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THE HONOURABLE MARGARET WILSON QC, Commissioner

MR P. FREEBURN QC, Counsel Assisting

MS C. MUIR, Counsel Assisting

IN THE MATTER OF THE COMMISSIONS OF INQUIRY ACT 1950

COMMISSIONS OF INQUIRY ORDER (No. 4) 2015

BARRETT ADOLESCENT CENTRE COMMISSION OF INQUIRY

BRISBANE

9.30 AM, THURSDAY, 15 OCTOBER 2015

Continued from 30.9.15

DAY 2

RESUMED

[9.30 am]

5 COMMISSION OFFICER: The Barrett Adolescent Centre Commission of Inquiry is in session. Please be seated.

COMMISSIONER WILSON: Good morning, everyone. Can I take the appearances first.

10 MR P.A. FREEBURN QC: Your Honour, Freeburn, initials P.A., Queen's Counsel. I appear with MS MUIR as Counsel Assisting.

COMMISSIONER WILSON: Thanks, Mr Freeburn.

15 MS E.S. WILSON QC: Commissioner, Wilson, initial E.S, of Queen's Counsel. I appear for the State of Queensland with my learned friends, KEFFORD, initial N. and CRAWFORD, initial J. We are instructed by Crown Law.

20 COMMISSIONER WILSON: Thanks, Ms Wilson. Perhaps for the first time I should do what I used to do in the court when Ms Wilson appeared before me and explain to the assembled throng that we're not related in any way. All right. Who's next – Mr Ambrose.

25 MR P. AMBROSE QC: Commissioner, I appear for the West Moreton Hospital Health – and Health Board and Hospital and Health Services. I'm instructed by Corrs Chambers Westgarth.

COMMISSIONER WILSON: Thanks, Mr Ambrose.

30 MR D. O'SULLIVAN QC: May it please the Commission, my name is O'Sullivan of Queen's Counsel, instructed with JAMES O'REGAN of counsel by McCullough Robertson for the Honourable Lawrence Springborg.

COMMISSIONER WILSON: Thanks, Mr O'Sullivan.

35

MR J.J. ALLEN QC: Good morning, Commissioner. Allen, A-l-l-e-n, initials J.J., Queen's Counsel, appearing for Metro North Hospital and Health Service and the Metro North Hospital and Health Service Board.

40 COMMISSIONER WILSON: Thanks, Mr Allen.

MS M.G. ZERNER: May it please the Commission, my name is Zerner, Z-e-r-n-e-r, initials M.G. of Counsel. I appear on behalf of Metro South Hospital and Health Services. I am instructed by Clayton Utz.

45

COMMISSIONER WILSON: I'm sorry, I didn't catch your surname.

MS ZERNER: Sorry, Zerner, Z-e-r-n-e-r.

COMMISSIONER WILSON: Zerner.

5 MS ZERNER: Thank you.

COMMISSIONER WILSON: Thank you. Yes.

10 MR G.R. MULLINS: Good morning, Commissioner. My name is Mullins, initials G.R., instructed by Shine Lawyers. I appear on behalf of Justine Wilkinson, Vanita Olliver and Nichole Pryde.

COMMISSIONER WILSON: Thanks, Mr Mullins.

15 MS S.R. ROBB: Thank you, Commissioner. Robb, R-o-b-b. I appear on behalf of registered nurses Kochardy, Beswick, MacLeod, Young and Yorke.

COMMISSIONER WILSON: Thank you, Ms Robb. Are there any other
appearances this morning? No. Thank you. I should explain what we're doing here.
20 At the public hearing on 30 September I said that the State of Queensland and a
number of Hospital and Health Services boards had made a joint written submission
about confidentiality. I also said that the Faculty of Child and Adolescent Psychiatry
within the Royal Australian and New Zealand College of Psychiatrists had written to
the Commission voicing concern about risks inherent in the disclosure of certain
25 types of information. Today's sitting has been convened to address those concerns.

A copy of the written submissions including attachments will be marked as the first
written submission tendered before the Commission and it will be kept – excuse me
– with the Commission's records. A copy with the attachments will be placed on the
30 website in due course. I think it's probably available on the screen, is it? Who's
pressing the button – we're testing the technology this morning. Now, if we just take
it slowly so that if anyone wishes to read it he or she can. Mr Freeburn, would you
outline what steps have been taken with respect to the written submission since it
was received.

