



**CORONER'S COURT  
OF NEW SOUTH WALES**

<b>Inquest:</b>	Inquest into the death of Dwayne Johnstone
<b>Hearing dates:</b>	27–28 October 2020; 9–12 July 2024
<b>Date of findings:</b>	21 August 2024
<b>Place of findings:</b>	Coroners Court of New South Wales at Lidcombe
<b>Findings of:</b>	<b>State Coroner, Magistrate Teresa O'Sullivan</b>
<b>Catchwords:</b>	CORONIAL LAW – First Nations death in custody – section 23 mandatory inquest – prisoner attempting escape during medical escort – shot by firearm discharged by correctional officer – findings as to manner and cause of death – whether training of correctional officers adequate – consideration of Crimes (Administration of Sentences) Regulation 2014 – whether regulations surrounding use of force and discharge of firearms by correctional officers clear – whether recommendation for legislative change ought be made under section 82 Coroners Act
<b>File number:</b>	2019/00085457
<b>Representation:</b>	<p><b>Counsel Assisting:</b> Dr P Dwyer SC, instructed by Ms G Buchan and Ms D Lambert, NSW Crown Solicitor's Office</p> <p><b>Counsel for Corrective Services NSW:</b> Ms G Bashir SC with Ms T Stevens, instructed by Ms C Dunn and Mr M Williams, NSW Department of Communities &amp; Justice Legal</p> <p><b>Counsel for Officer A and Officer B:</b> Mr S Russell, instructed by Mr M Jaloussis, McNally Jones Staff Layers</p> <p><b>Counsel for Kirsty Pepper (family):</b> Mr J Watts, Public Defender's Office, instructed Ms J Dougan-Jones, Aboriginal Legal Service</p> <p><b>Counsel for Kerry Shanahan-Crawford (family):</b> Mr P de Dassel, instructed by Mr R Cummins, solicitor</p>

<b>Protective orders:</b>	Final non-publication orders made on 9 July 2024, prohibiting publication of the names and identifying information of Officer A and Officer B; and prohibiting publication of various CSNSW policies, procedures and training materials. A copy of the orders may be obtained on application to the Coroner's Court Registry.
<b>Findings:</b>	<p><b>Identity:</b> The person who died was Dwayne Johnstone (Dwayne).</p> <p><b>Date of death:</b> Dwyane died on the evening on 15 March 2019.</p> <p><b>Place of death:</b> Dwayne died in Lismore, New South Wales.</p> <p><b>Cause of death:</b> Dwayne died from a gunshot wound to the chest and abdomen.</p> <p><b>Manner of death:</b> Dwayne died while he was a prisoner being transported on medical escort, as a result of a gunshot wound inflicted by a Corrective Services New South Wales officer who discharged his firearm to prevent Dwayne's escape.</p>
<b>Recommendations:</b>	<p>To the New South Wales Attorney General and to the New South Wales Minister for Corrections:</p> <ol style="list-style-type: none"> <li>1. That there be an urgent review of the legislation and regulations relating to the use of firearms by officers of Corrective Services New South Wales, and, in particular, cll 131 and 303 of the <i>Crimes (Administration of Sentences) Regulation 2014</i>, having regard to the findings in the inquest into the death of Dwayne Johnstone.</li> </ol>

# Contents

Introduction	2
The role of the coroner and the scope of the inquest	2
Background facts	3
Dwayne's early life	3
Dwayne's adult life	4
Criminal history and prior escapes	5
Events of 11 to 14 March 2019	6
Events of 15 March 2019	6
Transport to and treatment at hospital	8
Shooting incident and resuscitation attempts	9
Autopsy Report	10
Procedural history	10
Suspension of inquest in 2020	10
Criminal trials of Officer A	11
Resumption of inquest in 2024	11
Formal findings as to manner and cause of death	13
Legal context for key issues	13
The CAS Act and CAS Regulation	14
History of LEPRA and the "fleeing felon" rule	17
Key issues considered at the inquest	19
Issue 1 – Gaps in procedure and communication	20
Issue 2 – Training in the use of force and firearms	24
Issue 3 – Options available on the ground	32
Issue 4 – Uncertainty in the law	35
Concluding remarks	43

*The Coroners Act 2009 (NSW) in section 81(1) requires that when an inquest is held, the coroner must record in writing his or her findings as to various aspects of the death. These are the findings of an inquest into the death of Dwayne Johnstone.*

## **Introduction**

1. This inquest concerns the death of Dwayne Johnstone, who died on 15 March 2019, aged 43 years, in Lismore, New South Wales. Dwayne died from a gunshot wound after being shot by a Corrective Services NSW (CSNSW) officer, known in these proceedings by the pseudonym “Officer A”. Dwayne was a prisoner on a medical escort and was attempting to escape from the custody of CSNSW when Officer A discharged his firearm at Dwayne in Uralba Street, outside Lismore Base Hospital.
2. As Dwayne was attempting to escape from lawful custody at the time of his death, jurisdiction to hold this inquest arose under s 23(1)(b) of the *Coroners Act 2009* (NSW) (the Act), and the inquest was mandatory.<sup>1</sup>
3. For reasons that will be made clear in these findings, this case has had a long history. The inquest first commenced before me for two days in late October 2020. It was then suspended for over three years before resuming in mid July 2024.
4. During the period that the inquest was suspended, Officer A was charged with the manslaughter, and later the murder, of Dwayne. Two criminal trials took place in the Supreme Court of NSW. In October 2023, Officer A was ultimately found by a jury to be not guilty of Dwayne’s murder.
5. I note this history in the criminal jurisdiction for contextual purposes only. The inquest itself was not concerned with matters of criminal or civil liability arising from Dwayne’s death, but rather with systemic issues, death prevention and the protection of the public as a whole.

## **The role of the coroner and the scope of the inquest**

6. The role of the coroner is to make findings as to the identity of the deceased and in relation to the place and date of their death. The coroner is also to address issues concerning the manner and cause of the person’s death.<sup>2</sup> The Act does not define the phrase “manner and cause of death”. It is generally accepted that cause of death refers to the direct and

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<sup>1</sup> *Coroners Act 2009* (NSW) s 29(1)(b).

<sup>2</sup> *Coroners Act 2009* (NSW) s 81.

proximate physiological cause of the death, while manner of death relates to the broader circumstances leading up to and surrounding the death.

7. Pursuant to section 82 of the Act, a coroner may make recommendations in relation to any matter connected with the death into which an inquest is concerned. The matters that can be the subject of a recommendation are those that have the capacity to improve public health and safety in the future, and/or to be investigated or reviewed by a specified person or body.<sup>3</sup> A recommendation can be made if it arises from the evidence adduced and tendered at the inquest or inquiry.
8. As was made clear several times during this inquest when it resumed, it is important for the public to understand that this was not a criminal case, and Officer A was not on trial during the inquest. Section 81(3) of the Act provides that when I deliver my findings, I must not indicate or in any way suggest that an offence has been committed by any person.
9. I am likewise not determining whether any individual acted outside the policies and procedures which existed at the time or should be considered at fault or subject to criticism. Further, I am not making findings of civil liability and I have no power to award compensation or damages.

## **Background facts**

10. Much of the factual background set out below was helpfully articulated in the opening address of Senior Counsel Assisting when the inquest resumed on 9 July 2024.<sup>4</sup> Unless otherwise indicated, the evidence underlying the factual background which follows is uncontentious and was not the subject of dispute between the interested parties to the inquest.

### *Dwayne's early life*

11. Dwayne Johnstone was born on 10 December 1975 in Bankstown, NSW.<sup>5</sup> Dwayne was a Wiradjuri man, who is survived by a large and loving extended family.
12. Dwayne's mother, Kerry Crawford-Shanahan, and his father, George Johnstone, were married in June 1972 and had three sons together: Shane, who was born in 1972; Scott, who was born in 1974, but died shortly after his birth; and Dwayne, born a year later.<sup>6</sup>

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<sup>3</sup> *Coroners Act 2009* (NSW) s 82.

<sup>4</sup> Transcript 09/07/2024 T1 – T20.

<sup>5</sup> BOE Vol. 1, Tab 11 (Statement of George Johnstone).

<sup>6</sup> BOE Vol. 1, Tab 11 (Statement of George Johnstone); BOE Vol. 1, Tab 13A (Statement of Kerry Crawford).

13. Kerry and George separated at the end of 1976. Both met other partners and had a number of children in the late 1970s and early 1980s: Luke and Daniel were born to Kerry and her partner, Robert; and Linc was born to George and his partner, Jenny. There is evidence before the Court that Dwayne and his siblings were close and were raised as brothers.<sup>7</sup>
14. Dwayne attended Birrong Infants and Primary school for his early schooling and later Ebenezer Public school. While still a child, Dwayne was diagnosed with Attention Deficit Disorder and his behaviour was challenging to manage. As a young person, Dwayne was placed in several different residential care homes, then called “Boys Homes”. Dwayne saw his mother and father at different times throughout that period of State care.<sup>8</sup>
15. Sadly, evidence tendered at the inquest indicates that Dwayne was sexually abused when he was a child, a matter which he disclosed to his father at around 17 years of age;<sup>9</sup> and later disclosed to his mother.<sup>10</sup> There seems little doubt that Dwayne’s childhood trauma impacted him throughout his life and goes some way to explaining his later drug addiction and interactions with the criminal justice system.

#### *Dwayne’s adult life*

16. In his early twenties, Dwayne partnered with Samantha Henwood, and they had a son named Christopher.<sup>11</sup> Dwayne and Samantha later separated.
17. When Dwayne was aged in his late twenties or early thirties, he was the victim of a physical assault that resulted in a brain injury. He had surgery on his brain to relieve the pressure. Afterwards he was diagnosed with epilepsy and had frequent seizures.<sup>12</sup> This fact is relevant to understanding certain events which transpired while Dwayne was in custody on the day of his death.
18. In his forties, Dwayne moved to the North Coast of NSW and worked on a garlic farm.<sup>13</sup> In 2017 he met Kirsty Pepper, his de facto partner. At the time of his death, Kirsty and Dwayne were living together at a property in Numulgi, near Lismore.<sup>14</sup>

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<sup>7</sup> BOE Vol. 1, Tab 11 (Statement of George Johnstone); BOE Vol. 1, Tab 13A (Statement of Kerry Crawford).

<sup>8</sup> BOE Vol. 1, Tab 11 (Statement of George Johnstone).

<sup>9</sup> BOE Vol. 1, Tab 11 (Statement of George Johnstone).

<sup>10</sup> BOE Vol 1, Tab 13A (Statement of Kerry Crawford).

<sup>11</sup> BOE Vol 1, Tab 13A (Statement of Kerry Crawford).

<sup>12</sup> BOE Vol. 1, Tab 11 (Statement of George Johnstone).

<sup>13</sup> BOE Vol. 1, Tab 11 (Statement of George Johnstone).

<sup>14</sup> BOE Vol. 1, Tab 1 (P79A Report).

19. Dwayne spoke regularly with his family. He was in frequent contact with his father, with whom he last spoke on 13 March 2019, two days before he was fatally shot.<sup>15</sup> He also spoke to his mother around that same date, just to say hello.<sup>16</sup>
20. Dwayne's mother, Kerry, and his partner, Kirsty, both attended the criminal trials of Officer A. They were interested parties to the inquest and attended the hearing, where they gave moving family statements in Court. Kirsty also read a statement written by Dwayne's stepmother, Jenny Johnstone.

### *Criminal history and prior escapes*

21. Dwayne had a lengthy criminal history. Aside from driving-related offences, his adult offending in NSW dates back to 1995 when, at 24 years of age, he was charged with drug offences, larceny and assault. His criminal history is thereafter littered with other offences of that nature up to 2018.<sup>17</sup>
22. Dwayne also had a history in Victoria for offences relating to drugs, theft and assault between 2006 and 2013.<sup>18</sup>
23. A particular aspect of Dwayne's criminal history relevant to issues explored in this inquest was his prior history of escapes from custody. This occurred the following two times:<sup>19</sup>
  - a. On 4 August 1999, Dwyane was being held in custody at Bankstown Police Station to appear before Bankstown Local Court for revocation of parole. During that court appearance, he escaped from the dock and tried to run from the court room. He was later charged with and convicted for the offence of "escape/attempt escape by prisoner from lawful custody".
  - b. On 18 February 2013, Dwayne was arrested for stealing a motorcycle in Victoria. After his arrest he attempted to escape and was later charged with and convicted for the offence of "attempted escape police custody", for which he was imprisoned.
24. Another important aspect of Dwayne's criminal history is that in January 2019, he was charged with alleged offences of possessing a prohibited drug (marijuana); resisting arrest; and dealing with the proceeds of crime ("the January 2019 charges"). He was granted bail for the January 2019 charges. Then, in March 2019, Dwayne was charged with possessing

<sup>15</sup> BOE Vol. 1, Tab 11 (Statement of George Johnstone).

<sup>16</sup> BOE Vol. 1, Tab 13A (Statement of Kerry Crawford).

<sup>17</sup> BOE Vol. 3, Tab 64 (NSW Criminal History Bail Report).

<sup>18</sup> BOE Vol. 3, Tab 65 (Victorian Police Criminal History).

<sup>19</sup> BOE Vol. 1, Tab 10 (Statement of Detective Sergeant Michael Smith).

or using a prohibited weapon without a permit; and assault occasioning actual bodily harm (“the March 2019 charges”).<sup>20</sup> For the March 2019 charges Dwayne was refused bail.<sup>21</sup>

25. These final charges (discussed in further detail below) are the reason why Dwayne was in custody on 15 March 2019. They had not been finally determined before his death.

#### *Events of 11 to 14 March 2019*

26. The March 2019 charges arose from an incident alleged to have occurred in Lismore on 11 March 2019. The alleged victim, a former friend or at least an associate of Dwayne’s, told police that Dwayne attended his home on 11 March and that they had an argument. During that argument, Dwayne supposedly fired a taser at the complainant and punched him in the face. A formal police report was filed on 12 March 2019 with witness statements taken from the alleged victim and another witness.<sup>22</sup>

27. On 14 March 2019, Dwayne attended Lismore Police Station as per his bail reporting conditions for the January 2019 charges. While at the station that evening, police officers informed Dwayne that they were investigating an alleged assault perpetrated by him on 11 March. They placed him under arrest. He was cautioned and taken into the custody area.<sup>23</sup>

#### *Events of 15 March 2019*

28. Early in the morning on 15 March 2019, Dwayne was charged by police with assault occasioning actual bodily harm (arising from an alleged punch) and possess or use a prohibited weapon without a permit (alleged to be a taser).<sup>24</sup> As Dwayne was already on bail when he was arrested for the March charges, they were “show cause” offences. This meant the onus was on him to show why he should get bail.

29. Dwayne was initially bail refused by a NSWPF Sergeant on 15 March 2019,<sup>25</sup> and he appeared before the Magistrate at Lismore Local Court on the same day. Dwayne’s lawyer told the Court that he was pleading not guilty and argued that it was a weak prosecution case. In light of his criminal record, and the requirement for Dwayne to show cause as to why he should be granted bail, Dwayne was bail refused by the Court, a brief of evidence was ordered, and the matters were adjourned to 6 May 2019.

<sup>20</sup> BOE Vol. 3, Tab 64 (NSW Criminal History Bail Report).

<sup>21</sup> BOE Vol. 2, Tab 46A (Transcript of Bail Refusal on 15/03/2019).

<sup>22</sup> BOE Vol. 3, Tab 66 (Statement of Constable Daniel Nugent); BOE Vol. 3, Tab 70 (Statement of alleged victim); BOE Vol. 3, Tab 71 (Statement of witness).

<sup>23</sup> BOE Vol. 3, Tab 66 (Statement of Constable Daniel Nugent); BOE, Vol. 3, Tab 69 (BWV footage of arrest).

<sup>24</sup> BOE Vol. 3, Tab 68 (Court Attendance Notices).

<sup>25</sup> BOE Vol. 2, Tab 44 (Statement of Sergeant Darren Wilson).



30. The transcript of Dwayne's bail hearing reveals that Dwayne was asking for his medication and, before being escorted from the court room, he said that he was "*going to have a fit*".<sup>26</sup>
31. Two correctional officers from CSNSW accompanied Dwayne to Court on 15 March 2019 and were present during his bail hearing. They are known by the pseudonyms Officer A and Officer B in this inquest. Officer A is an experienced officer who first joined Corrections NSW in 1986. He worked in correctional and detention centres interstate, in Queensland and Western Australia, and returned to work as a correctional officer in NSW in 2015. Officer A participated in an interview with investigators from the NSWPF after Dwayne's death, in which he said that Dwayne appeared to be emotional in court during the bail hearing, yelling at the Magistrate and attempting to speak with his girlfriend.<sup>27</sup>
32. Shortly after 1:00pm, Dwayne was taken by correctional officers from the charge room at Lismore Police Station to the Lismore Court cells.<sup>28</sup> He was transferred between cells and, at about 2:45pm, was escorted by Officer A and Officer B to cell 3.<sup>29</sup>
33. At about 2:48pm, Dwayne lay on the ground and appeared to have an epileptic fit.<sup>30</sup> Moments later, Officer A saw Dwayne appearing to fit, called out for support and entered Dwayne's cell. He did not touch Dwayne but told him to breathe and reassured him. He observed Dwayne to be lying on his side and shaking for less than a minute.<sup>31</sup> Officer B arrived in the cell about a minute after Officer A.<sup>32</sup> They called for a Justice Health nurse.
34. At about 2:51pm, Justice Health Registered Nurse Christopher Heighway (RN Heighway) entered the cell to examine Dwayne.<sup>33</sup> RN Heighway recalls that when he entered Dwayne's cell, he saw him lying on his right side on the floor with his feet facing the cell door. Dwayne was conscious and alert. RN Heighway checked his blood pressure, heart rate, respiration and oxygen saturations, which all appeared okay. As Dwayne had complained of chest pain, RN Heighway advised CSNSW staff to arrange an ambulance so that an ECG could be performed.<sup>34</sup> An ambulance was arranged to take Dwayne to Lismore Base Hospital.

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<sup>26</sup> BOE Vol. 2, Tab 46A (Transcript of Bail Refusal on 15/03/2019).

<sup>27</sup> BOE, Vol. 1, Tab 14 (Transcript of NSWPF recorded interview with Officer A).

<sup>28</sup> BOE, Vol. 4, Tab 81 (CSNSW Investigation Report).

<sup>29</sup> BOE, Vol. 4, Tab 81 (CSNSW Investigation Report).

<sup>30</sup> BOE, Vol. 2, Tab 42A (CCTV footage from Lismore Court cells); BOE, Vol. 4, Tab 81 (CSNSW Investigation Report).

<sup>31</sup> BOE, Vol. 1, Tab 14 (Transcript of NSWPF recorded interview with Officer A); BOE Vol. 4, Tab 81 (CSNSW Investigation Report).

<sup>32</sup> BOE, Vol. 4, Tab 81 (CSNSW Investigation Report).

<sup>33</sup> BOE, Vol. 4, Tab 81 (CSNSW Investigation Report).

<sup>34</sup> BOE, Vol. 2, Tab 42A (Statement of Christopher Heighway).

