

SPECIAL COMMISSION OF INQUIRY

INTO OFFENDING BY FORMER CORRECTIONS OFFICER

WAYNE ASTILL AT DILLWYNIA WOMEN'S CORRECTIONAL CENTRE

Submissions in reply
on behalf of Ms. Shari Martin

1. In these submissions, Ms. Martin indicates her reply to certain matters raised in the submissions put by the NSW Commissioner of Police, CSNSW and Mr. Shearer.

Submissions of NSW Commissioner of Police

2. *Issue - allegation that Ms. Martin should be referred for consideration whether she committed misconduct in public office for not adopting a 'belt and braces' approach to reporting*
3. With respect to the submission by Counsel Assisting that Ms. Martin should be referred for reporting of matters to the Investigations Branch but not also to the NSW police force, which allegation was addressed at paragraphs 3 – 23 in Ms. Martin's written submissions (and see especially paragraphs 14 and 16 of those written submissions):
4. Ms. Martin adopts and supports the submissions made on behalf of the NSW Commissioner of Police about the legal obligations and professional standards of CSIU police officers. More particularly, Ms. Martin supports and adopts paragraphs 16, 17, 18, 19, 20, 21, 23 and 28 in the submissions made on behalf of the NSW Commissioner of Police. Ms. Martin also supports and adopts paragraphs 8, 27, 30 and 36 in the submissions made on behalf of the NSW Commissioner of Police.

Submissions on behalf of CSNSW

5. *Issue - allegation that Ms. Martin should be referred for consideration whether she committed misconduct in public office for not adopting a 'belt and braces' approach to reporting*
6. With respect to the submission by Counsel Assisting that Ms. Martin should be referred for reporting of matters to the Investigations Branch but not also to the NSW police force:

7. Ms. Martin adopts and supports the submissions made on behalf of CSNSW, which submissions tend to show that Counsel Assisting has ignored the critical points that (a) the evidence showed that Ms. Martin's approach was not inconsistent with any requirement which she knew about at the time and (b) that Ms. Martin was not privy to the problems within the Investigations Branch, which have been exposed by evidence before the Special Commission.
8. Ms. Martin adopts and supports the submission at paragraph 109 in the CSNSW submissions that:

“Ms. Wright's evidence supports the system as understood by Ms. Martin, not whatever Mr. Greaves considered it to be. No doubt it would have been helpful for Ms. Martin to deal directly with the PSB but the system at the time did not require that. What was required was for the IB, through Mr. Hovey, to attend to the task once it received a referral from the PSB which manifestly did not occur for reasons which are unexplained and warrant an investigation by an appropriate agency.”

9. With respect, that submission, crisply and eloquently, (and in addition to the matters previously explained in Ms. Martin's submissions in chief and having regard to the fault element needed to establish the common law offence of misconduct in public office) explains why Ms. Martin should not be referred to the Director of Public Prosecutions.
10. Ms. Martin also adopts and supports the submission at paragraph 109 in the CSNSW submissions that *“The emphasis on the perceived failings of Ms. Martin tends to obscure the failings within the IB and the PSB.”*
11. Ms. Martin also adopts and supports the submissions at:
 - a) paragraph 119,
 - b) paragraphs 113, 114 and 115,
 - c) paragraph 112,
 - d) paragraphs 156 and 157, and
 - e) the second and third sentences in paragraph 107

in the CSNSW submissions.

12. Ms. Martin respectfully submits that the Special Commission should reject Counsel Assisting's approach of trying to scapegoat an individual (Ms. Martin) by referring her for a prosecution that is likely to fail (including for the reasons given in the CSNSW submissions at 109) and ignore the serious issues why the IB, despite the eight relevant complaints that went to it, did not handle those complaints appropriately.

