

**In the matter of the *Commissions of Inquiry Act 1950***

**Commissions of Inquiry Order (No. 4) 2015**

**Barrett Adolescent Centre Commission of Inquiry**

**SUBMISSIONS ON BEHALF OF THE STATE OF QUEENSLAND  
CROSS-EXAMINATION OF WITNESSES AND CLOSED HEARINGS**

**Preamble**

1. The State of Queensland has provided Joint Submissions with respect to closed hearings and amendments to the Order to Prohibit Publication of Evidence dated 15 October 2015.

**Cross-examination**

2. Pursuant to Practice Guideline 2/2015<sup>1</sup> opportunity will be given to each person/party who has leave to appear before the Commission to examine each witness who gives evidence in chief.
3. The State of Queensland may cross-examine on any issue arising out of the terms of reference, particularly with regard to any matter upon which there is potential for an adverse finding of interest to the State or any matter where the State may be called on to carry out implementation of recommendations.

**Cross-examination of other parties witnesses**

4. The Commission of Inquiry has directed that all parties seeking to cross-examine witnesses provide written submissions by 21 January 2016 outlining:
  - (a) a schedule of the witnesses they wish to cross-examine;
  - (b) particulars of the issues on which they wish to cross-examine;
  - (c) a list of any documents they wish to refer to during cross-examination; and

---

<sup>1</sup> *Publication of Witness Statements and other Evidentiary Materials and Public Hearings* – published 30 October 2015 Amended 18 January 2016

- (d) a considered estimate of the duration of the cross-examination of each witness.<sup>2</sup>
5. At this stage, it is a difficult and perhaps a somewhat premature task to provide details or topics for cross examination in circumstances, where:
- (a) Counsel Assisting have not provided an opening address setting out the potential material issues and scope of inquiry;<sup>3</sup>
- (b) paragraph 3(b) of Practice Guideline 02/2015 as Amended 18 January 2016 indicates that the issues and documents which Counsel Assisting intend to question the witnesses upon will be provided:
- (i) “*where possible*”;
- (ii) three business days before a witness is called; and
- (iii) to the witness or their legal representative,
- with no mention of whether the other parties will receive any notice of such matters; and
- (c) not all witness statements for witnesses on the present witness list have, as yet, been provided to the parties. Those statements may raise issues that impact on the scope of cross-examination of witnesses; and
- (d) it is anticipated that there may be additional statements from witnesses not yet identified to the parties.
6. In the absence of any advance notice about the matters that Counsel Assisting consider to be of interest, it is difficult to provide greater clarity. It is of concern that Practice Guideline 02/2015 as Amended 18 January 2016 does not provide for the notification to all represented parties of the Commission’s area of interest and list of documents. It is submitted that the Commission ought consider further

---

<sup>2</sup> Direction from the Commission by email to Crown Law from A.Hill, Executive Director, Barrett Adolescent Centre Commission of Inquiry 15/12/15 at 16:36

<sup>3</sup> It would assist to have a copy of the opening as soon as possible. We note that it is intended that there be openings in relation to “Decision and Models of Care” and “Transition” on 15 February 2016. The earlier we receive a copy, the sooner we can provide greater assistance to the Commission.

amending the Practice Guideline to provide three days notice of areas of interest and relevant documents to all parties and for parties seeking to cross-examine to respond two days prior to the witness being called. This would ensure a more efficient process and may even reduce the time identified witnesses are required (if they are still required at all).

7. Once notice is provided of the areas of interest for each witness information, assuming such information is provided, it will be possible to provide greater clarity, in compliance with paragraphs 3(c) and (d) of Practice Guideline 02/2015 as Amended 18 January 2016, with respect to intended cross-examination, particularly in relation to documents we wish to refer to during cross-examination.
8. Prima facie, the State does not seek to cross-examine any witness with respect to:
  - (a) any issues outside the scope of the Terms of Reference;
  - (b) hearsay evidence;
  - (c) statements of the witnesses that are not based on fact or are speculative; or
  - (d) opinions provided outside the scope of expertise of the witness.
9. However, should Counsel Assisting or any other Counsel engage in any such issue, the State reserves its right to cross-examine the relevant witness.
10. At this stage, qualified by the above constraints, the State anticipates that it may wish to cross-examine the witnesses identified in the table below.
11. For each identified witness, an indication is provided of the likely general topics for cross-examination and an indicative timeframe.