35. At about 3:06pm, paramedics from NSW Ambulance entered Dwayne's cell and started rendering medical assistance to him.<sup>35</sup> The ECG was performed and was normal. Dwayne was cannulated.
36. At about 3:15pm, paramedics removed Dwayne from the cell in order to convey him to Lismore Base Hospital.<sup>36</sup>
37. While Dwayne was being treated, Acting Senior Correctional Officer Barbera Henderson completed a form titled, "Order for inmate to be transferred to a hospital or other place specified" (known as a "Section 24 Order") and an "Escort Assessment Form" recommending Dwayne's transfer to Lismore Base Hospital.<sup>37</sup> Those documents were checked and approved by Acting Assistant Superintendent Ross (A/Assistant Superintendent Ross). The completion of those forms and the risk assessment process undertaken prior to Dwayne's medical escort were important issues explored at the inquest and the subject of oral evidence. I consider this topic in further detail below.
38. The Section 24 Order required one officer to be armed to escort Dwayne to the hospital. Officer A was allocated as the armed officer due to his experience, and he obtained a firearm from the Lismore Police Station for the purpose of the escort.<sup>38</sup>

*Transport to and treatment at hospital*

39. At about 3:30pm, after the Escort Assessment Form and Section 24 Order were completed, Dwayne was put into the ambulance. Handcuffs and ankle cuffs were placed on Dwayne for the escort to the hospital. Officer B was inside the ambulance with Dwayne; and Officer A was in a police car that followed the ambulance to the hospital.<sup>39</sup> Officer A was armed during the escort, but Officer B was not. The entire time he was at the hospital, Dwayne was secured by the handcuffs and ankle cuffs.
40. On arrival at Lismore Base Hospital, Dwayne was admitted for his seizure. He also revealed to hospital staff that he had been in a recent motorcycle crash, and he was taken to the X-Ray department. Registered Nurse Glen McIntosh (RN McIntosh) was the primary nurse caring for Dwayne during his time in the Accident and Emergency Department. Apart from treating Dwayne for the seizure, RN McIntosh treated some abrasions to his right foot

<sup>35</sup> BOE Vol. 4, Tab 81 (CSNSW Investigation Report).

<sup>36</sup> BOE Vol. 4, Tab 81 (CSNSW Investigation Report).

<sup>37</sup> BOE Vol. 1, Tab 20 (Order for inmate to be transferred to a hospital or other place specified and Escort Assessment).

<sup>38</sup> BOE Vol. 9, Tab 152 (Criminal Trial 2, 17/10/2023, T76).

<sup>39</sup> BOE Vol. 1, Tab 21 (Statement of Senior Correctional Officer David Ross).

and left shoulder. Dwayne was complaining of pain to the middle and left side of his chest, so RN McIntosh did some chest pain investigations.<sup>40</sup>

41. Dwayne was seen by a doctor and prescribed medications, once of which was the anti-seizure medication, clonazepam; and suboxone, also directed at seizure prevention. He was given an antibiotic because of his injuries. Dwayne was then cleared for discharge.<sup>41</sup>

*Shooting incident and resuscitation attempts*

42. At about 7:33pm on 15 March 2019, Dwayne was escorted from the Accident and Emergency exit doors towards a CSNSW van that was parked nearby in Uralba Street.<sup>42</sup> Officer A was armed with a revolver and walked ahead of Dwayne, while Officer B remained with Dwayne and kept a grip on him by holding the back of his pants. Officer A walked ahead because he was going to open the rear of the CSNSW van. During this escort, Dwayne was wearing two CSNSW issued restraints – being handcuffs and ankle shackles – that restricted the movement of his hands and legs. His ankles were attached by a ■■■ cm chain.

43. Nevertheless, less than one minute after leaving the hospital exit doors, as he was walking beside Officer B towards the CSNSW van, Dwayne pushed Officer B to break free from his grip. He ran away in a southwest direction from the rear of the van across Uralba Street towards a General Practice that had closed for the evening. He was chased by Officer B.<sup>43</sup> As Dwayne crossed Uralba Street, Officer A did not chase him but called out for Dwayne to stop. He later told police that he yelled out, “*Correctional Officer*” and “*stop, or I’ll shoot*”.<sup>44</sup>

44. At about 7:34pm, Officer A drew his revolver and fired a number of shots, the first of them a warning shot. Officer A yelled “*stop*” again and fired a second shot in the direction of Dwayne, but it was the last of three shots fired by Officer A that struck Dwayne to the right of his back and caused him to fall to the ground. Officer A immediately identified that he had hit him.<sup>45</sup> Officer A ran towards Dwayne, still holding his weapon. Dwayne said to Officer A words to the effect of, “*Ya got me chief*.”<sup>46</sup>

<sup>40</sup> BOE Vol. 1, Tab 22 (Statement of RN McIntosh).

<sup>41</sup> BOE Vol. 3, Tab 75 Annexure A (Lismore Base Hospital Discharge Referral Notes).

<sup>42</sup> BOE Vol. 2, Tab 42 (CCTV Footage from Lismore Base Hospital); BOE Vol. 4, Tab 81 (CSNSW Investigation Report).

<sup>43</sup> BOE Vol. 4, Tab 81 (CSNSW Investigation Report).

<sup>44</sup> BOE Vol. 1, Tab 14 (Transcript of NSWPF recorded interview with Officer A).

<sup>45</sup> BOE Vol. 1, Tab 14 (Transcript of NSWPF recorded interview with Officer A).

<sup>46</sup> BOE Vol. 1, Tab 14 (Transcript of NSWPF recorded interview with Officer A).

45. Four calls were made to Triple 0 by different persons, including by Officer A.<sup>47</sup>
46. Ambulance NSW paramedics who had arrived at the hospital emergency area moments before the shooting ran over and began rendering assistance.<sup>48</sup> Later in the evening, a doctor removed the bullet from Dwyane, and an emergency team worked to try to resuscitate him, but he was not able to be revived.<sup>49</sup>
47. Hospital records revealed Dwayne's clinical time of death as 9.24pm.<sup>50</sup> A life extinct form was issued at 9.30pm on 15 March 2019.<sup>51</sup>
48. A P79A Report of Death for the Coroner was prepared, and the NSW Police Force (NSWPF) commenced an investigation into the death.

### *Autopsy Report*

49. An autopsy was performed on Dwayne on 21 March 2019 at the department of Forensic Medicine in Newcastle, NSW. An Autopsy Report for the Coroner was prepared by Dr Lorraine Du Toit-Prinsloo and dated 6 December 2019 ("the Autopsy Report").<sup>52</sup> The direct cause of Dwayne's death was recorded as "gunshot wound to the chest and abdomen"; no antecedent cause of death was recorded.
50. The Autopsy Report also recorded as follows:<sup>53</sup>

*"Post mortem examination showed a single entrance gunshot wound to the right mid back. The trajectory of the projectile was from back to front, right to left and upwards as it traversed the Y12 thoracic vertebral body, the aorta, the mesentery, liver, the diaphragm, the pericardium and the left ventricle at the apex. There was no exit wound."*

## **Procedural history**

### *Suspension of inquest in 2020*

51. This inquest was first opened by me on 27 October 2020 in the Coroners Court of NSW sitting at Lismore. Following Senior Counsel Assisting's opening address, a five-volume brief of evidence was tendered.<sup>54</sup>

<sup>47</sup> BOE Vol. 2, Tab 37 (Transcripts of Triple 0 calls).

<sup>48</sup> BOE Vol. 1, Tab 26 (Statement of paramedic Peter Haron); BOE Vol. 1, Tab 27 (Statement of paramedic Jaimee Daniel).

<sup>49</sup> BOE Vol. 1, Tab 32 (Statement of Dr Robert Attila Simon).

<sup>50</sup> BOE Vol. 1, Tab 10 (Statement of Detective Sergeant Michael Smith).

<sup>51</sup> BOE Vol. 1, Tab 2 (Certificate of Life Extinct).

<sup>52</sup> BOE Vol. 1, Tab 7 (Autopsy Report).

<sup>53</sup> BOE Vol. 1, Tab 7 (Autopsy Report).

<sup>54</sup> Exhibit 1: Brief of Evidence (Volumes 1, 2, 2A, 3 and 4) tendered on 27/10/2020.

52. The following day, on 28 October 2020, I heard oral submissions from the interested parties on the question of whether a referral ought to be made to the Director of Public Prosecutions having regard to s 78(1)(b) of the Act; that is, whether, having regard to all of the evidence given up to that time, a jury would be satisfied beyond a reasonable doubt that a known person committed an indictable offence causing Dwayne's death.
53. After having regard to the brief of evidence and the submissions made on the question of a referral under s 78 of the Act, I suspended the inquest on 28 October 2020.<sup>55</sup>

#### *Criminal trials of Officer A*

54. In 2021 Officer A was charged with the manslaughter of Dwayne Johnstone; and in August 2022 that charge was upgraded to murder.
55. The first criminal trial of Officer A ran from 11 October 2022 to 7 November 2022 in the Supreme Court of NSW. The presiding judge for the first trial was his Honour Justice Beech-Jones, then the Chief Judge at Common Law of the Supreme Court of NSW and now a Justice of the High Court of Australia. The jury in the first trial of Officer A could not reach a verdict, resulting in what is known as a "hung jury".
56. Officer A was tried for a second time in the Supreme Court of NSW between 16 October 2023 and 13 November 2023. Justice Adams of the Supreme Court presided over the second trial. The evidence was traversed again, and numerous lay and expert witnesses were called. The jury found that Officer A was not guilty of the charge of murder. An alternative charge of manslaughter was left to the jury, but no such finding was made.

#### *Resumption of inquest in 2024*

57. Following the conclusion of the second criminal trial, in which Officer A was acquitted, the charge against him was taken to be "finally determined" within the meaning of s 79(4) of the Act. The inquest was then able to resume in accordance with s 79 of the Act.
58. As noted by Senior Counsel Assisting, the resumption of an inquest post suspension is quite a rare occurrence in NSW after a criminal trial has taken place. However, as noted above, an inquest into Dwayne's death is mandatory under the Act. The legislature has deemed it appropriate for a Senior Coroner to review all deaths in custody in NSW as an important check and balance in relation to the powers exercised by officers of the State who are authorised, in certain circumstances, to detain individuals and to use force. In this

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<sup>55</sup> *Coroners Act 2009*, s 78(2).

case, notwithstanding that Officer A stood trial twice in connection with Dwayne's death, there remained important institutional issues to be examined by this Court.

59. The inquest ultimately resumed before me between 9 and 12 July 2024 at the Coroners Court of NSW sitting at Lismore. An 11-volume brief of evidence was tendered,<sup>56</sup> along with a USB containing audio-visual evidence.<sup>57</sup> The 11-volume brief of evidence comprises the original five volumes tendered in 2020, along with a substantial amount of new material, including all transcripts from the two criminal trials of Officer A and several updated statements provided by CSNSW in 2024.
60. In light of the comprehensive coronial brief, and the volume of evidence adduced orally at the two trials, I considered it unnecessary to call a number of witnesses of fact in relation to the circumstances surrounding Dwayne's death on 15 March 2019. Many such witnesses were interviewed by NSW Police Force (NSWPF) investigators and gave statements in 2019. All the relevant factual witnesses gave evidence in the Supreme Court trials in 2021 and 2022. The trial transcripts are included in the coronial brief of evidence.
61. Accordingly, there was sufficient documentary evidence before the Court for me to make findings as to manner and cause of death. The focus of the hearing was therefore on institutional issues, with the result that several witnesses who had been subpoenaed to attend to give evidence were ultimately excused. This included Officer A and Officer B.
62. The following five witnesses gave evidence at the inquest on 9 and 10 July 2024:
  - a. Detective Sergeant Michael Barry Smith of the NSWPF, the lead investigator in this inquest and attached to Ballina Police Station;
  - b. Ms Barbera Rowena Henderson, First-Class Correctional Officer, CSNSW;
  - c. Mr John Martin Harrison, the current Governor of Long Bay Hospital, and the former General Manager of Statewide Operations, CSNSW;
  - d. Mr Kenneth Hanipale Pale Pese, General Manager of the Security Operations Group, CSNSW; and
  - e. Mr Malcolm Brown, General Manager of Statewide Operations within Security and Custody, CSNSW.
63. A smoking ceremony was held outside the Court on 11 July 2024, followed by family statements given in Court that day.

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<sup>56</sup> Exhibit 2: Updated Brief of Evidence (Volumes 1-11) tendered on 09/07/2024.

<sup>57</sup> Exhibit 3: USB containing electronic evidence tendered on 09/07/2024.

64. On 12 July 2024, Senior Counsel Assisting and each of the legal representatives for the interested parties addressed me in oral closing submissions.

### **Formal findings as to manner and cause of death**

65. There is ample evidence before the Court relating to the manner and cause of Dwayne's death. Those matters were given reduced focus at the hearing owing to both the medical cause of his death, and the broader circumstances surrounding his death, being clearly borne out from the evidence that was tendered. The undisputed factual circumstances of the events leading up to Dwayne's death are grounded in that evidence and set out above.

66. In her closing submissions, Senior Counsel Assisting submitted that I might consider making findings along the following lines in relation to the manner and cause of Dwayne's death, (noting that, in her view, they are not controversial):<sup>58</sup>

*"Dwayne died on 15 March 2019 in Lismore in the State of New South Wales while he was a prisoner being transported on medical escort. He died as a result of a gunshot wound that was inflicted by a Corrective Services officer who discharged his firearm to prevent Dwayne's escape."*

67. None of the interested parties made submissions directly in response to the above suggestion, nor did I hear submissions that the evidence supported alternative findings as to manner and cause of death.

68. Having regard to all of the evidence before me and the submissions made by Senior Counsel above, the formal findings I will make under s 81(1) of the Act are as follows:

- a. Identity, date and place of death: Dwayne Johnstone died on the evening of 15 March 2019 in Lismore, New South Wales.
- b. Cause of death: Dwayne died from a gunshot wound to the chest and abdomen.
- c. Manner of death: Dwayne died while he was a prisoner being transported on medical escort, as a result of a gunshot wound inflicted by a Corrective Services New South Wales officer who discharged his firearm to prevent Dwayne's escape.

### **Legal context for key issues**

69. It is important to briefly set out the relevant legal framework for the key issues explored in this inquest.

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<sup>58</sup> Transcript 12/07/2024 T185.16-24.

### *The CAS Act and CAS Regulation*

70. The *Crimes (Administration of Sentences) Act 1999* (NSW) (“the CAS Act”) is the primary statute governing the administration of sentences and the keeping of offenders in custody in NSW. The objects of the CAS Act include, relevantly:

- “to ensure that those offenders who are required to be held in custody are removed from the general community and placed in a safe, secure and humane environment”;<sup>59</sup> and
- “to ensure that the safety of persons having the custody or supervision of offenders is not endangered”.<sup>60</sup>

71. Part 2 of the CAS Act deals with imprisonment by way of full-time detention. The provisions of Pt 2 applied to Dwyane, who was an “inmate” within the meaning of the CAS Act given the outcome of his bail hearing on 15 March 2019.

72. Officer A was an employee of CSNSW and a “correctional officer” within the meaning of the CAS Act at the time of Dwayne’s death.

73. Division 3 of Pt 2 of the CAS Act deals with transfers and leaves of absence, with s 24 specifically governing hospital transfers. Section 24 applied to Dwyane on 15 March 2019.

74. Division 8 of Pt 2 of the CAS Act includes s 79, which authorises the making of regulations for or with respect to a number of matters. Relevantly for this case, this includes the power to make regulations with respect to:

- a. the management, control, administration, supervision and inspection of correctional centres and correctional complexes;<sup>61</sup>
- b. the provision to inmates of medical, surgical and dental treatment;<sup>62</sup>
- c. the circumstances in which a correctional officer may use force against an inmate, and the keeping of records of the occasions on which force is so used;<sup>63</sup> and
- d. the circumstances in which a correctional officer may use firearms, and the keeping of records of the occasions on which firearms are so used.<sup>64</sup>

75. Two particular provisions in the *Crimes (Administration of Sentences) Regulation 2014* (NSW) (“the CAS Regulation”) relating to the use of force by correctional officers against

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<sup>59</sup> CAS Act, s 2A(1)(a).

<sup>60</sup> CAS Act, s 2A(1)(c).

<sup>61</sup> CAS Act, s 79(1)(a).

<sup>62</sup> CAS Act, s 79(1)(p).

<sup>63</sup> CAS Act, s 79(1)(s).

<sup>64</sup> CAS Act, s 79(1)(t).



an inmate and the use of firearms by correctional officers loomed large in this inquest and in the criminal trials of Officer A. Indeed, a significant issue that arose during the first criminal trial was whether cl 303 of the CAS Regulation (titled “Authority to discharge firearms”) should be read alongside or subject to cl 131 of the CAS Regulation (titled “Use of force in dealing with inmates”).

76. Clause 303 of the CAS Regulation has not been amended since the time of Dwayne’s death. It reads as follows:

***CI 303 – Authority to discharge firearms***

*(1) A correctional officer may discharge a firearm—*

*(a) to protect the officer or any other person if the officer believes on reasonable grounds that there is a substantial probability that the officer or other person will be killed or seriously injured if the officer does not discharge the firearm, or*

*(b) if the officer believes on reasonable grounds that it is necessary to do so in order—*

*(i) to prevent the escape of an inmate, or*

*(ii) to prevent an unlawful attempt to enter a correctional centre or to free an inmate, or*

*(iii) to attract the immediate attention of correctional officers or other person to a serious breach of correctional centre security that has arisen or is likely to arise, or*

*(c) to give a warning in accordance with this Regulation.*

*(2) Despite subclause (1), a correctional officer must not discharge a firearm at a person if the officer has reasonable grounds to believe that the shot may hit a person other than the person at whom it is directed.*

77. Clause 131 of the CAS Regulation similarly has not been amended since the time of Dwayne’s death and relevantly reads as follows:

***131 Use of force in dealing with inmates***

*(1) In dealing with an inmate, a correctional officer may use no more force than is reasonably necessary in the circumstances, and the infliction of injury on the inmate is to be avoided if at all possible.*

*(2) The nature and extent of the force that may be used in relation to an inmate are to be dictated by circumstances, but must not exceed the force that is necessary for control and protection, having due regard to the personal safety of correctional officers and others.*

*(3) If an inmate is satisfactorily restrained, the only force that may be used against the inmate is the force that is necessary to maintain that restraint.*

*(4) Subject to subclauses (1)–(3), a correctional officer may have recourse to force for the following purposes—*

...

*(b) to prevent the escape of an inmate,*

...

*(d) to defend himself or herself if attacked or threatened with attack, but only if the officer cannot otherwise protect himself or herself from harm,*

*(e) to protect other persons (including correctional officers, departmental officers, inmates and members of the public) from attack or harm, but only if there are no other immediate or apparent means available for their protection,*

*(f) to avoid an imminent attack on the correctional officer or some other person, but only if there is a reasonable apprehension of an imminent attack,*

*(g) to prevent an inmate from injuring himself or herself,*

*(h) to ensure compliance with a proper order, or maintenance of discipline, but only if an inmate is failing to co-operate with a lawful correctional centre requirement in a way that cannot otherwise be adequately controlled,*

...

*(j) to achieve the control of inmates acting defiantly,*

*(k) to avoid imminent violent or destructive behaviour by inmates,*

*(l) to restrain violence directed towards the correctional officer or other persons by an uncontrollable or disturbed inmate,*

...

*(n) to deal with any other situation that has a degree of seriousness comparable to that of the situations referred to in paragraphs (a)–(m).*

78. During the first trial of Officer A, the question of whether cl 303 should be read alongside or subject to cl 133 was the subject of significant argument between two leading Senior Counsel, who appeared for Officer A and for the Crown respectively. This is because it was relevant to the question of whether Officer A was legally authorised or had a lawful excuse to shoot Dwayne by the operation of cl 303 or cl 131, or both read together.

