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THE HONOURABLE MARGARET WILSON QC, Commissioner

MR P. FREEBURN QC, Counsel Assisting

MS C. MUIR, Counsel Assisting

IN THE MATTER OF THE COMMISSIONS OF INQUIRY ACT 1950

COMMISSIONS OF INQUIRY ORDER (No. 4) 2015

BARRETT ADOLESCENT CENTRE COMMISSION OF INQUIRY

BRISBANE

9.31 AM, MONDAY, 11 APRIL 2016

Continued from 11.3.16

DAY 26

RESUMED

[9.31 am]

5 COMMISSIONER WILSON: Good morning, everyone. First, I'd like to attend to
a housekeeping matter, and that is the exhibit list. As at the close of the oral
evidence on the 11th of March, exhibits 1 to 292 had been admitted into evidence.
Since then, Counsel Assisting and the parties have agreed that further documents
should be admitted, and these have provisionally been numbered 293 to 971. I take it
there's no objection to my receiving those? They have been circulated? Very well.
10 And I understand there is still further documents which have been placed in the data
rooms, and the Commission is waiting to hear from the parties as to whether they
agree that they should be admitted or not.

15 It's now a month since the Commission conducted the public hearings to receive oral
evidence. Since then, Counsel Assisting and the parties with leave to appear have
exchanged written submissions. The public hearings today and tomorrow are
intended to afford Counsel Assisting and the parties the opportunity to speak to their
written submissions and to respond to the submissions of others.

20 Many of the people associated with the facts and circumstances to which the terms of
reference relate may not have previously had any direct interest in legal proceedings
of any kind, let alone a Commission of Inquiry. With that in mind, I want to say a
few things about submissions before counsel begin their addresses.

25 Submissions are not evidence. They are legal arguments put forward to assist me in
my task of conducting a full and open inquiry into the issues raised by the Terms of
Reference, and, ultimately, reporting to the Premier on the results of that inquiry.
The Commission's task is to investigate the facts.

30 This is not adversarial litigation where someone makes a claim, usually others
respond to it, then the parties search out the evidence and present it to a judge, who
must determine whether the claimant has proved his or her case. Here, it is for the
Commission to search out and assemble the evidence. It is not bound by the rules of
evidence that apply in adversarial litigation, but it is obliged to afford procedural
35 fairness to those whose interests may be affected by its findings. Because its
findings may affect the interests of parties, they have the opportunity to test the
evidence on which the Commission proposes to rely. They have done that by cross-
examination of witnesses and now by making submissions and what conclusions I
should draw from the evidence.

40 Over the past few months, the Commission received over 100,000 documents,
including many documents which came into existence in the ordinary course of
business of various government departments and Hospital and Health Services, as
well as witness statements. To let the parties know which documents it may
45 ultimately rely on, the Commission has taken the course of making all the witness
statements and their attachments in their unredacted form available to the parties by
way of secure online data rooms. It has also placed in the online data rooms those of

the 100,000 documents not attached to the witness statements which it considers may be directly relevant to the determination of the issues raised by the Terms of Reference.

5 Given the nature of the issues for determination, the Commission has had to balance its obligation to conduct a full and open inquiry with legitimate concerns about confidentiality. Many of the witness statements and other documents have been redacted before being used in the public hearings. Some of the hearings have been conducted in closed session. The redaction process has been an onerous one.
10 Commission staff have carried out the first redactions. Then those first redactions have been posted to the online data rooms, and the parties have been given the opportunity to make submissions on the extent of the redactions. The Commission has considered these, sometimes making further redactions, sometimes not. Only after this thorough process has been completed have any documents been placed on
15 the internet. So far, over 36,000 pages of witness statements and exhibits have been reviewed, redacted so far as necessary, and posted to the online data rooms. The process is ongoing.

20 Traditionally, submissions would be received orally and responded to orally. But in recent years, in an endeavour to save time and expense in convening oral hearings, both courts conducting adversarial litigation and Commissions of Inquiry have adopted the practice of receiving primary submissions in writing and allowing parties to speak to their submissions and to respond to the submissions of others. That's the course this Commission of Inquiry has adopted. As I've said, submissions are not
25 evidence.

In the present case, there are few primary facts in issue. The real disputes are as to the conclusions I should draw from those primary facts. I cannot engage in speculation. My conclusions have to follow logically from the facts I find. They
30 will necessarily involve evaluation, that is, making judgment calls. And so it is to be expected that there will be vigorous debate about the conclusions I should draw. That is perfectly normal and proper.

I caution everyone listening to these submissions to bear in mind that they are
35 submissions. They are not evidence. Where they contain criticisms of individuals or statutory entities, they are merely submissions that those criticisms are open on the evidence. They are not the findings of the Commission that those criticisms are appropriate in all of the circumstances. Shall we begin? Mr Freeburn.

40 MS McMILLAN: Can I – excuse me – raise one issue, Commissioner?

COMMISSIONER WILSON: You'll have to speak up. I can't hear.

45 MS McMILLAN: I'm sorry. Commissioner, can I just raise one issue? Clearly, matters involving patients and their families will be in closed session. You received a letter from the Crown on Friday about the publication of written submissions, which follows on from a letter sent by my instructing solicitors. Can I ask whether

you intend to have the oral submissions in closed session, those parts that are injurious to particular individuals' reputations?

5 COMMISSIONER WILSON: I don't propose to do that at the moment, Ms McMillan. Certainly, anything involving patient confidentiality - - -

MS McMILLAN: Yes.

10 COMMISSIONER WILSON: - - - will be dealt with in closed hearings. But in any court proceeding there has to be open debate of the issues. This Inquiry must be, so far as it can, a full and open Inquiry. Any criticisms that you may wish to make of individuals or entities or that other counsel may wish to make are merely submissions, and I will consider the submissions in due course, but I don't regard them as something that should necessarily be heard in closed hearing.

15 MS McMILLAN: Thank you.

COMMISSIONER WILSON: Mr Freeburn.

20 MR FREEBURN: Commissioner, there is a vast electronic container-load of evidence, and the parties have also given you detailed and comprehensive submissions. There is insufficient time for us to deal comprehensively with the 17 sets of submissions. Instead, Ms Muir and I propose to select some substantive points from the submissions and to explain where there is broad agreement or not
25 and where the differences lie. That approach, we hope, will be useful in your next task of writing the report.

I have six points I will address. The first is the issue of legal authority. Commissioner, you asked the parties for written submissions on the entity which had
30 the legal authority to close the Barrett Adolescent Centre. This is a matter upon which the parties are largely agreed, and the situation is this, if I can explain it in two tranches: the first is that the period before 1 July 2012, before that date, Queensland Health, was one large organisation or department. Consequently, the Director-General, subject to the Minister, had overall responsibility for the management,
35 administration and delivery of public sector health services in Queensland. And if I can give you and the parties the references for that proposition, it's the *Health Services Act 1991*, section 59. There's also references in Counsel Assisting's discussion paper 4A at paragraph 13. It the State's submissions at paragraphs - - -

40 COMMISSIONER WILSON: Slow down, would you?

MR FREEBURN: Sorry.

COMMISSIONER WILSON: Discussion paper 4A at paragraph 13.

45 MR FREEBURN: Yes.

COMMISSIONER WILSON: Crown submissions?

MR FREEBURN: Crown submissions at paragraph 17 and 65(a).

5 COMMISSIONER WILSON: Yes.

MR FREEBURN: That's paragraph references.

10 COMMISSIONER WILSON: At 65A or - - -

MR FREEBURN: 65(a).

COMMISSIONER WILSON: Thank you.

15 MR FREEBURN: Mr Diehm and Ms Conway's submissions on behalf of Dr O'Connell at paragraph 5, and Ms McMillan and Mr Fitzpatrick's submissions at page 1 of appendix A.

20 COMMISSIONER WILSON: Yes.

MR FREEBURN: Now, I can deal with the period after 1 July 2012. In our submission, the position is fairly summarised from the O'Connell submission as follows: and I'm going to put seven propositions. The first is that Queensland Health, through its Director-General, was the system manager, with overall
25 management of the public sector health system. The second is that each Hospital and Health Service had responsibility for the delivery of health services in its district including some statewide facilities. The third is that the relationship between the system manager and Queensland Health on the one hand and the health service on the other hand was governed by the particular service agreement that applied to that
30 health service. The fourth is that the particular service agreement between West Moreton and Queensland Health for the period 2012 to 2013 - - -

COMMISSIONER WILSON: Does that have an exhibit number?

35 MR FREEBURN: It does and I will - - -

COMMISSIONER WILSON: Give it to me later.

MR FREEBURN: - - - obtain that. But it required West Moreton to operate the
40 Barrett Adolescent Centre. The next service agreement was a three-year agreement and it provided that West Moreton had oversight responsibility for the Barrett Adolescent Centre. The next is that under that service agreement there was a tiered or cascading process for amending the service agreement which involved agreement or attempted agreement at different levels cascading in terms of seniority and if there
45 was no agreement at the senior level – Director-General and Chief Executive – then there would be a decision by the Minister.

And the last proposition here is that the Director-General was subject to the direction of the Minister in managing Queensland Health generally and the Minister was entitled to give any Hospital and Health Service a written direction. Now, again, if I can return to the O'Connell submission, it neatly summarises the effect of the legislation and the service agreements in this way and this at - - -

COMMISSIONER WILSON: So which point of your seven are you up to?

MR FREEBURN: I've finished the seven.

COMMISSIONER WILSON: You've finished the seven. Thank you.

MR FREEBURN: And I'm now up to a summary of those seven or the effect of those seven.

COMMISSIONER WILSON: Yes.

MR FREEBURN: Ms Wilson tells me that the exhibit is 228.

COMMISSIONER WILSON: That's the 2012 to '13.

MR FREEBURN: That's right.

COMMISSIONER WILSON: Thank you.

MR FREEBURN: So the O'Connell submission neatly summarises the effect of the legislation and the service agreements in this way: a decision to close the Barrett Adolescent Centre could only be legally effected by amending the service agreement because absent that West Moreton Hospital and Health Service was obliged to operate the Barrett Adolescent Centre. Now, that's the O'Connell submissions at paragraph 14. Now, that's the position agreed by Counsel Assisting and we perceive there to be no significant difference in opinion about that. There is, perhaps, one exception. Can I take you briefly to page 26 of the State's submissions.

COMMISSIONER WILSON: Yes.

MR FREEBURN: Now, there in paragraph 65(b) the State say correctly, in our submission, that any decision to close the Barrett Adolescent Centre was within the power of those who had authority to amend the service agreement. And then the State has set out the cascading or tiered arrangement for amending the service agreement. But, now, if we go to the summary at paragraph 69 on the next page and we scroll down to the last of the points – it should be (f).

COMMISSIONER WILSON: (f) seems to be inconsistent with 65(b), does it not?

MR FREEBURN: Yeah. In my submission, it is. The substantive submissions are correct. The summary, in my submission, is incorrect. But with that exception there is broad agreement. Now, can I list the references for this area? It's the O'Connell submissions from paragraphs 6 to 14. Next, the State's submissions at 65(b) and 66
5 but not that summary – or at least that part of the summary. West Moreton's submissions appendix A at paragraphs 5 to 14 and the *Hospital and Health Boards Act 2011*, section 44. Now, before leaving this at this point – this area – can I say that in fact as it happened in this case, West Moreton, Queensland Health, the Minister all agreed with the decision to close the Barrett Adolescent Centre in
10 various ways. And again, that doesn't seem to be in contest.

