

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

**SUBMISSIONS IN REPLY FILED ON BEHALF OF MICHAEL HOVEY**

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**Introduction**

1. These submissions are filed on behalf of Michael Hovey in response to the submissions filed by Corrective Services NSW (CSNSW).
2. CSNSW has adopted the predictable posture of blame shifting, in which it seeks to deflect its responsibility for the systemic corporate failure that permitted Mr Astill's offending to go unchecked, by mounting a general attack on individuals such as Mr Hovey. This tactical approach – which as old as corporate structures themselves – of laying blame on individual employees for what is properly understood as a case of corporate negligence, suggests that CSNSW lacks any insight into how its deficient organisational structure, policies, staffing and resourcing, were contributing factors.
3. Mr Hovey respectfully submits that the Special Commission would reject the self-serving arguments advanced by CSNSW and prefer the more insightful approach adopted by Counsel Assisting. Mr Hovey submits that the latter approach is consistent with the well-established principles of corporate accountability, whereas the former is designed to deflect responsibility for the serious risk management failures which lay at the core of the matter.

**Further investigation**

4. CSNSW repeatedly submits at [113], [116], [143], [158], [165], and [166] that there are various matters involving Mr Hovey which “warrant further investigation”. Yet, CSNSW inexplicably fails to explain how those matters have managed to escape its scrutiny until now. As Mr Astill's former employer, CSNSW was duty bound to investigate the serious misconduct, including identifying any contributing internal control failures that required corrective action. Furthermore, CSNSW was best placed to assist the Special Commission during its hearings by and producing evidence and asking relevant questions. CSNSW's belated submissions about the need for further investigation, are but one example of the systemic failure of risk management failure involved in this case.

5. CSNSW similarly submits at [107] that Mr Hovey provided no explanation for the failure of PSB to receive complaints, citing his evidence at T1971.38- 42, T1981.1-42 and T2009.9-24. That submission does not do justice to Mr Hovey’s evidence. With respect to the first reference, Mr Hovey explained deficiencies in resourcing in the IB/SIU. With respect to the second, Mr Hovey explained that he was on a leave absence from October 2022, after which he retired. With respect to the third, Mr Hovey explained that the matter appeared to have been actioned locally by the Governor and Director.<sup>1</sup>
6. The Special Commission might rightly wonder whether the attempt by CSNSW to deflect responsibility toward individual employees which is exemplified in its submission, is indicative of a broader cultural problem within the organisation. If CSNSW is prepared to make such a brazen attempt at deflecting responsibility in a case where one of its employees was able to repeatedly commit serious acts of sexual violence – itself indicative of a complete and obvious failure of internal risk management controls – how can the public have any confidence that the root cause is not cultural?

#### **Failure of PSB to receive complaints**

7. CSNSW submits at [105] that a “lack of clarity, confusion or contradiction in policies is not an explanation or justification for a lack of action by relevant action”. That submission is emblematic of CSNSW failure to recognise that at the root of its failure to identify Mr Astill’s early offending and then intervene to prevent later offending, was the deficient system of internal governance. The Special Commission should find that it was explicable by inter alia the lack of a clearly articulated and documented system for responding to allegations of misconduct, as well as an insufficiently resourced division capable of reviewing reports of suspected misconduct in a timely manner. The submissions of CSNSW at [107], that it was “entirely the fault” of Mr Hovey that PSB did not receive relevant complaints, obfuscates the plethora of system failures that have been exposed by the Special Commission of Inquiry.
8. There is an uncomfortable tension in CSNSW’s submissions at [115] to [116]. On the one hand, CSNSW suggests that at best a single untrained analyst<sup>2</sup> in the IB/SIU should have been able to triage and prioritise referrals (which were being received in IRs) such that there were no resourcing issues – even though at times, no one was reviewing IRs.<sup>3</sup> Yet, CSNSW then proceeds to suggest that Mr Hovey unilaterally implemented a misconduct reporting system that raise deep concerns about *his* purpose.

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<sup>1</sup> T 8/11/2023 P-2009.26-2010.45