79. On 11 October 2022, Justice Beech-Jones ruled that the lawful excuse that would be put to the jury in the first criminal trial would be that provided for in cl 303 of the CAS Regulation without regard to cl 131. In the corresponding judgment published on 14 October 2022, *R v Officer A (No 2)* [2022] NSWSC 1381 at [42] (“*R v Officer A (No 2)*”), a copy of which was exhibited during the inquest,<sup>65</sup> his Honour ruled:

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<sup>65</sup> Exhibit 6: *R v Officer A (No 2)*.

*"[T]he more general provisions of Pt 6 give way to the specific provisions of Pt 19 with the result that the "force" referred to in cl 131 does not include the discharge of a firearm."*

80. The decision in *R v Officer A (No 2)* therefore settled the position that the power to discharge a firearm in cl 303 of the CAS Regulation is not to be read subject to the general use of force power in cl 131. This issue will be discussed in further detail below.
81. A detailed overview of the legislative history of the CAS Act and CAS Regulation (and the preceding legislation) was canvassed in the first trial of Officer A and is summarised in *R v Officer (No 2)* at [19] to [24].

#### *History of LEPPRA and the "fleeing felon" rule*

82. For comparative purposes, I will briefly set out some history around the use of force and, in particular, the use of firearms by police officers in the context of escaping prisoners. In her opening address, Senior Counsel Assisting drew my attention to how the use of force options and legislative guidance for NSW police officers differ to the options and guidance for NSW correctional officers. This is true today and historically; and is relevant to Dwayne's death and my consideration of Issue 4 below.
83. For police officers, the use of force is governed by the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) ("*LEPPRA*"), which was enacted on 29 November 2002 to consolidate police powers into a single Act. Part 18 of *LEPPRA* deals with the use of force by reference to the test of "reasonable necessity". Sections 230 and 231 have not been amended since the introduction of *LEPPRA* and they read as follows:

#### **230 Use of force generally by police officers**

*It is lawful for a police officer exercising a function under this Act or any other Act or law in relation to an individual or a thing, and anyone helping the police officer, to use such force as is reasonably necessary to exercise the function.*

#### **231 Use of force in making an arrest**

*A police officer or other person who exercises a power to arrest another person may use such force as is reasonably necessary to make the arrest or to prevent the escape of the person after arrest.*

84. Sections 230 and 231 of *LEPRA* provide limited statutory guidance on the parameters of the use of lawful force by police officers. Relevant additional guidance is included in comprehensive internal policy documents that appear to be updated periodically. While some versions of those policy documents are publicly available, they were not in evidence in this inquest; and the Commissioner of Police was not an interested party to this inquest.
85. Senior Counsel Assisting submitted that the relevance of the comparison to *LEPRA* is, broadly, that it contains provisions similar to cl 131 of the CAS Regulation, which incorporate the test of “reasonably necessary” force, rather than a specific power that directs that a firearm can be used by police officers in certain circumstances including to prevent an escape (as included in cl 303 of the CAS Regulation).<sup>66</sup> Prior to the introduction of *LEPRA* in 2002, the lawful use of force by NSW police officers was authorised by the common law, supplemented by NSWPF internal policies. For a long time, this included what is known as the “fleeing felon” rule. Senior Counsel Assisting submitted as follows:<sup>67</sup>

*“Historically, the common law authorised a police officer to use lethal force in a circumstance where a person, whom the police sought to arrest for a felony [was] fleeing from the arrest ... So putting this in summary form, before New South Wales changed the rules around this for police which was roughly towards the end of the 1990s, police had the power to use a lethal firearm if a felon was running away, much more closely aligned to the existing power for corrective services. That was known as the fleeing felon rule; it was in various jurisdictions across Australia.”*

86. In closing submissions, Senior Counsel for CSNSW set out further detail of the history of the “fleeing felon” rule as authorisation for the use of deadly force to prevent an escape, citing a version of the rule stated in Hale's 1736 *“Historia Placitorum Coronae: The History of the Pleas of the Crown”*.<sup>68</sup> Ms Bashir SC submitted that the rule arose at a time when “*virtually all felonies were punishable by death*”; and therefore, it “*authorised no greater punishment than that authorised for the felony with which the individual was charged or suspected, which then was capital punishment.*”<sup>69</sup>
87. The Court was informed that the death penalty was abolished in NSW for murder in 1955 and for all crimes in 1985; and the distinction between felonies and misdemeanours was abolished by an amendment to the *Crimes Act 1900* (NSW) in 2000.<sup>70</sup> However, statutory powers governing the use of firearms by prison officers had been introduced in NSW by

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<sup>66</sup> Transcript 09/07/2024 T17.

<sup>67</sup> Transcript 09/07/2024 T17.36-46.

<sup>68</sup> Transcript 12/07/2024 T186.38-50.

<sup>69</sup> Transcript 12/07/2024 T189.1-6.

<sup>70</sup> Transcript 12/07/2024 T189.30-33.

1980, by operation of the (then) *Prisons Act 1952* (NSW) and the (then) *Prisons Regulation 1968* (NSW).<sup>71</sup> In that legislation, there was no distinction between felonies and misdemeanours in the prisons legislation. As Senior Counsel for CSNSW submitted:<sup>72</sup>

*“The regulatory authority for the use of firearms by prison officers as found in current cl 303 is independent from the common law and divorced from any distinction between felonies and misdemeanours. And when it was brought in, it did away with proportionality.”*

88. Historically, therefore, police officers in NSW had common law power to shoot people charged with a felony if they were running away. Prison officers similarly have, since 1980, had that power, but it has been authorised by statute and not limited to felons.

89. From 1999, however, the position changed for police officers. In that year the NSW Police Service Handbook set out a significant change in the instructions for police in that the lawful discharge of a firearm did not include the fleeing felon rule. From this point, the discharge of a firearm was regarded as a last resort, necessitated by an immediate risk to life or serious injury. Police officers were also not to fire warning shots. Senior Counsel Assisting surmised that:<sup>73</sup>

*“So a significant change for NSW police included in the NSW Police Service Handbook in 1999 to make it very clear that there could only be the discharge of a firearm when there was an immediate risk to life or serious injury to an officer or someone else.”*

### **Key issues considered at the inquest**

90. A draft list of issues to be explored at the inquest was circulated to the interested parties in December 2023, well in advance of the resumption of the hearing. The issues included on that draft Issues List were:

- 1) Whether Officer A and [Officer B] were adequately informed and prepared regarding the risk of escape posed by Mr Johnstone, including whether there was a proper handover of relevant information.
- 2) Whether the level of restraint applied to Mr Johnstone during the escort was appropriate.

<sup>71</sup> Transcript 12/07/2024 T189.33-35; Exhibit 6: *R v Officer A (No 2)* at [20].

<sup>72</sup> Transcript 12/07/2024 T189.43-46.

<sup>73</sup> Transcript 09/07/2024 T19.13-16

- 3) Whether the Corrective Services NSW policies applicable to medical escorts are sufficient to ensure the safety of the community and/or the safety of the inmate.
- 4) Whether the training provided to Officer A and [Officer B] regarding medical escorts and the use of force / discharge of a firearm was appropriate.
- 5) Whether there are any recommendations that are necessary or desirable to make in relation to any matter connected with Mr Johnstone's death, including any recommendations on a change in law, policy, procedure or training.

91. I note that such lists are indicative only, as the issues in an inquest are not set in stone. Issues often change as the evidence unfolds.

92. Ultimately, Senior Counsel Assisting submitted that the evidence demonstrates that a significant amount of work has been done by CSNSW to review the circumstances of Dwyane's death, and to be proactive in introducing reforms before the inquest resumed. It was submitted that this was no doubt because, *"there is sincerity in them wanting to avoid any similar tragedy."*<sup>74</sup>

93. I accept this submission.

94. In her closing submissions, Senior Counsel Assisting identified four key systemic or institutional issues highlighted by Dwayne's death and the evidence heard at the inquest, namely:

- a. Issue 1: Gaps in procedure and communication;
- b. Issue 2: Training in the use of force and firearms;
- c. Issue 3: Options available on the ground; and
- d. Issue 4: Uncertainty in the law.

95. I will approach my analysis of the evidence and submissions in line with the four issues identified above. I intend to summarise the key evidence and the submissions of the parties', where made, on each of the issues.

### **Issue 1 – Gaps in procedure and communication**

96. The first key issue that I will address is how Dwayne's death revealed a gap in communication between those who were in supervisor roles on 15 March 2019 (that is, Ms Henderson, then an Acting Senior Correctional Officer, and A/Assistant Superintendent

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<sup>74</sup> Transcript 12/07/2024 T174.15-20.

Ross) and the correctional officers tasked with escorting Dwayne to Lismore Base Hospital (that is, Officers A and B).

*Evidence relating to Issue 1*

97. As noted earlier in these findings, prior to Dwayne's escort, Ms Henderson prepared an Escort Assessment Form and a Section 24 Order.<sup>75</sup> She gave evidence that this was done in conjunction with looking at Dwayne's inmate profile document, which she checked to see if Dwayne had any alerts. She noted that he was a risk of escape and recorded him as having a "E1" risk classification. A/Assistant Superintendent Ross reviewed and signed both the Escort Assessment Form and the Section 24 Order. He organised the escort officers and a police vehicle to accompany the ambulance to Lismore Base Hospital; and he organised a CSNSW escort vehicle to be delivered to the hospital for Dwayne's return.
98. Officer B's evidence in 2019 was that he had a quick look over the Section 24 Order, but he was not able to recall what classification Dwayne was and was not aware that he had a history of escapes.<sup>76</sup>
99. Officer A's evidence in 2019 was he was not aware of Dwayne's E1 classification or any warning that Dwayne had previously escaped, and he did not see the Section 24 Order.<sup>77</sup>
100. While in 2019 Ms Henderson told police that she had relayed this information verbally to Officer A and Officer B, she conceded in her oral evidence at the inquest that she cannot be 100 per cent sure she passed on the information to Officer A. Certainly however, that information was contained in the Section 24 Order.<sup>78</sup>
101. To complicate matters, A/Assistant Superintendent Ross gave evidence in the second criminal trial of Officer A that Ms Henderson contemporaneously told him that she had briefed the escort officers.<sup>79</sup> A/Assistant Superintendent Ross did not give evidence at the inquest.
102. In the second criminal trial of Officer A, Officer B said that he did not recall being told about Dwayne's escape risk; however, he knew that unsentenced inmates had a maximum-security classification that they were to be treated as high-risk inmates, and required an armed escort to ensure they did not escape.<sup>80</sup>

<sup>75</sup> BOE Vol. 1, Tab 20 (Order for inmate to be transferred to a hospital or other place specified and Escort Assessment).

<sup>76</sup> BOE Vol. 1, Tab 18 (Transcript of NSWPF recorded interview with Officer B).

<sup>77</sup> BOE Vol 1, Tab 14 (Transcript of NSWPF recorded interview with Officer A)

<sup>78</sup> Transcript 09/07/2024 T46.47 – T47.2.

<sup>79</sup> BOE Vol. 9, Tab 153 (Criminal Trial 2, 18/10/2023 T179).

<sup>80</sup> BOE Vol. 9, Tab 158 (Criminal Trial 2, 25/10/2023 T574).

103. In the CSNSW Serious Incident Review Report prepared following Dwyane's death, the following recommendation was made:

*"Recommendation 5: That all CSNSW custodial officers, when conducting medical escorts, are fully aware of the inmate's security classification and alerts, particularly if the inmate has a history of escaping custody. Currently, this responsibility is applicable to the senior escorting officer."*

104. Mr Brown, in his first statement prepared for this inquest dated 22 April 2024, addressed the status of implementation of that recommendation. Mr Brown summarised the policy documents and requirements in existence at the time of Dwayne's death and now.<sup>81</sup> He also noted that recommendation 5 had been suggested on the basis of the statements of Officers A and B (given in 2019) in which they said they were unaware that Dwayne was an escape risk, and unaware of other security-related information. He noted this was in conflict with the evidence of Ms Henderson, who had said in 2019 that she informed them verbally.<sup>82</sup> Her recollection on this point later changed, as noted above.

105. In his April 2024 statement, Mr Brown said that he believed the current policies and procedures in relation to this topic are sufficient and appropriate when applied. He added that CSNSW was undertaking "holistic review of escort risk assessments", which includes a review of:<sup>83</sup>

- a. How escort security arrangements are determined, including resourcing and manning levels;
- b. Briefing of escorting officers;
- c. Ongoing risk assessments;
- d. Carriage and use of equipment and firearms; and
- e. Legislation of discharge of firearms.

106. In a supplementary statement dated 8 July 2024,<sup>84</sup> Mr Brown set out further details of the holistic risk assessment procedure developed since Dwayne's death; and confirmed that mandatory training for correctional officers in relation to the holistic risk assessment has been developed by CSNSW.<sup>85</sup>

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<sup>81</sup> BOE Vol 5, Tab 126 (Statement of Mr Brown).

<sup>82</sup> Transcript 09/07/2024 T46.47-50.

<sup>83</sup> BOE Vol. 5, Tab 126 (Statement of Mr Brown).

<sup>84</sup> BOE Vol. 11, Tab 174 (Supplementary statement of Mr Brown).

<sup>85</sup> BOE Vol. 11, Tab 174 at [12] (Supplementary statement of Mr Brown).



107. A revised Section 24 Order form (in draft form) was annexed to Mr Brown's supplementary statement.<sup>86</sup> It includes [REDACTED]

#### *Submissions on Issue 1*

108. As to the conflicting evidence as between Ms Henderson and Officers A and B on whether information about Dwayne's security classification and risk of escape was adequately passed on in a briefing, Senior Counsel Assisting submitted that the evidence cannot be resolved. In any event, however, the information was available in the Section 24 Order but does not appear to have been properly absorbed by Officers A and B.

109. On this point, Senior Counsel for CSNSW concurred that, whether or not a briefing occurred, all of the information on Dwayne's risk of escape was available to CSNSW and was attached to the Section 24 Order and given to Officer B. Further, the medical escorts policy at that time "plainly provided the safeguards of briefing, but also of all the relevant documentation being given to the escort officers."<sup>87</sup>

110. On the evidence before me, I am not able to make a finding as to whether or not the briefing occurred. I find that the information was available in the Section 24 Order but does not appear to have been properly absorbed by Officers A and B.

111. Overall, Senior Counsel Assisting submitted that CSNSW has done a number of things to limit the risk of a communication breakdown again, highlighting two things in particular:<sup>88</sup>

- a. First, correctional officers on medical escorts will use Body Worn Video Cameras (BWVCs) and record any handovers.<sup>89</sup> There is evidence before the Court that since 2021, BWVCs have been used by officers for high-risk medical escorts conducted by the Extreme High Security Escort Unit. And since 2022, BWVCs have been used for all medical escorts out of correctional centres and courts.<sup>90</sup>

<sup>86</sup> BOE Vol. 11, Tab 174 at MB-5 (Supplementary statement of Mr Brown).

<sup>87</sup> Transcript 12/07/2024 T191.

<sup>88</sup> Transcript 12/07/2024 T175 – T176.

<sup>89</sup> BOE Vol. 11, Tab 174 at MB-2 (Supplementary statement of Mr Brown).

<sup>90</sup> BOE Vol. 11, Tab 175 at [11] (Supplementary statement of Mr Pese).

- b. Secondly, the revised draft Section 24 Order form prepared by CSNSW and annexed to Mr Brown's supplementary statement is a "significant improvement" on both the version in place at the time of Dwayne's transfer and the version currently in place.

112. The draft Section 24 Order form referred to at [110(b)] above had not been introduced as at the time of the hearing, however, Senior Counsel Assisting submitted that it not be the subject of a recommendation, in circumstances where it is clearly part of an ongoing process that CSNSW is committed to.<sup>91</sup>

113. As to Issue 1 overall, Senior Counsel for CSNSW submitted that on balance there was not an obvious communication breakdown which cannot be resolved. Ms Bashir SC noted that the officers had all of the material they needed, but, in any case, she pointed to the further steps that have been taken by CSNSW since 2019. This includes the introduction of BWVCs and the new draft Section 24 Order form, which, it was noted, provides for what could be called a "*triple and quadruple check*". Ms Bashir SC endorsed the position of Senior Counsel Assisting that I do not need to make any recommendations in respect of this issue.<sup>92</sup>

114. I accept the submissions of Senior Counsel Assisting and Senior Counsel for CSNSW that I do not need to make a recommendation regarding this issue.

## **Issue 2 – Training in the use of force and firearms**

115. The second issue explored at the inquest was the nature of the training in the use of force and firearms for correctional officers, in particular the lack of training on a scenario that mirrored the medical escort situation that faced Officers A and B on 15 March 2019. In line with the evidence and the submissions of the parties, I will consider the evidence as to both the type and extent of training available at the time of Dwayne's death, as well as subsequent amendments to that training.

116. Before doing so, I note that I made final non-publication orders under s 74 of the Act on 9 July 2024. Therefore, details of some of the evidence I have considered on this issue is not able to be published in these findings.

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<sup>91</sup> Transcript 12/07/2024 T176.

<sup>92</sup> Transcript 12/07/2024 T192.

*Evidence relating to Issue 2*

117. In respect of specific witnesses, the inquest received the following evidence in relation to their training:

- a. Ms Henderson: commenced with CSNSW on 26 September 2005, recollected that she did approximately 11 weeks of general training at the commencement of her employment.<sup>93</sup>
- b. Governor Harrison: commenced with CSNSW in 1995 and was required to do 11 weeks of training at that time.<sup>94</sup> He has performed training in the weapons training unit, developed, delivered and qualified instructors within the field training officer's program, and is considered one of the most experienced weapons trainers in CSNSW;<sup>95</sup> he completed specific qualifications to be a trainer;<sup>96</sup> He is still qualified on use of all weapons platforms.<sup>97</sup>
- c. Officer A: first joined CSNSW as a correctional officer in 1986 until he left in about 2002.<sup>98</sup> He re-joined CSNSW in 2016 and completed his WOST training as part of his pre-service training in July 2016,<sup>99</sup> as well as the recall training in June 2017.<sup>100</sup>
- d. Officer B: had only been employed as a casual correctional officer at Lismore Court cells since 21 January 2019 – that is, for approximately two months before Dwayne's death. Officer B had been sworn in as a correctional officer on 17 January 2019 after completing his pre-service training.<sup>101</sup>

118. Key aspects of training focused on during the inquest were: the length and nature of the general training for correctional officers; the substance and frequency of firearms training; and the nature of the scenario training provided in relation to medical escorts and escapes (and whether it was sufficient to address the type of escape which occurred in this case).

119. It is first relevant to set out the training available to, and undertaken by, correctional officers as at the time of Dwayne's death, and received by Officers A and B.

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<sup>93</sup> Transcript 09/07/2024 T44.34.

<sup>94</sup> Transcript 10/07/2024 T72.39.

<sup>95</sup> Transcript 10/07/2024 T73.27-45; BOE Vol. 2A, Tab 53A (Statement of Mr Harrison, 14/10/2020).

<sup>96</sup> Transcript 10/07/2024 T73.57 – T74.12.

<sup>97</sup> Transcript 10/07/2024 T73.38.

<sup>98</sup> BOE Vol. 1, Tab 14, (Transcript of NSWPF recorded interview with Officer A).

<sup>99</sup> BOE Vol. 2A, Tab 53A (Statement of Mr Harrison, 14/10/2020).

<sup>100</sup> BOE Vol. 1, Tabs 16 and 17 (Weapons Training Certification for Officer A).

<sup>101</sup> BOE Vol. 1, Tab 18 (Transcript of NSWPF recorded interview with Officer B).

