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IN THE MATTER OF THE COMMISSIONS OF INQUIRY ACT 1950

COMMISSIONS OF INQUIRY ORDER (No. 4) 2015

BARRETT ADOLESCENT CENTRE COMMISSION OF INQUIRY

BRISBANE

9.33 AM, FRIDAY, 15 APRIL 2016

Continued from 12.4.16

DAY 28

RESUMED

[9.33 am]

5 COMMISSIONER WILSON: Good morning, everyone. Mr Duffy.

MR DUFFY: Commissioner. Commissioner, I propose to approach my oral address this morning - - -

10 COMMISSIONER WILSON: Mr Duffy, I'm going to have trouble hearing you. You're going to have to keep your voice up.

MR DUFFY: Is that better?

15 COMMISSIONER WILSON: Not much.

MR DUFFY: I propose to - - -

COMMISSIONER WILSON: That's better.

20 MR DUFFY: - - - approach the oral address in this way for this morning. I want to address a number of matters that appeared to me to have arisen out of oral addresses which require some response from us. That will be in open court. There is one matter that I need to deal with in closed court. It's to do with some evidence so far as it concerns my client but impacting in relation to a particular patient. And then, your Honour, I wish to deal with some other matters that have arisen, in effect, yesterday and overnight and they will, again, be in open court.

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30 So firstly, I had intended prior to the recent discussion about the question of the National Planning Framework only to say the following things about it. The first was that as my learned friend, Mr O'Sullivan, went through with your Honour Dr Kingswell gave evidence orally about it and I won't traverse the same references again now. I had intended to also refer the Commission to Dr Kotzé's evidence which, I'll be submitting, was largely to the same effect remembering, of course, that both Dr Kingswell and Dr Kotzé were both in fact on the relevant bodies that prepared the documents.

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40 Thirdly, I wanted to say this about it, that is, that – as I will come to in respect of some other matters – the real importance of it from Dr Kingswell's evidence was that he was frustrated that rather than use the language of the document the ECRG had, in effect, come up with its own terminology, namely, tier 3 and it's notorious now to anyone who has been listening to the proceedings of this Commission that that terminology has done precisely what Dr Kingswell was frustrated about: created confusion.

45 The ECRG in its terms of reference and the reference to that document – you don't need to go to it now, Commissioner – is CHS.001.001.6019. The terms of reference called for the ECRG to align its recommendations with that Planning Framework.

Now, they didn't. There might be good reasons why they didn't. Dr Kingswell, you will recall, gave evidence that he thought he had provided copies of the taxonomy to the ECRG. He concedes that he may have been wrong about that but that was the source of his frustration because they use the language – a descriptor – that was new and unknown. The ECRG, of course, referred in its own way to national mental health reforms and national mental health policy and the shift that had occurred in it. What it says about that in the document that it produced and the particular reference – again, your Honour doesn't need to go to it now – WMS.6006.0002.33022 itself seems to be the antithesis of the Barrett model that what itself said.

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COMMISSIONER WILSON: Sorry, you'll have to – that last submission I didn't quite catch. What is the antithesis of the Barrett model?

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MR DUFFY: That is what the ECRG referred to in the body of its report. It recorded at 33021 that:

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State and national mental health reforms had identified the decentralisation of services –

And so on. Secondly, at 33022 it talked about the ECRG being mindful of the current policy context and direction for mental health services as informed by the national mental health policy. Now, there was no express mention to the planning framework notwithstanding the terms of reference but that doesn't matter. They record that non-acute bed-based services should be community-based where possible. They record that a key principle for child and youth mental health services which is supported by all members of the ECRG is that young people are treated in the least restrictive environment possible and one which recognises the need for safety and cultural sensitivity, minimum possible disruption to family and educational, social and community networks.

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It's that statement that, in my submission, is the antithesis of what was then the BAC model. Now, one ought not be confused as so often occurred with the BAC model being a tier 3 facility. The ECRG was not recommending and there's nothing that can be seen in their report whereby they recommend a continuation of the Barrett model.

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COMMISSIONER WILSON: No.

MR DUFFY: It just doesn't appear but yet it seems at times to have been equated, that is, the then current BAC model seems to have sometimes and very often been equated with the what they were recommending - - -

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COMMISSIONER WILSON: By whom?

MR DUFFY: - - - about a tier 3 facility.

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COMMISSIONER WILSON: By whom?

MR DUFFY: By various people, witnesses and in submissions and questions.

5 COMMISSIONER WILSON: Well, that's not as I understand the evidence. Let me clear about that. As I understand the evidence it is with respect to some form of bed-based inpatient unit for extended treatment and rehabilitation of a small sub-set of adolescents. It's not, if I can be clear, that the particular model that was employed at the Barrett Centre should be replicated.

10 MR DUFFY: Quite so. And with respect, all witnesses bar one or two perhaps and significantly including Dr Kingswell sing with the same voice in that respect. All. What you won't find, though, is any or many – there might be one or two, I can't say for sure – who say for sure that the Barrett model should have been continued. In any event, I make that submission to give context to what, from the point of view of the submissions that I had until yesterday proposed to make about the framework,
15 that was the central importance of it. I'll come back to that question about the submissions about the framework, if I may, later.

Can I move to the Redlands project. Now, I'm not certain that this is a question directly posed by the Commission but it's one that seems to arise and this is my
20 wording. Was the need to make savings the reasons why Redlands was cancelled – the reason why Redlands was cancelled. Well, Dr Kingswell, of course, said that the impetus for him looking at the matter was exactly that, the need to make savings. The department was asked – and it's uncontroversial that the department was asked – to look for about \$100 million worth of savings. And he did. And he has described
25 in detail what he did and why this project was the one out of the list that he had that could be offered up.

30 There is an issue, of course, as to whether Dr Kingswell's recollection that it was Dr Cleary who asked him or whether it was somebody asked him but it doesn't matter. At the end of the day to resolve that conflict he was plainly asked to do so by somebody. All of the witness from the department gave the evidence that they were asked to look for savings. That's what they did.

35 COMMISSIONER WILSON: I don't wish to restrain your submissions but can I ask whether what you're saying is this, that from Dr Kingswell's perspective the need to make savings was the catalyst.

40 MR DUFFY: Or the impetus – the commencement – the reason he started to look at it at all. Now, it's of course - - -

COMMISSIONER WILSON: Well - - -

45 MR DUFFY: - - - purely hypothetical to ask this question. If that had not occurred, that is, if by the time the Newman Government came to power the problems with the health budget that it identified did not exist, that is, there was plenty of money or at least enough money to not require the mental health branch to look for savings. What would have happened to Redlands? Well, we don't know, of course. It's

purely hypothetical but we do know this: the last estimate as to the time within which Redlands would be completed – and I emphasise the word “estimate” – was that it would be completed about the middle of 2015. That appears – so that your Honour has the reference – in exhibit 654 which is Delium reference
5 QHD.004.015.7533. And you will recall - - -

COMMISSIONER WILSON: What’s the date of that document, roughly?

10 MR DUFFY: I don’t know. It’s undated. But it must have been prepared prior to the cessation. So it’s either prepared immediately prior to the May – or sometime prior to the May decision or sometime prior to August but in other words in about the middle of 2012 that’s what the estimate was. And given the history of the project it was intended, of course, to originally have been completed by about August, I think, of 2011 or October of 2011. Given the delays that occurred to date, it would be a
15 brave assumption to say that the assessment as at May 2012 that it would be finished mid to late 2015 would stick. If anything, if an inference is to be drawn, it’s likely that would have blown out even further. That’s because of the characteristics of what had happened to this particular project. But, Commissioner, it’s almost received wisdom that virtually every project of substance incurs some delays.
20 Questioning was put to some witnesses to that very effect and they were asked to accept it. And they did.

So would it, hypothetically, have continued on its path if the need for the savings was not identified? Can I say it this way: who knows? Commonsense might have
25 suggested that at some point frustration with it would have grown to the point that it was ceased in any event. In any event, what we do know, of course, is that the plans for the development of the EFTRU occurring at The Park, plans that had been in place for a long time, since at least the development of the Queensland Plan for Mental Health, had EFTRU completing sometime about the middle of 2013. That
30 seems to be the best estimate.

COMMISSIONER WILSON: Well, I think that date had blown out too. I think there are documents which show at an earlier stage – I think it’s about 2011. I’m not sure. But the completion – estimated completion dates for the two projects were not
35 precisely the same.

MR DUFFY: No.

COMMISSIONER WILSON: In fact, I think EFTRU was a couple of months ahead
40 of Redlands. But they were more or less the same.

MR DUFFY: Yes. No. So – that’s so. EFTRU, in fact, didn’t finally become fully operational, it seems, until the end of 2013. It might have opened in July but it - - -

45 COMMISSIONER WILSON: Well, there seemed to have been, at that stage, a deliberate decision taken to very carefully vet the patients - - -

MR DUFFY: Yes.

COMMISSIONER WILSON: - - - and only put in a small number of patients because of the continuing existence of the Barrett Adolescent Centre.

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MR DUFFY: Yes, quite sensibly so. So what we do know though is this, just finally dealing with the question of Redlands – at least on that aspect of Redlands. That is, even if, hypothetically, the savings had never been looked for, Redlands would never ever have been available to provide a solution to the closure of the Barrett Centre. Now, there is another entire hypothetical, of course, and that is, well – and no one has explored this, of course – but why not just cancel the EFTRU? Why not just say, well, we won't have an EFTRU, we will keep Barrett there forever.

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COMMISSIONER WILSON: Except it was almost finished in terms of construction work.

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MR DUFFY: I'm sorry, your Honour?

COMMISSIONER WILSON: The construction work was almost finished.

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MR DUFFY: Well, that would be a good reason not to. But that was the only other possibility.

COMMISSIONER WILSON: Okay.

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MR DUFFY: That was the only other possibility, wasn't it, your Honour, on that hypothetical.

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COMMISSIONER WILSON: Can I address a slightly different topic in relation to Redlands. And I can pass over it fairly briefly. Was the cancellation of Redlands effective in May or August? Now, this is a point on which various parties have made submissions. Ours are in writing at paragraphs 133 to 136. And we've submitted – and this is contrary, of course, to the submissions of at least Mr Springborg – that it was, in effect, done in August. It ultimately probably doesn't matter. But those are our submissions in relation to it. It matters in this sense. That is, when were West Moreton advised of it? Well, they were advised by a memo from a Mr Rashleigh, if my memory serves me correctly – I don't have the reference for your Honour – immediately after the August decision, if you want to call it that, - - -

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COMMISSIONER WILSON: That's right.

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MR DUFFY: - - - which rather seems consistent with the fact that that's when it, in effect, took place.

COMMISSIONER WILSON: Interestingly, as I recall Dr O'Connell's evidence, he accepted that the decision he'd made in May had, effectively, been overtaken.

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MR DUFFY: That's what he said. He said two things. He said he thought, and was operating on the basis, that he had the power to do it. And that's what he thought he was doing at the time. But it didn't take effect. His decision didn't take effect in a practical sense. Now, at the time of consideration of EFTRU, a question has been posed – sorry, at the time of cessation of the Redlands project, was the effect of EFTRU considered? The answer to that, plainly enough from the evidence, is no. The reference to that is Dr O'Connell's first statement at paragraph 11(g). A question was posed following upon that: should Dr O'Connell have made inquiries about the consequences, that is, relevant to EFTRU? The answer in part was provided by my learned friend Mr Diehm in his submissions that it couldn't have made any difference.

COMMISSIONER WILSON: Well, I take the force of that submission. But what is troubling me at the moment about it is this: this is an inquiry into the process of executive decision making. If this were a legal proceeding, an administrative law proceeding, it may well have been the answer that this would not have made any difference. But when we're talking about an inquiry into the process of executive decision making in an administrative inquiry, it may be that we take broader matters into consideration than the strictly legal consequences. And what is concerning me is that it seems neither the Director-General nor the Minister was made fully aware of the whole context and fully aware that, as things worked out, the – and it may well be that it could be predicted they'd work out this way if the whole context had been taken into account. The cancellation of Redlands was a step along the way to the cancellation or closure of the Barrett Adolescent Centre. Do you understand what I'm saying?

MR DUFFY: I do, your Honour. But can I respond to it in this way. Firstly, addressing it in the context of an administrative law concept, one might hypothesise in this way the briefing note would've then said something like this, "Dear Dr O'Connell, there is another consideration. It is a wholly irrelevant consideration because it will not affect the decision. It's incapable of affecting the decision. And that is this: that EFTRU will be opening sometime next year." Now, the briefing note might've gone on to say, "The reason I say it's irrelevant is that whether you decide to cancel Redlands or not decide to cancel Redlands, it will have no effect, remedial or otherwise, on that." So that's looked at in that context. There could, of course, have been many other matters that were equally irrelevant to it. That is, that could not have made a difference.

And I say it couldn't have made a difference because if one tries to imagine, well, let's say this was raised and either Dr O'Connell or the Minister thought, "Hang on, I'd better not cancel Redlands." How could that have helped? How could it have, in any sense, been an answer to the problem? It couldn't. But, of course, there is another aspect of it that is, in fact, the truth. And that is this: that the operational budget that otherwise would've been locked up with Redlands was able, in fact, to be transferred over and utilised with the new services. So one might say this, let's say Redlands had gone on. That operational budget would have had to have been stuck with it. It would not have been ready by the end of 2013 or the beginning of 2014 or

mid-2014 or probably not until about the end of 2015. But that operational budget would've been locked up then.

5 COMMISSIONER WILSON: I take the force of what you're saying. Can I ask you to consider another aspect. As I say, we're talking about executive decision making. We're talking about decision making that, certainly, has the aspect that you've put forward, of the logical consequences and what were not logical consequences of decisions. But we're also talking about the care of mentally ill young people, and it seems to me we're also talking about the legitimate concerns of those who cared for
10 them, by which I mean not only the staff of state-run institutions, but also their families. Now, the way this whole issue evolved, we know as a matter of fact, that it caused a lot of distress and confusion.

15 MR DUFFY: When you say it, Commissioner, you mean the cancellation of Barrett?

COMMISSIONER WILSON: No, the whole issue of the cancellation of Redlands, the ultimate decision to close the Barrett Adolescent Centre, what was to happen to the existing patients, when new models of care were to be developed. There was a
20 very unclear picture which emerged from the perspective of the public, and in particular patients and their families.

We know that, taking it through logically and just looking at it in executive terms – we've got the cancellation of Redlands – I might say that between the two briefing
25 notes there seems to be a meeting of some executive group within the Mental Health Branch, where they were starting to talk about developing new models of care, but the Minister didn't know anything about that. Then it's cancelled, Redlands is cancelled. West Moreton is then informed that it has been cancelled. Then there are meetings between people from the Health Department, including Dr Kingswell, and
30 people from West Moreton, saying we're going to have to develop new models of care, in other words saying this place should be closed and we are going to have to develop new models of care.

Now, as far as I know, I don't think the director-general was aware of that. He may
35 have been. Certainly, the Minister doesn't seem to have been. It leaked out in the form of Dr McDermott's statement to the Carmody inquiry. That caused a lot of distress at many levels. Then in about December of 2012, there was a meeting with the Minister, and it seems as if that was when – about when he first learnt of EFTRU, and hence learnt of the "urgency" in some people's view of closing the Barrett
40 Adolescent Centre.

There were the – I think at about that stage there might have started to be fast facts documents issued, which indicated that there would be a planning group and an
45 ECRG, and they would consider things etcetera. And people were still very concerned about all of this, and then it culminated in the Minister's announcement, which, with respect, viewed objectively – not in terms of what he might have meant, but what he actually said – was not very clear, and the problems continued.

Now, as I say, I don't think this is just a question of an administrative law issue, as to whether something is strictly relevant. It's also a question of how the whole issue was handled publicly.

5 MR DUFFY: Well, can I try and tease the two issues out. One is undoubtedly a communication issue, that is, how people were informed about what was going on. But stepping back, in the first instance, of course, briefing notes aren't available to the public. They're not put out there. So what goes into a briefing note for a
10 the decision. So that's – that issue is not, if I may say, cavilled with or negated by the observations your Honour makes about the way that it was then ultimately communicated, because the perceptions and the degree of knowledge of those receiving the information, who wanted the information, who were entitled to receive the information, undoubtedly has caused some concern amongst - - -

15 COMMISSIONER WILSON: Can I say I'm fully conscious that it is the job of the executive to make hard decisions.

MR DUFFY: Yes.

20 COMMISSIONER WILSON: And I'm fully conscious that it can cause added – it can cause unnecessary distress to put material into the public domain when the issues have not been thoroughly analysed and the position reached. I'm not suggesting that every step along the way to the decision-maker should have been public. That would
25 have been counterproductive, particularly in a circumstance such as this, where we're dealing with such sensitive issues. So I want to be – want you to be clear - - -

MR DUFFY: Yeah.

30 COMMISSIONER WILSON: - - - that I don't suggest for one minute that that was necessary. But what I do think may have been necessary was for the Minister to have been – and – well, the Director-General and the Minister – to have been made cognisant of the full picture along the way, along the way to the making of the decision to close the Barrett Adolescent Centre.

35 MR DUFFY: But the opening of EFTRU wasn't an ingredient in that, that is, it wasn't an ingredient in what they need to know to make a decision about – and I don't just mean in an administrative law sense; I mean in any sense – to make a decision about whether to cease the Redlands Project. It's an entirely different
40 question then to say alright, we're here ceasing a project that – and, of course, I should of course say this: in between the May briefing note signed by Dr O'Connell, which on any view of the evidence went up to the Minister's office, and the Department took the view that it wouldn't then action that by making it public until the Minister said so. And then, ultimately, it culminated in the Minister approval.
45 So for the Department to have gone out to the public in any sense between May and August would have been - - -

COMMISSIONER WILSON: I'm not suggesting they should have.

MR DUFFY: - - - a courageous move.

5 COMMISSIONER WILSON: I'm not suggesting they should have.

MR DUFFY: No. So - - -

10 COMMISSIONER WILSON: What I am suggesting – I think I'm not making myself very clear – is that the cancellation of Redlands, the EFTRU issue, were, in effect, steps along the way to an ultimate recommendation for the closure of the Barrett Adolescent Centre. And I have difficulty at the moment in thinking that those who recommended the closure of – sorry – the cessation of Redlands were thinking just of Redlands, that they weren't thinking of the total picture.

15 MR DUFFY: No. And, indeed, Dr Kingswell gave evidence – he was asked the very question, well, what then? And he said, well, Barrett would have to continue – now, remember when – his involvement in the question of the decision was in May 2012 – Barrett would have to continue until replacement services could be put in
20 place. That was his evidence. That's what he thought at the time would have to happen, and that was the consequence of the cancellation of EFTRU.

COMMISSIONER WILSON: But, you see, Barrett continue until new services were put in place. That has in it Barrett's going to come to and end, does it not - - -

25 MR DUFFY: Yes, but that had always been the case.

COMMISSIONER WILSON: - - - when new services are available?

30 MR DUFFY: It was always intended that way, for a long time.

COMMISSIONER WILSON: Was the Minister made aware of that?

35 MR DUFFY: The Minister was aware of the Queensland Plan for Mental Health in a more general sense, but - - -

COMMISSIONER WILSON: No, that's not really answering my question, with respect.

40 MR DUFFY: Well, that's the genesis of the decision which culminated, if you want to call it – and a – delete the word decision. There had been moves afoot, if I can put it in mutual terms, to close the Barrett Centre for a long time, that is, that - - -

45 COMMISSIONER WILSON: Well - - -

MR DUFFY: - - - it was seen as necessary because of the development of The Park as a forensic facility. That was in the Queensland Plan for Mental Health.

COMMISSIONER WILSON: That's right. The Queensland – the Plan for Mental Health, maybe not expressed in the plan itself, but in accompanying documents, envisaged the relocation.

5 MR DUFFY: Yes.

COMMISSIONER WILSON: It's a different issue from the way it had developed in the minds of the Mental Health Branch by mid-2012, what they were thinking, it seems to me, was not a relocation, not a Redlands – which wouldn't have been a
10 replication – not a Redlands. They were thinking of something quite different.

MR DUFFY: Well, immediately prior to this decision in May 2012 Redlands was continuing, but it was never going to meet that; we know that. But that's the hypothetical: what if it had continued on its way? Well, it would've – the buildings
15 etcetera would have become available in late 2015, and would have, presumably, been used in some way, not for people who were at Barrett at any relevant time, but perhaps as part of something that was developed, ultimately. But it's a really difficult hypothetical, because as at the end of 2015 the thinking – certainly by then, if not well earlier than that – the thinking had changed around what the shape of
20 [indistinct] that you would need.

The – I'll try and be as brief as possible about some of these other topics. A question was put in this context: did Dr Kingswell have any involvement in the planning of EFTRU, that is, in terms of the scheduling? Can I merely draw your Honour's
25 attention to the fact that he didn't. He – in his supplementary statement, in answer to paragraph 2(c), he deals with those matters.

