



**SPECIAL COMMISSION OF INQUIRY INTO OFFENDING BY FORMER
CORRECTIONS OFFICER WAYNE ASTILL**

**PUBLIC HEARING
SYDNEY**

**THURSDAY, 28 SEPTEMBER 2023
AT 10AM**

PUBLIC HEARING DAY 1

APPEARANCES

**MR D. LLOYD SC appears with MS J. DAVIDSON as counsel assisting.
MR J. SHELLER SC appears with MS C. MELIS for Corrective Services NSW.
MR D. VILLA SC appears with MR BUTERIN for a group of current or former
inmates at Dillwynia.
MR M. BURNS appears for a group of Correctional Officers.**

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<THE HEARING COMMENCED AT 10.05 AM

COMMISSIONER: Be seated. On 28 July this year, following a request from the Minister for Corrections, under section 82 of the Government Sector Employment ACT 2013, the Premier directed me to inquire into a report and make
5 recommendations on the circumstances related to the sexual offences committed by Wayne Astill at Dillwynia Women's Correctional Centre. Shortly after I commenced work pursuant to this direction, it became apparent, and having regard to the nature of the allegations which would be made, and claims of
10 privilege which were likely to be made, the powers under the Government Sector Employment Act would prove to be inadequate.

For that reason, I wrote to the Minister and indicated the difficulties and requested that the direction I had been given should be terminated and instead I should be
15 appointed a Commissioner under the Special Commissions of Inquiry Act 1983, to inquire into the issues relating to, or arising from, the conduct of Mr Astill. The Premier accepted my request and on 13 September 2023, I received a commission from Her Excellency the Governor under the Special Commissions of Inquiry Act.

20 Wayne Astill as a prisoner officer at Dillwynia Women's Correctional Centre achieving the level of acting chief corrections officer. Following a trial with a jury he was convicted of multiple counts of sexual assault and other offences. Mr Lloyd of King's Counsel will provide greater detail of these offences shortly. He also pleaded guilty to seven counts of misconduct in public office. I understand
25 that the authorities may be investigating other matters relating to Mr Astill but they are not for this inquiry. This inquiry is confined to an examination of the circumstances relating to the offences in respect of which Mr Astill has been convicted.

30 To assist the inquiry, Mr David Lloyd of King's Counsel and Ms Joanna Davidson, have been appointed. They will be assisted by a small team of lawyers and investigators. During the inquiry, evidence will be given by some inmates or former inmates of Dillwynia. There is a concern held by some that by giving their evidence which may be critical of others, including prison officers, they may be
35 vulnerable to acts of retribution. The inquiry trusts that this will not be the case. The responsibility lies on those who are responsible for the welfare of prisoners to ensure that this does not happen.

40 My Letters Patent direct me to report by 15 December this year. Although that is a tight deadline I will endeavour to comply with it. If it is to be met, I will need the cooperation of all parties who have an interest in the inquiry.

45 With that in mind, before I ask Mr Lloyd to address the commission, are there any applications for leave to appear?

MS MELIS: May it please the inquiry, my name is Melis, M-e-l-i-s, initial C. I seek your leave to appear, together with James Sheller SC for Corrective Services New South Wales, I am instructed by Dr Ashley Tsacalos of Clayton Utz.

5 **COMMISSIONER:** You have leave. Anyone else?

MR VILLA: If it please the commission, my name is Villa, V-i-l-l-a, of senior counsel and I seek leave along with Mr Buterin, B-u-t-e-r-i-n, of counsel instructed by Mills Oakley to appear on behalf of certain inmates and former
10 inmates of Dillwynia.

COMMISSIONER: You have leave.

MR VILLA: Thank you, Commissioner.
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MR BURNS: Your Honour, Michael Burns, B-u-r-n-s, initial M, I am a solicitor from McNally Jones Staff Lawyers. I am instructed on behalf of seven Correctional Officers who are known to the commission. We were brought into this, instructed, received instructions yesterday in relation to this. We have no
20 counsel yet. I have, yesterday, initially made an application for leave for six; in correspondence after that a further Correctional Officer was added which I didn't receive a formal request for leave but I understand that that is known to the commission as well.

25 **COMMISSIONER:** Can you make it known to Mr Lloyd who are your clients presently?

MR BURNS: Yes, I think, as I understand, he is aware. Mr Lloyd is also aware that I have an application to make for the clients that I have represented concerns
30 a matter that you have already dealt with in your opening and that is in relation to the protection of their identities, and the instructions are to seek the identity be protected, including closed court and non-transmission of proceedings while those - and de-identification of those particular witnesses as a concern for their safety as Correctional Officers for fear of retribution, as you have indicated, from
35 former inmates and other former Correctional Officers and also families, et cetera.

COMMISSIONER: You should not misunderstand me. I was not talking about your clients.

40 **MR BURNS:** It relates to the - it's for the same -

COMMISSIONER: We will have to discuss that.

MR BURNS: That's -
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COMMISSIONER: The effect is you are asking me to close the inquiry?

MR BURNS: At the time of those, yes.

COMMISSIONER: That's the effect of what you are asking for? .

5 **MR BURNS:** Yes, at the time of the witnesses that I represent give evidence, yes.

COMMISSIONER: Yes, which would have the effect of closing the inquiry.

MR BURNS: Well, at least at that time, yes.

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COMMISSIONER: We can talk about that in due course.

MR BURNS: Thank you, your Honour.

15 **COMMISSIONER:** Otherwise you have leave.

MR BURNS: Thank you.

COMMISSIONER: Mr Lloyd.

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MR LLOYD: May it please the Commission, with respect to Mr Burns's application, Commissioner, an aspect of that needs to be dealt with now because subject to the fate of what I understand to be the application for non-publication orders with respect to the seven officers for whom Mr Burns appears, but in this opening, I intend to refer to at least some of those people by name.

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Now, if there is to be an application for orders of the kind identified by Mr Burns, then we will need to deal with that now before I proceed. So, I'm happy to proceed in whatever way is convenient to you. I can either outline what I understand to be the issues and Mr Burns can reply or Mr Burns can outline the position

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COMMISSIONER: Mr Burns, it's your application. If you wish to pursue it at this stage, you should do so.

35 **MR BURNS:** There's not really much more to it, apart from the general sense from the Correctional Officers that they are seeking for their identities to be preserved. The nature of Correctional Officers inside these institutions is they are dealing with inmates and in the nature of this inquiry other prison officers who may or may not be pleased with what they have to say. And they consider themselves to be de-identified ordinarily in relation to their employment. For example, they are not on the electoral roll. They are not permitted to wear their uniforms outside of their employment area.

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COMMISSIONER: That has to do with identifying them in the public domain.

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MR BURNS: Then this is also now in the public domain as well.

COMMISSIONER: Let me illustrate it. I'm not on the electoral role because I'm a judge, I'm pretty well-known in the community, at least some parts of the community.

5 **MR BURNS:** I've already mentioned I'm aware of that to counsel assisting.

COMMISSIONER: I am not sure where this goes, frankly.

10 **MR BURNS:** I need to make the application, if you would like to dispose of it in the way you see fit.

COMMISSIONER: I will give you reasons later, short reasons. The fundamental problem is the Act assumes that the inquiry will occur in public.

15 **MR BURNS:** I'm aware of that.

COMMISSIONER: Is there anything more you want to say?

20 **MR BURNS:** No.

COMMISSIONER: I will decline the application and I will publish some reasons in due course.

25 **MR BURNS:** Thank you very much.

COMMISSIONER: Yes, Mr Lloyd?

30 **MR LLOYD:** It would be convenient to at least read on to the record the submission. It's short. We received it yesterday. What was said in writing yesterday on behalf of the seven officers Mr Burns is here for is as follows. Each of the applicants are concerned and apprehensive about giving evidence to the inquiry because their identity as Correctional Officers may be disclosed to persons who are currently inmates in New South Wales correctional centres or have been inmates in correctional centres where the applicants have worked.

35 This raises concerns, so the submission goes, not only for their own safety but also for that of their families should their identities be disclosed in any other hearings.

40 The next submission made is each of the applicants apprehend that their conduct as Correctional Officers while working at Dillwynia during the relevant time may be challenged during the inquiry to their detriment and the final point advanced is each of the applicants apprehend that they must be the subject of an adverse allegation.

45 **COMMISSIONER:** Yes, thank you.

MR LLOYD: Unless you want submissions from me about that?

COMMISSIONER: No, I don't need them, Mr Lloyd.

MR LLOYD: May it please the commission.

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This is the first day of the public hearing of the special inquiry into offending by Wayne Astill. Between 2009 and February 2019, Astill was a corrections officer at Dillwynia Correctional Centre. In August 2022 Astill was convicted of 34 criminal offences. All of the offences involved the sexual abuse of inmates at Dillwynia.

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22 of the offences were in the nature of sexual offending and the other 12 were misconduct in public office offences. Astill pleaded guilty to six of the misconduct offences. The offences for which Astill was convicted were committed against 13 women inmates of Dillwynia in the period between March 2014 and February 2019. Astill was sentenced to an aggregate sentence of 23 years in gaol and presently is serving his sentence. His earliest possible release date is 21 December 2037.

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The sentencing judge described some of Astill's conduct as opportunistic and brazen. Other offending by Astill involved a wilful disregard for his duty to inmates and to the community. Her Honour said that his offending was a gross breach of trust to the community and to the inmates. And that Astill exploited his own public office and position for his own sexual gratification.

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His misconduct involved sexual abuse of 13 women one of whom was pregnant at the time of the assault, over about five years. Despite the brazen and shameless nature of Astill's offending, the length of time over which it occurred, and the number of women abused, no action was taken against Astill by Corrective Services in relation to that offending until the New South Wales Police charged and arrested him on 20 February 2019. Two days later he was suspended from his position as senior Correctional Officer at Dillwynia.

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Commissioner, a key issue to be explored at this public hearing is the extent to which Corrective Services officers knew about Astill's offending and why no action was taken to address his abuse of the women who were inmates. It is those circumstances which bring us to the first day of the public hearing of this inquiry. As you know, Commissioner, you are required to report into, inquire into, report and make recommendations on the circumstances related to the sexual offences committed by Astill at Dillwynia, including the following matters which are the terms of reference.

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First, whether any other employee of Corrective Services had knowledge or reasonable suspicion of the offending and, if so, when, and what steps they took in relation to that knowledge or submission. Second, whether the management at Dillwynia had knowledge or reasonable suspicion of the offending and, if so, when and what steps it took in relation to that knowledge or suspicion.

Third, the systems of supervision and oversight that applied in relation to Astill at Dillwynia, their adequacy and how they should be improved to prevent the risk of serious offending. Fourth, the policies and procedures available at Dillwynia for inmates or staff to raise complaints about misconduct including sexual offending by Correctional Officers. Fifth, whether the circumstance related to Astill's offending and the findings of you, Commissioner, require further consideration of broader site or case-specific or Corrective Services investigations.

Six, whether the circumstances related to Astill's offending and your findings require further consideration of policies and processes for professional oversight and/or the conduct of professional standards investigation that apply in Corrections New South Wales and whether they are sufficiently independent and robust. And finally, whether any matters should be referred to the Independent Commission Against Corruption or the New South Wales Police Force for further investigation.

The Special Commissions of Inquiry Act in section 7(1) provides that you may hold hearings in connection with this inquiry and I note that you have determined to hold this hearing, section 7(2) provides that where you have determined to hold a hearing, the hearing shall take place in public unless you are satisfied that it is appropriate to direct to the contrary. That is, the Act in effect creates a presumption in favour of the hearing being held in public.

Section 8 of that Act employs that you may give directions preventing or restricting the publication of evidence given before you. However, the principle of open justice weighs heavily in favour of the evidence which is received being published unless there are exceptional reasons in favour of a non-publication order. I will return later to an application which I intend to make for some non-publication orders I propose in respect of the identity of inmates and former inmates at Dillwynia. For present purposes, I will refer to those women by letter rather than their names during this opening.

The matters raised by the terms of reference will be explored in this public hearing. After this opening, and the witnesses to be called today and tomorrow, the public hearing will resume on 17 October 2023 when I expect over 45 witnesses will be called to give evidence.

I'm now going to turn to say something about matters which I expect the inquiry will hear evidence, matters which will be the subject of a public hearing which resumes in October.

Dillwynia is operated by Corrective Services New South Wales. Corrective Services manages and delivers services in New South Wales correctional centres for adult inmates and offenders in the community. It's part of the Department of Communities and Justice. The core business of Corrective Services is managing the state's correctional centres to achieve safe, secure and humane custodial

environments, supervising offenders in the community, working to achieve successful reintegration and providing critical advice in a range of matters to courts and the State Parole Authority, providing effective treatment programs and services to offenders to reduce the rate of reoffending and the holistic range of
5 services to offenders that promote wellbeing, assessing and managing key security and risk issues across Corrective Services, working with law enforcement and intelligence agencies on national security issues and administering sentences and other legal orders.

10 Commissioner, it is important to observe that while the core business of Corrective Services includes ensuring that inmates are securely detained, another part of that core business is to ensure that inmates are detained humanely. Life in gaol is not easy and nor is it intended to be. Inmates other than those on remand have been
15 convicted of crimes. But inmates are entitled to be detained in an environment where they are not exposed to criminal offending by those in positions of authority who are charged with operating the gaol.

Dillwynia is one of 36 correctional centres in New South Wales. It's a female-only correctional centre. It's located in Berkshire Park. Dillwynia houses all categories
20 of female inmates, including inmates on remand as well as women who have been sentenced. It contains a high needs area, a medium needs area, a low needs area and a behavioural intervention unit. Each area contains accommodation blocks where prisoners are housed and a separate or adjoining administrative block.

25 The administrative blocks contain a sequence of officers utilised for various purposes, including for the coordination of offender programs and for various Corrective Services employees. In addition to cells, the accommodation blocks also contain facilities such as kitchens, living areas, bathrooms and laundries. General facilities are also located in separate blocks, including an inmate reception
30 area, chapel, kitchen and programs block.

During the period of Astill's offending he was employed as a Senior Correctional Officer and subsequently as chief Correctional Officer. In these roles he had the
35 ability to interact with inmates in various locations throughout Dillwynia, including the accommodation areas and offices and the common areas of the centre.

None of Astill's offending was captured on CCTV cameras. At the time of Astill's
40 arrest Dillwynia housed approximately 230 inmates and was staffed by 144 employees. The hierarchical structure at Dillwynia at the relevant times is as follows. The governor of Dillwynia for most of the period of Astill's offending was Shari Martin. She was in that position first between approximately 2006 and 2012 and then from 2015 until 21 December 2018. At the relevant time, Governor
45 Martin reported to the director of custodial operations within the Department of Communities and Justice. That person in turn reported to the Assistant Commissioner of Custodial Corrections, at the relevant times, being Kevin Corcoran.

The Commissioner responsible for Corrective Services New South Wales for most of the relevant time was Peter Severin. Governor Martin's role included leading the development, implementation and review of all operational, financial and administrative activities at Dillwynia, providing strategic advice to the Corrective Services executive and custodial corrections senior management on operation matters affecting Dillwynia, maintaining effective security systems, procedures and controls to ensure the maintenance of good order and security at Dillwynia and the safety of employees, inmates, visitors and the community.

In 2016, the manager of security at Dillwynia was Leanne O'Toole. The position was later filled by Sury Hariharan. Ms O'Toole's direct reports were, as at 28 June 2016, the Manager of Business, Robert Campbell, Chief Correctional Officers, Judith Barry, Michael Paddison, Pamela Kellett and Neil Holman, Intelligence Chief Correctional Officer Deborah Wilson, Principal Correctional Officers, Sury Hariharan, Pam Hotham, and Principal Industries Officer Catherine Avery. Over the course of Astill's offending other officers held some of these roles including Astill himself and officers Westley Giles, Timothy Peek, Ann Whitehead, David Deen and Stephen Virgo. Officer Stephen Virgo commenced employment at Dillwynia on 3 September 2018 after he was successful in securing a promotion to the rank of Senior Assistant Superintendent, intelligence.

At Dillwynia he held the role of principal Correctional Officer. The principal Correctional Officer had a variety of Correctional Officers reporting to him including Senior Correctional Officers and senior case managers. The next rank in the hierarchy was the chief Correctional Officer. The position under that rank was senior Correctional Officer, then first class Correctional Officer and then Correctional Officer.

Astill commenced his career as a police officer rising to the rank of detective senior constable. He left the New South Wales Police Force in March 1996 and took employment as a court security officer at the Downing Centre in 1997. Having joined Corrective Services in 1999, Astill came to be employed at Dillwynia with the rank of senior Correctional Officer in 2009.

He was temporarily assigned the role of Chief Correctional Officer in 2016, and remained in that position until 1 October 2018, at which time he returned to the rank of senior Correctional Officer. He remained a Senior Correctional Officer until his arrest on 20 February 2019. Astill was suspended without pay from 22 February 2019 until his employment was terminated on 5 October 2022.

As I have said, on 20 February 2019 Astill was arrested and charged by New South Wales Police and suspended by Corrective Services two days later. Astill's trial commenced in July 2022 in the Sydney District Court and ultimately, as I have said, he was found guilty of 34 offences committed against 13 inmates at Dillwynia.

The criminal trial, and Astill's convictions established very serious criminal sexual offending by Astill over almost a five year period. Astill's sexual offending comprised five counts of aggravated sexual assault without consent, 14 counts of aggravated indecent assault and three counts of aggravated acts of indecency. In each instance the circumstance of aggravation was that the victim was under the authority of Astill at the time of the offence.

Astill was also convicted of 12 offences of misconduct in public office. The nature of this offence will be something that I will discuss in more detail in due course. Presently, it is sufficient to observe that Astill wilfully misconducted himself in public office by engaging in inappropriate sexual relationships with 13 inmates. It is necessary to say something about the nature of Astill's offending as it directly relates to a number of the terms of reference, notably whether management and/or employees at Dillwynia knew of Astill's offending and misconduct and failed to take steps in relation to it.

Commissioner, a regular pattern of Astill's offending established in his criminal trial was to perform favours for inmates and then in return for those favours demand that the women perform sexual acts. For example, Astill on one occasion, told an inmate that a complaint had been made about her behaviour and that she might be moved from Dillwynia. He said that he would try to help her sort it out. About two weeks later, the inmate attended Astill's office and he forcibly required the inmate to perform oral sex on him. The same inmate was required to attend his office at lunchtime, where he asked her to perform an intimate sex act and then had sexual intercourse with her which the inmate described as feeling like hell.

Another example is an inmate who had made it known that she wanted to speak to her partner but had no credit on her phone. She approached Astill, who gave her free calls to her partner on two occasions. After the second phone call, the inmate went to leave Astill's office when he asked her to do him a favour because he had done her a favour. He walked around behind her, and pushed her on to the desk and pulled her pants down and had sexual intercourse with her. The inmate said that he would pay for what he had done and her partner would get him. Astill said that he was an ex-police officer and was affiliated with a bikie gang and no one would find out.

Astill also was convicted of offences involving an inmate where he had requested that she attend his office to clean it on four occasions, only for Astill to kiss her neck, rub himself up against her, and put his hands up her top and down her pants. He was convicted of misconduct offences in respect of this.

Astill pleaded guilty to the offence of misconduct in public office in relation to another inmate. Over a three month period in 2018, Astill had sexual intercourse with her on around five occasions. On one of those occasions, he gave her a type of hair dye that was not available to other inmates and on another four occasions he gave her tobacco in return for sex. Sadly, this inmate has since passed away.

An offence was established in relation to an inmate where the inmate had asked Astill to help her keep her job, following a potential internal charge for conduct within the correctional facility. Astill offered to shred the paperwork for the internal charge and then grabbed the inmate on her bottom.

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A similar behaviour occurred in a public area. Astill also was convicted of misconduct in public office concerning this inmate, which involved making sexualised comments, including "Look after that arse", telling her personal information about himself, including that he formerly was a police officer, and showing a photograph of himself in uniform; approaching her while she was on her knees cleaning the reception area, placing his crotch near her face and saying, "That's where I like you" and offering favours.

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In relation to another inmate, Astill was convicted of misconduct involving sharing personal information about himself, giving her favourable treatment, offering to help her make contact with family members, all in return for the inmate performing sexual favours. Another pattern of Astill's offending was the brazen nature of it. For example, an inmate was called to reception area where Astill was working, being an open area of Dillwynia, where Astill kissed her directly on the lips.

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The same inmate on another occasion was assaulted by Astill in an area of the gaol in full view of others when Astill ran his hand between her legs and touched her vagina. That kind of conduct occurred on more than one occasion.

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Astill approached another inmate in the compound and asked her to attend his office to sign a form for an extended family visit. Once in the office, Astill sexually assaulted her. He was also convicted of misconduct in public office in relation to this inmate which included making inappropriate comments about her physical appearance, giving her favourable treatment, such as an extended family visit, and access to his office without supervision and engaging in inappropriate sexual relations.

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Astill was convicted of misconduct in public office in relation to another inmate which involved him making personal disclosures and giving her make-up. Later, the inmate and another inmate were in Astill's office and he sexually assaulted one of the inmates.

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Commissioner, another pattern of Astill's offending established in the trial was the threats that he made to inmates to pressure them into performing sexual acts. I've already mentioned the threat to the inmate that Astill was affiliated with a bikie gang. Astill was found guilty of intimidation of the inmate by making ongoing threats over almost two years to this inmate after she was involved in a meeting with Dillwynia management regarding Astill's behaviour, including telling her that he was an ex-police officer and a member of a motorcycle gang so he could get her friends and family.