Now, my next point is about the ECRG. It's important to clarify one aspect about the ECRG. I'd like to go to page 80 at paragraph 303 of the State's submissions. Now, paragraph 303 says:

15 *It is submitted that it is not apparent from the face of the ECRG report that the requirement for a tier 3 service equates to a requirement for bricks and mortar.*

Then we can see in the previous paragraph there is a reference to the evidence of Dr Geppert about that. Now, in our submission, the ECRG was in reality
20 recommending a bricks and mortar and we perceived that mounted against us are a number of different parties – I think the State – also at paragraph 7.16 of West Moreton's submissions rely on that same part of Dr Geppert's evidence.

25 COMMISSIONER WILSON: Sorry, West Moreton – I'll just turn that up.

MR FREEBURN: West Moreton's submissions at paragraph 7.16. The Springborg submissions essentially say that the ECRG were unclear about what they meant by tier 3 and that's at paragraph 6.21 on page 52.

30 COMMISSIONER WILSON: I'd just like to have a look at that if I may – the Springborg submissions which are COI.028.0017.0001 at .0054. Now, which part of 6.21 do you rely on, Mr Freeburn, or are you pointing to me?

35 MR FREEBURN: It's in that paragraph (a).

As the –

about six or seven lines down:

40 *As the ECRG did not define precisely what they meant by tier 3.*

COMMISSIONER WILSON: You'll have to speak into the mic so it can be recorded.

45 MR FREEBURN: I'm sorry. About seven lines down, the words:

As the ECRG did not define precisely what the meant by tier 3.

And then they point to Dr Kingswell being unsure about what it meant.

5 COMMISSIONER WILSON: Yes. I see that.

MR FREEBURN: And Mr Kingswell's submissions cover it in two parts. The first is paragraph 160 on page 46 and then at paragraph 197 on page 58. And there it's contended that:

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The ECRG did not recommend a standalone facility or a new purpose-built facility but, rather, a service.

COMMISSIONER WILSON: Yes.

15

MR FREEBURN: I should acknowledge at the outset that Ms Amelia Callaghan, the lady from headspace who was also on the ECRG, gave evidence to the effect that she was unsure whether a service was intended, a service or a bricks and mortar were intended. So the four parties who make this submission have that in their favour.

20

But can we go to the ECRG report itself because that's the most important document. There's a number of versions in evidence. For convenience, I'm going to go to the version attached to Ms Kelly's statement. Ms Kelly's statement is exhibit 66 and SK12 are the West Moreton Board papers for that meeting that considered the ECRG report. The Delium reference is WMS.9000.0006.00001 and it starts at page 861.

25

So, Commissioner, you will recall that this is the agenda paper for the board meeting.

COMMISSIONER WILSON: I do.

MR FREEBURN: And if we scroll down a little we'll see the reason to item 7.

30

Scroll down a little bit further. The ECRG submitted a preamble and the service model elements of an adolescent extended treatment and rehabilitation services document. And then it's attached, attachments 1 and 2. I should interrupt to say that the ECRG report, in fact, comprises three elements: the preamble, the recommendations and the services elements. And I should say that, in our

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submission, all three elements support the proposition that they were talking about bricks and mortar.

COMMISSIONER WILSON: Now, were those three elements all put before the Board on the 24th of May?

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MR FREEBURN: Yes. When they refer – if we actually go to the – we'll actually go to the document. But the preamble that's attached at attachment 1 is, in fact, the preamble and the recommendations.

45

COMMISSIONER WILSON: I see.

MR FREEBURN: And attachment 2 is the third element that I've referred to, the services document – services model elements. Now, if you go now to page 864 we can quickly cover the preamble. Now, if we go to the bottom of that page we'll see the classification system used by the ECRG. And, in particular, tier 3 is defined as:

5

Statewide adolescent inpatient extended treatment and rehabilitation service.

Now, that reference to the word inpatient must mean, in our submission, a person who has to stay in a hospital. That is, within some bricks and mortar. Then if we go to the next page and to the second paragraph on the next page, now, I want to focus on the fifth last line. You see the sentence that commences:

10

However, it is the view of the ECRG –

and then they give an example of community care units within the adult mental health stream. And then from then on is important:

15

...a design specific and clinically staffed bed based service is essential for adolescents who require medium-term extended care and rehabilitation.

20

Now, plainly enough, that is a reference to bricks and mortar. And then the next sentence says:

25

This type of care and rehabilitation program is considered life-saving for young people and is available currently in both Queensland –

now, that's the Barrett Adolescent Centre at that time –

30

and New South Wales; eg, the Walker Unit.

So the examples – both examples given are bricks and mortar. And then if we scroll down to the second of the key messages or recommendations referred to, item 2 is:

35

Inpatient extended treatment and rehabilitation care (tier 3 is an essential service component).

So, again, there is a reference to inpatient and therefore, in our submission, bricks and mortar. Then it's worth looking at the dot points that follow that recommendation. We can see that the ECRG makes the point that managing this group of young people in an acute unit would not meet their needs. That's another controversy before you. Then over to the next page, the first dot point says:

40

The risk of institutionalisation is considered greater if the young person receives medium-term care in an acute unit –

45

and then there's a comparator –

versus a design specific extended care unit.

5 In other words, the ECRG are comparing the risks of institutionalisation in an acute unit versus what they are recommending, which is a design specific extended care unit. Now, if we go to page 872 and scroll to the bottom of the page. Now, this is the service model elements section of the document. And if we scroll down to the bottom of the page we will see the reference to tier 3:

Tier 3: Level 6 CSCF.

10

What the ECRG is saying is their tier 3 is equivalent to a level 6 CSCF. There's been some criticism of the ECRG for using a – essentially, their own method of classification, but this ties their method of classification, at least from a tier 3 point of view, to a more commonly known method of classification, and that is that
15 abbreviation, CSCF, refers to clinical services capability framework, and amongst the many thousands of documents that Ms Adamson attaches to her witness statement is that framework in its entirety; it's attachment ZI to her statement, and the page number is 3041.

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COMMISSIONER WILSON: That's page 3041 of her affidavit and exhibits, is it, I'm sorry?

25

MR FREEBURN: Yes. I think a view was taken that because Ms Adamson had so many exhibits – so many pages that they would be numbered consecutively, but it's part of attachment ZI to her statement. And so if we go to page 3079 – should be the specific page – so if we're dealing with the pages at the bottom of the document – so I'll just get that reference - - -

30

COMMISSIONER WILSON: You want 3041 not 3048; is that correct?

MR FREEBURN: It looks like the Delium numbers don't coincide with the page numbers. I'm told it should be 3072. What we're looking for is the particular classification is on page 39 of 132 of the document.

35

COMMISSIONER WILSON: There's a document on the screen at the moment which has the figure 6 in the left-hand bottom corner. Is that where you want 39 to appear?

40

MR FREEBURN: There we go.

COMMISSIONER WILSON: We've got it now?

MR FREEBURN: Sorry, it's - - -

45

COMMISSIONER WILSON: That's okay.

MR FREEBURN: Sorry. So that seems to be particular classification 6, the level 6. I should say that, on this point, there is a useful explanation of the ECRG's recommendations in a presentation that Dr Stathis gave. He gave that presentation to the Mental Health Branch Leadership Forum on the 29th of April 2014; it's exhibit 5 735 in the provisional exhibit list.

Now, in that leadership forum – and you can probably go to it; the reference for it is WMS.0011.0001.02810 – and this is looks to be one of those slide presentations. And if we just scroll down a few pages, we'll see that one of the things that Dr 10 Stathis does is, essentially, to summarise the recommendations of the ECRG. If we go to page – two pages on – yes – background, ECRG recommendations, tier 3, and he describes in some detail those recommendations. When we go specifically to tier 3 on page 825, the one ending 825, we can see that Dr Stathis is talking about a proposed subacute bed-based unit, tier 3, and it's hospital-based.

15

COMMISSIONER WILSON: So that's page – what is it?

MR FREEBURN: .02825 is the Delium reference. So, in our submission, Dr Stathis is correct in his interpretation of the ECRG report. Professor Hazell's evidence 20 appears to be relied on as showing that he, as a member of the ECRG, was considering a service rather than bricks and mortar. I would like to go to that evidence specifically. Before I do, I should say that the evidence is relied upon by the State at paragraphs 304 and by West Moreton at 7.16(b).

25 Now, the evidence of Professor Hazell is this transcript reference: T8, page 33, at lines 33 to 46. It's fairly early in his evidence, and you'll see that I asked Professor Hazell about the Terms of Reference for the ECRG and whether another build – a re-build was out of scope. The first answer to the question I've asked is:

30 *Were you conscious of the limitation at the time you were on the ECRG?*

And Professor Hazell says:

35 *I was conscious that there was a predicament about infrastructure and funding for infrastructure, but I saw that as not antagonistic to the idea of developing a model of care that involved tier 3 services.*

Now, so far, that might lead some support to the proposition that the four parties are contending for.

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COMMISSIONER WILSON: Keep your voice up, please, Mr Freeburn.

MR FREEBURN: But then the next paragraph, I've asked him specifically:

45 *Alright. Isn't this effectively taking the tier 3 option off the table?*

And Professor Hazell says:

I interpreted it as taking the new build option off the table, but there could have been other creative solutions, such as refurbishing an existing facility –

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Now, pausing there, that's refurbish bricks and mortar rather than new bricks and mortar. And then he says:

...finding an alternative accommodation for the service –

10

Which is different bricks and mortar. It's hard to interpret those words of Professor Hazell as giving any support to the idea that the service would be provided other than in a building.

15

So I wanted to deal with another difficult issue, and that is contemporary models of care; this is my third issue. Now, there's insufficient time to deal comprehensively with the topic, but I propose to explain some complexity to the concept that may not be appreciated in the written submissions. When different witnesses spoke of either Barrett or Redlands as not involving a contemporary model of care they meant

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different things. And I want to illustrate that. I prepared a document which rather than flicking back and forth through the evidence is one document that extracts the relevant evidence from the witness statements and the transcript so hopefully that's available there – yes, it is. Now, this is not intended to be exhaustive but it does explain, in our submission, the different uses of the expression.

25

Let me go to the first point: Mr Eltham's evidence. He talks about extended institutionalised care not being considered contemporary. Now, the focus there for him appears to be the word "extended", that is, for a lengthy period of time. And then in the second point he has expanded on his understanding and he talks about – and I've bolded the relevant parts – long-term institutionalised care – and then he talks about:

30

The philosophy of mental health care had moved away from institutionalised models and towards care in the community close to existing supports where this was possible.

35

So Mr Eltham's concern is institutionalisation and the need to care for patients in their local community where that's possible.

40

Then if we scroll a little bit we can see what Dr Corbett says. Dr Corbett says that under the – and QPMH stands for the Queensland Plan for Mental Health – there was a need to develop a contemporary evidence-based model of care for adolescent mental health. So here what is a contemporary model of service is being measured against the Queensland Plan for Mental Health and that plan's requirement for an

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evidence base. And there's a reference there in point 4 to Dr Corbett's oral evidence

where she tied the concept to the draft National Mental Health Service Planning Framework.