13. *Issue – reliability of Ms. Martin's evidence versus Sarah Ward's evidence*

14. With respect to the submission of Counsel Assisting that Ms. Martin's account in her witness statement and oral evidence at the public inquiry, of how she supported Ms. Sarah Ward in making her complaint against Mr. Astill should not be accepted, but rather that the Special Commission should accept Sarah Ward's allegation that Ms. Martin somehow "sat in" on a NSW detective's witness with Ms. Ward, which allegation was addressed in Ms. Martin's written submissions at paragraphs 124 – 126:
15. Ms. Martin adopts and supports the submissions made on behalf of CSNSW at paragraph 19.
16. *Issue – reliability of Ms. Martin's, Ms. O'Toole's and Mr. Paddison's evidence versus Witness C's evidence*
17. With respect to the submissions of Counsel Assisting that Ms. Martin was an unreliable witness because her evidence disagreed with Witness C's evidence (see CA submissions at [1110] that witness C was a reliable witness and her evidence should be preferred over the evidence of Ms. Martin and Ms. O'Toole; and CA submissions at [1115] that Witness C's evidence should be preferred over the evidence of Ms. Martin and Mr. Paddison):
18. (Noting that each of those submissions and the flaws behind them have already been addressed in Ms. Martin's submissions in chief (at paragraphs 87 – 90 and 96 - 97). It is submitted that the evidence of Ms. Martin, Ms. O'Toole and Mr. Paddison should be preferred where it diverged from Witness C's evidence).
19. Ms. Martin adopts and supports the submissions made on behalf of CSNSW at paragraphs 20 and 133, regarding the need for the Special Commission to treat Witness C's evidence at large, with caution, including for the reasons of Witness C's hostile perspective towards CSNSW, her criminal history including dishonesty related offences and the divergence between her evidence and Ms. Berry and Ms. Barry.
20. *Issue – Ms. Miskov allegation about 'ripping up' a report*
21. Notwithstanding agreement with certain submissions made by CSNSW, as specified above in these submissions, Ms. Martin disputes CSNSW submissions which specifically impugn her credibility and her behaviour more generally. Ms. Martin disputes the attack on her in the CSNSW submissions at paragraphs 169 to 171 and the reference to Ms. Martin's "credibility" contained in paragraph 172 therein.
22. Three matters raised by CSNSW against Ms. Martin require specific attention.
23. As to the allegation made by Ms. Miskov about a person ripping-up Ms. Miskov's report of misconduct against her by Mr. Astill and witnessed by Mr. Giles, Ms. Martin does not understand and disputes the CSNSW submissions (at paragraph 57.(d) in CSNSW

submissions) that this happened in “Ms. Martin’s office” and that the meeting involved Ms. Martin and what Ms. Martin “stated” about how “the matter” would be handled.

24. No evidence is cited in support of the submission that the meeting took place in Ms. Martin’s office.
25. The uncontested evidence was that the meeting took place in Mr. Paddison’s office. The evidence, it will be recalled, was that Ms. Miskov’s report had been delivered by Ms. Miskov to Ms. Martin’s office at a time when Ms. Martin was not at DCC, that Ms. Miskov’s subsequent meeting took place at Mr. Paddison’s office, that the female who attended the meeting was not known to Ms. Miskov and was merely assumed by her to be Ms. Martin, and that no discussion did take place at the meeting about the subject or “matter” engaged with in Ms. Miskov’s report.
26. *Issue – alleged Governor’s prerogative to remove correctional officers from one centre and transfer them to another centre*
27. CSNSW make a submission against Ms. Martin that she should have removed Mr. Astill from DCC and (implicitly) that she had the power or authority to do so (e.g. CSNSW submissions at 170 and 108, last sentence).
28. No evidence is cited for the (implicit) submission that Ms. Martin had the power or authority to remove Mr. Astill from DCC to another correctional centre.
29. Counsel Assisting, quite properly, never suggested to Ms. Martin that she had the prerogative to move Mr. Astill to another correctional centre.
30. Such a power would be extraordinary. Imagine a scenario where a corrections officer living in Sydney, has had made allegations against him, those allegations have gone to IB for investigation, and before the regional director Mr. Shearer or IB has come back to the Governor with advice on the outcome of the investigation, and advice on what both can and should be done about the officer, that the Governor could simply direct the corrections officer to transfer to, say, Lithgow Correctional Centre or Tamworth Correctional Centre.
31. Ms. Martin’s evidence was direct and clear that she did not have the power to relocate an officer to another correctional facility: transcript 16 November 2023, p. 2385/29 – 36.
32. If that evidence were sought to be contradicted, any party who sought to contradict it was obliged, as a matter of fairness, to put to Ms. Martin the clauses in the instrument or award provision to Ms. Martin when she gave evidence, which provided her with the extraordinary power now suggested by CSNSW.
33. The submission is also contradicted by an important interaction with Mr. Hovey that was described in Ms. Martin’s witness statement at paragraphs 85 - 94 (see Tab 59A Tender