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Astill was also convicted of a count where he would call an inmate into a manager's room and put his hand up the front of the inmate's shorts and touched her genitals. On another occasion Astill gave the inmate a gift of three pairs of underwear and pressured her to show herself to him while she was wearing the underwear. The inmate complied as she was concerned that if she continued to resist the "other inmates would hear us".

I have mentioned the trial judge in Astill's criminal trial described some of his offending as opportunistic and I have described it earlier in this opening as shameless. For example, with one inmate, Astill repeatedly stood at her cell window and gestured to her pointing to her breasts saying "Go on show us" and pointing towards her vagina, and motioning pulling her pants down. The inmate complied by showing him her breasts. That same inmate was summonsed to Astill's office where he asked her to perform oral sex on him and the inmate complied.

In respect of another inmate, Astill summoned her to his office. The inmate attended and Astill sexually assaulted her. On another occasion, the inmate told him that she was on her period in the hope that that would deter him. Astill pushed her on the table, took off her pants and separated her legs and checked whether she was having her period. A few days after that, the inmate attended Astill's office at his request and Astill had sex with her. The inmate described what occurred as feeling like it went for, like, a life time.

Astill pleaded guilty to two offences with respect two other inmates. He showed one of the victims photos of his dog, motorbike and other personal photographs. A week or two later Astill met with her and another inmate in an office. The window of that office was covered with cardboard so nobody could see inside. Astill had sex with the women. Astill was found guilty of engaging in inappropriate sexual conduct with the women.

Commissioner, I've set out the criminal conduct of Astill which led to his convictions in a little detail. The offending involved conduct spanning several years, almost five, a significant number of women and a very large number of occasions on which Astill either sexually assaulted the women or misused his position to coerce them into performing sexual acts.

A good deal of Astill's conduct occurred in offices where it would be expected that it would not be common for Correctional Officers to be alone with inmates and after inmates had been summoned publicly by Astill to attend. One of the matters to be explored in this public hearing is how such brazen criminal conduct by Astill did not result in any adverse action being taken against him by Corrective Services until after his arrest.

I now wish to turn to say something about the legal and other obligations on Corrective Services officers to report criminal and other offending. Contact between inmates and Corrective Services Officers at Dillwynia and other

correctional facilities, is highly regulated and supervised. This is for good reason, given the risks of vulnerabilities inherent in such contact.

5 In these circumstances, it won't be thought surprising that Astill's offending against inmates over that almost five year period at the time did not result in any action against him by his superiors in Corrective Services. As I have said, it was the New South Wales Police Force which first took action by charging Astill and it was after his arrest that Corrective Services suspended him.

10 Prior to that time, there had been no adverse disciplinary action by Corrective Services in relation to Astill's criminal sexual offending. One of the issues to be considered in the course of this inquiry is whether, and to what extent, Corrective Services employees may have breached their reporting obligations in relation to Astill's conduct.

15 Starting with perhaps the most specific of the provisions prohibiting sexual contact between officers and inmates, section 236Q of the Crimes (Administration of Sentences) Act provides that it is a criminal offence if a Correctional Officer engages in sexual conduct or an intimate sexual relationship with an inmate or
20 a person who is on a community based order and where the conduct or relationship poses a risk or a 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 compromises the proper administration of a sentence.

25 This offence was not applicable during most of the period of Astill's employment. It carries a maximum penalty of imprisonment of two years. Although Astill was not charged with this offence, it is relevant to understand the background to its enactment. Two things are notable about the offence. First, it was enacted in
30 response to public concerns about inappropriate sexual contact between officers and inmates; and second, its relationship to the reporting obligations that I will address shortly. Section 236Q was enacted in 2018 and commenced on 22 November 2018.

35 It was described by the then Minister for Corrections in the Second Reading Speech for the bill introducing the offence as a response to, and I quote:

40 "Community concerns about the small minority of staff within the correctional system who engage in inappropriate relationships with offenders."

45 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 Corrective Services New South Wales employees and offenders at the Mid North Coast, Long Bay, Lithgow and Silverwater correctional complexes.

There was reference in the debates to newspaper coverage of an allegation that a female officer had "Had an affair with a convicted cop killer" and the then Minister having "put his job on the line over the issue, vowing that he would change the laws." The Minister for Corrections added during his Second Reading
5 Speech that he wished to make it very clear that sexual conduct between a correctional employee and an inmate that occurs while an inmate is in custody would always, and I quote:

10 "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."

The introduction of the offence was described by the Minister as increasing opportunities for successful detection and prosecution because it is not limited to
15 the sexual conduct and includes intimate relationships. An intimate relationship can be a precursor, it was said, to sexual conduct as it can, for example, include physical expressions of affection.

The Minister's Second Reading Speech stated that:

20 "In addition to the new offence targeting intimate relationships and sexual conduct between correctional employees and offenders, the government has established Task Force Themis led by Mark Murdoch, a retired Assistant Commissioner of the New South Wales Police Force, to assess and report on
25 the circumstances of a number of inappropriate relationships between Corrective Services employees and offenders dating back to 2007."

The task force, it was said will also review and report on the investigation and management of these relationships by Corrective Services New South Wales. The
30 then commissioner issued a memorandum for the information of all staff in November 2018 following the passage of the amendment introducing section 236Q stating that:

35 "Sexual and intimate relationships between staff members and offenders compromise the safety, security, good order and discipline at correctional facilities and result in the improper administration of sentences both in custody and in the community. These amendments ensure there are serious consequences for this type of misconduct."

40 Remaining for the moment, Commissioner, with the specific provisions concerning correctional employees, there is a specific reporting obligation in the Crimes (Administration of Sentences) Regulation 2014. Clause 253(1) of that Regulation provides that if an allegation is made to a Correctional Officer that
45 another Correctional Officer has, while carrying out his or her duties, engaged in conduct that, in the opinion of the officer to whom the allegation is made, constitutes a criminal offence or 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.

5 Clause 253(2) of the Regulation provides that the Senior Correctional Officer must then report the conduct or alleged conduct promptly to the Commissioner if that Senior Correctional Officer believes that it constitutes or would constitute a criminal offence by the Correctional Officer, or would provide sufficient grounds for taking proceedings or action under section 69 of the Government Sector Employment Act against the Correctional Officer.

10 Clause 253(4) is an anti-retaliation provision providing that a Correctional Officer must not act to the detriment of another officer in retaliation because the other officer has acted in accordance with the clause or has disclosed information relating to the conduct contrary to the law of any other Correctional Officer.

15 Clause 254 of that Regulation provides the contravention of the Regulation is not an offence but the contravention may be dealt with under section 69 of the Government Sector Act. Accordingly, it would appear to follow that a failure to report as required by clause 253 is capable of constituting misconduct under the
20 Government Sector Act.

Section 69 of that Act as I have said, deals with misconduct by employees, if the employer finds that there was misconduct, the employer may take any of the various disciplinary measures outlined in section 69(4). Misconduct is defined not
25 exhaustively in section 69(1) and extends to a conviction or finding of guilt for a serious offence. Serious offence is described in section 69(1) relevantly as an offence punishable by imprisonment of six months or more.

30 Under section 261 of the Crimes (Administration of Sentences) Act, the Commissioner of Corrective Services, governors of correctional centres, Correctional Officers and other staff as necessary for the purpose of that Act are to be employed in the public service under the Government Sector Act. As such they might be subject of a finding of misconduct under section 69 under the Government Sector Act.

35 Relevantly, contraventions of the Regulation may constitute misconduct for the purpose of section 69 of the Government Sector Act. The same is true of a contravention of any Code of Ethics and conduct adopted pursuant to section 8A of the Government Sector Act and of non-compliance by Correctional Officers of
40 or above the rank of assistant superintendent with directions made by the Commissioner of Corrective Services.

45 A contravention of a policy code of conduct or legislative instrument is also capable of constituting misconduct within section 69 albeit whether or not it does will depend on the level of seriousness of the breach. Accordingly, contravention of the regulation could constitute misconduct. For the purpose of this opening, I intend to mention only provisions potentially giving rise to reporting obligations.

In addition to clause 253 of the Regulation which I have already mentioned, contravention of clause 123 of that Regulation could also constitute misconduct. This applies to a nominated officer who finds that a letter, parcel or other article contains information or any other thing that the officer has reasonable grounds to believe is likely to prejudice the good order and security of a correctional centre or relates to a serious - I withdraw that, or relates to a criminal offence which has, or may be committed.

In that case, the nominated officer must, as soon as practicable, report the circumstances to the governor. If the Governor is of the opinion that the article obtains any information that may be required to the administration of justice, the governor may give both particulars of the information and the article itself to a Police Officer.

Clause 242 of the Regulation requires officers to comply with the commissioner's instructions and local governor's directions. Clause 242(5) provides that for the purposes of taking any action under section 69 of the Government Sector Act, an officer is fit to be presumed to be aware of the officer's obligation under the Act or this regulation.

The commissioner's instruction No. 2010/02 under the heading Contact with Offenders provides that employees must disclose all personal relationships and/or significant social or off-duty contact with offenders so that risks may be managed and false perceptions corrected. Employees are, therefore, obligated to report all known relationships or significant social or off-duty contact with offenders using the declaration of contact with offender document found on the intranet. Failure to report or misrepresentation of the relationship may result in disciplinary action. The instruction concluded that improper relationships of any kind will not be tolerated.

Contravention of Corrective Services Custodial Operations Policy and Procedures document, the Department of Communities and Justice Code of Ethics and Conduct policy or the Code of Conduct and Ethics in the New South Wales Government sector employees is also capable of constituting misconduct, section 69 of the Government Sector Act.

In August 2015, the then Department of Justice Code of Ethics Conduct Policy came into effect. Corrective Services employees were required to comply with the code. The code sets out the obligations of employees in relation to managing conflicts of interest, professional behaviour and other ethical matters. Part 9 of the code deals with reporting suspected wrongdoing and states:

"If an employee witnesses or suspects wrongdoing, they should discuss the matter with their supervisor or manager. Pursuant to the code where that wrongdoing constitutes corrupt or maladministration, employees have a duty, a public duty, to report it. 'Maladministration' is defined in the 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."

5 Further, clause 4.2 of the code requires employees to report breaches of the code to their supervisor or manager. Beyond the general requirements of Department of Justice employees, additional specific reporting obligations in relation to corrupt conduct were imposed for Corrective Services employees.

10 The Independent Commission against Corruption, also known as ICAC, is responsible for investigating and inquiring into corruption involving or affecting public authorities and public officials. Corrective Services employees are public officials who fall within the purview of ICAC.

15 I note that, pursuant to its Letters Patent, this Special Commission is to inquire into and report on whether any matters arising from this inquiry should be referred to, relevantly, ICAC for further investigation.

20 "Corrupt conduct" is defined in sections 7, 8 and 9 of the Independent Commission Against Corruption Act. Under section 8(1)(c) of the ICAC Act, "any conduct of a public official that constitutes or involves a breach of public trust can constitute corrupt conduct. The same is true of "any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions ..." by section 8(1)(b) or "any conduct of a public official or
25 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" by section 8(1)(d).

30 Pursuant to section 8(2) of the ICAC Act, "corrupt conduct is also conduct of any person 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 any of the following matters: Official misconduct, blackmail, fraud or perverting the course of justice. Conduct does not amount to corrupt conduct unless it could constitute or
35 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 section 9(1).

40 On February - on 19 February 2011, the then Commissioner of Corrective Services issued Commissioners Instruction number 1/2011. That instruction required all Corrective Services employees to acknowledge that they had read and understood the Corrective Services Guide to Ethics and Conduct 2010 and agreed to comply with it. 3.1 of the 2010 guide deals with reporting misconduct, including corrupt
45 conduct. Corrupt conduct is defined to include when a public official improperly uses or tries to use the knowledge, power or resources of their position for personal gain or the advantage of others, and when a public official acts dishonestly or unfairly or breaches public trust.

Part III of the 2010 Guide also states under the heading “The Principle of Disclosure and Employee Responsibilities”, that “Corrective Services 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. Employees are also encouraged to challenge inappropriate and unprofessional behaviour.”

On 21 August 2013 the then Commissioner of Corrective Services issued Commissioners instruction number 10/2013. That instruction states that Corrective Services employees have a duty to report suspected corrupt conduct and should do so promptly.

In addition to these specific reporting requirements under legislation, which I have mentioned and also the policies applicable to Corrective Services employees, under the criminal law failing to report criminal conduct may amount to an offence in some circumstances. Section 316(1) of the Crimes Act provides that it is an offence not to report criminal conduct in circumstances where an adult person knew or believed a person had committed a serious indictable offence; had information that might be of material assistance in securing the apprehension of that person or in the prosecution or conviction of that person for the offence; and failed without reasonable excuse to bring that information to the attention of a member of the police force or other appropriate authority.

The elements of the section 316(1) offence were the same throughout the period of Astill's employment at Dillwynia, although the maximum penalty was increased in November 2018. Suspicion on behalf of an accused will be insufficient to make out the mental element of the offence. A serious indictable offence for the purpose of section 316 is an indictable offence carrying a term of life imprisonment or a maximum penalty of five years or more. All of the offences, Commissioner, of which Wayne Astill was convicted were serious indictable offences. The maximum penalty for contravention of section 316 is currently - and has been since the penalties were increased in November 2018 depending on the maximum penalty for the serious indictable offence that is not reported - the range has been between two and five years imprisonment.

In addition, 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 or her public office wilfully misconducts him or herself by act or omission. For example, by wilfully neglecting or failing to perform his or her 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 office holder, the importance of the public objects which they service, and the nature and extent of the departure from those objects. The penalty for this offence is at large and courts will generally look to identify a statutory analogue as a point of reference.

The term "public official" has not been exhaustively defined, but employees of Corrective Services fall comfortably within the scope of that term. Misconduct has also not been exhaustively defined but includes nonfeasance.

5 A wilful failure by a Correctional Officer to report conduct which threatens the safety of an inmate, or to report conduct which constitutes a serious offence against an inmate without reasonable excuse or justification may be regarded as sufficiently serious to constitute the offence of wilful misconduct in public office.

10 Commissioner, I wish to turn by saying something briefly about the system for making and acting on complaints on officers in Dillwynia at the relevant times. After my opening has concluded my learned junior, Ms Davidson, will call a witness, Ms Angela Zekanovic. This evidence will address aspects of the system for making and addressing complaints about officers. I don't propose to say
15 anything about that evidence in this opening as you are about to hear the evidence. However, I do wish to say the following about this issue: Handling a complaint made by an inmate about an officer inside a correctional centre sometimes can give rise to complicated issues. As you are about to hear, Commissioner, one of those issues is where an inmate makes a disclosure to an officer of misconduct by
20 another officer but does not wish to make a formal complaint for fear of reprisals.

Another issue will be - and I withdraw that. An issue which will be explored at this public hearing is the training that officers were given about handling disclosures of misconduct by an inmate about a fellow officer. Also, I anticipate
25 that the Commission will receive evidence that many of the inmates were not aware of what options were available to them to safely and confidentially make complaints about officers. I also anticipate the Commission will receive evidence that many Corrective Services Officers did not have a good understanding of the system for handling complaints made by inmates about Officers.

30 I want to - sorry, Commissioner, I've just been told that the internet in this building has stopped functioning and I have been invited to invite you to take a short adjournment while that is fixed. It affects the live stream obviously.

35 COMMISSIONER: All right. Let me know when we are ready to go. We will adjourn.

<THE HEARING ADJOURNED AT 11.05 AM

40 **<THE HEARING RESUMED AT 11.22 AM**

COMMISSIONER: Are we all fixed?

45 **MR LLOYD:** That's what I'm told, Commissioner. A couple of things, though, I need to say. At some point during that part of the opening when I was addressing the reporting obligations legislation and other codes of conduct, et cetera, I am told that the live stream cut out. But I am told that what I said about those things

was transcribed, there wasn't a problem with that, and unless you have a different view, Commissioner, I was proposing not to, in effect, restate those matters which weren't broadcast on the basis that the parties and anyone else who is interested in that part of the opening will be able to access the transcript.

5

COMMISSIONER: That's fine, yes.

MR LLOYD: And the other thing I wish to say is it has been raised with me that there are some acoustic issues in this room, particularly with respect to people toward the back hearing. So if you feel like I'm shouting at you, Commissioner, don't take it personally.

10

COMMISSIONER: Don't take offence.

MR LLOYD: I was about to turn, and I do now turn, to say something about some of the evidence that I anticipate you will receive about complaints with respect to Astill's conduct and knowledge on the part of Corrective Services about that conduct. The response by Corrective Services to information about Astill's conduct must be viewed in the following context.

20

In July 2018, Task Force Themis, which I have mentioned, was established by Corrective Services. It looked at 322 cases of allegedly inappropriate relationships between Corrective Services staff and prisoners, between 2007 and 2018.

COMMISSIONER: Mr Lloyd, I'm going to have to interrupt you. My screen has gone dead.

25

MR LLOYD: I'm happy to wait, Commissioner, if you are.

COMMISSIONER: Is everyone else's screen working or not?

30

MR LLOYD: No, it's not. They're not working.

COMMISSIONER: They are not working? I think we should adjourn and have a cup of tea and when it's all sorted let me know and we will proceed from there.

35

MR LLOYD: Thank you.

<THE HEARING ADJOURNED AT 11.25 AM

40

<THE HEARING RESUMED AT 11.49 AM

COMMISSIONER: We are in working order, are we?

MR LLOYD: That's what I'm told. I will bring it to your attention as soon as I'm told, if that changes.

45

COMMISSIONER: Everyone should understand that not only do we lose the capacity to transmit, we lose the transcript as well. So if it happens, we can't keep going. So, hopefully, it won't happen. Yes, Mr Lloyd.

5 **MR LLOYD:** Thank you, Commissioner. I am going to restate what I stated before we resumed, because of the importance of that aspect of the opening. I wish to say something about some of the evidence that I anticipate you will receive of complaints about Astill's conduct and knowledge on the part of Corrective Services of that conduct.

10

The response by Corrective Services to information about Astill's conduct must be viewed in the following context. In July 2018, Task Force Themis was established by Corrective Services. It looked at 322 cases of allegedly inappropriate relationships between Corrective Services staff and prisoners, between 2007 and 15 2018. 14 cases of what was described as sexual contact were established. The then Assistant Commissioner of Corrective Services said that Corrective Services staff could be vulnerable because of trauma, and that that trauma was a common factor leading to the inappropriate conduct by the officers towards inmates.

20 In response to this problem, the assistant commissioner said that, and I quote:

"The best defence is a strong supportive work culture which provides training, skills and competencies needed for the job and we have taken immediate action to support our staff and improve practices."

25

Commissioner, by mid 2018 at the latest, and probably earlier, Corrective Services knew it had a problem with inappropriate sexual conduct by officers towards inmates. The answer from Corrective Services was said to be a strong supportive workplace culture and improved practices. On some of the evidence which 30 I anticipate the commission will hear, there are serious doubts about whether there was a strong and supportive culture at Dillwynia in relation to acting on complaints by inmates of misconduct by Astill or information about Astill's misconduct. That is an issue which will be explored at the public hearing.

35 I turn now to some specific matters which I anticipate the commission will hear evidence, about knowledge of Astill's offending. But before doing so, the matters which I'm about to turn to must be seen in the context of evidence that I anticipate you will hear that Astill, throughout the relevant period, was widely known at Dillwynia as "the grey fox" or "the fox".

40

I wish to say something about the experience of an inmate who I will describe as witness C. In April 2015, Senior Correctional Officer Renee Berry, saw Astill sitting close together with witness C in a reception area. It was against protocol for inmates to be in the reception area, including because of confidential information 45 which was stored there.

Officer Renee Berry did not make a report because she found Astill intimidating and believed he was supported by senior management at the gaol. I anticipate that the commission will receive evidence that, in January 2016, Senior Correctional Officer Mark Wilson and First Class Officer Glenn Clark saw Astill walking to the rear of the J Unit in the special management area placement, and 10 to 15 minutes later saw him walking out the back door of the J Unit. Witness C at this time was housed in the J Unit. This conduct was not normal procedure and posed a security risk.

Officer Wilson mentioned this event to other staff. The then Governor, Shari Martin, received a complaint about this and a report that Astill was seen talking with witness C at times in a manner which was not appropriate. We know from allegations proven in the criminal trial that Astill committed criminal offences against witness C. What action was taken by Governor Martin in response to these complaints will be explored in the hearing.

I anticipate the commission will hear evidence that in that same month then Chief Correctional Officer Judith Barry made a report of Astill sharing a can of Coke with witness C. This was contrary to strict rules, as giving favours to inmates was prohibited. First Class Correctional Officer Robert Brumwell spoke to Astill about this, and I anticipate Officer Brumwell will say that Astill's response was, "I am the Chief and I can do what I want."

A short time after this incident, Officer Judith Barry told Governor Martin that staff were not reporting concerns about Astill to Manager of Security, Leanne O'Toole, because Ms O'Toole and Astill were friends. Governor Martin received a complaint about Astill's conduct and I anticipate that the commission will hear evidence that she discussed this with Ms O'Toole. What action was taken by Governor Martin and Ms O'Toole will be explored during the hearing.

I anticipate that the commission will receive evidence that in February 2016 Officer Renee Berry noticed witness C wearing a silver men's ring. Another officer, Jacinta Curtin, directed witness C to remove the ring. Astill became irate and berated Officer Curtin. Principal Correctional Officer Pam Hotham intervened to remove the ring from witness C. I anticipate the commission will hear evidence that Officer Tania Hockey, who was Astill's de facto spouse, told Officer Renee Berry that she had been told that Astill had been receiving oral sex from witness C. Officer Berry disclosed at least some of these events to Senior Correctional Officers, Grant Riddle, Judy Barry and Pam Hotham.

