



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: CLC/PuLC:BMcd060924

6 September 2024

The Hon. Anoulack Chanthivong MP
Minister for Corrections
GPO Box 5341
Sydney NSW 2001

Dear Mr Chanthivong,

Astill Special Commission of Inquiry

The Law Society commends the NSW Government for taking action to respond to the Astill Special Commission of Inquiry, including by establishing Corrective Services NSW as a standalone public service agency to lift standards, and deliver a more accountable and transparent system that keeps people in NSW safe.

We support continued action by the NSW Government to improve outcomes following the Astill Special Commission of Inquiry, and we note the severity of the issues identified in the Final Report of the Special Commission of Inquiry (**Final Report**).

To assist in your consideration of further action to be taken in response to the Inquiry, we write to confirm our support for action on the recommendations contained within the Final Report, particularly the recommendations discussed below. We are of the view that, if implemented, many of the recommendations contained in the Final Report would not only safeguard against any abuse of human rights in a correctional setting, but would also serve to prevent the occurrence of other criminal activity in correctional centres, such as the introduction of contraband.

Further, noting the systemic issues related to the management and structure of Corrective Services NSW (**CSNSW**) identified in the Final Report, we would also support action by the NSW Government to pursue a sector-wide review. In considering issues relating to Former Corrections Officer Wayne Astill and the Dillwynia Correctional Centre, the Special Commission of Inquiry found 'a multiplicity of problems in the reporting and management of misconduct by officers of CSNSW'¹ that, in the view of the Special Commission of Inquiry, 'undermined public confidence in CSNSW.'² The Final Report opined, 'it will be important that a process of review of the entire institution is undertaken, and appropriate changes implemented' through a process not internal to CSNSW.³

Noting these findings, we would support action by the NSW Government to pursue a sector-wide review of CSNSW, in addition to implementing the recommendations of the Final Report,

¹ Final Report, p. 36.

² Final Report, p. 36.

³ Final Report, p. 36.

to ensure that any prevalent issues are identified and addressed, so as to support the safe and effective management of correctional centres in NSW.

Recommendations of the Final Report

The Law Society supports the recommendations set out in the Final Report. In our view, the recommendations, if implemented, would assist to ensure that there is appropriate infrastructure, systems and safeguards to support the safe and effective management of correctional centres.

We consider correctional centres to require particularly robust processes and pathways to identify and respond effectively to abuse, as the formal power differentials characteristic of correctional centres can make it exceedingly difficult for inmates to report misconduct, including due to a fear of reprisal. Indeed, as identified by the Royal Commission into Institutional Responses to Child Sexual Abuse in respect of 'total institutions', 'the greater the status and power of a perpetrator in an organisation, the harder it may be for survivors and others who are aware of abuse to have their disclosures heard and believed.'⁴ In this way, effective management structures, complaint pathways and safeguards are essential to ensuring public confidence in CSNSW. In our view, implementing the recommendations set out in the Final Report would be an important step towards achieving this effect.

We consider it appropriate for recommendations 1, 5-11, 13 and 18 to be implemented as priority matters.

Priority recommendations

Recommendation 1: CCTV Coverage

Recommendation 1 provides that 'the CCTV coverage at Dillwynia should be brought up to the standard set out in the Specification as an urgent priority.' We consider functioning CCTV an essential safeguard to support the effective discharge of duties and protection of human rights all in correctional centres. We also support the recommendation that 'consideration should be given to CCTV footage in all correctional centres being retained for a minimum of 90 days before being overwritten.'

Recommendations 5-11: Management of allegations of misconduct

We support prompt action regarding the management of allegations of misconduct in CSNSW, including implementation of recommendations 5-11 contained in the Final Report. We are concerned by the Special Commission of Inquiry's finding that, at the time of Astill's offending, CSNSW did not have a proper process or system for managing reports of misconduct that was organised, consistent with relevant law and policy, and clearly communicated, and that, in the view of the Special Commission of Inquiry, this 'significantly contributed to Astill being able to offend over a period of years.'⁵

In view of these findings, and broader issues explored in Chapter 5 of the Final Report, we consider it essential that appropriate reforms are implemented to improve reporting processes for, and management of, complaints of misconduct in CSNSW. We also consider these findings to indicate systemic issues in CSNSW that warrant broader, sector-wide review, as explored further below.

⁴ K Kaufman & M Erooga, Risk profiles for institutional child sexual abuse: A literature review, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, pp 40–1. See P O'Leary, E Koh & A Dare, Grooming and child sexual abuse in institutional contexts, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2017.

⁵ Final Report, p. 173.

Recommendation 13: Soundproof AVL Suites

Recommendation 13 provides that ‘an assessment of AVL suites should be undertaken to ensure that noise from those suites cannot be heard in adjoining rooms or corridors.’ We support such an assessment being conducted, particularly noting that a lack of privacy and confidentiality can act as a deterrent for inmates to report wrongdoing,⁶ and contribute to a problematic culture that lacks accountability.

In addition, we note that soundproof AVL suites are also essential to ensure that inmates can speak with their legal representative in a confidential and private manner, and that practitioners can comply with legal privilege as a fundamental duty. Ensuring that inmates have access to soundproof AVL suites is particularly imperative given the increased reliance on AVL since the COVID-19 pandemic and, indeed, to support the smooth implementation of centralised bail courts.

Recommendation 18: Auditable Complaint Management System

Recommendation 18 provides that ‘CSNSW should ensure all correctional centres have an auditable system that records internal inmate requests and complaints, which can be inspected by CSNSW, the Ombudsman and the Inspector. The auditable system should record the time taken to resolve a complaint.’ We consider this an essential feature to ensure accountability in NSW correctional centres, and are of the view that this recommendation should be implemented as soon as practicable.