So I've dealt with the question of did Dr O'Connell – or should Dr O'Connell have inquired about EFTRU. The flipside of that is, well, should Dr Kingswell have said
30 something to him about it, and I think we've traversed that ground. The answer to that is, well, no, because it was wholly irrelevant in any practical – not just a legal sense, but in any practical sense it was irrelevant.

Now, Dr Kingswell has given his evidence about what the impetus for the decision was. He undoubtedly, in addition, had the view that what was proposed at Redlands,
35 an 18 to 20 bed facility and so on – and the detail of that's outlined in our written submissions – he had the view as well that what was then proposed was no longer contemporary. But, again, addressing the hypothetical, if he had never been asked to look for savings, is it likely that he would have, of his own motion, recommended
40 that because of the contemporary care issue have recommended the cessation of Redlands. Well, it's hypothetical, but the likelihood is no. You will recall that he gave some evidence that he wouldn't voluntarily offer up a capital facility that otherwise wasn't called for to be cancelled. But, obviously, exactly what the components of the care that would have been provided within that building would
45 have had to evolve and be developed.

Now, Dr O'Connell, of course, in his evidence thought that the question of the model of care was the most important issue. That's his view, and it's a view that it should be accepted he genuinely held. He gave some detailed evidence in his, I think, supplementary statement – I'll just turn it up – about the basis for his view. This was
5 by reference to the question of the emerging clinical preference, and your Honour will recall in paragraph 4(a) of his statement – and this is contained at document reference DTO90000020003 – and then over the page he outlines the detailed conversations and so on that he had had over the last two decades with adult and
10 child psychiatrists, as well as documents and so on.

Now, I'm not sure whether anyone wants to be critical of him for acting in that way, but can I say this: that's precisely the way that professionals acquire knowledge. They acquire it from, of course, their own experience. They sometimes go to lectures and sometimes read books and articles, but they also acquire knowledge
15 from discussions with their fellow professionals over many years. And, in my respectful submission, there'd be no basis to call into doubt either that Dr O'Connell genuinely had those discussions and so on over those years, no basis to call into doubt that that was the true effect of those discussions, and that he therefore genuinely held those views and those views were correct. There's no basis to think
20 otherwise. Now, that was the most important factor from his point of view.

COMMISSIONER WILSON: Mr Duffy, I don't think anyone questions the honesty of Dr O'Connell's evidence in this regard, and I don't think anyone questions that that is a way in which professionals gain knowledge, nor do I think anyone questions
25 that the view he had formed was in accordance with the general thrust of the development of thinking in mental health. The problem for your submission, as I see it, is this: as the evidence has been presented – well, as it has come out in this inquiry, most, if not all of the specialist adolescent psychiatrists, who are a small subset of psychiatry, seem to accept that there may be a small subset of mentally ill
30 adolescents for whom some form of subacute inpatient care is appropriate, and it may be that Dr O'Connell's discussions didn't descend to that level of sub-specialty.

MR DUFFY: Well, can I say this: that view, that there is that small subset, is certainly the prevailing view. It's a view with which Dr Kingswell expressly agrees.
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COMMISSIONER WILSON: Yes, he has - - -

MR DUFFY: Quite.

40 COMMISSIONER WILSON: - - - and, ultimately - - -

MR DUFFY: So I'm not terribly sure – only because I personally don't recollect whether Dr O'Connell was asked this very question – but relevant to Dr Kingswell's position, I suppose, is this: should he have asked Dr O'Connell what his
45 understanding was? Should he have said something about it? Well, the answer is it couldn't have made any difference. Dr Kingswell might be, by inference, possessed of the knowledge that Dr O'Connell was very experienced in these matters - - -

COMMISSIONER WILSON: I just want to clarify something so there's no misunderstanding about what I've just said, my understanding of Dr Kingswell's evidence. I don't think his evidence goes any further than saying that this subset can be dealt with in a YPARC facility.

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MR DUFFY: Well, this – the questioning that was expressly put to him was, by reference, as your Honour will recall, to the ECRG report, and he was asked – and this starts at transcript page 13-23 at – commencing at line 23 – question by Counsel Assisting. After reading from the report, question:

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A tier 3 service should be prioritised; so did you agree with that?---Yes.

And if we scroll down to heading 3 – one more page down, please – you can see a recommendation, “A tier 3 service should be prioritised”?---Yes.

15

That was the answer:

Do you agree with that?---I wasn't happy with the language, but I was happy with the intent.

20

Over the page, at 13-24, at the top of the page, about – commencing about line 2:

So, yes, I was completely comfortable with the idea that we needed extended inpatient facilities for a group of adolescents, tier 3, whatever you call it. Yes.

25

So there's no argument in proof although at times one could be forgiven for thinking that Dr Kingswell had said something different to that. In truth, he never did. Now, let's test that reference to what in fact was done. The ECRG report said that should be prioritised. Now, the words used by the planning group which included Dr Kingswell – it wasn't just Dr Kingswell but it included Dr Kingswell – was, first, accept. So that's not reject, that's accept. And then they said in order to comply with – let me call it in my terms – modern developments that could be accommodated or can be investigated to be accommodated in this, bearing in mind that of course the ECRG had itself said we're not going to tell you anything about how you should implement this. We're just giving you the concept. So the concept that there needs to be a tier 3 facility which, it follows, means a bed-based facility for a group – that was accepted.

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COMMISSIONER WILSON: What do you mean – you're using tier 3 service, tier 3 facility, a bed-based service. Now, I want to be clear what your submission relates to. Does it relate to a youth resi? Does it relate to a Step Up Step Down which seems to be roughly equivalent to a Victorian YPARC, not the same. Or does it relate to something more intensive?

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MR DUFFY: Well, when the planning group came together – so when Dr Kingswell was first confronted by this recommendation and agreed with it that wasn't developed. That is, exactly what shape it would take was not developed.

And that's precisely, of course, what the ECRG knew and said. Work will have to be done about you do all this but – so the answer is at that time I'm not certain that anyone had precisely in their mind exactly what shape it would take. As it developed the youth residential facility at Greenslopes was implemented in order to meet an
5 actual need that developed – and your Honour will recall the email in November that Dr Kingswell sent to Dr Cleary saying, look, we've got to do something, what about this. Or not so much what about this. Lesley Dwyer has suggested this. I've got money to do it, can I have your approval to shortcut the funding process and get this done because she needs it. So that's what that was done.

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Now, was that exactly what anyone in the ECRG or the planning group had in mind when they were talking about tier 3? I don't know. I suspect they wouldn't have known precisely what they had in mind. Subsequently, of course, to all of this the YPARC in Victoria was examined. They had a look at it. There were proposals that
15 reflected, I think, from the evidence of Dr Stathis that they were in effect looking at a YPARC or a variation to a YPARC and perhaps the best place to look at that, your Honour, is in the evidence of the report, I think it is, from Ingrid Adamson following upon the visit to the YPARC in Victoria. And so they were saying, in effect, look, let's do this as a variation.

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COMMISSIONER WILSON: But Mr Duffy, I'm conscious of the time. I don't want to take you off course. What I'm interested in is trying to clarify what it is that you are submitting Dr Kingswell accepted was necessary?

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MR DUFFY: He accepted that a tier 3 facility as described – sorry, a tier 3 service as described in the ECRG report was necessary – a service.

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COMMISSIONER WILSON: And is this being unfair in interpreting your subsequent submissions as at that stage no one was really sure what that meant or Dr Kingswell, like others, had different views as to what that meant?

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MR DUFFY: I'll come back to the question of different views because, of course, there have been differences as to what it meant. There's confusion as to what it meant. But can I just remind the Commission that this is what the ECRG said about what they were recommending. This elements document is not a model of service
40 and that's emphasised. It is a conceptual document that delineates the key components of a service continuum type and so on. As a service model elements document it will not define how the key components will function at a service delivery level and does not incorporate funding and implementation of planning processes.

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So one might infer from that that the ECRG did not itself have a clear picture in mind. It had identified the elements that it thought were important and those were accepted. That's what at the time Dr Kingswell accepted. Then the very planning
45 that was envisaged by the ECRG then went on and took place and it took its ultimate shape. But I think it would be unnecessary for your Honour to try and work out whether at that time anyone in the ECRG had a clear idea that what was ultimately

put in place either as a Step Down and Step Up, YPARC, residential or otherwise that that's precisely what they had in mind. The real question is – what they plainly had in mind is you will need services to cover these people. We accept that it's going to be a bed-based service.

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COMMISSIONER WILSON: Alright. Well - - -

MR DUFFY: So - - -

10 COMMISSIONER WILSON: I just will remind you that I will take account of what they said in their preamble as well as in the - - -

MR DUFFY: Yeah.

15 COMMISSIONER WILSON: - - - list of recommendations. But let's move on.

MR DUFFY: Yeah. Can I just give you some other quick references to the transcript. At transcript 13-37 Dr Kingswell expressly accepts that some patients need to be dealt with in a bed-based facility. It goes on to say that can be regional. It doesn't need to be concentrated in a stand-alone hospital. I can give you some more references. At transcript page 13-29, line 29 through to transcript 13-30 at line 7. Also transcript 13-44, lines 39 to 44.

25 Now, I'll briefly say this. In my submission, properly understood the ECRG was not recommending that there be a new build. And your Honour will know that Dr Kingswell was at times throughout the course of the events that unfolded frustrated that some people thought so. That was justified because – I'm not sure that it's even been satisfactorily accepted by everyone in this room that they were not recommending a new facility be built. But in my submission, properly understood, it wasn't recommending it. The most powerful thing about that is, of course, the words which your Honour can read for yourself.

35 But secondly, Dr Geppert, your Honour will recall gave evidence that she told the ECRG at the outset that a new building was not possible. These were not stupid people. It's pretty unlikely that they would have, without saying so in their report, simply proceeded on to recommend a new build. They might have, of course, said we've been told a new build is not possible. Our task is rendered nugatory unless there is or some such words. They didn't say anything like that. They were talking about services. They expressly left it to other to plan how you deliver those services. So on a proper construction and in these circumstances the ECRG can't be taken to have said that but, of course, the terminology that used – tier 3 – whether or not it complies with the National Planning Framework aside – was language that was unfamiliar to everybody. They didn't know what it meant. And that debate has continued.

45

I wanted to briefly say something about the models of care terminology issue that have been used. Sometimes, of course, witnesses have used the term “model of care”

to refer to the type of facility, if I can generalise – institutional versus community-based and so on. In other senses it's been used to refer to a detailed document spelling out how care is to be delivered. But most of the time it seems that the witnesses were referring to the first topic so that when your Honour reads references
5 such as the model of care was not contemporary and so, that's typically a reference to the first sense of the term. What this all means, of course, is that you, Commissioner, will need to carefully look at the context in which a witness gives an answer to determine what they were talking about.

10 There was reference in passing to an email sent – I've referred to it simply as the Harden email; the reference is – it's exhibit 366 – DBK0010020182 – and it seems – and I wasn't here that day, but it seems that there was some issue about what was being said, a concern being expressed in there about developing services to be up and running in time for the Barrett Centre closure, and that's so. Your Honour will be
15 familiar with the evidence of Dr Kingswell that he was frustrated that things weren't moving as quickly as he would have liked, and that email is nothing more [indistinct]

There was a reference as well – and this, again, picks up terminology issues – there was reference as well in submissions by Ms Muir, Counsel Assisting, in relation to
20 West Moreton recording in some minutes in July 2013 that Dr Kingswell had confidence in the procurement timeline to open YPARC services by January 2014. That's simply not so. He never said any such thing. The – what he had informed people following November, the November email to Dr Cleary when Dr Cleary approved the funding shortcut, so to speak, to get the Greenslopes residential up is
25 that that would be available by February. In fact, it was available in March, so nothing much turns on that. YPARC services only become something that were discussed in any detail once the matter got into the hands of Children's - - -

30 COMMISSIONER WILSON: But YPARC is still not available. If YPARC - - -

MR DUFFY: I'm sorry?

35 COMMISSIONER WILSON: If YPARC is roughly equivalent to a Step Up Step Down, that's still not available. That's planned for Cairns. What become available in March was the youth resi at Greenslopes.

40 MR DUFFY: That's exactly right, which was on the initiative of Ms Dwyer, I think it was, who raised with Dr Kingswell that services might not be available for another 12 months; your Honour remembers that. Dr Kingswell then emails Dr Cleary, saying this isn't acceptable or this isn't satisfactory. We need to, in effect, shortcut the funding to get this up. And so once that was done, work was done or funding was allocated. I think the evidence is that – to make that happen, and that was expected to be by February. It, in fact, turned out to be a month later.

45 COMMISSIONER WILSON: That's was the youth resi at Greenslopes.

MR DUFFY: That's exactly right, not YPARC. That's what I wanted to say – I'm sorry – yes. That's what I wanted to say in open session. There is one matter that I need to deal with in closed session.

5 COMMISSIONER WILSON: Alright. Well, the hearing will be closed. The live streaming should go off. Just bear with us while the Associate does this.

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MR DUFFY: Now, the – what I now have to say deals with three different things. The first is the question of the written submissions required in relation to the National Planning Framework. As I mentioned at the outset, what I had intended to do was simply refer your Honour to two things. This was originally, before
30 yesterday, refer your Honour to two things. Namely, the fact that the real relevance of them here was that Dr Kingswell was frustrated by the fact that the terminology wasn't used. That's the real relevance. As things emerged, your Honour sought some submissions. And it arose in this context – this appears at transcript page 27-60 about line 33:

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*If there is going to be reliance upon the assertion that models involving a statewide clinical bed base such as the Barrett Adolescent Centre or the Walker Centre are not considered contemporary within the framework, I am going to need to have some detailed submissions from Counsel Assisting and from
40 others as to how to interpret that framework.*

And then I won't go through the entirety of the transcript. Your Honour will remember that it then developed into a question which I kept characterising as the construction point. Now, whether I was mistaken or not, that's what I thought we were going to do. What I got yesterday and then revised, albeit only a very slightly
45 revised version this morning, was a 24 page submission which goes much further than that. It's not just on the construction. It contains a detailed analysis of evidence

that's said to be relevant to it. And it's urged upon your Honour to reject the evidence of Dr Kingswell and Dr Kotzé as to how they say the framework ought be construed, instead to accept the evidence of Dr Groves. It goes further. It's critical, in a serious way, in my submission, not only of the conclusion reached by Dr Kingswell about the matter but the way he gave evidence. It is simply not possible to properly respond to that by the end of today.

COMMISSIONER WILSON: When can you respond?

MR DUFFY: By the end of next week. This document, your Honour, is a document that has been, plainly enough, in preparation for some time.

COMMISSIONER WILSON: I'm sorry. I cannot give you until the end of next week. It will have to be early next week. Time is marching on.

MR DUFFY: Yes. I understand that, your Honour. Can I say this, there's two other matters that are of great significance that might impact upon that as well. And they are serious matters as well. Again, yesterday – when I say yesterday, I mean last night – we received from the Commission an email identifying on three pages a list of research material that it was said has been used by our research staff to help inform the work of the Commission. Now, this is obviously relevant because otherwise no one would be troubling us with it. And it must be relevant to the findings that are going to be urged upon the Commission, otherwise it wouldn't be referred to. This is the first time most of this has come to attention.

It's a very detailed list. One would have to go through it, read the material and identify two things. One is, is there anything in there that causes concern that needs to have some submissions made about it? That is, therefore, material that we might tease out of this that might be adverse to any of our interests. And, secondly, to identify material that we think should be brought to your attention because it, in fact, supports something we want to say. And, thirdly, identifying that there is other material or evidence that ought be taken into account if the matters that are identified in this research material are to be taken into account. Now, it could well be that, in fact, contrary to what we're told, this is all irrelevant. But we must presume otherwise. So that needs some time built into the timetable to deal with that. And, in my submission - - -

COMMISSIONER WILSON: I'll come to that issue in a moment and ask Mr Freeburn to respond to it.

MR DUFFY: Yes.

COMMISSIONER WILSON: Did you have another point?

MR DUFFY: What I was going to say before you ask the respondents is that what really ought happen in relation to that is there ought be some identification to the parties of which parts of which of these documents are said to be relevant for some

particular reason so that it can be properly addressed. The next thing is that, again, last evening we were given a list of an extensive number of documents which have been added to the exhibit list. Now, some or all of these may have been available prior to this in the data room. But I don't know because what we do know is that
5 some documents have been available to some parties and not necessarily all parties throughout the course of it.

But, importantly, we don't know what relevance any of this is said to have. So each of these exhibits has to be examined as well for that very same reason – well, for the
10 same purpose. Now, we've been given until next Friday to object to that. So that presumably means as part of the objection we can make some submissions about what we say should be done with a particular exhibit as well as just – because, of course, the question of objection is really a rather academic one. There's no proper ground to properly object. It's really a question of, well, what do we say should be
15 done about this. So that's next Friday. That's why I said next Friday for the submissions on the other.

COMMISSIONER WILSON: Anything else?

20 MR DUFFY: That's it.

COMMISSIONER WILSON: Mr Freeburn, could you assist, please, by explaining the research material question.

25 MR FREEBURN: I suppose, Commissioner, I can say three things. First of all - - -

COMMISSIONER WILSON: Could you speak up?

MR FREEBURN: Sorry. I'll – I should say three things. The first is that the
30 research material has been advised to the parties so that the parties are aware of material that is background and relevant to the Commission's terms of reference. In the most part, that material is publicly available and it has always been publicly available. And some of it, in fact, is referred to in discussion papers and various documents already produced by Counsel Assisting. That's the first point.

35 The second is that, yes, to some extent this material will be relevant. However, insofar as the material is to be used to form the basis of any findings against specific people or adverse findings that material will be identified in the course of any notices that are issued by the Commission. And Commissioner, you will be aware that the
40 process from here involves, if there is proposed to be a possible adverse finding, the parties will be given notice of that and that - - -

COMMISSIONER WILSON: You mean the relevant party against whom such a finding might be made - - -

45 MR FREEBURN: Yes.

COMMISSIONER WILSON: - - - be given notice.

5 MR FREEBURN: Yes. And insofar as any of this research material bears upon those questions, that party will also be identified of that material. Now, we received overnight from Mr Springborg's lawyers – in fact, we received this morning a letter raising this issue and we're in the course of preparing a response and a response will be provided probably by this evening and, if not, over the weekend.

10 COMMISSIONER WILSON: Anything else?

MR FREEBURN: Thank you, Commissioner.

15 COMMISSIONER WILSON: Before I say something does any other counsel wish to say anything about this issue? Yes, Mr O'Sullivan.

MR O'SULLIVAN: May I hand up the letter to which our learned friend refers. I'm instructed that the letter has been circulated to others. May I - - -

20 COMMISSIONER WILSON: Others being all other parties or only selectively?

MR O'SULLIVAN: No. All other parties, if it please the Commission.

25 COMMISSIONER WILSON: Right. Yes. I have the letter. I've seen it. It came in this morning.

MR O'SULLIVAN: Thank you, Commissioner. We submit that your Honour would direct that the process that is requested in this letter occur. You should direct that that occur, namely, that your staff advise the parties of each publication in the list that the Commission intends to rely upon or may rely upon specifying which part of the publication is proposed to be relied upon and for what purpose and the parties are given leave to provide written submissions within a set timeframe that you will fix in relation to that information.

35 Secondly, we submit that you should direct that your staff advise the parties as to whether the Commission – you or your staff have, in carrying out the Terms of Reference, made any other inquiries which the parties have not yet been made aware of including consultations with any person, views of any place or other information gathering and, to the extent that the inquiries have been made, provide details.

40 The reason that we submit that's an appropriate direction to make is that your Honour has extensive powers and almost unfettered discretion as to how you will inquire into and report to the Premier. It's entirely a matter for your Honour. The only matter that your Honour would be concerned and must be concerned to ensure is procedural fairness as afforded to the parties. That's also a matter for your
45 Honour, not for me or anyone else. You will make that judgment about what is fair and not.

The submission we make is that to afford procedural fairness in the sense of giving parties a right to be heard, it would be necessary to adopt the course that we urge upon your Honour so that parties are able, if they wish, to make such submissions as they see fit on the particular matters which might fall out of this research material that might be relied upon or any other investigations that have been carried out. Now, the practical problem that exists is it's Friday, 15 April, your Honour. Time is a driving force in everything because your Honour has made very clear there will be no extension and we all need to assist you to achieve the outcome that needs to be achieved. The best report that can be done in the time – that's what we're obliged to assist with.

Now, the problem that exists – the timing problem – is not of the making of any of the parties. We had been unaware of the existence of this material or that research was going on – I withdraw that. We were aware from day 1 that there six documents referred to and we were also aware that there had been, from time to time, reference to research materials. We accept that. We had not been aware that there have been what's described in this email as a research staff and we had not been aware of the extent of the material – and it's not suggested, your Honour, that every single document here is a document that's been previously identified and we understand the position to be that that's not the case.