I also anticipate that the commission will also receive evidence that Astill repeatedly bullied Officer Renee Berry after the incident involving the male silver ring taken from witness C. What senior management knew about this incident and these allegations and what they did in response will be explored.

I turn now to some events involving another inmate who I will refer to as witness H. In November 2016 Astill called witness H to come and see him in the

administration building. There was no obvious reason for Astill to call her to go to that area. Astill demanded that witness H give him oral sex, and she complied. I anticipate that the commission will receive evidence that an officer in the position of overseer, Cheryl Douglas, entered the room and this gave witness H the chance to leave.

I also anticipate the commission will receive evidence that in January 2017, Senior Correctional Officer Mirza Mohtaj, escorted witness H to Astill's office and Astill dismissed Officer Mohtaj. Astill had sex with witness H. Officer Mohtaj came back to Astill's office and I anticipate that witness H will say that he did not appear to understand what was going on and Astill said something to the effect, "We're almost done here, mate". And Officer Mohtaj exited the room and waited in the corridor to escort witness H back to the house. I anticipate there will be evidence of the following sequence of events in late March, early 2017, involving witness H. On the morning of 28 March 2017, an inmate, witness T, went to Astill's office to speak with Astill. Witness H was in Astill's office at the time. Astill told witness T that he would call her later to address her issues. Witness T had not heard from Astill and so she went back towards Astill's office with another inmate, witness O. I anticipate the commission will receive evidence that witness T saw Astill when she returned, sitting in his chair, with witness H on her knees, close to him, and that they remained in that position for quite some time.

Witness T could see the back of witness H's head. Further, I anticipate that the commission will receive evidence from witness O that on the same day she saw Astill touching witness H on her bottom in a sexualised way. I anticipate that you will receive evidence that after this incident, witness O reported what she had seen to Senior Correctional Officer Timothy Peek. There was then a meeting between witness O, Officer Peake, and Chief Senior Correctional Officer Westley Giles. Officer Peake asked witness O whether she wished to make a complaint and witness O said that she did.

A short report was prepared by witness O about what she had seen and she gave that to Officer Giles. Witness T also completed a complaint form saying that she wanted to speak with a manager or the governor about what she had seen. In the form completed by her, witness T clearly stated that she thought that the whole event was inappropriate and, to use her words, "Not right".

Next, I expect you to receive evidence that a few days later on 3 April 2017, witness O was interviewed by the manager of security, Brian Bartlett. In a record of the interview prepared by Officer Bartlett with witness O, witness O was recorded as saying that Astill had placed his hand on witness H's thigh and that there were past instances on night shift when Astill would go to the rear of witness H's cell and talk to her, although it was recorded that witness O had heard nothing inappropriate. Witness O also said that Astill had given witness H some tracing paper which it was recorded that inmates were not permitted to have.

I anticipate that there will be evidence that there is a documentary record of an interview which is said to have been conducted by Officer Bartlett with witness T on the same day. Witness T, I anticipate you will hear, has no recollection of attending any such interview. In the documentary record of the interview, it is
5 recorded that witness T said that at no time did she see any inappropriate behaviour between Astill and witness H. This, of course, was the opposite of what she had said in the written account that she had prepared a few days earlier.

10 Further, the record of the interview said to have occurred on 3 April 2017 with witness T, stated that witness T and witness H were not friends and that witness H had been intimidating her and had assaulted her. I anticipate that the commission will receive evidence from witness T that some of the information recorded in this document is false and doesn't record anything that she said.

15 Although witness H was central to the allegations made by witness O and witness T, a decision was made not to interview her for the purposes of the investigation. Officer Bartlett wrote to Governor Martin recording his findings from the investigation. Those findings included that witness T did not witness Astill touching witness H's leg and said that there was nothing inappropriate about
20 witness H cleaning Astill's office. Officer Bartlett recorded that witness T and witness O admitted ongoing issues with witness H, and that he suspected that the allegations were a plot to incriminate witness H and have her removed from Dillwynia.

25 Officer Bartlett concluded that there was insufficient evidence to warrant any further action. Governor Martin added a handwritten notation on Officer Bartlett's report requesting that Officer Bartlett speak to Astill regarding the conversations with inmates outside their cells, at the windows of their cells and about the tracing paper and there is a record that officer Bartlett had that discussion with Astill.
30

Commissioner, a range of matters will be explored in this public hearing about this incident including the adequacy of the investigation by Officer Bartlett and Governor Martin into the allegations made by witnesses T and O, the way in which the records of interview conducted with witness O and the interviews said
35 to have been conducted with witness T were made; whether those records down played the allegations which those women were making and why witness H was not interviewed at all.

I anticipate that you will hear evidence that shortly after the complaints were made
40 by these two women, Astill called witness O into his office and said that he knew that she had made a complaint about him. Astill showed the complaint document which had been completed on behalf of witness O. Witness O apologised to Astill and told him that it would never happen again. Astill later threw away mail which was sent to witness O, but witness O believing that this was in retaliation for her
45 making a complaint.

This was not the only occasion when I anticipate that you will hear evidence that Astill was informed of the identity of an inmate who complained about him and then intimidated the woman who had come forward.

5 Moving to March 2018, an inmate witness then told Officer Clark that witness H was scared of Astill and had been paged to attend Astill's office and had a panic attack in response. Officer Clark's advice to witness Z was to tell witness H to take someone with her if she was called to Astill's office. Several days later, witness H was again paged to Astill's office. She said that she told Officer Clark that she was
10 scared of Astill and did not want to attend his office but she was not prepared at that time to reveal why. Witness H noticed that after that time Officer Clark seemed to look out for her and would attempt to ensure that she was not left alone with Astill.

15 In April 2018, witness H again approached Officer Clark and made allegations of improper conduct against Astill. She gave some specific details about alleged sexual assaults. Officer Clark said that he needed to report this immediately but witness H said she was not prepared at that stage to make a statement.

20 In late June 2018, witness H told Officer Clark that she had no confidence in Dillwynia's management and did not trust them. Witness H gave Officer Clark the dates of alleged offences by Astill and said that if anything happened to her that he should provide those details to the authorities. Witness H again asked Officer Clark not to report this as she was not prepared at that stage to make a statement.

25 I expect that the commission will hear evidence that in mid to late September 2018, Officer Clark again spoke to witness H and witness H disclosed that Astill had had sex with her. The following day, Officer Clark came to check on witness H and ask her whether she wanted to do anything about it. But witness H said that
30 she did not want to do anything, citing fears of facing retribution from officers, including fearing for her life.

On 26 September 2018 witness H wrote to witness Z saying she thought that the "Big bosses" knew all about Astill and "Something might actually stick to the fat
35 cunt". Letters of this kind were routinely read by prison authorities at Dillwynia. I anticipate that there will be evidence that in early October 2018 witness H asked Officer Clark whether he trusted newly appointed Senior Assistant Superintendent Stephen Virgo and that Officer Clark said that he did trust Officer Virgo.

40 At this point witness H asked Officer Clark to go and get Officer Virgo as she would like to make a statement. Officer Clark immediately complied and on 5 October 2018 witness H made a number of disclosures about sex that Astill had had with her and inappropriate relationships with several inmates. Officer Virgo immediately prepared a report I anticipate he will tell you. It was these events
45 which ultimately led to the arrest of Astill by police on 20 February 2019.

Commissioner, a significant number of issues will be explored during this public hearing in relation to the experience of witness H at Dillwynia, including, first, as I have noted already, the adequacy of the investigations into the allegations made by witness O and witness T back in April 2017 including whether the
5 documentary records of those allegations are accurate and how it was that Astill came to be given the complaint made in writing by witness O.

Next, whether the way in which witness H was summoned to attend Astill's office in 2018 was noticed by management at Dillwynia and, if not, why not in the
10 context of the earlier allegations. Next, the environment at Dillwynia which led to witness H not being prepared to make a statement or complaint about Astill for a lengthy period until Officer Virgo's arrival at Dillwynia.

Next, whether there was any system in place to support an officer in the position
15 of Officer Clark to whom disclosures of serious wrongdoing had been made in circumstances where the inmate was not comfortable with that complaint being passed on. And, finally, what these events tell us about the culture of Dillwynia, that it took the appointment of Officer Virgo for a senior officer at Dillwynia to be sufficiently trusted for witness H to come forward.

I now wish to turn to say something about the experience of another inmate at
20 Dillwynia who I will refer to as witness M. I expect that you will receive evidence that on 21 July 2017 an inmate, witness V, approached Astill. Witness V had heard a rumour that she had labelled Astill a "Kiddie fiddler" and witness V
25 denied that she had done that. In fact, witness V's allegation was that Astill had sexually assaulted another inmate, witness M, and was always asking for witness M to come to his office. Another inmate, witness R also said that witness M had made these allegations about Astill to her along with other inmates, witness W and witness V.

30 Witness V and witness R went to the administration block to speak to Chief Correctional Officer Neil Holman. I anticipate the commission will receive evidence from witness V that at this meeting, in addition to Officer Holman, with Chief Correctional Officer Michael Paddison and Acting Chief Correctional
35 Officer Westley Giles. I also anticipate that there will be evidence that during the meeting Governor Martin was summoned to attend, and that at the meeting the allegations made by witness M were disclosed to those officers who were present.

It should be remembered, Commissioner, that this meeting occurred just months
40 after the investigation into the allegations made about Astill's conduct towards witness H which, as I have already said, I expect you will receive evidence that Governor Martin was aware of. At this stage it is not clear what actions, if any, were taken by those senior corrections officers present at the meeting in July 2018 to investigate, or act upon, the complaint passed on about Astill's behaviour
45 towards witness M. That will be explored in this hearing.

A few days after the complaints about Astill's conduct towards witness M were first raised by witness R and witness V, I anticipate there will be evidence that Astill said to witness R, witness B, and witness V, "Smells like dogs in here". I understand this to be a reference to those three women having made a complaint about Astill and Astill obviously becoming aware of that complaint. The circumstances in which Astill became aware of the complaint will be explored in this hearing.

I anticipate that there will be evidence that shortly after this, Astill confronted a number of the women inmates and said, "If any of you have something to say, say it here" pointing to his face "and not here" pointing at his back. Witness V said in response, "Are you directing that at me?" and Astill said, "No, I'm directing this to everyone, especially you". I anticipate that there will be other evidence of bullying behaviour by Astill towards witness B.

I also anticipate you will hear from evidence from a chaplain at Dillwynia, Suellen Johnson, that she was approached by various women who raised concerns about Astill and that he was targeting witnesses V, B and P, by accusing them of being "dogs". There were two mediations to address these matters, and the focus at this public hearing will be what occurred at those two events. I expect that there will be evidence that Governor Martin requested a mediation with Astill which occurred in the presence of Ms Johnson, the chaplain. I also anticipate that Ms Johnson spoke to Governor Martin, regarding the allegations made by the women and that Governor Martin said, "There are only two of them and they are inmates after all."

Ms Johnson responded by saying, "What if there were six of them?" I anticipate that Ms Johnson will give evidence that Governor Martin's response was, "I don't believe it". The adequacy of the response by Governor Martin and others in senior management at Dillwynia to those allegations will be explored. I also anticipate that there will be evidence from Correctional Officer Peter Barglik about a conversation that he had with Astill about the allegations made by witnesses B and V about Astill's abuse of witness M.

I anticipate that officer will give evidence that Astill described to him the way that he and Governor Martin had dealt with the complaints and I quote what evidence I expect you will hear that Astill said to that officer:

"We interviewed both of them, and you know how I used to be a copper, well Shari Martin and I give it to them. We belittle them. We intimidated the fuck out of them and by the time we finish those two mutts won't fucking tell any more lies."

I anticipate Mr Barglik will also tell you that Astill said to him, "Yeah, thanks to Shari mate, without her I reckon I would have been dragged out over the coals."

I turn now to say something about the experience of another inmate who I will refer to as witness K. I anticipate that the commission will hear evidence that in 2017 witness K was concerned that she may be charged with an internal offence. She approached Astill. Astill had witness K attend his office where he shredded the complaint in front of her and then grabbed witness K's bottom in his office on her way out the door. Witness K disclosed this incident to Officer Renee Berry and separately to Officer Judy Barry. I anticipate that both officers will say they didn't pass on this complaint because they felt unsupported by management at Dillwynia and feared reprisals from Astill if they passed on the complaint.

I also anticipate the Commission will hear evidence of inappropriate sexual comments made by Astill about witness K which were observed by another officer and another sexual assault by Astill of witness K observed by an officer. These matters give rise to questions about the culture of complaints handling at Dillwynia which will be addressed at this hearing.

I anticipate that the Commission will hear evidence that in early October 2018 Officer Clark found Astill in witness K's cell. Witness K mouthed the word "Help" to Officer Clark and Officer Clark said:

"What the fuck do you think are you doing, Wayne."

Witness K said that Astill had tried to grab her. The event coincided with the arrival at Dillwynia, approximately coincided, of Officer Virgo and Officer Clark passed the matter on to him. I will shortly address you about the events which occurred on the arrival of Officer Virgo at Dillwynia in September 2018.

Next, I turn to the evidence I expect the Commission to receive about an inmate who I will refer to as witness II. I expect the Commission to receive evidence that witness II made allegations in May 2018 that Astill was trading sexual acts by inmates in return for him doing favours such as bringing tobacco into prison. I anticipate that there will be evidence that those allegations included that Astill had shown witness II's personal information to another inmate; Astill facilitated inmate moves in the medium security area with respect to inmates who he spoke to in a sexualised fashion, and touches with obvious sexual overtones.

And Astill had told one of the Colombian inmates that she "Racked up a big tick bill and that she would have to pay soon"; that Astill had inappropriately discussed venereal diseases with a number of inmates; had made inappropriate sexual comments to young inmates, coupled with touching and disclosing fantasy like desires and that there were rumours Astill was bringing in tobacco for inmates. I anticipate you will hear that witness II's apprehension of Astill became so bad that she wanted to take out an AVO against him.

On one occasion, Astill paged witness II to go to the hub to see him. Witness II became very distressed. I anticipate that Senior Correctional Officer Jean Dolly will say that she had to lock witness II in a storeroom to hide her from Astill, only

for Astill to come searching for witness II. Witness II said that she had not reported Astill because he had threatened her family with his bikie connections. These events give rise to a number of issues to be explored. They include what action, if any, was taken in response to the complaints by witness II within
5 Dillwynia; whether any consideration was given, in dealing with those complaints, to the earlier complaints about Astill, and why at this point there does not appear to have been any adequate investigation of the complaint by witness II.

10 Another inmate, witness Q, spoke to Officer Judy Barry about making a report about Astill holding her hand and patting it while saying, "If you do favours for officers, officers will do favours for you." I anticipate that there will be evidence that Officer Judy Barry told witness Q to speak to Officer Wilson about this, but that witness Q did not bother to do that as she understood that she was good
15 friends with Astill.

I turn now to say something about events in August 2018 concerning an inmate who I will describe as witness E. On 22 August 2018, Service and Programs Officer, Deborah Gaynor was rostered on to work in the Service and Programs Office in the high needs area. Officer Gaynor saw Astill take witness E into his
20 office but, a short time later, she could see that the chair in the office reserved for an inmate in there was empty.

The following day, Officer Gaynor again saw Astill take witness E into his office. Officer Gaynor was suspicious because of what she had seen the day before, and
25 looked into the office but could not see Astill or witness E in the office area. She assumed that they must have been in a small storeroom within the office. I expect that Officer Gaynor will give evidence that she wanted to report what she had seen, along with her knowledge of rumours about Astill's inappropriate conduct towards inmates to her manager, but she felt uncomfortable putting anything in
30 writing. I anticipate that she will say that this was due to fear of not being supported by management.

I want to say some things about what evidence I anticipate that you will receive says about the culture of complaint handling at Dillwynia. I have already
35 mentioned some things which raise, or have the capacity to raise, serious issues about the culture at Dillwynia with respect to handling complaints by inmates of misconduct by officers. These matters give rise to a serious issue to be explored at this public hearing about whether complaints were taken seriously by management at Dillwynia. In that context, I wish to say the following things about the events
40 toward the end of 2018 which ultimately led to Astill's arrest in February 2019 and what those events reveal about the culture of Dillwynia at the time.

I expect that you will hear evidence that Officer Brumwell, who I have already mentioned, was away on a holiday with Astill in about September 2018. On that
45 holiday, I expect that Officer Brumwell will give evidence that Astill made the following admissions, which I recount in full:

5 "Astill said that he slapped witness K on the arse. Witness H was 'straight on the cock', as soon as he opened the door to the BIU and that she gave him a blow job and let him fuck her. Astill said that she really wanted it and they had sex multiple times. Astill said that he had another inmate on the sink on top of the toilet, fisting her and she loved it. Astill said that nothing happened between him and witness C. Astill said that he fucked the three South American girls in (indistinct), witness GG and two other women, who were later moved to Emu Plains Correctional Centre.

10 Astill said he had sex with them in the chief's hub. Astill also said that he had sex with witness F. He said that he had sex with witness O and performed oral sex on her and they almost got caught. He said that 'Gilesy came in on us'. Astill said he would take some SMAP inmates to the SAPO's office at the back of High Needs. One of the inmates was witness I. Astill said one inmate
15 would give him oral sex and the other would show her vagina to him. Astill asserted that all of the inmates were willing participants."

20 These admissions, Commissioner, by Astill to Officer Brumwell amounted to disclosures of sexual assault or other sexual misconduct by him towards at least nine inmates, some of which occurred repeatedly. While Astill asserted that the inmates were willing participants, that assertion ignored the fact that, as he later accepted in his pleas of guilty in the criminal trial, conduct of this kind involved at the very least the abuse of his position and was misconduct in public office.

25 A significant issue which arises and needs to be explored from this is how conduct as brazen as that admitted by Astill, including having sex with inmates in the Chief Correctional Officer's Hub and Astill's admission that he was caught by another senior officer, Westley Giles, could have gone on at Dillwynia without action being taken.

30 It raises the real possibility that actual sexual abuse of women inmates at Dillwynia was an open secret at the prison, and this possibility will be explored at the public hearing. I have already mentioned Officer Stephen Virgo's arrival at Dillwynia in September 2018 and that that arrival led to witness H being prepared
35 to make a complaint about Astill's abuse of her.

40 That, in turn, led to the New South Wales police investigation of Astill, which included covert strategies. The acting governor at that time was Adam Schreiber, who replaced Governor Martin following her retirement in December 2018 in the role of acting governor. Governor Schreiber cooperated with the police in their inquiry. At the same time as that police investigation was being pursued, I expect Officer Virgo to give evidence that he lodged a report concerning complaints made by witness H about Astill. I expect Officer Virgo to give evidence that that report disclosed that witness H had information about Astill but would not go into
45 detail until she was transferred out of Dillwynia for fear of retribution.

One of the management issues which will be explored at this public hearing is the effect on reporting and behavioural culture of the close relationships between staff at Dillwynia. There were a number of married couples, most notably Astill and Officer Hockey. Many of the officers were very close friends and known to be so.
5 Perhaps, for these reasons, amongst others, officers often had lengthy periods of service at Dillwynia rather than being moved between different correctional centres. The extent to which these issues affected the management and culture of Dillwynia will be explored.

10 Finally, in relation to the culture at Dillwynia, I wish to say something about evidence which Governor Martin gave at Astill's criminal trial. She said that conduct towards the end of - I withdraw that. She said that towards the end of 2018, witness K made a complaint about Astill and that he had approached her in her cell and that she was terrified of Astill. Governor Martin said that
15 arrangements were made for Officer Kellett to speak to witness K about the issue and to record it, and a report was made.

Governor Martin said that she encouraged witness K to speak to the New South Wales Police. The complaint had been made while Astill was on leave. Governor
20 Martin gave evidence that she was at that time not happy for Astill to come back to Dillwynia from his leave until a proper investigation had taken place. She said that by this time, she was "Frustrated by the lack of management action against the continual reporting of misconduct by Wayne Astill".

25 As I have already said, Commissioner, Shari Martin was the governor at Dillwynia between 2006 and 2012 and again between 2015 to 21 December 2018. The evidence I've just mentioned that she gave, suggests the frustration by her about a lack of action by management at Dillwynia in response to the continual reporting of misconduct by Astill. It will be explored at this hearing as to who, within
30 management, Governor Martin believed had failed to act in response to continual reporting of misconduct by Astill in circumstances where she was the most senior person at Dillwynia for the period in which most of his offending occurred.

I will say something about the structure of this public hearing. As I've already
35 said, there are many matters which it will be necessary to address at this hearing. Several of those matters is the question of whether complaints were made about Astill and not acted on, and whether officers from Corrective Services knew about Astill's offending and failed to act. Another of the key issues will be to explore the culture of Dillwynia in relation to reporting of misconduct by officers, and
40 whether Dillwynia was, or is, being managed in accordance with the requirement that I earlier identified for Corrective Services to "manage the state's correctional centres to achieve safe, secure, and humane custodial environments."

45 Another of the issues is whether the findings of Task Force Themis which I've already said revealed a serious problem of sexual contact between Corrective Services officers and inmates made any difference to the culture and systems of

Dillwynia with respect to handling complaints by women about officers.
I mentioned the statement by the then assistant commissioner that:

5 "The best defence is a strong, supportive work culture which provides
training, skills, and competencies needed for the job."