Bundle 2, AST.002.013.0059_0017 and AST.002.013.0059_0018). The evidence, it will be recalled, was as follows:

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85. *The NSW police came and spoke to Sarah [Ward] in the conference room. One of the police officers then came to me and said Sarah didn't want to talk to them, that she was too scared and asked if I could help them by getting her to talk. I agreed.*

86. *Sarah then came back in to my office I spoke to her.*

87. *Then Sarah back to my office. I told her that she had done nothing wrong and needed to talk to the police about what Astill had said to her. I gave her an undertaking that she would be safe. I gave her an undertaking that I would keep Astill away from her. She said "Ok Shari I will talk to them."*

88. *She then left my office, went back to the conference room. I understand she gave the police a statement.*

89. *At no time throughout all these incidents about Mr. Astill and his alleged misconduct, did any of these prisoners ever tell me they were being sexually assaulted and at no time did any staff tell me th[at] Mr. Astill was committing sexual assault.*

90. *Astill was on some sort of leave at the time. This was also just before I was going to retire.*

91. *My replacement was someone called Adam Schreiber who telephoned me to advise he was replacing me. I told him about this and that I had given an undertaking to Sarah Ward that she would be kept safe. He told me that the police were going to do some sort of operation in the prison about this.*

92. *I then telephoned Mick Hovey, the Director of Professional Standards. I said to Mr. Hovey that Astill can't come back here. I said I had given the inmate an undertaking that she would be safe. Mr. Hovey said Astill was coming back. He didn't tell me why and I didn't let on that Mr. Schreiber had already told me there was going to be a police operation. I said words to the effect "This is an absolute disgrace. If he comes back while I'm still here, I'm not letting him in." I also said something like "You are negligent in your duty. If he comes back and something happens to that woman or any other woman, you lot are at fault."*

93. *I had already decided to leave by this time but the incident confirmed in my mind that the chain of command outside the prison not only didn't provide much help, but seemed to make things worse.*"
94. The evidence demonstrates that Ms. Martin, as shown by her conduct, plainly did not believe she herself had any power or capacity to transfer Mr. Astill to another corrections centre.
95. The evidence also demonstrates that a higher-ranked person in CSNSW, and one whom, Ms. Martin would at that stage have assumed would have full knowledge of the facts raised in the investigations relating to Mr. Astill, was actually requiring Mr. Astill to stay at DCC, as late as December 2018!
96. *Issue: generalised, revisionist slurs against Ms. Martin*
97. At paragraph 171 in the CSNSW submissions there is a submission that Ms. Martin permitted "low standards" to operate at DCC and engaged in the type of behaviour that constituted these "low standards" of behaviour.
98. These sorts of revisionist, after-the-event, vague and generalised slurs against Ms. Martin should not be accepted by this Special Commission, it is respectfully submitted.
99. Some salient facts are clear. Ms. Martin worked for 32 years in CSNSW. At no stage did CSNSW ever take any disciplinary action against her. At no stage did CSNSW ever place Ms. Martin on a performance review for her management of DCC or Emu Plains CC.
100. Roughly during the same period under review by the Special Commission, there was a Governor who was removed from his position and demoted for six months, there was a Governor who was fined, there was a Governor who was suspended without pay and there were two Managers of Security who were demoted for periods of twelve months.
101. At no stage were any of those sorts of actions, which were available to CSNSW, taken against Ms. Martin.
102. (There was of course the singular occasion in March 2017 when Mr. Shearer, to Mr. Corcoran's knowledge, was contemplating the raising of a performance management plan in relation to Ms. Martin. Mr. Shearer did not bother pursuing that. Mr. Corcoran, who did know that Ms. Martin and Mr. Shearer had a difficult relationship, never made any follow-up inquiries with Mr. Shearer as to the outcomes of the review or inquire with Mr. Shearer subsequently, as to whether Ms. Martin's