Now, that's not a problem of our making – of the parties. It's a problem – and there's no need to attribute blame. It's a problem that exists today because it's only yesterday that we became aware that this was going on. Now, there are only two courses, in our respectful submission. Either your Honour accedes to the directions that we say should be made, which is the better course, or your Honour disregards – or declines to have regard to this material. That's not an attractive course because that will arguably impair the quality of the results so we submit that the appropriate course is your Honour has reliance upon it and the parties are given an intelligent opportunity to say something. It may be that there's a nil return. It may be the parties say thank you for that. We've considered all of these – thank you for the three-page letter where you've said it's report A, B and C, this page and this is the point. Thank you very much. We have nothing to say. And one can imagine that may be the response. It may be a nil return. But what, in our respectful submission, needs to happen at least is that, as a matter of fairness, the opportunity to say something needs to be given. May it please the Commission.

COMMISSIONER WILSON: Does anyone else want to say anything? Mr Freeburn – sorry, Ms McMillan.

MS McMILLAN: Just briefly. I don't have much to add to what my learned friend, Mr O'Sullivan, said but this: the notice of a proposed adverse finding, of course, doesn't refer to the evidence behind it nor, therefore, the research. And secondly, it doesn't answer the point that, for instance, if you're looking at Terms of Reference 4 then what research might be relied upon about any recommendations that you seek to make. One could readily imagine that might be where that goes to. Another example might be – my learned friend, Mr Freeburn, referred to contemporary

models of care and different evidence about that. Well, that might be something that that research goes to and that won't be identified either. So the difficulty – it's a practical one. I agree with my learned friend, Mr O'Sullivan, it's not about apportioning blame. It's about this needs to be done in a transparent way.

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COMMISSIONER WILSON: Mr Freeburn.

MR FREEBURN: Commissioner, that's exactly why – that is, the transparency is exactly why a list of these documents has been produced. That's the first point.

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The second point is in relation to Mr O'Sullivan's assertion that only yesterday did he become aware that there was research going on – it's just plainly wrong and one only needs to refer to the transcript of the first day of the hearings where we produced a discussion paper which attaches a whole lot of tables including discussion paper 4D which is the one that explains the AMHETI continuum and contains quite a lot of research which I am sure has found its way into this list.

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The question really is this: what Mr O'Sullivan really seeks to do – and, in my submission, he goes further than what Mr Duffy's concern is – is to interrogate the Commission about its processes. There is no legal basis for that. The Commission is content – sorry. As Counsel Assisting we are content to be as transparent as we can, and we will provide an answer to Mr O'Sullivan's letter. But it should be borne in mind that this process is not an adversarial process. It's a fact-finding process, and it's a fact-finding process by the Commission, not by the parties. And we are conscious in the course of that there may be a potential for adverse findings, and there is provision in the Commission's process for dealing with that concern.

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COMMISSIONER WILSON: Thanks, Mr Freeburn. Can I begin by endorsing what Mr Freeburn has just said about the nature of this process, that it is a fact-finding process by the Commission, not by the parties. The Commission has been very conscious all along that the process has the potential to reflect adversely on different people. That is in the nature of a Commission, and that's why the Commission is so strictly bound to afford procedural fairness to all of the parties. It has endeavoured, so far as it can, to conduct the proceedings in an open manner and to make any material upon which it might rely from the vast array of material – over 100,000 documents, for example, that have come into its possession – available to the parties.

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It is, in my view, totally consonant with its function that it carry out background research to make sure that I, as Commissioner, and all members of the Commission staff have an understanding of the technical areas to which this inquiry relates. It is essential at all times to respect the need for proportionality. We saw that with respect to the email question, for example. If the Commission were to require every potentially-relevant email it wouldn't be able to complete its work this year, probably, because those emails at the earliest wouldn't be available until August, we were told. So the proportionality relates to time. It relates to expense also.

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5 It was, as I understand it, purely out of an endeavour to be as transparent as possible that the list of publicly-available material relied on as background material was made available to the parties. The fact that research has been going on has never been any secret. As Mr Freeburn said, one only needs to look at the discussion papers to realise that, and I'm sure that people know there are certain members of staff employed as research officers, as is the usual case with a Commission of Inquiry these days; there's nothing different about that.

10 It is the Commission's intention with respect to any potential adverse findings not merely to supply a statement of the potential finding, but also a short statement of the basis upon which it might be made, and there will be an opportunity to respond to that.

15 It is, in my view, inappropriate for the parties or any of them to seek to interrogate the Commission as to its processes if that is what is intended; I'm not sure. But whether or not that's a fair characterisation of the parties' intention, I emphasise to everyone, including members of the public, that the Commission is very conscious of its obligation to afford procedural fairness and will remain conscious of that obligation to the very end. I bear the ultimate responsibility of ensuring that that is done, and I don't propose to accede to all of the submissions that have been made in relation to how the Commission ought to proceed in relation to this matter.

25 All of the statements that have been obtained have been provided to the parties through the online data rooms. They have notice of the documents on which the Commission may ultimately rely through the very extensive exhibits list, which they have had the opportunity to make submissions in relation to along the way. They have now been informed of background material.

30 It is, again, not a matter in any way sought to be withheld from the parties, that some time last year people from the Commission went to the site of the Barrett Adolescent Centre in the presence of representatives of West Moreton, nor is it in any way intended to be withheld that earlier this year people from the Commission attended the Adolescent Mental Health Unit at the Lady Cilento Hospital, in the presence of people from the Crown. I don't intend to take those matters any further.

35 If, on perusing the list of background material, anyone – any of the parties wishes to make any submission in writing, they should do so as soon as possible and it will be considered, but I'm not going to set a precise timeframe for everything else in association with setting a timeframe for that. Efficiency, questions of time, questions of proportionality make it necessary that the Commission move on with the next phase of its work. But if something should arise at the last minute, as it has happened in other inquiries, and it is really of significance, it will be taken into account and whatever has to be done as a consequence of that arising at the last minute will be done. But I certainly hope that there won't be any last-minute issues.

45 So that is all I wish to say about the research material. In relation to the written submissions on the National Mental Health Services Planning Framework, Mr Duffy

has asked for more time to respond. Is anyone else asking for more time so I know what the position is before I deal with his submission? Mr O'Sullivan.

5 MR O'SULLIVAN: We're not asking for more time, but we've got some that we've done this morning, and we're hoping to give you the rest by 4 pm.

COMMISSIONER WILSON: That'll be fine. Anyone else? Well, Mr Duffy – Ms Wilson.

10 MS WILSON: We will do what we can in the time. It may not be as extensive as we like, but we'll meet what we can this afternoon.

15 COMMISSIONER WILSON: Well, I take it Mr Duffy's submissions simply aren't ready yet, and I do want to receive those submissions. I'll give him until lunchtime on Tuesday. Alright. Anything else, Mr Duffy?

MR DUFFY: No. Thank you, your Honour.

20 COMMISSIONER WILSON: Alright. Well, we'll take the morning break until 20 past 11.

ADJOURNED [11.04 am]

25 **RESUMED** [11.26 am]

30 COMMISSIONER WILSON: Ms Wilson.

MS WILSON: Thank you, Commissioner. I believe that I'm next.

COMMISSIONER WILSON: Right.

35 MS WILSON: Commissioner, I'm very conscious of the necessary time constraints that today poses, and I want to be as efficient as possible. Commissioner, there is one matter that appears it is of great interest, and that was raised on Monday, and that is the interest of the communications between West Moreton and Children's, if I can call it that – when I refer to Children's I'm referring to Children's Health Queensland
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COMMISSIONER WILSON: Yes.

45 MS WILSON: - - - about the development of a new suite of services, and whether there was any confusion between West Moreton and Children's Health. And as I said on Monday, this necessarily involves – it's like a jigsaw. It necessarily involves an examination of a number of documents and putting them into an appropriate

order. And I thought the most efficient way to proceed is to set out a chronology with the number of documents referred to.

5 Commissioner, you have received our written submissions, and I've provided these written submissions because it's, I think, just the most efficient way to proceed today on this issue. Commissioner, as you see them they refer to a number of documents. I have provided hardcopy documents to Counsel Assisting, and I have a copy for you if you wish.

10 COMMISSIONER WILSON: Commission staff have copied it for me. Thank you very much.

15 MS WILSON: Now, why I thought that was the best way to proceed in terms of open and closed court: I refer to a number of SWAETRI steering committee minutes of meetings. There's sometimes confidential information in there, and some of that comes from Ingrid Adamson's statement, which hasn't been able to be uploaded. So working with what I've got, I thought that was the best way to proceed.

20 COMMISSIONER WILSON: Very well.

MS WILSON: Commissioner, we have done rather extensive submissions setting out the documents.

25 COMMISSIONER WILSON: I found them on my iPad when I woke up this morning, so I've had a quick read through them. But I can't pretend to be fully on top of them.

30 MS WILSON: And that's what I just thought. I just would step you through them and make some observations along the way, and perhaps it's more of a document that can be more consumed later.

COMMISSIONER WILSON: Very well.

35 MS WILSON: Now, what we've done is we've set out a number of documents, and it does not purport to be a comprehensive analysis of all the SWAETRI steering committee documents, the oversight committee meetings, the West Moreton Hospital and Health Board meetings and correspondence and any other meetings. And we have then, when we've gone to those meetings, on occasion we have taken some sort of excerpts out of the documents. There's a lot of content in them. I don't want to
40 necessarily create the impression that that is comprehensive, what we've done. Ms Kefford can only type so much, so it was – what we've done is just – where we thought was relevant other parties may think other parts are relevant, and it was just to get a picture, or, as I call it, sort of, the fabric.

45 We say – we start – if we can start at 1.2, which is the state's position, and I will not read out my submissions. But if I can take you to paragraph 10, where we state that members of the West Moreton Hospital and Health Service were embedded in the

committee's task for the planning and development, what we can see from looking at these documents is Lesley Dwyer was – who was an ex officio member of the board – she sat on the oversight committee, and Leanne Geppert – Dr Geppert – also attend the oversight committee meetings, and also the SWAETRI steering committee meetings, and, in fact, often, on occasion chaired them, chaired the steering committee meetings.

Paragraph 11, we just set out the parallel process. Now, Commissioner, this is an important platform to view the evidence, that West Moreton were working on the transition arrangements, to develop a wraparound care and the planning and development of the suite of services was tasked with Children's Health Queensland, when we see the documents. Going through the chronology as quickly as I can, 24 May 2013, that's a West Moreton meeting, board meeting. And, Commissioner, have the documents that Commission have provided to you – have they put the tabs in it?

COMMISSIONER WILSON: Yes, they have.

MS WILSON: Okay. So those documents can be found at tabs 1 and tab 2. If we can start at paragraph 13, which is tab 2, which is the agenda paper, and that is set out in paragraph 13, for convenience. And where it says that the closure of the Barrett is not dependent on the next stage, is progressing and consulting on a state-wide service model, and refers to that it's relevant to the needs of the current and wait-list consumer group of BAC, and the capacity for wraparound care in their local community services. And they noted that this is feasible to commence now; that would assume to be the wraparound care and the transition process. We have also set out in our submissions at paragraph 13, paragraph 15 of this agenda paper, which is under the heading of Consultation.

Commissioner, the only members of the West Moreton Hospital and Health Board from whom Counsel Assisting presented evidence was Dr Corbett and Mr Eltham. There were three – there were six members of the West Moreton Hospital and Health Board. There were three ex officio members; for example, Ms Dwyer is one of them, as the chief executive officer. And then, sometimes, there are others – when you look at the papers, there's other invitees. Ms Kelly was another invitee on occasion, and she came and sat on the meetings.

We set out then in relation to the evidence of Dr Corbett at paragraph 16, and Mr Eltham in relation to the 24 May 2013 meeting. At 16, paragraph (b), we see that Dr Corbett stated that the advice of the Barrett Adolescent Planning Group was that the target group is the current and wait-listed patients, and it is not imperative that a state-wide model is operational for those patients. And then we set out – and then you can see in the following paragraphs what her focus was, and that was on ensuring that a proper and appropriate wraparound care was being provided, rather than the finalisation of the model in the state-wide service.

At 16, paragraph (f), which we can see on page 7, the board received advice from executives, but with the knowledge that they were working with and collaborating with executives from Health and Hospital Services and the Department.

5 COMMISSIONER WILSON: Can I interrupt for one quick moment, Ms Wilson?

MS WILSON: Certainly.

10 COMMISSIONER WILSON: You're conscious that these are on the screen, these submissions?

MS WILSON: And I note there is one part that if there's any confidential I will let everyone know so that it doesn't go up.

15 COMMISSIONER WILSON: Alright.

MS WILSON: Mr Eltham, we set out the evidence there, where it talks about what his understanding was as at 24 May, and then he was asked about the interim period at paragraph (c). And, interestingly, at paragraph (d) what I want to – we set out the quote there:

20

What I want to suggest to you is this: there was tier 3 – no tier 3 on the horizon was here?---Not that we made of at that point.

25 And then the question was:

So these interim arrangements: could they be 10 to 20?

30 And his response back, that he would think that one year or perhaps two would be within the timeframe. Ms Dwyer was also present at the West Moreton – that meeting on the 24th, but she was not questioned about her understanding of the board papers. And then we set out the – Ms Kelly, who was the author of the agenda papers – some evidence there.

35 At paragraph 26 we've got the minutes and where they noted the recommendations of the Barrett adolescent strategy planning group and the need to move as rapidly as possible to an alternative model based on those recommendations. And the number of actions which we can see are set out in 26(b)(i) to (iv). If I can direct the Commissioner's attention to 26(b)(iv) that they were pursuing the discharge of
40 appropriate current patients with appropriate wraparound services. And then it also referred to the development of a communication implementation plan.

45 Commissioner, we do hear along the way – and it's throughout these documents and there's a number of documents talking about options. One of the terms that we've highlighted in paragraph 27 is “alternative services”. And what you've really got to do is you've got to look at it - - -

COMMISSIONER WILSON: Keep your voice up.

MS WILSON: Sorry. You've got to look at it in the context of how those terms are used in a document - - -

5

COMMISSIONER WILSON: Yes.

MS WILSON: - - - so to speak. Because sometimes it is referring to the transition process and then others – it may be referring to the other stream which is the future suite. 11 June 2013, there was a meeting between Ms Dwyer, Dr Steer, Dr Geppert and Ms Kelly. And then we get that from an agenda paper of the West Moreton Hospital and Health Board on 28 June 2013. Commissioner, for your convenience you'll find that at tab 3. And paragraph 30 – that there was a meeting of Dr O'Connell, Cleary, Dwyer, Kelly and Geppert on 17 June where there was in-principle support for closure of the BAC with an understanding the new model of service was to be identified and developed. We've got there “not operational”. That's not in the quote. That's obviously our comment but it's clear that the words were used “was identified and developed” which is a significant away from – in this – operational. And that the discharge of current patients of the BAC would involve wraparound services.

10

15

20

And we set out in paragraphs 31 to 33 – other matters that are referred to in that West Moreton meeting noting that at paragraph 3 it refers to “with appropriate wraparound services” and in paragraph 4:

25

The Minister to be updated regarding proposed closure of Barrett, the plans for development of alternatives and community engagement strategy.

30

Next document is the briefing note for noting to the Director-General. This briefing note was on 15 July. It was authored by Dr Geppert, cleared by Ms Kelly, verified by Ms Dwyer. Dr Geppert was not questioned about the briefing note but Ms Dwyer and Ms Kelly were. And we set that out in paragraphs 40 to 44.

35

COMMISSIONER WILSON: This is the briefing note that the D-G signed on the day of the meeting and the Minister – I think his chief of staff signed it – was it about 31 July. It was certainly well after the meeting anyway.

40

MS WILSON: That accords with my recollection, Commissioner. Then we have the meeting of the Minister on 15 July. And the next meeting that we could identify is 23 July – well, we can say that there was a meeting on 23 July by the Barrett adolescent strategy meeting.

45

COMMISSIONER WILSON: It's called the Barrett adolescent strategy meeting. At that stage was there a committee called that or was that just what - - -

MS WILSON: No.

COMMISSIONER WILSON: - - - someone decided to tag that particular meeting?

5 MS WILSON: My understanding is that that wasn't a committee per se but the matters that are discussed in the Barrett adolescent strategy meeting then get morphed into SWAETRI. And we can see who is at that – and that was to discuss the implementation stage of the Barrett adolescent strategy. There were a number of West Moreton attendees there that we can see and there were Dr Steer, Associate Professor Stathis and Ms Krause from Children's as well as Mr Brown from Queensland Health and Dr Kingswell . And that's – the minutes record three items
10 under discussion which we set out at 53.

COMMISSIONER WILSON: Interestingly, it seems at that meeting that Queensland Health was itself taking an initiative with respect to YPARC and the youth resi separate from the work Children's Health was to do. Is that correct?
15

MS WILSON: It would hard to say either way just from looking at that document. The problem is with a lot of these documents that the attendees – what was discussed at these meetings wasn't explored. But what we can see, though, in the other meetings when SWAETRI becomes up and running and all of these matters are then
20 brought in under discussion with SWAETRI. So I can't give you a definite answer there, Commissioner.

COMMISSIONER WILSON: Okay.

25 MS WILSON: Just as a matter of note, Ms Kefford said that if you look at – maybe this may be of relevance that in terms of the timing – in the lead up that was before the changeover from – well, that was before the *Hospital Health Board Act* came into play.

30 COMMISSIONER WILSON: Sorry?

MS WILSON: If that has any - - -

COMMISSIONER WILSON: It couldn't have been.
35

MS WILSON: Ms Kefford's note was - - -

MS KEFFORD: Incorrect.

40 MS WILSON: - - - incorrect.

COMMISSIONER WILSON: I'll ignore that.

45 MS WILSON: So then we get into – and so the next meeting details to be confirmed following submission of a draft project plan. So what I'm trying to do, Commissioner, is to try to understand the story, so to speak, by looking at these documents but, as I said, we are limited with our full understanding of the story

because the attendees at these meetings – it wasn't explored with them what actually occurred. Now, on 30 July 2013 Dr Geppert prepared an initial draft for consideration of the initial draft project plan. And then there were revisions to that on 1 August.

5

Commissioner, in the time available we haven't been able to identify that initial draft project plan or the revisions to the draft SWAETRI project plan. But where we get this information from is that on 16 August 2013 there was further revisions to the SWAETRI project plan which we can see at – just ahead at paragraph 16 – 69 – jumping ahead. And that has on the front page a revision history so we can just look at that revision history and see who was involved at what stage. But I haven't been able to source those primary documents at least for this.

10

COMMISSIONER WILSON: In fact, as I recall Dr Stathis' evidence that project plan wasn't finalised until – was it October or November? Something like that.

15

MS WILSON: There certainly was one and we can – we go through it that we find one, I think, in September or October.

20

COMMISSIONER WILSON: Because I remember, I think correctly, that the version of it which was annexed to questions put to Dr Stathis and annexed to his statement in response, he pointed out, was a draft and that it was subsequently that it was finalised and the subsequent version was then used in oral questioning of Dr Stathis and became an exhibit.

25

MS WILSON: Yes. And if I recall that, remember he was – one project plan he was put and he said no, no, I want to see another project plan.

30

COMMISSIONER WILSON: Yes. He wanted to see the one that was finally approved - - -

MS WILSON: Yes.

35

COMMISSIONER WILSON: - - - as I recall.

MS WILSON: At paragraph 80 of our submissions we say that the project plan was endorsed by the steering committee and the oversight committee in October 2013. You will find that at paragraph 80 of the submissions. Then we have the Minister's announcement. And then on 7 August 2013 we have an email from Ms Kelly. The second sentence in that email:

40

Adolescents requiring extended mental health treatment and rehabilitation will receive services through a new range of contemporary service options from early 2014.

45

And then it talks about the young people receiving care from the Barrett will be supported to transition to other contemporary care options that best meet their

individual needs. And then in the next paragraph it talks about that West Moreton's goal is that adolescents requiring mental health extended treatment and rehabilitation will receive the most appropriate care for their individual needs.

5 COMMISSIONER WILSON: Well, that's a general statement that could relate either to the existing patients or to patients in the future, isn't it?

MS WILSON: Yes. But I think we – if we go back to that first paragraph, adolescents requiring extended mental health treatment will receive services from
10 early 2014 and from the Barrett will be supported to transition to other contemporary care. It's – just excuse me one moment. Yes. Ms Kefford pointed out to me the bottom of paragraph 60:

15 *Young people receiving care from the Barrett Adolescent Centre at that time will be supported to transition to other contemporary care options.*

And we set out some evidence there from Ms Kelly. And that is that at this point in time that she had not – the work to be undertaken by the SWAETRI committee in terms of the contemporary service options had not been identified. Now, on 9
20 August 2013 there's the letter from Dr Corbett. And if we can just stop at this point in time in terms of the operator for the document. We – no. And then what's to be noted about this is that Dr Corbett was not questioned about this letter.

COMMISSIONER WILSON: Well, I'm not sure of the significance of that because
25 this was a letter issued to a parent. Insofar as it was a communication from West Moreton to a parent, what matters is what was said in the letter, rather than what might've been the subjective intention of Dr Corbett in writing it, doesn't it?

MS WILSON: Well, I'm addressing what – in terms of the communication between
30 West Moreton and Children's Health - - -

COMMISSIONER WILSON: Yes. I realise that's a different matter.