10 Commissioner, there are serious issues to be explored about whether any of these
ideals were achieved at Dillwynia and whether anything changed there as a result
of Task Force Themis's findings. Further, the terms of reference require the
commission to identify further considerations of broader site or case-specific or
Correctional Services investigations which arise from the findings. This inquiry,
therefore, is concerned with identifying whether the factual matters exposed by the
inquiry expose broader problems within Correctional Services in New South
Wales.

15 Another of the tasks of this inquiry is to consider whether any matters should be
referred to ICAC or the New South Wales Police Force for further investigation. It
will be necessary to closely examine the conduct of officers within Corrective
Services in relation to knowledge or information about Astill's offending in order
20 to properly consider whether referrals should be made.

25 As I have noted, the inquiry was established on 28 July 2023. As you have
observed, Commissioner, it was reconstituted under the Special Commissions of
Inquiry Act to enable it to compel witnesses to answer questions and produce
documents on 13 September 2023.

30 The inquiry and its staff have interviewed a significant number of inmates and
former inmates, and they are expected to call inmates and former inmates to give
evidence when the public hearing resumes on 17 October 2023. Many of those
women are vulnerable and have been victims of serious sexual assault. As I will
come to shortly, steps will be taken to protect their identities and accommodate
them in giving evidence as required.

35 The inquiry has already interviewed a number of current and former Corrective
Services officers. Those Officers have attended interviews voluntarily. Those
interviews are continuing. There are a number of officers who have not yet
attended interviews with the commission. Commissioner, any officer who the
commission believes can give relevant evidence will be required to appear at, and
40 give evidence at, the public hearing by the issue of a summons irrespective of
whether that officer has attended an interview.

45 I expect to call on a large number of current and former officers to give evidence
at this public hearing to explore the circumstances in which Astill's offending was
not acted on until he was arrested. I'm not yet in a position to identify all of the
witnesses who I propose to call to give evidence. Shortly, Ms Davidson will call
Ms Angela Zekanovic. Tomorrow we will call John Buckley and Fergal Molloy.

A large volume of documents has been obtained and are being reviewed. I expect in due course that a tender bundle, including the relevant documents, will be available and circulated to the parties with interest, as far ahead of the resumption of the hearing on 17 October 2023 as is possible.

5

Could I finally, Commissioner, make an application for a non-publication order, the terms of which I hope are before you. Commissioner, the effect of those orders is to restrict or prohibit the publication of evidence which allows the people identified in annexure A to be identified. Those people who are -

10

COMMISSIONER: Just a minute, Mr Lloyd.

MR LLOYD: I'm sorry.

15

COMMISSIONER: Looking at the terms of orders 1 and 2 as you propose, they deal with pseudonyms, as effectively does order 3. But order 4 goes well beyond that.

MR LLOYD: Yes.

20

COMMISSIONER: I am prepared, subject to what others may say, to make orders 1, 2 and 3, but I would hesitate significantly before I made order 4.

25

MR LLOYD: I understand. I propose this in answer to what you have just said, Commissioner. I defer moving on order 4 and only move on orders 1, 2 and 3. If necessary, at some later point I will come back to order 4 and say something about it.

30

COMMISSIONER: Yes. Does everyone else have a copy of what is proposed?

MS MELIS: It has just been put before me now, Commissioner.

35

MR VILLA: Commissioner, we have seen that. I would want to be heard in relation to order 4, but I'm content, given who the witnesses are to be called today and tomorrow, for order 4, the issue about order 4, to be deferred because I don't anticipate any of the evidence that will be given by the next three witnesses will in any way contain information that would be capable of identifying individuals. So I would be content with Mr Lloyd's proposed course as an interim measure, but that would also need to include, I think, paragraph 5 which is the non-publication of the annexure itself.

40

COMMISSIONER: Yes. What is your current instructions in relation to order 4?

45

MR VILLA: We were supportive of it and if -

COMMISSIONER: When you say "we" it would have to go witness by witness.

MR VILLA: The persons identified in annexure A for whom I appear, which I can indicate, Commissioner, are witness C, witness H, witness I, witness K, witness M, witness N and witness V -

5 **COMMISSIONER:** Sorry, C, H, I -

MR VILLA: K, M, N, and V.

COMMISSIONER: And V?

10

MR VILLA: Yes, they are the seven who I currently have instructions to appear, and we were content with the form of order that had been proposed. There might be a concern which we would need to speak to the individual witness about if order 4 was not made, and we would need to explain to them the effect of that in terms of their continued willingness to participate in the process which they have currently been willing to participate in.

15

COMMISSIONER: Well, this is going to cause some problems because to explore what I am required to explore does require me to look at particular events, and those events can only be understood in the context of who was involved.

20

MR VILLA: Yes. Commissioner, as I've indicated, we are content for the interim regime Mr Lloyd has suggested to be in place; that is, the Commission would make the orders in paragraphs 1, 2, 3 and 5, and nothing that happens in the remainder of today or tomorrow is really going to engage what is sought to be engaged by paragraph 4. Then in the interim, before we resume on 17 October, I will have an opportunity to speak to the women for whom I act to emphasise to them the importance of the work that is being done and how it can only be done in a particular way, and just give them some satisfaction -

25

30

COMMISSIONER: I would appreciate that. I mean, I anticipated the problem, and I appreciate the concerns. But if we are to get to where the instructions I have are designed to go, you have to confront this issue.

35

MR VILLA: I understand that entirely, Commissioner. There's a process we will need to engage in.

COMMISSIONER: Yes.

40

MR VILLA: And we will engage in it, in the interim.

COMMISSIONER: You might speak to Mr Lloyd and Ms Davidson about it too, if you would.

45

MR VILLA: Yes.

COMMISSIONER: Does anyone else wish to be heard in relation to orders 1, 2, 3 and 5?

MS MELIS: No, thank you.

5

COMMISSIONER: Very well, I will make orders 1, 2, 3, 5, and I guess 6, in the document entitled "Non-Publication of (indistinct) orders" which I have initialled and dated.

10 **MR LLOYD:** May it please the Commission. Perhaps to make it perhaps obvious to you, Commissioner, and certainly to me, the basis upon which this application is made, Mr Burns' application was resisted, just to make it clear that each of the people, the subject of this order, are current or former inmates at Dillwynia and many of them have been the victims of Astill's sexual offending.

15

COMMISSIONER: I understand that.

20 **MR LLOYD:** Others have not, but the identification of those other women would have the serious capacity to allow the identification of the women who have been the victims of Astill's sexual offending, which puts these women obviously, in our respectful submission, in a different category.

25 **COMMISSIONER:** Yes. I mean, I understand all of this, but it would be naive to believe that, given all that has occurred, with some knowledge, indeed significant knowledge, is not widespread in a confined community.

MR LLOYD: Yes.

30 **COMMISSIONER:** And we need to, I think, step through these problems, conscious of the fact that that's the reality.

35 **MR LLOYD:** And nothing that I just said was intended to address order 4, which we can come back to. It was really just to make it clear the basis upon which this application is made and the earlier application was opposed. These women are in a materially different category to the people the subject of Mr Burns' application.

COMMISSIONER: I understand that.

40 **MR LLOYD:** Commissioner, that completes the opening and that administrative issue. The next thing to occur is to call Ms Zekanovic; I hope that is how you say her name. I ask for an indulgence, it's not that far away from lunch, to just try and sort out some issues arising from a claim I understand that is made in the nature of public interest immunity over parts of her statement, to try and sort that out before we call her.

45

COMMISSIONER: Very well. Is 2 o'clock then a sensible time?

MR LLOYD: Looking at Ms Melis and Ms Davidson, yes.

COMMISSIONER: All right. We will adjourn until 2.00.

5 <**THE HEARING ADJOURNED AT 12.43 PM**

<**THE HEARING RESUMED AT 2.03 PM**

10 **MR SELLER:** I was wondering if I could announce my appearance.

COMMISSIONER: Yes, thank you, Mr Sheller.

15 **MR LLOYD:** Commissioner, before I ask Ms Davidson to call the witness, I just wish to correct something that I said in the opening. I intended to refer to a person by the name of Pam, P-a-m Hotham, if I said Pat Hotham, I withdraw it. There is no Pat Hotham who we're concerned with. It was intended to be a reference to Pam Hotham. The other thing I wish to pass on you, Commissioner, is Mr Villa's apologies. He can't be here this afternoon and he wished me to convey that.

20 **COMMISSIONER:** Is there anyone in his stead or not?

MR LLOYD: No, there's not.

25 **MS DAVIDSON:** Commissioner, I'm shortly to call Angela Zekanovic. I have the documents I need for that purpose. Commissioner, I call Angela Zekanovic, who I understand is in the well of the Commission.

COMMISSIONER: You need to be sworn. Will you take an oath on the Bible?

30 **MS ZEKANOVIC:** Yes.

<**ANGELA ZEKANOVIC, SWORN** [2.05 PM]

35 **COMMISSIONER:** Yes, take a seat.

40 **MS DAVIDSON:** Commissioner, in respect of foreshadowed public interest immunity claims in respect of parts of Ms Zekanovic's statement - I should say statements plural. There has been a supplementary statement provided. The position as I understand it is this: the claim that was foreshadowed yesterday has been narrowed somewhat this morning but at present the position is still that it is pressed as a public interest immunity claim.

45 I have raised with my learned friend, Ms Melis, who was here this morning for the Commissioner, and understand that consideration is now being given to whether, in fact, appropriate protection could be given to that material by way of making non-publication orders, the effect of course of a public interest immunity finding being that the evidence is not before this inquiry but is excluded.

COMMISSIONER: I wouldn't get it at all.

5 **MS DAVIDSON:** Indeed, your Honour, other than for the purposes of ruling on the public interest immunity claim.

COMMISSIONER: It's not exactly a helpful position.

10 **MS DAVIDSON:** The High Court has made clear in HT v The Queen that the evidence then is an exclusionary doctrine. Therefore, what I propose as a practical means of dealing with the issue given that there are not yet, as I understand it, instructions forthcoming from the Commissioner in respect of whether
15 a non-publication order would be appropriate, to have the statement marked for identification and circulated to the parties with interest, but not yet tendered because what will be marked for identification is a version of the statement that presently has redactions on it indicating the material that is presently the subject of what is flagged as a public interest immunity claim.

20 The intention then would be to the extent that public interest immunity claims are made by the Commissioner in respect of material in this statement or, indeed, in other material that has been produced to the commission, that that would become the subject of evidence and submissions to be dealt with on a future occasion by means of potentially a directions hearing, Commissioner, and thus not to detain us this afternoon.

25 **COMMISSIONER:** Certainly. How much has been redacted from the statement?

MS DAVIDSON: It's not extensive. It's the subject of effectively extracts from policy documents that are the subject -

30 **COMMISSIONER:** What's the general category of the claim?

MS DAVIDSON: Well, largely, as I understand it, in respect of policy documents that are not presently in the public domain, that relate to subjects of how
35 investigations may be carried out or generally policies in relation to some aspects of the treatment of inmates.

COMMISSIONER: Public interest immunity claim in relation to the way
40 inmates are treated?

MS DAVIDSON: Some limited aspects of that. I'm being careful obviously in relation to what I say as to that material.

45 **COMMISSIONER:** Well, it is incumbent on those who act for Corrective Services to ensure that this inquiry is not compromised in any way given the task that has been given to me by government. People might like to reflect on that. Very well.

MS DAVIDSON: Indeed, Commissioner.

COMMISSIONER: What do you wish to tender?

5

MS DAVIDSON: If I might hand up and ask to have marked for identification, two statements of Ms Zekanovic, the first is marked, or dated 27 September and the second is dated 28 September. It is described as a supplementary statement.

10 **COMMISSIONER:** They will become MFI1 and MFI2.

<MFI 1 - STATEMENT OF ANGELA ZEKANOVIC DATED 27/09/2023.

<MFI 2 - STATEMENT OF ANGELA ZEKANOVIC DATED 28/09/2023.

15

MS DAVIDSON: Thank you, Commissioner. There are copies available in the witness box for the witness, and I understand that those will be circulated as MFIs now to the parties.

20 Ms Zekanovic, have you, for the purposes of this commission, prepared two statements dated the 27 and 28 September 2023?

MS ZEKANOVIC: I have.

25 **MS DAVIDSON:** Are the contents of those statements true to the best of your knowledge?

MS ZEKANOVIC: Yes.

30 **MS DAVIDSON:** Ms Zekanovic, you are, in your current role, the Acting Director of Professional Standards and Investigation within Corrective Services New South Wales?

MS ZEKANOVIC: Yes.

35

MS DAVIDSON: You need to answer orally so they can get it for the transcript.

MS ZEKANOVIC: I am.

40 **MS DAVIDSON:** You've been in that role since January 2023, is that correct?

MS ZEKANOVIC: I have.

45 **MS DAVIDSON:** You indicated that you report to the Assistant Commissioner Delivery Performance and Culture, who is that?

MS ZEKANOVIC: Chantal Snell.

MS DAVIDSON: She in return reports to the Deputy Commissioner Strategy and Governance; who is that?

5 **MS ZEKANOVIC:** Luke Grant.

MS DAVIDSON: And Luke Grant in turn reports to the Commissioner, is that correct?

10 **MS ZEKANOVIC:** Yes, that's correct.

COMMISSIONER: I wonder if you try and make sure you keep your voice up, it's hard for me to hear you from here.

15 **MS ZEKANOVIC:** Sure, I will sit closer to the microphone.

MS DAVIDSON: You have worked in Corrective Services New South Wales since February 2022, but in the course of preparing your statement you have used your best endeavours to find out in relation to matters that occurred before your period of employment, I take it, is that correct?

20 **MS ZEKANOVIC:** Yes, that's correct.

MS DAVIDSON: Have you got a copy of your statement there?

25 **MS ZEKANOVIC:** I do.

MS DAVIDSON: You refer at paragraph 20, to Project Merge which I will come back to because you deal with it later also in your statement. Project Merge is the merger of the former Professional Standards Branch and the Investigations Branch; is that correct?

30 **MS ZEKANOVIC:** Yes, that's correct.

35 **MS DAVIDSON:** You refer in paragraph 20 to addressing - or one of the things that you are responsible for is initiatives in Project Merge that you have implemented to address current governance shortfalls. Are you able to explain what current governance shortfalls you're addressing via the project?

40 **MS ZEKANOVIC:** Sure. So one of the things that we have recognised as part of Project Merge is 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. I talk about later in my statement about some of the things that we have identified, including the current process taking too long, current referrals not being a proper prioritisation model in terms of how we - the types of referrals that we get and how we triage them. There have also been concerns raised around the

lack of transparency around the misconduct process and how that operates and those impacted. That's general.

5 **MS DAVIDSON:** Is it the concerns that you have referred to at paragraph 100 that we should take it are the current governance shortfalls in summary form?

MS ZEKANOVIC: Yes, that's correct.

10 **MS DAVIDSON:** Just to be clear, the former Professional Standards Branch and the Investigations Branch, what was the difference between the role of those two branches?

15 **MS ZEKANOVIC:** The Investigations Branch was solely responsible for conducting investigations into workplace misconduct and other critical incidents such as deaths in custody, escapes and the like. That is still done by that team. However, that team now, as you indicated, is part of professional standards and investigations and professional standards was solely responsible for dealing with the allegations of misconduct and pursuing the misconduct process.

20 **MS DAVIDSON:** But did professional standards conduct any investigations in relation to the misconduct process or they would delegate that across to the Investigations Branch?

25 **MS ZEKANOVIC:** That's correct, yes and they would rely on the investigation reports in most cases to put allegations to an officer or a staff member, and then commence the misconduct process.

30 **MS DAVIDSON:** Did both of those former entities have a role in relation to both complaints from inmates and complaints that came from other officers or members of the public?

35 **MS ZEKANOVIC:** So it was only the professional standards branch is my understanding that would - speaking for my time there, so my time at correctives, the complaints would come through the Professional Standards Branch and be referred to investigations after the referrals had been assessed by the Professional Standards Committee, which is a committee made up of mostly assistant commissioners and they look at all the allegations or referrals that come in each week.

40 **MS DAVIDSON:** Just to understand your answer, so Professional Standards Branch and Investigations Branch both did play a role though in relation to complaints from inmates as well as complaints that were from other officers or members of the public?

45 **MS ZEKANOVIC:** Yes.

MS DAVIDSON: There wasn't some division between the two in terms of the source of the complaints?

MS ZEKANOVIC: No, more the entry point.

5

MS DAVIDSON: Yes. You refer in relation to - sorry, you refer in paragraph 30 - I withdraw that - in paragraph 20 to your statement relating to policy and procedure in relation to the making and handling of complaints in relation to misconduct and inappropriate behaviour including sexual offending by Corrective Services New South Wales officers. That was the subject of the request that was put to Corrective Services in respect of making this institutional statement, is the Commissioner to understand that in respect of the policy documents you refer to throughout your statement they are addressed to that subject matter; that is that they are, to your understanding, intended to include misconduct in the form of sexual offending by Corrective Services officers?

10
15

MS ZEKANOVIC: Yes.

MS DAVIDSON: At paragraph 30 of your statement, you refer to the CSNSW intranet page for PSI which then use the term PSI intranet and you have given aspects of an overview that is available on that intranet page. Is that an intranet page that is available to all Corrective Services officers?

20

MS ZEKANOVIC: Yes.

25

MS DAVIDSON: That is, it's part of a broader Corrective Services intranet?

MS ZEKANOVIC: Yes.

30

MS DAVIDSON: It's not a system that is available to inmates?

MS ZEKANOVIC: No.

MS DAVIDSON: You indicate, and you indicated in one of your earlier answers in referring to what the intranet tells staff that the Professional Standards Committee oversight staff misconduct and the PSI acts as a secretariat for the PSC or Professional Standards Committee. Who is it who sits on the Professional Standards Committee? I think you indicated it was mostly assistant commissioners?

35
40

MS ZEKANOVIC: Yes, mostly, Assistant Commissioners, both of the custodial assistant commissioners, the Community Corrections Assistant Commissioner, we have a representative from the people division, so that's essentially our human resources area, the director of staff support, wellbeing and culture and the two other Assistant Commissioners.

45

MS DAVIDSON: Do you sit on the Professional Standards Committee?

MS ZEKANOVIC: Yes. Can I just add to that, I along with the AC that I report to, Chantal Snell, we chair the committee.

5 **MS DAVIDSON:** In terms of your role, I understand you are in an acting position but are you effectively or in actual fact the head of the PSI branch as it presently is?

10 **MS ZEKANOVIC:** Yes.

10 **MS DAVIDSON:** You extracted at paragraphs 30 and 31 I should say from the intranet page in respect of the reporting of misconduct. You have indicated, taking you to paragraph 31, that 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 investigation. Then there's some examples given. And
15 then over the page, page 9, quoting again from the intranet, you have indicated or the intranet says:

20 "That 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."

25 Are you able to indicate which of those two requirements prevails, that is the requirement to report to PSI and the encouragement in relation to reporting to the line manager in the first instance?

30 **MS ZEKANOVIC:** Staff are encouraged to report misconduct. Regardless of which pathway they choose, the requirement is there. What I do find is that most people report via their manager although some people do come directly to PSI.

35 **MS DAVIDSON:** Because there appears to be a requirement as to reading from the first extract under paragraph 31, that any allegation must be reported to PSI. Is that in your understanding confusing for a staff member reading it and trying to understand what their reporting pathway is meant to be?

40 **MS ZEKANOVIC:** Yes, I can understand that. I guess I would say that regardless of which pathway people choose to go down, they are required to report. I think we encourage people to report directly to us and some people feel more comfortable reporting through their manager, or their line manager.

MS DAVIDSON: When you say encourage people to report directly to you, by what means do you encourage reporting to you?

45 **MS ZEKANOVIC:** We offer training, not our unit any more, it used to be part of our unit, the support unit which is now part of the staff support wellbeing and culture directorate, they do training around misconduct or about misconduct and where misconduct should be reported to and how to report and what misconduct

is, and that raises awareness around the recording of misconduct. So people do know they can come directly to us and report and they don't have to go via their line manager.

5 **MS DAVIDSON:** So you are aware of the content of that training including encouragement of reporting direct to PSI?

MS ZEKANOVIC: Yes.

10 **MS DAVIDSON:** You have given figures at paragraph 32 in respect of numbers of complaints in relation to staff and I should indicate, Commissioner, that there have been some corrections made to those figures in the supplementary statement in paragraph 5 of the supplementary statement, the figures for 2020 to 2022 are corrected. There does seem to be some disconnect potentially between the figures
15 at paragraph 33 of your statement that you've confirmed are correct, and the corrected figures that you've given for 2021 and 2022. I withdraw that.

There's only a disconnect now in relation to 2022. But 32(h) on your correction paragraph 5 you say that there are 779 referrals in 2022, in paragraph 33 which
20 you've, in your supplementary statement said is correct, you said 729. Do you need to make a further correction to the supplementary statement? Do you know whether it's 729 or 779 for 2022?

MS ZEKANOVIC: Sorry, can you repeat that question again?
25

MS DAVIDSON: Yes. So do you have your supplementary statement there?

MS ZEKANOVIC: I do.

30 **MS DAVIDSON:** You have given some corrected figures for paragraph 32. Do you see that there in paragraph 5?

MS ZEKANOVIC: Yes.

35 **MS DAVIDSON:** You've then said in paragraph 6:

"I confirm that the figures referred to in paragraph 33 of my first statement are accurate."

40 **MS ZEKANOVIC:** Yes.

MS DAVIDSON: You see the figure for 2022 in paragraph 5 of the corrected version in your supplementary statement is 779 but in paragraph 33 of your initial statement, you've said 729 for 2022. I'm just wondering, I'm not trying to catch
45 you out. I'm wondering whether you know which one of those is correct.