5 Then if we scroll down a bit further we can look at Ms Dwyer's evidence. Ms Dwyer, it can be seen, places an emphasis on the need to care for young people in the community. Now, in point 6 I have extracted a part of the transcript where Ms Dwyer was specifically asked in what respects it was not a contemporary model of care. She refers to the concepts of length of stay that was quite long, to a dislocation from family and social networks and that's another way of talking about
10 institutionalisation. And then she talks about not being in a conducive therapeutic environment. And I've noted there that Ms Kelly said the closure was not aligned with the Queensland Plan for Mental Health.

15 Then Dr Kingswell's view – this is from his statement. And he also seems to have a problem with the therapeutic community, that is, the therapies being used. He talks about it being controversial and outdated. And in particular, Dr Kingswell's emphasis seems to be the next part where he says:

20 *Where adolescents are hospitalised for years within a stand-alone psychiatric institution.*

So he's there concerned particularly about the length of stay and then he talks about the reviews of the Barrett Adolescent Centre which had not been actioned. Now, we can see from that quote that there is a mixture of concepts in Dr Kingswell's
25 evidence. He has emphasised that adolescents are hospitalised for years and he's talked about the therapies that are used. He's talked about the review.

Now, if we scroll down a little bit further to point 9 we can see Dr Cleary's views were apparently based on what Dr Kingswell had told him and Dr Kingswell told him – this is according to Dr Cleary – that the unit at Redlands was not considered
30 contemporary in that institutional models of care were not considered contemporary under the draft National Mental Health Services Planning Framework. In relation to the Barrett Adolescent Centre he says:

35 *The model of care at the Barrett Adolescent Centre was no longer consistent with best practice.*

You can see Dr O'Connell emphasised a move more to community-based support. Mr Springborg's evidence which is quoted in paragraph is it was an outdated model,
40 that long-term and institutional care was no longer considered to be best practice and the preferred model involved caring for people in their community and close to home.

Now, there is other evidence about that but I wanted to emphasise the complexity or
45 layers to the concept of contemporary models of care. And at least seven things can be listed as layers or complexity to this concept, according to the witnesses, that is, the witnesses used the expression to indicate one or more of these things: first, that

extended stays in an institution were undesirable and risked institutionalisation. Second – and this is probably the other side of that – contemporary models of care emphasise community-based, locally provided non-institutional care.

5 And I should pause there and say that Mr Diehm and Ms Conway's submissions for Mr O'Connell emphasised this geographic element or dimension. That's at paragraph 61.

10 But the expression can also indicate that the Barrett Adolescent Centre or the Redlands model was not consistent with the Queensland Plan for Mental Health. Or fourth, that those models were not consistent with the draft National Mental Health Services Planning Framework or that in some way the model was outdated or that the model did not have an evidence base.

15 COMMISSIONER WILSON: So is that outdated number 5?

MR FREEBURN: Yes. And that the model did not have an evidence base is number 6. And perhaps also that the types of therapy used were unsuitable.

20 COMMISSIONER WILSON: That's seven.

MR FREEBURN: That's seven. Now, I haven't got to a conclusion about any of that except that the written submissions for the various parties, in my submission, don't come to grips with that complexity. As I said, Mr Diehm and Ms Conway's
25 submissions – this is paragraph 61 – emphasise the geographical element to it. But, in my submission, there is more to the concept than that.

The fourth issue I wanted to deal with is governance. Commissioner, you will recall that in our written submissions we submitted that governance was not one of the
30 reasons for closure. That's at paragraphs 264 to 266 of our submissions. Ms Rosengren for Dr Sadler makes some further points on that issue at paragraphs 4 to 9 of her submissions. Incidentally, to avoid any doubt, I should say that the submission here is merely that, in fact, governance issues did not form part of the reasons for the closure.

35 COMMISSIONER WILSON: That's your submission?

MR FREEBURN: That's our submission. There may have been concerns about governance but, in our submission, the evidence is against the proposition that
40 governance, in fact, formed one of the reasons for closure. The fifth point I wanted to deal with is the discussion paper prepared by Ms Sophie Morson.

COMMISSIONER WILSON: Is that the subacute beds paper?

45 MR FREEBURN: Yes. One of the 453 criticisms of Counsel Assisting is that we fail to call or properly acknowledge the discussion paper prepared by Ms Morson. We should make it clear we do regard Ms Morson's discussion paper as a useful

contribution to the issues to be considered by this Commission and we apologise if there is a contrary impression given. It's not necessary to go through the points raised in the paper. The paper is an academic paper. It cites its sources and it is, as we said, useful.

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The last point I wanted to deal with is the issue of adequacy of care and support for families. On behalf of Dr Brennan, Mr Diehm and Ms Conway raise an issue about interpretation of term of reference 3(e). And, for reference, this point is made at paragraph 67 to 73 of the Dr Brennan submissions. Now, the first point is that term of reference 3(e) requires an inquiry into the adequacy of the care, support and services provided to transition clients and their families. Now, we would agree that that term of reference can't be read as creating or suggesting that there existed some independent duty to families. The care, support and services being referred to must relate to the young person.

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The second point we'd make about those submissions is that the support and services being spoken of in term of reference 3(e) requires, at the least, in our submission, reasonably accurate communications to the patients and their families about what health services the patients were to be transitioned to.

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COMMISSIONER WILSON: Just a moment. Requires at least reasonably accurate communications – could you repeat that?

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MR FREEBURN: Requires, at the least, reasonably accurate communications to the patients and their families about what health services the patients were to be transitioned to.

COMMISSIONER WILSON: Yes.

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MR FREEBURN: In other words, it is a fundamental requirement of the patients and their families that they know to which hospital or health service they are going to next visit.

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COMMISSIONER WILSON: So you're talking of the individual patient and where he or she was destined?

MR FREEBURN: Yes, yes.

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COMMISSIONER WILSON: Right.

45

MR FREEBURN: Now, and the next and last point I wanted to make about this is that as Counsel Assisting, we do not submit that there is a criticism that could be made of the communications made by those on the ground such as Dr Brennan, Ms Clayworth, Ms Hayes and Ms Hughes. Our submissions on the communications are directed to the mixed messages communicated to patients and their families by West Moreton.

COMMISSIONER WILSON: I want to be clear that I understand what you're saying. Are these mixed messages about where particular patients were destined? Or are they mixed messages about whether patients would be transitioned to one or other form of existing services opposed to new services?

5

MR FREEBURN: Yes, the latter. The mixed messages were about what services either the patients were going to or what services would be available for them.

COMMISSIONER WILSON: Well, again, I want to be clear who it was, in your submission, who issued these mixed messages. You have said that you make no criticism of those on the ground such as Dr Brennan, Ms Clayworth, Ms Hayes, Ms Hughes who were, really, West Moreton employees. So who is it you are suggesting issued mixed messages and when?

MR FREEBURN: I'm pretty sure that's covered in our submissions— that is, the written component of the submissions.

COMMISSIONER WILSON: Could you draw my attention to the relevant part?

MR FREEBURN: Yes. I'll turn that up. The relevant section is part J of the written submissions. And it's paragraphs 677 to 710. And I'm fairly – there's an example I can give you, Commissioner, which involves a letter to a patient. Sorry, a patient's family. And obviously there's material in here which complains – or criticises the Fast Facts as documents. So, essentially, it's the written communication comprising the Fast Facts and the specific letters that are referred to in the submission.

COMMISSIONER WILSON: Are you able to illustrate that by pointing to one or more of the Fast Facts or perhaps pointing to the content of a letter without identifying the addressee of the letter or any reference to the addressee's family member who may have been a patient?

MR FREEBURN: Yes. There's a letter from Dr Corbett on 9 August 2013 to one of the families of the transition patients. And the letter is part of exhibit 145. And the letter states:

As announced on 6 August 2013, there will be changes to the governance of mental health extended treatment and rehabilitation for adolescents. Children's Health Queensland will provide the leadership for development of a new model of – for adolescent services. In the meantime, the Barrett Adolescent Centre will continue to provide services until this model is operational.

COMMISSIONER WILSON: And what about the Fast Facts? Can you illustrate the point that you make?

45

MR FREEBURN: And where it states “as announced”, there’s an absence of Fast Facts in the period from May 2013 to August 2013. But, I think, in essence, the Fast Facts – we will probably – perhaps, Commissioner, if I can take some time we can identify later the specific parts of these submissions that identify the problems with the Fast Facts.

COMMISSIONER WILSON: I’m not trying to rush anyone but can I tell you that after your part of the Counsel Assisting’s submissions have concluded, I’m proposing to take the morning break. So you might identify it as soon as we come back from the morning break.

MR FREEBURN: Thank you, Commissioner. That’s all I have. Ms Muir is going to address the Commission on four specific points.

COMMISSIONER WILSON: Alright. Well, it would be convenient to take the break then. Come back at 11 o’clock, please, Mr Bailiff.

ADJOURNED [10.38 am]

RESUMED [10.59 am]

COMMISSIONER WILSON: Yes, Mr Freeburn.

MR FREEBURN: Commissioner, can I give you those paragraph references to the submissions.

COMMISSIONER WILSON: Yes.

MR FREEBURN: There’s three paragraphs: 682, 683 and 698.

COMMISSIONER WILSON: That’s in your submissions?

MR FREEBURN: Yes.

COMMISSIONER WILSON: Yes.

MR FITZPATRICK: I’m sorry, Commissioner. Could I ask Counsel Assisting to repeat those numbers? I just missed them?

MR FREEBURN: 682, 683 and 698.

MR O’SULLIVAN: Thank you.

COMMISSIONER WILSON: And do they contain illustrations of the point you made?

MR FREEBURN: Yes.

5

COMMISSIONER WILSON: Thank you. Alright. Ms Muir, your submissions, I assume, are on transition, are they?

MS MUIR: Yes, Commissioner. One of the issues I will speak to relates to the coordination between Children's Health Queensland and West Moreton in relation to the availability of the new services.

10

COMMISSIONER WILSON: Well, let me know when you're going to start address issues which may contain matters of confidentiality.

15

MS MUIR: Commissioner, I've tried to prepare the submissions such that I'm hopeful that I mightn't need to close the court.

COMMISSIONER WILSON: Very well.

20

MS MUIR: Commissioner, as Mr Freeburn has already identified, the submissions of the parties are detailed and comprehensive, and, indeed, we would commend all of the submissions to you as containing some very useful summaries and analyses of the evidence and the issues. Again, as Mr Freeburn has said, it's impossible for us to deal comprehensively in our oral submissions with 17 sets of submissions, so I propose to speak to four matters of substance, four matters that matter arising from the written submissions.

25

I have used the expression matters that matter on purpose. That is because, as you have no doubt read, there are a few sets of written submissions that contain strong criticisms of the submissions and the approach of Counsel Assisting. We as Counsel Assisting do not think that we can assist you in responding to those matters. They are, in our submission, an unnecessary distraction, and do not matter. There is one exception. If we could go to paragraph 2.4 on page 2 of the submissions on behalf of West Moreton Hospital and Health Service - - -

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35

COMMISSIONER WILSON: Is this the first of your four matters?

MS MUIR: Yes, it is.

40

COMMISSIONER WILSON: So West Moreton, paragraph 2.4?

MS MUIR: That's at COI.028.0015.0001 at .0005. If I could take you to paragraph 2.4, which, in the sentence that commences:

45

Starkly, no mention is made that of the 50 or so families contacted only a handful gave statements or at least statements that were tendered from, which

one might infer that the majority have no criticism of the ilk in those statements.

