a criminal offence;
- c) prior to commencing duty on 25 October 2023, staff were required to sign that they had read and understood the Commissioner’s Instruction, which would continue until all staff across all shifts had done so;
- d) the Commissioner’s Instruction was placed on various walls at DCC; and
- e) a direct process for inmates to raise issues with the Governor had been implemented and was in operation.¹⁹³⁹

¹⁹³⁷ Ex. 3, TB1, Vol 5, Tab 11A, AST.002.012.0002_0008 [29].

¹⁹³⁸ Transcript, 25 October 2023, T724.8-17.

¹⁹³⁹ Ex. 59, TB5, Vol 29, Tab 18, Annexure Tab 44, CSNSW.0001.0209.0196.

10. The Big Picture

10.1. Contraband at DCC

1492. An aspect of Astill's offending was his use of contraband to manipulate inmates and secure their compliance.

1493. Astill's use of contraband as an aspect of his offending demonstrates that contraband poses a risk to the safety and security of the correctional environment in two ways. Some contraband items potentially pose a direct risk because of the nature of the items themselves. This is most readily apparent with items such as non-prescription drugs which pose a direct risk of abuse and overdose. In addition, the flow of contraband into a correctional centre also can create tension and conflict between inmates, and creates opportunities for blackmail and coercion of both inmates and correctional officers. For example, Ms Ward gave evidence that Witness N was receiving contraband from Astill including tobacco, make-up and jewellery. Ms Ward stated:

*but the issue really was the tobacco, because it gave her a lot of power in the unit, and she, you know, was wheeling and dealing and selling it and all the rest of it, and it caused a lot of problems.*¹⁹⁴⁰

1494. Mr Severin gave evidence that CSNSW experienced a significant increase in the introduction of illicit substances into prisons from 2015 onwards. This was an issue in every facility and remains an ongoing issue for any correctional jurisdictions internationally and in Australia.¹⁹⁴¹

Mr Severin gave evidence that this prompted a focus on preventative measures including technology, body scanners, drug detection, and continuous focus on reporting and awareness.¹⁹⁴²

1495. Mr Severin was asked about evidence heard by the Special Commission that correctional officers are not subject to the same strict inspection or scanning when they enter prisons as

¹⁹⁴⁰ Transcript, 18 October 2023, T284.42 – T285.13.

¹⁹⁴¹ Transcript, 20 November 2023, T2687.29 – 2688.5.

¹⁹⁴² Transcript, 20 November 2023, T2687.46-T2688.2.

visitors. Mr Severin stated “[w]e encountered some significant resistance from the staff and the unions at the time, and we had to make a decision to either not use the technology at all or at least use it for those that we could screen.”¹⁹⁴³ His interpretation of the stance taken by the unions on this issue was “I think it’s simply [officers] don’t want to be subject to the same interrogation that strangers to this prison are subject to because [officers] can be trusted”.¹⁹⁴⁴

1496. Mr Molloy denied being aware that there was a significant issue with contraband in the form of tobacco, clothing and jewellery being brought into DCC by people, including Astill.¹⁹⁴⁵

1497. Mr Molloy gave evidence that all persons entering DCC, pass through a metal detector and their baggage is screened using a baggage X-ray scanner. Officers use clear bags which are also passed through the X-ray scanner. Mr Molloy described the X-ray scanner as similar to those used in an airport, giving a “fairly clear” image of the contents of a bag.¹⁹⁴⁶

1498. Mr Molloy conceded that soft items carried into DCC on the person of an officer or visitor, such as drugs and cigarettes, would not be detected by the metal detector.¹⁹⁴⁷ Such items would only be detected by way of physical search or use of drug detection dogs. Mr Molloy’s evidence was that drug detection dogs are deployed on a regular basis, across all correctional centres in NSW.¹⁹⁴⁸

1499. Mr Molloy gave evidence that body scanners had been rolled out in the last year and a half across the State and had been very successful in reducing the amount of contraband entering centres on persons, including by way of internal concealment. He was unable to confirm if a body scanner had been installed at DCC.¹⁹⁴⁹

¹⁹⁴³ Transcript, 20 November 2023, T2688.19-26.

¹⁹⁴⁴ Transcript, 20 November 2023, T2688.41-45.

¹⁹⁴⁵ Transcript, 6 October 2023, T163.10-15.

¹⁹⁴⁶ Transcript, 6 October 2023, T164.1-4.

¹⁹⁴⁷ Transcript, 6 October 2023, T164.8-12.

¹⁹⁴⁸ Transcript, 6 October 2023, T164.25-31.

¹⁹⁴⁹ Transcript, 6 October 2023, T165.20-24.

1500. Mr Westlake gave evidence that there was no routine screening of officers for non-metallic contraband, unless the dog unit were present and searching staff.¹⁹⁵⁰ He denied any personal knowledge of staff bringing contraband into DCC.¹⁹⁵¹
1501. In addition to bringing contraband into correctional centres by passing through screening undetected, the Special Commission heard evidence from Ms Kellett that contraband could be thrown over the fence or brought in during C watch when no searches are conducted.¹⁹⁵²
1502. Ms Snell gave evidence that she has been involved in initiating and/or progressing various improvements in response to Astill’s offending and the work of the Special Commission.¹⁹⁵³ She outlined the following improvements targeted to the issue of contraband:
- a) implementation of training for CSNSW staff administering security screening of staff and visitors entering a correctional centre in line with COPP s. 17.3, “Stop, detain and search of visitors and staff”. A Commissioner’s Instruction has been drafted to remind staff of their obligations in line with this policy. CSNSW are looking into commercial training packages which would enhance the capability of staff undertaking security screening. Specific options for computer-based training courses are being considered which would include content on x-ray theory and operation. CSNSW intends to roll out training to all correctional officers responsible for security screening by the end of March 2024,¹⁹⁵⁴ and
 - b) CSNSW is undertaking a full re-design of the Immediate Action Team and Security Operations Group One Team model. Ms Snell states that this will provide for a more holistic approach to the use of detection dogs and to have this more readily available across correctional centre locations. She opines that the renewed focus on the essential capability of “K9” services will enable local action, target searches and an increase in

¹⁹⁵⁰ Transcript, 26 October 2023, T899.34-38.

¹⁹⁵¹ Transcript, 26 October 2023, T900.27.

¹⁹⁵² Transcript, 2 November 2023, T1605.16-19.

¹⁹⁵³ Ex. 55, TB5, Vol 28, Tab 12, CSNSW.0001.0263.1558_0005 [19].

¹⁹⁵⁴ Ex. 55, TB5, Vol 28, Tab 12, CSNSW.0001.0263.1558_0020-21.

the detection of contraband of various introduction methods. Ms Snell describes this as a long-term improvement, able to be implemented in 12 months or more.¹⁹⁵⁵

1503. **PROPOSED RECOMMENDATION: The Special Commission should recommend that CSNSW implement the measures proposed by Ms Snell to reduce contraband in CSNSW facilities.**

1504. **PROPOSED RECOMMENDATION: The Special Commission should further recommend that sophisticated detection for contraband on all persons coming into gaols including officers should be in place.**

10.2. Inappropriate relationships between staff and inmates

10.2.1. Task Force Themis

1505. In 2018, Task Force Themis (**the Task Force**) was established to examine instances of inappropriate relationships between CSNSW staff and offenders. The Task Force was led by Mark Murdoch, former Assistant Commissioner, NSWPF.¹⁹⁵⁶

1506. CSNSW provided the Task Force with 343 files recording allegations of inappropriate relationships going back 10 years. Once duplicate and out of scope files were excluded, 322 files were considered by the Task Force. These files comprised 96 allegations of employees not declaring offender associations, 93 allegations of non-physical and non-intimate relationships and 52 allegations of sexual relationships.¹⁹⁵⁷

1507. Of the 322 cases examined, a quarter were found to be substantiated. Those substantiated cases comprised:

- a) 14 sexual relationships;
- b) 9 non-physical and intimate relationships;
- c) 17 non-physical and non-intimate relationships;

¹⁹⁵⁵ Ex. 55, TB5, Vol 28, Tab 12, CSNSW.0001.0263.1558_0026.