MS ZEKANOVIC: Yes, the figures in my supplementary statement are correct.

MS DAVIDSON: All right. So 779 is the correct figure.

MS ZEKANOVIC: That's correct.

5

MS DAVIDSON: For 2022.

MS ZEKANOVIC: Yes.

10 **MS DAVIDSON:** You've made a correction in relation to the second aspect or the second sentence.

COMMISSIONER: Can I just understand for a moment. These figures come with the comment also as to the number of matters that were closed. How do
15 I understand the word "closed"? Does that mean dismissed or does it mean upheld or what does it mean?

MS ZEKANOVIC: A combination. So closed could mean we referred it to local
20 management to deal with or human resources. The misconduct process has concluded. There wasn't enough to sustain an allegation of misconduct. Or there wasn't enough information to even pursue the matter.

COMMISSIONER: Sorry, there wasn't enough?

25 **MS ZEKANOVIC:** Information to even pursue the matter or even pursue an investigation.

COMMISSIONER: Do you have figures on how many are closed by being
30 dismissed?

MS ZEKANOVIC: Yes, I can obtain those for you. I don't have that on me today, I'm sorry.

COMMISSIONER: Yes, I think we would like those. Roughly what sort of
35 proportion on average would be dismissed and what would be found to be justified?

MS ZEKANOVIC: I don't have those readily available, I'm sorry.

40 **COMMISSIONER:** If someone can give them to us, that would be good.

MS ZEKANOVIC: Yes.

COMMISSIONER: While I'm on my feet, so to speak, I would like to know how
45 many of these relate to matters of sexual misconduct, and any other major category of complaint. For example, is there a category on bullying of other officers or bullying of inmates? Or mistreatment of inmates?

MS ZEKANOVIC: Yes, there's bullying and harassment.

5 **COMMISSIONER:** I would like to know how the numbers fall into significant categories if they do, all right?

MS ZEKANOVIC: We can provide those.

10 **COMMISSIONER:** Thank you.

15 **MS DAVIDSON:** This is perhaps a related question. In your supplementary statement at paragraph 7 and 8, you refer to your paragraph 33 indicating that the figure is not the subject of regular reporting and you corrected that by reference to indicating that they are not the subject of external reporting. You then do indicate in paragraph 8 of your supplementary statement that on occasion these figures are used for internal reporting and auditing purposes. Is there a regular process of internal reporting that you're aware of, of these numbers of complaints and can you explain to the Commissioner how that operates?

20 **MS ZEKANOVIC:** The Audit and Risk committee, they ask us regularly for the number of matters that we have opened and closed over a certain period and then I also provide the data to executive, the executive around the matters that are open and closed as requested.

25 **COMMISSIONER:** So there's no regular reporting pattern, there's just a question of someone asking?

30 **MS ZEKANOVIC:** The Audit Office have a regular - they have a regular request, I think it's every quarter. They ask for information. Sorry. And the executive -

COMMISSIONER: So as a matter of obligation, every quarter, they get a report, is that right?

35 **MS ZEKANOVIC:** Yes. It's not always on time but for the most part it's a - yes.

COMMISSIONER: And where does that report go to apart from to that committee?

40 **MS ZEKANOVIC:** I'm not sure. I'm not sure if they forward it on to the audit office or it remains within DCJ.

COMMISSIONER: Does anything go to the Commissioner?

45 **MS ZEKANOVIC:** Yes. I report to him fairly regularly on -

COMMISSIONER: No, no, does he get a copy of the statistics? Does he or she from time to time, do they get a copy of the report indicating the trend, nature and number of complaints.

5 **MS ZEKANOVIC:** Not on routine - not as part of say monthly reporting or weekly reporting but I do provide reports to the Commissioner about where certain matters are up to, not necessarily the raw data, on a weekly or monthly basis.

10 **COMMISSIONER:** You provide those reports I assume when requested?

MS ZEKANOVIC: Yes.

15 **MS DAVIDSON:** To clarify your answers in respect of reports being prepared for the Audit Committee or the audit office, are you referring there to an Audit Committee within Corrective Services or do you understand that to be the external New South Wales Government Auditor?

20 **MS ZEKANOVIC:** I understand that to be a DCJ Audit Committee, Audit and Risk Committee.

MS DAVIDSON: That is within the department but outside of Corrective Services?

25 **MS ZEKANOVIC:** That's right. And that's a relatively, from my understanding, I think a new reporting that has been required. I'm not sure if the previous person who was in the role that I'm in did that reporting.

30 **MS DAVIDSON:** Was there a predecessor in your role noting that the merger has only been in effect since I think March of 2023.

MS ZEKANOVIC: Sorry, I should have said the previous director of professional standards.

35 **MS DAVIDSON:** I see. Where you say you understand it to be new, has that reporting to the Audit Committee occurred throughout your time in this role; that is since January of 2023?

40 **MS ZEKANOVIC:** Yes.

MS DAVIDSON: And it's been quarterly in that period?

45 **MS ZEKANOVIC:** I would have to confirm exactly but I think I've reported about twice.

MS DAVIDSON: Right. And in that report, is it simply a report of overall numbers of the kind that you have provided here at paragraph 32 or does it contain categories in respect of what kinds of complaints of misconduct have been made?

5 **MS ZEKANOVIC:** It also includes categories.

MS DAVIDSON: And does it indicate, in that report, the source of the complaint, that is, whether it came from a fellow officer or an inmate or somebody external?

10 **MS ZEKANOVIC:** I don't think it does, no.

MS DAVIDSON: For your own, that is for your own purposes within PSI, is it that you produce for any purpose statistics in relation to how many of those complaints are from officers about other officers and how many are from inmates?

15

MS ZEKANOVIC: We, I'm not sure if you are going to raise this anyway but we report regularly to ICAC every quarter to them under section 11 of the ICAC Act and that includes all the matters that we are required to report to them and that's quite an exhaustive list and that includes who made the complaint, what centre was involved, the staff involved and if they ask for further information we provide it to them.

20

MS DAVIDSON: There is reference in some of your documentation, I'm not sure it's in the body of your statement, to the ICAC spreadsheet. Is that what you are referring to?

25

MS ZEKANOVIC: I think I call it a schedule, ICAC schedule maybe.

MS DAVIDSON: There is a schedule that is maintained by you for the purposes of providing to ICAC on a quarterly basis?

30

MS ZEKANOVIC: Yes.

MS DAVIDSON: Is that correct?

35

MS ZEKANOVIC: Yes.

MS DAVIDSON: Are you aware of how long that reporting has been occurring to ICAC?

40

MS ZEKANOVIC: I'm not sure but it's certainly been during the time that I worked at Corrective Services.

MS DAVIDSON: And in respect of the information that is included in the ICAC schedule, does it regularly provide that breakdown by centre and by the source of the complaint? You indicated that if ICAC asked for further information you would give it but in terms of what you affirmatively give to them?

45

MS ZEKANOVIC: Yes, and I will just add that we are always open to providing additional information and sort of refining our template, if you like, of the types of information that we include routinely at their request.

5

MS DAVIDSON: Have you refined the template in the time that you have been in the role as head of PSI.

MS ZEKANOVIC: Yes, just recently they have asked for further information to be included.

10

MS DAVIDSON: In what way, can you describe that refinement?

MS ZEKANOVIC: Further details, I can't think of what exactly they have asked for recently at this moment, but they have indicated they needed some more information so I asked the manager that's responsible for initially preparing those reports to reach out to them and get the information that they have requested and we are actually in the process of doing it for the next schedule.

15

MS DAVIDSON: So it hasn't occurred yet?

20

MS ZEKANOVIC: It hasn't occurred yet.

MS DAVIDSON: You indicate at paragraph 33 that there was a significant increase in complaints in 2021 and thereafter. And you understand that the numbers of complaints increased due to factors associated with COVID-19 and the introduction of the support unit. Are you able to explain to the Commissioner what factors associated with COVID-19 you understood to have given rise to increased numbers of complaints?

25

30

MS ZEKANOVIC: So we had a number of referrals made to professional standards branch at the time in relation to staff not complying with the requirement to get vaccinated.

MS DAVIDSON: I understand. You refer in paragraph 34 to the support unit. And you have indicated that that used to be part of PSB. Do you know when the support unit was created?

35

MS ZEKANOVIC: It was created before I commenced at Correctives. I think it was around 2021, 2020, or 2021, I'm not sure of the exact date but I think around that time.

40

MS DAVIDSON: So you understand it to have post-dated the period of Mr Astill's offending?

45

MS ZEKANOVIC: Yes.

MS DAVIDSON: And am I correct in understanding that support unit is confined to providing support functions for staff, that is, it doesn't play any role in supporting inmates?

5 **MS ZEKANOVIC:** That's correct.

MS DAVIDSON: You indicate that it attends the academy, that is, the Brush Farm Corrective Services Academy. It speaks to new recruits and that there's training provided to new recruits. Does the PSI play a role in determining the content of that training?
10

MS ZEKANOVIC: My understanding, the training package was developed prior to my time in Corrective Services but I understand that we, when I say we, professional standards branch, did have some involvement in terms of the content of that training and how that was developed when the support unit was part of professional standards branch.
15

MS DAVIDSON: Have you recently, that is, since you commenced in the role, had any engagement in respect of the content of that training?
20

MS ZEKANOVIC: No, that support unit has now moved to another directorate. The staff support and cultural wellbeing directorate. However, I think I talk about later in my statement that as part of Project Merge we are looking to establish the internal PSI education and prevention team.
25

MS DAVIDSON: Do you envisage that that team once created will then take over the training role in relation to new recruits?

MS ZEKANOVIC: I'm not sure if we will take over or be complementary. We haven't got to that level of detail yet but are certainly going to have a role to play in terms of prevention and education of misconduct.
30

MS DAVIDSON: As part of your concern in Project Merge is to make sure that, as I understand it, that officers understand better than they presently do how reporting of misconduct is intended to occur; is that correct?
35

MS ZEKANOVIC: Yes.

MS DAVIDSON: And training will be a critical aspect of that presumably?
40

MS ZEKANOVIC: That's correct.

MS DAVIDSON: So is it correct to say that the Directorate within which the support unit currently sits is presently responsible for the content of that training?
45

MS ZEKANOVIC: Yes. Although can I just add that I'm not sure how much that training package has changed. It's quite, in terms of the moving over, I think the

training has remained the same as it was when they were part of professional standards branch, I'm not aware if it has changed at all. But it still exists the training around misconduct.

5 **MS DAVIDSON:** To the extent that the professional standards branch no longer exists, and the investigation branch no longer exists and the merger has taken place, albeit that your new teams and matrixes and things haven't necessarily yet been put into place, it would be necessary, would it not, for the content of the training to reflect what has occurred in terms of the merger?

10

MS ZEKANOVIC: Yes, it reflects that. It reflects that we are now PSI.

MS DAVIDSON: You understand that it has been updated?

15 **MS ZEKANOVIC:** Yes, that's correct.

MS DAVIDSON: Is that because you have reviewed some training documents or somebody has told you that, how is it you came to be aware of that?

20 **MS ZEKANOVIC:** I know that we have had the opportunity to review things like changes to email addresses and things like that to reference that the support unit is not the PSI support unit, for instance.

25 **MS DAVIDSON:** So that is email addresses and other information that is given within the training?

MS ZEKANOVIC: Yes.

30 **MS DAVIDSON:** You refer at paragraph 36 to the role of PSI stemming from the obligation arising out of clause 253 of the Crimes (Administration of Sentences) Regulation to which my learned friend, Mr Lloyd, referred in his opening. You have extracted that at paragraph 36 of your statement. You refer to - the regulation, I should say, refers in subclause (1) to a requirement that the Correctional Officer report any allegation made to them that in the opinion of the
35 officer to whom the allegation is made is of conduct that constitutes a criminal offence or other misconduct and the requirement that is then set out is that 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. To your understanding, that doesn't differentiate in any way between where that more
40 senior Correctional Officer is located, that is, within or outside the centre or within or outside the particular officer's chain of command, for want of a better word. It's simply a requirement to report to a more Senior Officer?

45 **MS ZEKANOVIC:** Yes.

MS DAVIDSON: There is then a requirement in subclause (2) for the more senior officer to report the conduct or alleged conduct promptly to the Commissioner if

the Senior Correctional Officer forms a belief in relation to it including that it constitutes or would constitute a criminal offence, that is in terms a requirement that conduct or alleged conduct be reported to the Commissioner. How, in practical terms, is a more senior officer to understand a requirement to report directly to the Commissioner, in your understanding, I realise you can't speak for other officers?

MS ZEKANOVIC: Yes, of course. I guess the requirement to report to PSI would be in terms of reporting misconduct would be a delegate of the Commissioner in that sense, is my understanding.

MS DAVIDSON: Do you understand PSI to hold a delegation from the Commissioner in relation to clause 253?

MS ZEKANOVIC: I have to check the delegations, it's been a while since I looked at them. I'm not sure if the Commissioner receives directly complaints around misconduct. I'm sure -

COMMISSIONER: Sorry, I'm not sure I've understood.

MS ZEKANOVIC: I'm not sure I understood the question either.

COMMISSIONER: Well, can I ask a question?

MS ZEKANOVIC: Sure.

COMMISSIONER: The regulation is plain.

MS ZEKANOVIC: Yes.

COMMISSIONER: It says report promptly to the Commissioner. Does that happen? Are reports made promptly to the Commissioner?

MS ZEKANOVIC: Reports are made promptly to PSI.

COMMISSIONER: No, no, I didn't ask you that.

MS ZEKANOVIC: I guess I can't answer.

COMMISSIONER: Are they made to the Commissioner?

MS ZEKANOVIC: I am made aware that there are reports made to the Commissioner.

COMMISSIONER: The regulation says that they must be. Why isn't that being followed?

MS ZEKANOVIC: Sorry?

COMMISSIONER: Why is that not being followed.

5 **MS ZEKANOVIC:** I'm not sure if the Commissioner, I mean the Commissioner does refer complaints that he receives to us.

COMMISSIONER: No, no, no. It's the other way. You don't know of any
10 complaint ever being referred to the Commissioner, but the regulation says it must be. Correct? Why aren't they being referred to the Commissioner?

MS ZEKANOVIC: I'm not sure of that answer. I would have to check.

COMMISSIONER: Very well.
15

MS DAVIDSON: It is the case, is it not, that amongst other aspects of the training you would understand Correctional Officers to be made aware of their obligations pursuant to clause 253 of the regulation?

20 **MS ZEKANOVIC:** Yes.

MS DAVIDSON: Which includes the reporting obligations to which the Commissioner has just referred in his questions?

25 **MS ZEKANOVIC:** Yes.

MS DAVIDSON: Would you agree that for a Senior Correctional Officer who is subject to that requirement in subclause (2), the requirement to report promptly to the Commissioner, I withdraw that. Are you aware of Senior Correctional Officers
30 being given any training material indicating how they are to discharge their responsibilities under subclause (2) to report promptly to the Commissioner?

MS ZEKANOVIC: No.

35 **MS DAVIDSON:** Are you aware of them being informed anything about a delegation in place which you suggested might exist in relation to a report to PSI being equivalent to, in some way, a report to the Commissioner for the purposes of the regulation?

40 **MS ZEKANOVIC:** No, all of our training is focused on reporting misconduct to PSI.

MS DAVIDSON: So you're not aware of any policy document indicating, that is any policy document that's provided to officers in training, or any training package that's provided indicating how it is that senior officers are to discharge - Senior
45 Correctional Officers are to discharge that responsibility?

MS ZEKANOVIC: All the material that I'm familiar with talks about reporting misconduct to professional standards.

5 **MS DAVIDSON:** And that's consistent with the policy documents that you have referred to.

MS ZEKANOVIC: That's correct.

10 **MS DAVIDSON:** In your statement. You've referred, at paragraph 39, to the concept of misconduct under the Government Sector Employment Act for the purposes of section 69 and you have extracted an aspect of the definition in section 69 of the Government Sector Employment Act in relation to misconduct. You would agree that definition is not exhaustive, would you not?

15 **MS ZEKANOVIC:** Yes, I agree.

MS DAVIDSON: Indeed, the regulation confirms that insofar as it refers to a criminal offence, that is clause 253 that we have just been referring, refers to a criminal offence or other misconduct. It's certainly not confined to, that is
20 misconduct, is certainly not confined in the way that paragraph (d) of the definition is confined, that is to convictions or findings of guilt for a serious offence, is it?

25 **MS ZEKANOVIC:** That's right.

MS DAVIDSON: Do you agree that sexual contact between an officer and an inmate constitutes misconduct for the purposes of section 69 of the Government Sector Employment Act.

30 **MS ZEKANOVIC:** Yes.

MS DAVIDSON: There's no ambiguity about that, is there?

35 **MS ZEKANOVIC:** No.

MS DAVIDSON: As to paragraph 40, you refer to the various governance documents setting out the obligations of Corrective Services officers. You have come up with six or referred to six, albeit that the CSNSW guide to conduct and ethics is no longer current, how is an officer, that is a Correctional Officer,
40 working in a Correctional Centre, to find those aspects of the governance or copies of those governance documents, how are they made accessible to Officers?

MS ZEKANOVIC: They are available on the intranet.

45 **MS DAVIDSON:** Is that via the PSI intranet page that you made reference to or somewhere else on the intranet?

MS ZEKANOVIC: Yes, they are available on the PSI or links to those documents on the PSI intranet page. The DCJ Code of Ethical Conduct, it's a DCJ-wide document so that's available on the DCJ intranet page as well as the PSI page.

5

MS DAVIDSON: It is replicated on the PSI. To your understanding on the PSI page is there a gathering of these documents together or at least those of them that are current so that in one place an officer is able to find what their professional and ethical obligations are?

10

MS ZEKANOVIC: Yes, and legislation that's relevant to them, the Government Sector Employment Act, the Crimes (Administration of Sentences) Act links to those legislation are also on the web page. I would have to check the custodial operations policy and procedures whether there's a link to that document on our intranet page.

15

MS DAVIDSON: All right.

MS ZEKANOVIC: I just can't recall at this moment.

20

MS DAVIDSON: Is it your understanding that there is an expectation on officers to be familiar with the content of all of those items that you have listed in paragraph 40 in respect of understanding what the obligations are upon them in terms of ethical conduct?

25

MS ZEKANOVIC: Yes.

MS DAVIDSON: Does the requirement, in your understanding, to consult all of those different sources in order to understand what those obligations are potentially impose an onerous requirement on an Officer?

30

MS ZEKANOVIC: Yes. There is training offered around the DCJ Code of Ethical Conduct, and there is another type of training offered which I referred to in my statement, I can't think of off the top of my head, I'm sorry, and that's a requirement every year or every second year that staff are required to do that training, it's compulsory.

35

MS DAVIDSON: You have made reference to that I think at paragraph 50 of your statement, that the doing the right thing workplace ethics e-learning module that has to occur every two years in respect of the code of conducts and ethics policy.

40

MS ZEKANOVIC: Yes.

MS DAVIDSON: And in addition there is a requirement imposed by, well, I'm not sure it was imposed by DCJ or Corrective Services but you referred to for annual training through the thrive hub that is also online?

45

MS ZEKANOVIC: Yes, that's correct.

5 **MS DAVIDSON:** Do you understand that training to involve effectively clicking through pages on the intranet?

MS ZEKANOVIC: Yes.

10 **MS DAVIDSON:** Are you aware of any auditing or checking of whether staff have complied with those training requirements?

MS ZEKANOVIC: I don't own that training platform and I don't have direct visibility of it so I'm not sure how that's audited or that's tracked.

15 **MS DAVIDSON:** You don't know one way or the other?

MS ZEKANOVIC: No.

20 **MS DAVIDSON:** Do you know who would be able to answer that question in relation to compliance with those training requirements?

MS ZEKANOVIC: I assume someone from the HR Division.

25 **MS DAVIDSON:** You've referred, going back to paragraph 40, to item (c), being the Corrective Services New South Wales guide to conduct and ethics which is no longer current but was in operation from 2010 to approximately 2018. Is it correct that you don't know when that ceased to be current?

30 **MS ZEKANOVIC:** That's correct.

MS DAVIDSON: Is there anybody else in the organisation who would?

35 **MS ZEKANOVIC:** At the time of doing my statement, I had asked staff in my team that had been around longer than I have, and that was the response that I received. That was the period for which we thought that it had been in place.

MS DAVIDSON: All right. But outside your team elsewhere or in some document would you expect there to be some record within Corrective Services?

40 **MS ZEKANOVIC:** Possibly but in the time that I had to prepare my statement I wasn't able to obtain that.

45 **MS DAVIDSON:** I understand that you were only asked to prepare the statement on the 13th notwithstanding that the request for it had been somewhat earlier than that but so you yourself had only been performing inquiries since that time. Do you have any understanding of why that code of conduct and ethics ceased to be current?

MS ZEKANOVIC: It was replaced by a DCJ-wide code.

5 **MS DAVIDSON:** I see. So do you understand there to have been some view taken that it should no longer be document specific to Corrective Services?

MS ZEKANOVIC: I'm not sure why it was replaced by a DCJ document. I wasn't at Correctives at the time.

10 **MS DAVIDSON:** You referred at paragraph 42 to some historical Corrective Services professional standards documentation that you have been able to unearth as a result of searches or presumably those assisting you but you have indicated that this might not represent full coverage of the historical governance documents that were in place during the period of Mr Astill's employment because there is no
15 central repository of historical documents. Do you understand there to be various non-central repositories of historical professional standards documents?

MS ZEKANOVIC: Sorry, can you repeat that?