35 MR FREEBURN: Yes, Commissioner. Commissioner, the issues raised in this
joint application were addressed in a discussion paper produced by the Commission's
staff and counsel. On Wednesday of last week, that is, 7 October, that discussion
paper was distributed to the lawyers for the parties with leave to appear. A copy was
40 also given to the Royal Australian and New Zealand College of Psychiatrists who
had previously indicated an interest in the topic. Also on 7 October the parties were
advised of today's hearing and the College was notified of that as well. Since 7
October there have been some very productive discussions with the lawyers for a
number of the parties and I should record my thanks to the lawyers involved.

45

5 Yesterday the Commission received a proposal to make two changes to the proposed order and in a moment I think we can get that document up on the screen and I can explain the changes or the suggested changes. There are in total four changes proposed, two of them reasonably technical and two – a deletion of a paragraph and an addition of a paragraph. So once we've finished with the present – the application document – we might have a look at the new document. There it is. So these were the changes suggested yesterday afternoon, that is, on the screen there is a draft order with a new paragraph (a) in yellow and also the deletion of the part in brackets in what is in this draft (c)(i).

10

Now – and if I can go to the next document which is version 2 we've called it. Commissioner, this reflects the four changes proposed to the order. In my submission – or in our submission, all changes except the addition of paragraph (b) ought to be accepted as part of the order. The new paragraph (b) is a matter that needs further investigation and some consultation with some interested parties including the College and it probably needs to be the subject of some specific material about the three acts mentioned there.

15

20 Commissioner, one of the reasons – one of the concerns behind the substantive change which is deleting the part in brackets was the quality of the consent that you might receive or that a party might receive in order to exempt themselves from the operation of this order. Because this tribunal is dealing with young people – people with – who may have impaired capacity and perhaps a variety of views held within a family about the publicity, it is thought that if a party desires to be exempted from the confidentiality attaching to their medical records and the like then a variation to this order can be made because the order is subject to further order of the Commissioner and it's thought that that's a better mechanism for dealing with parties who are in that category. Commissioner, I should say that the issues – the orders the subject of – sorry, the matters the subject of this order are under a continuing review. 30 One matter that the applicants raise in their application is the question of closed hearings. The discussion paper addresses that issue. The submission of Counsel Assisting is that that issue should be reviewed when we are closer to the evidence and we know precisely what evidence would be the subject of a closed hearing. Certainly it is contemplated that the evidence of patients or family members may 35 well be the subject of an order under 16A of the Act.

35

Commissioner, there's one further matter I should mention. On the last occasion you mentioned a confidentiality protocol that was being developed by the Commission. That has been developed and refined and it is now on the website. It addresses not 40 only the issues before you today but also the wider aspect of confidentiality and how the Commission, for example, deals with documents. Confidentiality is something that we are going to continue to keep under review. And we will continue to take submissions from the parties and to keep, as best we can, private information private.

40

45 COMMISSIONER WILSON: Thanks, Mr Freeburn. Yes. Ms Wilson, do you wish to speak to it?

MS WILSON: Thank you, Commissioner. The paragraph (b) that we can see there that has been – the red line through, that was an amendment proposed by the State of Queensland. As I understand it, that has been deferred so that we can have further discussions with the Commission and, if necessary, we can provide further
5 submissions to the insertion of such a paragraph into the order. Another matter that, as I understand it, should be deferred or could be deferred is that we got further input from a client last night in relation to (b)(i). That is:

10 *Identifies or is likely to lead to the identification.*

Further clarification was sought as to the meaning of “or is likely to lead to the identification of a patient” and it was suggested that it – further words is added to that paragraph that state:

15 *Which includes but is not limited to the following types of detail: gender, point in time, the person was an inpatient, their clinical diagnosis and anything else relating to their clinical information or their family.*

20 That suggestion, as I understand it, has also been deferred so that Counsel Assisting can take further instructions and further consider the matter. And, if necessary, the State can put in additional submissions relating to that proposal. Those are the only matters that I wish to raise in relation to the order. One other matter is that we have been - - -

25 COMMISSIONER WILSON: Before you move on, Ms Wilson, I wasn’t aware of that proposed change. And there’s no problem about my not being aware of it but one thing that strikes me immediately is this; if such a change were to be made, why would it be restricted to the period of time the person was an inpatient? Didn’t the Centre also take day patients?

30 MS WILSON: Because, by its very nature, if it does – if the time is released, depending upon the circumstances of that evidence that time could very well, because of the small number of cohorts, easily identify who was being referred to in that discussion around that time.

35 COMMISSIONER WILSON: I can understand that. But I am asking; wouldn’t the same concern arise with respect to the period a person was a day patient?