5 The suggestion from the counsel for the West Moreton Hospital and Health Service and the Board, in this passage, appears to be that Counsel Assisting have been selective in choosing the statements from the families that have been tendered into evidence before the Commission. Commissioner, if this is the contention it is wrong. To start with, can I say we do not where the figure of 50 or so referred to in the submissions come from.

10

What we can tell you about numbers of families spoken to is what I said during part of my opening on 15 February 2016, that is, Commission staff were able to contact 34 family members of the potential transition clients. As I also said in my opening, initially, 42 potential transition clients, which included wait list clients, had been identified. As matters transpired, that number, as we now know, has been narrowed to 16 potential transition clients. Commissioner, 18 statements were able to be taken from family members or carers, and five statements from young people within that number of 42.

20 COMMISSIONER WILSON: Sorry.

MS MUIR: Can I give a further breakdown - - -

25 COMMISSIONER WILSON: Excuse me a moment. I want to make sure I understand this. You contacted 34 family members of the potential transition clients, so 34 family members of the 42.

MS MUIR: Yes.

30 COMMISSIONER WILSON: The 42 was narrowed to 16, then what followed?

MS MUIR: So before I – so the 42 has been narrowed to 16, but in total 18 statements were able to be taken from that group of 42, if you like, and that included five statements from young people within that number as well. Perhaps a better breakdown for you, Commissioner, is that there are 12 statements in evidence from either the individual or a family member relating to 11 of those who we have now characterised as non-transition clients, and there are 14 statements in evidence - - -

40 COMMISSIONER WILSON: Sorry, 11 of what?

MS MUIR: So there are 12 statements in evidence that relate to 11 individuals that are in the 42 – sorry – that are non-transition clients.

45 COMMISSIONER WILSON: Yes.

MS MUIR: And there are 14 statements in evidence from either the individual and/or a family member relating to 11 of the 16 potential transition clients. So, for

example, in a couple of cases there's a statement from the transition client and a family member.

5 COMMISSIONER WILSON: So, coincidentally, you have statements from or relating to 11 persons who have turned out not to be transition clients and from or relating to 11 persons who were in the 16 subsequently identified - - -

MS MUIR: there are actually 12 statements in evidence relating to 11 of those that are non-transition clients.

10 COMMISSIONER WILSON: Yes. But there are statements relating to 11 non-transition clients and statements relating to - - -

MS MUIR: Yes.

15 COMMISSIONER WILSON: - - - 11 transition clients.

MS MUIR: Yes, Commissioner.

20 COMMISSIONER WILSON: Good.

MS MUIR: Thank you. I should say too that there was evidence from all four families of the four transition clients who were identified during the course of the hearings by Counsel Assisting where we had particular issues insofar as the transition arrangements were concerned.

25 More to the point, all of the statements that the Commission staff were able to obtain have become exhibits. There are no executed statements from families of former Barrett Centre patients that have been taken that have not been tendered. There is one statement that is incomplete and still in draft, and it is not in evidence. This is because despite attempts by Commission staff to follow up the finalisation of this statement so it could be tendered into evidence, the person who gave the draft statement is going through a very difficult time. Commission staff quite properly, in our submission, have not wished to compound this person's difficulties, so have left this person to be.

30 Commissioner, there has been no selective approach. As I say, all the statements of witnesses who could be persuaded to give statements are in evidence, and in each case the statements are warts and all. By that, I mean what the witness wanted to say, whether it was critical or complimentary, was included in the statement.

35
40
45 Could I turn then to the substance of the submission in paragraph 2.4 on page 2 of West Moreton's submission. It seems, Commissioner, you are being invited, we think, to infer that if a family of an ex-Barrett Centre patient did not speak to the Commission then they did not have any complaints to make. Counsel Assisting cannot and do not make any submission about what evidence the families or carers who did not come forward would have made. We do not purport

to know what their evidence is. We submit that there is no basis for an assumption either way.

5 Commissioner, you may recall back on 30 September last year, at the first public hearing, you encouraged any person who believed he or she had information that might assist the Commission in carrying out its work to contact the Commission's executive director, Mr Hill. You emphasised that it was not necessary to wait to receive the notice from the Commission. You also stated that such persons could ask the Commission to treat what they convey as confidential.

10 You also identified publicly at this time that there is a great sensitivity, legitimate sensitivity, about many of the issues the Commission must address, including sensitivity because of the vulnerability of young people who suffer mental illness, sensitivity of young people who suffer mental illness, sensitivity because of the
15 challenges young people's mental illness can present to their families, friends and carers, sensitivity because of the varied demands their illness places on those engaged in their management, sensitivity because of community attitudes and concerns.

20 So what Counsel Assisting do know, and what I can say, again, as I did in my opening: six of the families the Commission obtained statements from came forward themselves. The rest were contacted by Commission staff. I make no criticism – or we make no criticism of the families who were followed up or of those who did not want to speak to the Commission. Given not only the matters of sensitivity you
25 identified publicly at the outset but also the evidence we now know of the huge impact in terms of both time and emotion on the families or carers of adolescents who – sorry, on the families or carers of adolescents who suffer from severe and complex mental health issues.

30 The fact that some of the families involved with the Barrett Centre did not come forward is understandable and not surprising, in our submission, Commissioner. For some, coming forward could not be a priority or even a possibility in terms of caring for their mentally ill adolescent. Furthermore, Commissioner, we know that a number of families wish to remain anonymous. They do not feel comfortable or
35 ready to share their experiences with even their closest friends and families let alone strangers at the Commission.

We would like to emphasise that we are very grateful for those who were able to find the time and felt comfortable enough to talk to the Commission but we understand
40 and submit that there are a number of legitimate reasons why families did not come forward or did not wish to provide the Commission with information. Relatively speaking, in our submission, when you actually consider the actual number of potential transition clients involved it is not accurate to say only a handful gave statements. In our submission, a reasonably large number of the families of former
45 Barrett Centre patients involved with the Barrett Centre around the last year or so before it closed which is relevant to the Terms of Reference provided information to

the Commission. And I say it again, Commissioner, this information is recorded in evidence before you.

5 Contrary, however, to the submission we understand being made on behalf of West Moreton it is our submission that it is simply not possible, Commissioner, for you to draw any inference whatsoever about what evidence a person who did not give any information to the Commission may have given had they come forward. Commissioner, you have wide powers but, in our respectful submission, they do not extend to drawing an inference from nothing.

10

If I could turn now to the second substantive issue we wish to address you on. If we could go to paragraph 5.12 on – while we're on the West Moreton submissions – on page 9 of the submissions on behalf of West Moreton. That's paragraph 5.12 – page 9. It's nine - - -

15

COMMISSIONER WILSON: It's Delium page .0012.

MS MUIR: .0012. Sorry. This paragraph contends that Counsel Assisting have stated in their written submissions that all patients had had were current failed admissions to acute units and in fact this has never been established. The reference to Counsel Assisting's submissions referred to is paragraph 57A which if we could go to is at COI.028 – sorry, .0001.0015. So the sentence is the second sentence of 57A:

25 *By the time patients reached the Barrett Centre almost all had recurrent failed admissions to acute units.*

The submission that all had recurrent failed admissions was not made. Commissioner, we have reviewed in some detail the medical records which are in evidence in relation to the 16 potential transition clients. I won't take you to the various exhibit numbers because they're numerous and the evidence contains many volumes. Can I tell you that what is established on the evidence is that 11 of the 16 – or if you like, close to 70 per cent – accessed acute units prior to their admission to the Barrett Centre. The evidence is not all of these were adolescent units. In some cases adolescents were required to access paediatric and adult inpatient units. I can tell you that six of those 11, that is, just over half were admitted on more than six occasions. So Commissioner, we would accept that perhaps 70 per cent is not almost all but on any view it is pretty darned close.

40 Commissioner, I mentioned a moment ago that Counsel Assisting have undertaken an analysis of the medical evidence. I should have said that this analysis also included reviewing the oral and written evidence of Dr Brennan and Associate Professor Beth Kotzé in relation to the 16 transition clients. Such an analysis, in our submission, reveals the patients at the Barrett Centre were a small cohort of adolescents who presented with highly individualised combinations of comorbidity, acuity, severity and complexity and who had, prior to their admission to the Barrett Centre, been resistant to treatment at a less restrictive level of care.

45

COMMISSIONER WILSON: So highly individualised combinations of acuity - - -

MS MUIR: Of comorbidity.

5 COMMISSIONER WILSON: Comorbidity.

MS MUIR: Acuity, severity and complexity and who had, prior to their admission, been resistant to treatment at a less restrictive level of care. I'm going to talk further about those matters.

10

COMMISSIONER WILSON: Yes.

MS MUIR: But before I do, we apprehend that it may be contended by paragraphs 5.12 and 5.13 – if we could go back to the West Moreton submissions which is at
15 COI.028.0015.0012. We apprehend from these paragraphs that the severity or otherwise of the Barrett cohort is in question and there is some evidence – an extract from Dr Brennan's oral evidence - that is relied upon. I'm going to go to that extract in a moment but can I say, firstly, in our submission, if that is what is being
20 contended it doesn't bear scrutiny. What we say is that the evidence about the Barrett cohort that is before you reveals a number of things. Most had severe and complex psychiatric conditions usually associated with comorbidity. Commissioner, if I could refer you to exhibit 112 which is the statement of Trevor Sadler; the transcript of Ashley Trinder of 2nd of March at page 18; transcript of Associate Professor Kotzé, 9 March 2016, page 23; transcript of Dr Brennan, 4 March 2016,
25 page 20. There are many other references but I think those will do, Commissioner.

Furthermore, the evidence shows that most had chronic and recurrent high acuity by virtue of suicidality, self-injury, explosive aggressive behaviour or incapacity to cope with common dangers. The severity of their symptoms which in some cases
30 overlapped with acuity was severe because the evidence was their symptoms were sufficiently frequent or intense to cause the patient severe distress and to cause serious disruption to the family and to the community. This severity was described as coming from an accumulation of multiple problems, not just from a specific
35 diagnosis.

35

COMMISSIONER WILSON: So you said sufficiently frequent - - -

MS MUIR: Or intense.

40 COMMISSIONER WILSON: - - - or intense - - -

MS MUIR: To cause - - -

45 COMMISSIONER WILSON: Severe distress to the - - -

MS MUIR: Patient.

COMMISSIONER WILSON: - - - patient - - -

MS MUIR: And also disruption to the family and to the community.

5 COMMISSIONER WILSON: And the evidence for that?

MS MUIR: And the – this is – the severity was described as coming from an accumulation of multiple problems, not just from a specific diagnosis. There's evidence from Professor McGorry at transcript 2 March 2016, page 18.

10

MR O'SULLIVAN: Commissioner, we don't understand how that can be so. Professor McGorry didn't see any of these patients.

15

COMMISSIONER WILSON: Well, you'll have a chance to make that submission in due course, Mr O'Sullivan, with respect.

MR O'SULLIVAN: Yes. Good.

20

COMMISSIONER WILSON: Yes, Ms Muir.

MS MUIR: Thank you. There is other evidence as well, Commissioner, from the transcript of Ashley Trinder, 2 March 2016, page 18; transcript, Angela Clarke, 29 February 2016, page 16 - - -

25

COMMISSIONER WILSON: What about the evidence - - -

MS MUIR: - - - Dr Brennan - - -

30

COMMISSIONER WILSON: Yes.

MS MUIR: - - - 4 March 2016, pages 20 to 30 - - -

COMMISSIONER WILSON: Is there anything in Dr Sadler's evidence?