20 **MS DAVIDSON:** You have said that you might not have been able to provide full coverage of governance documents that were applicable during Mr Astill's period of employment. It's obviously important to the inquiry to understand what policies were in place during that period of particularly his employment at Dillwynia that you have indicated you understand the reason you haven't been able to find them
25 all or may not have been able to find them all is because there's no central repository of historical documents. What I'm asking you is do you understand whether there are any separated or other repositories of historical documents that may be able to be consulted, albeit that you haven't had the opportunity to consult them in the time that was available to you for preparation of this statement?

30 **MS ZEKANOVIC:** There may be, I'm not aware of any and as you indicated, I wasn't able to determine whether that was the case in the time that I had but there may be. I'm not sure.

35 **MS DAVIDSON:** Are there people employed in your team who have been working at Corrective Services for a longer period than you?

MS ZEKANOVIC: Yes, and they assisted me with trying to find some of these
40 documents.

MS DAVIDSON: Are you able to indicate within your team, is there an individual who you would regard as having the best corporate knowledge in relation to what historical documents may have been in place and at what time?

45 **MS ZEKANOVIC:** The staff that I got to assist me with this, that was the staff that I thought would be best placed to be able to provide those details around when certain documents were in place.

MS DAVIDSON: Were they formerly members of the professional standards branch?

5 **MS ZEKANOVIC:** They were, yes, but some of them only - the longest probably five years they've been there.

MS DAVIDSON: All right. So to your knowledge is there anyone still employed within PSI who was employed within Corrective Services in 2009, which is the
10 period that Mr Astill started at Dillwynia?

MS ZEKANOVIC: I don't think there is anyone in PSI currently who was employed back that far.

15 **MS DAVIDSON:** You refer, in paragraph 43, to Mr Astill commencing employment with Corrective Services New South Wales in 2009. That's, in fact, a period of time that he commenced at Dillwynia, having commenced with Corrective Services employment earlier than that. In any event, you seem to have made an endeavour at least in respect of the period since 2009 to produce
20 historical policy documents that were applicable. At paragraph 46 you refer to the Commissioner's instruction number 10 of 2013 in relation to reporting corrupt conduct. Do you understand that that - or you indicated that you understand it remains operative. That includes a duty in relation to reporting corrupt conduct and doing so promptly. To your understanding, would corrupt conduct extend to
25 sexual contact between an officer and an inmate?

MS ZEKANOVIC: Yes.

MS DAVIDSON: And similarly, sexual assault of an inmate would extend to
30 corrupt conduct?

MS ZEKANOVIC: Yes.

MS DAVIDSON: I need to take you back to paragraph 43. You have referred to
35 the management of professional conduct in the Department of Corrective Services policy and you have indicated that it's likely that that policy was in place, in operation until 2011 or 2015.

MS ZEKANOVIC: Yes.

40 **MS DAVIDSON:** There's a big gap obviously between those two years. Do you have any idea of which of those two it is?

MS ZEKANOVIC: No, I'm sorry, I put that in there intentionally saying
45 approximately because I wasn't able to ascertain when.

MS DAVIDSON: When you say 2011 or 2015 is that information that has been supplied to you by a member of your staff?

MS ZEKANOVIC: That's correct.

5

MS DAVIDSON: And do you know what basis they were using to come up with those years?

MS ZEKANOVIC: They were using that information based on going back how far they have been in the team, and their use of those documents in terms of pursuing allegations or putting allegations to people when preparing documents to commence a misconduct process. In putting allegations to staff we often have to refer to existing codes of conduct and other policies.

MS DAVIDSON: That is if a historical allegation is put to staff -

MS ZEKANOVIC: That's right.

MS DAVIDSON: - you would go back to -

20

MS ZEKANOVIC: That's right.

MS DAVIDSON: And notwithstanding you don't have access to any database that tells you when particular documents were in force. You're left in the position of trying to work it out for yourselves, is that effectively the position?

25

MS ZEKANOVIC: That has been, it hasn't been an easy exercise to obtain all of these documents in one place but this is the information that I could find within PSI.

30

MS DAVIDSON: All right, but it presents a problem for your staff as well in relation to historical allegations of misconduct, does it not, if they're to be assessed against then existing policies and your team doesn't know which policy applied at which time?

35

MS ZEKANOVIC: The document that you're referring to, September 2002, so it's highly unlikely that we would be dealing with misconduct dating back that far. And even if we are going back a few years, this document wouldn't necessarily be one that we refer to now.

40

MS DAVIDSON: All right.

MS ZEKANOVIC: So the staff that were able to help me find this document they had become familiar with it years ago perhaps when they first started but we are not using it, making reference to it now.

45

MS DAVIDSON: So you are referring to the staff who may have been around for five years?

MS ZEKANOVIC: That's correct.

5

MS DAVIDSON: Back to 2018 but not earlier than that?

MS ZEKANOVIC: That's correct.

10 **MS DAVIDSON:** Are you aware of whether anybody outside PSI who is still employed with Corrective Services might have any knowledge of whether or when this policy document ceased to apply?

MS ZEKANOVIC: Yes, possibly.

15

MS DAVIDSON: Do you know where that person would be employed or in what rank or position?

MS ZEKANOVIC: I can find out. Would you like me to say a name of someone?

20

MS DAVIDSON: If there's a name that you understand.

MS ZEKANOVIC: This is only my conversation with them recently. Stephen Cosgrove. I understand he used to be employed by professional standards a very long time ago, I'm not even sure when. It was ten plus years ago so he may have some knowledge of the documents.

25

MS DAVIDSON: What is his current role?

30 **MS ZEKANOVIC:** I'm not sure.

MS DAVIDSON: But he is employed by Corrective Services?

35 **MS ZEKANOVIC:** I think so, yes. I've had dealings with him but he did mention in one of our conversations that he had worked at professional standards.

MS DAVIDSON: All right. Going back to Commissioner's instruction number 10 of 2013, you have extracted it there at paragraph 47, which says that:

40 "Employees should report suspected corrupt conduct in writing to their supervisor, manager, branch head or divisional head or to the director of the professional standards branch, assistant commissioner governance and continuous improvement or to the Commissioner."

45 Would you agree that there's a wide range of reporting options there?

MS ZEKANOVIC: Yes.

MS DAVIDSON: And that that would seem potentially confusing to an Officer?

5 **MS DAVIDSON:** I would probably see it as more of an opportunity to have various options to report to, depending on the person's rank and who they felt comfortable reporting to.

10 **MS DAVIDSON:** You refer in your footnote 13 which is on the same page to many of the positions referred to in the Commissioner's instruction no longer existing. You also indicate that many staff are not aware that they can make complaints directly to PSI and must report through their chain of command. That would seem to contradict the evidence you gave earlier about staff being encouraged to report to PSI and not necessarily being required to report through their chain of command. Are you able to re-read that sentence, not aware that they
15 can make complaints directly to PSI and must report through their chain of command. Are the two requirements within that sentence contradictory?

MS ZEKANOVIC: So what I -

20 **MS DAVIDSON:** Can report to PSI but they must report through their chain of command?

25 **MS ZEKANOVIC:** So what I hear from time to time from various people through Correctives is that they assume they can only report misconduct through their chain of command, and what I would like to see happen going forward is there to be greater awareness that anyone can report misconduct.

30 **MS DAVIDSON:** So you didn't intend to convey - I'm just trying to understand your evidence, but you say:

"Many CSNSW staff are not aware they can make reports directly to PSI and must report through their chain of command."

35 Is it your evidence that staff think they must report through their chain of command and, in fact, that's not a requirement?

MS ZEKANOVIC: I think that's just a poorly worded sentence on reflection.

40 **MS DAVIDSON:** It's important for the inquiry to try to understand what amongst these multiple policy documents are the requirements that actually apply but your understanding is not that there is a requirement to report through one's chain of command?

45 **MS ZEKANOVIC:** No, people can go outside the chain of command to report misconduct.

MS DAVIDSON: But it is your understanding that many staff don't know that, that is, they think they have to report through their chain of command?

MS ZEKANOVIC: That's correct.

5

MS DAVIDSON: Do you have a view on what that understanding is based on?

MS ZEKANOVIC: A very command and control environment that correctional centres operate under.

10

MS DAVIDSON: You refer at paragraph 48 to a misconduct policy that was created in 2015 but not implemented and you understand was never put into operation. Do you have any idea what the misconduct policy that was created but never implemented?

15

MS ZEKANOVIC: No.

MS DAVIDSON: Would anybody in your team be aware of the reasons for that or are able to give you any information in relation to that?

20

MS ZEKANOVIC: No, the policy that I found was undated - it was not signed or even say it was in force. It was just titled "policy".

MS DAVIDSON: But you understand that it was created in 2015.

25

MS ZEKANOVIC: Yes.

MS DAVIDSON: Based on your review of the document itself.

30

MS ZEKANOVIC: Yes, and what people have told me, yes.

MS DAVIDSON: All right. You refer at paragraph 50 to the training requirements and you have already given some evidence in relation to that. These were implemented in 2020. Were you aware of any mandatory training requirements in relation to the DCJ code of conduct and ethics or the Corrective Services previously existing code of conduct and ethics that were in place before 2020?

35

MS ZEKANOVIC: Training in relation to the previous codes?

40

MS DAVIDSON: You have indicated that there was a Corrective Services Code of Conduct and Ethics in place between 2010 and 2018.

MS ZEKANOVIC: Yes.

45

MS DAVIDSON: Which covers a substantial period of Mr Astill's offending. He was an employee but not on duty by 2020. Are you aware of any mandatory training that occurred prior to 2020 in respect of -

5 **MS ZEKANOVIC:** I'm not aware.

MS DAVIDSON: - conduct and ethics?

MS ZEKANOVIC: I'm not aware.

10

MS DAVIDSON: Do you know whether there's anybody in your team who may have any information in relation to that?

15

MS ZEKANOVIC: I can find out, I can ask, yes, I can ask some of my staff or would you like me to advise you some people that could provide the information?

20

MS DAVIDSON: Did you make any inquiries for the purposes of preparing this statement in relation to whether there had been any mandatory training in relation to the policy documents that you were referring to in this statement or that wasn't an inquiry that you made?

25

MS ZEKANOVIC: I didn't make any inquiries around about the training specifically that was in place at the time of Mr Astill's offending, that went to the Codes of Conduct and Ethics.

MS DAVIDSON: Perhaps that, Commissioner, with other matters could be the subject of a further request in respect of information.

30

Turning to paragraph 56 of your statement, you are referring again to the code of conduct and ethics that was in place between 2010 and 2018. Would you turn in the annexure or the folder that's before you containing the annexure to page 55. That's the document that you're referring to at paragraph 56, is it not?

35

MS ZEKANOVIC: Yes.

40

MS DAVIDSON: And going within that document to page 79, you see there a definition of "corrupt conduct". Including where an official acts dishonestly or unfairly or breaches the public trust. To your understanding, would an instance of sexual contact between an officer and an inmate constitute a breach of public trust for the purposes of that definition?

MS ZEKANOVIC: Yes.

45

MS DAVIDSON: You will see lower down on the page there's then reference to the principle of disclosure and employee responsibilities. And you will see a reference there to CSNSW employees having a duty to disclose alleged misconduct of other colleagues regardless of their position. This includes criminal

offences. Employees are also encouraged to challenge inappropriate and unprofessional behaviour. How did you understand or do you have any understanding of how that duty and that encouragement were implemented during the period that this policy was in place?

5

MS ZEKANOVIC: I don't have any knowledge of that.

MS DAVIDSON: Moving -

10 **COMMISSIONER:** Can I just ask this: As I understand it at the moment, the system in general terms provides for an officer to report misconduct.

MS ZEKANOVIC: Yes.

15 **COMMISSIONER:** As a general thing. But offers a variety of options up the management chain. This is occurring in an environment, as you described it, of command and control. Is it recognised that a junior officer in those circumstances complaining to a more senior officer may well be in a very vulnerable position?

20 **MS ZEKANOVIC:** Yes.

COMMISSIONER: What protections are in place to ensure that that junior officer is able to report without suffering retribution or other payback, if you like, for the report?

25

MS ZEKANOVIC: So within Professional Standards and Investigations if we find out that someone has come forward or someone wants to come forward and not go through their chain of command and report to us and they indicate that they are at risk of retribution, we will take steps to go down a different - contact a different manager or someone much more senior or someone very senior, even on occasion assistant commissioner level, to make sure that person is either somehow protected in the workplace or and the risks around that person facing retribution is mitigated.

30

35 **COMMISSIONER:** I'm going back a step before that, though, the inhibition will be on reporting at all, won't it?

MS ZEKANOVIC: In some instances, yes.

40 **COMMISSIONER:** What do you offer to the employee who is unable by reason of a concern about retribution to report? What's the provision or what's the facility that enables that person to make a report at all?

45 **MS ZEKANOVIC:** Yes, I can see where the difficulty would be for the more junior officer.

COMMISSIONER: It may not even be a more junior officer, it may be a more senior one but your procedure at the moment requires them to go up the chain of command. What is there in the system that is going to protect the reporting person and enable them to make a report at all?

5

MS ZEKANOVIC: There is nothing formal other than - well, there is the Professional Standards Committee who assesses the risk to people making the complaint if there is one. And addresses that risk in those meetings.

10 **COMMISSIONER:** No, you are misunderstanding me. The risk is getting a report at all. See, many organisations will have a reporting capacity to an external arrangement. Someone outside of the management structure so that the person who has a concern doesn't fear retribution from within the structure. But you don't seem to have thought about that.

15

MS ZEKANOVIC: Staff can report directly to us. And they can indicate in their report they fear retribution.

COMMISSIONER: Say again?

20

MS ZEKANOVIC: I said staff can report directly to us and in their report they can indicate they fear retribution and we can address that when we get -

COMMISSIONER: It may be but don't you understand that some people -

25

MS ZEKANOVIC: Yes.

COMMISSIONER: - won't report at all?

30

MS ZEKANOVIC: Yes.

COMMISSIONER: And, indeed.

MS ZEKANOVIC: I acknowledge that completely.

35

COMMISSIONER: Well, what should we do about it?

MS ZEKANOVIC: I think I mentioned earlier, I think we need to raise awareness of the different entry points into making a complaint to Professional Standards and Investigations and that actually anyone can report and you don't have to follow the chain of command. I think there needs to be more encouragement for more junior staff to come forward if they suspect wrongdoing particularly by more Senior Officers or their colleagues.

40

COMMISSIONER: You don't think we might need to change the system?

MS ZEKANOVIC: Of how reports are received?

COMMISSIONER: Of who you report to, how reports are received and how it is processed so that people in your organisation are confident they are able to report.

5 **MS ZEKANOVIC:** I can't comment on that right now in terms of how -

COMMISSIONER: I know it's a big question but it's a question we are going to have to answer because you probably appreciate that is coming, as I understand it, - will be evidence that there have been significant limitations.

10

MS ZEKANOVIC: Yes.

COMMISSIONER: On the capacity for people to report which may go to the heart of the problem we are looking at.

15

MS ZEKANOVIC: I understand.

MS DAVIDSON: Given this document was in place between 2010 and 2018, turn to page 80, that includes the portion that you've extracted at paragraph 56 of your report as to it being preferable for the matter to be reported internally in the first instance. And then there's a reference to reporting to various - or the possibility of reporting to various external bodies including potentially in relation to criminal matters such as death or assault, a report directly to the police. Are you aware of whether employees were given any guidance beyond the contact details in appendix A in relation to what criminal matters were able to be reported directly to the police?

20

25

MS ZEKANOVIC: I'm not aware.

MS DAVIDSON: Similarly, in respect of, there's a reference you will see in the second paragraph to protected disclosures and public servants making a confidential report regarding, amongst other things, corruption and maladministration. And then there's a reference in the fourth paragraph on this page 82, a Corrective Services internal or protected disclosure policy. Are you aware of what the content of that policy was at the time?

35

MS ZEKANOVIC: No.

MS DAVIDSON: Do you understand that there was a policy that sat alongside this that was in place between 2010 and 2018?

40

MS ZEKANOVIC: Only as I've read it here.

MS DAVIDSON: Right. And would you agree that within this document, that is within this section of the document as to how to report misconduct, apart from the encouragement to report internally and the reference to various external, that is outside of Corrective Services bodies, there isn't any indication given or

45

encouragement given to separate reporting or reporting outside of or what we have been referring to as a chain of command to the PSB, for example, as it then existed?

5 **MS ZEKANOVIC:** No.

MS DAVIDSON: Employees weren't told about that effectively?

10 **MS ZEKANOVIC:** Not from what I have seen here, but unless it operated differently, I can only understand how this operated based on the document. How it actually worked in practice, I can't answer.

15 **MS DAVIDSON:** Do you know when the PSB, that is that PSB IB structure, do you know when that first came into place?

MS ZEKANOVIC: No.

20 **MS DAVIDSON:** Is it certainly the case that your team whose corporate knowledge extends back five years.

MS ZEKANOVIC: They were part of PSB.

MS DAVIDSON: Were aware of it existing through that period until -

25 **MS ZEKANOVIC:** It's certainly been more than five years.

30 **MS DAVIDSON:** Right. You refer, paragraph 57, to the DCJ Code of Ethical Conduct that was in place from 2015. Go to page 47 of your annexure. That is page 22 of a 29-page document, just to show you the front of the document. It begins on page 26. Is that the Code of Ethical Conduct, that is the DCJ code that you're referring to in paragraph 57 of your statement?

MS ZEKANOVIC: What page are you on at the moment?

35 **MS DAVIDSON:** I will show you the front page of document. Page 47 is page 22 of 29.

MS ZEKANOVIC: Yes.

40 **MS DAVIDSON:** Page 26 is the first page. I'm just trying to make sure I'm taking you to the correct document. It is the Code of Ethics and Conduct policy and if you turn then to -

MS ZEKANOVIC: That's correct.

45

MS DAVIDSON: - page 47, this is within clause 9 and goes to reporting suspected wrongdoing. I think the portion you have extracted, in fact, appears at

the bottom of page 46. Do you see that there? Turning then back to page 47, there are references to the duty to report corrupt conduct. The requirements in respect of reporting are found in that portion that you extracted there. *"If the employee witnesses wrongdoing or suspected wrongdoing they should discuss the matter with their supervisor or manager."* Then it continues from there. Did you understand that again to be effectively an encouragement in respect of reporting internally from the perspective of a Corrective Services Officer reading this and thus reporting up through the chain of command?

10 **MS ZEKANOVIC:** Based on what's written here, yes.

MS DAVIDSON: Right.

MS ZEKANOVIC: This is the 2015 document.

15

MS DAVIDSON: Yes. But this was - well, this was a document that you understand was - well, do you understand this to have been the one that was in place effectively until it was superseded by the 2020 or 2021 document?

20 **MS ZEKANOVIC:** Yes, that's correct.

MS DAVIDSON: This is the document that was in place in most of the period of Mr Astill's relevant employment?

25 **MS ZEKANOVIC:** Yes.

MS DAVIDSON: At paragraph 58, you refer to the managing misconduct procedure that was in force from 2016. You indicate elsewhere in your statement, you have extracted there clause 5 which says 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. Is the managing misconduct procedure a document that you would expect individual officers to consult for the purposes of knowing when to report? Or did that document serve a different purpose?

35

MS ZEKANOVIC: I understand the misconduct, managing misconduct procedure more to be a working document as to how to manage the misconduct process. Whether individual officers were aware of it at the time, I'm not sure.

40 **MS DAVIDSON:** So where it says all allegations of misconduct are to be reported to the strategic human resources business partner, do you know who that is or who that was intended to refer to?

MS ZEKANOVIC: The strategic human resources businesses partner?

45

MS DAVIDSON: Yes.

MS ZEKANOVIC: The office of someone - a human resources director or manager level.

MS DAVIDSON: All right.

5

MS ZEKANOVIC: That's what I understand -

MS DAVIDSON: Okay.

10 **MS ZEKANOVIC:** - that to mean.

MS DAVIDSON: Or the divisional professional standards unit in the first instance. Now, again, just in your understanding, again appreciating you don't know how this operated in practice, that, to the extent it refers to reporting to somebody in HR or professional standards in the first instance, is again contrary to the seeming requirement or encouragement that was given to Corrective Services Officers to report to their supervisor or manager internally, is it not?

15

MS ZEKANOVIC: Yes.

20

MS DAVIDSON: Do you agree that has the potential to be confusing?

MS ZEKANOVIC: Yes.

25 **MS DAVIDSON:** At paragraph 59, you refer to the 2021 DCJ Code of Ethical Conduct which is one that's currently in force. And you have extracted there a clause in respect of employees being required to report suspected breaches of the code to a manager or supervisor:

30 "In circumstances where the manager or supervisor is implicated or may be implicated in the suspected breach it must be reported to another manager or supervisor and/or professional standards. Please refer to the department's procedures for managing misconduct."

35 This is the document that, as I understand it, is the subject of regular training for Corrective Services Officers, this in respect of the 2021 code. So, that is, Officers are now expected to become familiar with this and their obligations under it; is that correct?

40 **MS ZEKANOVIC:** Yes.

MS DAVIDSON: Is there an expectation - would you agree that this is the first of the documents that you have provided for the purposes, or that you have reviewed for the purposes of preparing your statement that deals with the situation where a manager or supervisor might be implicated in a suspected breach; that is prior to 2021 policy documents didn't seem to deal with that circumstance?

45

MS ZEKANOVIC: From what we are going through now yes, but I would have to go back and have a look at the prior documents in greater detail to make sure.

5 **MS DAVIDSON:** But you don't understand there to have been a specific provision of that kind from what you have looked at when preparing your statement?

MS ZEKANOVIC: No.