<sup>2</sup> T 10/11/2023 P-1985-1988.5

<sup>3</sup> T 10/11/2023 P-1996.19-26; P-1998.44-46

**Allegations of cover-up**

9. CSNSW insinuates at [180] – [181], and explicitly alleges at [147], that Mr Hovey engaged in a cover-up. Yet, CSNSW inexplicably fails to explain why it failed to investigate the matters prior to the appointment of the Special Commission, nor ask pertinent questions during the Special Commission’s hearings. It is trite that before inviting findings of the kind articulated in its written submissions, CSNSW was duty bound to give Mr Hovey an opportunity to answer them. It did not do so. Indeed, CSNSW did not even ensure that Mr Hovey was legally represented during the hearings held by the Special Commission. It has waited until the evidence was closed to ambush Mr Hovey. For these reasons the Special Commission should summarily reject CSNSW’s arguments.
10. As to the merits of CSNSW’s allegation, Mr Hovey did not have a motive to conceal any of Mr Astill’s offending. Mr Hovey and the IB/SIU were simply over-stretched and under-resourced. As submitted in response to the submissions of Counsel Assisting, the failures of the IB/SIU should be understood by the Special Commission in the context of the problematic structure of the Governance and Continuous Improvement Division; the fractured system of reporting misconduct; the compartmentalisation of information flow; the IBs over-extended responsibility for a diverse array of functions; the under resourcing and understaffing affecting the IB/SIU.
11. CSNSW on the other hand, had an obvious interest in ensuring that internal misconduct went unidentified, un-investigated, and/or unknown to the public, if only to avoid embarrassment and/or civil liability. The Special Commission might think that CSNSW disinclination to inquire into the systematic failures of its internal controls, reveals deep cultural problems within the organisation, and accounts for the chronic understaffing and under-resourcing which undeniably beset the IB/SIU.

**Adverse credit submissions**

12. CSNSW repeatedly criticises Mr Hovey as an unreliable witness.
13. For instance, in challenging Mr Hovey at [122] as giving self-serving evidence, CSNSW submits that the Special Commission would have been aided by receiving evidence from Assistant Commissioners Koulouris and Scassera. Yet, once again, CSNSW offers no explanation for why it did not secure such evidence and provide it to the Special Commission. Presumably, CSNSW has known since at least 2019, that the Assistant Commissioners would have information pertinent to inquiries that the organisation was duty bound to conduct.

14. CSNSW submits at [21] that aspects of Mr Hovey’s evidence in relation to the IB, PSB and PSC should be given limited weight on the basis of his credibility. CSNSW submits that there were “inexplicable” failures by the IB/SIU to act on intelligence relating to Mr Astill’s misconduct. For the reasons addressed in the submission filed for Mr Hovey in chief, those failures were explicable by the reality that CSNSW’s structure and resourcing was not fit for purpose. Indeed, the front-end of the IB/SIU, responsible for reviewing IRs, was a unit in name only – at times it had no intelligence analyst, and other times it had a single untrained analyst.
15. CSNSW further submits at [21] that Mr Hovey has “an interest in overemphasising systemic concerns (such as resourcing or policy issues) and obfuscating the misconduct process.” That submission again deflects attention from the proper focus – that is, CSNSW underemphasising the importance of the systemic failure. Unless CSNSW is seriously contending that Mr Hovey was motivated to conceal Mr Astill’s crimes – a very serious allegation and one which CSNSW failed to put to him, then it is common sense that the institution’s systems failed. The Special Commission can infer from CSNSW’s tactics that it recognises that there was a complete failure of corporate safeguards during the time that Mr Astill was offending, and a complete cultural failure post his offending to willingly confront the institutional failure. Since CSNSW appears unable or unwilling to confront that reality, the public interest weighs heavily in favour of this Special Commission filling the void, less it is only a matter of time before the next predator exploits CSNSW systems.
16. Mr Hovey submits that the Special Commission should reject the criticisms of CSNSW and prefer Counsel Assisting’s submission at [1773] characterising him as a “frank” witness.

## **Conclusion**

17. CSNSW submits at [237] that the failures of IB and the PSB are “puzzling”. There was nothing puzzling about them. CSNSW had, and perhaps still has, a system of governance which is not fit for purpose: the structure was overcomplicated – involving multiple units and departments (including IB, SIU, PSC, PSB, CSIU) with confused areas of responsibility; the SIU which was responsible for receiving and reviewing reports of misconduct was a unit in name only – comprising Mr Hovey and one or at most two others; the leader of the IB/SIU was performing multiple roles – Mr Hovey was both the Director of the IB and the Investigations Manager.<sup>4</sup>

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<sup>4</sup> T 10/11/2023 P-2031.13-15

18. Rather than acknowledge its failures and take constructive measures to address their root cause, CSNSW is attempting to scape-goat Mr Hovey. Despite CSNSW having had authority and responsibility to investigate the systemic failures which permitted Mr Astill's offending to continue for as long as they did, it has the temerity to criticise the investigation conducted by the Special Commission of Inquiry as being incomplete. If, as CSNSW submits, there are matters left unexplained at this late juncture, it should look inward for sources of revelation.
19. The Special Commission should reject the spurious arguments made by CSNSW in support of its case that individuals –the most defenceless targets - are responsible. This was a case of institutional failure, and findings directed at the institutional level are required if appropriate correction action is to result.

25 January 2024



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