35

MS MUIR: I have – I can't tell you the paragraph, but in exhibit 11 – 12 of Dr Sadler's statement.

COMMISSIONER WILSON: Thank you.

40

MS MUIR: Commissioner, in our submission, the evidence shows that at some point in time all of their psychiatric conditions were complex, in that they had multiple diagnoses, comorbidities, and that they were often affected by various combinations of physical ill health, psychiatric symptomology, education retardation, social incapacity and poor future occupational adaptation.

45

COMMISSIONER WILSON: Physical health, psychiatric problems and what else?

MS MUIR: Education retardation.

COMMISSIONER WILSON: And?

5 MS MUIR: Social incapacity and poor future occupational adaptation.
Commissioner - - -

MS McMILLAN: Commissioner, I just missed the reference.

10 MS MUIR: Sorry.

MS McMILLAN: I just – I take it my learned friend is reading from a passage. I’m
– just if she could clarify that.

15 COMMISSIONER WILSON: I’m sorry. I didn’t know - - -

MS McMILLAN: It seems like my learned friend’s reading from a passage. I’ve
just asked for the reference in the evidence.

20 MS MUIR: So I’m not - - -

MS McMILLAN: I must have missed.

25 MS MUIR: I must apologise if it seemed I was reading – that’s not a quote from a
passage. That’s a summary of my submissions to you about what the evidence
reveals - - -

COMMISSIONER WILSON: Alright.

30 MS MUIR: - - - of the Barrett cohort.

COMMISSIONER WILSON: Thank you.

35 MS MUIR: The transcript of Beth Kotzé, 9 March 2016, page 23-55, lines 30 to 35,
talks about the complexity of their cases meant that complex individual treatment
needs were required, and no one service element fitted all.

COMMISSIONER WILSON: Yes.

40 MS MUIR: Commissioner, I wanted to go to the oral evidence of Dr Brennan
referred to by West Moreton in this context. If we could go to the transcript day 20,
page 20, and it’s from below line 10. You’ll see there I asked Dr Brennan some
questions in relation to the Barrett Centre being young people with severe and
persistent mental health problems.

45

COMMISSIONER WILSON: Yes.

MS MUIR: We can all read for ourselves. Commissioner, in our submission, what Dr Brennan is saying is not inconsistent with our analysis of the relevant evidence, and, indeed, other evidence of Dr Brennan, which I will take you to in a moment.

5 What Dr Brennan is doing in this passage, in our submission, is looking at a point in time for the transition clients, that is, the time when she was brought in to transition the transition clients out of the Barrett Centre. At this point in time, in our submission, Dr Brennan's evidence is that, certainly, not all could be categorised as having severe and persistent mental health problems with associated comorbidities,
10 as they were along a trajectory.

Interesting, while we have this passage on the ground, you will see that Dr Brennan is saying that as a result of the long-term treatment many were doing well and ready to be transitioned back into the community. This is consistent with Dr Brennan's
15 other evidence about these patients, that – which is – we don't need to go there. I'm happy to, but I'm concerned about the redactions; T20-23. Dr Brennan's evidence at lines 10 to 23, that a number of patients were emotionally and psychologically ready to transition, and that there was a significant amount of work done that bore fruit in terms of getting some of the young people more ready to transition. Indeed,
20 elsewhere in her evidence, Dr Brennan identified 12 patients ready for transition, and in whose cases there was time for cross-tapering of services; that transcript reference is T20-35 and T20-36. Most of those will be redacted.

It is consistent too with what Ms Kelly says her understanding of the cohort at the Barrett were, namely, that they had a range of mental health issues, some of them
25 were very unwell and some who were obviously on a trajectory to recovery and were getting close to discharge; that's transcript reference 11-57.

Dr Brennan's evidence is consistent also with the evidence of Associate Professor
30 Beth Kotzé, which is referred to in paragraph 41 on page 15 of the second part of the West Moreton submissions dealing with transition; this is at COI.028.0015.0059. With reference to the transcript, the extract is that:

35 *The Barrett population is one where no service element in a contemporary system is going to fit, because you have particularly difficult and complex patients with a trajectory already in train.*

Commissioner, if I could turn to address an issue that was raised in Counsel Assisting's opening and which is dealt with under the heading Coordination Between
40 Transition and Development of New Services in our written submissions – we don't need to go there – at paragraph 444 to 457, which commences at page 123 of our written submissions - - -

45 COMMISSIONER WILSON: Sorry, could you say that again, please?

MS MUIR: It's The Coordination Between Transition and Development of New Services. We have addressed this issue in our written submissions on page – commencing at page 123.

5 COMMISSIONER WILSON: Paragraphs?

MS MUIR: 444 to 457.

COMMISSIONER WILSON: Thank you.

10

MS MUIR: In our opening we said that the responsibility for implementing the transition arrangements rested with West Moreton Hospital and Health Service with oversight from its Board and that the development of the new range of contemporary service options was and is being led by Children's Health Queensland. As we
15 understand the evidence and the submissions, this statement is uncontroversial. In our opening we also identified that there appeared to be an issue that the performance of these two responsibilities seem to have occurred in isolation.

20

Commissioner, we do not now contend that describing the performance of these responsibilities to have occurred in isolation accurately reflects the evidence as we now know it to be. We say this – and I will talk to you more about this in a moment – there is evidence of a considerable amount of communication between Children's Health Queensland and West Moreton. What does seem to be a controversial issue on the evidence and, indeed, the submissions, is whether there were satisfactory lines
25 of communication and coordination between Children's Health Queensland and West Moreton about when and if these new services were to be available to the Barrett Centre patients transitioning out as a result of the closure.

30

COMMISSIONER WILSON: Well, I'm interested in this. And I – one aspect which interests me is how this was then communicated to the families. Mr Freeburn referred to a letter Dr Corbett wrote – I think it was 9 August or something like that – saying to a parent that the Barrett Adolescent Centre would continue to operate until the new services were available, or something to that effect.

35

MS MUIR: Yes. And I - - -

COMMISSIONER WILSON: And, as I understood the Minister's announcement on 6 August, he was saying that the new services would come online from January.

40

MS MUIR: Commissioner, I would like to go through the evidence slowly because that is evidence that I wish to take you to. And it's dealt with, very helpfully, in both sets of the written submissions on behalf of the State of Queensland and also West Moreton and I propose to look at what both sets of submissions say. And, at the end of the day, it does appear that there was some mixed messages and some confusion,
45 in my submission, between what Children's Health Queensland and West Moreton thought was going to be

operational when the Barrett Centre closed. And perhaps that may explain, to some extent, any confusion that the families may have had.

COMMISSIONER WILSON: Very well. Go ahead.

5

MS MUIR: If we go, firstly, to paragraph 169 on page 50 of the submissions on behalf of the State of Queensland at COI.028.0002.0050. So you'll see there the submissions on behalf of the State of Queensland refer to the evidence being that Children's Health Queensland and West Moreton appreciated that the preferred services could not be fully operationalised in the short-term. I'm going to take you to the references in a moment. But, firstly, it's not clear from the submission when this appreciation is said to have occurred. We assume too that the reference to preferred services is a reference to the new services. And, also, the submission is not clear as to whether it is that there was some appreciation that the preferred or new services were to be partially operationalised in the short-term.

15

So, Commissioner, we have reviewed the references relied upon. These references, in our submission, lend support to the contention that there was some confusion about the timeframe for the development of the new services. I don't think we need to go to the transcript but I can tell you what each of the references that are footnoted say. Dr Geppert's evidence, transcript 10-26, lines 1 to 7 - - -

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COMMISSIONER WILSON: [indistinct] Geppert.

MS MUIR: I should say, the evidence is footnoted in paragraph 169 of the submissions of the State of Queensland. It's footnote 167 but paragraph 169.

25

COMMISSIONER WILSON: Yes. No. Dr Geppert's position was what in this context? She was - - -

30

MS MUIR: The - - -

COMMISSIONER WILSON: - - - on the steering committee for the new services, was she not?

35

MS MUIR: At this point in time – Commissioner, let me check. I might have to physically – I know that the – she - - -

COMMISSIONER WILSON: I seem to remember Dr Stathis giving evidence to the effect that she was, really, the liaison between the steering committee and West Moreton. Now, that may or may not be an accurate recollection and I'm not sure of precisely the timeframe in which she was giving that evidence.

40

MS MUIR: I've got her statement here. I'll just – I'll check that.

45

COMMISSIONER WILSON: Very well.

MS MUIR: Can I come back to that? I'll - - -

COMMISSIONER WILSON: Certainly.

5 MS MUIR: In this transcript she refers to work around the new services requiring a process of:

...very extensive and broad consultation involving many different stakeholders.

10 So it would be a longer process.

COMMISSIONER WILSON: Well, that's fairly general evidence, isn't it?

15 MS MUIR: Yes. But I'm taking you to this evidence because it's the evidence that is relied upon by the State of Queensland to support the proposition that Children's Health Queensland and West Moreton appreciated that the preferred services could not be fully operationalised in the short-term. It's that evidence. And that's why I'm taking you to it. Dr Steer's evidence referred to made it clear that the comprehensive nature of the five elements of the new service model would not be ready within six
20 months.

COMMISSIONER WILSON: Well, when did he come to that view?

25 MS MUIR: He says it is that – his evidence – the transcript evidence is that right from August 2013, Children's Health Queensland made it very clear that the comprehensive nature – we can perhaps go to the transcript reference.

30 COMMISSIONER WILSON: I think we need to. I think we need to look at this evidence in some detail. My recollection is that Dr Steer attended a meeting on about 11 June, I think.

35 MS MUIR: Yes. I'm going to come to those meetings, Commissioner. They're certainly – there's no minutes of the meeting of 11 June but it is recorded in another – it is otherwise in evidence. It's recorded - - -

COMMISSIONER WILSON: It's either Ms Kelly or Ms Dwyer who gives evidence.

40 MS MUIR: Yes, yes.

COMMISSIONER WILSON: Alright. Well, I'll let you take it as you wish but I do want to cover this in some precise detail.

45 MS MUIR: I am – I will come to that, Commissioner. For now, I just propose to take you to the evidence relied upon.

COMMISSIONER WILSON: I think it should go up on the screen, what you're referring to.

MS MUIR: T24-115, lines 30 to 41. So you'll see there about the third line:

5

Right from August we've made it very clear that the comprehensive nature, the five elements of the new service model, would not be ready within the six months.

10 COMMISSIONER WILSON: Well, is it possible to nail down when in August he's referring to? The Minister made his announcement on the 6th. My recollection is that there was not a meeting of the steering committee for the new services until 26 of August. Is that correct?

15 MS MUIR: That's right.

COMMISSIONER WILSON: So was it not until 26 August that they made it clear?

20 MS MUIR: There does – that seems to be – there's no other date that I can take you to.

COMMISSIONER WILSON: Go on.

25 MS MUIR: Dr Cleary's evidence relied upon is that the development of new services was going to take some time to put in place, that it would take some years. And that's transcript 14-33, line 25. So it's:

30 *The parallel process was the development of new services. Again, I think they were going to take some time to put in place, especially – it would take some years.*

COMMISSIONER WILSON: Well, he doesn't say there when he came to that - - -

35 MS MUIR: No.

COMMISSIONER WILSON: - - - realisation, does he?