120. The evidence was that all CSNSW officers are required to undertake an initial training period of ten weeks at the commencement of their employment (“pre-service training”).<sup>102</sup> The substance of the pre-service training is described in two statements of Governor Harrison dated 13 May 2019 and 14 October 2020.<sup>103</sup>
121. In the pre-service training, correctional officers receive weapons and firearms training during an 11-day Weapons and Officer Survival Training (WOST) course. The WOST course covers the legislative framework for the use of force; information about the use of force and available weapons for correctional officers; scenario-based training; and, qualifications for the use of firearms. [REDACTED]  
[REDACTED]
122. The evidence of Governor Harrison at the hearing was that scenario-training included in the pre-service training involved medical escorts and escapes in the field. Scenarios included both unarmed and armed escapees. Governor Harrison was not aware that those scenarios ever involved a prisoner who was shackled.<sup>105</sup> Governor Harrison agreed that, prior to March 2019, Officers were trained in some escape scenarios but that no scenario simulated a situation like the one involving Dwayne, in which a prisoner who was being led by an officer in the field escaped from an officer and attempted to run away while shackled.<sup>106</sup>
123. Governor Harrison described a further five-day training period that occurred within 9-12-months of the pre-service training, which aligned with the end of the probationary period for officers. This program included general operations training, as well as a mandatory requalification for firearms.<sup>107</sup> Beyond this 12-month period, general duties correctional officers were not required to undertake any further firearms training or assessment.<sup>108</sup>
124. In respect of the training on the use of force, Governor Harrison’s evidence was that correctional officers are trained in the tactical options that were available to prevent an escape, which Governor Harrison referred to as the “tactical options continuum”.<sup>109</sup> Governor Harrison identified that there were some non-lethal weapons available to

<sup>102</sup> BOE Vol. 2A, Tab 53A (Statement of Mr Harrison 14/10/2020).

<sup>103</sup> BOE Vol. 2A, Tabs 53 (Statement of Mr Harrison, 13/05/2002); and 53A (Statement of Mr Harrison 14/10/2020).

<sup>104</sup> BOE Vol. 2A, Tab 53 (Statement of Mr Harrison 14/10/2020).

<sup>105</sup> Transcript 10/07/2024 T83.1 – T84.2.

<sup>106</sup> Transcript 10/07/2024 T98.15-29; T102.12-14.

<sup>107</sup> Transcript 10/07/2024 T76.1-18.

<sup>108</sup> BOE Vol. 2A, Tab 53 (Statement of Mr Harrison 14/10/2020); Transcript 10/07/2024 T54.3-13; T139.26.

<sup>109</sup> Transcript 10/07/2024 T94.39-46; T117.37-49.

correctional officers in 2019, which included the restraints or shackles (worn by Dwayne) and access to expandable batons while on escorts.<sup>110</sup>

125. Where a correctional officer is armed on an escort, Governor Harrison explained that the armed officer is trained to keep a good distance away where the offender doesn't have an opportunity to grab or interact with the armed officer.<sup>111</sup>

126. Officers were then trained that, before discharging their firearm to prevent an escape, they had to consider what less-lethal options were available to prevent that escape.<sup>112</sup> Available techniques that were taught included [REDACTED]  
[REDACTED].<sup>113</sup>

127. When questioned by Senior Counsel for CSNSW, Governor Harrison explained that scenario training is intended to give correctional officers "*foundational knowledge... and—because we can't predict or give them the answer to every single option—so it's being able to give them, I suppose, the tools and that exposure to make those decisions.*"<sup>114</sup>

128. For these reasons, Senior Counsel for CSNSW submitted that the training in regard to the use of force and discharge of firearms was appropriate at the relevant time, notwithstanding the changes which have since been implemented by CSNSW.<sup>115</sup>

#### *Amendments to training since 2019*

129. In a statement of Mr Pese, dated 22 April 2024, Mr Pese described the general reforms to training that CSNSW has implemented since Dwayne's death. These include:

- a. A project commenced by the Security Operations Group in mid-2022 to review and update all Security Operations Group training products.<sup>116</sup>
- b. A review in 2023 to identify opportunities to enhance training programs and create specialised training roles.<sup>117</sup>
- c. The development of a Training and Compliance Framework, in September 2023, which has been implemented by the Security Operations Group.<sup>118</sup>

<sup>110</sup> Transcript 10/07/2024 T109.11-16.

<sup>111</sup> Transcript 10/07/2024 T114.16-22.

<sup>112</sup> Transcript 10/07/2024 T94.39-46; T118.39.

<sup>113</sup> Transcript 10/07/2024 T119.50-T120.15; Transcript 12/07/2024 T197.10-13.

<sup>114</sup> Transcript 10/07/2024 T102.17-20.

<sup>115</sup> Transcript 12/07/2024 T195.

<sup>116</sup> BOE Vol. 6, Tab 132 at [7] (Statement of Mr Pese).

<sup>117</sup> BOE Vol. 6, Tab 132, at [8]-[10] (Statement of Mr Pese).

<sup>118</sup> BOE Vol. 6, Tab 132, at [11] (Statement of Mr Pese).

- d. Updates to and development of Security Operations Group policies and procedures (listed in Mr Pese's statement).<sup>119</sup>

130. Mr Pese gave evidence that the initial training undertaken by correctional officers is now 12 weeks in duration.<sup>120</sup> In Mr Pese's first statement he detailed the significant changes to the WOST course;<sup>121</sup> and the training materials used in the WOST course are annexed to his statement.

131. The most relevant updates to the WOST course include more detailed training in respect of the legislation. CSNSW has also introduced further scenario training around escapes outside correctional centres while on escorts. The new scenario training videos demonstrate best practice use of force methods, and defensive tactics [REDACTED]. The substance of the training on use of force has been updated to focus on less lethal options available to correctional officers.<sup>122</sup>

132. On 10 July 2024, during the hearing, two videos of training scenarios which are now included in the WOST course were played to the Court. Those videos involve [REDACTED]  
[REDACTED]  
[REDACTED].<sup>123</sup>  
Mr Pese's evidence was that this scenario was first introduced in training in 2023.<sup>124</sup>

133. Those training videos also demonstrated a new technique which Mr Pese called [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].<sup>125</sup> This technique has been taught to new Officers since 2022, as well as to existing Officers through a broad course covering defensive techniques.<sup>127</sup>

134. Mr Pese explained that a Joint Assistant Commissioner's Memorandum, issued in August 2022, prescribed refresher firearm training.<sup>128</sup> This course has four elements, which includes:

<sup>119</sup> BOE Vol. 6, Tab 132, at [12] (Statement of Mr Pese).

<sup>120</sup> Transcript 10/07/2024 T130.10.

<sup>121</sup> BOE Vol. 6, Tab 132, at [13] (Statement of Mr Pese).

<sup>122</sup> Transcript 12/07/2024 T139.10.

<sup>123</sup> Transcript 10/07/2024 T131.13.

<sup>124</sup> Transcript 10/07/2024 T131.20.

<sup>125</sup> Transcript 10/07/2024 T138.38.

<sup>126</sup> Transcript 10/07/2024 T138.45.

<sup>127</sup> Transcript 10/07/2024 T139.10.

<sup>128</sup> BOE Vol. 11, Tab 175, Tab C (Supplementary statement of Mr Pese).



*undertake those medical escorts... I would be recommending that they undertake that training.*"<sup>135</sup>

139. It was drawn out in evidence, that standard correctional officers are not required to undertake any fitness training or assessments once they complete their pre-service training, including officers who may regularly conduct medical escorts. This was contrasted to the mandatory requirements for Security Operations Group officers (who are required to pass an initial and annual fitness test), and the Medical Escort Unit Officers (who are required to pass a fitness assessment as part of the compulsory emergency response operator's course).<sup>136</sup> Mr Pese agreed with Senior Counsel Assisting that, in a place like Lismore where a specialised unit is not available, it "*would be important*" to require officers doing medical escorts to maintain a level of physical fitness.<sup>137</sup>

140. Evidence was also before the inquest about the existence of a specialised Medical Escorts Unit (MEU), first piloted in June 2019, which operates primarily in metropolitan centres in NSW.<sup>138</sup> It was clear that the members of that specialised unit are required to take the Escort Procedures Course, and are subject to advanced requirements, as described by Mr Pese.<sup>139</sup> This MEU is not currently available in the Lismore region.

#### *Submissions on Issue 2*

141. I now turn to the submissions of the parties in respect to the findings, and any recommendations, which I am to make regarding the training of correctional officers, specifically in respect of the use of force, firearms, and medical escorts.

142. First, I will deal with the firearms training, the most significant reform to which is the introduction of the refresher course.

143. Mr Russell submitted that "*it would appear necessary that any training or this updated training which I completely endorse, [REDACTED] and so forth is important for all officers*".<sup>140</sup>

144. Mr de Dassel, counsel for Dwayne's mother, submitted that he supported:<sup>141</sup>

<sup>135</sup> Transcript 10/07/2024 T142.36-42.

<sup>136</sup> Transcript 10/07/2024 T143.6-36.

<sup>137</sup> Transcript 10/07/2024 T143.38-45.

<sup>138</sup> BOE Vol. 111, Tab 172 (Statement of Renee Craft); Transcript 10/07/2024 T108.30-35.

<sup>139</sup> Transcript 10/07/2024 T142.44-49.

<sup>140</sup> Transcript 12/07/2024 T186.16-19.

<sup>141</sup> Transcript 12/07/2024 T187.46-50.



*“... any recommendation proposed for the increased frequency and the skilling up of a corrective officer's firearms training. I support Mr Russell's suggestion that the Court would recommend a complete review of training with Corrective Services, especially around the frequency of their firearms training.”*

145. Senior Counsel Assisting submitted that the Court should not make a recommendation mandating the frequency of firearms training, as it is clear that CSNSW is actively reviewing and reforming its policies in this area, and it is for CSNSW to determine the appropriate frequency in circumstances where not all officers carry firearms.<sup>142</sup>

146. Senior Counsel for CSNSW also submitted that there should not be a particular recommendation in respect of training, noting that *“the use of force and firearms training for correctional officers have changed significantly since 2019.”*<sup>143</sup> Ms Bashir SC referred to the efforts to introduce refresher firearms training to *“highlight Corrective Services' commitment to ongoing improvements for the training of their officers across the board, not just the specialist units.”*<sup>144</sup>

147. I accept Senior Counsel Assisting's submission that it is not necessary or desirable for me to make a recommendation mandating the frequency of firearms training, as it is clear that CSNSW is actively reviewing and reforming its policies in this area, and it is for CSNSW to determine the appropriate frequency in circumstances where not all officers carry firearms.

148. In respect of the evidence regarding the introduction of the Escorts Procedures Course, Senior Counsel Assisting submitted that this is a significant reform, which would be appropriate to be made available to all officers undertaking medical escorts, rather than only those in the MEU. Senior Counsel Assisting submitted that it would assist guards like Officers A and B in exactly the same scenarios that they were in when with Dwayne.<sup>145</sup>

149. Mr Russell supported Senior Counsel Assisting's submission in this respect.<sup>146</sup>

150. I accept the submission of Senior Counsel Assisting.

151. Regarding the training delivered in the WOST course, Senior Counsel Assisting submitted that the introduction of a training scenario around escapes outside of correctional

<sup>142</sup> Transcript 12/07/2024 T177.49-T178.11.

<sup>143</sup> Transcript 12/07/2024 T198.10-11.

<sup>144</sup> Transcript 12/07/2024 T199.26-27.

<sup>145</sup> Transcript 12/07/2024 T179.11-22.

<sup>146</sup> Transcript 12/07/2024 T186.16-19.

centres while on escorts is an important improvement in training..<sup>147</sup> Dr Dwyer SC acknowledged the evidence given by the CSNSW witnesses that it is not possible to create a scenario in training for every incident that may possibly occur, but submitted that an escape in these circumstances may well occur again and it is appropriate that correctional officers are taught expectations for actions where an inmate is unarmed and shackled.<sup>148</sup>

152. Senior Counsel for CSNSW made a similar submission, being that it is not possible to teach officers according to every single situation that might be faced on the ground. Ms Bashir SC noted that, *“the purpose of the scenario training is to teach officers how to exercise critical thinking, how to adapt and respond to a rapidly unfolding scenario.”*<sup>149</sup>

153. I accept the submissions of Senior Counsel Assisting regarding scenario training and consider that it is appropriate that correctional officers are taught what the expectations are for actions where an inmate is unarmed and shackled.

154. In respect of the evidence regarding fitness assessments or requirements, Ms Bashir SC submitted that the varied roles of correctional officers across CSNSW *“should be central to any consideration of any findings in relation to fitness.”*<sup>150</sup>

155. Taking into consideration the evidence of Mr Pese who considered that a level of physical fitness was important on a medical escort, and noting the specific circumstances of Dwayne’s escape, I find that requirements for fitness training or testing is an important matter that CSNSW should consider, having regard to the varied roles of correctional officers, in the process of its ongoing reviews and reforms in relation to training.

### **Issue 3 – Options available on the ground**

156. The third key issue explored in this inquest is the options that were, and are, available for escorting officers on the ground in terms of less-lethal weapons and restraints.

#### *Evidence relating to Issue 3*

157. It was not in dispute that the only weapon Officer A was carrying on the night Dwayne died was a firearm. Officer B was not carrying any weapon. While in 2019, correctional officers received training in the use of batons and were sometimes equipped with batons,

<sup>147</sup> Transcript 12/07/2024 T178.48-T179.6.

<sup>148</sup> Transcript 12/07/2024 T177.10-16.

<sup>149</sup> Transcript 12/07/2024 T197.37-42.

<sup>150</sup> Transcript 12/07/2024 T199.34-26.

they did not always carry them. Certainly, Officers A and B were not carrying batons. Also, correctional officers at that time did not carry tasers or Oleoresin Capsicum (OC) spray.

158. With respect to restraints, the undisputed evidence is that Dwayne was wearing ankle shackles and hand cuffs but was not wearing a restraining belt.

159. In his evidence given on 9 July 2024, Detective Sergeant Michael Smith was asked, in a general sense, about options for less-lethal weapons. While he could only comment from his perspective and experience as a police officer, Detective Sergeant Smith confirmed to Senior Counsel Assisting that he saw the benefit in correctional officers having access to non-lethal weapons when escorting prisoners.<sup>151</sup>

160. As to the use of batons, the Court heard evidence from Ms Henderson that, since Dwayne's death, all officers on medical escorts now carry batons. Ms Henderson completed batons training during her initial training as a correctional officer and said that batons training is mandated every two years.<sup>152</sup>

161. The Court heard evidence about the limitations of batons, from both Detective Sergeant Smith and Governor Harrison. In questioning by Mr Russell, Detective Sergeant Smith confirmed that you must be within a certain distance from an individual to be able to successfully deploy tasers and OC spray; and batons are not effective if you cannot come close to an individual to grab hold of them.<sup>153</sup>

162. Governor Harrison similarly gave evidence that batons have limitations due to distance, as do other less-lethal options such as tasers.<sup>154</sup> However, Governor Harrison agreed with a proposition put to him by Senior Counsel Assisting that less-lethal options than firearms, and other than batons, should be carried by correctional officers on medical escorts. At least, he confirmed that he thought what is available should be reviewed. In terms of what options should be available, Governor Harrison noted that, *"there are options ... very similar to NSW Police that could be explored in that less-than-lethal space."*<sup>155</sup>

163. With respect to restraint belts, Governor Harrison clarified that restraint belts are only used when prisoners are escorted in sedans on escorts with three officers, not in vans and

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<sup>151</sup> Transcript 09/07/2024 T33.12-15.

<sup>152</sup> Transcript 09/07/2024 T53; and 10/07/2024 T69.

<sup>153</sup> Transcript 09/07/2024 T38-39.

<sup>154</sup> Transcript 10/07/2024 T109 – T110.

<sup>155</sup> Transcript 10/07/2024 T91.30-38.

trucks.<sup>156</sup> The reasons for this appear to relate to risk and safety and were somewhat clarified in closing submissions by Senior Counsel for CSNSW.

164. Finally, in a supplementary statement dated 9 July 2024, Mr Pese set out the steps that CSNSW has taken, since 2021, to explore the viability of less-lethal weapons and restraints for correctional officers. It is noted that those steps are ongoing and include:<sup>157</sup>

- a. Approving the use of restraint belts for escorts if the Governor or Manager of Security deems it appropriate;
- b. Launching a project in 2022 to consolidate various projects underway to examine the availability and effectiveness of less-lethal options, alternative mechanical restraints and other appointments to potentially be used by correctional officers when escorting inmates outside correctional centres; and
- c. Canvassing a number of specific less-lethal options to increase the available options to be used on escorts, including transport link chains. Other specific options being explored by CSNSW were set out in Mr Pese's supplementary statement,<sup>158</sup> but that information is subject to non-publication orders.

### *Submissions on Issue 3*

165. In closing submissions, Senior Counsel Assisting emphasised the fact that whilst correctional officers received training in the use of batons and were sometimes equipped with them in 2019, they did not always carry them, and Officer A only had a firearm. There was no baton, no OC spray or other less-lethal means available to them. Senior Counsel Assisting also recognised that, while a baton has limitations and may not have assisted Officer A, there is evidence that batons have now been introduced on all medical escorts.<sup>159</sup>

166. On behalf of Officers A and B, Mr Russell submitted that they would endorse the availability of less-lethal alternative options. Mr Russell also submitted that the incident would not have occurred if a third officer and a restraint belt had been used.<sup>160</sup>

167. With respect to restraint belts, Senior Counsel for CSNSW pointed to the evidence given by Governor Harrison, who stated that restraint belts are not used when prisoners are travelling in a truck. Ms Bashir SC submitted that care must be taken when prisoners are

<sup>156</sup> Transcript 10/07/2024 T112 – T113.

<sup>157</sup> BOE Vol. 11, Tab 175 (Supplementary statement of Mr Pese).

<sup>158</sup> BOE Vol. 11, Tab 175 (Supplementary statement of Mr Pese).

<sup>159</sup> Transcript 12/07/2024 T180.16-33.

<sup>160</sup> Exhibit 7: Email from Mr Russell dated 11/07/2024.

wearing restraint belts to ensure that they are put into an appropriate vehicle, as there is a risk of injury attached to restraint belts when prisoners are in a truck.<sup>161</sup>

168. Overall, with respect to the issue of less-lethal weapons and restraints, Senior Counsel Assisting submitted that it was important to note the ongoing review being conducted by CSNSW to determine what non-lethal means should be added to the tactical options available to correctional officers, as set out in Mr Pese's supplementary statement. In those circumstances, Dr Dwyer SC did not submit that I should make a formal recommendation in respect of this issue.<sup>162</sup>

169. In view of the ongoing review being carried out by CSNSW to determine what non-lethal means should be added to the tactical options available to correctional officers, I do not propose to make any recommendations on this issue.

#### **Issue 4 – Uncertainty in the law**

170. The final key issue explored in this inquest was whether the regulations which govern the use of force, and particularly the discharge of firearms, by correctional officers are uncertain and leave room for confusion.

171. As noted above, the interpretation of conflicting statutory provisions in the CAS Regulation played a significant role in the criminal trials of Officer A. This resulted in the judgment of Beech-Jones J in *R v Officer A (No 2)*. In that decision, his Honour concluded that the more general provisions of Pt 6 of the CAS Regulation (wherein lies cl 131) give way to the specific provisions of Pt 19 (wherein lies cl 303).<sup>163</sup> By corollary, the power to discharge a firearm in cl 303 is not to be read subject to the general use of force power in cl 131. The lawful excuse put to the juries in the criminal trials of Officer A was, therefore, that provided for in cl 303 of the CAS Regulation.<sup>164</sup>

172. Notwithstanding the decision of Beech-Jones J, which settles the position in NSW, Senior Counsel Assisting submitted that the circumstances of Dwayne's death still revealed room for disagreement and confusion as to how cll 131 and 303 should be interpreted by correctional officers on the ground.