10 **MS DAVIDSON:** Is there an expectation, so far as you understand it, that officers will be, that is Corrective Services Officers, will be able to identify another manager or supervisor for the purposes of this alternative reporting line, effectively?

15 **MS ZEKANOVIC:** Yes.

MS DAVIDSON: Are they given any guidance in who would be their alternative manager or supervisor for this purpose, do you know?

20 **MS ZEKANOVIC:** I'm not sure. Different Correctional Centre sometimes operate slightly differently based on their size so they may have different reporting lines.

25 **MS DAVIDSON:** All right. As to, there's a discussion, there's reference here to alternatively reporting to professional standards. Other than the training that is given to recruits at the academy, do you know whether there is training given on a repeated basis to individual officers in correctional centres as to how to report to professional standards if they want to go to professional standards to make a report, how do they do that in practice?

30 **MS ZEKANOVIC:** The support unit which used to be part of the Professional Standards Branch is now part of the staff support culture and wellbeing directorate, they have a unit called the support unit and they go around and do the training about misconduct, and what misconduct is and how to report and that training, they travel across the state and deliver that training.

MS DAVIDSON: All right. So it's by that training being delivered that people are supposed or officers are supposed to be reminded periodically?

40 **MS ZEKANOVIC:** Yes, and that - yes.

MS DAVIDSON: Do they have, do you know, some regular schedule of attending different Correctional Centres around the state to give that training or is it on an ad hoc sort of a basis?

45 **MS ZEKANOVIC:** No, I understand certainly while they were part of professional standards branch during my time at Correctives they had a planned

schedule of the Centres they would attend and they would also do target training if a certain centre or workplace required additional training.

5 **MS DAVIDSON:** Do you know why they were taken out of the professional standards branch?

10 **MS ZEKANOVIC:** The Staff Support Culture and Wellbeing Directorate is a new directorate that was established this year and I guess the decision was made at the executive level that they are better placed to being part of a Directorate that is offering staff support generally.

15 **MS DAVIDSON:** In paragraph 61, you refer to a complaint making process by inmates. You have referred to a number of documents there. Largely extracts from the COPP, that is the correctional operational policy and procedures document, and you've referred in your supplementary statement to what I understand to be some aspects of equivalent documents that applied before 2017. That is at tab 3 an extract from the operation procedures manual that extract - that relates to the Ombudsman. At tab 4 an extract that refers to the Corrective Services support line. Did you understand there to be any equivalent of section 16.12 relating to inmate informants in place prior to 16 December 2017?

MS ZEKANOVIC: I'm not sure. I would have to have a look at that.

25 **MS DAVIDSON:** You don't know whether there was any equivalent?

MS ZEKANOVIC: I don't.

MS DAVIDSON: Prior to that?

30 **MS ZEKANOVIC:** I don't.

MS DAVIDSON: Do you know whether at the time or for the purpose of preparing your statement you made inquiries in relation to what the predecessor provision, if there was one, would have been in relation to inmate informants before 16 December 2017?

MS ZEKANOVIC: The reference that I make to the OPM here is - I would have to go back and check about the inmate informants.

40 **MS DAVIDSON:** All right.

MS ZEKANOVIC: These were a late addition.

45 **MS DAVIDSON:** Yes, I understand that. It was the fact that you had updated in respect to some of them but not that section that prompted me to ask the question whether there was an equivalent that existed prior to -

MS ZEKANOVIC: I think there was. I would have to double-check but I think there was.

MS DAVIDSON: All right.

5

MS ZEKANOVIC: Sorry, that's not a very good answer.

MS DAVIDSON: All right. These are documents from the - or the extracts that you have referred to from the COPP, do you know what guidance is given to inmates in respect of these documents? Is there an expectation that inmates - do inmates have any ability to access them?

10

MS ZEKANOVIC: These are internal working documents, is my understanding.

MS DAVIDSON: So, in relation to inmates making complaints, one of the documents that you have referred to here in paragraph 61 is number 5, the Corrective Services fact sheet on the avenues for inmates to make inquiries and complaints?

15

MS ZEKANOVIC: Yes.

20

MS DAVIDSON: But that is a document that you've included, and that's a document that applied as at September 2020. Are you aware of equivalent documents being available prior to September 2020, as in terms of a fact sheet for inmates?

25

MS ZEKANOVIC: I'm not aware, no.

MS DAVIDSON: Did you make any inquiries for the purpose of preparing your statement as to whether there was a fact sheet made available to inmates?

30

MS ZEKANOVIC: Not at that time.

MS DAVIDSON: How to make a complaint.

35

MS ZEKANOVIC: I can find out though.

MS DAVIDSON: All right, you just don't know -

MS ZEKANOVIC: I just don't know.

40

MS DAVIDSON: - whether there was. You've mentioned at paragraph 65 - I note for present purposes, Commissioner, that to the extent that there is the foreshadowed application, I won't be asking this witness questions now in relation to material that is the subject of that application, but it will be something which will be important to return, and the witness will need to be recalled for that purpose, probably amongst others, Commissioner, later in the hearing.

45

COMMISSIONER: Very well.

5 **MS DAVIDSON:** At paragraph - from paragraph 65 you refer to the Corrective
Services Support Line. You indicate at paragraph 66 that - sorry, I withdraw
that - at paragraph 65 that the CSSL calls are taken by the Parliamentary and
Executive Services Directorate which falls within the responsibility of the Deputy
10 Commissioner Strategy and Governance, and you indicate there is an additional
fact sheet made available to inmates to inform them of their ability to use the
support line.

There is also a policy - well, you provided the aspects of the COPP in relation to
the support line. Is the fact sheet that is made available to inmates, to your
15 understanding, the document that is at page 365 of your annexure?

MS ZEKANOVIC: Can you repeat your question?

20 **MS DAVIDSON:** I'm sorry, is the document that is the additional fact sheet that
you refer to being given to inmates, the document at page 365 of your annexure?

MS ZEKANOVIC: That is my understanding yes.

25 **MS DAVIDSON:** That's a document that doesn't seem to be dated. Do you have
any idea of when, other than it refers to the CSSL being initially piloted in January
2003 and now being operational in all centres state-wide, do you have any
knowledge of when this fact sheet was produced?

MS ZEKANOVIC: I don't.

30 **MS DAVIDSON:** Do you have any - you've referred to your understanding, I
think, that the fact sheet is displayed in various locations at Correctional Centres.
What do you base that understanding on; that it is being displayed at various
locations?

35 **MS ZEKANOVIC:** From what people have told me, I understand that
these - there's posters around correctional centres that make reference to the CSSL.

40 **MS DAVIDSON:** All right. So the posters, as I understand it, correct me if I am
wrong, are the document that is at page 367?

MS ZEKANOVIC: That's my understanding also.

MS DAVIDSON: Yes, so the fact sheet is different to the poster?

45 **MS ZEKANOVIC:** Yes.

MS DAVIDSON: Is that right?

MS ZEKANOVIC: That's my understanding, yes.

5 **MS DAVIDSON:** Yes. So in relation to the fact sheet being displayed, is that understanding just based on things that people in your team have told you or have you seen these fact sheets displayed at correctional centres?

10 **MS ZEKANOVIC:** I've not seen them myself, but I've not been to correctional centres.

MS DAVIDSON: All right.

15 **COMMISSIONER:** I'm not sure I understand. What's the role of the support line in terms of complaints about misbehaviour or misconduct?

MS ZEKANOVIC: The support line deals with complaints by inmates. So complaints, any sort of complaints not just complaints about staff but any types of complaints that inmates may have while they're -

20 **COMMISSIONER:** So staff can use it but inmates can use it as well?

MS ZEKANOVIC: No, it's just for inmates.

25 **COMMISSIONER:** Just for inmates?

MS ZEKANOVIC: Yes.

30 **COMMISSIONER:** Is that intended to be their mechanism for reporting complaints?

MS ZEKANOVIC: It's their mechanism for reporting complaints, yes. But my understanding is that they use the line not just for necessarily reporting staff misconduct, because most of the misconduct complaints I get from inmates come via the Ombudsman.

35 **COMMISSIONER:** Come via?

MS ZEKANOVIC: The Ombudsman, or ICAC, the ICAC.

40 **COMMISSIONER:** So inmates don't use this process?

45 **MS ZEKANOVIC:** I'm not sure what sort of complaints this line receives. I understand they receive a number of complaints the inmates could have with their accommodation, and other types of complaints they may have at the correctional centre.

MS DAVIDSON: I was going to go, if it assists, Commissioner, to some aspects (overspeaking).

COMMISSIONER: Okay, all right. This bit I need to understand.

5

MS DAVIDSON: At least work on the documents.

COMMISSIONER: Yes.

10 **MS DAVIDSON:** Going to this fact sheet, at page 365, it indicates that unless it's
a genuine emergency, there are four steps that have to be taken first, before calling
the CSSL, including asking the wing or case officer, filling in a bluey or a white
inmate application form and waiting two weeks. Then asking the Senior Assistant
Superintendent or Principal Officer, and only then if the problem is not answered
15 or sorted out, call the CSSL. And then it says generally the CSSL is not the first
point of call, and calling the CSSL will not speed up or bypass these initial
procedures.

20 So it was certainly not the case, to your understanding, was it, that the CSSL was
intended to provide an alternative mechanism for inmates to raise complaints
about officer misconduct, because generally they were required to raise those
with - via these mechanisms; that is with officers first. Is that -

MS ZEKANOVIC: Yes.

25

MS DAVIDSON: And that remains the case in your understanding?

MS ZEKANOVIC: For the purposes of the CSSL yes, but inmates can make
a complaint to the Ombudsman at any time. And I think the COPP goes into detail
30 about that.

MS DAVIDSON: Making complaints at any time in relation to external agencies?

MS ZEKANOVIC: Yes.

35

MS DAVIDSON: Right. Is it your understanding that officers taking the CSSL
calls would refer, that is to the procedural documents that you have been provided,
that is refer inmates taking the calls to the procedural documents or follow the
procedural documents that you have provided, indicating that when an allegation
40 of officer misconduct was raised, what the CSSL staff would do, would be to refer
the problem back to the centre?

MS ZEKANOVIC: Based on these documents, yes.

45 **MS DAVIDSON:** Right. So there's no indication, so far as you're aware - if I can
take you to page 364 which is the inmate fact sheet about avenues for complaints,

indicated in the top left hand corner in respect to the CSSL that the CSSL has no authority to resolve matters or make decisions on behalf of a correctional centre.

5 **MS ZEKANOVIC:** That is my understanding.

MS DAVIDSON: You understand that to be an accurate statement of the position?

10 **MS ZEKANOVIC:** Yes.

MS DAVIDSON: So there's really no capacity, is there, to your understanding, to use the CSSL to raise matters independently of the centre, that is for an inmate to not have the matter that they raise via the CSSL sent back to the centre for resolution?

15 **MS ZEKANOVIC:** Sorry, can you repeat that?

20 **MS DAVIDSON:** There's no mechanism, so far as you understand the CSSL and the way it's meant to work, for an inmate to use that as a way of complaining about something that's occurring in their Centre and not have that officer misconduct, for example, and not have that referred back to the centre?

25 **MS ZEKANOVIC:** I'm not sure when it comes to misconduct whether that does get referred back to the centre. I'm not sure.

MS DAVIDSON: You simply don't know -

MS ZEKANOVIC: I don't know.

30 **MS DAVIDSON:** - one way or the other how the CSSL operates?

MS ZEKANOVIC: Not in relation to complaints about staff misconduct.

35 **MS DAVIDSON:** Are you aware of having, that is your unit, having ever received a complaint about staff misconduct in your time that was raised via the CSSL?

40 **MS ZEKANOVIC:** I can't recall one right now. Most of the complaints that we receive by inmates, from inmates come via the Ombudsman or the ICAC.

MS DAVIDSON: All right. If there had been such, that is if that mechanism had ever been used, would you expect there to be a record?

45 **MS ZEKANOVIC:** Yes, definitely.

MS DAVIDSON: So it would be possible to find out -

MS ZEKANOVIC: Yes.

MS DAVIDSON: - whether such a -

5 **MS ZEKANOVIC:** Yes, of course. Every complaint that we receive is recorded.

MS DAVIDSON: And it's origin if it was via the -

MS ZEKANOVIC: Yes.

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MS DAVIDSON: - you would expect that to be known?

MS ZEKANOVIC: That's correct.

15 **MS DAVIDSON:** Paragraph 75 you set out what you describe as a general process for handling misconduct, set out in the PSI Misconduct Process Map. That's a document that is reproduced page 25 of your statement. Are you able to give any indication as to when this document became operative?

20 **MS ZEKANOVIC:** This document is one that was created earlier this year as part of Project Merge when we were looking at all our policies - sorry, not policies, all our processes and how the process actually works. We were looking at all the entry points for complaints and trying to map that out.

25 **MS DAVIDSON:** Are you aware of PSB having an equivalent document that existed prior to 2023?

MS ZEKANOVIC: Yes. There was.

30 **MS DAVIDSON:** You have seen such a document?

MS ZEKANOVIC: Yes.

MS DAVIDSON: That could be readily produced?

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MS ZEKANOVIC: Yes.

40 **MS DAVIDSON:** There's a reference to the various sources of the complaints, and then in the second box, the gathering and determining approach which then involves misconduct allegations going to the PSC which you have indicated that you chair. It appears that there's a recommendation that's given to the PSC.

MS ZEKANOVIC: Yes.

45 **MS DAVIDSON:** What sort of investigation in relation to a complaint of misconduct occurs prior to a recommendation going to the PSC?

MS ZEKANOVIC: So, at the time that the PSC receive the information, all the information they have at that point is the documents that were received as part of the referral. And then the PSC determine whether the matter should be investigated or referred elsewhere.

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MS DAVIDSON: All right. So when you say there's a recommendation made to the PSC, is that made by you?

MS ZEKANOVIC: Yes, that's made by Professional Standards and Investigations Branch.

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MS DAVIDSON: So that's only based on whatever information has come forward?

MS ZEKANOVIC: That's right, in the week before, yes.

MS DAVIDSON: All right. And the PSC meets every week?

MS ZEKANOVIC: That's correct.

20

MS DAVIDSON: So it's not the case - or tell me is it the case that PSI makes any further inquiries for the purposes of making a recommendation to PSC, or does it simply effectively forward on the material?

MS ZEKANOVIC: No. So we make all inquiries that we can prior to the PSC sitting. So that might include obtaining CCTV footage, relevant records, checking various databases. We try and obtain as much information that we can prior to making any recommendation to the PSC, given that, you know, we only have one week before they sit, or sometimes even less.

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MS DAVIDSON: There's then various, in the third box, Investigation and/or Misconduct processes that are set out. One of which is a referral to CSIU, and I understand from your statement that CSIU includes police officers. In what - well, are there circumstances in which a criminal allegation would be referred to the CSIU and/or police without going through the Professional Standards Committee or would it always first be the subject of a consideration by the committee?

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MS ZEKANOVIC: It would always be the consideration of the committee. However, if something required urgent attention, we would refer it to the police before the PSC sits; and then in the agenda papers for the committee to say we've already, given the criminal urgency around this, the criminal conduct alleged and there's urgency to address it immediately, we have referred this to the CSIU.

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MS DAVIDSON: In circumstances where the alleged criminal conduct was sexual assault of an inmate, speaking as to your processes now, would you expect

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that to be referred to the police or the CSIU rather than going through the PSC process?

5 **MS ZEKANOVIC:** Absolutely. I would expect the staff at the centre to be reporting that to the police.

MS DAVIDSON: But you wouldn't expect them -

10 **MS ZEKANOVIC:** I would expect them to do a referral to the PSI but at the same time contacting the police immediately.

15 **MS DAVIDSON:** Do you understand that, that is the contacting the police immediately in the event of an allegation of sexual assault, to be the subject of any training given to officers?

20 **MS ZEKANOVIC:** Not specifically. However, I would assume that people, if there's an allegation of such serious criminal conduct, that they would contact the police, as you would if you were a member of the public and witnessed or found out about such conduct.

25 **MS DAVIDSON:** Do you understand in any of the currently applicable policy documents there to be any explanation of taking that course; that is, going directly to the police?

MS ZEKANOVIC: No. No. Most -

MS DAVIDSON: Because you would expect the Officers to consult the policy documents to know what to do, would you not?

30 **MS ZEKANOVIC:** Yes. However, I would also - yes. I would, but I also would expect if there was an offence that staff needed to address immediately, if it was a Saturday and they couldn't necessarily reach Professional Standards for whatever reason or couldn't get an immediate response, that they would contact the local police.

35 **MS DAVIDSON:** All right. Would you expect that to be the case during the week as well if the allegation is of sexual assault or would you expect that to be done in compliance with the policy and to go through (overspeaking).

40 **MS ZEKANOVIC:** In most cases, when Professional Standards and Investigations get notified of any criminal conduct we refer it immediately to the CSIU. Sometimes the CSIU get directly contacted by staff in the centres.

45 **MS DAVIDSON:** That's your awareness of what has occurred during your time?

MS ZEKANOVIC: Yes.

MS DAVIDSON: You have referred at paragraph 87 to a PSC referral process, and you have referred in that paragraph to the PSC terms of reference. Is that the document that appears at page 374 of your annexure?

5 **MS ZEKANOVIC:** Yes.

MS DAVIDSON: You will see there is a description of item number 6 or paragraph 6 of that document of the core membership of the PSC.

10 **MS ZEKANOVIC:** Yes.

MS DAVIDSON: Is that an accurate current description of the membership other than that the Professional Standards Branch and the Investigations Branch don't exist any more?

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MS ZEKANOVIC: No, that's an inaccurate description.

MS DAVIDSON: Is there some more updated terms of reference document for the PSC, or it still operates on this document even though the membership isn't accurately -

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MS ZEKANOVIC: It still operates. The majority of the document is still correct other than the membership. Some of those roles don't exist anymore, but the same level of staff sit on the committee. And we will be looking to review these terms of reference as part of Project Merge.

25

MS DAVIDSON: Is there some document that captures the current membership?

MS ZEKANOVIC: No, not in a document like this.

30

MS DAVIDSON: Are there minutes kept of PSC meetings?

MS ZEKANOVIC: Yes.

35 **MS DAVIDSON:** Would they describe who attended the meeting (indistinct)?

MS ZEKANOVIC: Yes, that's correct and there's agenda papers.

MS DAVIDSON: Am I correct in understanding based on the Misconduct Process Map that the PSC has been in existence since about 2018?

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MS ZEKANOVIC: I thought it was around 2019, based on what I've been told.

MS DAVIDSON: All right.

45

MS ZEKANOVIC: Or a version of it. There's always been a version of it is my understanding; whether it was called the PSC prior to 2019 I'm not sure.

MS DAVIDSON: Right. The referral process document, which you've referred to it, I think is page 372, correct me if I am wrong.

5 **MS ZEKANOVIC:** That's correct.

MS DAVIDSON: There is a reference to - before I come to that. Sticking it the Terms of Reference document if we could go back to page 375, under paragraph 8 you will see at (g) and (h):

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"Fact finding inquiries are to be carried out by Investigations Branch within two weeks upon receipt of request. Investigations are to be carried out by Investigations Branch within eight weeks of receipt of request."

15 I realise you say you don't know when this document came into existence, but to the extent it refers to the PSC, presumably some point around 2019, would that be accurate so far as you think you can place it?

20 **MS ZEKANOVIC:** I can't comment.

MS DAVIDSON: Do you know whether those timeframes were adhered to by the Investigations Branch?

25 **MS ZEKANOVIC:** For that period, I'm not sure.

MS DAVIDSON: Are they timeframes to the extent they are referred to in this document, you say most of it is still current. Are they timeframes that are now adhered to by PSI?

30 **MS ZEKANOVIC:** Not in all cases, no.

MS DAVIDSON: But is there some reporting on the fact of the PSC in respect of how long how investigations are taking?

35 **MS ZEKANOVIC:** Not to the PSC, but there is to certain members of the executive about some cases.

MS DAVIDSON: All right. Is they're reporting to you in terms of how long investigations are taking by the members of your Branch?

40

MS ZEKANOVIC: Yes. I get a weekly - a fortnightly report from the investigators on each of the cases they're working on presently.

45 **MS DAVIDSON:** Right. Going back to the referral process document, which is at page 372, which you indicate was issued around 2019. In paragraph 88 you refer to that. Is there reference in this document to the SPSO? Who is the SPSO?

MS ZEKANOVIC: That's the Senior Professional Standards Officer. I will just add that this is an internal procedure document that was, I think developed from my understanding, for new people, for new starters in the team.

5 **MS DAVIDSON:** All right. Is it still in use at the moment?

MS ZEKANOVIC: I'm not - I would say the procedures haven't changed all that much. I don't know if new starters are actually given this particular document or are just walked through the process.

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MS DAVIDSON: All right. There's also reference in the document to the coordinator.

MS ZEKANOVIC: Yes.

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MS DAVIDSON: Who is the Coordinator?

MS ZEKANOVIC: The Coordinator of Professional Standards and Investigations is the officer responsible for coordinating all the referrals each week.

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MS DAVIDSON: So that is not you?

MS ZEKANOVIC: No.

25 **MS DAVIDSON:** But it's somebody in your branch?

MS ZEKANOVIC: That's correct.

30 **MS DAVIDSON:** You refer in your statement, paragraph 98, to circumstances where PSI staff become aware of information that there may be concerns for the welfare and/or safety of an inmate. You indicate that they must contact the Governor of the relevant correctional centre to ensure that welfare and/or safety risks are assessed and mitigated. What is the situation if PSI staff are made aware that there are concerns in relation to the Governor of the correctional centre and
35 their relationship with the person whose misconduct is being alleged?