40 MS MUIR: No, Commissioner. So then if we could go to the submissions filed on behalf of West Moreton, they contend that the first notice that alternative services would not be online by the end of 2013 came in around November 2013 - - -

COMMISSIONER WILSON: Now, where did they contend that?

45 MS MUIR: - - - that's at 7.52 on page 25 of their submissions COI.028.0015.0028. There's no specific reference there but I will take you to the evidence that I expect is being relied upon.

COMMISSIONER WILSON: Well, November, as I recall, was when the project plan was finalised and submitted to whomever it had to be submitted. Is that correct?

MS MUIR: Yes.

5

MS McMILLAN: The CHQ one, yes.

COMMISSIONER WILSON: Yes.

10 MS MUIR: So there seems to be conflicting views of the interaction between West
Moreton and Children's Health Queensland over the development of the new
services that can be seen in the written submissions made on their respective
behalfs. If I could go back to the State of Queensland's submissions at paragraph
191 on page 56 which is COI.028.0002.0001 at .0056. So there we see the
15 submission that there is overwhelming evidence – with a reference to section 4.6 of
their submissions – there was overwhelming evidence that there was good
communication and good coordination between Children's Health Queensland and
West Moreton

20 If we could then go to .0037 you will see there at paragraph 108 there's a contention
that there was support, information sharing and clear lines of communication
throughout the transition process and the development of the new suite of services
between Children's Health Queensland and West Moreton Hospital and Health
Service.

25

COMMISSIONER WILSON: Well, hopefully Ms Wilson will be able to fill out
that submission by pointing to the evidence which supports it.

MS MUIR: West Moreton's submissions appear to propound a contrary view. If
30 we could go COI.028.0015.0072 paragraph 92(d), you will see there that West
Moreton's submissions contend West Moreton cannot be held responsible for anxiety
caused to families through delay in rollout of the statewide model for adolescent
mental health if there was any delay because West Moreton's ability to communicate
the progress of that rollout to families was limited by two things including what
35 those parties communicated to West Moreton concerning that topic.

COMMISSIONER WILSON: I don't know what that means but no doubt Ms
McMillan will tell me.

40 MS MUIR: This submission in itself does not suggest, in our submission, that at
least from West Moreton's perspective they consider the lines of communication and
the coordination of services with Children's Health Queensland to have been good at
all.

45 Commissioner, in our submission, and certainly on one view of the evidence, it does
seem that even though there was no doubt after the 24th of May 2013 that the Barrett
Centre would close there was some confusion and mixed messages and

misinformation between Children's Health Queensland and West Moreton about whether the Barrett Centre would close before the new services were operational. And I want to go through some of that evidence. The minutes of the board meeting of 24 May 2013 which are part of Mr Eltham's evidence at exhibit 50 – which we don't need to go to – suggest that West Moreton – the board envisaged in May 2013 that at least some new services would be up and running at the very least.

COMMISSIONER WILSON: Well, I would like to see those minutes to see what it is in the minutes that you're relying on.

MS MUIR: I'll have to get the - - -

COMMISSIONER WILSON: You said they're annexed to Mr Eltham's statement.

MS MUIR: Sorry, Commissioner, if I just have one moment - - -

COMMISSIONER WILSON: Certainly.

MS MUIR: - - - I'll take you to them. While Mr Freeburn is looking for me I can tell you what the minutes say – the evidence that I am relying on and I will take you to the source document - - -

COMMISSIONER WILSON: Not a paraphrase of them but the precise wording.

MS MUIR: Sorry? Yes. I can tell you – included in the – sorry, it might be safer if I just take you to the document. It's WMB.0001.0001 – sorry, it's WMB.9000.0002.00125. If you go over to – and then at .00129 at the bottom of that page, Commissioner.

COMMISSIONER WILSON: Just a moment. They're not up yet. Right. We have Mr Eltham's statement.

MS MUIR: So that's WMB.9000.0002.00129 – at the bottom of that page. And you will see there the reference to:

The board recognised that the Barrett Centre facility is no longer suitable. Concern that there is currently no alternative for consumers. Notes 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.

COMMISSIONER WILSON: But what do those minutes say about the coordination between the transition and the development of the new models of care?

MS MUIR: At that point, nothing, Commissioner – sorry – that was on 000130. That's where West Moreton to engage with children's health services and the Mental Health, Alcohol and Other Drugs Branch re planning for future models of care. And

also on the same page, Commissioner, West Moreton, took issue to discharge of appropriate current patients with appropriate wraparound services.

COMMISSIONER WILSON: Yes.

5

MS MUIR: Consistent with the submission that, at least, some of the new services were to have been up and running is the letter that Mr Freeburn referred to at exhibit 145.

10 COMMISSIONER WILSON: Well, can I pause there for the moment. That's jumping forward to, I think, 9 August.

MS MUIR: Yes.

15 COMMISSIONER WILSON: I'm interested in what happened in the meantime, between 24 May and the Minister's announcement to begin with.

MS MUIR: I can take you to that.

20 COMMISSIONER WILSON: If you would.

MS MUIR: So the first relevant meeting after 24 May is a meeting held on 11 June 2013.

25 COMMISSIONER WILSON: Now, who attended that?

MS MUIR: Dr Lesley Dwyer, Dr Peter Steer and Sharon Kelly. We don't have the minutes of this meeting. Dr Steer does not mention this meeting in his statement, but it is referred to in a West Moreton Board Committee agenda paper prepared by Ms Kelly, which is dated 28 June, and is exhibit 41 to Dr Corbett's statement.

30

COMMISSIONER WILSON: Well, we'd better have a look at that on the screen, please.

35 MS MUIR: I'll have to get you – I'll get you the reference for Dr Corbett – it's WMB.9000.0001.00001. It's WMB.9000.0001 at .00081.

COMMISSIONER WILSON: Now, that's Dr Corbett's statement. What page of the statement?

40

MS MUIR: .00081.

COMMISSIONER WILSON: Yes.

45 MS MUIR: So if you go to – if we scroll down to under Key Issues or Risks, under 2(a), you'll see there, Commissioner, a meeting was held Tuesday, the 11th between Lesley Dwyer, Peter Steer, Leanne Geppert - - -

COMMISSIONER WILSON: So Dr Geppert was there too.

MS MUIR: Yes. And that - - -

5 COMMISSIONER WILSON:

Agreement that the timeliness of the development and implementation of a state-wide service model is a priority for West Moreton, as the decision to cease provide services at the Barrett Adolescent Service is contingent on a viable service model option being available.

10

Was there any oral evidence about this meeting?

MS MUIR: If I could have a moment, I can - - -

15

COMMISSIONER WILSON: Certainly.

MS MUIR: - - - tell you. Commissioner, I can't – yeah – I can't refer you to any oral evidence about the meeting. I do know that Dr Steer doesn't mention the 11 June meeting in his statement, and - - -

20

COMMISSIONER WILSON: Dr Geppert doesn't mention it?

MS MUIR: I can't – I'll check Dr Geppert's statement. Insofar as the transcript reference or any questions asked orally of Dr Geppert, I can't tell you that, but I can take that on notice, Commissioner.

25

COMMISSIONER WILSON: Then I notice in paragraph (b) a meeting on 17 June with Dr O'Connell, Dr Cleary, Lesley Dwyer, Sharon Kelly and Leanne Geppert:

30

In-principle support of the plan for closure of Barrett Adolescent Service, with an understanding the new model of service is identified.

And (ii):

35

Agreement of HSCI support for the shared model planning process.

We don't know what that means?

MS MUIR: Commissioner, there's certainly – the next – the evidence that I have looked at – that follows was of 23 July, which was the Barrett Adolescent strategy meeting.

40

COMMISSIONER WILSON: Alright.

45

MS MUIR: And that's in Dr Geppert's evidence, which is exhibit 55, at page 8, para 4.3, if we want to get – that's WMS.9000.0004.00009 – sorry – para 4.3, which is back on . 00008, so WMS.9000.0004.00008.

5 COMMISSIONER WILSON: So we're in Dr Geppert's evidence, are we?

MS MUIR: Yes. At 4.3.

COMMISSIONER WILSON: Yes.

10

MS MUIR: So attendees at this meeting were Lesley Dwyer, Sharon Kelly, Leanne Geppert, Naomi Ford, Peter Steer, Stephen Stathis, Judy Krause, Craig Brown and Bill Kingswell.

15 COMMISSIONER WILSON: Now, where do you get that from?

MS MUIR: From the minutes which are exhibited to her statement which is .00101.

COMMISSIONER WILSON: So Dr Stathis and Judi Krause were not there.

20

MS MUIR: Sorry, that's my mistake, Commissioner.

MS McMILLAN: They were there by teleconference by the looks.

25 MS MUIR: Teleconference

COMMISSIONER WILSON: I see. Right. Thank you.

MS MUIR: Perhaps it's not my mistake.

30

COMMISSIONER WILSON: It's not. It's mine.

MS MUIR: Thank you. Dr Geppert's evidence - - -

35 COMMISSIONER WILSON: What went on at this meeting? What do the minutes show?

MS MUIR: So this is the Barrett Adolescent strategy meeting to discuss the implementation of the Barrett Adolescent strategy in view of the West Moreton decision. According to Dr Geppert's evidence it was an outcome of this meeting that governance for the implementation were shifted from West Moreton Hospital and Health Service and assumed by Children's Health Queensland Hospital and Health Service via the SWAETRI - - -

45 COMMISSIONER WILSON: Alright.

MS MUIR: - - - which was established - - -

COMMISSIONER WILSON: Well, can we scroll down through the minutes and see what they say about governance and what they say, if anything, about coordination.

5 MS MUIR: Okay.

COMMISSIONER WILSON:

10 *West Moreton will ensure ongoing service provision for BAC consumer group as needed until an alternative service is identified to meet individual need.*

MS MUIR: Yes. That's in 2.1.

COMMISSIONER WILSON: Yes.

15

MS MUIR: And if you look at 2.3, Commissioner, you will see under the recommendations:

20 *Children's Health Queensland and the Hospital and Health Service will lead the implementation phase of the Barrett Adolescent strategy moving forward. West Moreton and Department of Health will remain key stakeholders. Other Hospital and Health Services and departments will be included as relevant.*

COMMISSIONER WILSON: So is the new clinical model being referred to there just YPARC? Scrolling up the page - - -

25

MS MUIR: If you go - - -

COMMISSIONER WILSON: - - - there's reference also to a youth residential rehab service.

30

MS MUIR: Yes. If you see under 2.1 the reference to:

35 *BK has confidence in procurement timeline to open YPARC service by January 2014.*

COMMISSIONER WILSON: Can you scroll down please.

MS MUIR: And then - - -

40

COMMISSIONER WILSON: So they're talking there both of a YPARC and a youth resi as it's become known. Keep going if you would, please.

MS MUIR: Yes. So in addition to YPARC the youth resi identified as important component of service continuum if BAC closes.

45

COMMISSIONER WILSON: Would you scroll down further, please. I note the second last dot point in 2.3:

Consider the potential to transition BAC staff to services being established.

5

It's not really clear where they thought the existing patients were to go at that stage, is it?

MS MUIR: Well, it certainly – there's no specific timeframes for when the new suite of services is - - -

10

COMMISSIONER WILSON: There's not even talk of a suite of services at that stage. They're just talking of YPARC and a youth resi, aren't they? Or have I missed something.

15

MS MUIR: Can we just go back up. They also talk about – they're talking about the youth resi as an important component of the service continuum of BAC closes. But your point is they're only talking, if I understand correctly, Commissioner – that at that point the talk is only of some of the services.