173. Before turning to consider the evidence and submissions on this issue, I pause to comment on the scarceness of deaths in NSW in circumstances like Dwayne's. During this

<sup>161</sup> Transcript 12/07/2024 T193.18-25.

<sup>162</sup> Transcript 12/07/2024 T180.30-35.

<sup>163</sup> Exhibit 6: *R v Officer A (No 2)* at [42].

<sup>164</sup> Exhibit 6: *R v Officer A (No 2)* at [2].

inquest, it was made clear, not only from the evidence given but from research conducted by the solicitors assisting me from the NSW Crown Solicitor's Office, that it is extremely rare for prisoners to be shot by correctional officers in NSW. Deaths by such means are even more rare. To this end, the Court was informed as follows:

- a. CSNSW records date back to 1992 and Dwayne's is the only case known where a correctional officer has shot dead a prisoner trying to escape.<sup>165</sup>
- b. In the 12 months to July 2024, 85,860 escorts were conducted, the vast majority of those being centre-to-centre escorts.<sup>166</sup>
- c. In the 12 months to July 2024, there were 5,742 unscheduled medical escorts.<sup>167</sup>
- d. In the 12 months to July 2024, there were 11 attempted escapes from hospital escorts, and no firearms were discharged.<sup>168</sup>
- e. In the 12 months to July 2024, there were six attempted escapes from courts, and one actual escape from Broken Hill where no firearm was discharged.<sup>169</sup>
- f. There was one occasion in Lithgow where a prison officer shot a prisoner and the prisoner did not die.<sup>170</sup>
- g. It is a very rare occurrence for a correctional officer in NSW to have to actually use their firearm, either within a prison complex or outside one.<sup>171</sup>
- h. A review of an internal coronial findings database maintained by the Crown Solicitor's Office in July 2024 did not identify any inquest findings involving deaths by gunshot wound from a firearm discharged by a correctional officer in NSW.<sup>172</sup>

174. However rare the situation may be, it did tragically arise in March 2019.

#### *Evidence relating to Issue 4*

175. The evidence given by CSNSW during the inquest was that correctional officers were (as at 2019) and are still trained that cl 303 is subject to the considerations set out in cl 131.

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<sup>165</sup> Transcript 10/07/2024 T159:22-25.

<sup>166</sup> Transcript 10/07/2024 T159:27-32.

<sup>167</sup> Transcript 10/07/2024 T159:38-40.

<sup>168</sup> Transcript 10/07/2024 T159:17-20.

<sup>169</sup> Transcript 10/07/2024 T159:45-50.

<sup>170</sup> Transcript 10/07/2024 T136:17-25.

<sup>171</sup> Transcript 10/07/2024 T75:23-29.

<sup>172</sup> Transcript 10/07/2024 T136:30-42.

176. Governor Harrison prepared two statements for this inquest and gave oral evidence at the hearing. He was asked about the training correctional officers are given, during their pre-service training, in the relevant legislation which gives them the power to use force.<sup>173</sup> Addressing the situation as it was in March 2019, Governor Harrison confirmed that officers were taught about cl 303 (that is, when they could use a firearm) and about cl 131 (regarding the use of proportionate or reasonable force). He completed this training himself in 1995 when he was a correctional officer and was taught about his legal powers and responsibilities in terms of the use of force.<sup>174</sup>

177. Governor Harrison said he was taught that cll 303 and 131 should be read together; that there was “in effect an overlay” between cll 303 and 131.<sup>175</sup> When he was being trained, Governor Harrison understood that when exercising judgment about whether or not to discharge a firearm, it needed to be in accordance with the principle that it was only the force that was reasonably necessary at the time.<sup>176</sup> The following was put to Governor Harrison:<sup>177</sup>

*Q. And in effect, as 131 sets out, no more force than is reasonably necessary and the infliction of injury on an inmate had to be avoided, if at all possible?*

*A. Yes*

*Q. Section 131(3) says: "If an inmate is satisfactorily restrained, the only force that may be used against the inmate is the force that is necessary to maintain that restraint". Did you think that that was relevant in terms of considering whether to discharge a firearm?*

*A. Yes.*

178. Governor Harrison confirmed that in the roughly 25 years that he has been with CSNSW, in roles in and out of the Security Operations Group, there has been no change in training with respect to the overarching relevance of both cll 131 and 303.<sup>178</sup> Governor Harrison said he was not aware of any changes to the training given to correctional officers since the decision in *R v Officer A (No 2)*.<sup>179</sup>

179. Despite his evidence that cl 131 is taught as an overlay to cl 303, Governor Harrison agreed that, in a scenario like Dwayne’s (where it is dark and raining and a prisoner is being escorted from hospital, unarmed, shackled by the feet and the hands), if a correctional officer assesses that the prisoner would escape if they do not shoot them, the

<sup>173</sup> Transcript 10/07/2019 T76-77.

<sup>174</sup> Transcript 10/07/2019 T77-78.

<sup>175</sup> Transcript 10/07/2019 T78.34-36.

<sup>176</sup> Transcript 10/07/2019 T80.34-42.

<sup>177</sup> Transcript 10/07/2019 T80.44 – T81.2.

<sup>178</sup> Transcript 10/07/2019 T81.4-14.

<sup>179</sup> Transcript 10/07/2019 T84.21-27.

officer would have the option to deploy their firearm to prevent the escape.<sup>180</sup> To this end, Governor Harrison confirmed as follows:<sup>181</sup>

*Q. With 303, are prisoner officers taught, currently, as you understand it, that they need to interpret that alongside 131?*

*A. That's correct.*

*Q. But your assessment is that, if you had an unarmed prisoner, who was shackled, hands and feet, but was at risk of escaping, you would be entitled, as a prison officer, to shoot them while they're running away? That's not a criticism, it's a question.*

*A. Yes.*

180. As noted above, Officer A did not give evidence at the inquest. He did however participate in a recorded interview with police detectives in March 2019 in the aftermath of the shooting.<sup>182</sup> In that interview, Officer A was asked about a number of topics, including his understanding of when he could discharge a firearm. While Officer A was unable to recall the number of the specific legislative provision in this interview, he recalled the primary features of cl 303 in his answers. The point at which Officer A decided to discharge the firearm was the point at which he identified Dwayne was running.<sup>183</sup>

181. Officer A did not refer to cl 131 or recite elements of that general use of force provision in his police interview. When prompted by the detectives as to whether he thought there were alternatives to shooting his firearm, or any other way to prevent Dwayne's escape, Officer A said, *"I wish ... I could go and tackle him from behind. But that, his distance was ... it was getting wider."*<sup>184</sup>

182. In relation to Officer A's response on the night in question and his subsequent police interview, the following exchange between Dr Dwyer SC and Governor Harrison took place the hearing:<sup>185</sup>

*Q. Mr Harrison, I'll reframe it slightly. You saw Officer A, who had given a record of interview of police, saying that what he did on the night, he believed, was consistent with how he was taught. You've given evidence in your first statement that, as far as you were concerned, watching the CCTV footage, there did not appear to be a breach of regulation 303.*

*A. That's correct.*

*Q. Following consideration by the Director of Public Prosecutions, Officer A was initially charged with manslaughter and then that was upgraded to a charge of murder. The first jury was hung, second jury, not guilty. It's clear that this has been a*

<sup>180</sup> Transcript 10/07/2019 T84.7-14.

<sup>181</sup> Transcript 10/07/2019 T86.39-46.

<sup>182</sup> BOE Vol. 1, Tab 14 (Transcript of NSWPF recorded interview with Officer A).

<sup>183</sup> BOE Vol. 1, Tab 14 (Transcript of NSWPF recorded interview with Officer A).

<sup>184</sup> BOE Vol. 1, Tab 14 (Transcript of NSWPF recorded interview with Officer A).

<sup>185</sup> Transcript 10/07/2024 T87.25-42.



*terrible tragedy for particularly Dwayne's family, but also a significant stressor on the Correctives officers involved. Is that fair so far?*

*A. That is certainly fair, yes.*

*Q. Obviously, from your position, as somebody who is very invested in Corrective Services over many years, you want to avoid, if at all possible, that ever happening again, that same scenario?*

*A. Yes.*

183. Mr Brown also gave evidence at the hearing relevant to Issue 4.

184. During examination by Senior Counsel for CSNSW, Mr Brown confirmed there are a vast array of situations that prison officers have to deal with when it comes to escapes and preventing escapes, and that those situations may be vastly different to the circumstances faced by police, who have an offender escaping in the course of an arrest. Some such examples confirmed by Mr Brown were: inmates driving a bus down over a fence; someone physically going over a fence; helicopter escapes; escapes that might attract the attention of armed posts at maximum security centres; and escorts to a multiplicity of locations.<sup>186</sup>

185. Mr Brown concluded his evidence by confirming that CSNSW is not opposed to any regulatory change in the right context around its role and function within the NSW community, noting:<sup>187</sup>

*"In that regard, our primary role is to enforce lawful orders, and then, also keep the community safe by keeping those in our custody safe. And also, a part of that is to make sure we treat those in our care with – with human decency and respect."*

186. Mr Brown ultimately confirmed his support for a recommendation for regulatory change in general terms, encompassing the CAS Act and CAS Regulation.<sup>188</sup>

#### *Submissions on Issue 4*

187. By the conclusion of the hearing, all interested parties supported the proposal that I make a recommendation pursuant s 82 of the Act for a review of the law having regard to the circumstances of Dwayne's death.

188. A draft recommendation was circulated by the solicitor assisting me to the representatives for the interested parties by email on 11 July 2024, for their consideration and comment prior to oral closing submissions on 12 July 2024. I now summarise the closing oral submissions on this issue.

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<sup>186</sup> Transcript 10/07/2024 T60-T61.

<sup>187</sup> Transcript 10/07/2024 T164.34-39.

<sup>188</sup> Transcript 10/07/2024 T165.1-4.

189. Senior Counsel Assisting submitted that the CAS Regulation appears ripe for review by the NSW Parliament to determine whether it is in accordance with modern standards and to ensure that it reflects the duties that correctional officers now have, which they may not have had at the time the provisions were drafted.<sup>189</sup>

190. Senior Counsel Assisting referred back to her opening address, in which she had summarised the relevant history of police powers in NSW and the origins of the “fleeing felon” rule, whereby, before changes to NSWPF policy in 1999, police officers were authorised to shoot felons trying to escape. It was submitted that, as that power was limited to those in custody for serious offences subject to the death penalty, it was an even more restrictive power than that which appears currently available to correctional officers in NSW.<sup>190</sup> Senior Counsel Assisting also noted that the rarity of Dwayne’s situation may be why there has not been a review or at least a broad review of the CAS Act and CAS Regulation for some time.<sup>191</sup>

191. In her closing remarks, Dr Dwyer SC said:<sup>192</sup>

*“Dwayne’s death ... raised significant gaps in procedure and training and has revealed an uncertainty in the law, at least around the time of Dwayne’s passing, and a need to modernise the law, in my respectful submission, so that it reflects modern community standards in relation to prisoner welfare, and also the expanded role of correctional officers in the community, including medical escorts which might mean escorting people like Dwayne on remand, and it might mean escorting prisoners who are in custody for less serious offending.”*

192. Senior Counsel Assisting drew attention to the position put on behalf of CSNSW at the hearing in relation to the training given to correctional officers on the interaction between cll 131 and 303 — that being, they are taught the authority to discharge a firearm is conditioned by both cll 303 and 131(1). This was the case at the time of Dwayne’s death and is still the case now. Senior Counsel Assisting expressed that she was unsure how this position can be reconciled with the decision of Beech-Jones J. Without intending to be critical, she submitted that this demonstrates the need for clarification.<sup>193</sup>

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<sup>189</sup> Transcript 12/07/2024 T118.20-21.

<sup>190</sup> Transcript 12/07/2024 T182.8-16.

<sup>191</sup> Transcript 12/07/2024 T172.48 – T173.3.

<sup>192</sup> Transcript 12/07/2024 T173.20-27.

<sup>193</sup> Transcript 12/07/2024 T181.25-32.

193. Senior Counsel Assisting proposed that I make a recommendation to the NSW Attorney General and to the NSW Minister for Corrections in the following terms:<sup>194</sup>

*“That there be an urgent review of the legislation and regulations relating to the use of firearms by officers of Corrective Services NSW, and, in particular, reg 303 of the Crimes (Administration of Sentences) Regulation 2014, having regard to the findings in the inquest into the death of Dwayne Johnstone.”*

194. Senior Counsel Assisting submitted that there was value in there being a specific reference to cl 303 in any recommendation that I make, given the central significance of that regulation to this case, and noting that a specific reference to cl 303 would not prohibit a broader review of the CAS Regulation.<sup>195</sup>

195. The recommendation as framed above was supported by Mr Watts, counsel for Ms Pepper, Dwayne’s partner. Mr Watts submitted that the current law, in particular cl 303, created uncertainty and possible confusion in its application by correctional officers in carrying out their functions and in their training as correctional officers. Mr Watts stepped through Officer A’s recorded interview which took place in the days after the shooting, noting it was “instructive” in demonstrating the uncertainty and confusion that officers face on the ground. That evidence has been summarised above.<sup>196</sup>

196. Mr Watts also highlighted that cl 303 presently does not require one to consider other less-lethal options, but if it were to be read as being subject to reg 131, then that obligation would arise. Even if CSNSW considered that cl 303 was subject to cl 131, or the legislative drafters intended it be read that way, that is not the case and Mr Watts submitted that is why Ms Pepper supports the recommendation.<sup>197</sup>

197. On behalf of Officer A and Officer B, Mr Russell noted that *LEPRA* and how that legislation controls NSW police officers has very little or no application for correctional officers;<sup>198</sup> however he too agreed that a recommendation for law reform ought to be made. Mr Russell noted that his clients, *“welcome any clarity a legislative change can make to protect not only Officers and citizens of NSW, but also the inmates for whom [they] are charged with their care.”*<sup>199</sup>

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<sup>194</sup> Transcript 12/07/2024 T118.42-49.

<sup>195</sup> Transcript 12/07/2024 T119.1-6.

<sup>196</sup> Transcript 12/07/2024 T182.38-44.

<sup>197</sup> Transcript 12/07/2024 T184.

<sup>198</sup> Transcript 12/07/2024 T186.49-50.

<sup>199</sup> Exhibit 7: Email from Mr Russell dated 11/07/2024.

198. Mr Russell suggested that the word “urgent” in the draft recommendation be replaced with the word “cautious” on the basis that Dwayne’s death was a novel incident and that any review should be careful and considered.<sup>200</sup> Mr Russell also suggested that additional words should be added, such that the recommendation ultimately proposed by Officers A and B would read as follows.<sup>201</sup>

*“That there be a cautious review of the legislation and regulations relating to the use of firearms by officers of Corrective Services NSW, having regard to the findings in the inquest into the death of Dwayne Johnstone, and the obligations of Correctional Officers to comply with Court Orders regarding the custody of an inmate and generally the safety of both Correctional Officers and the community.”*

199. Dwayne’s mother was likewise supportive of a recommendation for law reform. Her counsel, Mr de Dassel, endorsed the additional wording proposed by Mr Russell regarding the obligations of correctional officers to comply with court orders, and regarding the safety of correctional officers and the community.<sup>202</sup>

200. CSNSW supported the making of a recommendation for reform of the CAS Regulation. Ms Bashir SC submitted in her closing address that, while CSNSW was also not opposed to drawing attention to cl 303, it would be worthwhile to keep any recommendation general, so that a review of the regulations is not just focused on cl 303. Either way, it was acknowledged by Ms Bashir SC, on behalf of CSNSW, that cll 131 and 303 would be “*at the heart*” any recommendation for law reform that I might make.<sup>203</sup>

201. In reply, Senior Counsel Assisting submitted that she endorsed the comment by Ms Bashir SC about cll 131 and 303 being “*at the heart*” of my recommendation. Dr Dwyer SC submitted that I might wish to draw attention to both,<sup>204</sup> and her final submissions on the issue were as follows:<sup>205</sup>

*“... it is clear from the decision of Beech-Jones J, but it was not clear beforehand, that reg 303, the authority to discharge a firearm, provides that if the officer believes on reasonable grounds that it's necessary to do so in order to prevent an escape of an inmate, then reg 303, in those circumstances, is not constrained by reg 131. To put it shortly, perhaps it should be, or perhaps it should be worded entirely differently to make it clear that there are further constraints, particularly in the circumstances that Dwayne*

<sup>200</sup> Exhibit 7: Email from Mr Russell dated 11/07/2024.

<sup>201</sup> Exhibit 7: Email from Mr Russell dated 11/07/2024.

<sup>202</sup> Exhibit 8: Email from Mr de Dassel dated 11/07/2024.

<sup>203</sup> Transcript 12/07/2024 T201.2-8.

<sup>204</sup> Transcript 12/07/2024 T201.35-40.

<sup>205</sup> Transcript 12/07/2024 T201.342-50.

*was being transported on medical escort, which were not envisaged at the time that the legislation was written.”*

202. I am grateful for the submissions by all parties on the issue of a recommendation for law reform in light of the circumstances of Dwayne’s death. Having closely considered the evidence and submissions, I make a recommendation in the following terms pursuant to s 82 of the Act:

“To the New South Wales Attorney General and to the New South Wales Minister for Corrections, I recommend:

- 1) That there be an urgent review of the legislation and regulations relating to the use of firearms by officers of Corrective Services New South Wales, and, in particular, cll 131 and 303 of the *Crimes (Administration of Sentences) Regulation 2014*, having regard to the findings in the inquest into the death of Dwayne Johnstone.”

203. Before concluding, I note that during the hearing Senior Counsel Assisting handed up a document titled, *“Excerpts of comparative legislation regarding correctional officers’ use of force, firearms, weapons and restraints”*. The table was prepared by the solicitors assisting me and sets out the relevant legislative provisions operative in all Australian State and Territory jurisdictions and in New Zealand, as of 8 July 2024. The table was marked for identification but was not exhibited.<sup>206</sup> I annex a copy of the table to these findings in the event that it may assist in the process of any review.

### **Concluding remarks**

204. As is clear from my findings, the nature and scope of the issues explored during the inquest had narrowed considerably by 2024. The issues were centred upon the policies and procedures of CSNSW in relation to medical escorts; and the regulations and training around the discharge of firearms and the use of force by correctional officers. Because of this, it bears repeating the following words of Senior Counsel Assisting in her opening address on 9 July 2024:<sup>207</sup>

*“I note that although the focus in this inquest is on whether or not there should be further institutional and legal reform in order to prevent another death, this Court will never lose sight of the fact that at the centre of this case is a man who has passed away, but is not forgotten and is much loved, and always will be.”*

<sup>206</sup> Transcript 12/07/2024 T182.18-23.

<sup>207</sup> Transcript 09/07/2024 T4.47 – T5.1.

205. It was clear from the very moving family statements given at the hearing by Dwyane's partner, Kirsty, and by his mother, Kerry, that Dwayne was a man who many people loved and cared for very deeply.
206. I wish to formally thank both Kirsty and Kerry for the patience and dignity they showed throughout these proceedings. I recognise that they have experienced a tragic loss and been involved in this process for a very long time now. Their generous participation in this inquest is very much appreciated. I offer my sincere condolences to all of Dwayne's family and loved ones, and hope that the conclusion of the inquest is able to bring them some sense of peace and therapeutic justice.
207. I am also grateful for the constructive way in which the proceedings were approached by the interested parties and their legal representatives, and the extensive work undertaken by the parties to assist me in the matters which inform these findings. This constructive approach allowed Senior Counsel Assisting to propose a recommendation which was endorsed, at least in essence, by all of the parties to the inquest.
208. Finally, I wish to thank Senior Counsel Assisting, Dr Dwyer SC, and her instructing solicitors, Ms Buchan and Ms Lambert of the NSW Crown Solicitor's Office, for the enormous amount of work that they put into assisting me in preparation for and during this important inquest.
209. I now close this inquest.