40 MS WILSON: My instructions are yes.

COMMISSIONER WILSON: Alright. Well, that’s something that can be considered.

45 MS WILSON: Yes. And that can also go into the pot of, say, the pot of discussion that we are having and continually having with Counsel Assisting. So we may be making further submissions on that matter and it may have to be raised again. On one additional matter is that we have received a letter from Dr Stephen Stathis who is

the medical director of Child and Youth Mental Health Services. The – and the – I then ask to tender this letter specifically on behalf of the Children’s Health Queensland Hospital and Health Services. That is to supplement the – already the material that we have provided, attached to the submission – the joint submission by
5 the parties. I have provided a copy to Counsel Assisting this morning and I have copies to provide to the additional parties. But it was - - -

COMMISSIONER WILSON: Is it possible to put it up on the screen or not?

10 MS WILSON: No.

COMMISSIONER WILSON: Alright. Well, look, if you could hand up a copy to me I’ll have it marked as an exhibit. And we’ll keep an electronic copy of it.

15 MS WILSON: And - - -

COMMISSIONER WILSON: Let me read it, would you, Ms Wilson.

MS WILSON: Commissioner, I can take onboard the functions of this Commission
20 and how it is run. And any other material that we wish to put before the Commission, we will provide it to the Commission in an electronic form so then it can be put up on the screen. We undertake to do that in the future.

COMMISSIONER WILSON: Look, I appreciate that. This is a bit of a learning
25 curve with the technology this morning. So - - -

MS WILSON: Thank you, Commissioner.

COMMISSIONER WILSON: I’ll just read this before I go on. Dr Stathis is
30 advocating that the protection of confidentiality be afforded beyond the categories in the draft order to include current and previous Queensland Health staff. That obviously will be a matter which will require some consideration before any order could be made.

35 MS WILSON: Yes.

COMMISSIONER WILSON: Alright. Thank you. That will be an exhibit, as I said.

40 MS WILSON: Thank you. Those are all the matters that I wished to raise.

COMMISSIONER WILSON: Thanks, Ms Wilson. Who’s next? Mr Ambrose.

MR AMBROSE: Commissioner, my clients instruct me to consent to that part of
45 the application dealing with the public hearings which, as I understand it, is (a) and (b) of the proposed orders be adjourned. And my client also instructs me to consent to the orders.

COMMISSIONER WILSON: Now, which proposed orders are you speaking of?
The ones in the - - -

5 MR AMBROSE: The application – the joint application.

COMMISSIONER WILSON: So that were attached to the written submission?

10 MR AMBROSE: Yes. And they're the matters that deal with public hearings and a blanket order about there being no publication. We consent to that being adjourned to a date to be fixed.

COMMISSIONER WILSON: Right.

15 MR AMBROSE: And we also consent to the proposed orders which are on the screen now as amended and described as version 2.

COMMISSIONER WILSON: Alright. Thank you for that. Mr O'Sullivan.

20 MR O'SULLIVAN: May it please the Commission. We've considered the draft order that my learned friend Mr Freeburn has put forward and we've also corresponded with Mr Freeburn about how it will operate. My client consents to the orders that are sought to be made today as set out on the screen. And we also consent to a deferral of the hearing of strike out paragraph (b).

25 COMMISSIONER WILSON: Alright. Thank you.

MR O'SULLIVAN: Thank you.

30 COMMISSIONER WILSON: Who's next? Mr Allen.

MR ALLEN: I have no submissions to add. Thank you, Commissioner.

COMMISSIONER WILSON: Thank you. Mr Mullins – I'm sorry, Ms Zerner.

35 MS ZERNER: Your Honour, I have no submissions to add, only to indicate that my client's instructions are to also adjourn the section 16A application in relation to the closed hearings. But I'm to consent to the current orders as they are drafted, that is version 2.

40 COMMISSIONER WILSON: Thank you. Mr Mullins.

45 MR MULLINS: Thank you, Commissioner. My clients have given me instructions to consent to the orders and to the adjournment of the application and to just make the following comments, that the – my clients' objections to the closure of the Centre, to the transitional arrangements and to the circumstances of the death of their children have been the subject of extensive media coverage. Having said that, they have grave concerns for the confidentiality of other patients and they respect that and

acknowledge that the evidence is developing and that there may be some areas in which their evidence might overlap. And they have great respect for the other parties' confidentiality, so they're prepared to consent to the orders. But they do place on the record that an application will be made for the hearing, or for the oral hearings at least, that their evidence and the evidence of others relating to their own children will be made – should be made publicly accessible and released for publication.