20

COMMISSIONER WILSON: It seems to be. Alright. Go on.

MS MUIR: These minutes are also exhibited to Ms Kelly's statement and in paragraph 11.24 of her statement – I'll go to the reference which is WMS.9000.006.00017. In her statement at this paragraph Ms Kelly – and I have a hard copy in front of me, Commissioner – said that she had received assurances from Dr Bill Kingswell in his role as Executive Director that a youth residential extended treatment facility would be established in southeast Queensland by around January 2014.

25
30

COMMISSIONER WILSON: Well, when did she receive those assurances?

MS MUIR: She says at the time of my involvement in the closure decision, that is, during the period the planning group considerations were under way. So that's May 2013.

35

COMMISSIONER WILSON: So is that going back to May – 24 May? Alright. Thank you. That's paragraph 11.24.

40 MS MUIR: Yes.

COMMISSIONER WILSON: Yes.

MS MUIR: And so - - -

45

COMMISSIONER WILSON: So we've got to 23 July - - -

MS MUIR: And then - - -

COMMISSIONER WILSON: - - - which is, if I can interrupt, about a week after there had been a meeting with the Minister. Is that correct? Was that meeting with the Minister on 15 July?

MS MUIR: I've got – I'll check the date.

COMMISSIONER WILSON: Because I would be interested to know if there is evidence of what was discussed at that meeting with the Minister about coordination between the transitioning of the existing patients and the availability of new services.

MS MUIR: I certainly can take you to the evidence by Mr Springborg about the interviews he gave when the Barrett was closing.

COMMISSIONER WILSON: No. I want to go back to 15 July at this stage.

MS MUIR: There's some notes of those – that meeting at WMS.0014.0001.06714.

COMMISSIONER WILSON: So these are notes prepared as talking points in preparation for the meeting; is that correct?

MS MUIR: They're not, of course, Mr Springborg's notes. In his statement at paragraph 53, he refers to being shown a diary entry for a meeting scheduled for the 15th of July, and he says that this was the meetings I had with Dr Corbett and Ms Dwyer, which he mentioned earlier.

COMMISSIONER WILSON: But does he say what was discussed at the meeting?

MS MUIR: He says at paragraph 56 – LJS.900.001.0011, he says that his main concern at this time was that if the Barrett Centre to be closed then adequate replacement services had to be in place from that time onward. He says:

I conveyed this to Dr Corbett and Ms Dwyer in the meetings that I had with them where the Barrett Centre was discussed.

He then says in - - -

COMMISSIONER WILSON: What does he say, adequate services had to be available; is that what you said?

MS MUIR: Then adequate replacements had to be in place from that time onward. That's paragraph - - -

COMMISSIONER WILSON: That's from closure, is it, or is it from at the time of the discharge of the patients?

MS MUIR: His evidence is:

My main concern at this time was that if the Barrett Centre was to be closed, then adequate replacement services had to be in place from that time onward.

5

COMMISSIONER WILSON: That's from the closure.

MS MUIR: From the closure.

10 COMMISSIONER WILSON: Just stay with the page that's on the screen in a moment. Could you scroll down a little bit, please; I'm looking at paragraph 12. And is there another page?

MS MUIR: That's it.

15

COMMISSIONER WILSON: Alright. Well, apart from what you've just read from the Minister's statement, is there other evidence, either in statements or in the transcript as to what went on at that meeting on 15 July?

20 MS MUIR: Paragraph 57 of his statement, Mr Springborg says:

In one or more of these meetings with Dr Corbett and Ms Dwyer we discussed and agreed that the Barrett Centre would not close until adequate replacement services were provided.

25

COMMISSIONER WILSON: Was anyone at that meeting from Children's Health?

30 MS MUIR: Doesn't appear to have been anyone from Children's Health. Mr Springborg, his statement though, does give some evidence about discussions he had with representatives of Children's Health Queensland during 2013.

COMMISSIONER WILSON: Alright. Tell me what he says and where.

MS MUIR: Paragraphs 58 and 59.

35

COMMISSIONER WILSON: Could that go up on the screen, please.

MS MUIR: LJS.900.001.0012 – it's .001.0012.

40 COMMISSIONER WILSON: This is an agreement there should be no gap in services when the Barrett Centre closed. Now, does Dr Steer say anything about that?

45 MS MUIR: I'm just checking, Commissioner. Commissioner, I'll have to check if Dr Steer says anything. What I can say, perhaps, while we're at that point in time and with Mr Springborg's evidence is that, in his statement at paragraph 62 – which is on .0012 – his evidence is he gave radio interviews on 6 and 7 August, at which he

stated that the Barrett Centre would close and that new services would be provided under a new model of care that was being developed.

5 COMMISSIONER WILSON: We have a transcript of that. That's in evidence, isn't it?

MS MUIR: Yes.

10 MS McMILLAN: Commissioner, could I just ask – I'm a little lost; it's probably my fault. I'm just trying to follow where in Counsel Assisting's submissions I'll find the discussion of this issue, where it's explored.

15 COMMISSIONER WILSON: Well, I'm not sure, but I want to discuss now, anyway, whether or not it's in the submissions, because it's obviously critical and obviously jumps out of the page that everyone is critical.

20 MS MUIR: There is some discussion, Commissioner, at paragraphs 444 to 457 there is some discussion under the heading Coordination Between Transition and Development of New Services.

25 COMMISSIONER WILSON: Anyway, we're still at the meeting of 15 July, and we don't have anything further, it seems, by way of evidence as to what went on. Am I right in thinking that after that there was the meeting of 23 July you've already taken me to - - -

MS MUIR: Yes.

30 COMMISSIONER WILSON: - - - and then there's nothing until the Minister's announcement?

35 MS MUIR: No, Commissioner. There's nothing, it seems – from 23 July until some time after the announcement on 6 August there seems to have been almost no action taken as far as we can see towards the developing of the new models of care. We can then go to – the first meeting – the agenda and the meeting minutes of the steering committee – the SWAETRI committee – is annexed to the affidavit of Dr Stathis and they show that the first meeting - - -

COMMISSIONER WILSON: So what meeting is this? What date?

40 MS MUIR: 26 August 2013.

COMMISSIONER WILSON: Right.

45 MS MUIR: That's exhibit 22.

COMMISSIONER WILSON: Yes.

MS MUIR: Then the terms of reference for the steering committee were not endorsed until 23 September 2013. And then the agenda papers for the 29 November 2013 West Moreton board meeting which are part of exhibit 50 - - -

5 COMMISSIONER WILSON: 29 November, did you say?

MS MUIR: Yes. So they confirm that the steering committee did not meet until 26 August although I should say that the committee met then seven times between 26 August 2013 and 29 November 2013.

10

COMMISSIONER WILSON: So it met seven times including 26 August to 29 November. Are there minutes of all of those meetings? Will they be exhibited to Ms Adamson's affidavit?

15 MS MUIR: I have – but there's certainly the – I will check that, Commissioner.

COMMISSIONER WILSON: Because what I want to know is, well, essentially two things. In this period between 26 August and 29 November (a) what if any conclusion did the steering committee come to as to how long it would take to develop let alone implement these models of care and (b) was that realisation being transmitted to West Moreton? Was that Dr Geppert's responsibility or was it someone else's?

25 MS MUIR: There is certainly, Commissioner, an email from Dr Kingswell to Dr Cleary on 12 November where Dr Kingswell stated:

I met with Lesley and her team today.

This is in exhibit 148.

30

I met with Lesley and her team today. She has had advice from Peter Steer that he will not have a model in place to address the closure of the Barrett Centre for 12 months. That is not a solution useful to Lesley.

35 There is some evidence in the transcript – 13-44 - - -

COMMISSIONER WILSON: Whose evidence?

40 MS MUIR: This is evidence from Dr Kingswell.

COMMISSIONER WILSON: 13-44, did you say?

MS MUIR: Yes.

45 COMMISSIONER WILSON: Kingswell. Yes. What does that say?

MS MUIR: He expressed frustration – by September 2013 in an email to Dr Scott Harden he was asked some questions about this and he said that he considered that Children’s Health Queensland should be urgently developing services that could be up and running in time for the Barrett Centre’s closure.

5

COMMISSIONER WILSON: Well, two things. First of all, could you take me, please, to that transcript.

MS MUIR: That’s 13-44.

10

COMMISSIONER WILSON: And secondly, the email to Dr Harden – is that available?

MS MUIR: I’ve been trying to find that in evidence. I can’t give you a number. Certainly the one of 12 November is exhibit 148. So line - - -

15

COMMISSIONER WILSON: So - - -

MS MUIR: If we can scroll down – line 45.

20

COMMISSIONER WILSON: Yes.

MS MUIR: And over the page to - - -

25

COMMISSIONER WILSON: This is talking about the ECRG.

MS MUIR: No, there’s – maybe – can we scroll down. If we can go back to 13-43 it might be - - -

30

COMMISSIONER WILSON:

So in September – and we see in November you’re concerned and frustrated.

Is that the passage?

35

MS MUIR:

That I was frustrated with the speed at which people were getting on with putting in place replacement services.

40

COMMISSIONER WILSON: So he’s drawing a distinction between the planning which he was confident was being done meticulously and procurement. Is that it?

MS MUIR: Of the replacement services. If we could scroll back up the top to the page before. Yes. And can we just scroll up the top. Yes. So this is the email. I had the wrong transcript reference. It should be 13-42.

45

COMMISSIONER WILSON: But this can, surely, only relate to procurement of the youth resi service because some of the other components - - -

MS MUIR: Would take time to - - -

5

COMMISSIONER WILSON: Well, they have taken - - -

MS MUIR: Yes.

10 COMMISSIONER WILSON: - - - a long time. And that's the email that you referred to, it seems. DBK.001.002.0182.

MS MUIR: Yes.

15 COMMISSIONER WILSON: Alright. Thank you for that.

MS MUIR: So then the agenda papers for the West Moreton board meeting of 20 November - - -

20 COMMISSIONER WILSON: 20 or 29?

MS MUIR: 29 November – prepared by Dr Geppert are attached to Mr Eltham's statement and I'll give you – that's WMB.9000.0002.00191. That's the page number within his statement if that's okay.

25

COMMISSIONER WILSON: Yes. We've got Mr Eltham now. Whereabouts? Yes.

MS MUIR: So .00191. I'm just trying to find the reference here that:

30

West Moreton had recently been informed that the new statewide options may take a further 12 months to be fully established.

COMMISSIONER WILSON: Well, scroll down if you would, please.

35

MS MUIR: That's in – if you go to .00192 under – beside (i) – if we go – scroll down a bit – and you will see there it's:

40

In order to ensure there is no gap to service delivery West Moreton Hospital and Health Service has commenced planning interim service options for current Barrett Centre patients and other eligible adolescents across the State that would benefit from extended and rehabilitation.

45 COMMISSIONER WILSON: But the reality is Dr Brennan had been there since early September and she had immediately set about planning what she could given the existing services such as they were.

5 MS MUIR: Well, indeed, Dr Brennan's evidence, which is conveniently referred to at paragraph 49(e) of West Moreton's submissions, is that she knew that replacement services were still being developed when she was transitioning patients from the Barrett Centre and that they were not ready for this cohort. And that's T20-21, lines 1 to 5.

COMMISSIONER WILSON: Sorry, say that again.