Balance of recommendations

Further to the above, we support action on the balance of the recommendations contained in the Final Report and offer the following further comments for consideration.

Recommendation 20: Advocacy service for female inmates

In respect of Recommendation 20, we are of the view that, in developing such an advocacy service, regard should be given to the unique vulnerabilities and challenges experienced by female inmates in reporting misconduct, due to the power imbalances characteristic of correctional centres.

We note, for example, that the Royal Commission into Institutional Responses to Child Sexual Abuse found that a number of victim-survivors of abuse in youth detention facilities did not report their experiences of abuse because they did not feel safe to report abuse, they did not have access to a trusted person, or were fearful of punishment or being labelled a ‘dobber’.⁷

In light of this, we consider it essential that any such advocacy service for female inmates be genuinely independent from CSNSW, including requiring the involvement of independent representatives on the selection panel for the tender. Another way to ensure that inmates feel safe and supported in reporting misconduct may be to make available pathways for anonymous complaints to be made.

Scope and prevalence

We note that the purview of the Special Commission of Inquiry was limited to investigating issues related to the Dillwynia Correctional Centre, and offending by Former Corrections Officer Wayne Astill. However, notwithstanding the limited scope, the Final Report also found issues in respect of the broader structure, management and performance of CSNSW staff that may extend to other correctional centres in NSW.

⁶ Final Report, p. 324.

⁷ [Contemporary detention environments | Royal Commission into Institutional Responses to Child Sexual Abuse \(childabuseroyalcommission.gov.au\)](https://www.childabuseroyalcommission.gov.au).

Indeed, the Special Commission of Inquiry reported:

I have been tasked with looking at the problems in one correctional centre and I cannot say whether those problems or similar problems exist in other centres. However, it would be wrong to assume that there are not problems elsewhere.

CSNSW has responded to the issues raised by problems at Dillwynia by committing to changes in management structure and process. Although many of these matters remain objectives on paper, it is imperative that change consistent with these objectives occur. That change is required not just at Dillwynia but across the entire CSNSW organisation.

It is apparent that problems in the management structure of CSNSW and the incapacity of some managers have undermined public confidence in CSNSW facilities. Because many problems have been revealed, it will be important that a process of review of the entire institution is undertaken, and appropriate changes implemented. In my opinion, this should not be left to a process internal to CSNSW.

Although I do not urge that there be any further formal inquiry, I believe a small task force reporting to the Secretary of the NSW Department of Communities and Justice charged with overseeing the process of internal review of the structure, management, the performance of staff, and the effectiveness of CSNSW in making necessary changes is required.⁸

In light of these comments, we are concerned that the findings contained in the Final Report may be indicative of a larger problem. We note that findings contained in other reports, including inspection reports from the Inspector of Custodial Services, and reports by the Ombudsman, provide further evidence to suggest that the problems at Dillwynia Correctional Centre may also be occurring in other correctional centres.

Examples of such findings include:

- Reports of correctional officers who were 'rude racist and dismissive towards inmates and other staff' at Glen Innes and Mannus Correctional Centres.⁹
- 'Alleged bullying, harassment, discrimination and racism between staff and also from staff to inmates' at St Heliers Correctional Centre.¹⁰
- 'Inadequate systems for monitoring requests and complaints' at Parklea Correctional Centre.¹¹
- Concern regarding whether there were sufficient numbers of female officers rostered in 24-hour court cell locations to undertake searches of female inmates.¹²
- Interactions between staff and inmates that 'lacked professionalism'¹³ at Goulburn Correctional Centre, including staff using 'dehumanising language' to describe inmates and engaging in unprofessional behaviour such as 'placing items, including meals, on the floor and kicking them into cells.'¹⁴
- Concerns related to the adequacy of investigations into complaints about uses of force, including those which did not reach the criminal standard for an assault but where there were other deficiencies, such as the force applied being unwarranted, significant

⁸ Final Report, p 36.

⁹ Inspector of Custodial Services, *Inspection of Mannus Correctional Centre and Glen Innes Correctional Centre 2022*, (Report, February 2024) p 4.

¹⁰ Inspector of Custodial Services, *St Heliers Correctional Centre 2021* (Report, November 2022) p. 24.

¹¹ Inspector of Custodial Services, *Inspection of Parklea Correctional Centre* (Report, June 2022) p. 10.

¹² Inspector of Custodial Services, *Inspection of 24-Hour Court Cell Complexes, Amber Laurel Correctional Centre, and Kariang Intake and Transit Centre* (Report, December 2022), p. 7.

¹³ Inspector of Custodial Services, *Inspection of Goulburn Correctional Centre and the High Risk Management Correctional Centre 2021* (Report, June 2022) p. 8.

¹⁴ *Ibid.*, p. 25.

procedural errors, opportunities to de-escalate a situation being missed or videoing being inadequate.¹⁵

We are concerned that these findings, in addition to the findings contained in the Final Report, may indicate the existence of more systemic issues, warranting sector-wide review of CSNSW. We support the suggestion from the Special Commission of Inquiry that a 'review of the structure, management, the performance of staff, and the effectiveness of CSNSW' be conducted. We would be happy to provide assistance as part of any consultation processes arising in the course of such a review.

If you have any questions in relation to this letter, please contact Claudia Daly, Policy Lawyer on (02) 9926 0233 or by email: claudia.daly@lawsociety.com.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Brett McGrath', with a long horizontal flourish extending to the right.

Brett McGrath
President

¹⁵ NSW Ombudsman, *Managing use of force in prisons: the need for better policy and practice* (July 2012) p. 5.