¹⁹⁵⁶ Ex. 3, TB3, Vol 10, Tab 154, CSNSW.0001.0024.0753.

¹⁹⁵⁷ Ex. 3, TB3, Vol 10, Tab 154, CSNSW.0001.0024.0753_0001.

- d) 24 undeclared offender associations; and
- e) 17 other breaches of policy.¹⁹⁵⁸

1508. The Task Force closely analysed 180 files to determine compliance with legislation, policy, quality of record keeping and investigative practice. It found:

- a) staff from all levels of experience and length of service can be susceptible;
- b) 60 per cent of allegations involved men and 40 per cent women;
- c) staff subject to allegations are likely to be aged between 40-50 years old;
- d) of the assessed files 58 per cent were from Custodial Corrections, 22 per cent from Community Corrections and 16 per cent from Offender Management and Programs, which accords broadly with the makeup of the workforce;
- e) in 74 per cent of cases the findings made were considered appropriate; and
- f) in 86 per cent of cases the Task Force agreed with the proposed disciplinary action.¹⁹⁵⁹

1509. Task Force Themis found that the best defence to inappropriate staff relationships “is a strong, supportive work culture, which provides training, skills and competencies needed for the job.”¹⁹⁶⁰ 39 recommendations were made in the areas of ‘managing misconduct’, ‘culture and wellbeing’, ‘staff engagement’ and ‘strengthen expectations and consequences’. CSNSW state that the “vast majority” of those recommendations have been accepted.¹⁹⁶¹

10.2.2. Seymour Review

1510. In March 2022, the Minister and Mr Corcoran determined that a review should be conducted into allegations that inappropriate sexual conduct towards female staff had been ongoing at Bathurst and Kirconnell Correctional Centres for 10 years, and that management was aware of, but did not address the allegations. Jane Seymour, barrister, was engaged to conduct the

¹⁹⁵⁸ Ex. 3, TB3, Vol 10, Tab 154, CSNSW.0001.0024.0753_0001.

¹⁹⁵⁹ Ex. 3, TB3, Vol 10, Tab 154, CSNSW.0001.0024.0753_0001.

¹⁹⁶⁰ Ex. 3, TB3, Vol 10, Tab 154, CSNSW.0001.0024.0753_0001.

¹⁹⁶¹ Ex. 3, TB3, Vol 10, Tab 154, CSNSW.0001.0024.0753_0002.

Review (**the Seymour Review**). Law firm Kingston Reid was engaged to provide legal advice to DCJ and CSNSW concerning the Seymour Review.¹⁹⁶²

1511. In her Preliminary Inquiry Advice in response to Phase 1 of the Seymour Review, Ms Seymour reported she had received 16 submissions, four of which were “in scope”, 10 of which were “out of scope” and in two of which the complainant had not provided details of the complaint. Ms Seymour advised there was a *prima facie* case to answer with respect to two of the “in scope” complaints.¹⁹⁶³ Ms Seymour advised that the managers who initially received those two complaints had relevant responsibilities under CSNSW and DCJ policies that were not complied with, including the obligation to escalate, report or otherwise manage alleged incidents of potential sexual harassment or assault. Ms Seymour advised this potentially constituted misconduct.¹⁹⁶⁴

1512. In her Supplementary Advice, Ms Seymour identified the following systemic themes in relation to the prevalence, reporting and management of complaints on inappropriate sexual conduct identified during the Review:

- a) poor workplace culture: complainants variously described their experience of CSNSW’s workplaces as “undesirable”, “stressful”, “toxic”, “unprofessional and abusive”, “belittling”, and “a terrible system in desperate need of change”. Management was perceived, at best, to ignore inappropriate conduct, and at worst, to condone/ participate in it and protect those who engage in it,¹⁹⁶⁵
- b) lack of confidence in CSNSW management: perception of local management was particularly poor. Multiple complainants described a “club” or “boys club” of officers who were seen as “protective” members of their club against complainants. This lack

¹⁹⁶² CSNSW.0001.0050.0001_0001 (to be tendered).

¹⁹⁶³ The other two ‘in scope’ complaints were not progressed for different reasons. See CSNSW.0001.0050.0001_0002 (to be tendered).

¹⁹⁶⁴ CSNSW.0001.0050.0001_0002-3 (to be tendered).

¹⁹⁶⁵ CSNSW.0001.0050.0001_0003 (to be tendered).

of confidence extended to the executive level. There was a perception that statements/ announcements were periodically made but action was not taken;¹⁹⁶⁶

- c) reluctance to raise concerns of sexual assault for reasons that are common to victims of such conduct, such as that they will not be believed;¹⁹⁶⁷
- d) lack of knowledge about where to go/ absence of process outside local management: Ms Seymour advised that, at the relevant times, there was no clear alternative pathway to raise a concern outside local management. If there was, complainants did not appear to know it existed;¹⁹⁶⁸
- e) lack of confidence in internal investigations, i.e. those conducted by the PSB and IB;¹⁹⁶⁹
- f) lack of confidence in CSNSW taking action arising from the Seymour Review;¹⁹⁷⁰
- g) other unlawful discrimination and workplace culture: some complainants raised concerns about conduct that did not constitute sexual harassment or assault, but would constitute another form of unlawful discrimination;¹⁹⁷¹ and
- h) nature of workplace: the nature of the correctives environment requires staff to work in numerous discrete secure areas, to contain inmates and promote the security of staff. This is unique and the physical nature of the workplace is a factor to be taken into account in CSNSW identifying and managing health and safety risks to staff.¹⁹⁷²

1513. The issues raised in the Seymour Review demonstrate that many of the problems identified at DCC throughout the course of the Special Commission are not unique to that centre. They should be viewed in the context of broader cultural and workplace issues across CSNSW. The scope of the challenge which confronts CSNSW in addressing the problems identified in the Special Commission becomes apparent when the broader context is considered.

¹⁹⁶⁶ CSNSW.0001.0050.0001_0003 (to be tendered).

¹⁹⁶⁷ CSNSW.0001.0050.0001_0003 (to be tendered).

¹⁹⁶⁸ CSNSW.0001.0050.0001_0003 (to be tendered).

¹⁹⁶⁹ CSNSW.0001.0050.0001_0003 (to be tendered).

¹⁹⁷⁰ CSNSW.0001.0050.0001_0003 (to be tendered).

¹⁹⁷¹ CSNSW.0001.0050.0001_0004 (to be tendered).

¹⁹⁷² CSNSW.0001.0050.0001_0004 (to be tendered).