MS ZEKANOVIC: Then we would speak to the person that sits above the Governor or even two levels up. I would contact them myself if such allegations were presented.

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MS DAVIDSON: All right so that is the area manager (overspeaking)

MS ZEKANOVIC: That would be the Custodial Director if it's a centre. Custodial Directors are responsible for regions for a number of centres, and then
45 the person sitting above them is an assistant commissioner.

MS DAVIDSON: Have there been instances in your time in your present role that you have employed that process of going above the Governor?

MS ZEKANOVIC: No.

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MS DAVIDSON: Have you spoken to your staff about - that is when there's a reference here that they must contact the Governor. Is that some direction or guidance that you have given to your staff in relation to concerns for inmate welfare or safety?

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MS ZEKANOVIC: So, when any sort of issues around safety of inmates presents themselves, I have a conversation with staff, including that coordinator position, about contacting the centre and either addressing it - depending on who's involved, if it's - checking with the centre to making sure the welfare of the inmate is checked on, or whether steps need to be taken to either remove the inmate from that particular centre.

15

MS DAVIDSON: Right. Paragraph 100, the last part of your statement, deals with Project Merge.

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MS ZEKANOVIC: Yes.

MS DAVIDSON: You refer to the various issues prompting Project Merge which were the governance failures, I think you said - your referred to earlier. One of those is extensive delays in resolving misconduct matters. What are you able to tell the commission in respect of your understanding of the reasons for those excessive, or extensive delays?

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MS ZEKANOVIC: I think there are a couple of things. So will you see from earlier in my statement I indicated that the number of referrals that have been received by PSI has been increasing year in, year out, and that has been for the reasons I outlined. But also I think some of the referrals that we received go to grievance issues or issues with - that could be dealt with at a local level and are still being escalated to Professional Standards and Investigations.

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MS DAVIDSON: Is that grievances between employees or grievances -

MS ZEKANOVIC: Both.

40

MS DAVIDSON: - on the part of inmates towards (indistinct).

MS ZEKANOVIC: Mostly in relation to grievances between employees, or an employee and a manager.

45

MS DAVIDSON: You refer at (b) of 100 to the model no longer being fit for purpose. Are you able to explain the manner in which you understand the misconduct model to no longer be fit for purpose?

5 **MS ZEKANOVIC:** Last year, Corrective Services issued a new strategic plan, and part of the strategic plan was a bigger focus on staff wellbeing and support, and changing the culture. So, as part of that, rather than - the misconduct model up to now has been very outcome focused with quite punitive outcomes: termination, moving someone on a different role, reducing their rank, et cetera. I think the focus now we would like to go, is trying to address people's conduct in the workplace where appropriate, obviously for the lesser serious end of conduct, and looking at more remedial training.

10 **MS DAVIDSON:** Right. So the intention is to make it less punitive where appropriate?

15 **MS ZEKANOVIC:** Where appropriate, yes. Of course, the more serious misconduct still has to be dealt with in accordance with the government sector employment legislation. But the less serious could be dealt with in other ways.

20 **MS DAVIDSON:** You refer to a lack of prioritisation model. That's (e). Does the commission understand from that, that there was allegations - or that you understood part of the difficulties in the past with the way that misconduct was handled was that allegations of serious conduct were not elevated or prioritised in terms of being dealt with more quickly?

25 **MS ZEKANOVIC:** In the past, I'm not sure how it operated. But I, just from my time in working in the area, I can see that we can be better - do better at prioritising the more serious allegations or just coming up with a system that fast tracks that process a little bit better.

30 **MS DAVIDSON:** You refer to the need to address recurrent misconduct issues more systematically. Have you identified what those recurrent misconduct issues are?

MS ZEKANOVIC: Yes.

35 **MS DAVIDSON:** And what are those?

40 **MS ZEKANOVIC:** So, sexual harassment, bullying and harassment are the two that we often receive referrals about. Uses of force, inappropriate uses of force. They're the most common misconduct matters.

MS DAVIDSON: And as to, sexual harassment, is that as between officers, or officers sexually harassing inmates, or both?

45 **MS ZEKANOVIC:** Both.

MS DAVIDSON: Are you aware of any previous means of systemically addressing those misconduct issues? You indicate that you understand they need

to be addressed more systemically and that's part of your task or project. Are you aware of any systemic means of addressing those - the recurrent issue of sexual harassment previously?

5 **MS ZEKANOVIC:** No.

10 **MS DAVIDSON:** You refer at paragraph 101 to undertaking research in relation to best practice models, and you have given some indication within your supplementary material and I think also in your annexure of agencies that you conducted a practice review of, and those you consulted with. Do I understand correctly that you didn't either do a practice review or do any consultation with any other Corrective Services equivalent organisations?

15 **MS ZEKANOVIC:** That's correct.

MS DAVIDSON: Was there a reason for that?

20 **MS ZEKANOVIC:** I don't think it was intentional. We - no, I don't have a reason for that.

MS DAVIDSON: In respect of handling complaints from inmates, would you regard any of your - the organisations that you did do that comparison exercise with as having the equivalent of complaints from inmates that they had to handle in terms of misconduct?

25 **MS ZEKANOVIC:** Not so much from inmates, but vulnerable persons such as the police, including the New South Wales Police and AFP.

30 **MS DAVIDSON:** All right. So persons who might come into contact with (overspeaking).

MS ZEKANOVIC: That's right.

35 **MS DAVIDSON:** - the New South Wales Police and the AFP in the context of their operations -

MS ZEKANOVIC: That's right.

40 **MS DAVIDSON:** - may be comparable.

MS ZEKANOVIC: Yes.

45 **MS DAVIDSON:** At paragraph 103, you note that there's a prevention and education team that is going to be developed for the purposes of delivering training. Do you have any understanding of what the timeframe is in relation to the development of that team and implementing new training?

MS ZEKANOVIC: The - we are still in the process of developing the new staffing model. It's subject to consultation with staff. While we have told staff they will be operating in new teams, multidisciplinary teams where the lawyers and investigators will be in the same teams, we haven't fully consulted them about how those teams will operate and how - where the teams will be based.

MS DAVIDSON: So -

MS ZEKANOVIC: So in terms of timeframe.

MS DAVIDSON: (Indistinct) when that consultation might take place?

MS ZEKANOVIC: It's due to take place in the next month or two.

MS DAVIDSON: All right. So do you envisage that a new prevention and education team will be in place by the end of this year, early next year?

MS ZEKANOVIC: I would like to hope so but we will need to recruit staff with those specific skills.

MS DAVIDSON: Right. You refer to ensuring consistent information is provided to all staff across CSNSW as part of the training. Is one of your concerns that there is inconsistent information, or have you identified instances of inconsistent information being provided to staff?

MS ZEKANOVIC: I think I referred earlier to, you know, I hear anecdotally that people aren't aware that they need to report misconduct or they can come directly to PSI. So I think that's a key part of the messaging, just making sure that everybody is aware they can report directly and where they go to, to report and what is misconduct.

MS DAVIDSON: You have referred at 104 to systemic reviews being undertaken to identify correctional centres or other workplaces that could benefit from education and support in addressing workplace and misconduct issues. You have indicated that the support unit presently plays some similar sort of a role.

MS ZEKANOVIC: Yes.

MS DAVIDSON: Are you aware of the support unit undertaking systemic reviews to identify what correctional centres are appropriately the subject of that additional training?

MS ZEKANOVIC: Yes. During my time at Corrective Services they have been asked either by local management to come and do a training tailored package for that particular centre on occasion, yes.

MS DAVIDSON: Is Dillwynia one of those centres?

MS ZEKANOVIC: I'm not sure.

5 **MS DAVIDSON:** Are you aware of whether any specific request has gone to the support unit or any specific training has been provided to the support unit?

MS ZEKANOVIC: I'm not sure.

10 **MS DAVIDSON:** (Indistinct) officers of Dillwynia?

MS ZEKANOVIC: I'm not sure. I can find out.

15 **MS DAVIDSON:** But you would expect that the support unit would be aware of that?

MS ZEKANOVIC: Yes.

20 **MS DAVIDSON:** You refer at paragraphs 105 to 107 of your statement of effectively an assessment and grading of misconduct allegations. Under the new model, how do you understand that an allegation of sexual assault of an inmate by an officer is to be dealt with?

MS ZEKANOVIC: Under the new model?

25 **MS DAVIDSON:** Yes, under your new model of misconduct prioritisation and categorisation?

30 **MS ZEKANOVIC:** Sure. That will be dealt with at the most serious end of misconduct. While we haven't developed a new matrix, that will be an immediate referral to the CSIU.

MS DAVIDSON: All right. That's how you would expect it to be treated in the new triage?

35 **MS ZEKANOVIC:** Yes.

MS DAVIDSON: Do you know when that will be developed?

40 **MS ZEKANOVIC:** In terms of that serious misconduct, to that extreme, that won't change. That will always be referred to the CSIU as it has been now.

45 **MS DAVIDSON:** Right. You refer at paragraph 110 to a need to - to things being a work-in-progress, but also to the need to consolidate various policies to collapse some of the existing arrangements and make them more streamlined and accessible. Is that prompted by a concern that they are presently not sufficiently accessible to officers?

MS ZEKANOVIC: I think it's prompted by a concern, not - well, partly that they are not easily accessible, and also that within PSI we also need to have - be operating now that we have merged, to have documents that represent PSI and the new way of working, and better information resources.

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MS DAVIDSON: Are you able to indicate which documents you contemplate, that is which policy documents you contemplate, consolidating, or have you not yet got to the point of being able to identify them?

10 **MS ZEKANOVIC:** We're still working on very much the policy and procedure side of things.

15 **MS DAVIDSON:** Based on your understanding on the work that you have done for the purposes of preparation of your statement, and appreciating that you weren't employed by Corrective Services at the relevant time, are you able to - or what do you understand should be the position based on the policy documents that you've provided to the commission if an inmate in 2017 came to a Corrective Services officer and told that officer that another guard had had sexual contact with them, are you able to indicate what in terms of reporting that officer should
20 have done and what steps should have been taken to address any risks to that inmate?

25 **MS ZEKANOVIC:** Based on - as you indicated I wasn't there at the time; however, based on the documents that I have reviewed for the purposes of my statement, those officers, if they receive such reports, had a duty to escalate those reports and report them upwards.

MS DAVIDSON: Escalate them to others within their chain of command?

30 **MS ZEKANOVIC:** I would have to go back and check all of the documents, but they certainly had a - no, actually they would have a duty to report, it was a criminal offence. So, I would say report to the police and report to Professional Standards.

35 **MS DAVIDSON:** Is there any difference, to your understanding, in relation to how the position for an officer changed in 2018 or 2019?

MS ZEKANOVIC: I can't speak for that, I'm sorry.

40 **MS DAVIDSON:** Are you aware of any policy that was in existence, and appreciating you weren't there at the time, that required or suggested mediation as a mechanism for addressing complaints of sexual harassment or assault?

45 **MS ZEKANOVIC:** I've not come across such a document.

MS DAVIDSON: A similar question to the one I've asked you in respect of an officer who is given information by an inmate: if an Officer, based on their

observation of another officer in 2017, had formed the belief that another officer was engaged in sexual contact with inmates, what's your understanding, based on the policy work that you have done - and this is my final question, Commissioner - what's your understanding of what that officer, having formed
5 that belief, should have done in 2015 and whether then that changed in 2018 or 2019?

MS ZEKANOVIC: Reported it, if it was in relation to a sexual offence.

10 **MS DAVIDSON:** Reported it to whom?

MS ZEKANOVIC: Sorry, from the Officer on an inmate and it was criminality there involved, to the police and to professional standards.

15 **MS DAVIDSON:** I have no further questions.

COMMISSIONER: Can you just help me with two things. You said that, so far as you can assess the statistics, a lot of complaints are not being resolved at the local level, that they are being elevated up -
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MS ZEKANOVIC: Yes.

COMMISSIONER: - in recent years. Why would that be?

25 **MS ZEKANOVIC:** I'm not sure if staff don't feel like they're getting the (indistinct) that they want. You know, there are some vexatious complaints as well; we have some people that complain regularly.

COMMISSIONER: But you have got an increase occurring; why would that
30 increase have occurred?

MS ZEKANOVIC: The last couple of years we had quite a significant number of staff that refused to get vaccinated. That really increased the number of referrals.

35 **COMMISSIONER:** But you talked about them not being resolved at the local level. Leave aside what their complaint was, you say that they have not been resolved, when they should have been, at the local level. I just wanted to know why. It suggests on the surface a lack of confidence in the resolution of matters at the local level, but is that right or not?
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MS ZEKANOVIC: I'm not sure if that's what it means, but I think sometimes people feel that professional standards means that they will get a better outcome even though it's something that should be really dealt with by HR or local management, or that if they complain to professional standards that it will be dealt
45 with quicker.

COMMISSIONER: Well, that's all speaking to a lack of confidence in the local level, isn't it?

MS ZEKANOVIC: Mmm-mm.

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COMMISSIONER: Secondly, sexual harassment you talked about as being a issue in relation to staff on staff, as well as staff on inmates. Have many cases been reported to the police in your time?

10 **MS ZEKANOVIC:** Yes. When you say "many", certainly the ones that I become aware of, that involve assault, sexual assault type of conduct, yes.

COMMISSIONER: Well, are you aware of all of them?

15 **MS ZEKANOVIC:** Yes.

COMMISSIONER: You would be?

MS ZEKANOVIC: While I've been acting I'm been aware of all of them.

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COMMISSIONER: How long have you been acting?

MS ZEKANOVIC: In this role end of January this year.

25 **COMMISSIONER:** How many have you referred to the police?

MS ZEKANOVIC: I wouldn't know off the top of my head but I can give you those figures if you like.

30 **COMMISSIONER:** Well, am I talking about less than five?

MS ZEKANOVIC: We have had over 500 referrals this year alone.

COMMISSIONER: 500 referrals not to the police.

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MS ZEKANOVIC: No, 500 referrals to the Professional Standards and Investigations area this year. Of those I'm not sure how many have gone to the police.

40 **COMMISSIONER:** In terms of management of the Corrective Services, is sexual harassment a significant management issue?

MS ZEKANOVIC: We are taking - yes, we are taking it very seriously. Every week that the Professional Standards Committee sits, if we receive allegations that somebody is engaging in sexually harassing behaviours of a colleague or anyone, in most cases they are suspended from duty.

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COMMISSIONER: So in those cases?

MS ZEKANOVIC: In most cases they are immediately suspended from duty.

5 **COMMISSIONER:** Yes, but are we talking about a problem that is growing or is it the same level every year? What picture should I have of sexual harassment inside Corrective Services?

10 **MS ZEKANOVIC:** I'm not sure about the numbers of the previous years so I would have to go and have a look. I would have to check the data to see if the number has been increasing in terms of sexual harassment.

15 **COMMISSIONER:** And in terms of where the reports are coming from, are they coming from all of the gaols or are there particular gaols where reports come from?

MS ZEKANOVIC: I wouldn't say there's a particular gaol that comes to mind. It's from various gaols.

20 **COMMISSIONER:** And what about sexual assaults of whatever kind upon inmates by staff, do you get reports of those?

MS ZEKANOVIC: Yes.

25 **COMMISSIONER:** And refer those to the police?

MS ZEKANOVIC: Yes.

30 **COMMISSIONER:** You don't have any idea sitting here how many of those you have had in your time?

MS ZEKANOVIC: There has been a few. I don't know the exact number off the top of my head, no.

35 **COMMISSIONER:** Perhaps you can get the numbers.

MS ZEKANOVIC: Yes, I can.

40 **COMMISSIONER:** Perhaps you might find out also which prisons they are coming from.

MS ZEKANOVIC: Sure. I've got all that information but I just don't have it on hand.

45 **COMMISSIONER:** Mr Sheller, do you have any questions?

MR SHELLER: In addition to the reporting lines that you have described so far do you also have some reporting directly to the Commissioner concerning high profile matters?

5 **MS ZEKANOVIC:** Yes, I report to the Commissioner often in relation to the high profile matters.

MR SHELLER: What constitutes a high profile matter, just in general terms?

10 **MS ZEKANOVIC:** Anything to do with sexual harassment, sexual assault, serious criminal conduct of an officer, serious use of force, systemic bullying and harassment.

MR SHELLER: Do you also report to someone in the position of secretary?

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MS ZEKANOVIC: Yes.

MR SHELLER: Who is the Secretary.

20 **MS ZEKANOVIC:** Michael Tidball.

MR SHELLER: Is he within Corrective Services?

25 **MS ZEKANOVIC:** He sits above the Commissioner, he is the Secretary of Department of Communities and Justice. Sorry, I will just add we report quarterly to him in relation to all of our high profile and serious matters.

MR SHELLER: Could I just ask you to go to your statement from yesterday, if you could just open it up at page 10 where paragraph 36 is.

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MS ZEKANOVIC: Sorry, what paragraph?

MR SHELLER: Paragraph 36. You were asked some questions by my learned friend and the Commissioner on this subparagraph (2) of regulation 253 concerning the obligation to report to the Commissioner. Do you see that?

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MS ZEKANOVIC: Yes.

MR SHELLER: If you go back earlier in the document to paragraph 31 which is at the bottom of page 8 you will see there you are referring to what appears on the PSI intranet.

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MS ZEKANOVIC: Yes.

45 **MR SHELLER:** And then if you just go down a few lines from the introduction to paragraph 31 there's specification of the examples of misconduct.

MS ZEKANOVIC: Yes.

5 **MR SHELLER:** And again you were asked some questions about this and if you go over the page, you see the options for reporting appear to be to PSI or to line manager. Do you see that?

MS ZEKANOVIC: Yes.

10 **MR SHELLER:** Then throughout this document you have referred to a number of policies, some still in place, some formerly in place. Without taking you back to them, is it the case that a process of reporting to the Commissioner doesn't appear in any of these policies?

MS ZEKANOVIC: Yes.

15 **MR SHELLER:** And is the fact that it appears at least from the policies that there's no suggested reporting to the Commissioner? Does that assist you at all in determining whether there has been a delegation from the Commissioner to the PSI.

20 **COMMISSIONER:** That's a bold one. I rather suspect if there's a delegation it should be produced.

25 **MR SHELLER:** Yes, I won't address it then with this witness. Then if you could go to the annexures to your statement, you were shown this before, page 364 - sorry, this is the document of the avenues for inmate inquiries and complaints - sorry, the fact sheet. It starts at page 363.

MS ZEKANOVIC: Yes.

30 **MR SHELLER:** And then goes over to page 364. You will see in the right-hand column under that heading in writing, provision for the inmate to complain to certain persons including the Commissioner.

35 **MS ZEKANOVIC:** Yes.

MR SHELLER: And in terms of the policies that you have seen generally for the purposes of preparing your statement, is this the only instance where there seems to be a reporting line to the Commissioner mentioned in terms of a complaint?

40 **MS ZEKANOVIC:** From what I've read to date, yes.

MR SHELLER: Then also a few paragraphs down you will see reference to the Ombudsman.

45 **MS ZEKANOVIC:** Yes.

MR SELLER: I think you've told us that the complaints that you get from inmates generally come through the Ombudsman?

5 **MS ZEKANOVIC:** That's correct.

MR SELLER: Would you be able, through making inquiry be able to specify the number of complaints that come through the Ombudsman?

10 **MS ZEKANOVIC:** Yes. Yes.

MR SELLER: Then just in the left-hand column, something I don't think that has been addressed, although it is addressed in your statement, is a reference to the official visitor.

15 **MS ZEKANOVIC:** Yes.

MR SELLER: Would your inquiries also be able to reveal what, if any, complaints come via the official visitor to the PSI?

20 **MS ZEKANOVIC:** Yes.

MR SELLER: Yes thank you, Commissioner.

25 **COMMISSIONER:** Mr Sheller, your client is not suggesting that if there's an accusation of a criminal offence committed by an officer that that shouldn't be reported to the Commissioner?

MR SELLER: No.

30 **COMMISSIONER:** Then we need not worry about delegations. The fact of the matter is that the report should be made, shouldn't it?

MR SELLER: Yes.

35 **COMMISSIONER:** Very well. Does anyone else have any questions of this witness? Very well. Thank you, for your evidence. You are excused until the next time we require you which I think will be before we finish. Thank you. You may step down.

40 **<THE WITNESS WAS EXCUSED**

MR LLOYD: Commissioner, tomorrow, the plan was to call John Buckley and Fergal Molloy. I said that earlier. We have been told by the department that we get Mr Buckley's statement by noon today and that hasn't happened.

45 **COMMISSIONER:** You still haven't got it, you mean?

MR LLOYD: Correct. He addresses - I expect his statement to be pretty detailed.
The other one was -

COMMISSIONER: What is the topic?

5

MR LLOYD: There's a range: Policies re the oversight of Corrective Services officers, including supervision structure, detailed description of roles, outline of executive oversight, conduct expected of behavioural standards, policies re female prisoners. The other one, Fergal Molloy's statement, wasn't due until 4 today. That we are told will come in the early evening. I withdraw that. Early evening. That is less problematic. He addresses only CCTV and if we get that in the early evening, I'm sure we can deal with that.

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There may be a problem, the reason I'm raising this, with being able to -

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COMMISSIONER: Let's see what happens in the morning. If need be, we will sit again on Tuesday.

MR LLOYD: Yes.

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COMMISSIONER: Anything else from anyone?

MR LLOYD: Not from me.

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COMMISSIONER: All right. 10 o'clock in the morning.

<THE HEARING ADJOURNED AT 4.13 PM