MS WILSON: So this may very well be a question that you may wish to pose to my
35 learned friend. And we've set out, which I don't wish to be put on the screen, matters at paragraph 68.

COMMISSIONER WILSON: Yes.

40 MS WILSON: Thank you. Now, and if we can just keep it off the screen for the moment, by 16 August 2013 there's further revisions to the SWAETRI project plan. Commissioner, you will find that project plan in tab 8 if you wish to look at it at a
- - -

45 COMMISSIONER WILSON: Which version is tab 8?

MS WILSON: Tab 8 is the 16 August 2013 - - -

COMMISSIONER WILSON: Version.

MS WILSON: - - - version.

5 COMMISSIONER WILSON: Yes.

MS WILSON: Commissioner, it may not be necessary for you to go to each document. But when I get to each document I'll write what tab they are so in later times you can go back and have a look at it. We set out what this version records.
10 At paragraph (b) on page 19 – and we can go back to the screen now if - - -

COMMISSIONER WILSON: Well, I don't – no, don't do that yet because that's still going to include some of what was in paragraph 68.

15 MS WILSON: It's the following page that I'm going to, Commissioner.

COMMISSIONER WILSON: Alright. Okay. The next page. Page 20 of the document. Yes, please.

20 MS WILSON: Sorry. I've got it wrong. I've got a version that could be – a formatting issue. If we look at “performance indicating as including” - - -

COMMISSIONER WILSON: Yes. I've got that.

25 MS WILSON: Yes. And “the relevant assumptions as including also” – we've set out a number of matters there. And the last – the dot point of – that also picks up what one of the performance indicators is, is that not all of the service options with the statewide model that will be proposed will be necessarily available in early 2014. In this document there's a number of constraints that are set out. And - - -
30

COMMISSIONER WILSON: So the page that is page 20, I think, of the document should begin with the word “note”. And if it does, it can go up on the screen.

MS WILSON: Thank you, Commissioner. So it can go on the screen now.
35

COMMISSIONER WILSON: No, next page, please.

MS WILSON: Yes.

40 COMMISSIONER WILSON: That's it. Now, “target group” is an expression which has occurred a number of times in this material. Going back to the meeting of 24 May, I think, it was identified as the existing patients.

MS WILSON: That is the case.
45

COMMISSIONER WILSON: Is it used consistently?

MS WILSON: I haven't done – in the two days, Commissioner, I haven't done that level of detail of analysis. But – so I can't tell you that. Sometimes it is. I think I can recall that it refers to target group. Generally it does. Now, Commissioner, we left out a document. And that is – which I should have taken you back to – which is
5 on 26 July 2013 there was a West Moreton Hospital and Health Board meeting. You will find that, Commissioner, at exhibit 50 of statement Mr Eltham. I can have a copy of that for you that you could add. Commissioner, would you mind dreadfully if there was some highlighting on the document?

10 COMMISSIONER WILSON: I don't mind at all. No.

MS WILSON: So those – that's the West Moreton Health Board Meeting and Agenda documents for 26 July.

15 COMMISSIONER WILSON: Yes. Now, is there anything in them you want to take me to?

MS WILSON: A couple of matters of interest. If you can go to the agenda paper.

20 COMMISSIONER WILSON: Yes.

MS WILSON: At three it talks about development of alternate service options. And that then goes down also at paragraph 8 that the closure of the Barrett and cessation of adolescent services from The Park, forensic site alliance with boasted strategic
25 direction of the Hospital Health Services and the Queensland Plan for Mental Health. At the minutes of the meeting, Commissioner, paragraph 5.2 where it starts "the Board note that all references to the closure".

30 COMMISSIONER WILSON: Yes. I've got that.

MS WILSON: Commissioner, then if we can go back to the document. We go to paragraph 72 which refers to a board meeting on the West Moreton Hospital and Health Board Meeting. That can be, Commissioner, found at tab 12 and 13 of your brief or of your documents. Commissioner, on one of the agenda meeting or the
35 minutes, one refers to the 23rd, one refers to the 26th, but it's clear that it's the same meeting that's referred to.

40 COMMISSIONER WILSON: Excuse me. The 26th was the meeting of SWAETRI, wasn't it?

MS WILSON: Yes, which we can see down below. So that's the first meeting of SWAETRI, Commissioner, and you'll find that at tab 15. Commissioner, you may be interested, the document at tab 20, which is the meeting attendance register, and that sets out all of the attendees at the SWAETRI meetings.

45 COMMISSIONER WILSON: Right. Yes. Go on.

MS WILSON: Then in September and October 2013 we have meetings of the SWAETRI steering committee and the oversight committee. We then refer to, in paragraph 81, to that paragraph that I referred to you previously about the August 2013 project plan authored by Dr Geppert. And if we go to paragraph 5, we refer to the subsequent version of this project plan; Commissioner, you will find that version at tab 19. At 2.2 of that document, it sets out the key milestones to be delivered to the project.

COMMISSIONER WILSON: Sorry. I'm looking at 19. Project planning: is that what we're talking about?

MS WILSON: Yes. The – that's it. That's the version, 1.11, the project plan. And if we go to 2.2 - - -

COMMISSIONER WILSON: The deliverables?

MS WILSON: The key deliverables; that's the document. And, relevantly, we've just pulled out three of those, but we can see the key deliverables there. And, to be fair, this is the key deliverables as at October 2013. At paragraph 18, at the meeting of the oversight committee on 17 October, an update brief was prepared; Commissioner, you will find that at tab 25.

COMMISSIONER WILSON: Sorry.

MS WILSON: And at the bottom of – you – there's a – there's some page numbers at the bottom, if you can go to page 643.

COMMISSIONER WILSON: Which paragraph of your submissions are you up to?

MS WILSON: Eighty-seven, Commissioner.

COMMISSIONER WILSON: Eighty-seven. And that's tab - - -

MS WILSON: Twenty-five.

COMMISSIONER WILSON: - - - twenty-five. Okay. Thanks. Yes.

MS WILSON: Thank you. Thank you, Commissioner. We set out in paragraph 89 the number of meetings of the steering committee that we can – we got this from the meeting attendance register, which I've referred to you – referred, Commissioner, to you previously. You will see that it's – the frequency is about every two weeks. And, Commissioner, a question that you posed to me the other day was was SWAETRI still operating?

COMMISSIONER WILSON: I picked up myself that it had its last meeting in December 2014. And what happened in 2014? Did it hand in a report to someone or - - -

MS WILSON: Not that I'm aware of, and I can't actually take you, Commissioner, to that evidence. If there is, Commissioner, I'll put it on notice, and I – if I can assist you I'll get that to you. Commissioner, then we get to the 27 September 2013, which was the West Moreton Hospital and Health board meeting. Commissioner, you will
5 find those documents of the agenda and the minutes at tabs 21 and 22. The minutes are at 21, the agenda is at 22. At 93, we set out what the agenda – relevantly, what the agenda paper records. And at the meeting, which we see at – find at tab 21 at 8.2, it records that Ms Kelly joined the meeting by video conference and provided an overview of the current actions in relation to the SWAETRI strategy. And what
10 West Moreton – what Ms – the position that West Moreton supported is set out in 94(b). Commissioner, one of the matters that you raised on Monday with Counsel Assisting is the knowledge of Dr Brennan.

COMMISSIONER WILSON: Well, just before you come to that, staying with
15 paragraph 8.2 of the minutes - - -

MS WILSON: Eight point two of the minutes, yes.

COMMISSIONER WILSON:

20 *The board discussed the proposal to announce a closure date for BAC, noting that the board could not advise a firm date for closure in the absence of an alternative model.*

25 Is that what – is that consistent with what they've been saying before or, previously, had the firm closure date related more to providing services for the existing patients?

MS WILSON: I've just brought this page up, Commissioner. It refers there to the clear plan being in place for the transition of other current patients, and the
30 appropriate – I mean, this is one of the problems that we do face, Commissioner, in some respects, is actually what was meant or what was actually said there is difficult to really firmly come to any solid point, because the people who were at the meeting weren't – it wasn't explored with, because - - -

35 COMMISSIONER WILSON: Well, the minute should record what was decided.

MS WILSON: Well, yes, but then it comes down to terminology. And I think that when agendas and minutes are made is – I'm not too sure whether they're all
40 expected to be examined in detail to the level that we are doing. And so what we have to do then, Commissioner, if you're wanting to – if you're needing to glean information out of this is to read all of these documents as a whole and to see – and what evidence that has been explored with the witness to understand the context of what was being recorded and discussed.

45 But even – Commissioner, at – the knowledge of Ms Dwyer and Dr Brennan in September and October 2013 is addressed in paragraphs 95 following. There – in 97, we refer to an email chain; Commissioner, you will find that email at tab 23.

COMMISSIONER WILSON: Sorry, which paragraph?

MS WILSON: Paragraph 97 of our submissions, which refers to an email which can be found at tab 23.

5

COMMISSIONER WILSON: Yes. Thank you.

MS WILSON: And in paragraph 98 we set out Dr Brennan's evidence.

10 Commissioner, when you're looking at that, if you're going back in and looking at the transcript it will be – this evidence follows from her being taken to that email about the separate streams between Dr Hoehn at SWAETRI and she's just going to concentrate on the transition. And then all of that flows. So context being is from mid-September it's recorded in an email that her focus is just on the transition, not on SWAETRI and that what was being done at SWAETRI was not going to be affecting
15 her in terms of her transition.

COMMISSIONER WILSON: She had more than enough to do without being involved in SWAETRI.

20 MS WILSON: And it looks like that – and that's what that email effectively recognises. Commissioner, at 1.3.8, which is just above paragraph 99, that's the SWAETRI steering committee meeting. Commissioner, you will find that at tab 24. We just set out some matters of interest from those minutes. Commissioner, then we go to 17 October 2013, the oversight committee meeting. Commissioner, you'll find
25 that at tab 25. At that meeting the SWAETRI service options update brief was provided and various aspects of the proposed service model were discussed. Interestingly, Commissioner, Peter Steer – PS is Peter Steer – commented that:

30 *The work that Anne Brennan and Elizabeth Hoehn were doing involvement with the BAC has been valuable and provided new insight into the model.*

So they're using those experiences to help inform what the – the new suite of services model.

35 COMMISSIONER WILSON: Where do I find that?

MS WILSON: At paragraph 10, the first dot point.

40 COMMISSIONER WILSON: I see.

MS WILSON: And picking up on that, Commissioner, the last dot point where LG, which would be Leanne Geppert – Commissioner, you also might be interested in the second dot point, not in terms of this discussion but perhaps another.

45 COMMISSIONER WILSON: It's with respect to the benefit that they were obtaining from the work Drs Brennan and Hoehn were doing. This is putting it rather bluntly but in terms of SWAETRI's work, that was really a bonus. It wasn't

intended that their work should await the work being done by Dr Brennan or Dr Hoehn.

5 MS WILSON: No, no, no. I – from – and we can only look at it from looking through the documents and I cannot find any type of inference from that to be drawn from the documents.

COMMISSIONER WILSON: No.

10 MS WILSON: But what it does say is they're developing the model and they're getting some good information back to help inform how that model can be developed. 21 October 2013 there was a SWAETRI steering committee meeting. You'll find that, Commissioner, at tab 26. At this meeting, a statewide adolescent extended treatment and rehabilitation initiative update brief was provided. And we
15 set out that that document is, in effect, in three parts. And we set out those three parts. The first part deals with that's happening at Barrett. And the second part deals with the Adolescent Mental Health Extended Treatment and Rehabilitation Service options. And that work – that's the work for the future suite, noting that a forum was convened on 1 October. And then the third part deals with the next steps. On 22
20 October there was a memo from Ms Kelly to all chief executives and clinical directors of staff.

COMMISSIONER WILSON: This was the one Dr Stathis referred to.

25 MS WILSON: That's the case. And that is that it has commenced work. So on 22 October, Ms Kelly is telling the chief executives and clinical directors that Children's Health Queensland has commenced work and to contact Dr Stephen Stathis to discuss any clinical issues.

30 COMMISSIONER WILSON: The email wasn't in the express terms that he seemed to recall when he was giving his oral evidence. As I recall his oral evidence, he thought the email had said something to the effect, "If you need a subacute bed in the meantime, get in touch with me."

35 MS WILSON: Well, but that can be – that's the logical step because it's saying if you have a problem that can't be dealt with in your Hospital and Health Services, contact Dr Stathis.

40 COMMISSIONER WILSON: All I'm saying is it wasn't in the express terms he recalled.

MS WILSON: No, no, no, no, no. And the West Moreton Hospital and Health Board meeting was on 25 October. And you will find that, Commissioner, at tab 28. At – the minutes for the meeting record that Ms Dwyer provide an update. That's at
45 5.1.

Commissioner, we then go to 15 November 2013, that there's an oversight committee. But I've just looked back and there must've been – there was a SWAETRI meeting on 4 November 2013, Commissioner. I did think that was a bit of a gap between SWAETRI meetings and I haven't provided that document to you, Commissioner. And you will be able to find that document attached to Adamson's. We can provide that document to you, Commissioner. Every two weeks SWAETRI met. So they were at a very regular – so that's every two weeks they were meeting.

15 November there's the oversight committee. This – the minutes of this meeting go on for some time. They start then getting and talking about practical problems that they're going – that they face in a fairly – in a very clinical way, in some respects. So the Commissioner may be informed by that.

And then 18 November 2013 is the SWAETRI steering committee meeting. And perhaps if we can leave that – we can turn that – we can move to the next page, please. There was just – not for you, Commissioner, but perhaps there was something there that shouldn't have been on the screen.

On 26 November there's a letter that's cleared by Ms Dwyer where it states that – and you will find that, Commissioner, at tab 31 – noting that the model of care under development is nearing completion with work being undertaken to finalise the details of all service options. Noting the words obviously it's not operational. And Ms Dwyer explained this statement in giving evidence and we've set that out at paragraph 117.

And then we get to, Commissioner, 29 November 2013 – the West Moreton Health and Hospital Board meeting. Just looking at the words as they jump off the page:

That has been recently informed the new statewide services may take a further 12 months to be fully established.

Dr Corbett and Mr Eltham were each questioned about this meeting and related agenda paper and we set that out, Commissioner, at paragraphs 124 for Dr Corbett to 125.

COMMISSIONER WILSON: Can I take you back to 120.

MS WILSON: Certainly.

COMMISSIONER WILSON: In summary form you've got three dot points there.

MS WILSON: Yes.

COMMISSIONER WILSON: The activity-based holiday program phase 1 and the West Moreton transition service phase 2 – am I correct in thinking they were initiatives of West Moreton outside the SWAETRI process?

MS WILSON: That is the case.

COMMISSIONER WILSON: So as at November 2013 are there really three processes being undertaken? One, you've got these initiatives of West Moreton.
5 Two, you've the Mental Health, Alcohol and Other Drugs Branch taking steps towards YPARC and a youth resi and, three, you've got SWAETRI.

MS WILSON: Yes. But all of those are members of SWAETRI so they're all privy to those discussions about what's going on. And I wouldn't call it three separate
10 processes. There are some operational matters that they have looked at discussed and maybe felt that's the best way to deal with it – getting their knowledge from what obviously is occurring at SWAETRI and the oversight committee.

COMMISSIONER WILSON: But was it about this time or was it earlier that Dr
15 Kingswell was expressing frustration with the slowness at which SWAETRI was proceeding and did he take independent steps to try to get the youth resi and YPARC moving?

MS WILSON: It is about that time. I'm just trying to find that. It was 12
20 November – that was the email from Dr Kingswell to Dr Cleary.

COMMISSIONER WILSON: Well, that was a couple of weeks before this meeting.

MS WILSON: Yes.
25

COMMISSIONER WILSON: That's not in your list, is it?

MS WILSON: And Commissioner, that's behind tab 35.

COMMISSIONER WILSON: 12 November. Just a moment. I'd like to look at
30 that.

MS WILSON: Certainly.

COMMISSIONER WILSON: So is he saying in this email that Lesley Dwyer was
35 proposing a six month pilot project to deliver a youth resi and a six month pilot day program that would use existing West Moreton space. So that's another West Moreton proposal.

MS WILSON: One of the problems we've got is that this email was explored in a
40 very limited way during the hearings in terms of evidence. In terms of what Lesley Dwyer's concerns were – what she wanted – she wasn't taken to this email so we can't be assisted by that. Dr Steer was taken to the email and he gave evidence, well, it was always known the process even back at the August project plan to say this was
45 never going to be something that could be rolled out quickly. And we've set that evidence out in our submissions as well. And Commissioner, the later minutes of SWAETRI show how all of things progressed, how that all worked out. Our

submissions only were up to November because that's what we took that you were interested.

COMMISSIONER WILSON: Yes. That's alright. Go on.

5

MS WILSON: If you wish, we can assist you and go through that in the same process we've done, if that can be of any assistance to you. Because it did play out in different ways, as I understand it. Commissioner, we've set out the evidence of Dr Corbett and Mr Eltham in paragraphs 124 onwards. It is not noted that Mr Eltham, in his evidence at 9-15, lines 5 to 10, stated that – and this not included in these submissions – that he couldn't recall a report being given to the board on the development of such a model between May and December.

10

If we go through the minutes, we do see some updates coming back from Ms Kelly about what's happening. August – the ones that I could quickly find were August 2013:

15

Noted the contents of the BAC strategy.

In September it was noted:

20

Ms Kelly provided an overview of the current action in relation to the statewide project.

It was noted that:

25

The statewide steering committee had met three times.

COMMISSIONER WILSON: It doesn't say much does it, really?

30

MS WILSON: Well, it's always – I mean these are not – it's not a transcript.

COMMISSIONER WILSON: I know but in terms of what we're looking for, as to whether there was any real update of what was going on and when the services were likely to become available.

35

MS WILSON: Well – and that's all we've got. We've got just these aids that we can pick through looking at these documents and try to pick as best as we can out of it without the assistance of evidence to explain it and give it its proper meaning.

40

COMMISSIONER WILSON: Very well.

MS WILSON: Now, Commissioner, I am very conscious of my time and how much I have used up but I thought that was going to be a useful exercise to take you through it.

45

COMMISSIONER WILSON: Very useful.

MS WILSON: And noting though it does seem that we've missed a couple of SWAETRI meetings along the way. We've set out there the communications between Children's Health Queensland and West Moreton and the mechanisms. We set out in paragraph 129 the evidence of Dr Geppert. And really, this is as good as
5 we get about the evidence in relation to the coordination between SWAETRI and – between what was happening with the new suite of services and back down to West Moreton. She refers there to her role on SWAETRI, and she notes that she actually chaired and she contributed in a two-way direction information from West Moreton and information from the committee back to West Moreton.

10 Now, this is seen in the context of some questions from me, taken from the opening of Counsel Assisting, and that was about did this occur in isolation, and I took Dr Geppert through the elements of those propositions, and that's where we get this from. It wasn't challenged in any way, nor further explored to bring out, actually –
15 well, actually, what was actually happening when you – about when you got back to West Moreton. And we set that out at paragraph 130.

We also refer to that Ms Dwyer was a member of the oversight committee. At paragraph 136, we refer to the evidence of Dr Steer, that – when questioned about
20 that email from Dr Kingswell to Dr Cleary on 12 November. And then we set out some matters that we wish to make in terms of submissions for the summary that I don't need to repeat. But what is really – what's very important to acknowledge, Commissioner, is that West Moreton – members of the West Moreton Hospital and Health Service and actually an ex officio member of the board was embedded in the
25 process in terms of the oversight committee and the steering committee.

Commissioner, I am acutely aware of the time I have taken. They were the bulk of the submissions that I wish to make. In respect to EFTRU, we set out some matters there. I don't wish to take up any more time of the Commission. We really have
30 nothing to add to the submissions already made by the parties, especially the submissions made by Mr Diehm on behalf of Dr O'Connell.

COMMISSIONER WILSON: Ms Wilson, the only area which hasn't been covered – and it probably wasn't clearly enough delineated by me the other day – is this: the
35 matter of West Moreton for a while seeming to plan its own new services and what became of that.

MS WILSON: Now, that - - -

40 COMMISSIONER WILSON: Now, it may be that Ms McMillan will fully cover it and there'll be no need for any further discussion from you.

MS WILSON: That is referred to in the later meetings of SWAETRI, that is, what happened to these pilot programs. SWAETRI took over the West Moreton Hospital and Health Service's idea of a day program pilot, and so that – information from
45 where it happens from November onwards will assist you, Commissioner, if you

refer to those subsequent SWAETRI meetings, and the minutes from there. You might be able to get some assistance there.

5 COMMISSIONER WILSON: Thanks, Ms Wilson.

MS WILSON: Commissioner, I won't take up any more of the time. Our submissions are comprehensive, I thought, and we've added – we've put some other matters in there. In terms of – and this is why I didn't want to take up the time – Counsel Assisting has provided comprehensive written submissions. We've
10 responded in a comprehensive way. I can't see any merit today going through and saying which are the matters we disagree with. They're comprehensive and they're set out in a very plain way.