10.2.3. Allegations of sexual misconduct by officers towards inmates at DCC

1514. A summons was issued to CSNSW for production of all documents recording, or referring to, any complaint to, or investigation by, the PSB, the IB, the PSI or CIG relating to any sexual or intimate relationship, sexual assault or sexual offending between any person employed at DCC and any inmate at DCC during the period of Astill's employment at DCC.¹⁹⁷³

1515. A large volume of material was produced in response to this summons, which demonstrates that the issue of inappropriate contact between staff and inmates at DCC was not isolated to Astill's conduct.

10.2.4. Hycinth Joseph

1516. On 21 February 2013, Senior Correctional Officer Hycinth Joseph was charged by NSWPF with aggravated indecent assault and aggravated sexual assault – victim under authority of the offender. The charges arose from an alleged assault upon a female inmate at DCC.¹⁹⁷⁴

1517. The brief facts of the alleged offending were that on 18 February 2013 Mr Joseph escorted the inmate into the video link room at DCC on the pretext that she was required for a court video link. It was alleged that after entering the hallway leading to the room, Mr Joseph grabbed the inmate by the arm and forced her towards him where he placed his lips on her mouth and forced his tongue inside. After the inmate had managed to remove herself away from him, it was alleged that Mr Joseph grabbed the inmate a second time where he squeezed her breasts and forced his hand beneath her pants where he inserted two of his fingers inside her vagina. Following the alleged assault, the inmate called her husband who reported the matter to the correctional centre.¹⁹⁷⁵ The inmate described a pattern of inappropriate comments towards her by Mr Joseph in the lead up to the alleged offending.¹⁹⁷⁶

¹⁹⁷³ Summons No. 2, 19 September 2023, AST.002.006.0002_0002.

¹⁹⁷⁴ Ex. 3, TB3, Vol 14, Tab 437, CSNSW.0001.0032.0039_0001.

¹⁹⁷⁵ Ex. 3, TB3, Vol 14, Tab 437, CSNSW.0001.0032.0039_0001.

¹⁹⁷⁶ Ex. 3, TB3, Vol 14, Tab 443, CSNSW.0001.0032.3724.

1518. On 22 February 2012, Mr Joseph was suspended.¹⁹⁷⁷ His suspension without pay was periodically reviewed and continued. On 12 February 2015, while his criminal proceedings remained pending, Mr Joseph notified CSNSW of his retirement, effective immediately.¹⁹⁷⁸

1519. Mr Joseph was ultimately acquitted of the criminal offences at trial. As he had retired from his employment with CSNSW, no internal investigation was conducted.¹⁹⁷⁹

10.2.5. Allegations against Kitchen Overseer Allan McCall

1520. On 24 July 2013, PSB received a referral concerning a number of allegations against Kitchen Overseer Allan McCall. Broadly speaking, the allegations were that Mr McCall had engaged in inappropriate association with female inmates, engaged in excessive internet use, and accessed internet sites on behalf of inmates.¹⁹⁸⁰ The impropriety alleged in Mr McCall's association with the inmates involved flirtation and maintaining a close relationship. No allegations of sexual contact were made.¹⁹⁸¹

1521. Following a detailed investigation, it was found that the two allegations of improper relationships with inmates were not sustained. Other aspects of the misconduct allegations were sustained. It was identified that "through a misguided trust in his professional relationships with inmates assigned to his work location...Mr McCall allowed himself to be opened to manipulation. This manipulation inadvertently placed Mr McCall in a potentially precarious situation."¹⁹⁸² This finding related to Mr McCall's admission that he received a photograph provided to him by an inmate, altered the size of the photograph, scanned it and printed it out. Mr McCall also made admissions to accessing various non-approved internet sites, but denied accessing the internet on behalf of inmates or allowing inmates access to his computer account.¹⁹⁸³

¹⁹⁷⁷ Ex. 3, TB3, Vol 14, Tab 441, CSNSW.0001.0032.0067_0003.

¹⁹⁷⁸ Ex. 3, TB3, Vol 14, Tab 439, CSNSW.0001.0032.0058.

¹⁹⁷⁹ CSNSW.0002.0048.1163_0001-2 (to be tendered).

¹⁹⁸⁰ Ex. 3, TB3, Vol 15, Tab 491, CSNSW.0001.0032.4102_0018, 0038-41.

¹⁹⁸¹ Ex. 3, TB3, Vol 15, Tab 491, CSNSW.0001.0032.4102_0038-41.

¹⁹⁸² Ex. 3, TB3, Vol 15, Tab 491, CSNSW.0001.0032.4102_0012-0013.

¹⁹⁸³ Ex. 3, TB3, Vol 15, Tab 491, CSNSW.0001.0032.4102_0013.

1522. Mr McCall was advised that it was alleged that he contravened the CSNSW Guide to Conduct and Ethics (**2010 Guide**), by failing to remain professional and transparent at all times while interacting with offenders in the performance of his duties, and that he acted in contravention of the Attorney General & Justice Internet Usage Policy by failing to ensure the appropriate, lawful, proper and ethical use of the internet system. It was also alleged that he acted in contravention of cl. 261 of the CAS Regulation by failing to devote the whole of his attention to the performance of his duties. Rather than taking disciplinary action pursuant to s. 63(4) of the GSE Act, Mr McCall was warned that his conduct was unsatisfactory and reminded to strictly adhere to CSNSW policies and procedures.¹⁹⁸⁴

10.2.6. Criminal charges against Senior Correctional Officer Robert Southwell

1523. On 10 September 2014, Senior Correctional Officer Robert Southwell pleaded guilty to a charge of common assault against an inmate at Parramatta Local Court. A more serious charge of aggravated indecent assault was consequently withdrawn. Mr Southwell was placed on a good behaviour bond for 12 months and no conviction was recorded.

1524. The facts giving rise to the charge were that on 26 January 2013, an inmate advised DCC managers that she had been assaulted by Mr Southwell on 24 January 2014. She was subsequently interviewed by CSIU detectives and provided a statement. The inmate stated that she approached Mr Southwell after becoming aware that other inmates had reported the theft of zucchinis from the centre's vegetable patch. The inmate informed Mr Southwell that she had removed three zucchinis to add to her prison supplied meals. Mr Southwell then stated that he should put her over his knee and spank her. The inmate said "I'd like to see you try". The inmate then alleged that Mr Southwell grabbed her by the wrist, pulled her into the officer's station, positioned her over his knee and smacked her buttocks.¹⁹⁸⁵

¹⁹⁸⁴ Ex. 3, TB3, Vol 15, Tab 491, CSNSW.0001.0032.4102_0009-10.

¹⁹⁸⁵ Ex. 3, TB3, Vol 16, Tab 493, CSNSW.0001.0032.4464.