Magistrate Teresa O'Sullivan

NSW State Coroner

# ANNEXURE A

## INQUEST INTO THE DEATH OF DWAYNE JOHNSTONE

Court Ref: 2019/85457 | CSO Ref: 201901404

Before State Coroner O'Sullivan

### Excerpts of comparative legislation regarding correctional officers' use of force, firearms, weapons and restraints

As at 8 July 2024

#### Index of Legislation

NEW SOUTH WALES (Act)	2
NEW SOUTH WALES (Regulation)	3
VICTORIA (Act)	6
VICTORIA (Regulation)	8
QUEENSLAND (Act)	9
QUEENSLAND (Regulation)	10
WESTERN AUSTRALIA (Act)	11
WESTERN AUSTRALIA (Regulation)	12
NORTHERN TERRITORY (Act)	13
NORTHERN TERRITORY (Regulation)	13
SOUTH AUSTRALIA (Act)	14
SOUTH AUSTRALIA (Regulation)	14
AUSTRALIAN CAPITAL TERRITORY (Act)	15
AUSTRALIAN CAPITAL TERRITORY (Regulation)	16
TASMANIA (Act)	17
TASMANIA (Regulation)	18
NEW ZEALAND (Act)	19
NEW ZEALAND (Regulation)	21

## NEW SOUTH WALES (Act)

### ***Crimes (Administration of Sentences) Act 1999 (NSW)***

#### **Sections:**

#### **79 Regulations**

(1) The regulations may make provision for or with respect to the following matters—

...

- (s) the circumstances in which a **correctional officer** may use force against an inmate, and the keeping of records of the occasions on which force is so used,
- (t) the circumstances in which a **correctional officer** may use firearms, and the keeping of records of the occasions on which firearms are so used,
- (u) the equipment that may be used to restrain an inmate, and the circumstances in which, and the maximum periods for which, an inmate may be restrained by means of such equipment,

...

#### **236R Prohibition on use of spit hoods**

(1) Each of the following persons exercising functions under this Act must not use a spit hood in the exercise of the functions—

- (a) a correctional officer,
- (b) a police officer,
- (c) a person employed for the purposes of a management agreement or submanagement agreement.

Note—

A contravention of this subsection may constitute an unauthorised or unreasonable use of force

...

#### **252A Correctional officers may provide assistance**

(1) A correctional officer may, if requested to do so by a police officer or a person employed in the Department of Justice, provide assistance in connection with the restraint, conveyance or detention of any person in the lawful custody of the officer requesting the assistance.

(2) A correctional officer has, while providing such assistance, all the functions and immunities of the officer who requested the assistance in relation to the restraint, conveyance or detention of the person concerned.

...

#### **253L Use of reasonable force**

In exercising a function under this Part, a correctional officer may use such force as is reasonably necessary to exercise the function.

...

#### **253MA Use of reasonable force—visitors**

(1) A correctional officer may use force to deal with a visitor for the following purposes—

- (a) to protect the correctional officer or another person (including a member of staff of Corrective Services NSW, an inmate or a member of the public) from attack or harm, or imminent attack or harm, but only if there are no other immediate or apparent means available for the protection of the correctional officer or other person,
- (b) to prevent damage to the place of detention or to any property within the place of detention,
- (c) to prevent an unlawful attempt to enter the place of detention by force or to free an inmate,
- (d) to remove the visitor from the place of detention, if the officer is authorised to do so under the regulations.

(2) A correctional officer may use force to deal with a visitor for the purpose of exercising a power under section 253I or any other provision of this Part.

**Note—**

Section 253I confers powers on a correctional officer to arrest a person suspected of committing a relevant offence, to search and detain the person and to seize things that are evidence of the commission of a relevant offence.



## ***Crimes (Administration of Sentences) Act 1999 (NSW)***

(3) The nature and extent of the force that may be used in relation to a visitor are to be dictated by circumstances, subject to the following—

- (a) the force used must not exceed the force that is reasonably necessary for protection, or to maintain the good order and security of a place of detention, having due regard to the personal safety of correctional officers and others,
- (b) the infliction of injury on a visitor is to be avoided if at all possible,
- (c) if a visitor is restrained—once the visitor is satisfactorily restrained, no further force must be used on the visitor other than the force reasonably necessary to maintain that restraint.

(4) A correctional officer may use handcuffs, or other equipment prescribed by the regulations, for the purpose of restraining a visitor, but only if it is reasonably necessary in the circumstances.

...

### **253MB Report on use of force**

(1) Any correctional officer who uses force on a visitor must, as soon as reasonably practicable, give a report about the use of force to the governor of the place of detention.

(2) The report must—

- (a) be in writing, and
- (b) specify the name of the visitor and the name of the correctional officer involved in the use of force, and
- (c) specify the location where the force was used, and
- (d) describe the nature of the force used and the circumstances requiring its use, and
- (e) be signed by the correctional officer involved in the use of force.

...

### **263 Exclusion of personal liability**

(1) An act or omission—

...

(c) by a correctional officer or by any other person on whom functions are conferred or imposed by or under this Act, or

...

Does not subject a person referred to in paragraph (b), (c) or (d) personally to any action, liability, claim or demand if the act or omission was done or omitted to be done in good faith in the administration or execution of this Act or of any other Act that confers or imposes any functions on a correctional officer.

## **NEW SOUTH WALES (Regulation)**

## ***Crimes (Administration of Sentences) Regulation 2014 (NSW)***

### **129 Maintenance of order and discipline generally**

(1) Order and discipline in a correctional centre are to be maintained with firmness, but with no more restriction or force than is required for safe custody and well-ordered community life within the centre.

...

### **131 Use of force in dealing with inmates**

(1) In dealing with an inmate, a correctional officer may use no more force than is reasonably necessary in the circumstances, and the infliction of injury on the inmate is to be avoided if at all possible.

(2) The nature and extent of the force that may be used in relation to an inmate are to be dictated by circumstances, but must not exceed the force that is necessary for control and protection, having due regard to the personal safety of correctional officers and others.

(3) If an inmate is satisfactorily restrained, the only force that may be used against the inmate is the force that is necessary to maintain that **restraint**.

(4) Subject to subclauses (1)–(3), a correctional officer may have recourse to force for the following purposes—

## ***Crimes (Administration of Sentences) Regulation 2014 (NSW)***

...

(b) to prevent the escape of an inmate,

...

(d) to defend himself or herself if attacked or threatened with attack, but only if the officer cannot otherwise protect himself or herself from harm,

(e) to protect other persons (including correctional officers, departmental officers, inmates and members of the public) from attack or harm, but only if there are no other immediate or apparent means available for their protection,

(f) to avoid an imminent attack on the correctional officer or some other person, but only if there is a reasonable apprehension of an imminent attack,

(g) to prevent an inmate from injuring himself or herself,

(h) to ensure compliance with a proper order, or maintenance of discipline, but only if an inmate is failing to co-operate with a lawful correctional centre requirement in a way that cannot otherwise be adequately controlled,

...

(j) to achieve the control of inmates acting defiantly,

(k) to avoid imminent violent or destructive behaviour by inmates,

(l) to restrain violence directed towards the correctional officer or other persons by an uncontrollable or disturbed inmate,

...

(n) to deal with any other situation that has a degree of seriousness comparable to that of the situations referred to in paragraphs (a)–(m).

### **132 Use of equipment for restraining inmates**

(1) With the concurrence of the governor, a correctional officer may use handcuffs, security belts, batons, chemical aids and firearms for the purpose of restraining inmates.

(2) With the concurrence of the Commissioner, a correctional officer may also use the following equipment for the purpose of restraining inmates—

(a) anklecuffs,

(b) other articles, other than chains or irons, approved by the Commissioner for use for that purpose.

...

### **294 Issue of firearms to correctional officers not at armed posts**

(1) The governor of a correctional centre or the principal security officer may (by a direction given generally or in any particular case) authorise the issue of firearms to correctional officers who are not stationed at armed posts for use in connection with—

(a) the escorting of inmates, or

(b) the maintenance of a guard outside a correctional centre.

...

(3) The governor of a correctional centre may (by a direction given in a particular case) authorise the issue of firearms to correctional officers who are not stationed at armed posts—

(a) for use in connection with the quelling or control of a correctional centre disturbance or riot, or

(b) for any other purpose for which the governor considers it necessary that firearms be issued.

### **295 Officers handling firearms to undergo training courses**

(1) A correctional officer must not—

(a) authorise or direct the issue of a firearm to another correctional officer, or

(b) issue a firearm to another correctional officer,

for use by the other officer unless the other officer has undergone an approved training course in the use of that firearm.

## ***Crimes (Administration of Sentences) Regulation 2014 (NSW)***

(2) A correctional officer must ensure that a correctional officer under his or her control does not perform any duty involving the carrying or use of a firearm unless the officer has undergone an approved training course in the use of the firearm.

...

### **298 Duties of correctional officers generally**

While carrying a firearm on duty, a correctional officer—

- (a) must at all times be alert, and
- (b) must maintain the firearm and its ammunition in the condition, and with the safety precautions regarding its carriage, use and readiness to fire, as are approved, and
- (c) must not deface the firearm or any of its accessories or ammunition, and
- (d) must not make modifications to the firearm or to its ammunition.

...

### **302 Discharge of firearms**

A correctional officer must not discharge a firearm while on duty except in the performance of that duty.

### **303 Authority to discharge firearms**

(1) A correctional officer may discharge a firearm:

- (a) to protect the officer or any other person if the officer believes on reasonable grounds that there is a substantial probability that the officer or other person will be killed or seriously injured if the officer does not discharge the firearm, or
- (b) if the officer believes on reasonable grounds that it is necessary to do so in order:
  - (i) to prevent the escape of an inmate, or
  - (ii) to prevent an unlawful attempt to enter a correctional centre or to free an inmate, or
  - (iii) to attract the immediate attention of correctional officers or other persons to a serious breach of correctional centre security that has arisen or is likely to arise, or
- (c) to give a warning in accordance with this Regulation.

(2) Despite subclause (1), a correctional officer must not discharge a firearm at a person if the officer has reasonable grounds to believe that the shot may hit a person other than the person at whom it is directed.

### **304 Warnings**

(1) A correctional officer must not discharge a firearm in the direction of a person unless the officer has first given a warning to that person of the intention to fire.

(2) For the purposes of subclause (1), and without prejudice to any other way in which a warning may be given, a warning shot is a warning.

(3) A warning shot must be fired in a direction in which no one is likely to be hit by it.

(4) A correctional officer may, without giving a warning, discharge a firearm in order to protect the officer or any other person if of the opinion that—

- (a) there is a substantial probability that the officer or other person will be killed or seriously injured if the officer does not do so, and
- (b) a warning would only increase that probability.

### **305 Notice of discharge**

...

(2) A correctional officer who discharges a firearm while on escort duty must notify a police officer and—

- (a) the governor of the correctional centre at which the officer is usually on duty, or
- (b) if the correctional officer is a member of a Security Unit, the officer in charge of that Unit, of the circumstances in which it was discharged.

(3) On being notified, the governor or the officer in charge of the Security Unit is to report the circumstances of the discharge to the Commissioner.

(4) On receiving the report the Commissioner may hold an inquiry into the discharge.

(5) The Commissioner must submit a full report of the findings of any inquiry to the Minister.

## VICTORIA (Act)

### ***Corrections Act 1986 (Vic)***

#### **Sections:**

#### **55C Functions and powers of escort officers in relation to prisoners**

- (1) An escort officer has the following functions in relation to a prisoner he or she is transporting or supervising—
- (a) to take all reasonable steps to prevent the escape or attempted escape of the prisoner from the physical custody of the escort officer;
  - (b) to take all reasonable steps to ensure that the prisoner's safety and welfare are maintained;
  - (c) to take all reasonable steps to prevent and detect the commission by the prisoner of any unlawful act or any attempt to commit an unlawful act;
  - (d) to take all reasonable steps to ensure the good order and discipline of the prisoner;
  - ...
  - (f) to take all reasonable steps to ensure that the prisoner is transported to or from the appropriate place as required by the Secretary;
  - (g) to take all reasonable steps to ensure that the prisoner is transferred—
    - (i) into the physical custody of another person acting on behalf of the Secretary; or
    - (ii) if legal custody of the prisoner is authorised to be transferred to a person other than the Secretary, into the physical custody of a person acting on behalf of the person to whom legal custody is to be transferred.
- (2) An escort officer has the following powers in relation to a prisoner he or she is transporting or supervising—
- (a) to order the prisoner to do or not to do anything which the escort officer believes on reasonable grounds is necessary for the safety of the escort officer, the prisoner or any other person;
  - ...
  - (d) to apply an authorised instrument of restraint to the prisoner for the duration of the transport or supervision of the prisoner if the Secretary believes on reasonable grounds that the application of the instrument of restraint is necessary to prevent the escape of the prisoner or the assault of, or injury to, any person;
  - (e) to apply an authorised instrument of restraint to the prisoner during the transport or supervision of a prisoner if the conduct of the prisoner during that transport or supervision has been such that it is reasonable to believe that the application of the instrument of restraint is necessary to prevent the escape of the prisoner or the assault of, or injury to, any person.
- ...

#### **55D Authorisation of instruments of restraint**

An escort officer may apply an instrument of restraint to a person being transported only if—

- (a) the instrument, or type of instrument, is approved by the Secretary; and
- (b) the instrument is used in the manner determined by the Secretary.

#### **55E Use of reasonable force**

- (1) An escort officer may, where necessary, use reasonable force to compel a prisoner to obey an order given by the escort officer in the exercise of a function or power.
- (2) An escort officer who uses force in accordance with this section is not liable for injury or damage caused by that use of force.

#### **55EA Issue of firearms to escort officers**

A Governor or the Secretary may authorise the issue of a firearm to an escort officer—

- (a) if the escort officer is undertaking duties as an armed escort for high security prisoners or maximum security prisoners; or

## **Corrections Act 1986 (Vic)**

- (b) if the escort officer is undertaking patrols outside a prison where high security or maximum security prisoners are kept; or
- (c) if the escort officer is undertaking duties at a post specified by the Governor—
  - (i) at a prison where high security or maximum security prisoners are kept; and
  - (ii) at the times when prisoners are locked in cells; or
- (d) if the escort officer is undertaking firearms training under the direction of an approved instructor; or
- (e) in a case of emergency; or
- (f) if the Governor or Secretary reasonably believes that a firearm is necessary for the security or good order of the prison or for the safety of a prisoner, escort officer or other person.

### **55EB Discharge of firearms**

- (1) An escort officer may discharge a firearm at a prisoner if—
  - (a) the prisoner escapes or attempts to escape from custody; and
  - (b) the escort officer reasonably believes that discharging the firearm is the only practicable way to prevent the escape of the prisoner from custody.
- (2) An escort officer may discharge a firearm at a person if the escort officer reasonably believes that—
  - (a) the person is aiding a prisoner in escaping or attempting to escape from custody; and
  - (b) discharging the firearm is the only practicable way to prevent the escape of the prisoner from custody.
- (3) An escort officer may discharge a firearm at a person if—
  - (a) that person is using force or threatening force against—
    - (i) a person in a prison; or
    - (ii) an officer within the meaning of Part 5 (including the escort officer carrying the firearm) acting in the execution of his or her duties outside a prison; or
    - (iii) a prisoner outside a prison; and
  - (b) the escort officer reasonably believes that discharging the firearm is the only practicable way to prevent that person causing death or serious injury.
- (4) Before discharging a firearm at a person under this section, an escort officer must—
  - (a) if it is practicable to do so, give an oral warning to that person to the effect that the person will be shot at if that person does not stop escaping, attempting to escape, aiding an escape or attempted escape or using or threatening force (as the case may be); and
  - (b) satisfy himself or herself that discharging a firearm at the person does not create an unnecessary risk to any other person.

### **55EC Discharge of non-lethal firearm**

An escort officer may discharge a firearm that is a prescribed non-lethal firearm at a person if the escort officer reasonably believes that discharging the firearm is the only practicable way to—

- (a) prevent, control or stop a riot in a prison; or
- (b) prevent a serious threat to the security or good order of the prison.

### **55F Report to Secretary**

...

- (2) An escort officer must report to the Secretary without delay—

...

- (b) the exercise of any of the powers the escort officer has under sections 55C(2)(b) to 55C(2)(e) in relation to the prisoner;

...

- (e) if the escort officer uses force to compel a prisoner to obey an order.

...

## ***Corrections Act 1986 (Vic)***

### **112A Additional regulation-making powers—firearms**

Without limiting section 112, the Governor in Council may, subject to disallowance by Parliament, make regulations for or with respect to—

- (a) the manner and circumstances in which an escort officer may be issued with a firearm, including circumstances relating to—
  - (i) the classification of prisoners and prisons;
  - (ii) firearms training;
  - (iii) cases of emergency;
- (b) without limiting paragraph (a), conferring discretion on the Secretary or a Governor to issue a firearm to an escort officer in circumstances where the Secretary or Governor reasonably believes that a firearm is necessary for the security or good order of the prison or for the safety of a prisoner, an escort officer or other persons;
- (c) the carrying and storage of firearms issued to escort officers.

## **VICTORIA (Regulation)**

## ***Corrections Regulations 2019 (Vic)***

### **Clauses:**

#### **10 Unauthorised removal of firearms and ammunition**

An escort officer acting in the course of the escort officer's duties must not remove a firearm or ammunition from a prison unless authorised by the Governor to do so.

...

#### **13 Instruments of restraint**

(1) Subject to this Division, a prison officer may restrain a prisoner in a prison by using any of the following instruments of restraint—

- (a) handcuffs;
- (b) arm restraints;
- (c) leg restraints;
- (d) belts which restrain parts of the body;
- (e) spitter protective hoods;
- (f) one or more chains connected to—
  - (i) any of the instruments of restraint in paragraphs (a) to (d); or
  - (ii) any of the instruments of restraint in paragraphs (a) to (d) and a fixture

...

#### **14 Use of instrument to restrain in prisons**

...

(3) Subject to subregulation (7), a prison officer may apply an instrument of restraint to a prisoner if—

- (a) the immediate safety of the prisoner or any other person within the prison is threatened and the prison officer believes on reasonable grounds that the application of the instrument of restraint to the prisoner is necessary to protect the safety of the prisoner or the other person (as the case may be); or
- (b) the security or good order of the prison is threatened and the prison officer believes on reasonable grounds that the application of the instrument of restraint to the prisoner is necessary to protect the security or good order of the prison.

## QUEENSLAND (Act)

### ***Corrective Services Act 2006 (Qld)***

#### **Sections:**

#### **43 Authority to use reasonable force**

- (1) A corrective services officer may use force, other than lethal force, that is reasonably necessary to—
- (a) compel compliance with an order given or applying to a prisoner; or
  - ...
  - (b) restrain a prisoner who is attempting or preparing to commit an offence against an Act or a breach of discipline; or
  - (c) restrain a prisoner who is committing an offence against an Act or a breach of discipline; or
  - (d) compel any person who has been lawfully ordered to leave a corrective services facility, and who refuses to do so, to leave the facility; or
  - (e) restrain a prisoner who is—
    - (i) attempting or preparing to self harm; or
    - (ii) self harming.
- (2) The corrective services officer may use the force only if the officer—
- (a) reasonably believes the act or omission permitting the use of force can not be stopped in another way; and
  - (b) gives a clear warning of the intention to use force if the act or omission does not stop; and
  - (c) gives sufficient time for the warning to be observed; and
  - (d) attempts to use the force in a way that is unlikely to cause death or grievous bodily harm.
- (3) However, the corrective services officer need not comply with subsection (2)(b) or (c) if doing so would create a risk of injury to—
- (a) the officer; or
  - (b) someone other than the person who is committing the act or omission; or
  - (c) a prisoner who is—
    - (i) attempting or preparing to self harm; or
    - (ii) self harming.
- (4) The use of force may involve the use of only the following—
- (a) a gas gun;
  - (b) a chemical agent;
  - (c) riot control equipment;
  - (d) a restraining device;
  - (e) a corrective services dog under the control of a corrective services officer.