COMMISSIONER WILSON: Thank you. Ms Robb.

MS ROBB: Thank you, Commissioner. My instructions are to consent to version 2 of the order as it stands, and we support an adjournment and a section 16A application. Having had a quick look at the letter from Dr Stathis, it is likely that my clients would take a position about whether or not the staff was subject to confidentiality orders as they were likely to be the subject of those orders, and we would appreciate an opportunity to be heard further on that.

COMMISSIONER WILSON: Thanks, Ms Robb.

MS ROBB: Thank you.

COMMISSIONER WILSON: Mr Freeburn, there's no appearance this morning from the College of Psychiatrists. Are you aware of their attitude?

MR FREEBURN: They largely consent. They saw – the last version they saw was version 1. They haven't seen the relatively minor changes that were made. So I can indicate they're broadly content with the proposed order.

COMMISSIONER WILSON: Thank you for that.

MR FREEBURN: Thank you.

COMMISSIONER WILSON: Does anyone else wish to say anything? No. I will make an order in terms of version 2 adding to that order that the following questions are adjourned for further consideration: (1) the addition of draft paragraph (b) of version 2 as it was displayed which relates to information under section 228 of the Disability Services Act 2006, information was subject of chapter 6 part 6 of the Child Protection Act 1999 and personal information collected under the Education (General Provisions) Act 2006. I will also adjourn the question of closed hearings, and adjourn consideration of the extension of confidentiality protection to current and previous Queensland Health staff who will be impacted by the Commission as raised in the letter from Dr Stephen Stathis which has been tendered as an exhibit.

With respect to those adjourned questions, I think the first step should be the provision of further written submissions and further liaising with Counsel Assisting. It may be possible to resolve them on the papers. If it's not, we'll come back to a

public hearing like this to resolve them. Is there anything else with respect to the confidentiality issue?

5 MS WILSON: Just the issue that I raised in relation to, Commissioner, paragraph (b)(i), that is, the – it – the further clarification that has been provided in relation to – or is likely to lead to the identification. Can that also go into – I’ve made my submissions that that also should be going – to go to the deferred basket. Can that also be included in your order?

10 COMMISSIONER WILSON: Yes. It can be.

MS WILSON: Thank you.

15 COMMISSIONER WILSON: So the question of whether paragraph (c)(i) should be added to in the way proposed by Ms Wilson in her oral submissions will also be adjourned, and written submissions can be made with respect to it.

MS WILSON: Thank you, Commissioner.

20 COMMISSIONER WILSON: Anything else with respect to confidentiality? No. Well, I think it’s timely that I place on the public record a summary of the work that’s been undertaken by the Commission to date. 58 notices to produce documents have been issued to various departments of government, institutions and individuals. In terms of responses to those 58 notices, in 13 cases, there’s been partial compliance
25 so far. In 44 cases, there’s been no compliance so far, and in one case, there’s been a response that there are no documents of the nature called for. I should explain that the Commission has asked that so far as possible, documents be provided to it electronically.

30 You won’t be surprised to hear that it will be analysing the documents with the assistance of a computer search engine. The Commission is conscious that compliance with these notices is onerous. It’s conscious, for example, that reconstruction of previously archived email boxes is a very time-consuming task. The Commission has no reason to question the diligence with which the respondents
35 to the notices and their legal representatives have been working hard to try to meet the deadlines set, but it’s proved not possible in many cases. So extensions of time have been sought. A number of extensions have already been granted in most cases to the end of this month. Several thousand documents have already been received, but the Commission is expecting many more, and the number will probably exceed
40 one million.

Analysis of documents already received from various sources has begun. In addition to seeking and receiving documents, the Commission has issued over 40 notices to provide information or to produce written statements. More of those notices are in
45 preparation. Commission staff are actively engaged in interviewing potential witnesses and preparing witness statements. In most cases, the time for the provision of statements is still running. As we all know, the Commission’s report is to be

presented by 14 January 2016. As I said last time, public hearings have been tentatively scheduled to begin on 16 November. I can say now that the likelihood of the Commission and the various parties being ready by that date is a matter of genuine concern, and it's a matter under constant review. As soon as I'm able to
5 provide more information in that regard, it will be placed on the website. Does anyone have any questions or wish to make any statement? All right. There's nothing else in this morning's proceeding. Can you adjourn, please.

10 **ADJOURNED**

[9.59 am]