performance had improved. If Mr. Cororan genuinely did have a concern about Ms. Martin's performance – which is not accepted – no doubt he would have been keen to follow-up the outcomes of any performance management plan in relation to Ms. Martin. But Mr. Corcoran's evidence before the Special Commission appears to concede that he never did anything like that).

103. Even apart from some sort of formal action that could have been taken against Ms. Martin if she truly did (which is denied) engage in “low standards”, then why were not informal means taken by CSNSW to correct, direct or re-train Ms. Martin? For example, Mr. Corcoran met with Ms. Martin during conferences, functions or when visiting the two gaols under Ms. Martin's management. Mr. Corcoran also had access to telephones and email communications. There were ample opportunities for informal mentoring, rebuking or support.
104. Mr. Corcoran's evidence, in late 2023, that he lacked confidence in Ms. Martin is wholly belied by his complete failure, during the time of the events considered by this Special Commission, to provide any informal critique or feedback to her about her performance, let alone by CSNSW's failure to take any formal actions against her.
105. The revisionist nature of CSNSW's criticisms of Ms. Martin can also be amply demonstrated by the “*local investigation into serious misconduct*” 11 – 13 October 2017 email transmission chain (see CSNSW.0001.0032.0130_001 and CSNSW.0001.0032.0130_0012) that was the subject of submissions in Ms. Martin's submissions in chief.
106. As the submissions by Ms. Martin in chief about that email chain previously addressed, Ms. Martin had explained to Mr. Shearer her knowledge about what was going on in regards to the intelligence gathering then going-on. But the point for present purposes is, even if it is assumed that proper procedure was not being followed, then none of the senior CSNSW staff who were parties to that email chain (Peter Robinson, Doug Greaves, Hamish Shearer, James Koulouris and Michael Hovey) ever went back to Ms. Martin, in October 2017 or any time thereafter, with advice or training that proper procedure was not being followed in DCC by Ms. Martin or her executive within DCC.
107. The lack of direction or correction by Mr. Shearer is especially striking, as just weeks after this, and the conversation between Ms. Martin and Mr. Shearer that is referred to in the 13 October 2017 2.07 p.m. email transmission, Ms. Martin called out to Mr. Shearer for his help in dealing with Mr. Astill and Mr. Shearer came to DCC and met with Mr. Astill and Ms. Martin.
108. There is also a considerable unfairness in the submissions of CSNSW in the generalised attack against Ms. Martin.

