

4 March 2024

Contact: [REDACTED]
Telephone: [REDACTED]
Email: [REDACTED]

Lena Nash
Special Counsel
Special Commission of Inquiry into
offending by former Corrections Officer
Wayne Astill at Dillwynia Correctional Centre

By email: [REDACTED]
Copy: [REDACTED]

Dear Ms Nash

Special Commission of Inquiry Report into offending by former Corrections Officer Wayne Astill at Dillwynia Correctional Centre

I refer to the recently published Report of the Special Commission of Inquiry.

As you are aware, I voluntarily responded to a request by the Commission to provide a statement of information to the Commission on 21 November 2023.

The Report, at section 6.2.2, paraphrases in some detail information that was provided in my statement, before expressing the following conclusion at paragraph [832] on page 319:

*While the Ombudsman did have statutory power to conduct an investigation into Astill's misconduct, **on the Ombudsman's own evidence it is very unlikely that such an investigation would have occurred even had complaints about Astill been brought to the Ombudsman's attention. Such an investigation would likely have been regarded as duplicating other alternative appropriate avenues for investigation.** In any event, inmates did not perceive the Ombudsman to be an independent or effective means of resolving complaints. This inhibited the making of complaints.*

A reasonable reader would likely read the above as imputing that my office would likely not have taken any action had we received reports from inmates about Astill's criminal offending – and furthermore, that this is what I had told the Commission.

This imputation is not supported by anything in my statement, and directly contradicts what I did say. This is what I said in my statement, at paragraph [9]:

*If we were to receive a complaint from an inmate and in that complaint that inmate disclosed sexual assault by a corrections officer, **the first action we would take** is to determine whether the matter had been referred to the NSW Police Force (NSWPF) for investigation. Where conduct may constitute both criminal conduct and maladministration (such as the criminal assault by a corrections officer of an inmate), **it would generally be appropriate for the matter to be investigated (by NSWPF) and dealt with as a criminal matter rather than, or at least in priority to, any administrative***

***investigation.** It may also be appropriate for a referral to be made to another agency, such as ICAC if the complaint is about corrupt conduct. [emphasis added]*

At no point in my statement did I suggest that any Ombudsman investigation would 'duplicate' alternative avenues for investigation, or that my office would have taken no action if a complaint had been received. As I further explained at paragraphs [41] and [42]:

We would usually provide a complainant who alleged criminal conduct with information as to how they might wish to report a matter directly to police. If an inmate did not wish to inform staff in a particular part of a correctional centre that they wanted to contact police, one option we have is to contact an alternative officer at Corrective Services (with the inmate's consent). In such a case we would generally follow up to ensure police had been notified. In addition, if an inmate told us they had informed a correctional officer that they wished to report a matter to police but this hadn't occurred, we could make inquiries with the centre to determine what action, if any, had been taken in relation to the inmate's request, and the reasons for this.

*If an inmate complained to us about the (allegedly criminal) conduct of a correctional officer, but told us they did not wish to complain to the police, **this would not preclude us from making preliminary inquiries or taking other action in accordance with the Ombudsman Act.** Depending on the circumstances, if it appeared to us (for example, from those inquiries or from other action, such as viewing CCTV footage) that a criminal offence had been committed **we may be required to ensure the matter was reported to police.***

Far from suggesting an unwillingness to investigate, my statement explains that, if an inmate were to allege conduct that would be both administrative wrong conduct (maladministration) and criminal conduct, our immediate priority would be to take action toward ensuring the matter is brought to the attention of Police for criminal investigation.

The concern is not that any maladministration investigation by the Ombudsman would 'duplicate' other avenues of investigation, but rather to ensure that nothing we do in that regard should prejudice or compromise the conduct of a criminal investigation which we appreciate, for reasons that I assume would be obvious and uncontroversial, should take priority.

Given the adverse imputations in the Commission's Report, I will arrange to forward a copy of this letter to the Joint Parliamentary Committee which oversees my office. I will also provide them with a copy of the full statement I had provided to the Special Commission.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Paul Miller', written in a cursive style.

Paul Miller
NSW Ombudsman