<b>Witness</b>	<b>Topics</b>	<b>Timeframe</b>
Dr Cary Breakey	<ul style="list-style-type: none"> <li>• Models of care and continuum of care</li> </ul>	15-20 min
Dr Anne Brennan	<ul style="list-style-type: none"> <li>• Models of care and continuum of care</li> <li>• Transition / transfer arrangements</li> </ul>	15-20 min
Vanessa Clayworth	<ul style="list-style-type: none"> <li>• Transition / transfer arrangements</li> </ul>	15-20 min

Dr Michael Cleary	<ul style="list-style-type: none"> <li>• Models of care and continuum of care</li> <li>• Liaison with Department of Education staff</li> </ul>	15-20 min
Dr David Crompton	<ul style="list-style-type: none"> <li>• Models of care and continuum of care</li> <li>• Liaison with Department of Education staff</li> </ul>	15-20 min
Susan Daniel	<ul style="list-style-type: none"> <li>• Transition / transfer arrangements</li> </ul>	10-15 min
Dr Leanne Geppert	<ul style="list-style-type: none"> <li>• Models of care and continuum of care</li> <li>• Transition / transfer arrangements</li> </ul>	15-20 min
Dr Phillip Hazell	<ul style="list-style-type: none"> <li>• Models of care and continuum of care</li> </ul>	20-30 min
Sharon Kelly	<ul style="list-style-type: none"> <li>• Transition / transfer arrangements</li> <li>• Liaison with Department of Education staff</li> </ul>	15-20 min
Dr William Kingswell	<ul style="list-style-type: none"> <li>• Models of care and continuum of care</li> <li>• Transition / transfer arrangements</li> </ul>	15-20 min
Dr Brett McDermott	<ul style="list-style-type: none"> <li>• Models of care and continuum of care</li> </ul>	15-20 min
Deborah Rankin	<ul style="list-style-type: none"> <li>• Education models</li> </ul>	15-20 min
Anne Reddie	<ul style="list-style-type: none"> <li>• Education models</li> </ul>	20-30 min
Dr Trevor Sadler	<ul style="list-style-type: none"> <li>• Models of care and continuum of care</li> <li>• Transition / transfer arrangements</li> </ul>	20-30 min
Dr Terry Stedman	<ul style="list-style-type: none"> <li>• Transition / transfer arrangements</li> </ul>	10-15 min

12. With respect to all witnesses, including those not listed above but for whom statements have been provided, the State reserves its right to apply to cross-examine:

- (a) once the material issues are identified by Counsel Assisting; and/or

- (b) on any unanticipated issue that arises as a consequence of responses to questions put by Counsel Assisting or other Counsel.

### **Questioning of witnesses represented by Crown Law**

- 13. In relation to witnesses represented by Crown Law, the State reserves its right to question on any issue raised by Counsel Assisting or any other party.

### **Closed hearings**

- 14. Presently, the State of Queensland does not anticipate that it will seek to cross-examine any of the witnesses with respect to:
  - (a) information regarding a patient's health, including but not limited to information contained in their medical and clinical records;
  - (b) information that identifies, or is likely to lead to the identification of a patient or former patient of the Barrett Adolescent Centre or their family, which includes but is not limited to the following types of detail: gender, date of birth, home address/es or geographic location, point in time the person was an inpatient (or day patient), treating clinician, patient specific transition arrangements including the location or name of the receiving service, patients' clinical diagnoses and anything else relating to a patient's clinical information or their family;
  - (c) details of the method or location of the death of any deceased patient; or
  - (d) details of the fact of and/or method of any incidents of self-harm.
- 15. However, if this position changes Counsel Assisting will be notified at the earliest opportunity.
- 16. To the extent that questions from Counsel Assisting, or other parties, or any evidence from any witness will, or may, traverse the matters listed in paragraph 14 above, the State of Queensland will provide as much notice of that outcome as possible to Counsel Assisting in order to facilitate closure, or part closure, of the hearing of that witness' evidence.

17. Detailed submissions and correspondence have previously been provided to the Commission with respect to non-publication and confidentiality (and continue to be provided as redacted statements are published and released for comment). In accordance with those submissions, it is the position of the State that any evidence with respect to the matters the State identifies as requiring redaction ought be conducted in camera.