If I can just pick up one other matter, Commissioner, and that in terms of – I really,
15 actually, just came from the discussion this morning about the research material and the research material that if any adverse finding is made and it is based on any research material, then that will be included in any adverse – in any notice. Commissioner, where it actually may be even more important is in terms of any recommendation that you're seeking to – you may be wishing to make, because there
20 may be some assistance that can be provided in relation to that.

COMMISSIONER WILSON: Well, when I come to recommendations if I am intending specifically to rely on research material I'll give consideration to what you've just said.

25 MS WILSON: Thank you, Commissioner. So is there anything further, Commissioner?

COMMISSIONER WILSON: Thank you very much. Are you ready, Ms
30 McMillan?

MS McMILLAN: Yes.

COMMISSIONER WILSON: We'll go through until 1 o'clock, and then have a
35 break.

MS McMILLAN: Sure. Thank you. Commissioner, I might take that opportunity then just to double-check that last issue you raised with my learned friend, Ms
40 Wilson, about the initiatives of West Moreton and how that may have played out, I think is what your question is.

COMMISSIONER WILSON: Yes.

MS McMILLAN: Alright. Perhaps we'll just address that over lunchtime.
45 Commissioner, you will probably be relieved to hear that I will be, I imagine, less than two hours, because we're very grateful for the very detailed submissions that the State has provided on those issues that my learned friend has just addressed you

about this morning, so that I only need to say a few things about a number of those issues, not comprehensively. But I imagine if there are particular issues you will raise those with me if they're not already covered and I don't cover them.

5 Can I just hand up a brief – there's three pieces of paper I wish to hand up. One is some submissions about general legal propositions, the second one is in relation to the communication between West Moreton and Children's Health, and a submission about EFTRU, and communication with the family. Sorry, there's four pieces of paper. They have been distributed to the parties, Commissioner.

10

COMMISSIONER WILSON: We'll treat these are supplementary to your - - -

MS McMILLAN: Yes.

15 COMMISSIONER WILSON: - - - existing submissions.

MS McMILLAN: Thank you, Commissioner.

20

COMMISSIONER WILSON: Yes.

MS McMILLAN: Commissioner, some of them refer to matters which, obviously, shouldn't be put on the screen, particularly the communication with families. I don't, at this stage, intend my submissions to be necessarily in closed court, but if there's something that arises, naturally, I will raise that.

25

Can I say that in relation to two issues that Ms Muir raised on Monday – which seems a very long time ago now – about two points in our submissions, our primary submissions, that was a reference in 6-22 as to 50 families. Quite rightly, it should be 34 families, not 50. It was in our submissions as 50. I checked the opening again at 6-22, and it should be 34, rather than 50.

30

COMMISSIONER WILSON: Bring up your submissions. Paragraph again?

MS McMILLAN: Sorry.

35

COMMISSIONER WILSON: Did you say 6-22?

MS McMILLAN: No, sorry. That was the reference in the transcript. I apologise. Just – 2.4, Commissioner, page 2 of the substantive submissions.

40

COMMISSIONER WILSON: So instead of 50 it should be?

MS McMILLAN: Should be 34, and I took that – referenced it at the transcript 6-22 from the opening of Ms Muir.

45

COMMISSIONER WILSON: Right. Thank you.

MS McMILLAN: And the point was it wasn't an assertion that there had been evidence held back, and I corrected that later with Ms Muir. What it was was you should be cautious about extrapolating from that. That was the point, really. And it's equally open to infer that they didn't necessarily have a complaint about Barrett.
5 So that was the point. It wasn't an assertion that there had been evidence held back; wouldn't make that assertion.

The other issue is the patient profiles. Now, there was the first document, if I can put it this way, that had been in circulation earlier. I adopt what my learned friend, Mr
10 Diehm, said about that, that, as I understood, paraphrasing his submission, that it was really an aide-memoire rather than anything else, and I understand - - -

COMMISSIONER WILSON: That was the A3 document that was the list of potential transition clients; is that what you mean?
15

MS McMILLAN: I believe so, yes.

COMMISSIONER WILSON: Yes.

MS McMILLAN: And then there was the later document we received Monday night, some, approximately, 17 pages, and I'll make some submissions about that in due course. But otherwise, that's what we wanted to say about those corrections, if I can put it that way. And the point I think Ms Muir, with respect, missed was we were saying that you need to be careful in evaluating Professor McGorry's opinion
25 because he saw no source documentation, and there are issues around what might be – what were the patient profiles. So that was the point of that submission being made, and therefore evaluating his evidence as a whole.

The second issue is we adopt the submissions of Dr Mellifont in relation to her
30 general submissions, but also her oral submissions about, in particular, transition and discharge of the patients she addressed you on. And I won't descend into any more details unless you want me to.

We also adopt, generally, the submissions of Mr Diehm and, particularly, his
35 explanation orally to you of what contemporary care means. And, again, reinforce what he said to you that, in effect, that was fairly remarkably consistent, what all of those witnesses said in contradistinction to what Mr Freeburn had said to you. I think it also needs to be borne in mind, Commissioner, that that evidence was from an array of witnesses, some of whom were clinicians and some who weren't. And, in
40 fact, you'd be somewhat suspicious, I would've thought, if everybody gave exactly the same word for word description.

Dr Geppert, at transcript 10-12, lines 1 to 18, gives a good explanation, I would submit to you, about what contemporary models of care are. I should also say that,
45 in effect, what a number of the witnesses and what my learned friend Mr Diehm really iterated to you was the community based care is utterly consistent with the objects of the *Mental Health Act*.

COMMISSIONER WILSON: Wherever it's possible.

5 MS McMILLAN: Wherever it's possible. Absolutely. Yes. I mean, it's all through the evidence. There's an acknowledgement that it's not always able to be in the community. Nor should it be said too that there might be periods of time where it can't, for any patient, may not be able to continue in the community which is why, obviously, we have the auspices of the *Mental Health Act* with various categories of orders that can be made.

10 We also adopt his submissions about particular patients he made submissions to you about, particularly in relation to Dr Brennan. And also his submissions to you about swing beds could be perhaps made up to a suboptimal standard.

15 COMMISSIONER WILSON: You're talking of Mr Diehm's submissions?

MS McMILLAN: Yes. Yes, I am. We adopt the submissions of my learned friend Mr O'Sullivan about - - -

20 COMMISSIONER WILSON: Sorry. What did you say about swing beds and suboptimal?

25 MS McMILLAN: He made some submissions to you about what Dr Stathis' evidence was in answer to a question you posed to him. We adopt the submissions of my learned friend Mr O'Sullivan in relation to EFTRU. He made some earlier submissions about the Mental Health Framework and the ECRG. The difference that we have with Mr Springborg's submissions, as I read them, is really about the availability of funding. And because, as I understand it, paraphrasing it broadly, it's like, well, you could've asked for funding if you needed it. I simply underline that from my client's perspective and the various employees, it was clear from all of the evidence it was a fiscally tight environment. And I refer you to my learned friend Mr 30 Duffy's submissions at paragraph 88 about that to 118, about the fiscal repair strategy.

35 COMMISSIONER WILSON: Are you referring to the evidence of Mr Springborg to the effect, "Look, this cancellation of Redlands wasn't a money-driven decision. If I'd been persuaded that it was right to continue with Redlands, the money would've been found." Is that what you're referring to?

40 MS McMILLAN: I think it – no, it was the closure of Barrett. That a tier 3, the build for the tier 3 - - -

COMMISSIONER WILSON: Okay.

45 MS McMILLAN: Yes.

COMMISSIONER WILSON: I want to be sure I'm remembering the evidence that you're referring to. Is this evidence of Mr Springborg or is it a submission of his counsel?

5 MS McMILLAN: It's a submission.

COMMISSIONER WILSON: And it's a submission relating to the failure to build another tier 3?

10 MS McMILLAN: Well, it's about the funding available for a tier 3 build. If you want, I'm happy to check it over lunchtime.

COMMISSIONER WILSON: If you would, please, I'd be grateful.

15 MS McMILLAN: Alright. Thank you. Again, we adopt – so what I'm essentially saying is that there's not a great deal of difference between what Mr Springborg contends and what we say our understanding was. They can both perfectly be correct, with respect. It's a difference of understanding. We generally adopt my learned friend Mr Duffy's primary submissions. And, particularly, we say you have
20 assistance about paragraph 209 re the standing down of Dr Sadler. He makes, with respect, very well the point it's not about the closure of Barrett with the issue of Dr Sadler, the standing down. It was that this confirmed there were governance issues.

25 And can I add to that, there were wider issues. If you recall the evidence of Ms Kelly saying that there had been other issues about governance and she referred to a number of incidents. One of them referred to a particular nurse. And if you want, I can turn you up the evidence in relation to that. So we don't want it to be thought it was solely restricted to that. There were governance issues. And at one stage, she's recorded as saying, "Barrett has hardly been a shining light in the last few weeks."
30 And my learned friend Mr Freeburn cross-examined her about that.

COMMISSIONER WILSON: But when the decision to close the Barrett Adolescent Centre was made, governance issues, even if they existed, were not put forward as a reason supporting closure, were they?
35

MS McMILLAN: They were not iterated in a written form as in one to five, yes, it's reason number 5. No, it wasn't. Well, I've not read it and I stand to be corrected but, no. But it was permeating through. And I say it becomes relevant because there was this ongoing in the 2003 and 2009 reviews about not being a contemporary
40 model of care. Issues of governance were raised in those. So it had percolated along for a number of years. So if I can put it that way, yes, it's relevant. No, it wasn't listed, as I understand it. You won't see it in a briefing note. You won't see it in anything of that kind. It doesn't mean it wasn't a real issue. That's my point in relation to it.
45

COMMISSIONER WILSON: If there were issues, they hadn't been addressed either when the Barrett Adolescent Centre was being run, if I can say it, directly by Queensland Health or post 1 July 2012 when it was being run by West Moreton.

5 MS McMILLAN: Well, that – obviously, my client had only come into being in July. And there were issues and you heard me cross-examine Dr Sadler about, “Well, you had these reviews, what was done about implementing these issues?” So there were issues running alongside it. And it, as I say, permeated both the
10 governance issues but also it not being a contemporary model of care. There were issues about lengths of stay and all of those other issues. So that's the relevance.

COMMISSIONER WILSON: If there were governance issues, on the evidence that's before the Commission, it seems - - -

15 MS McMILLAN: Yes, yes.

COMMISSIONER WILSON: - - - Queensland Health didn't do anything about them. Not just Dr Sadler himself but Queensland Health.

20 MS McMILLAN: Well, there was a document put to you, and I'm just trying to remember which one it was, that it had elevated to the regional level the 2009 reviews because Dr Sadler when he was re-examined pointed to that. And, as I understand it, it was – he fed into, if you like, a regional level about implementation about a number of the reforms.

25 COMMISSIONER WILSON: I seem to remember some – I don't know whether it was called a briefing note but some memorandum that came from – it wouldn't have been in the West Moreton Hospital and Health Service - - -

30 MS McMILLAN: No.

COMMISSIONER WILSON: - - - but the West Moreton Hospital District, whatever it was called, to, effectively, head office saying “This is how we've addressed the criticisms in the 2009 report” and that's it.

35 MS McMILLAN: Yes. I believe it was a Darling Downs regional document from Pam Lane, I'm instructed.

COMMISSIONER WILSON: But West Moreton is part of that.

40 MS McMILLAN: Yes, yes.

COMMISSIONER WILSON: Yes.

45 MS McMILLAN: So that - - -

COMMISSIONER WILSON: They reported, in effect, to head office, “Look, this is what we’ve done to address the problems that have been raised.” And it wasn’t taken any further.

5 MS McMILLAN: Well, I can’t say that. All I can say is I don’t – I can’t point you to evidence about where that went from there.

COMMISSIONER WILSON: Okay.

10 MS McMILLAN: That’s all I can say. I can’t say to the positive that nothing was done. Yes. And my instructing solicitor tells me also that on its face it’s said some of these issues can’t be fixed until the matter, effectively, goes to Redlands. So that was at that point in time because, of course, clearly, Redlands was still well and truly on the horizon as at 2009, 2010.

15 In relation to the submissions generally of the State, each iteration – if I can put it that way – we generally adopt those, in particular, annexure B to the State’s submissions with the schedule of objections. Next point, we don’t particularly cavil with Counsel Assisting’s submission to you that it was, effectively, a joint decision
20 of West Moreton, Queensland Health and the Minister about the closure.

COMMISSIONER WILSON: Sorry. A joint decision?

25 MS McMILLAN: Of West Moreton, Queensland Health and the Minister.

COMMISSIONER WILSON: Yes.

30 MS McMILLAN: In relation to – I want to move onto another point. In relation to the submission of the nurses, if I can put it that way, by my learned friend, Ms Robb, we say again the differences between us, such as they are, are not particularly significant. The witnesses Sault and Richardson were not required to give oral evidence and nor were their propositions put to Mr Will Brennan, Mr McGrath or Vanessa Clayworth. I put to both Mr McGrath and Mr Brennan issues where I paraphrased what Ms Richardson had said in her statement and Ms Robb says that
35 was perhaps – it wasn’t properly put. I say that it was.

40 But in any case the point is you don’t have complaints by the QNU generally or Queensland Health about the treatment of staff. Now, I don’t mean to submit that therefore there were no problems. Of course, there must have been problems. You don’t have, effectively, the closing of a unit without there being some dislocations, upsets. A number of the nurses had been there for a number of years. And Ms Clayworth’s evidence was not disputed where she went into some significant detail before you about the steps she took in terms of supporting the staff. Absolutely unchallenged on that and, indeed, pretty much all of her evidence. So that - - -
45

COMMISSIONER WILSON: Was her evidence relating just to the nursing staff?

5 MS McMILLAN: Largely to the nursing staff, yes. So she talked about staff
communiqués, leaving a folder with job opportunities, referring them to the HR – I
forget what it’s called – the HR body that they could have access to. Allowing them
to, if necessary, go off site for assistance. She also spoke about why it was important
to put the CIMHA records in force because that was standardised across Queensland
Health so that they had familiarity with that. So that there were a whole series of
things and, again, I can find that excerpt if you wish from the evidence. I think we
refer to it in our written submissions in relation to that.

10 COMMISSIONER WILSON: Can I just make one observation - - -

MS McMILLAN: Yes.

15 COMMISSIONER WILSON: - - - and it’s not just with respect to your
submissions, Ms McMillan, but generally – a number of times I’ve heard X was not
required to give evidence. All of the statements were put in the data rooms. Counsel
Assisting gave notice of the witnesses that they proposed to call but if any other party
had wanted another witness to be called he or she had only to speak up.

20 MS McMILLAN: Well, can I say about that, though, you used the word
“proportionality” earlier. One has to be very careful. It was made very clear on a
number of occasions in open session the pressure – time pressures that the
Commission was under. There were a lot of witnesses that needed to go through just
on who Counsel Assisting sought to call. So it’s a proportionality aspect.

25 COMMISSIONER WILSON: It is. It is.

MS McMILLAN: And one would think that one doesn’t go asking for a whole
series of other witnesses unless it’s absolutely necessary and our point simply is there
was untested by cross-examination. You have the witnesses who you would think is
the director of nursing at The Park, etcetera, etcetera. They’re not tested about those
issues. So you can take from that that their evidence is unchallenged about it. That’s
the point. So again, I think proportionality really needs to be borne in mind in
relation to that being said.

35 The submissions made on behalf of Dr Sadler – my submission is we don’t need to
say very much about that. One readily understands his perspective about issues he
set forth in his submissions. He clearly had invested – and we say this in our written
submissions – a lot of his life and energy into the Centre. So whilst there were issues
40 that we raised about governance and those sorts of matters, again, probably it’s
largely a matter of perspective about those issues. So unless there was something
factually you particularly wanted me to take up or issues from there, I wasn’t
intending to address that.

45 Now, can I say in relation to the document that was forwarded to us on Monday night
– this is the analysis of Counsel Assisting of the characteristics of the cohort – I
believe I can deal with it without closing the court but if need be obviously I will.

Can I just say clearly it's very detailed and must have taken some considerable period of time to collate it and there simply isn't time because, as you would be aware, the patient records are in a number of places in Delium in terms of that. But perhaps a number of general comments can be made.

5

This related to 16 adolescents. Again, the comment and submission must be it's a very limited number given Dr Sadler spoke about 800 and he said that was a number of years before when he wrote his email, I believe, in 2013. So this is a very small number of already a small cohort. You've heard what Professor McDermott had to say in relation to Dr Ward's research that a great deal of care would need to be taken because it was such a small sample and it wasn't – one had to be very careful about any conclusions that could be drawn of it.

10

I urge upon you, Commissioner, to be very careful about – in the third line of it – talking about general characteristics. One of the very significant issues that percolates through a lot of the evidence before you is that there is enough stigmatisation that occurs of mental health patients and particularly young people. So the point about these young people is that they all had individual issues. What this summary doesn't do – and, in my submission, couldn't adequately do – it doesn't really factor in issues of family dynamics, all of those matters that might have led up to a particular presentation at a particular time. Nor does it descend into what Professor Kotzé talked about, about issues that might have occurred effectively within the Barrett Centre.

15

20

25

COMMISSIONER WILSON: If I can interrupt you there, my understanding of that document is what it's intended to show is, essentially, two things: (1) what services and with what success had the patients accessed before coming to Barrett and (2) to paint a picture of them, so to speak, at the time of their admission.

30

MS McMILLAN: Well, again, to what use, I ask rhetorically, will that be put, because the point that at one stage is made in that document: they could not be easily categorised as same or typical, and that was the whole point, that one – and they say no one service element fitted all. That is the issue that each of them had bespoke, transition plans made for them. There is a correction, as I understand, where Dr Brennan has helpfully highlighted that, in fact, it was only

35

Now, the relevance - - -

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45

MS McMILLAN: Well, yes, and the point about that is is that that flows into Dr Fryer's evidence and the submission about psychosis, and also Professor Hazell. So the difficulty is this document hasn't been put to any witness to adopt or not, so the

use to which it can be put, in my submission, is fairly limited. If it's going to be said that, therefore, that's the basis for why you need another equivalent extended treatment inpatient, there are some real problems with it. If it's just simply said well, at one point in time this was an array of particular issues, both diagnoses and presentation and acuity, then so be it. But all I'm just pointing to is that it's fairly limited, the assistance it can be to you.

COMMISSIONER WILSON: I understand what you say.

MS McMILLAN: Thank you. And probably the best evidence still is clearly going to be Dr Brennan, which is footnoted at number 4, because she was the last person to really, obviously, review their diagnoses prior to discharge/transition/transfer.

COMMISSIONER WILSON: Well, she looked at them, with respect, at a different time from the time this document looks at them.

MS McMILLAN: Well, we don't know. This appears to be at the time of admission, but it's difficult to understand that. And that's one of, again, the difficulties with this document is the fluctuations that naturally occurs with mental health state. So that's the point that can be made about that.

Now, can I just then move onto some other issues. In relation to EFTRU, can I just deal with that for a moment, because that's probably a fairly short point. You'll see the page before you that's headed EFTRU, and it commences with an analysis of Dr Neillie's evidence; that's a four-paragraph document before you.

COMMISSIONER WILSON: Yes.

MS McMILLAN: And can I also give you the reference to Ms Kelly's evidence, oral evidence about it: transcript 70 - - -

COMMISSIONER WILSON: Yes.

MS McMILLAN: - - - transcript 71, lines 1 to 7.

COMMISSIONER WILSON: Okay. That's - it's - sorry - which day?

MS McMILLAN: That would have been helpful if I told you that, wouldn't it?

COMMISSIONER WILSON: I know we've sat for many days, but not 70.

MS McMILLAN: I think it's 12, 12.

COMMISSIONER WILSON: So T12-70 - - -

MS McMILLAN: Yes.

COMMISSIONER WILSON: - - - at lines?

MS McMILLAN: Seventy, generally, that page, and then 71, one to seven.

5 COMMISSIONER WILSON: Thank you.

MS McMILLAN: I think I've given you the wrong day. Can I just check that over lunch? I'm told 11, transcript 72, lines 12 to 19, 73 and 74. Now, I wanted to move onto another topic. Would that be a convenient time?

10

COMMISSIONER WILSON: Yes. Would 2.30 suit everyone?

MS McMILLAN: That's fine. Thank you.

15 COMMISSIONER WILSON: Adjourn until 2.30, please.

ADJOURNED

[12.57 pm]

20

RESUMED

[2.32 pm]

COMMISSIONER WILSON: Yes, Ms McMillan.

25

MS McMILLAN: Yes. Thank you, Commissioner. I wanted to clarify a few things over the luncheon adjournment. Commissioner, would you mind, please, going to behind tab 7 of that bundle that the State gave you this morning; it's just a few documents. You will see - - -

30

COMMISSIONER WILSON: 23 July 2013: is that it?