#### **144. Training for use of lethal force**

The chief executive must ensure that a corrective services officer authorised to use lethal force has been trained to use lethal force and other forms of force in a way that causes the least possible risk of injury to anyone other than the person against whom lethal force is directed.

...

#### **146 Use of lethal force**

- (1) A corrective services officer may use the lethal force that is reasonably necessary—
- (a) to stop a prisoner from escaping or attempting to escape from secure custody, if the officer reasonably believes the prisoner is likely to cause grievous bodily harm to, or the death of, someone other than the prisoner in the escape or attempted escape; or
  - (b) to stop a person from helping, or attempting to help, a prisoner to escape from secure custody, if the officer reasonably believes the person is likely to cause grievous bodily harm to, or the death of, someone other than the person or prisoner while helping or attempting to help the prisoner escape; or



## ***Corrective Services Act 2006 (Qld)***

- (c) to stop a prisoner from assaulting or attempting to assault another person, if the officer reasonably believes the prisoner is likely to cause grievous bodily harm to, or the death of, the other person; or
- (d) in an immediate response to a prisoner who has escaped from secure custody, if the officer reasonably believes the prisoner is likely to cause grievous bodily harm to, or the death of, someone other than the prisoner in the course of the immediate response.

(2) However, lethal force must not be used if there is a foreseeable risk that the use of lethal force will cause grievous bodily harm to, or the death of, someone other than the person against whom the lethal force may otherwise be directed.

- (3) The use of lethal force may involve, but is not limited to, the use of—
- (a) weapons, including firearms; or
  - (b) a corrective services dog under the control of a corrective services officer.

### **147 Requirements for use of lethal force**

- (1) A corrective services officer may use lethal force only if the officer—
- (a) reasonably believes the act or omission permitting the use of lethal force can not be stopped in another way; and
  - (b) gives a clear warning of the intention to use lethal force if the act or omission does not stop; and
  - (c) gives sufficient time for the warning to be observed; and
  - (d) attempts to use the force in a way that causes the least injury to anyone.
- (2) However, the corrective services officer need not comply with subsection (1)(b), (c) or (d) if doing so would create a risk of injury to—
- (a) the officer; or
  - (b) someone other than the person against whom the lethal force is directed.

### **148 Reporting use of lethal force**

- (1) The chief executive must keep a record detailing any incident in which—
- (a) lethal force is used; or
  - (b) anyone discharges a firearm, other than for training.
- (2) The chief executive must immediately advise the Minister of an incident mentioned in subsection (1).

## **QUEENSLAND (Regulation)**

## ***Corrective Services Regulation 2017 (Qld)***

### **Clauses:**

#### **38 Officers' knowledge of legislation and governing documents**

(1) The grantee must take reasonable steps to ensure each of the grantee's officers has a sufficient knowledge of the prescribed documents to carry out the officer's functions including, in particular, the grantee's obligations under the prescribed documents relevant to providing the programs or services funded by the grant.

(2) In this section—

**prescribed documents** means—

- (a) the [Act](#) and this regulation; and
- (b) any constitution or other governing document of the grantee; and
- (c) an agreement entered into between the grantee and the State about the performance of the financial assistance agreement, commonly referred to as a service level agreement.



## WESTERN AUSTRALIA (Act)

### ***Prisons Act 1981 (WA)***

#### **Sections:**

#### **14 Powers and duties of prison officers**

(1) Every prison officer –

...

(d) may issue to a prisoner such orders as are necessary for the purposes of this Act, including the security, good order, or management of a prison, and may use such force as he believes on reasonable grounds to be necessary to ensure that his or other lawful orders are complied with.

...

#### **42 Restraint**

(1) Without prejudice to any power otherwise conferred, a superintendent may authorise and direct the restraint of a prisoner where in his opinion such restraint is necessary —

(a) to prevent a prisoner injuring himself or any other person; or

(b) upon considering advice from a medical officer or some other medical practitioner, on medical grounds; or

(c) to prevent the escape of a prisoner during his movement to or from a prison or during his temporary absence from a prison.

(2) Restraint involving the use of medication shall be used only on medical grounds with the approval of a medical officer or some other medical practitioner.

...

#### **47. Use of firearms**

(1) A superintendent, prison officer or a person lawfully charged by the Minister or chief executive officer with the charge of a prisoner, may use a firearm against a prisoner who —

(a) is attempting to escape from lawful custody if it appears to the user of the firearm that the use of a firearm is necessary to prevent the escape of the prisoner; or

...

(3) Before the use of a firearm under this section, steps shall be taken, where it is practicable in the circumstances to do so, to order the prisoner or other person to desist from his apparent course of conduct and to give warning that a firearm is about to be used.

(4) Subsection (3) is a directory provision.

#### **48. Use of force on serious breach of security**

(1) Where the chief executive officer is of the opinion that—

(a) a serious breach of the good order or security of a prison has occurred or appears to the chief executive officer to be imminent; and

(b) no other reasonable means of control are available at the prison,

the chief executive officer may order the use of force against a prisoner or prisoners, including force which may cause death or serious injury.

(2) Before force is used under this section, steps shall be taken, where it is practicable in the circumstances to do so, to issue the orders necessary to restore or ensure good order and security within the prison and to give warning of the consequences of failure to comply with those orders.

(3) Subsection (2) is a directory provision.

## WESTERN AUSTRALIA (Regulation)

### ***Prison Regulations 1982 (WA)***

#### **Clauses:**

#### **24 Responsibility when carrying firearm items**

- (1) A prison officer may be required to undertake training in the use of a firearm item and may after that training, when on duty, be required to carry the firearm item.
- (2) A firearm item may be issued only by an officer so authorised by the superintendent.
- (3) When on duty under arms, a prison officer must —
  - (a) be responsible for any firearm item issued to the officer; and
  - (b) ensure that any firearms are properly loaded and that the officer is carrying the appropriate ammunition for those firearms; and
  - (c) handle the firearm item so that an accident cannot occur; and
  - (d) report to the officer's superior officer immediately if the officer has any reason to doubt the serviceability of the firearm item; and
  - (e) remain alert and vigilant at the officer's post; and
  - (f) immediately the officer observes any irregularity in the routine of the prison which may jeopardise the security of the prison, report the irregularity to the superintendent or another prison officer (receiving officer), being their superior officer or the nearest prison officer with whom they can communicate, and the receiving officer must immediately inform the superintendent of the report; and
  - (g) as soon as practicable, report to their superior officer any discharge of any firearms or loss or damage to the firearm item.

#### **25 Procedure before the use of firearms**

- (1) Before using a firearm against a prisoner or other person, a prison officer must, where it is practicable in the circumstances to do so —
  - (a) order the prisoner or person to halt;
  - (b) if the prisoner or person so ordered refuses or neglects to halt, the prison officer must immediately call aloud "halt or I'll fire" or words to similar effect.
- (2) Before using a firearm against a prisoner or other person, a prison officer may, where it is practicable in the circumstances to do so, fire a warning shot.
- (3) In exercising the discretion whether to use or to continue to use a firearm, a prison officer must have regard to the risk, in the immediate circumstances, of injury which the use of fire power would impose upon any person other than the prisoner or person against whom fire power may be used.

## NORTHERN TERRITORY (Act)

### ***Correctional Services Act 2014 (NT)***

#### **Sections:**

#### **137 Correctional officer to maintain security and good order**

(1) A correctional officer may take any reasonable and appropriate steps in order to maintain the security and good order of a custodial correctional facility and prisoners.

(2) For the purpose of doing so, a correctional officer may use the force that is reasonably necessary.

(3) Examples of when it may be reasonably necessary to use force include the following:

...

(b) to prevent a prisoner engaging in misconduct;

...

(e) to restrain persons causing a disturbance at the facility;

(f) to prevent the escape of a prisoner.

...

#### **138 Limitations on the use of force**

(1) This section applies when a correctional officer is permitted under this Act to use force.

(2) The use of force by a correctional officer is ***reasonably necessary*** only if the correctional officer reasonably believes that:

(a) the purpose for which the force is used could not reasonably be achieved in another practicable way; and

(b) the nature and amount of force used is reasonable in the circumstances.

#### **139 Firearms and other weapons**

(1) A correctional officer lawfully using force under this Act may use an approved firearm, weapon or restraint for that purpose.

(2) A correctional officer may possess an approved firearm, weapon or restraint for the purpose of using it as permitted under subsection (1).

(3) In this section:

***approved*** means approved by the Commissioner in the Commissioner's Directions

#### **140 Commissioner to manage use of force**

(1) The Commissioner must ensure that:

(a) to the extent practicable, force is used under this Act only:

(i) as a last resort; and

(ii) when the use of force is reasonably necessary; and

(b) correctional officers who use force do so in accordance with this Act.

(2) The Commissioner must issue Commissioner's Directions in relation to the use of force, including as to:

(a) the circumstances in which, and by whom, force may be used; and

(b) the nature of the force that may be used in those circumstances

## NORTHERN TERRITORY (Regulation)

### ***Correctional Services Regulations 2014 (NT)***

None applicable.

## SOUTH AUSTRALIA (Act)

### ***Correctional Services Act 1982 (SA)***

#### **Sections:**

##### **36A Restraints to be used on prisoners in certain circumstances**

- (1) An officer or employee of the Department may use restraints on a prisoner—
- (a) if the prisoner is being transferred from the place in which the prisoner is being detained to a place where the prisoner is to be detained; or
  - (b) if the prisoner is on leave of absence and is required to be in the custody of, and be supervised by, 1 or more officers or employees of the Department authorised by the Minister under section 27(2)(a)(i); or
  - (c) in any other circumstances determined by the CE.
- (2) An officer or employee of the Department who uses restraints on a prisoner under this section must comply with any requirements determined by the CE.
- ...

##### **86 Prison officers may use reasonable force in certain cases**

Subject to this Act, an officer or employee of the Department or a police officer employed in a correctional institution may, for the purposes of exercising powers or discharging duties under this Act, use such force against any person as is reasonably necessary in the circumstances of the particular case.

##### **86A Prison officer may carry prescribed weapon**

- (1) The CE may authorise an officer or employee of the Department to carry a prescribed weapon while on duty for purposes specified by the CE.
- (2) An officer or employee authorised to carry a prescribed weapon under this section must comply with any requirements of the CE in relation to the handling, storage and responsible use of the weapon.
- (3) In this section—
- prescribed weapon*** means a weapon prescribed by the regulations for the purposes of this section.

## SOUTH AUSTRALIA (Regulation)

### ***Correctional Services Regulations 2016 (SA)***

#### **Clauses:**

##### **44 Prescribed weapons (section 86A)**

For the purposes of section 86A of the Act, the following weapons are prescribed:

- (a) a Glock 9mm hand gun;
- (b) a 12 gauge shotgun;
- (c) a Monadnock PR24 Defensive Police Baton;
- (d) a baton designed or adapted for use as a weapon that can be extended in length by gravity or centrifugal force or by a release button or other device (known as an extendable baton);
- (e) Oleoresin Capsicum (known as OC) in all its forms;
- (f) Orthochlorobenzalmalonitrile (known as CS) in all its forms;
- (g) a Taser;
- (h) a 40mm single or multi shot launcher;
- (i) a Pepperball launcher.

## AUSTRALIAN CAPITAL TERRITORY (Act)

### ***Corrections Management Act 2007 (ACT)***

#### **Sections:**

#### **137 Managing use of force**

(1) The director-general must ensure, as far as practicable, that the use of force in relation to the management of detainees is always—

- (a) a last resort; and
- (b) in accordance with this part.

(2) Without limiting section 14 (Corrections policies and operating procedures), the director-general must make a corrections policy or operating procedure in relation to the use of force, including provision in relation to the following:

- (a) the circumstances, and by whom, force may be used;
- (b) the kinds of force that may be used.

**Note** The power to make a corrections policy or operating procedure includes power to make different provisions in relation to different matters or different classes of matters, and provisions that apply differently by reference to stated exceptions or factors (see Legislation Act)

#### **138 Authorised use of force**

(1) A corrections officer may use force that is necessary and reasonable for this Act, including for any of the following:

...

- (c) to prevent or stop the commission of an offence or disciplinary breach;
- (d) to prevent the escape of a detainee;

...

(2) However, a corrections officer may use force only if the officer believes, on reasonable grounds, that the purpose for which force may be used cannot be achieved in another way.

#### **139 Application of force**

(1) A corrections officer may use force under this part only if the officer—

- (a) gives a clear warning of the intended use of force; and
- (b) allows enough time for the warning to be observed; and
- (c) uses no more force than is necessary and reasonable in the circumstances; and
- (d) uses force, as far as practicable, in a way that reduces the risk of causing death or grievous bodily harm.

(2) However, the corrections officer need not comply with subsection (1) (a) or (b) if, in urgent circumstances, the officer believes, on reasonable grounds, that doing so would create a risk of injury to the officer, the detainee or anyone else.

#### **140 Use of restraints or weapons**

(1) The use of force under this part includes the use of restraints and weapons.

(2) The director-general must ensure, as far as practicable, that the use of force involving a restraint or weapon is proportionate to the circumstances, and in particular that—

- (a) the circumstances are sufficiently serious to justify the use; and
- (b) the kind of restraint or weapon is appropriate in the circumstances; and
- (c) the restraint or weapon is used appropriately in the circumstances.

(3) The director-general must also ensure that restraints and weapons are only used under this part—

- (a) by corrections officers trained to use them; and
- (b) in accordance with a corrections policy or operating procedure that applies to their use.

...

### ***Corrections Management Act 2007 (ACT)***

(5) The director-general must ensure that firearms are not used under this part unless someone's life is under threat or a detainee or other person offers armed resistance to a corrections officer or police officer exercising a function under this Act or another Act.

(6) In applying force under this part, a corrections officer may use a restraint or weapon, including any of the following:

- (a) body contact;
- (b) handcuffs, restraint jackets and other restraining devices;
- (c) riot control equipment;
- (d) a chemical agent;
- (e) a gas gun;
- (f) a firearm;
- (g) anything else prescribed by regulation

### **AUSTRALIAN CAPITAL TERRITORY (Regulation)**

#### ***Corrections Management Regulation 2010 (ACT)***

None applicable.

## TASMANIA (Act)

### ***Corrections Act 1997 (Tas)***

#### **Sections:**

##### **34A Managing use of force**

(1) The Director must ensure, as far as practicable, that the use of force in relation to the management of prisoners and detainees is always –

- (a) a last resort; and
- (b) in accordance with this Part.

(2) The Director must make standing orders or an operating procedure in relation to the use of force, including provision in relation to the following:

- (a) the circumstances in which, and by whom, force may be used;
- (b) the kinds of force that may be used.

(3) The power to make a standing order or an operating procedure includes power to make different provisions in relation to different matters or different classes of matters, and provisions that apply differently by reference to stated exceptions or factors.

##### **34B Authorised use of force**

(1) A correctional officer may use force that is necessary and reasonable for this Act, including for any of the following:

...

- (d) to prevent the escape of a prisoner or detainee;

(2) However, a correctional officer may use force only if the correctional officer believes, on reasonable grounds, that the purpose for which force may be used cannot be achieved in another way.

##### **34C Application of force**

(1) A correctional officer may use force under this Part only if the correctional officer –

- (a) gives a clear warning of the intended use of force; and
- (b) allows enough time for the warning to be observed; and
- (c) uses no more force than is necessary and reasonable in the circumstances; and
- (d) uses force, as far as practicable, in a way that reduces the risk of causing death or grievous bodily harm.

(2) However, a correctional officer need not comply with subsection (1)(a) or (b) if, in urgent circumstances, the correctional officer believes, on reasonable grounds, that doing so would create a risk of injury to the correctional officer, the prisoner or detainee or any other person.

##### **34D Use of restraints or weapons**

(1) The use of force under this Part includes the use of restraints and weapons.

(2) The Director must ensure, as far as practicable, that the use of force involving a restraint or weapon is proportionate to the circumstances, and in particular that –

- (a) the circumstances are sufficiently serious to justify the use; and
- (b) the kind of restraint or weapon is appropriate in the circumstances; and
- (c) the restraint or weapon is used appropriately in the circumstances.

(3) The Director must also ensure that restraints and weapons are only used under this Part –

- (a) by correctional officers trained to use them; and
- (b) in accordance with standing orders or an operating procedure that applies to their use.

(4) The Director must take all steps to ensure that potentially lethal force is not used under this Part unless the actions of a prisoner or detainee or other person are likely to cause death or serious injury.

(5) In applying force under this Part, a correctional officer may use a restraint or weapon, including any of the following:

## ***Corrections Act 1997 (Tas)***

- (a) body contact, impact and restraint;
- (b) a mechanical restraining device;
- (c) a baton;
- (d) riot control equipment;
- (e) a chemical agent;
- (f) an electro-muscular disruption device or a conducted electrical weapon;
- (g) a distraction device;
- (h) a firearm;
- (i) any other thing prescribed by the regulations.

...

### **34I Authorised use of mechanical restraints**

- (1) A correctional officer may use a mechanical restraint only in accordance with a standing order or operating procedure.
- (2) A correctional officer may use a mechanical restraint on a prisoner or detainee for all or any of the following purposes:
  - (a) to prevent the commission of an offence or disciplinary breach;
  - (b) to prevent the escape of a prisoner or detainee;
  - (c) to prevent the prisoner or detainee from accessing an area to which they are not permitted access;
  - (d) to prevent unlawful damage, destruction or interference with property;
  - (e) to prevent a prisoner or detainee from inflicting self-harm;
  - (f) for any other purpose prescribed by the regulations.
- (3) A correctional officer may use mechanical restraints only if the correctional officer believes, on reasonable grounds, that no other less restrictive method of control is applicable or appropriate in the circumstances.
- (4) The health and wellbeing of a prisoner must be considered before a mechanical restraint is applied.
- (5) A correctional officer must remove a mechanical restraint from a prisoner as soon as the restraint is no longer required for any of the purposes set out in subsection (2).
- (6) A mechanical restraint must not be used for the purpose of punishment.

## **TASMANIA (Regulation)**

### ***Corrections Regulations 2018 (Tas)***

#### **Clauses:**

#### **8 Separate treatment**

- (1) The Director may order that, in accordance with any standing orders, a prisoner or detainee be subject to –
  - ...
  - (b) the use of mechanical or chemical restraints.
- (2) A person authorised to carry out an order under subregulation (1) may use reasonable force in carrying out the order if the person considers it necessary to do so.



## NEW ZEALAND (Act)

### ***Corrections Act 2004 (NZ)***

#### **Sections:**

#### **6 Principles guiding corrections system**

- (1) The principles that guide the operation of the corrections system are that–
- (a) the maintenance of public safety is the paramount consideration in decisions about the management of persons under control or supervision:

...

#### **83 Use of force**

- (1) No officer or staff member may use physical force in dealing with any prisoner unless the officer or staff member has reasonable grounds for believing that the use of physical force is reasonably necessary–

- (a) in self-defence, in the defence of another person, or to protect the prisoner from injury; or
- (b) in the case of an escape or attempted escape (including the recapture of any person who is fleeing after escape); or

...