#### **Evidence of former patients or family members**

18. The State understands that it is likely that former patients or family members will give evidence during hearings. It is submitted that the evidence of transition patients or family members of transition patients should be heard in closed hearings.
19. While the provision of consent for an open hearing by a former patient may address the risks to that patient arising from the disclosure of confidential personal medical records, it does not address the concerns expressed by the experts about:
  - (a) the appreciable potential for serious psychological harm or deleterious impact on the mental state of former patients, if the former patients are exposed to the evidence, for example via web streaming of the Commission hearings;
  - (b) the risk of suicide contagion effects, if the former patients are exposed to the evidence, for example via media coverage or web streaming of the Commission hearings; or
  - (c) the risk of suicide contagion effects in the wider youth community if there is publicly accessible web streaming or inappropriate media reporting.
20. Given the small cohort of transition patients, and the close interaction between those patients in the Barrett Adolescent Centre, there is an appreciable risk that the evidence of a former patient or a family member may disclose confidential

information about another patient, or otherwise place the former patients at risk. As is noted by Associate Professor John Allen:

... the community of patients and families whose stories may be aired in this inquiry is small and many know each other. ...

It is also possible that former patients who hear reports of other's experiences may both identify with those stories and increase their risk or may misidentify the stories as their own and then feel aggrieved that their story is in the press.

21. In those circumstances, it is in "*the public interest*" expedient for the evidence of the transition patients and family of those patients to be in closed hearings.
22. Further, the conduct of discrete parts of the hearing in closed session will not detract from the Commission's task to conduct the Inquiry in an open and independent manner in accordance with the *Commission of Inquiry Order (No. 4) 2015* should the Commissioner permit the transition patients and their families to be present during the closed hearings.

#### **Information relating to reported deaths**

23. On 19 January 2016, the Commission requested submissions relating to the way the Commission should treat references and information relating to the three young people whose deaths have already been widely reported in the press.
24. It is submitted that, although such information may have been widely reported in the past, this information ought be subject to the same controls with respect to publication as those contained in the Order to Prohibit Publication of Evidence made on 15 October 2015 (including those amendments sought in paragraph 22 of the Joint Submissions).
25. In this respect, the State again relies on the expert evidence of the clinicians in the field of adolescent psychiatry.
26. In particular, the report of Gould, Jamieson and Romer, referred to in the report of Dr Hatherill and attached to the Joint Submissions dated 25 September 2015, notes:

The magnitude of the increase in suicides following a suicide story is proportional to the amount, duration, and prominence of media coverage (see Gould, 2001, for review). A "dose-response" relationship has recently been reported ...<sup>4</sup>

---

<sup>4</sup> at page 1271.

27. If references to the three young people whose deaths have already been widely reported in the press are not redacted, the amount of publicly available information is proportionally increased such that the factors necessary for a “dose-response” are created.

**Evidence regarding the alleged incident which led to Dr Sadler being stood down**

28. On 20 January 2016, the Commission requested submissions about the extent to which evidence relating to the alleged incident which led to Dr Sadler being stood down should be heard in closed session and be the subject of a non-publication order.

29.

30.

31. Further, hearing evidence on this issue in closed session (or preventing the publication of this information) will not detract from the Commission’s task to conduct the Inquiry in an open and independent manner in accordance with the *Commission of Inquiry Order (No. 4) 2015* should the Commissioner permit interested parties to be present during the closed hearings.



32. The State otherwise reiterates its previous submissions about the risks associated with publication of and public hearings relating to patient information.

### **Media**

33. In light of the expert evidence about how inappropriate media coverage exacerbates the risks to former patients and the wider community, it is respectfully submitted that the Commissioner ought:
- (a) distribute copies of the relevant Mindframe Guidelines at the directions hearing on 28 January 2016, as well as regularly throughout the Commission's hearings; and
  - (b) remind media, both at the directions hearing on 28 January 2016 and regularly throughout the Commission's hearings, of the importance of following the Guidelines and directing consumers to relevant mental health support services.

### **Non-publication of these submissions and closed directions hearing**

34. The State requests that these submissions not be published without redaction.
35. The State also notes that there may be a need for part of the directions hearing to be closed if detailed oral submissions on the issues referred to herein are necessary.

Elizabeth Wilson QC, Nicole Kefford and Janice Crawford  
Counsel for the State of Queensland

21 January 2016