MS McMILLAN: Yes, that's right - - -

35 COMMISSIONER WILSON: Yes.

MS McMILLAN: - - - 23 July. As I understood, I think correctly, from my learned friend, Mr Duffy, an issue about whether YPARC was going to be operational and what West Moreton understood about it: could you please go to the next page, and you'll see, if you read, Commissioner, the first two paragraphs there. So BK from page 1 is Dr Kingswell; he was an attendee at that meeting.

40

COMMISSIONER WILSON: All right. So this is pre-the formation of SWAETRI.

45 MS McMILLAN: Yes, yes. And you will recollect – and we refer this – to this in our written submissions – that Ms Kelly also gave evidence of her understanding of that from Dr Kingswell.

COMMISSIONER WILSON: Thank you.

MS McMILLAN: Now, you asked me, as I understand, before lunch too about
5 issues of West Moreton's perhaps proposing or trying to implement another,
different program.

COMMISSIONER WILSON: Yes.

MS McMILLAN: Could I take you to paragraphs 4.3 and 4.4 of Dr Geppert's
10 statement. Dr Geppert.

COMMISSIONER WILSON: That's Dr Corbett; we want Geppert. Do you have a
Delium reference?

15 MS McMILLAN: No, I'm sorry.

COMMISSIONER WILSON: That's alright.

MS McMILLAN: It'll be – I mean, it's WMS reference, but that probably doesn't
20 assist to what – exhibit 55 or WMS – thank you WMS.9000.0004.00001. While
that's coming up, Commissioner, it relates to Dr Geppert's evidence about a meeting
on 23 July 2013.

COMMISSIONER WILSON: Same meeting?
25

MS McMILLAN: Yes. And if you just – could we scroll down, please. Thank you.

COMMISSIONER WILSON: Yes.

MS McMILLAN: And over to the next page, please – no, I'm sorry – if we just go
30 back to that page, thanks. So that, perhaps, assists in understanding when, if you
like, the devolution of the transition plan. You asked me, Commissioner, about – yes
– and as – thank you, Ms Kefford – as you see, 4.1, there was only one meeting for
the Barrett Adolescent Strategy Meeting. And then that seems to have morphed into
35 SWAETRI.

And you asked me, because a document was raised with you, I think, by my learned
friend, Ms Wilson, before lunch about three phases of the program and whether West
Moreton had any involvement in that. Certainly, there was the holiday day program,
40 because a school had closed and, obviously, there were still some patients there as at
2013. And then there were two other phases. Now, Dr Geppert said that she had
some involvement – she was part of YPETRI, and it was connected to SWAETRI.

COMMISSIONER WILSON: Now, YPETRI morphed into the youth resi, didn't it?
45

MS McMILLAN: Yes. And if you go to 20.3 and 20.4 of this statement – while it's
coming up, I'll tell you, in effect, as I understand it, that it was – here we go; if we

just scroll down – it was intended to provide an interim day program in February 2014 as part of the adolescent residential program, and then that wasn't delivered, as you'll see, because it was slightly delayed. So West Moreton, through Dr Geppert, if you like: she had involvement in YPETRI and there was to have been a day program associated with the residential. But in the end, it didn't transpire, and that part of her evidence seems to, I believe, address that, Commissioner.

COMMISSIONER WILSON: But there was also at some stage – and I can't recall precisely when – a move by West Moreton to have its own assertive outreach team and something else, and I can't recall what it was.

MS McMILLAN: My learned friend points me to transcript 24-42, Dr Stathis' evidence, about a meeting. There was discussion by West Moreton and presentation to the parents of specific plans for specific children or service options, and he said:

Why would West Moreton –

He was asked by Mr Freeburn:

...be presenting options more generally when it was Children's Queensland who were preparing that.

He says:

Well, that's precisely what happened.

This is Dr Stathis:

West Moreton were so committed at developing transitional plans that they initially decided to look at the possibility of using a range of services – day programs, resi services – within West Moreton HHS. And then they – and don't forget this was evolving over time very rapidly. And then by November/December '13 West Moreton recognised that: first, CHQ was taking responsibility of the implementation of a range of new services; second, they were – West Moreton was able to transfer a number of young people from Barrett very rapidly; and, thirdly, the few young people that remained, they were able to develop their own individual transition plans.

So perhaps that assists as well, Commissioner.

COMMISSIONER WILSON: Yes. Thank you.

MS McMILLAN: You – there's also just the references to what is referred to in Mr Springborg's submissions, 5.103, at page 35, which is responded to in 7.10 of our submissions. I probably don't need you to go to this unless you wish to, Commissioner.

COMMISSIONER WILSON: I don't know what you're talking about, to be honest, so I need to go to it.

5 MS McMILLAN: This was about the money for the build, a further build.

COMMISSIONER WILSON: Right.

MS McMILLAN: And I'm just giving you the references to where - - -

10 COMMISSIONER WILSON: And what was your response?

MS McMILLAN: West Moreton's submissions, 7.10, and 4 in the first substantive submissions, and 4.123 in the - 4.123, I'm sorry, of the primary and 7.10 in the second lot of the submissions, annexure C.

15 COMMISSIONER WILSON: Yes. Go on.

MS McMILLAN: Can I then take you to a further written submission we handed up this morning, which relates to, if you like, the parallel process. It's a document with
20 four numbered paragraphs on it.

COMMISSIONER WILSON: And is this the one that begins - or that - - -

MS McMILLAN: The supplementary submissions on behalf of State of
25 Queensland. And then paragraph 2 has four subparagraphs.

COMMISSIONER WILSON: Yes.

MS McMILLAN: Yes. I don't perceive I need to take that any further, given the
30 extensive submissions, both orally and in writing, from my learned friend, Ms Wilson, unless you wish to hear me further on that.

COMMISSIONER WILSON: No, I'm happy with that.

35 MS McMILLAN: Thank you. A further issue is the submissions in relation to contact with patients and their families.

COMMISSIONER WILSON: Yes.

40 MS McMILLAN: You have our primary submissions in relation to that, and then there's a two-page document that was handed up this morning, Dr Corbett's letter, 9 August, and Fast F acts.

45 COMMISSIONER WILSON: Yes. Interestingly, I recall in the supplementary statement of Dr Stathis there is a mention of the Minister's announcement. And as I read what he said in that supplementary statement, he seems to have interpreted it as the services would be available from January 2014.

MS McMILLAN: Who was that, Dr Stathis?

COMMISSIONER WILSON: Dr Stathis' supplementary statement.

5 MS McMILLAN: Well, I suppose one of the difficulties is services can take on a number of different meanings. Certainly, as at July – and my clients didn't know until November – there was this whole concept of the YPARC being up and going for January 2014. And you'll recollect there was the evidence of the field trip, if I can call it that - - -

10

COMMISSIONER WILSON: Did you say your client didn't know about that until November?

15 MS McMILLAN: That was Ms Kelly said we weren't informed until November that it was definitely not going to go ahead for the YPARC.

COMMISSIONER WILSON: I see.

20 MS McMILLAN: And that was uncontradicted.

COMMISSIONER WILSON: Thank you.

25 MS McMILLAN: So I wanted to move then on about communications with families and young people. Counsel Assisting is critical of the fact – as I understand it, they said there was no Fast Facts between May and September 2013.

COMMISSIONER WILSON: May and August, I think.

30 MS McMILLAN: May and August. I want to say a few things about that. Firstly, we have to look at it as a backdrop that in November 2012 Professor McDermott gave evidence at the Child Protection Inquiry, and without doubt that caused a lot of consternation and distress. There is no doubt that care was taken in terms of what could be said. As at May, you know the board met and recommended closure, but, effectively, until the Minister actually publicly announced it neither the board nor the
35 service could really say too much else. They would have caused greater angst, because it was certainly their view that it was the Minister's ultimate decision. They should not go about disseminating information that no doubt would cause a lot of distress.

40 The next layer down from that is when the Minister announces it Ms Kelly's evidence is she sat with Dr Sadler and he made the phone calls to the patients and the families. From then on, you have – and you, with respect, correctly pointed out that at that point in – come September, Dr Brennan is on board, Ms Clayworth, Ms Hughes, Ms Hain. They're all employees of my client.

45

Now, there could have been a lot of criticisms if there continued to be a lot of generic, if I can put it that way, communications. What you had was appropriate

communications with the families and the young people by those persons who, I interpolate, knew them well. That doesn't mean to say there wasn't ongoing communication by executive level of West Moreton. But if you look, for instance, at the – behind tab 25 in that bundle - - -

5

COMMISSIONER WILSON: Just before I come to that document - - -

MS McMILLAN: Yes.

10 COMMISSIONER WILSON: - - - I want to make sure I have an accurate note here.

MS McMILLAN: Yes.

15 COMMISSIONER WILSON: You've taken me from the McDermott disclosure
- - -

MS McMILLAN: Yes.

20 COMMISSIONER WILSON: - - - the fast facts to May, the board taking the view it was the Minister's decision, the announcement on 6 August, Ms Kelly and Dr Sadler ringing all the parents, then you moved on, I think, to talk about what Dr Brennan and her staff did; is that right?

25 MS McMILLAN: Yes. Well, you're moving through the chronology there.

COMMISSIONER WILSON: Yes. And you said that they did what?

30 MS McMILLAN: Well, they were on the ground, obviously, making communication - - -

COMMISSIONER WILSON: With whom did they communicate?

35 MS McMILLAN: Well, it's clear that they were communicating with the patients and their families in terms of arrangements. Whether it was directly or through these transition care panels, they were on the ground. And as I understand, there's no criticism of their conduct from Counsel Assisting.

40 Can I say that's not the only communication, because if you look at, say, page 2 of – behind tab 25, about a third of the way down, under communication strategy, PS is Dr Steer, who gave oral evidence before you, noted the extraordinary communication efforts with families and consumers throughout the initiative to date.

45 COMMISSIONER WILSON: I think I'm looking at the wrong document, somehow.

MS McMILLAN: This is behind tab 25 in the documents the State provided to you.

COMMISSIONER WILSON: Yes, but there are a number of documents behind 25.

MS McMILLAN: Sorry. It's the document headed Minutes. It's three pages in.

5 COMMISSIONER WILSON: I've got it.

MS McMILLAN: Second page into the minutes, sorry.

10 COMMISSIONER WILSON: Something you said, Dr - - -

MS McMILLAN: Dr Steer is the - - -

COMMISSIONER WILSON: That'd be PD, wouldn't it?

15 MS McMILLAN: Is the PS.

COMMISSIONER WILSON: Yes. Yes, I've got it.

20 MS McMILLAN: Yes. And you'll see from the first page, a meeting agenda, he was the acting chair.

COMMISSIONER WILSON: Well, for the moment I don't know whether I agree with assessment, but that was his assessment of - - -

25 MS McMILLAN: Yes.

30 COMMISSIONER WILSON: - - - West Moreton's efforts. And you talked about Dr Brennan and her staff, and then I thought you were moving on to what was done by the executive of West Moreton.

35 MS McMILLAN: Yes. Well, that's an instance in terms – there, you'll see regular communication from – and I won't identify the person named there – you'll see parent etcetera. LD is Lesley Dwyer, some therapeutic support etcetera. And you'll see in other minutes – I can take you to if you wish – there's other recording of the executive and other members of West Moreton making communication with families.

40 COMMISSIONER WILSON: Well, that's what I'd like you to give me a few particulars of, if you could, just what the executive arm of West Moreton did.

MS McMILLAN: Well, I might have Mr Fitzpatrick find those particulars - - -

COMMISSIONER WILSON: Very well.

45 MS McMILLAN: - - - while I'm dealing with those issues. While that's being found, in terms of the written document before you about Dr Corbett's letter of 9 August - - -

COMMISSIONER WILSON: Yes.

5 MS McMILLAN: - - - I don't want to say too much about the specifics in that document unless you wish me to, because, obviously, that – the court will need to be closed, which, of course, I can do – concede that you do. But the point is that letter can't be seen in isolation. It's part of a chain of correspondence which ends up as part of that annexure of MC-32 of that particular parent being quite complimentary of, as you'll see at the bottom of the page, that Lesley – meaning Ms Dwyer – has been accessible, allocating time within a busy schedule. So that's another particular
10 of communications being made. And that letter, of course, sits, Dr Corbett's letter, only three days after the Minister's announcement in relation to those details, so the point being it's a good example of how that correspondence, that chain of emails etcetera ensued, and also the result, and from that parent indicative of satisfaction with the communication they received.

15 COMMISSIONER WILSON: But do you disagree with me when I say that what was said in that letter was clearly wrong?

20 MS McMILLAN: Well, it's – can I say a couple of things. One is if it's open to a number of interpretations – which I say it is – the fact that Dr Corbett's not asked about that, so she's not asked to give what she intended by that letter.

25 COMMISSIONER WILSON: It's not what she intended. It's what the letter said, on an objective assessment, because it was going to a parent. What was the parent to take from it?

30 MS McMILLAN: Well, can I say a couple of things: (1) that letter just doesn't stand on its own, because there's continuing correspondence. So it's not like that finishes the communication. Secondly, at that point in time it was thought – because I've taken you to the July minutes of the strategy meeting – that there would be a YPARC up and going by January. And it should be remembered that – I'm sorry, Commissioner.

35 COMMISSIONER WILSON: Yes.

MS McMILLAN: And it should be remembered that a number of young persons did go to new, as in different, services because they were turning 18. So it depends on what you mean by new as in brand new, new as in unknown to them.

40 COMMISSIONER WILSON: Well, I think, with respect, Ms McMillan, that's a different issue, that they were sent to adult services. They were different services, but they weren't new in any sense.

45 MS McMILLAN: Well – and I say there are a number of interpretations open, and when she's not asked about you should exercise extreme caution, I would urge upon you, to take the most – can I put it this way – dim view of that letter. But, in any case, even if you viewed it in that sense you have got to look at it as part of the

chronology of that correspondence where that parent was made very clear about what was being done for, we say, [REDACTED] child. I say child in an advice, it's – adolescent might be better.

5 COMMISSIONER WILSON: Well, I'll review all of the correspondence. I'm not saying at the moment that I accept your interpretation of it. I'll leave my mind open until I've reviewed all of it.

10 MS McMILLAN: Yes. Just excuse me. Yes. And can I also – my solicitor points out, if you go to page 18 of the State's submissions that were handed up, well, I should say emailed, to you. Yes. If it perhaps not be put on the screen.

COMMISSIONER WILSON: Page 18.

15 MS McMILLAN: Yes. Paragraph 68.

COMMISSIONER WILSON: Yes. I'd need to check but my recollection of the August Fast Facts document – yes. The August Fast Facts document was dated 23 August. So it post-dated the letter.

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MS McMILLAN: Well, she's being questioned here about early August.

COMMISSIONER WILSON: Well - - -

25 MS McMILLAN: And then she says back through the Fast Facts – I don't know which one we're talking about.

COMMISSIONER WILSON: Well, then there's a gap between 21 May, I'm sure, and 23 August.

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MS McMILLAN: Yes.

COMMISSIONER WILSON: So maybe there was some confusion when she gave that particular piece of evidence. But those are the dates on the documents.

35

MS McMILLAN: Yes. But the point of what she takes out of it when she's asked about in early August your understanding was what? She sets it out there and it's clear there that the West Moreton and other agencies – that the Barrett Adolescent Centre weren't going to receive services from any of the new services. So she – that

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COMMISSIONER WILSON: I will have a look at it.

MS McMILLAN: Now, subject to me finding those further references in the documents of minutes of meeting, that's what I propose to say about the communications with the families.

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COMMISSIONER WILSON: Yes.

MS McMILLAN: Was there anything further on that issue, Commissioner?

5 COMMISSIONER WILSON: I don't think so. Thanks.

MS McMILLAN: Thank you. Commissioner, in terms then of substantive other submissions, the – I don't propose to say anything else, really, in terms of the State's main submissions unless there was something particularly that you wanted me to address you about.

COMMISSIONER WILSON: No.

MS McMILLAN: And in terms of our written submissions, both the first and second iterations if I can put it that way, was there anything specifically you wanted me to address you about, Commissioner? Thank you. I want to say a couple of thing about the Board. In our submissions you'll see as an annexure there is correspondence with the Commission about matters not being put to various witnesses. And there is an acknowledgement by Counsel Assisting in their letter back to my solicitors which is annexed on 22 March.

COMMISSIONER WILSON: 22 March. Yes.

MS McMILLAN: Page 5. It's annexure A, I'm told. This is to our primary submission.

COMMISSIONER WILSON: It's actually B, but I've got it.

MS McMILLAN: I'm sorry. Yes. Page 5, paragraph 31. Paragraph 31.

COMMISSIONER WILSON: Yes.

MS McMILLAN: You'll see there's an acknowledgement there. And, with respect, that clearly must be right. The rest of the Board weren't called. So it can't be said that a finding should be made against the Board in the terms that it is. It was originally sought to be made by Counsel Assisting.

COMMISSIONER WILSON: Well, just to be quite precise it says:

40 *You are correct that only two members of the Board were called – the chair and deputy chair. It is true also that it may be unlikely that findings can be made against the Board or the members of the Board other than the chair and deputy chair. Plainly, that will be borne in mind when it comes to drafting the proposed adverse findings.*

45

MS McMILLAN: Yes.

COMMISSIONER WILSON: So it's expressed in terms of it may be unlikely that they can be made.

5 MS McMILLAN: Well, we'd say that it is unlikely. If it – they've not been called, it's not been put. These are serious allegations made against those two members of the Board. And you've already received our primary submissions about what you would find in relation to those. But making any findings against the Board generally we say would be quite out of the question. You shouldn't make them against those two individuals but you certainly couldn't against the Board. And I'm just saying
10 that there appears to be perhaps a grudging acknowledgement of that.

COMMISSIONER WILSON: Go on.

15 MS McMILLAN: Can I also hand up – I have just extracted – this is a very lengthy decision, ASIC v Macdonald. I have excerpted the relevant pages. Of course, Commissioner, if you want the full decision – it's about 180 pages – I'm happy to provide it. We distributed it at lunch time on the desks. What – it effectively talks about the nature and duties of directors. Now, I accept that you may say to me, Commissioner, we're not talking about a corporation as such. But I say that it is
20 relevant for you to bear in mind, understanding their qualifications, expertise, that they were entitled to rely on the assurances they got. These were executive members who were providing those assurances and they were quite entitled to and did so.

25 I mean, as Dr Corbett said – she gave some very good, in my submission, oral evidence about what could reasonably be expected of them to make inquiries about. This is a health service of which the Barrett is one component. I'm not saying an unimportant one but the fact is, they couldn't possibly drill down to individuals and needed to rest assurances. Quite frankly, submissions that go otherwise really fly in the face of how a Board would operate. And, secondly, there is no evidence before
30 you of any objective evidence of what you might expect from a Board in this situation. So it's not being benchmarked against anything else. It's just simply said, shouldn't have relied on those assurances.

35 COMMISSIONER WILSON: Well, surely – speaking purely hypothetically for the moment – if the executive director of an organisation puts forward a document to the Board which is expressed in general terms and which relates to an important decision, the Board is entitled, if not in some circumstances bound, to question it and ask for more information.

40 MS McMILLAN: Well, again, can I say that depends on what the decision is, how much detail they're given. The difficulty is, what's sought to be done is extrapolate from minutes which are clearly indicative of decisions made. They're not, as my learned friend Ms Wilson said, a transcript of what the discussion is or was. So that it's not proper to simply extrapolate, "Well, the minute only says this. Clearly you
45 just discussed that as set out in two lines here and there." And that's a large part of the criticism that's made, is that parts of documents are pulled out so – like the ECRG, like this line in the Planning Group, and it's put forward on the basis, well, that was what was discussed, this line here or there, where that's just simply not the

case. And it's not proper to do that. So we say that it's on very shifting sands this is sought to be made out, particularly where you don't seek other Board members' evidence about discussions that occurred. It takes full force when you look critically at the evidence about what was actually put to the relevant witnesses, what was not
5 pressed. Those things all come into the mix what would be appropriate in terms of findings to be made and when one looks at very closely and critically you would not be attracted by simply excerpting a line from the minutes say, well, that's clearly what – that was just discussed in brief because there's a line about it. That's clearly not what minutes are there to do. So that - - -

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COMMISSIONER WILSON: Well, your essential point is that these minutes record decisions. They don't record discussions.

MS McMILLAN: No. Exactly. And nor would I suggest minutes – that's simply
15 not what they're there to do. It's not a transcript of what was [indistinct] just like a court order doesn't any way record the argument before a judge or tribunal. It's simply the decision made at the end of the day and that's what I urge upon in terms of those.

20 Can I then come to – in relation to some further submissions that we promulgate about the basis for making findings. Commissioner, none of this, I suggest, be controversial to you in terms of this is the document. It starts from paragraph 1 on Monday, 11 April. It's a four-page document.