1525. The investigation by CSIU revealed that no CCTV was positioned within the ILU or other parts of DCC that could have recorded the incident.¹⁹⁸⁶
1526. A Director’s Report made by Mr Hovey dated 14 December 2014 notes that the victim made further allegations in her statement of concern. For example, she stated that:
- a) *“Over the last few weeks, Mr Southwell has been making strange comments to me. He has said things like ‘Why are you getting all dolled up for work. Who are you trying to impress’ and ‘why haven’t I been getting dolled up [sic] him at the weekends’”;*
 - b) *“[I] started feeling that he was trying to come on to me because around this time he had started to touch my shoulders and back when he saw me near him”;* and
 - c) *“I said to [] words to the effect of ‘Mr Southwell just abused me.’ [] said something similar to ‘why did you not fight back?; Mr Southwell then said ‘I would love you to fight back’.*
1527. Mr Hovey noted that these comments, while “uncorroborated and untested”, support that the incident on 24 January 2014 may not have been a “moments aberration”.¹⁹⁸⁷
1528. Following his plea of guilty, on 19 September 2014, then Mr Corcoran signed a letter of warning to Mr Southwell, in lieu of misconduct action, “in light of the court proceedings, your lengthy service and that you have not previously come to the notice of the Professional Standards Committee”.¹⁹⁸⁸
1529. However subsequently on 27 January 2014, Mr Southwell was advised by Ms Wright that she had formed the opinion he had engaged in misconduct and that she was considering imposing action. On 3 March 2015, Ms Wright issued Mr Southwell with a reprimand for his conduct.¹⁹⁸⁹

¹⁹⁸⁶ Ex. 3, TB3, Vol 16, Tab 494, CSNSW.0001.0032.4468.

¹⁹⁸⁷ Ex. 3, TB3, Vol 16, Tab 495, CSNSW.0001.0032.4481.

¹⁹⁸⁸ Ex. 3, TB3, Vol 16, Tab 496, CSNSW.0001.0032.4627.

¹⁹⁸⁹ Ex. 3, TB3, Vol 16, Tab 499, CSNSW.0001.0032.4642.

10.2.7. Allegation of relationship between inmate and Correctional Officer [REDACTED]

1530. In August 2015, Ms O’Toole reported to Mr Hovey in relation to possible sexual assault of an inmate by a Correctional Officer. A CSIU Investigations Job Book entry in relation to the report states “On receipt [sic] of documentation, as completed by Cheryl DOUGLAS, Overseer – Hygiene Service Unit, it was apparent that the allegation is more that the inmate is ‘boasting’ of a relationship she is having with the Officer, nominated as CO [REDACTED]”. The entry records that it had been envisaged CSIU detectives would approach the inmate, however on further consideration with Mr Hovey, CSIU would not be taking any active role “based on the lack of complaint”. The entry states “[i]f as it is assumed that the ‘relationship’ is mutual it could be considered an attempt by the inmate to manipulate the officer”. The matter was marked as finalised on 22 October 2015.¹⁹⁹⁰

10.2.8. Allegations against First Class Correctional Officer [REDACTED]

1531. On 26 May 2016, then Mr Paddison wrote to Mr Corcoran concerning a number of allegations made by an inmate at DCC. One of the allegations reported was that an officer, identified elsewhere as First Class Correctional Officer [REDACTED],¹⁹⁹¹ was giving girls cigarettes in return for head jobs.¹⁹⁹² On 27 May 2016, the allegations were referred to PSB. Subsequent enquiries conducted by CSIU concluded the matter was “unable to be progressed criminally” and investigators from IB took carriage of the matter.¹⁹⁹³

1532. In a Confidential Briefing to the Commissioner of CSNSW dated 22 August 2016, Mr Hovey summarised an interview conducted with a witness “nominated by the Commissioner”. Mr Hovey noted the witness had “no direct evidence of any impropriety only things that they have heard”. Mr Hovey observed “the witness did advise that she had formed the opinion that the sexual favours described in the allegations could be facilitated in Unit L4 which is part of the

¹⁹⁹⁰ Ex. 58, TB3, Vol 18, Tab 641, CSNSW.0002.0050.7659.

¹⁹⁹¹ Ex. 3, TB3, Vol 14, Tab 446, CSNSW.0001.0032.0105_0001.

¹⁹⁹² Ex. 3, TB3, Vol 14, Tab 444, CSNSW.0001.0032.0098_0002.

¹⁹⁹³ Ex. 3, TB3, Vol 14, Tab 446, CSNSW.0001.0032.0105_0001.

medium needs unit, further away from the Administration/ Operations Unit.”¹⁹⁹⁴ Mr Hovey concluded by noting the information provided by the witness was the same as that provided by the inmate who made the initial report. He wrote “[w]ithout further evidence [not hearsay] the lines of enquiry are exhausted”. He recommended that the allegations of sexual impropriety at DCC “be retained for intelligence purposes”.¹⁹⁹⁵

1533. A handwritten notation on the Briefing, attributed to Mr Koulouris, states “please contact Director IB to determine whether any remediation action is required in relation to Unit L4 to prevent the possibility of the allegations occurring and whom should be contact to implement”.¹⁹⁹⁶ This request appears to have been followed up by Mr Hovey with the then Acting General Manager of DCC, Mr MacRae, on 29 August 2016. Mr MacRae advised “L4 is not covered by cameras due to additional buildings being located within the compound, However [sic] there is many blind areas within the facility. There is numerous areas that could be utilised for inappropriate activity in this centre as per any other centre.”¹⁹⁹⁷ Mr MacRae noted that at EPCC he had broadcast a direction that no staff member is to enter an accommodation area alone. He stated he was happy to broadcast the same direction for DCC if it would assist.¹⁹⁹⁸ Mr Hovey approved of the suggested strategy,¹⁹⁹⁹ and it appears that a Local Order was issued at DCC to that effect on 30 August 2016 (referred to also at [2.3.5] above).²⁰⁰⁰
1534. The allegations were subsequently referred back to PSB. It was concluded there were no remaining viable lines of enquiry, and PSB closed its file on the matter.²⁰⁰¹

10.2.9. Disclosure to psychologist of sexual assault on inmate

1535. On 7 October 2016, Mimi Leith, Psychologist, Sydney West Cluster, Offender Services and Programs wrote to Ms O’Toole in relation to a recent interaction with an inmate. The inmate

¹⁹⁹⁴ Ex. 3, TB3, Vol 14, Tab 446, CSNSW.0001.0032.0105_0001.

¹⁹⁹⁵ Ex. 3, TB3, Vol 14, Tab 446, CSNSW.0001.0032.0105_0002.

¹⁹⁹⁶ Ex. 3, TB3, Vol 14, Tab 446, CSNSW.0001.0032.0105_0002.

¹⁹⁹⁷ Ex. 3, TB3, Vol 14, Tab 447, CSNSW.0001.0032.0108_0001.

¹⁹⁹⁸ Ex. 3, TB3, Vol 14, Tab 447, CSNSW.0001.0032.0108_0001.

¹⁹⁹⁹ Ex. 3, TB3, Vol 14, Tab 449, CSNSW.0001.0032.0111.

²⁰⁰⁰ Ex. 3, TB3, Vol 14, Tab 448, CSNSW.0001.0032.0110.