109. An astonishing revelation in the evidence before the Special Commission is that not only does it appear that Mr. Astill was propounding an entirely false story that Ms. Martin had some sort of special relationship with him, but that corrections officers were blithely accepting that deceit, without ever testing it, and actually discouraging inmates from passing on information to Ms. Martin (e.g. Ms. Berry, transcript p. 274/19-29) or were themselves deciding they did not have confidence to take matters to Ms. Martin because they assumed or believed (wrongly) that Ms. Martin was “*very friendly*” with Mr. Astill (e.g. Mr. Clark, transcript p. 742/4 – 37).
110. Ms. Martin faced a very difficult task in her role as general manager of DCC, because roughly half of her time had to be devoted to her role as general manager of Emu Plains CC. Ms. Wright gave evidence in support of that point. (It is also submitted that CA’s proposed recommendation 7, namely that the Commission should recognise a stand-alone Governor for DCC, constitutes support for this submission). Ms. Martin’s ability to perform that difficult role was fundamentally undermined by CSNSW staff who accepted Mr. Astill’s deceit, never tested it, and spread it further by passing it on to inmates or internalising it and believing they could not take matters to Ms. Martin. How could Ms. Martin perform her role to the best of her ability in such circumstances?
111. The generalised attack by CSNSW on Ms. Martin and alleged “low standards” is unfair in not recognising that Ms. Martin’s ability to perform her role was undermined by the deceit which Mr. Astill appears to have initiated and which was then accepted and spread further by staff employed by CSNSW.

Submissions on behalf of Mr. Shearer

112. *Issue: November 2017 meeting involving Mr. Shearer and Mr. Astill and January 2018 mediations - Ms. Martin’s account is plainly to be preferred*
113. First, Ms. Martin supports and adopts the submission that “*His [Mr. Shearer’s] evidence should be treated with caution and viewed through the lens of a person who was attempting to shift blame to others*”: see paragraph 10, submissions on behalf of Mr. Corcoran.
114. Secondly, the submissions on behalf of Mr. Shearer (e.g. at paragraph 7 therein) that seek to reject Ms. Martin’s evidence about what she told Mr. Shearer before his attendance at the meeting with Mr. Astill, and then the attempt to purport to minimise Mr. Shearer’s knowledge and involvement at the mediation, as part of his assertion that he was simply there to give “*her message*” “*more weight*”, (see the references at paragraph 6 in the submissions on behalf of Mr. Shearer) are implausible.
115. Mr. Shearer’s suggestion that Ms. Martin would not have sent in reports about Mr. Astill by November 2017, should be rejected. Multiple intelligence reports about

Mr. Astill had been submitted, as at November 2017, by DCC. (For example, IR-17-2051 submitted by Ms. Kellett on or about 30 July 2017 concerning Witnesses V and R: see exhibit 3, TB3, Vol. 10, tab 170).

116. Indeed, just weeks beforehand, in mid-October 2017, Mr. Shearer knew that Ms. Martin knew about intelligence gathering with respect to allegations involving Mr. Astill. On 13 October 2017 at 9.57 a.m., Mr. Shearer received an email transmission from Doug Greaves saying “*Governor Shari Martin is aware of his investigation*” and detailing an allegation involving “*serious misconduct*” by Mr. Astill (see CSNSW.0001.0032.0130_001 and CSNSW.0001.0032.0130_0012). Mr. Shearer then had a discussion with Ms. Martin about the process that was being pursued at DCC.
117. Moreover, Mr. Shearer’s downplaying of his knowledge and role in these events is plainly specious. It was an unprecedented and unique event in DCC history for Mr. Shearer to come out to DCC to attend a meeting of the sort that he attended with Mr. Astill. Mr. Shearer’s involvement came against the direct background of the mid-October 2017 communications to him about a “serious misconduct” issue the subject of intelligence-gathering at DCC.
118. Mr. Astill certainly appreciated the direct intervention of Mr. Shearer in this matter and appreciated that Mr. Shearer was not there simply to “*add weight*” to some personal message of Ms. Martin. Mr. Astill wrote to Mr. Shearer directly on 3 January 2018 at 9.28 a.m. (CSNSW.0002.0023.2976_0001), attaching his response in full to the email transmission, and saying “*Sir ... If you wish to discuss any of the content please contact me.*”
119. As to the mediation (there were in fact three mediations, two on 16 January 2018 and one on 25 January 2018: see Mr. Woods’ witness statement) as being Mr. Shearer’s idea and initiative, the contemporaneous evidence tends to support that. An important fact which Mr. Shearer’s submissions do not address is that Mr. Shearer wanted to come out to DCC again, soon after his meeting with Mr. Astill, this time to speak to Mr. Woods in person about the upcoming mediations (see 3 January 2018 at 11.27 a.m. email from Mr. Shearer to Mr. Woods: CSNSW.0002.0023.2982_0001). This email transmission amply shows that it was Mr. Shearer who had “*a real investment*” “in the mediation process”, to use the words of Mr. Shearer’s submission (at paragraph 16(d)), and Mr. Shearer took the additional initiative of coming out to DCC to see Mr. Woods before the mediations.
120. Mr. Woods was directly reporting to Mr. Shearer before the mediations (see 3 January 2018 at 11.21 a.m. email from Mr. Shearer to Mr. Woods: CSNSW.0002.0023.2982_0001).