- (2) An officer or staff member who uses physical force for any of the purposes or in any of the circumstances referred to in subsection (1) may not use any more physical force than is reasonably necessary in the circumstances.

- (3) If an officer or staff member uses physical force in dealing with any prisoner, the prisoner must, as soon as practicable after the application of that force, be examined by a registered health professional, unless that application of force is limited to the use of handcuffs of a kind that have been authorised for use as a mechanical restraint.

- (4) Nothing in this section limits or affects any other provision in this Act or any other enactment that authorises an officer or staff member to use physical force, or any provision of the Crimes Act 1961, or any rule of law, that makes any specified circumstances–

- (a) a justification or excuse for the use of force; or
- (b) a defence to a charge involving the use of force.

Section 83(3): amended, on 4 June 2013, by section 20 of the Corrections Amendment Act 2013 (2013 No 5).

...

#### **85 Use of non-lethal weapons**

- (1) In any situation described in section 83(1) or in any other situation where an officer or staff member is authorised by any other provision in this Act or any other enactment to use physical force, any officer or staff member may, if necessary, use any kind of non-lethal weapon prescribed for use.

- (2) The use of a non-lethal weapon by an officer or a staff member–

- (a) is subject to any conditions or restrictions specified in regulations made under this Act; and
- (b) must, if the weapon is used in any situation described in section 83(1), be in accordance with section 83(2).

- (3) Regulations may not be made authorising the use of any kind of non-lethal weapon unless the Minister is satisfied that–

- (a) the use of that kind of weapon is compatible with the humane treatment of prisoners; and
- (b) the potential benefits from the use of the weapon outweigh the potential risks.

- (4) In this section, **non-lethal weapon** means any weapon designed–

- (a) to temporarily disable a person against whom it is used; or
- (b) to incapacitate a person against whom it is used.

- (5) This section does not limit the powers of a constable under any other enactment.

Section 85(5): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

## **Corrections Act 2004 (NZ)**

### **86 Possession, carriage, and use of firearms restricted**

- (1) No officer or staff member may possess, carry, or use any firearm within a prison except as provided under subsection (3).
- (2) This section does not limit the powers of a constable under any other enactment.
- (3) The chief executive may, in writing, authorise an officer or staff member to possess, carry, or use a firearm (other than a prohibited firearm) within a prison, but only in a specified area of the prison for 1 or more of the following purposes:
- (a) for the purpose of any specified prison industry;
  - (b) for the purpose of humanely killing sick or injured animals;
  - (c) for the purpose of pest control.
- (4) If subsection (3) applies, a firearm—
- (a) may only be used by an officer or staff member who holds a current firearms licence under section 24 of the Arms Act 1983 and in accordance with that Act; and
  - (b) must not be used while prisoners are present; and
  - (c) must not be stored in a prison.

Section 86 heading: amended, on 3 April 2009, by section 7(1) of the Corrections Amendment Act 2009 (2009 No 3).

Section 86(1): replaced, on 3 April 2009, by section 7(2) of the Corrections Amendment Act 2009 (2009 No 3).

Section 86(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 86(3): inserted, on 3 April 2009, by section 7(3) of the Corrections Amendment Act 2009 (2009 No 3).

Section 86(3): amended, on 12 April 2019, by section 73 of the Arms (Prohibited Firearms, Magazines, and Parts) Amendment Act 2019 (2019 No 12).

Section 86(4): inserted, on 3 April 2009, by section 7(3) of the Corrections Amendment Act 2009 (2009 No 3).

### **87 Restraint of prisoners**

- (1) In any situation described in section 83(1) or in any other prescribed circumstances, any officer or staff member may, if necessary, apply any kind of mechanical restraint prescribed for use.
- (2) The use of a mechanical restraint by an officer or staff member—
- (a) is subject to any conditions or restrictions specified in regulations made under this Act; and
  - (b) must, if the restraint is used in any situation described in section 83(1), be in accordance with section 83(2).
- (3) Regulations may not be made authorising the use of any kind of mechanical restraint unless the Minister is satisfied that—
- (a) the use of that kind of restraint is compatible with the humane treatment of prisoners; and
  - (b) the potential benefits from the use of the restraint outweigh the potential risks.
- (4) A mechanical restraint—
- (a) may not be used for any disciplinary purpose;
  - (b) must be used in a manner that minimises harm and discomfort to the prisoner.
- (5) A mechanical restraint must not be used on a prisoner for more than 24 hours at a time unless the use of the restraint for more than 24 hours—
- (a) is authorised by the prison manager and is, in the opinion of a medical officer, necessary to protect the prisoner from self-harm; or
  - (b) is, in the case of a prisoner who has been temporarily removed to a hospital outside the prison for treatment, necessary to prevent the escape of the prisoner or to maintain public safety.
- (5A) An authorisation under subsection (5)(a) must—
- (a) be in writing; and
  - (b) specify the type of restraint to be used; and
  - (c) specify the time during which the prisoner is to be kept under restraint; and
  - (d) include a record of the medical officer's opinion that the restraint is necessary to protect the prisoner from self-harm.
- (6) Despite subsections (1) to (5), chains or irons must not be fitted or attached to a prisoner in any circumstances.

## ***Corrections Act 2004 (NZ)***

(7) In subsection (6), **chains or irons** does not include handcuffs.

Section 87(5): replaced, on 29 October 2019, by section 17(1) of the Corrections Amendment Act 2019 (2019 No 57).

Section 87(5A): inserted, on 4 June 2013, by section 21 of the Corrections Amendment Act 2013 (2013 No 5).

Section 87(5A): amended, on 29 October 2019, by section 17(2) of the Corrections Amendment Act 2019 (2019 No 57).

Section 87(6): replaced, on 29 October 2019, by section 17(3) of the Corrections Amendment Act 2019 (2019 No 57).

Section 87(7): inserted, on 29 October 2019, by section 17(3) of the Corrections Amendment Act 2019 (2019 No 57).

### **88 Reporting on use of force, weapons, and mechanical restraints**

Particulars of the use of force, non-lethal weapons, and mechanical restraints must, wherever required by regulations made under this Act,—

(a) be recorded; and

(b) be given by notice in writing to the chief executive and to any other person or persons specified in those regulations.

...

### **202 Regulations relating to safe custody of prisoners**

Regulations made under section 200(1)(c) may include (without limitation) provisions—

...

(j) regulating the use and reporting of the use of force, authorising and regulating the use and reporting of the use of specified kinds of mechanical restraints in particular circumstances, and authorising and regulating the use of and reporting of the use of specified kinds of non-lethal weapons:

...

## **NEW ZEALAND (Regulation)**

## ***Corrections Regulations 2005 (NZ)***

### **Clauses:**

#### **6 General duties of prison managers**

(1) Subject to the Act and to the control of the chief executive, the manager of a prison is responsible for its good management and the fair, safe, secure, orderly, and humane management and care of its prisoners.

(2) The manager of a prison must ensure—

(a) that staff members are fully instructed in respect of their duties, and that they perform their duties with diligence and competence:

...

#### **24 Rules to be observed when escorting prisoners**

(1) Any officer, staff member, or probation officer who is carrying out escort duty must ensure—

(a) the safety and security of the prisoner or prisoners being escorted; and

...

...

#### **118 Use of force**

These regulations, in respect of their application to the use of force by staff members and security officers, do not limit or affect any provision of the Crimes Act 1961, or any rule of law, that renders any circumstances—

(a) a justification or an excuse for the use of force; or

(b) a defence to a charge involving the use of force.

## **Corrections Regulations 2005 (NZ)**

### **118A De-escalation techniques to be employed before use of physical force**

A staff member or security officer may only use physical force against a prisoner after techniques to de-escalate behaviour have been employed with the prisoner, unless the use of de-escalation techniques is not reasonably practicable in the circumstances.

Regulation 118A: inserted, on 6 July 2023, by regulation 9 of the Corrections Amendment Regulations 2023 (SL 2023/110).

### **119 Conditions attached to use of physical hold**

- (1) A physical hold may be applied only by a staff member or security officer who has received adequate training in the use of that hold.
- (2) Before a staff member or security officer uses a physical hold on a prisoner, he or she must obtain the approval of the manager of the prison or employer as the case may be, unless it would be impracticable to do so.
- (3) The only types of physical hold that may be used are those approved by the chief executive.
- (4) Staff members and security officers trained to use physical holds must undergo refresher courses, approved by the chief executive, in the use of those holds at least once a year.

### **119A When non-lethal weapons may be used**

- (1) An officer or staff member may draw or use a baton only against a prisoner and only if the officer or staff member has reasonable grounds for believing that the use of physical force is reasonably necessary for any of the purposes or any of the circumstances referred to in section 83(1) of the Act.
- (2) An officer may draw or use pepper spray only against a prisoner and only if the officer has reasonable grounds for believing that the use of physical force is reasonably necessary for any of the purposes or any of the circumstances referred to in section 83(1) of the Act.

Regulation 119A: inserted, on 1 April 2022, by regulation 5 of the Corrections Amendment Regulations 2022 (SL 2022/23).

### **119B Warning before use of non-lethal weapon**

Before using a non-lethal weapon against a prisoner, an officer or a staff member must, unless it is not reasonably practicable in the circumstances to do so, warn the prisoner of the proposed use and give the prisoner the opportunity to become compliant.

Regulation 119B: inserted, on 6 July 2023, by regulation 10 of the Corrections Amendment Regulations 2023 (SL 2023/110).

### **120 Meaning of baton**

In these regulations, a **baton** means a blunt object that is designed to be used for law enforcement purposes and that is—

- (a) made of plastic, aluminium, or similar material; and
- (b) no more than 1 kg in weight; and
- (c) not capable of delivering an electric shock.

### **120A Meaning of pepper spray**

*[Revoked]*

Regulation 120A: revoked, on 1 July 2017, by regulation 4 of the Corrections Amendment Regulations 2017 (LI 2017/113).

### **121 Restrictions on carrying batons**

- (1) A security officer must not carry a baton while performing his or her duty as a security officer in any circumstance.
- (2) A staff member of a prison must not carry a baton outside a prison while performing his or her functions as a staff member in any circumstance.
- (3) A staff member of a prison may carry a baton only if—
  - (a) the baton was issued at the direction of the manager; and
  - (b) the staff member has received adequate training in the use of the baton.
- (4) Staff members trained to use batons must undergo refresher courses, approved by the chief executive, in the use of batons at least once a year.

## **Corrections Regulations 2005 (NZ)**

- (5) For the purpose of subclause (3)(b), **adequate training in the use of the baton** includes training in—
- (a) de-escalation techniques; and
  - (b) using a baton in a way that minimises causing pain or injury to a prisoner; and
  - (c) any conditions or restrictions imposed on baton use under regulation 123(3).

Regulation 121: replaced, on 2 November 2012, by regulation 5 of the Corrections Amendment Regulations 2012 (SR 2012/310).

Regulation 121(5): inserted, on 6 July 2023, by regulation 11 of the Corrections Amendment Regulations 2023 (SL 2023/110).

### **122 Issue and storage of batons**

- (1) The manager must ensure that batons are securely stored at all times except when they have been issued to staff members.
- (2) The manager may direct the issuing of batons to staff members only if he or she reasonably believes that—
- (a) there is a serious threat to prison security or to the safety of any person; and
  - (b) the use of batons will reduce or eliminate the serious threat; and
  - (c) other means of reducing or eliminating the serious threat have been or are likely to be ineffective.
- (3) The manager must promptly direct that batons be returned to storage once the serious threat no longer exists.

Regulation 122: replaced, on 2 November 2012, by regulation 5 of the Corrections Amendment Regulations 2012 (SR 2012/310).

### **123 Use of batons**

- (1) A staff member who has been issued a baton may draw or use the baton only if the manager's approval has been obtained, unless it is impracticable in the circumstances.
- (2) A staff member must use the baton in a way that minimises pain or injury to the prisoner, as far as it is consistent with protecting prison security or the safety of any person.
- (3) The use of a baton must also comply with any further conditions or restrictions imposed by the chief executive.

Regulation 123: replaced, on 2 November 2012, by regulation 5 of the Corrections Amendment Regulations 2012 (SR 2012/310).

Regulation 123(3): inserted, on 6 July 2023, by regulation 12 of the Corrections Amendment Regulations 2023 (SL 2023/110).

### **123A Meaning of pepper spray**

- (1) In these regulations, **pepper spray** means an aerosol spray or other aerosol substance, contained in a deployment mechanism described in subclause (2), that—
- (a) contains a pepper-based irritant (for example, oleoresin capsicum) or synthetic irritant to the eyes and respiratory passages; and
  - (b) is designed to temporarily disable, or to temporarily incapacitate, a person against whom it is used.
- (2) The deployment mechanisms for pepper spray are the following:
- (a) a hand-held deployment mechanism that deploys a targeted stream of pepper spray at a maximum distance of no more than 7 metres and that is to be carried on the person;
  - (b) a hand-held deployment mechanism that deploys a targeted stream of pepper spray at a maximum distance of no more than 10 metres;
  - (c) a hand-held deployment mechanism that can be equipped with a hose and wand attachment to deliver a dispersed fog of pepper spray into an enclosed space through an opening (such as through a vent or under a door).

Regulation 123A: replaced, on 1 April 2022, by regulation 6 of the Corrections Amendment Regulations 2022 (SL 2022/23).

### **123B Issue of pepper spray**

- (1) Pepper spray may be issued only to an officer and only if the officer has received adequate training in the use of pepper spray.
- (2) A security officer, or a staff member who is not an officer, must not, in any circumstance,—
- (a) be issued pepper spray; or
  - (b) carry pepper spray while performing his or her functions.
- (3) Pepper spray may be issued only at the direction of the prison manager.
- (3A) The prison manager must not issue pepper spray contained in a deployment mechanism of a type described in regulation 123A(2)(b) or (c) unless he or she reasonably believes that—
- (a) there is a serious threat to prison security or to the safety of any person; and

## Corrections Regulations 2005 (NZ)

- (b) the use of pepper spray will reduce or eliminate the serious threat.
- (3B) Before directing the issue of pepper spray contained in a deployment mechanism of a type described in regulation 123A(2)(b) or (c), the manager must be satisfied that reasonable steps have been taken to—
- (a) consult a registered health professional on whether there are any matters (such as underlying injuries, mental health issues, respiratory conditions, or pregnancy) that could place any prisoners against whom the use of pepper spray is being considered at particular risk of harm from the effects of pepper spray; and
  - (b) ensure that any risk of harm identified under paragraph (a) is minimised to the extent that is reasonably practicable; and
  - (c) ensure to the extent that is reasonably practicable that, if pepper spray is to be used, it does not contaminate prisoners other than the prisoners against whom it is used.
- (4) The issuing of pepper spray must comply with any further conditions or restrictions imposed by the chief executive.
- (5) For the purpose of subclause (1), **adequate training in the use of pepper spray** includes training in—
- (a) de-escalation techniques; and
  - (b) minimising the risk of contaminating persons other than those against whom pepper spray is being used; and
  - (c) decontamination procedures; and
  - (d) any conditions or restrictions imposed on the drawing and use of pepper spray under regulation 123C(5).

Regulation 123B: replaced, on 1 July 2017, by regulation 5 of the Corrections Amendment Regulations 2017 (LI 2017/113).

Regulation 123B(3): replaced, on 1 April 2022, by regulation 7 of the Corrections Amendment Regulations 2022 (SL 2022/23).

Regulation 123B(3A): inserted, on 1 April 2022, by regulation 7 of the Corrections Amendment Regulations 2022 (SL 2022/23).

Regulation 123B(3B): inserted, on 6 July 2023, by regulation 13(1) of the Corrections Amendment Regulations 2023 (SL 2023/110).

Regulation 123B(5): inserted, on 6 July 2023, by regulation 13(2) of the Corrections Amendment Regulations 2023 (SL 2023/110).

### 123C Drawing and use of pepper spray

- (1) An officer who has been issued pepper spray may draw or use it while performing the officer's functions in relation to a prisoner under the Act, these regulations, or any other enactment, while inside or outside a prison.
- (2) However, to minimise the risk of injury from falling, an officer must not use pepper spray against a prisoner if the prisoner is at height.
- (2) *[Revoked]*
- (3) The officer must use the pepper spray in a way that minimises pain or injury to the prisoner, so far as that is consistent with protecting prison security or the safety of any person.
- (4) Officers trained in the use of pepper spray must undergo refresher courses, approved by the chief executive, at least once a year.
- (5) The drawing and use of pepper spray must also comply with any further conditions or restrictions imposed by the chief executive.

Regulation 123C: replaced, on 1 July 2017, by regulation 5 of the Corrections Amendment Regulations 2017 (LI 2017/113).

Regulation 123C(1): replaced, on 17 September 2017, by regulation 16 of the Corrections Amendment Regulations (No 2) 2017 (LI 2017/242).

Regulation 123C(2): inserted, on 6 July 2023, by regulation 14 of the Corrections Amendment Regulations 2023 (SL 2023/110).

Regulation 123C(2): revoked, on 1 April 2022, by regulation 8 of the Corrections Amendment Regulations 2022 (SL 2022/23).

### 123D Keeping pepper spray secure

- (1) An officer must ensure that any pepper spray issued to him or her is kept secure.
- (2) The manager of a prison must ensure that pepper spray is securely stored at all times except when it is issued to an officer.

Regulation 123D: inserted, on 1 July 2017, by regulation 5 of the Corrections Amendment Regulations 2017 (LI 2017/113).

...

## ***Corrections Regulations 2005 (NZ)***

### **124 Use of mechanical restraints**

A mechanical restraint may be used to restrain a prisoner only if–

- (a) the restraint is authorised by Schedule 5; and
- (b) the restraint is used in accordance with the requirements of Schedule 5.

### **125 Additional circumstances for use of handcuffs and waist restraints**

(1) In addition to any situation described in section 83(1) of the Act, handcuffs or waist restraints used in conjunction with handcuffs may be applied on a prisoner–

- (a) by an officer for the purpose of escorting a prisoner outside of a prison; and
- (aa) by an officer for the purpose of allowing the prisoner to receive medical treatment if the prisoner's temporary removal is subject to a condition, imposed under section 64(1)(c) of the Act, that the handcuffs or restraints must be applied while the prisoner is receiving treatment; and
- (b) by an officer for the purpose of escorting a prisoner within a prison only if the officer has reasonable grounds to believe that it is necessary in the circumstances.

Regulation 125 heading: amended, on 17 September 2017, by regulation 17(1) of the Corrections Amendment Regulations (No 2) 2017 (LI 2017/242).

Regulation 125 heading: amended, on 9 August 2007, by regulation 4(1) of the Corrections Amendment Regulations (No 2) 2007 (SR 2007/192).

Regulation 125(1): amended, on 17 September 2017, by regulation 17(2) of the Corrections Amendment Regulations (No 2) 2017 (LI 2017/242).

Regulation 125(1): amended, on 22 September 2011, by regulation 15(1) of the Corrections Amendment Regulations 2011 (SR 2011/284).

Regulation 125(1)(aa): inserted, on 17 September 2017, by regulation 17(3) of the Corrections Amendment Regulations (No 2) 2017 (LI 2017/242).

Regulation 125(1)(b): amended, on 22 September 2011, by regulation 15(2) of the Corrections Amendment Regulations 2011 (SR 2011/284).

Regulation 125(2): revoked, on 22 September 2011, by regulation 15(3) of the Corrections Amendment Regulations 2011 (SR 2011/284).

...

### **128 Reporting use of force or non-lethal weapon**

(1) A staff member or security officer who uses force or a non-lethal weapon on a prisoner in any circumstances must promptly report the use of the force or nonlethal weapon...

...