25 COMMISSIONER WILSON: Yes.

MS McMILLAN: Again, I would contend that these are not particularly
30 controversial findings but it really flows from what I've just said in terms of it not being speculative as you, with respect, correctly remarked. That where direct proof is not available – and that comes into what has actually been put to witnesses, what was pressed, what was not pressed. And one of the difficulties, I suggest respectfully, that you've had this week in oral submissions is that matters that have concerned you – there isn't a great deal, in fact, often a dearth of evidence before you on those issues. So naturally we urge extreme caution where you being sought to
35 make – and in a number of matters which have been taken up by ourselves, the State and particularly on behalf of Mr Springborg – you will be very loathe and in fact should not make findings in relation to what's urged upon by Counsel Assisting. Now, we accept that merely what's in Counsel Assisting's submissions does not necessarily reflect your views, Commissioner - - -

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COMMISSIONER WILSON: And I think you should have gathered that I take that view, too. I'm very much assisted by their submissions as I am by all of the submissions - - -

45 MS McMILLAN: And - - -

COMMISSIONER WILSON: - - - but at the end of the day - - -

MS McMILLAN: I'm sorry. Yes.

COMMISSIONER WILSON: - - - the responsibility is mine and I will exercise my own judgment.

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MS McMILLAN: And Commissioner, if you took anything from what I said as in any way indicating that, it's not. In fact, our point is that you yourself – and there's no complaint about remarks you've made or any conduct on your part in relation to that. We simply point to the real difficulties about making findings where there is a dearth of evidence and particularly where there is very serious allegations pressed upon you by Counsel Assisting. Objection has been taken to them. Despite last Friday them issuing amended written submissions, it seems more like a formatting issue, oral submissions Monday – the response was matters that matter and only two issues. So we're somewhat left in the dark about whether they continue to press those or not. So we've had to take this course of putting this before you in terms of setting out what we say the appropriate authorities are and clearly they adhere to commissions of inquiry and enjoining obviously you to be cautious with respect about making these adverse findings that are pressed upon you. So unless you want me to descend further into particulars – we've given particulars in our written submissions to date – I wasn't intending to take that further.

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COMMISSIONER WILSON: I don't think it's necessary.

25

MS McMILLAN: Thank you. I didn't think it would be. Commissioner, might I, rather than hold you up now, if we just find those references in that document that the State gave you today – it's excerpted from Ms Adamson's statement – could we send that to Mr Hill just with the references to those documents?

30

COMMISSIONER WILSON: Yes, certainly.

MS McMILLAN: Thank you.

COMMISSIONER WILSON: Thank you very much. Now, Ms Rosengren.

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MS ROSENGREN: Thank you, Commissioner. I anticipate I will only be a few minutes. I hesitate to say that I think there's a brief issue in relation to Dr Sadler's standing down, the incident in relation to that, that it may be best to deal with in closed hearing.

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COMMISSIONER WILSON: Well, when you come to that tell me and the hearing can be closed.

45

MS ROSENGREN: Yeah. I was going to start with that because that's really the main point that I do have to make it was just a few issues following on from that.

COMMISSIONER WILSON: Alright. Well, when you conclude that the other issues must be in open hearing.

MS ROSENGREN: Thank you, Commissioner.

COMMISSIONER WILSON: We'll close the hearing. Live streaming off, please, and I will ask the Associate to check that everything is closed.

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MS ROSENGREN: Thank you, Commissioner. As to the 2003 and 2009 reviews, there are just a few short points to be made, if I can start with the 2009 review. Commissioner, you will recall that Dr Sadler explained that an important limitation of that review was that most of the relevant nursing staff were not spoken to because they weren't even available at the Centre on that day. Importantly, the evidence is that Dr Sadler spoke with Dr Stedman, who was his direct supervisor, and it was agreed that Dr Sadler would provide a response to the recommendations insofar as he could. Dr Sadler did, in fact, do this, and he, again, met with Dr Stedman to discuss what his responses were. And Dr Stedman did not raise with him any concerns regarding the adequacy of the responses that Dr Sadler had provided. And then, as McMillan explained, that the implementation of the responses was undertaken as a district level, if I can call it that.

30

And, Commissioner, you recall that there was the briefing note in which it is indicated as a key issue that the recommendations arising from the 2009 review of the Barrett Adolescent Centre have been substantially actioned; the Delium reference number for that document is QHD.005.001.3152 to 3153. And as McMillan explained in her submission, the outstanding recommendations were contingent upon the completion of the state-wide model of service. So the point to be made is that Dr Sadler had done all that he could do in response to the 2009 review; that's even though he did have some concerns about the way that it had been conducted.

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The 2003 review: it was about 10 years before the Centre closed. I don't want to spend a lot of time on it for that reason. But, Commissioner, you may recall that Dr Sadler attached to his second statement – that's annexure K – a partially-completed table of the steps or the actions that had been taken. Ms McMillan cross-examined him about that, and you may recall that he explained that this table, he was simply requested by the Commission to provide any documents that he had in relation to the 2003 review, and that's what he produced.

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He then gave evidence that that table was subsequently progressed and finalised, but that he didn't have a copy of it in his possession. And his evidence is that the final table was signed off by the executive director of mental health at The Park. That evidence can be found at day 24, page 10, from line 23. And, once again, Dr
5 Stedman was Dr Sadler's direct supervisor back then, and he did not raise any concerns with Dr Sadler about the steps that he had taken in relation to that review.

Standing here, on reflection, there's just one very further, minor point, and it's in relation to evidence or implied criticisms that have been raised about the fact that the
10 BAC model of care had not been evaluated as an evidence-based model of care. And can I just say this, that it is addressed at paragraph 20 of Dr Sadler's submissions, and in particular, Commissioner, you may recall the evidence of both Professor Martin and Professor McDermott about the significant challenges in collating such information for the very small cohort of young people who were treated at the Barrett
15 Adolescent Centre.

COMMISSIONER WILSON: Did you say paragraph 23?

MS ROSENGREN: It's paragraph 20 - - -
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COMMISSIONER WILSON: Twenty.

MS ROSENGREN: - - - sorry, of Dr Sadler's submissions.

25 COMMISSIONER WILSON: Thank you.

MS ROSENGREN: And the evidence of Professor McDermott can be found at page 19 – day 19, I'm sorry, at page 49, lines 31 to 43, and Professor Martin's evidence in that regard can be found at day 25, page 11, lines 1 to 35. And, in fact,
30 Commissioner, you may recall the evidence also of Dr Fryer, where she made the point that it also remains the case, even today, that there is no evidence-based research to say that community care is the more appropriate model of care for the sub-cohort of patients who were treated at BAC. What her evidence is is to say there simply is not any evidence either way. And there has generally been a dearth of
35 evidence or evaluated research-based evidence in relation to this issue.

COMMISSIONER WILSON: There's also the question of whether this whole notion of evidence-based research and evidence-based – I shouldn't say evidence-based research but evidence-based practice is really a valid one.
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MS ROSENGREN: Commissioner, you are correct about that and you may recall that Dr Sadler has addressed that quite extensively in the initial statement that he provided to the Commission. He detailed what his concerns were and having – even despite those concerns he has set out over three pages commencing at page 35 of his
45 initial statement the attempts that he himself took to evaluate and improve upon the model of care that was being used for the young adolescents at the Barrett Adolescent Centre.

COMMISSIONER WILSON: I remember there was some evidence that evidence-based practice seems to be a concept which is not only been pervasive in medicine in the last 20 years or so but in other areas too such as in policy-making.

5 MS ROSENGREN: I can't recall that specific evidence but I can recall that Dr Sadler has discussed it at significant length in his initial statement. If I can have a few moments I can direct your Honour to the particular paragraphs but I don't have independent recollection of any - - -

10 COMMISSIONER WILSON: That's alright. I'll find it.

MS ROSENGREN: - - - other evidence in that regard.

COMMISSIONER WILSON: Okay.

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MS ROSENGREN: Now, I can assist you, Commissioner, and in relation to any further matters they are my submissions.

COMMISSIONER WILSON: Thank you very much, Ms Rosengren.

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MS ROSENGREN: Thank you, Commissioner.

COMMISSIONER WILSON: Ms Robb. Or do you want to go first, Mr McMillan? Whichever you two have sorted out.

25

MS ROBB: I'm almost done if that [indistinct] Commissioner, all I wanted to say was further to my learned friend, Ms McMillan QC's submissions that we note in our outline of submissions that we rely on the evidence given by the nurses as to the impact of the closure and the management of the closure on them. It's worth noting that whilst QNU has been used as shorthand rather than the names of the 13 individual nurses, the QNU is in fact not a party before this Commission and no submissions have been made on the QNU's behalf and there's no point speculating as to what they would be, were they.

30

35 Finally, we are largely content with the work Counsel Assisting has done between paragraph 711 and 815 in summarising the evidence of the staff at the Barrett and I draw particular attention, as I have in my written outline, to paragraph 746 – I believe it was 747 in the previous version – where they have noted that:

40

The evidence reveals varying levels of anxiety and confusion during the closure process. Most staff described at least some feelings of stress during this time. It was an inevitably uncomfortable time for staff members some of whom had been at the BAC for many years.

45 And there's a further observation that they have made which I will just emphasise which is to say at paragraph 806:

It is apparent that the most effective support mechanism utilised by staff was simply a coming together of BAC colleagues to support each other.

5 And in my submission, the efforts made by Vanessa Clayworth are entirely consistent with that. She is a nurse employed at the Barrett as NUM and along with her colleagues they managed to support one another through a difficult time. And unless I can help your Honour further I rely on my brief written outline.

10 COMMISSIONER WILSON: Thank you.

MS ROBB: Thank you, Commissioner.

15 MS McMILLAN: Can I just – I shouldn't have said the QNU. My learned friend is quite correct. She acted for 13 nurses. I used shorthand when I shouldn't have.

COMMISSIONER WILSON: Thank you. Yes. Ms Rosengren.

20 MS ROSENGREN: Commissioner, can I briefly the references that I indicated before relating to the evidence-based practice – the concept of it and also the application of the BAC is addressed by Dr Sadler in his initial statement. It's commencing at paragraph 156 and it's through to paragraph 175 and thereafter for the next three pages he addresses the evaluations he [indistinct] BAC interventions. Thank you, Commissioner.

25 COMMISSIONER WILSON: Thank you very much. Mr Ben McMillan.

30 MR McMILLAN: Thank you, Commissioner. Commissioner, you will note that I didn't prepare any written submissions. The reason for that is I don't seek to respond to any extent to the submissions of learned Counsel Assisting. To the extent they touch upon my client's evidence they are fair and reasonable summaries of the evidence that she gave both orally and in writing.

35 In terms of the submissions made on behalf of the State of Queensland, those submissions very helpfully, in my respectful submission, address the education issues from part 3 commencing at page 28 of those submissions. I gratefully and respectfully agree with and adopt those submissions particularly at paragraphs 70 to 89 and paragraph 100. And I draw your Honour's attention particularly to the submission made for the State of Queensland at paragraph 87 of those submissions and the extract of Mr Blatch's evidence that appears there as it relates to –
40 particularly to my client.

COMMISSIONER WILSON: Just a tick.

45 MR McMILLAN: I have the Delium reference if - - -

COMMISSIONER WILSON: No, there's no need to put it upon on the screen.

MR McMILLAN: Thank you. That extract is at paragraph 87 of the State's submissions.

COMMISSIONER WILSON: Right.

5

MR McMILLAN: The State at annexure A to their submissions, Commissioner, make a number of objections to evidence including some of the evidence of my client given in her written statements. I note the exchange earlier between yourself, Commissioner, and my learned friend Mr Duffy about the basis for objection in
10 evidence and it seems that the objections that are taken by the State in relation to my client's evidence really go to questions of whether the evidence she gives was within her scope of expertise. To that extent I don't seek to address them individually other than to say they are obviously matters of weight that will be matters for you, Commissioner, to consider.

15

Moving then to the submissions on behalf of West Moreton, can I take you, please, Commissioner, to those submissions at page 30, Delium reference .0030.

COMMISSIONER WILSON: Yes.

20

MR McMILLAN: Now, it seems that the copy of the submissions that are on the screen have been redacted but - - -

COMMISSIONER WILSON: Sorry, I'm looking - - -

25

MR McMILLAN: - - - I expect you have a copy of those submissions before you, Commissioner. I'm not sure that it needs to be placed on the screen in any event.

COMMISSIONER WILSON: That can be taken down from the screen if it's
30 necessary.

30

MR McMILLAN: My submissions are directed to paragraphs 8.10, 8.13 and 8.15. Commissioner, you will see in paragraph 10 in the second sentence the term "education staff" is used. In paragraph 8.13 the term "teachers" is used and
35 "education staff" is again used in paragraph 8.15. There is no evidence of which I am aware that my client – first dealing with paragraph 8.10 – that my client perceived a need to pick up the baton which is the expression used by learned counsel for West Moreton or engaged furthermore in any of the conduct that is described by counsel for West Moreton in paragraphs 8.13 or 8.15.

40

COMMISSIONER WILSON: Wait a moment. Excuse me. I think I will have a look at these because I'm not sure what she's saying.

MR McMILLAN: Now, to be fair counsel for West Moreton don't assert
45 specifically that my client engaged in that conduct but rather attribute that conduct, in respect of paragraph 8.13, to teachers generally.

COMMISSIONER WILSON: You keep saying Counsel Assisting. Do you mean Counsel Assisting or do you mean - - -

5 MR McMILLAN: I'm sorry. Counsel for West Moreton.

COMMISSIONER WILSON: For West Moreton.

MR McMILLAN: I'm sorry.

10 COMMISSIONER WILSON: That's what's confusing me.

MR McMILLAN: I apologise.

15 COMMISSIONER WILSON: We're talking about West Moreton's submissions.

MR McMILLAN: Yes.

COMMISSIONER WILSON: We're not talking about Counsel Assisting's.

20 MR McMILLAN: I'm sorry. Yes. That's certainly what I meant to say.

COMMISSIONER WILSON: That's okay. We're talking about paragraph 8.10 and I'll read it out. There's no reason not to.

25 *It was at this time or slightly earlier according to Ms Clayworth that relations between the education and health staff degenerated. It was apparent that education staff perceived a need to pick up the baton for BAC. The grievances which were cited, that they were kept waiting whilst the executive met with health and then the adolescents, are indicative.*

30 Now, what are you saying about that submission?

35 MR McMILLAN: Now, what I say about that submission, while the expression "education staff" is used there is no evidence before the Commission that my client perceived that meaning.

COMMISSIONER WILSON: That's Ms Rankin.

40 MR McMILLAN: That's so.

COMMISSIONER WILSON: Yes.

45 MR McMILLAN: Certainly, she does not give that evidence in any – either of her written statements, nor was she asked about it in oral evidence. And she certainly didn't volunteer that she had that view. Moving to paragraph 8.13 of the submissions for West Moreton following - - -

COMMISSIONER WILSON: Which says, extraordinarily:

5 *Some of the teachers actively sought families to become witnesses to this inquiry and to agitate at a political level. For instance, see the evidence of Ms D. Rankin and Ms Oxenham, Dr Schoubroeck.*

MR McMILLAN: Now, while I acknowledge that the submission that is made is that some of the teachers actively sought to do what is said in that paragraph, again, there is no evidence that my client was one of those teachers. And, further, there is a
10 general reference as, Commissioner, you have just read into the record, to direct the Commission's attention to the evidence of Ms Rankin. I have not been able to find anything in the evidence of my client, either in written form or the evidence given by her orally, that refers or relates to the submission that is made by West Moreton in that paragraph. The only evidence that she gave that touches upon this issue in any
15 general way appears in paragraph 84 of her first statement which is exhibit 106. Can I ask for that to be put on the screen, please. It is on page – it is DRA.900.001.0001 at 0021.

COMMISSIONER WILSON: Yes. You want paragraph 86. Is that right?

20 MR McMILLAN: Paragraph 84, your Honour.

COMMISSIONER WILSON: Eighty-four.

25 MR McMILLAN: Now, that paragraph clearly doesn't directly relate to the submission that is made by West Moreton at paragraph 1.83 of their submissions. But it is the only evidence that my client gave that I am able to find that touches upon, in any way, what any of the education staff might've done. And it relates, as
30 your Honour can see, only to some correspondence – certainly not any agitation by teachers or other education staff at a political level. Similarly, at paragraph 8.15 of the submissions for West Moreton - - -

COMMISSIONER WILSON: Which says:

35 *Into that melting pot, the closure announcement, Dr Sadler's subsequent standing down and the disinformation promulgated by education staff, it is completely understandable that staff reported high levels of stress.*

MR McMILLAN: Again, Commissioner, there is a general allegation that there was
40 disinformation promulgated by education staff. I simply seek to highlight the fact that there is no evidence whatsoever before this Commission that my client engaged in such disinformation or the promulgation of such disinformation. Again, I note that it was not suggested in the course of her oral evidence by any party to my client that she engaged in any of the conduct described in either of those three paragraphs. Nor
45 was she asked about it under cross-examination by Mr Fitzpatrick on behalf of West Moreton.

On that basis, your Honour, in my submission, the Commission would have – would take real care in accepting any submission that relates generally to education staff or teachers. And to the extent that any criticism might arise on the face of the evidence before you in relation to particular individuals, it does not arise in relation to my
5 client. Those are my submissions. Unless I can assist any further.

COMMISSIONER WILSON: Thank you. Thank you very much.

10 MR McMILLAN: Thank you.

COMMISSIONER WILSON: Mr O’Sullivan. You’re on the edge of your chair. Are you wanting to say something?

15 MR O’SULLIVAN: I am. You have eagle eyes, Commissioner. I said to you this morning that we would endeavour by 4 o’clock to finish the written submissions that we discussed on the last occasion. May I hand up a copy of those. It’s the original and a working copy. Attached to the back of it is a document that was identified to all the parties last night as a document on which we could make submissions if we wished to. It was one of a large number of documents that had been marked as
20 exhibits, if it please the Commission.

COMMISSIONER WILSON: Has this been circulated to the other parties?

25 MR O’SULLIVAN: Yes, your Honour.

COMMISSIONER WILSON: Have you given me more than one copy of this?

30 MR O’SULLIVAN: Yes, your Honour. I’ve given you the original and a working copy. The working copy is hole punched and we’ve given a hard copy of the document identified to the parties last night. So your Honour has one copy of the July executive meeting document and two copies of the submissions.

35 COMMISSIONER WILSON: Yes. Alright. Well, I’ll come to the July thing in a moment. I see your submissions with respect to the National Framework. I will have to consider all of these submissions in some detail.

40 MR O’SULLIVAN: Yes. The – thank you, your Honour. There are submissions about methodology and submissions just about construction which I understand you want to be addressed about. And that’s the addendum. That’s the construction. We’ve gone through and tried to construe it. We haven’t construed the big A3 document, your Honour. We’ve put that to one side. We’ve just looked at the very large, thick, National Framework document.

45 COMMISSIONER WILSON: The whole issue which has arisen in relation to what that framework means, I suppose, really underlines the commonsense proposition that to rely on something that’s in draft form, as Dr Kingswell seemed to do when he was talking about Redlands, is an inherently unsatisfactory thing to do.

MR O'SULLIVAN: We wouldn't accept that as being valid, with respect. No, we wouldn't. The fact that it's in draft form is not the reason why there is difficulty interpreting it, in our submission.

5 COMMISSIONER WILSON: What is that reason, in your submission?

MR O'SULLIVAN: It's a medical document written by doctors for doctors. That's the only difficulty. When you have ambiguity, it's difficult. But we've had as good a go as we can in looking at the meaning of it. And we think it's, indeed, tolerably
10 clear. If you track it all through, it's tolerably clear what it means. We have attempted in the addendum to set out what it is the short point is. It's about the ages of those who are captured by different services. That's what it amounts to.

COMMISSIONER WILSON: And with this question of ages is itself a difficult
15 one. And I suspect that if one looks at the different drafts of the planning framework, if they're all available, you'll find that different ages – age – sorry, that the ages have been differently bracketed in the different drafts.

MR O'SULLIVAN: We've examined that point in relation to the two drafts in
20 evidence. There's a late 2012 draft, November. And then there's the October 2013 that I troubled your Honour with. They're the two that we're aware of being in evidence. The ages – the relevant ages don't seem to change. There's some changes in terminology but not the ages.

25 COMMISSIONER WILSON: Alright. Well, that's – I have to consider that question in another context, in the context of the alignment.

MR O'SULLIVAN: I know, I know. It goes on and on.

30 COMMISSIONER WILSON: It does go on and on.

MR O'SULLIVAN: The – that's right. And insofar as your Honour's interested, the alignment question, if one looks at the National Framework document with the alignment question in mind, it's interesting how the services do change in material
35 ways as you go up in age. We know this. There's one set, it seems, for 13 to 17. And then for reasons we don't quite understand there's another set of services for 16 to 65 or 16 and over. Why that is, I can't tell your Honour.

COMMISSIONER WILSON: Sixteen and over?
40

MR O'SULLIVAN: Yes, your Honour. It says 16 to 65. We don't understand why that is. But it seems as – again, it's difficult but it seems to be the reason why Dr Kingswell said those are adult services. And I told your Honour – well, we don't need to go back over it. But that's – we've gone through it in the addendum to try
45 and unpack exactly, as a matter of pure construction, what the document means.

COMMISSIONER WILSON: All right. I'll have a look at that.

MR O'SULLIVAN: Yes.