²⁰⁰¹ Ex. 3, TB3, Vol 14, Tab 451, CSNSW.0001.0032.0114.

disclosed to her she was experiencing a “build up of tension” due to “an incident I promised Ms O’Toole I wouldn’t talk about”. The inmate said, “I was assaulted by an officer”. The inmate stated Ms O’Toole and Ms Martin were aware of her allegations and it was being investigated. Ms O’Toole responded to Ms Leith, “I did not make her promise not to discuss the matter. What I requested from her was that she not discuss the matter with other inmates. Yes, she claims she was assaulted by an officer and the matter is being investigated”.²⁰⁰² Astill prepared a report in relation to the allegations, dated 25 September 2016,²⁰⁰³ and the complaint was subsequently withdrawn by the inmate on 5 November 2016.²⁰⁰⁴

10.2.10. Allegation against Overseer [REDACTED]

1536. On 2 May 2019, the PSC received a referral alleging that Overseer [REDACTED] had formed an inappropriate relationship with an inmate, and had inappropriately accessed the OIMS on that inmate’s behalf.²⁰⁰⁵ This relationship was described as “romantic” by one witness, however it is unclear if the relationship was alleged to be sexual.²⁰⁰⁶ [REDACTED] resigned from her position on 1 May 2019, prior to the formal lodging of the report with the PSC.²⁰⁰⁷ In light of [REDACTED]’s resignation, the matter was initially recorded for intelligence purposes only and was not investigated by the PSB or IB.²⁰⁰⁸

1537. Despite the initial decision that the matter would be recorded for intelligence purposes only, it appears that in August 2019, investigators from the IB attended DCC and spoke to the inmate involved. The inmate denied any romantic relationship with [REDACTED]. However, the inmate outlined her awareness of a number of workplace issues between staff at DCC including specific details of allegations of bullying and harassment.²⁰⁰⁹ The investigation concluded there was insufficient evidence to find that [REDACTED] and the inmate were in a romantic

²⁰⁰² Ex. 3, TB3, Vol 16, Tab 506, CSNSW.0002.0022.4248.

²⁰⁰³ CSNSW.0002.0001.4593 (not yet tendered).

²⁰⁰⁴ CSNSW.0001.0102.1415_0172 (not yet tendered).

²⁰⁰⁵ Ex. 3, TB3, Vol 14, Tab 466, CSNSW.0001.0032.0168.

²⁰⁰⁶ Ex. 3, TB3, Vol 14, Tab 468, CSNSW.0001.0032.0176.

²⁰⁰⁷ Ex. 3, TB3, Vol 14, Tab 466, CSNSW.0001.0032.0168.

²⁰⁰⁸ Ex. 3, TB3, Vol 14, Tab 465, CSNSW.0001.0032.0165_0001.

²⁰⁰⁹ Ex. 3, TB3, Vol 14, Tab 470, CSNSW.0001.0032.4697_0001-2.

relationship. However, the investigation revealed that the inmate involved had become aware of personal information relating to [REDACTED], and had knowledge of workplace issues occurring between staff. In his report of the investigation to Mr Hovey, Senior Investigator Jared O'Connor noted "This vulnerability can be exploited by inmates creating an opportunity for inmates to groom staff based on information they have become aware of. This could be avoided by ensuring CSNSW staff maintain professional boundaries with inmates and limit what information is discussed in their presence, including discussions about staff grievances within the workplace".²⁰¹⁰

1538. Mr O'Connor's report concluded with the following recommendations:

- a) there is evidence to suggest situational awareness in relation to information within CSNSW Industries can be improved at DCC. CSNSW staff at DCC should be briefed to be vigilant when talking with other staff or accessing official information when inmates are in the vicinity; and
- b) CSNSW staff working around inmates should be reminded to remove any belongings that can identify any personal details about them such as photographs of their family.²⁰¹¹

10.2.11. Allegation against Casual Correctional Officer [REDACTED]

1539. On 5 February 2021, PSB was advised of allegations that Casual Correctional Officer [REDACTED] may be in an inappropriate relationship with a specified inmate. A further allegation was made that [REDACTED] was going to start bringing contraband into the centre for the inmate. The then Governor of DCC, Emma Smith, requested that [REDACTED] be removed from the casual pool for DCC and EPCC, and recommended that she be removed from the casual list for all female correctional centres while the matter was reviewed.²⁰¹²

1540. The allegations against [REDACTED] were referred by PSB to CSIU in the first instance.²⁰¹³

²⁰¹⁰ Ex. 3, TB3, Vol 14, Tab 470, CSNSW.0001.0032.4697_0002.

²⁰¹¹ Ex. 3, TB3, Vol 14, Tab 470, CSNSW.0001.0032.4697_0003.

²⁰¹² Ex. 3, TB3, Vol 14, Tab 472, CSNSW.0001.0032.1243.

²⁰¹³ Ex. 3, TB3, Vol 14, Tab 472, CSNSW.0001.0032.1243; TB 3, Vol 14, Tab 473, CSNSW.0001.0032.1331.

1541. On 30 April 2021, Detective Inspector Bamford advised PSB that there was only “speculation and inuendo” that a criminal offence had occurred. He noted no CCTV was available. He recommended the matter remain with the IB.²⁰¹⁴

1542. A fact finding enquiry was conducted by John Purcell, a Principal Investigator with the IB. The enquiry included a review of incident reports submitted by various correctional officers, documentary review and formal interviews with two inmates. The enquiry concluded there was insufficient evidence to substantiate that ██████████ was in an inappropriate relationship with the inmate or was going to bring contraband into DCC for her.²⁰¹⁵ Consequently, the PSB file for the matter was closed with no adverse findings made.²⁰¹⁶

10.2.12. Findings of misconduct against Senior Overseer ██████████

1543. Following an investigation by IB, Senior Overseer ██████████ was advised on 16 December 2021 that she had been found to have engaged in misconduct in various respects and a reprimand was being considered. Relevantly, these included the following findings of misconduct which suggested a lack of appropriate interpersonal boundaries with inmates:

- a) sometime between August 2015 and March 2019, ██████████ invited an inmate into the Overseer’s office and showed them photographs of herself on the computer in which she was dressed in various outfits and on at least one occasion said words to the effect of “this is my slut look”. This conduct was in breach of ss. 4.5 and 6.3 the 2015 DOJ Code of Ethics and Conduct Policy (the **2015 Code**);
- b) while working at DCC, ██████████ regularly discussed her sex life with other staff and inmates including stating that she had a sexual relationship another specific officer, who at that time was a Principal Correctional Officer. This conduct was in breach of ss. 4.5 and 6.3 of the 2015 Code;

²⁰¹⁴ Ex. 3, TB3, Vol 14, Tab 476, CSNSW.0001.0032.1643_0002.

²⁰¹⁵ Ex. 3, TB3, Vol 14, Tab 480, CSNSW.0001.0032.1706_0009, [33]-[34].

²⁰¹⁶ Ex. 3, TB3, Vol 14, Tab 481, CSNSW.0001.0032.1721.

- c) in late 2018, ██████████ said in front of inmates and staff, words to the effect of “I met a young man on Friday night in the pub and after a few drinks said ‘you’re coming home with me’”, and “his penis was crooked and my legs got sore because of the way I had to sit on him”. This conduct was in breach of ss. 4.5 and 6.3 of the 2015 Code;
- d) while at DCC, said words in the presence of inmates and staff to the effect of “██████████ (referring to Overseer ██████████) is obsessed with ██████████ (referring to SOS ██████████) but he is not interested because he’s too busy having relationships with all his clerks such as [] and []”. This conduct was in breach of ss. 4.5, 6.3 and 6.3.2 of the 2015 Code; and
- e) between 28 May 2019 and 18 February 2019, ██████████ said to two inmates words to the effect of “everyone thinks he walks like that because he has a big dick, trust me, it is not that big, his poor wife”. This statement was made in relation to another correctional officer. This conduct was in breach of ss. 4.5, 6.1, 6.3 and 6.3.2 of the 2015 Code.²⁰¹⁷

10.2.13. Allegation of sexual misconduct against ██████████

1544. On 17 January 2022, the CSIU received a report from the IB in relation to an alleged inappropriate relationship between Overseer ██████████ and a specified inmate. Further allegations were made that ██████████ had threatened to give information to the inmate’s family members if she didn’t have sexual intercourse with him.²⁰¹⁸

1545. On 18 January 2022, the inmate involved met with detectives from CSIU. She declined to provide a formal statement but agreed to provide information about the allegation. She informed detectives that she had had consensual sexual intercourse with ██████████. She denied that any threats were made to herself or her family members.²⁰¹⁹

²⁰¹⁷ Ex. 3, TB3, Vol 16, Tab 504, CSNSW.0001.0032.4966_0002.