121. Mr. Woods then directly reported on the outcome of the mediations to Mr. Shearer on 13 February 2018 at 10.21 a.m. and copied Ms. Martin on the report to Mr. Shearer (CSNSW.0002.0023.3543_0001).
122. Mr. Shearer had “*a real investment*” in the mediations, and the communications between Mr. Shearer and Mr. Woods bear that out.
123. The other odd thing about this whole issue is that it should not be forgotten that there was a chain of command. Mr. Shearer was directly above Ms. Martin in that chain of command.
124. Even if (which is denied) Ms. Martin had the idea to hold a mediation (which would contradict her response to every single other allegation involving inmates/CS officers that came to her attention) Mr. Shearer could have, and was obliged, as a matter of his duty, to tell her that it was not a good idea.
125. Mr. Shearer’s oral evidence seeking to explain, on his account, why he “permitted” the mediations is remarkable (T2502/22) “*I don’t know what had occurred from the report mentioning it to Shari to 25 November to this point. She was on leave. I’d received this on 3 January, just before the mediation was supposed to occur. I sort of was in a quandry and I felt that Thomas Woods, who I had heard good things about ... would receive these comments.*”
126. Mr. Shearer was no subordinate of Ms. Martin who had to go along with some idea of hers (which is denied) and with which he did not agree. Mr. Shearer was no subordinate of Mr. Woods. He could direct Mr. Woods as he saw fit. As for ‘not knowing what had occurred’, Mr. Shearer could directly talk to Mr. Woods and even see him in person: which is precisely what Mr. Shearer decided to do on 3 January 2018. Mr. Shearer had ample time from receiving Mr. Astill’s email and report on 3 January 2018, including Mr. Astill’s invitation to contact him to discuss matters. The mediations took place on 16 and 25 January 2018. Mr. Shearer did know what was going on. He could contact Mr. Woods if he didn’t know or direct Mr. Woods not to proceed with the mediations.
127. Yet again one can see the accuracy of the submission that “*His [Mr. Shearer’s] evidence should be treated with caution and viewed through the lens of a person who was attempting to shift blame to others*”: see paragraph 10, submissions on behalf of Mr. Corcoran.
128. Finally, Mr. Shearer’s submissions about Ms. Martin “not believing inmates” should be rejected. It is a submission that cannot stand with Ms. Martin’s conduct in inviting and asking for Mr. Shearer’s direct support in November 2017 to deal with inmate allegations against Mr. Astill. It cannot stand with Mr. Shearer’s then-unprecedented intervention and agreement to come to DCC and meet with Mr. Astill.

It is a submission that cannot stand with the interactions between Ms. Martin and both Sarah Ward and Elizabeth Cox, which show that Ms. Martin did believe those inmates and act to protect them. It is a submission which cannot stand with the eight or so allegations of inappropriate behaviour by Mr. Astill that were sent to IB when Ms. Martin was Governor of DCC.



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