

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

**SUBMISSIONS OF HAMISH SHEARER IN RESPONSE TO OTHER PARTIES'
SUBMISSIONS**

1. To the extent that the other parties' submissions are not addressed below, Mr Shearer does not support those submissions unless consistent with his earlier written submissions.

Submissions of Commissioner Kevin Corcoran

Referral policy resolution

2. The submission in paragraph 11 of the submissions of Commissioner Kevin Corcoran (SCKC) is made about the email Mr Shearer sent on 12 September 2017. Mr Shearer accepted in his evidence, as cited in that paragraph, that he did not dissent from the decision about that policy made at the earlier meeting. Although, it might be said that Mr Shearer and other attendees at the meeting had responsibility, in part, for the decision, the most senior member of the meeting was then Assistant Commissioner Corcoran.
3. Mr Shearer explained, in re-examination to senior counsel assisting at T2550.16-25, in response to a question about whether he felt it open to voice his dissent to the decision, "Yeah, I don't think my voice in that meeting would have carried much weight. And I - I think it was the time that I, you know - you know, I wasn't particularly feeling, I guess, empowered in my role at that time." Counsel assisting identified the evidence about the relationship issues at this time between Mr Shearer and then Assistant Commissioner Corcoran at CSCA[1346]-[1372].
4. Given the hierarchical structure of CSNSW it was then Assistant Commissioner Corcoran who held primary and ultimate responsibility for the decision at the meeting.

The foundational officer training issue

5. As to paragraphs 47ff of the SCKC, Commissioner Corcoran supports counsel assisting's recommendation that there be a mandate that external recruits complete foundational officer training, see paragraph 64. In these circumstances Commissioner

Corcoran's submission seeking adverse findings against Mr Shearer about why he did not complete that training until recently are unpersuasive and apparently contradictory.

6. To the extent that it is necessary to resolve this issue, Commissioner Corcoran's own submissions at paragraphs 53-55 and 59-62 describe a culture where it would likely have been very difficult for an external recruit like Mr Shearer to undertake such training of his own accord: c.f. paragraphs 57, 63. Commissioner Corcoran in his submissions appears to also express a view that foundational officer training was not really necessary for new recruits.
7. The Special Commission should not accept Commissioner Corcoran's subtle submission about the credit of Mr Shearer in paragraph 56: see paragraph 3 of the submissions of Hamish Shearer. Mr Shearer's evidence on this general topic about his competence to perform his duties was contrary to his interests and was persuasive. Commissioner Corcoran's submission, in contrast, in paragraph 63 misses the fundamental point of the recommendation, that he now apparently accepts, that it should not be up to a new external recruit to arrange foundational training.

Submissions of Corrective Services NSW

8. The qualification Corrective Services NSW makes to Mr Shearer's credibility in paragraph 22 of their submissions should not be accepted: c.f. Corrective Services NSW submissions paragraph 194. It is not a proper challenge to Mr Shearer's credit. Mr Shearer at T2553.21-25 gave an answer about a hypothetical and ideal complaints process senior counsel assisting had previously raised at lines 9-13. Mr Shearer was accepting the proposition that followed from the practice after 12 September 2017 being different to that hypothetical and ideal practice. Mr Shearer accepted that the failure to have an ideal process where "*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*" was in part because of the very policy that made him the first person in the process where complaints were made. This was an honest and credible concession, even if led by senior counsel assisting. Similarly, the submission Corrective Services NSW makes in paragraph 162 should not be accepted to the extent it suggests a challenge to Mr Shearer's credit.

9. The submission Corrective Services NSW makes at paragraph 160 should not be accepted. The submission proceeds on a basis not established in the evidence. Mr Shearer was not aware that Mr Astill was the relevant officer the subject of the complaint Witness M raised in October 2017: see Statement of Hamish Shearer [51]; T2485.17-30; see also Corrective Services NSW's submissions at 189(g(iv)). Corrective Services NSW accepts that Mr Shearer was generally credible.
10. As to the uncited submission Corrective Services NSW makes about Mr Shearer in October 2017 in paragraph 182, this should be taken as it relates to Mr Astill as a present-day opinion. For the reasons explained above Mr Shearer was not aware this complaint was about Mr Astill in October 2017. The submission Corrective Services NSW makes in paragraph 185 should not be accepted as to Mr Shearer. As the complaint was with PSB, Mr Shearer did not prevent and could not have prevented Mr Hovey from being called to account.
11. A difficulty with the proposed findings about Mr Shearer, Corrective Services NSW submits in paragraph 189(g) should be made about him, is that they proceed on an unclear position as to Mr Shearer's actual knowledge and levels of speculation about what additional inquiries he could have made would have disclosed: c.f. (iv) with (iii). The Special Commission should not make findings in this form. Mr Shearer readily conceded in his evidence (T2485.38-43, 2487.35-39) that he was not inquisitive enough and it was a failure on his behalf not to make an inquiry with Mr Hovey about these allegations: see also CSCA [1188].
12. The Special Commission should also be reluctant to make such additional adverse findings in paragraph 189(g) given the lack of transparency by Ms Martin with Mr Shearer and her failure, at any time, before November 2017 to performance manage Mr Astill, noting that she renewed his higher services even at that time (see also Submissions of Hamish Shearer at paragraphs 5-16), and the role and failings by IB and PSB, the very bodies responsible for investigating and prosecuting the allegations: CSCA [1186]-[1187], [1189].
13. The Special Commission should not go beyond the findings proposed by counsel assisting on this issue at CSCA [1188].

Submissions of Shari Martin

14. Mr Shearer joins issue, save to the limited extent they are consistent with his own submissions, generally with the submissions of Ms Martin dated 22 December 2023: see generally his submissions and the CSCA.

23 January 2024

Barry Dean

Counsel for Hamish Shearer

153 Phillip

dean@153phillip.com.au