COMMISSIONER WILSON: Now, the other outstanding issue is that you continue to express concern at the presence of the submission that's made in paragraph 204 of
5 Counsel Assisting's submissions.

MR O'SULLIVAN: I wasn't – yes, your Honour. Yes.

COMMISSIONER WILSON: I've made it clear what my attitude to it is. I'll ask
10 Counsel Assisting what their present position is: whether they continue to rely on it or what the position is.

MR O'SULLIVAN: Yes.

15 COMMISSIONER WILSON: Mr Freeburn.

MR FREEBURN: I think the best course is for us to consider it and we'll put something on in writing on Monday.

20 COMMISSIONER WILSON: I really don't think it should be a matter which takes up too much time of the Commission or that it should be matter which causes too much angst in any quarters.

MR O'SULLIVAN: Yes. Well, your Honour has been in my position before.
25

COMMISSIONER WILSON: Sorry?

MR O'SULLIVAN: Your Honour has been in my position before - - -

30 COMMISSIONER WILSON: Yes.

MR O'SULLIVAN: - - - where one's client is the subject of what seem to be attacks on his integrity. And one can't let it go. And that's where we are, your Honour.
35

COMMISSIONER WILSON: Well, I've made the point, I think, clearly enough that they are mere submissions. I may or may not accept them and at the moment I'm not minded to accept that particular submission.

40 MR O'SULLIVAN: Thank you, your Honour.

COMMISSIONER WILSON: So I think that that's really where it rests.

MR O'SULLIVAN: Now, in our written submissions I tried to correct – because I
45 think something I said to you was not exactly right. I've tried to correct it under the heading Royal College.

COMMISSIONER WILSON: Is this about Dr Fryer?

MR O'SULLIVAN: That's right. And I think your Honour was right and I've tried to correct it in writing. There's one other thing that I've checked I think I was wrong about.

COMMISSIONER WILSON: What's that?

MR O'SULLIVAN: When you – we were having an exchange about the radio interview.

COMMISSIONER WILSON: Yes.

MR O'SULLIVAN: And you observed that the Minister was speaking about the expert group and there's a reference to carers and others being on it. And you said, well, how can that be the case? And one – because the ECRG had finished and it had one. And I think you said to me what about the steering – what about SWAETRI? And I said, "Your Honour, I don't think that there were carers on SWAETRI." There was a meeting in November. And I said, "I don't think there are." I've checked it and I was wrong. It appears that the SWAETRI steering committee, in the documents I have seen, did have a carer representative on them. And don't go to the documents but the reference is in the Geppert statement. It's LG9. The Delium reference is WMS.1003.0003.00663 and I've asked the question, well, that's irrelevant. If it wasn't known when the Minister made his announcement that would just be confusing. The evidence is quite imprecise but it seems from the material that by 1 July 2013 there was a draft of SWAETRI documentation. There was another draft version 2 on 1 August 2013 and they both had reference to a consumer being proposed to be on the steering committee. I'll just give your Honour the references. In this case it's Adamson's affidavit and it's an exhibit to Adamson. The Delium reference is IAD.900.001.0104 at 0111. The reason that the evidence is unsatisfactory is because we don't have version 1 and 2. We've only got version 3. Version 3 does make clear that a carer was supposed to be on the committee but your Honour doesn't know what versions 1 and 2 said. As far as I'm aware they're not in evidence.

COMMISSIONER WILSON: And what's the approximate date of version 3?

MR O'SULLIVAN: It is – version 3 is 16 August 2013, your Honour. And that's the document attached to Adamson's affidavit. Adamson herself is exhibit 14. That's – so that's version 3 which I apprehend is in evidence. Version 2 is 1 August 2013. Version 1 is 30 July 2013.

COMMISSIONER WILSON: 30th or 13th?

MR O'SULLIVAN: I'm sorry, your Honour, 30 July 2013. I'm taking those revisions from the revision history on the first page of the document.

UNIDENTIFIED SPEAKER: The document is at tab 8 of the bundle that the State provided.

COMMISSIONER WILSON: Thanks for that.

5

MR O'SULLIVAN: Thank you. I point out that there's no direct evidence of whether the Minister was ever briefed about this but I'm just trying to direct – I'm sorry, your Honour, you're looking for it.

10 COMMISSIONER WILSON: Yes. That's alright. Go on.

MR O'SULLIVAN: The reference that I was directing your Honour's attention to is – the Delium number is .0111. It's page 80 in the bottom right-hand corner. If your Honour has the hard copy it's the first box at the top of the page.

15

COMMISSIONER WILSON: Yes. Consumers, carers and significant others.

MR O'SULLIVAN: Yes. Membership - - -

20 COMMISSIONER WILSON: Membership of the steering committee - - -

MR O'SULLIVAN: Yes.

25 COMMISSIONER WILSON: - - - and working groups as identified by the steering committee.

MR O'SULLIVAN: Yes. That was not the language the Minister used. I point that out to you. He didn't use that language. He spoke of residents. That's the language in - - -

30

COMMISSIONER WILSON: Residents.

35 MR O'SULLIVAN: Residents is the language he used. He talked about a resident and a resident's parent. That was the language he used. The document that was – the document identified to the parties by email at 5 o'clock last night - - -

COMMISSIONER WILSON: Yes.

40 MR O'SULLIVAN: May I turn to that, your Honour.

COMMISSIONER WILSON: Certainly.

45 MR O'SULLIVAN: We apprehend that it's of interest to your Honour and we have looked at it and wish to make very brief submissions about it. It appears to be, your Honour – I will just read out the reference. It's QHD.005.001.0002. It's been given a provisional exhibit number of one thousand and something. I can't tell your Honour off the top of my head. Now, it's the minutes of something called the Mental Health

Branch Directorate Executive meeting. And relevantly Dr Kingswell and Dr Geppert attend, your Honour. You will see that on page 1.

COMMISSIONER WILSON: Yes.

5

MR O’SULLIVAN: On page 2 at the bottom there’s a discussion of Redlands. The date range is – your Honour might consider significant because it’s between the two ministerial or Director-General briefing notes so - - -

10 COMMISSIONER WILSON: Yes.

MR O’SULLIVAN: - - - in between. The bottom of the page on Delium number 3 is the relevant entry, your Honour – under 3.2.

15 COMMISSIONER WILSON: Yes.

MR O’SULLIVAN: The submissions – your Honour has read that – the submissions we’d make are as follows. It’s the third paragraph under the box. Firstly, there’s a statement there:

20

MHPUI have not provided a report but they have significant issues.

That seems to us to relate to what goes before to do with governance arrangements for some other matter. It doesn’t seem to relate to Redlands. Then there’s the word “although” which clearly relates to Redlands. Now:

25

Although it hasn’t been communicated outside the executive Redlands is not going ahead. Director-General has given approval for that to cease.

30 Just pausing that, that rather supports, if it matters, the submission that mental health considered that the Director-General was sufficient. That doesn’t really matter. The Minister hasn’t signed off. Then we have this:

35

Communication plan will need to be provided and then look at a process for what happens with the Barrett Adolescent Centre and steering committee on future care.

That’s important, we’d submit. The conclusion would be that the senior officers in Mental Health Branch clearly have in mind that cancellation of Redlands has a direct impact on the Barrett Centre. In our submission, we would draw attention to the fact that that same point – the very same point as a matter of substance, namely, that if you cancel Redlands you need to look at what you’re doing with Barrett appears in the briefing note to the Director-General of May 2012. I’ll give your Honour the reference. The reference in the May 2012 briefing note – it’s item 7 where this point – I withdraw that. It’s item – paragraph 6. The reference, your Honour, it’s LJS2. The Delium number is LJS.9000.001.0001 at 32 and 33.

45

COMMISSIONER WILSON: What does it say?

MR O’SULLIVAN: I’ll read out – paragraph 7 says this, your Honour:

5 *Ceasing the 15-bed REATU capital program will necessitate a review of the
existing adolescent centre at The Park, and should give consideration to the
advantages and disadvantages of this model of care.*

10 That’s paragraph 7 I was reading out to your Honour. In our submission, that same
point is the point that’s made in the sentence I direct your Honour’s attention to.
Insofar as your Honour is concerned with whether the decision making is joined up
or disjointed and the considerations that have been taken into account, your Honour
will conclude that by May the point that is exercised in Mental Health Branch in July
15 has been communicated to the Director-General in the briefing note, and one would
conclude it formed part of his - - -

COMMISSIONER WILSON: Well, it’s not quite the same.

20 MR O’SULLIVAN: No?

COMMISSIONER WILSON: From what you’ve just read out, the May briefing
note - - -

25 MR O’SULLIVAN: Yes.

COMMISSIONER WILSON: - - - said that this should – I don’t know whether
you’d use the word necessitate – a review of the provision of services to adolescents
at The Park. And did you say a consideration of the advantages and disadvantages of
30 this model of care?

MR O’SULLIVAN: Yes, your Honour.

COMMISSIONER WILSON: Whereas in July they’re saying look at a process for
35 what happens to the Barrett Adolescent Centre and steering committee on future
care:

Services will –

40 Leaving out a little bit:

Services will still be delivered until a replacement service is available.

MR O’SULLIVAN: I wanted to come onto that, yes.

45 COMMISSIONER WILSON: It’s a bit different.

MR O'SULLIVAN: It's very different, and that's what I wanted to make some submissions about.

COMMISSIONER WILSON: Yes. Go on.

5

MR O'SULLIVAN: The sentence I'd direct your Honour's attention to, we say, is relevantly reflected in the May briefing note. What is different is the next sentence:

Services will still be delivered until a replacement service is available.

10

That sentence we make the following submissions about. Firstly – sorry – just before I go onto that, the other point we'd make: in terms of the word steering committee in the previous sentence, steering committee on future care, all we'd say is that – that is, in substance, what happened instead of a steering committee, had an ECRG process, a planning group process and a SWAETRI process that was consistent with the idea of a steering committee on future care. Now, the next sentence is different:

15

Services will still be delivered until a replacement service is available.

20

The word until – we don't have evidence about this, but the natural meaning is we'll keep it open until the new model of care is operational. That's what it appears to me. That is not the decision that was made by West Moreton some months later, on 24 May 2013. It's plain, in our submission, on the evidence that West Moreton did not decide to keep the Barrett open until the new services were operationalised. Instead, as has been submitted on our behalf and on behalf of the State and on behalf of West Moreton, a different decision was made, and, in substance, that was the two stream process that will provide wraparound care to consumers within the Barrett Centre from the existing services available in a bespoke way, and, separately, there will be a separate stream of process of developing a new state-wide model of care, and it was plain, in our submission, from paragraph 11 of the briefing note for 21 May that they're regarded as two separate processes.

25

30

So the question the Commission might wish to ask at some point is why was the decision that West Moreton made not the decision that appears in this sentence of the briefing note? Why did West Moreton not make a different decision, which would be as follows: we're going to decide to leave the Barrett open until the new suite of services which have been developed are operationalised. They're being developed and they're on the ground operating. Why did they not make that decision, which seems to be consistent with the thinking in July? I appreciate your Honour hasn't asked for submissions on the point, but it occurs to ask that it may be a relevant consideration.

35

40

Now, we submit the following. Firstly, that question, what – why did you not go down the high road rather than the low road: it wasn't asked specifically in that way of Dr Corbett, Eltham, Ms Dwyer or Ms Kelly. But, in our submission, that doesn't much matter, because, in our submission, the evidence indicates why they didn't do that. And the reason, in our submission – it's always, as you say, dangerous to say

45

5 what the reasoning is when there's no direct evidence on it, but the inference we would – if your Honour wishes enter into it and your Honour wishes to make a decision about it, the inference we would ask your Honour to draw is as follows, that there was a reason why West Moreton did what it did and did not take this other approach.

10 The reason was the practical situation that existed by May 2013, which was that it was known by that stage that the EFTRU unit was imminent. It was imminently going to open, and to simplify it the judgment of Dr Kingswell, who was providing advice, and of Ms Kelly, who was executive director of mental health, and Ms Dwyer is it was simply too dangerous to collocate the young people at Barrett with an operational EFTRU unit for any period of time. A short time was a risk that could be borne if it was managed, but if it was one or two years that was not a risk that could be accepted. Dr Kingswell gave evidence not on this particular point, but the language he used is this was not a risk that should be taken. He said that orally in writing. We apprehend that that was equally the thinking of the executive director at West Moreton: it was simply too dangerous.

20 In our submission, the conclusion you would draw is that by May 2013 the option of waiting until a fully operationalised suite of services was up and running, had been developed and up and running to replace Barrett was effectively off the table because of the danger that EFTRU presented. It was not a risk that could responsibly be taken.

25 If your Honour is interested in the question was that a right or wrong decision, for the reasons we addressed earlier we would say that was a correct decision to make, it was the right risk assessment to make. If your Honour asks the question – if your Honour asks this question, what was the root cause of the outcome whereby from May 2013 Barrett was going to close and it was not a condition of closure that all of the new services were up and running, the root cause, we would submit, given what you've heard, is the delay in the Redlands Project. It was a delay in that project which caused EFTRU to come to dictate this key feature of what occurred.

35 COMMISSIONER WILSON: There's a fair bit of speculation in all of that, Mr O'Sullivan.

MR O'SULLIVAN: In what respect is there speculation, your Honour?

40 COMMISSIONER WILSON: Well, really, there's speculation as to what the reason was that West Moreton did what it did.

45 MR O'SULLIVAN: I accept that, your Honour. I accept that it's speculation because there's no direct evidence, because it wasn't put to them why did you not do something differently.

COMMISSIONER WILSON: And it also seems to ignore what I understood to be Dr Kingswell's evidence, and that was that he was very conscious of the risks that would be posed by EFTRU back in May 2012 - - -

5 MR O'SULLIVAN: Yes.

COMMISSIONER WILSON: - - - but didn't raise it; that's 12 months before.

10 MR O'SULLIVAN: He didn't raise it – well, if your Honour considers that he didn't raise it, if that's the finding your Honour wishes to make, he didn't raise it, can he be - - -

COMMISSIONER WILSON: There's no evidence that he did.

15 MR O'SULLIVAN: Yes.

COMMISSIONER WILSON: Clearly, it didn't come to the Minister's attention. It doesn't seem to have come to Dr O'Connell's attention - - -

20 MR O'SULLIVAN: Yes.

COMMISSIONER WILSON: - - - and it doesn't seem to have come to Dr Young's attention - - -

25 MR O'SULLIVAN: Yes.

COMMISSIONER WILSON: - - - that she can remember. So – I mean, whether or not he had any discussions with people within his branch I don't know.

30 MR O'SULLIVAN: Yes.

COMMISSIONER WILSON: But it doesn't seem to have been elevated.

35 MR O'SULLIVAN: Yes. I wouldn't disagree with what your Honour says. I point out that he wasn't asked, but what your Honour says is, with great respect, absolutely right. But the evidence that he did give was that – when he recommended the cancellation of Redlands is that it didn't solve the problem he had. The looming problem with EFTRU about the open was not solved by Redlands. So it – Redlands was irrelevant in solving the practical problem. So the correct question, in our
40 submission, is why should he be criticised for raising something which, in his judgment, was irrelevant?

COMMISSIONER WILSON: I must say, what concerns me is that this EFTRU problem was one that really wouldn't have arisen if the two projects had both stayed
45 more or less on schedule - - -

MR O'SULLIVAN: That's right.

COMMISSIONER WILSON: - - - for their completion. What troubles me is that it seems no one in authority in the Health Department was keeping an eye on these parallel developments of Redlands and EFTRU. And no one seems to have been cognisant of the fact they were getting out of sync and that their doing so was going
5 to cause a problem down the track. I just – I find it difficult that that should have been the case, that someone was not responsible for that overall coordination.

MR O’SULLIVAN: I understand that, your Honour. I understand that. And, as your Honour says, the misalignment of the timing was known for – probably since at
10 least 2010. It was known that they were getting more and more out of sync. And by 2011 it was apparent that they were significantly out of sync, and there certainly – we haven’t heard evidence from the – I withdraw that. There’s no evidence before you as to what was done in 2010 or 2011 in terms of recognition of – what was the practical implication of the out-of-syncness. I accept that, your Honour. There’s no
15 evidence that the out-of-syncness was noticed or a plan was come up with. No evidence doesn’t mean – well, your Honour, I don’t need to tell you, but there’s no evidence one way or another, but I suppose your Honour would say we’ve spent a lot of time getting documents. If there were documents showing it had been considered, they would be before you.

20 COMMISSIONER WILSON: Well, one would hope so.

MR O’SULLIVAN: One would hope so. So probably it’s a safe inference that certainly – I will start again. There are no documents indicating that the out-of-
25 alignment issue had become recognised or recognised as a serious – potentially becoming a serious problem in 2010, ’11 or ’12, and on the evidence, the problem seems to have, in the real world, actuated the closing of the Barrett Centre sooner rather than later because of the danger that EFTRU presented. But, your Honour, what’s troubling, your Honour, is why was this not being looked at and why was
30 there not coordination of the kind your Honour plainly expects should have occurred? Why – I understand that’s troubling your Honour.

COMMISSIONER WILSON: It is.

35 MR O’SULLIVAN: And what we submit is that, certainly from my client’s perspective, he comes in as Minister in April 2012. At that point, we’ve come a long way down the track. The question for your Honour is was it appropriately managed and responded to in a decision-making process. That seems to be the evidence, your Honour.

40 COMMISSIONER WILSON: He would have flagged it to someone? There’s no evidence that he did. He said that he’d known about it for years.

MR O’SULLIVAN: Well, your Honour, it’s plain that if you are talking about the
45 need to close Barrett because The Park is being repurposed at that general level we have to close Barrett because The Park’s future is inconsistent with Barrett. That was something that was known for some time and certainly the evidence of the

Minister was that he knew that Barrett had to close because of – one of the reasons he says that he understood it had to close was because of a repurposing of The Park and it was going to become an adult-only forensic – an adult-only facility with a focus on secure and forensic patients and there would be – I think he says more of a residential-type of accommodation – less secure. So - - -

COMMISSIONER WILSON: But to be fair to Dr Kingswell as I recall his evidence, he said, yes, it was – effectively he said it was being repurposed as an adult secure and forensic unit but he said until EFTRU came along there was a lot of security.

MR O’SULLIVAN: Yes.

COMMISSIONER WILSON: It seems that there was still some incidents - - -

MR O’SULLIVAN: No, quite.

COMMISSIONER WILSON: - - - despite all that security - - -

MR O’SULLIVAN: Quite.

COMMISSIONER WILSON: - - - but he said there was a lot of security.

MR O’SULLIVAN: That’s right.

COMMISSIONER WILSON: But EFTRU was a different proposition.

MR O’SULLIVAN: Yes.

COMMISSIONER WILSON: It was really a step down facility, getting people ready to go in to the community - - -

MR O’SULLIVAN: That’s right. Yes.

COMMISSIONER WILSON: - - - just with almost a suburban gate.

MR O’SULLIVAN: Yes. That’s right. Exactly.

COMMISSIONER WILSON: So that was something quite different.

MR O’SULLIVAN: Quite different. Fundamentally different in terms of risk assessment to the young people on the site. Completely different. But in terms of – if your Honour is asking about – I’ll start again. It was known – the evidence indicates it was known for some time that one reason why Barrett had to close at some point on that site was because of the repurposing of The Park into an adult-only facility. At that general level that’s something that seemed to have been known for some time. In terms of knowledge of different people the Minister’s evidence is not

specific about when he became aware of that. His evidence is that he knew that was a reason for closing it. His evidence is not specific about when he learned that but, in our respectful submission, it would be a mistake to equate advice about EFTRU in a context of closing Redlands. That question with the question of whether senior
5 persons within the Department of Health were aware that the shelf life for Barrett was short because The Park was being repurposed. That's a different question.

Your Honour is concerned about a lack of coordination between the left hand and the right hand, I think. And in our respectful submission, the fact that Dr Kingswell, if it
10 be a fact, didn't advise the Director-General who didn't advise the Minister about EFTRU in the context of cancelling Redlands – cancelling Redlands – not closing Barrett but cancelling Redlands, in our submission, is not a ground for criticising Dr Kingswell or, indeed, Dr O'Connell if one could go that far.

15 COMMISSIONER WILSON: Well, this comes back to the submissions I heard this morning. It's not really taking it any further is it, Mr O'Sullivan?

MR O'SULLIVAN: No. It's not. All I was going to say, your Honour, is that – no, I won't say anything further, your Honour.

20 COMMISSIONER WILSON: Alright.

MR O'SULLIVAN: So it was provisional exhibit 1161, your Honour.

25 COMMISSIONER WILSON: Thank you.

MR O'SULLIVAN: Thank you, your Honour.

COMMISSIONER WILSON: Thanks, Mr O'Sullivan. Now, does anyone else wish
30 to say anything? No. Alright. Well, I think that is the conclusion of the oral hearings but, as I said this morning, if something arises at the last minute – and I hope it's not at the last minute – whatever has to be done to deal with it at the last minute will be done. You should all rest assured of that. Alright. Thank you all very much for your help.

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ADJOURNED

[4.18 pm]