²⁰¹⁸ Ex. 3, TB3, Vol 14, Tab 482, CSNSW.0001.0032.2809_20.

²⁰¹⁹ Ex. 3, TB3, Vol 14, Tab 482, CSNSW.0001.0032.2809_20.

1546. On 18 January 2022, ██████ was placed on limited and restricted office duties, with no inmate contact.²⁰²⁰
1547. On 20 January 2022, the inmate met again with detectives from CSIU, and agreed to make a formal statement. She disclosed having consensual sexual intercourse with ██████ on two separate occasions in October and November 2021.²⁰²¹
1548. Complaint was made by the inmate to First Class Correctional Officer Paul Howes, and Mr Virgo. After speaking to the inmate, Mr Virgo reviewed CCTV footage of the relevant dates, and made a report to the IB.²⁰²² Further complaint evidence was taken from two other inmates. A third inmate provided informal information that the alleged victim was wanting to be re-classified out of DCC and was considering making a claim for victim's compensation in the future.²⁰²³
1549. On 8 February 2022, ██████ was interviewed at DCC on body worn video by CSIU detectives. He declined to participate in a formal interview. He declined the allegations of sexual intercourse that were put to him.²⁰²⁴
1550. The investigation report prepared by CSIU concluded that:

In the absence of any available forensic evidence to support the complaint evidence, there is insufficient evidence to criminally charge Overseer ██████ with the offence of 'Engages in sexual conduct or an intimate relationship with an inmate causes a risk or potential risk to the safety or security of a correctional centre or correctional complex or to goof order and discipline within a correctional centre of correctional complex', under Section 236Q(1)(a) Crimes (Administration of Sentences) Act 1999. The evidence gathered for this matter can not be proved beyond a reasonable doubt that Overseer ██████ committed an offence with inmate [██████].²⁰²⁵

1551. The investigation report refers to conversation overheard by Acting Overseer Sharon Fuller between inmates she could not see and whose voices she didn't recognise to the effect that the

²⁰²⁰ Ex. 3, TB3, Vol 14, Tab 482, CSNSW.0001.0032.2809_0023.

²⁰²¹ Ex. 3, TB3, Vol 14, Tab 482, CSNSW.0001.0032.2809_0021.

²⁰²² Ex. 3, TB3, Vol 14, Tab 482, CSNSW.0001.0032.2809_0023.

²⁰²³ Ex. 3, TB3, Vol 14, Tab 482, CSNSW.0001.0032.2809_0025-27.

²⁰²⁴ Ex. 3, TB3, Vol 14, Tab 482, CSNSW.0001.0032.2809_0034.

²⁰²⁵ Ex. 3, TB3, Vol 14, Tab 482, CSNSW.0001.0032.2809_0035-36.

complainant might be going for a “compo claim” against DCJ and that she is claiming Overseer ██████ “raped her”. The investigation report speculates that the complainant may possibly be telling other inmates she was raped “as a cover story to protect herself” as she had not made that disclosure to CSIU. The report also notes that the information provided by another inmate that the complainant suggested she should make a victims compensation claim may add some truth to the conversation overheard by Ms Fuller.²⁰²⁶

1552. CSIU referred the matter back to IB. Ultimately, the following findings of misconduct were made against ██████ (particulars omitted):

- a) from around late August 2021 to 15 January 2022 at DCC he engaged in an inappropriate relationship with an inmate; and
- b) that he accessed confidential information from OIMS; without an appropriate business need, and breaching the inmate’s privacy, to view her information.²⁰²⁷

1553. ██████ was advised that Mr Taylor had formed the intention to terminate his employment, without the opportunity to resign.²⁰²⁸ Following consideration of ██████ response to the allegations of misconduct, the recommendation that his employment be terminated was confirmed.²⁰²⁹

10.3. Volume of misconduct complaints concerning misconduct of CSNSW staff

1554. The examples of complaints of sexual impropriety by staff at DCC, discussed above, represent a small subset of the large volume of misconduct issues reported annually to PSB/ PSI. The volume of such complaints is discussed in detail at [5.4] above. As the evidence before the Special Commission has shown, not all incidents of staff misconduct, including sexual misconduct, are reported, either formally or by any means. It would be open to the Special

²⁰²⁶ Ex. 3, TB3, Vol 14, Tab 482, CSNSW.0001.0032.2809_0036.

²⁰²⁷ Ex. 3, TB3, Vol 14, Tab 482, CSNSW.0001.0032.2809_0004.

²⁰²⁸ Ex. 3, TB3, Vol 14, Tab 482, CSNSW.0001.0032.2809_0005.

²⁰²⁹ Ex. 3, TB3, Vol 14, Tab 482, CSNSW.0001.0032.2809_0002.

Commission to conclude that those incidents of alleged and established sexual impropriety by staff which are identified in the evidence do not accurately represent the scope of the issue confronting CSNSW.

10.3.1. Reports to the Special Commission

1555. Throughout the duration of this Special Commission, those assisting the Special Commission have been contacted by 37 people via the Special Commission's email inbox, and additional people via the Special Commission's voicemail system and by mail.
1556. Those contacting the Special Commission have included current and former employees of CSNSW. Some have shared their personal experiences with those assisting the Special Commission in detail, while others have provided information on an anonymous basis.
1557. While not all information provided to the Special Commission has been able to be explored in depth due to limitations imposed by the Terms of Reference and timeframes in which the Special Commission is working, all those who have contacted the assisting team have provided valuable information that has been carefully considered.
1558. The personal stories shared with the assisting team have provided a valuable reminder that the reporting, investigation and management of misconduct are highly sensitive issues that have significant, lasting impacts on the individuals involved.

11. Referrals

11.1. Breaches for Julijana Miskov

1559. We have set out in Section 2.2.1 in these submissions at [190] to [194] the elements of an offence committed contrary to s. 316 of the *Crimes Act 1900*. In our submission, there is no prospect of the elements being satisfied in relation to the incident involving Ms Miskov because Astill’s conduct towards her does not constitute an offence that meets the definition of a “serious indictable offence” (that is, an indictable offence that is punishable by imprisonment for a term of 5 years or more: s. 4 *Crimes Act 1900*). Astill’s conduct towards Ms Miskov, at its highest, may amount to an aggravated sexual act, contrary to s. 61KF *Crimes Act 1900*. That offence has a maximum penalty of imprisonment for 3 years.
1560. We have set out in Section 2.1.4 of these submissions at [177] to [189] the elements of the common law offence of misconduct in public office. There is evidence before the Special Commission which may go to proving these elements. As Governor of DCC, Ms Martin was a public officer and was acting as such at the relevant time. The conduct alleged by 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, they knew disclosed an alleged assault by Astill – would likely be found to constitute wilful misconduct that is serious and merits criminal punishment. Further, the evidence before the Special Commission does not disclose any reasonable justification for the alleged destruction of Ms Miskov’s report.²⁰³⁰ In these circumstances, we submit 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 in accordance with s. 10(1) of the *Special Commissions of Inquiry Act 1983*.
1561. We have set out 2.2.4 of these submissions at [215] to [219] the elements of an offence under s. 21(1) of the *SRA*. There is evidence before the Special Commission which may go to proving these elements. Ms Miskov’s report likely constitutes a “State record” (s. 3). Further, the tearing

²⁰³⁰ *R v Quach* (2010) 201 A Crim R 522.

up of such a report likely constitutes damaging a State record (per s. 21(1)(d)) or disposing of a State record (per ss. 3 and 21(1)(a)). In these circumstances, we submit that careful consideration should be given to considering whether this evidence is sufficient to warrant the prosecution of Ms Martin and Mr Paddison for an offence contrary to s. 21(1) of the *SRA* in accordance with s. 10(1) of the *Special Commissions of Inquiry Act 1983*.

11.2. Breach by Glenn Clark

1562. We have set out in Section 7.11 of these submissions at [1209] to [1215] above the factors relevant to whether Mr Clark's conduct may satisfy the elements of either s. 316 of the *Crimes Act 1900* or the common law offence of misconduct in public office. For the reasons stated there, on the evidence before the Special Commission, there is no prospect of the elements being satisfied for either of these offences.

11.3. Breaches for Elizabeth Cox

1563. We have set out in Section 6.11.1 above at [1055] to [1065] above the factual findings we submit ought to be made with respect to the disclosures by Ms Cox in April/May 2018 to Ms Martin and Mr Giles. We have set out the elements of the offence of misconduct in public office in Section 2.1.4 of these submissions at [177] to [189] above. We submit that it is open to find that Ms Martin's conduct in respect of this incident satisfies the elements of the common law offence of misconduct in public office.

1564. As a Governor, Ms Martin was a public officer and was acting as such. The allegations made by Ms Cox included allegations which, if proved, constitute the commission of a range of criminal offences and which involved a number of allegations of corrupt conduct.

1565. Ms Martin did cause a report to be made to the IB of Ms Cox's allegations. However, no report was made to NSWPF or to the Commissioner of CSNSW. In terms of the elements of the offence, the relevant questions which arise for determination are (1) whether Ms Martin was bound by her duties to report the allegations to NSWPF or to the Commissioner; (2) if so,

whether a failure to do so is serious and merits criminal punishment; and (3) if so, whether Ms Martin's failure to discharge her duty was without reasonable excuse or justification. It is convenient to address issues (2) and (3) together as they overlap.

11.3.1 Whether Ms Martin was bound by her duties to report the allegations to the Police or to the Commissioner

1566. Ms Martin's duties as Governor of DCC were to:

*provide leadership and direction for the effective and accountability based management of all aspects of a correctional centre, including the safety of inmates and visitors and other visiting persons in compliance with policy, duty of care requirements, defined service standards, key performance indicators and Management Agreements.*²⁰³¹

1567. As we have submitted above in Section 6, by the time of Ms Cox's allegations in April/May 2018, Ms Martin had received a significant number of allegations of serious misconduct by Astill. These included a range of allegations, some of which were not reported to the IB, and some of which were reported to the IB. Of the latter, Ms Martin knew by this time that very serious allegations had been reported without any evidence of an investigation by the IB or Police. These included most notably the notification to the IB in July 2017 of the allegations of assault by Astill on Witness M and of the intimidation by Astill of the witnesses who had made those allegations.

1568. Further, it is relevant that Ms Martin gave evidence that she believed Ms Cox.²⁰³²

1569. It is clear that Ms Martin considered that her duties as Governor required her to do no more than report Ms Cox's allegations to the IB. That position was as we have noted contrary to Mr Giles' view of his obligations upon these matters being disclosed. His evidence (see Section 7.12 above at [1224]) was that it was necessary for him to report Ms Cox's allegations to the Police and/or the Commissioner of CSNSW himself.

²⁰³¹ Ex. 3, TB3, Vol 9, Tab 106, CSNSW.0001.0030.0053_0001.

²⁰³² See [1049] above.

1570. We submit that it is open to find that Ms Martin was under the same obligation. These allegations were matters for NSWPF and in our submission, Ms Martin was obliged to report them to NSWPF in discharge of her obligations as a public official.

11.3.2 Whether Ms Martin's failure to discharge her duty is serious and merits criminal punishment; whether Ms Martin's failure to discharge her duty is without reasonable excuse or justification

1571. The failure by Ms Martin to report the allegations to NSWPF in our submission is very serious. What was disclosed was alleged criminal conduct. It was committed by a person in public office against vulnerable inmates. Ms Martin had important obligations for the safety and security of inmates, and to her knowledge these obligations were not likely to be discharged by merely making a report to the IB.

1572. However, whether Ms Martin's failure merits criminal punishment or was without reasonable excuse or justification requires careful consideration. A factor in favour of Ms Martin having reasonable excuse or justification for not reporting to NSWPF is the lack of any clear policy in existence in April/May 2018 about to whom allegations of serious misconduct should be reported. The 12 September 2017 Email Policy called for reports to be made to the Regional Director. The DOJ Managing Misconduct Policy required reports to be made to the PSB. The meaning and effect of cl. 253 CAS Regulation was unclear. Commissioner's Instruction No 10/2013 permitted a report of suspected corrupt conduct to be made to any one of a range of people. Remarkably, there was no clear policy which in terms required allegations of criminal conduct to be reported to NSWPF. These are all matters which would be relevant to whether the element of the offence that the failure by Ms Martin was without reasonable excuse or justification would be made out.

1573. In these circumstances, we submit that careful consideration should be given to considering whether this evidence is sufficient to warrant the prosecution of Ms Martin for the offence of

misconduct in public office in accordance with s. 10(1) of the *Special Commissions of Inquiry Act 1983*.

1574. We have also considered whether Ms Martin's failure to report Ms Cox's allegations might also amount to a breach of s. 316 of the *Crimes Act 1900*. We do not consider that there is any prospect that the elements of this offence would be established, because it is not clear that any of the disclosed conduct was a "serious indictable offence", and further, a report was made to the IB which may be regarded as falling within "other appropriate authority", especially noting that within the IB was the CSIU, which included seconded Police officers.

12. Proposed Recommendations

1. The Special Commission should recommend that CCTV coverage at DCC be brought up to the standard set out in the Specification as an urgent priority. It should further recommend that regardless of whether it is required by the Specification, CCTV cameras should be installed at DCC in all offices where officers potentially meet alone with inmates and in corridors leading to such offices. Finally, consideration should be given to recommending that CCTV footage in all correctional centres be retained for a minimum of 90 days before being overwritten. Funding should be made available to implement these recommendations.
2. The Special Commission should recommend that CSNSW create a standard of required conduct in relation to persons relieving as Intelligence Officers, including a process for PSI to conduct probity checks, and documentation requirements for the probity checks required to be conducted by PSI in relation to such persons, which should include requirements for probity checks to be documented on personnel files.
3. The Special Commission should recommend that a record of any disciplinary process or outcome should be kept on an employee's personnel file so as to be readily accessible by human resources personnel both within CSNSW and within DCJ more broadly.
4. The Special Commission should recommend that s. 236Q of the CAS Act be amended so that there is no longer a need to prove both the conduct/relationship and the existence of risk of the kind referred to in s. 236Q(1)(a) or a compromise to the proper administration of a sentence or community-based order to establish the offence.
5. The Special Commission should recommend that in urban areas, officers in intimate relationships with each other should not be permitted to work in the same correctional centres. In rural areas, where implementation of such a rule is not practical, clear and specific instructions accompanied by training in managing conflicts of interest should be mandatory for correctional centre management and officers themselves. There should be a requirement that such training be repeated at regular intervals.

6. The Special Commission should recommend that DCJ consider what legislative amendments (to the GSE Act or otherwise) would be required in order to mandate correctional officers rotating between correctional centres after a period of 7-10 years.
7. The Special Commission should recommend that a stand-alone Governor for DCC should be implemented as a priority.
8. The Special Commission should recommend that any training program for new recruits ensures they are made aware of the opportunity to raise concerns or complaints in relation to other CSNSW staff in a safe manner.
9. The Special Commission should recommend that the training initiatives detailed by Ms Chappell and Ms Snell above relating to ethical standards, misconduct and trauma informed practice, be delivered to staff on an ongoing basis and not limited to induction training for new staff. The Special Commission should further recommend that such training be delivered in-person where possible and be required of all staff members, including those at senior and management levels.
10. The Special Commission should recommend that the training initiatives detailed by Ms Chappell and Ms Snell above relating to ethical standards, misconduct and trauma informed practice, be delivered to staff on an ongoing basis and not limited to induction training for new staff. The Special Commission should further recommend that such training be delivered in-person where possible and be required of all staff members, including those at senior and management levels.
11. Consideration should be given to recommending that the strategy and policy initiatives the subject of Ms Snell's evidence be put in place. These should include, as one aspect of a Women's Strategy, the development of a sexual misconduct policy and associated training for CSNSW staff.
12. Consideration should be given to recommending that CSNSW fund such an advocacy service for female inmates, and that in designing the service, it maximises its accessibility to female

inmates (including in particular its accessibility to indigenous female inmates) and ensures that its scope extends to advocacy in the making of complaints about misconduct by CSNSW staff (rather than simply external issues such as housing, care of children etc).

13. Consideration should be given to recommending that the strategy and policy initiatives specific to female inmates the subject of Ms Snell's evidence be put in place. These should include, as one aspect of a Women's Strategy, the development of a sexual misconduct policy and associated training for CSNSW staff.
14. The Special Commission should recommend that, as a priority, CSNSW facilitate inmate access via tablet to the websites of statutory and external oversight bodies whose statutory functions include receiving complaints from inmates, including the Ombudsman, ICAC and the Inspector.
15. The Special Commission should make recommendations reflecting the Inspector's proposals, quoted at [657] and [658] above.
16. The Special Commission should make recommendations reflecting the Inspector's proposals, quoted at [661], [662] and [663] above.
17. The Special Commission should recommend that all protocols, procedures and inmate communications regarding the SMRL make clear that it is distinct from CSSL and operates in a different manner.
18. The Special Commission should recommend that CSNSW staff operating the SMRL should be required to attend training in responding to disclosures of sexual assault, and in trauma-informed practice, prior to commencing on this telephone line.
19. The Special Commission should recommend that specialised, culturally appropriate support should be available to Indigenous inmates in accessing the SMRL and that CSNSW staff operating the SMRL should be trained in culturally appropriate practice for Indigenous inmates.
20. The Special Commission should recommend that CSNSW must ensure that access to confidential, external, specialised sexual assault trauma counsellors be provided in an ongoing

manner to the victims of Astill's offending and other female inmate victims of sexual assault by CSNSW staff via the Uralla Cottage service provider, for so long as it is required (in the view of the specialist counsellors).

21. Consideration should be given to recommending the introduction of a legislated specific mandatory reporting requirement for CSNSW staff in relation to sexual harassment and sexual assault within correctional centres.
22. Consideration be given to the Director, PSI reporting directly to a Deputy Commissioner and that Deputy Commissioner report regularly to the relevant officer of DCJ. Reports should include notification of any new allegations of serious misconduct and updates as to the status of ongoing allegations.
23. Consideration should be given to CSNSW undertaking additional training regarding performance management and ensure that senior executives are trained as to the purpose of a PIP and the importance of documenting performance that is unsatisfactory.
24. The Special Commission should recommend that CSNSW clarify the reporting requirement for allegations of misconduct, to make clear to staff and in policy documents that reports of misconduct are required to be made to PSI and/or the NSWPF (rather than line managers) in the first instance. All CSNSW and DCJ communications to staff, training materials and policy documents should be clear and consistent as to reporting requirements for correctional officers in relation to staff misconduct.
25. The Special Commission should recommend that a direct form or template for reporting misconduct to PSI be made available on the front page of the CSNSW Intranet, enabling reporting directly to PSI with an option to copy the report to the Governor of the relevant correctional centre, in the case of custodial corrections staff.
26. CSNSW should ensure that all sections of the COPP accurately reflect the current process for reporting allegations of misconduct and any change in process resulting from the implementation of Project Merge (discussed further below).

27. Consideration should be given to recommending that allegations of criminal conduct by CSNSW officers be required to be referred to NSWPF commands rather than to the CSIU in the first instance.
28. Clause 253 of the CAS Regulation should be amended to clarify the obligations of CSNSW staff (and potentially also other contractors, such as chaplains, employed in correctional centres) in relation to alleged criminal offending or misconduct by other officers. Consideration should be given to imposing a uniform reporting obligation (not differentiating between more junior and more senior correctional officers) and to requiring all reports to be made to the Commissioner of CSNSW (reflecting the importance of he or she becoming aware of alleged criminal conduct by CSNSW staff as soon as possible).
29. The Special Commission should recommend that the scope of the proposed targeted review into the handling of allegations of CSNSW staff involved in sexual misconduct in 14 CSNSW workplaces be expanded to include all NSW correctional centres, and to include reports from inmates, for the purpose of CSNSW obtaining an accurate understanding the scope of the problem of sexual misconduct by its staff.
30. The Special Commission should recommend that the minimum features of a new PSI model include:
 - a) clear documentation of processes and outcomes;
 - b) expected time standards for the conduct of different types of investigations, with reporting against time standards so that the potential for any backlog to be developed is identified early;
 - c) improved communication of both process and outcome of complaints to complainants;
 - d) ensuring that records of any disciplinary process and outcome are included on staff personnel files, to inform human resources decision-making.
 - e) mandatory, face to face training for CSNSW staff in relation to the new PSI model;

f) regular mandatory refresher training for staff in relation to their reporting obligations;
and

g) clear, auditable measures of PSI performance.

31. The new PSI case management system should be designed to enable rapid and clear collation by PSI of records concerning CSNSW staff the subject of misconduct allegations (including IRs not regarded as indicative of misconduct) and to assist PSI staff in recognising potential patterns of staff conduct. The replacement for the SIU function should be designed to be easy to use and once implemented, all CSNSW staff (not only those who are Intelligence Officers) should be trained in its intended function and how it should be used.
32. The Special Commission should recommend that all lateral appointments to executive positions within CSNSW be required to complete entry level correctional officer training, prior to any substantive commencement in their role.
33. The Special Commission should recommend that CSNSW implement the measures proposed by Ms Snell to reduce contraband in CSNSW facilities.
34. The Special Commission should further recommend that sophisticated detection for contraband on all persons coming into gaols including officers should be in place.



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DAVID LLOYD SC

6 December 2023



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JOANNA DAVIDSON