10 MS MUIR: At T20-21.

COMMISSIONER WILSON: Yes. Can we go to that, please? Could you scroll down a little, please? Yes. Thank you.

15 MS MUIR: It's actually – the reference is, I thought, at the top, lines 1 to 5.

COMMISSIONER WILSON: Well, that's about her not becoming involved in the discussions. But if you could scroll down a little, please - - -

20 MS MUIR: She says it is the case she knew that replacement services were still being developed at the time. Can you see that?

Yes, I was aware they were being developed and they were not ready for this cohort.

25 COMMISSIONER WILSON: Yes. And further down the page too, she says:

30 *My understanding was that they were developing the new services which I did not think were going to be available for this cohort. So they weren't really developing services for these people, though there were some of this cohort who may use other services in the interim. And when new services developed by SWAETRI came online, yes, they may have been appropriate for them.*

35 So, what I'm wondering is, is there evidence to the effect that when Dr Brennan was engaged, she was informed by West Moreton you will have to transition these patients to existing services, or was she just informed you'll have to transition them to whatever you can find? What is the evidence as to the instructions she was given?

MS MUIR: Commissioner, I will have to check.

40 COMMISSIONER WILSON: Alright. Thank you.

MS MUIR: There is some evidence from Dr Hoehn.

45 COMMISSIONER WILSON: Yes.

MS MUIR: Paragraph 29 of her statement which is exhibit 64. And she says:

There was some urgency for Children's Health Queensland to ensure that new services for patients were up and running, where possible, prior to their transition from the Barrett Centre.

5 I suppose – and I certainly will check exactly what Dr Brennan's evidence is on this point. But insofar as when you look at the letter that Dr Corbett sent on 9 August, at least, after the announcement, so the Chair of the Board was saying the Barrett Centre wasn't going to close or telling, at least, - - -

10 COMMISSIONER WILSON: One of the parents.

MS MUIR: - - - one of the parents that:

15 *In the meantime, the Barrett Adolescent Centre will continue to provide services until this model is operational.*

Timing-wise then, Dr Brennan started around 10 September.

20 COMMISSIONER WILSON: Which was a month later.

MS MUIR: That's a month later. But then - - -

25 COMMISSIONER WILSON: And there had been one meeting of the steering committee in the meantime on 26 August.

30 MS MUIR: But then you've got minutes of the meeting on 29 November that say that West Moreton had only recently been informed that the new statewide service options may take a further 12 months to be fully established. And if I understand the written submissions from West Moreton, they say that the first notice that the alternative services would not be online by the end of 2013, early 2014, came in around November 2013.

35 COMMISSIONER WILSON: Well, what's confusing me is this: the picture that I have in my mind – and you can correct me if I've misunderstood the evidence – but the picture I have in my mind is this, that at least the West Moreton Board didn't have any appreciation until possibly November how long it would take to develop these new services, that the discussion with the Minister on 15 July must be seen against that background, that possibly it was not until the steering committee met on 40 26 August that those who were going to be hands on in developing these models of care became involved and, hence, not until then but there were the first signs of any realisation as to how long this was going to take.

45 And then I'm puzzled, I have to say – I will need to be taken to the evidence – about Dr Geppert's position in all of this because she seems to have been present at a number of meetings. And, as I recall Dr Stathis' evidence, he, at least, seemed to regard her as the link between the steering committee and West Moreton. Now, what's puzzling me is if my tentative view of the evidence is correct, did she not go

back to West Moreton? And if she did, was it simply to someone such as Ms Kelly or Ms Dwyer but it didn't filter back to the Board what the position truly was? It's very puzzling. So if you can enlighten me as to whether those observations are in accordance with the evidence and, if not, why not, I'd be grateful.

5

MS MUIR: Commissioner, if I could – I can look at that. If we can return to my last issue which I can deal with before lunch and then just briefly - - -

COMMISSIONER WILSON: Very well.

10

MS MUIR: - - - address you after the break.

COMMISSIONER WILSON: Very well.

15

MS MUIR: I suppose just even from – so as I said at the outset, just leaving this issue for now, there is certainly – there's evidence of communication. It's just the coordination and the communication. There does seem to be some confusion and the lines of communication seem to have been broken along the way.

20

COMMISSIONER WILSON: I'll need a bit more detail on that and I'll certainly need to have submissions from other parties.

MS MUIR: Yes. Commissioner, I'll just – in relation to - - -

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MS WILSON: Commissioner - - -

COMMISSIONER WILSON: What's the last issue that you want to address?

30

MS WILSON: Just on that point, can I put Counsel Assisting on notice that we would like particulars of that? Because it's very hard to address. And I'm going to potentially have to do this on my feet and on the run. So the more particulars and clarification of the scope of this argument would be of great assistance.

35

MS MUIR: Commissioner, I'm – the matters – the submission made by the State of Queensland is that there is evidence of good communication and good coordination between Children's Health Queensland and West Moreton. It was that general statement that I – when I went to look at the evidence, that I couldn't find. So, in fact, I am looking – and the matters that I've taken to you are the examples of why there seems to be a different view from West Moreton's perspective and from - - -

40

COMMISSIONER WILSON: Alright. Well, when we – we'll go on to your next point. When we break for lunch, which I hope will be about 1 o'clock, we won't come back until 2.30. So that will give everyone the opportunity to consider the material further and to confer as they consider necessary. So the last of your four

45

points.

MS MUIR: Commissioner, in paragraphs 430 to paragraph 441 of our written submissions which commence – and we don't need to go there – at 0123, we have discussed the issue of the redevelopment of The Park Centre for Mental Health to include the Extended Forensic Treatment and Rehabilitation Unit, or EFTRU as it's
5 known. I just want briefly to talk further to those submissions. The evidence, in our submission, establishes that the long-term collocation of the Barrett Centre with EFTRU was not feasible or desirable. The submissions on behalf of West Moreton at 7.2(b) at page 25 – and I – there's no need to go there – say that one of the reasons why - - -

10

COMMISSIONER WILSON: Well, wait a moment. You say the long – you accept, I think, that the long-term collocation of the Barrett Centre and EFTRU was not - - -

15 MS MUIR: Feasible or desirable.

COMMISSIONER WILSON: Yes. And then the next point is what?

MS MUIR: If we could go to 7.52 of West Moreton's submissions at
20 COI.0028.0015.0028. There, you'll see that one of the reasons why the Barrett Centre was closed was because in around November 2013 it's submitted that EFTRU was operational.

25

COMMISSIONER WILSON: Yes, I see that.

MS MUIR: In our submission, it's unclear on the evidence whether the actual date of the closure of the Barrett Centre was accelerated because of EFTRU. Ms Kelly, in her oral evidence on 2 February, at transcript page 74, lines 18-22, says that the forcible closure of the Barrett Centre due to EFTRU did not come up at the West
30 Moreton Hospital and Health Service board meeting. Dr Kingswell's evidence - - -

COMMISSIONER WILSON: So the reference to Kelly: could you give that to me again, please.

35 MS MUIR: Transcript 74 - - -

COMMISSIONER WILSON: Yes.

MS MUIR: - - - lines 18 to 22.
40

COMMISSIONER WILSON: What day of the transcript? Doesn't matter if you haven't got it.

MS MUIR: It's 2 February.
45

COMMISSIONER WILSON: Okay. That's okay. That's enough. Now – and then you were moving onto Dr Kingswell.

MS MUIR: Dr Kingswell's evidence is that he provided advice to Ms Dwyer, Minister Springborg and to Dr Cleary along the lines that the Barrett Centre would need to close quickly because of EFTRU. I'll give you that reference – sorry, Commissioner. I had it a moment ago. Commissioner, I might have to give you that
5 reference after lunch.

COMMISSIONER WILSON: Alright.

MS MUIR: It was in, from memory, Dr Kingswell's supplementary statement, and
10 which I should say I noticed this morning the supplementary statements of Dr Corbett and Dr Kingswell were not listed as an exhibit, so I'll have to sort that out.

COMMISSIONER WILSON: They certainly should go in - - -

15 MS MUIR: Yes.

COMMISSIONER WILSON: - - - and that was the intention. Yes. Look, I'm – my – one of my interests with respect to EFTRU is more than the immediate problem they had at the opening of EFTRU and the closing of the Barrett Adolescent Centre.
20 It's this: the idea of establishing an EFTRU, the planning for it, the construction of it went back several years. It pre-dated the changes made on 1 July 2012. The planning went on at a time when Queensland Health, through the West Moreton District, whatever it was called, was directly running The Park, and The Park included the Barrett Adolescent Centre.

25 It seems to me, from my understanding of the evidence, that that planning and evolution of the EFTRU idea was going on at the same time as it was anticipated that the Barrett Adolescent Centre would be replaced by a facility at Redlands. What puzzles me is that it seems when the briefing note of May 2012, which was
30 ultimately signed by Dr O'Connell as D-G, was prepared, and again when the briefing note of August 2012 or briefing notes, plural, one ultimately signed by Dr Young as acting D-G and the other signed as the Minister, both of which dealt with the cessation of the Redlands Project, there does not seem to have been any mention of the impending opening of EFTRU and the fact that EFTRU and the fact of the
35 undesirability of a service such as EFTRU being collocated with a service such as that provided by the Barrett Adolescent Centre.

Now, can anyone – I'll ask for Ms Muir for the moment, but I'll ask all the parties in due course – enlighten me as to whether there was any consideration or was it the
40 case that that part of the Health Department that looked after the infrastructure operated, it seemed, separately from that part that looked after mental health policy? Was there no coordination between the development of EFTRU and the consequences of ceasing Redlands, because it seems to me on the evidence that the concerns which, for the moment, seem to me to have been quite legitimate and well-
45 founded, but I'm prepared to receive submissions on that. But the concerns about the collocation of these services don't feature in the narrative until after the decision had been well and truly made not to go ahead with Redlands. So the concerns were

raised in a context where there was no existing plan for what was to happen to the Barrett Adolescent Centre.

5 Now, that concerns me. It was sought to be teased out in supplementary questions which were directed to a number of witnesses, and hence the supplementary statements of O'Connell, Glaister, I think Kingswell, Corbett and may have been others – and the Minister. But I still don't have a satisfactory answer to it in my own mind. Now, maybe there isn't one, but I would appreciate assistance from the parties as to what the evidence shows and whether I'm misunderstanding the issues.

10 MS MUIR: Commissioner, there is – the evidence that we have been able to – or we can refer you to is, firstly, Dr Corbett gave evidence that the West Moreton board did consider risks. In her further supplementary statement, which is – as I said I noticed this morning has actually not got an exhibit number – at page 3, paragraph 1.9, subparagraph (a) - - -

COMMISSIONER WILSON: But at what stage was that?

20 MS MUIR: It's not in the timeframe that you're concerned with.

COMMISSIONER WILSON: No.

25 MS MUIR: And the evidence that I can take you to, which is evidence from Dr Kingswell, Dr Cleary – there is some evidence from Dr Stedman about there being no formal external risk analysis conducted of EFTRU in his oral evidence. The point in time though is not the point in time that you're - - -

COMMISSIONER WILSON: No.

30 MS MUIR: - - - interested in.

35 COMMISSIONER WILSON: If I'm correct – and you can – someone can disabuse me of this notion if they can – but if I'm correct, it seems to me to have been, really, a problem that West Moreton inherited, because, remember, West Moreton assumed responsibility for The Park and hence the Barrett Adolescent Centre between those two briefing notes. And as I understand the evidence – and, again, I stand to be corrected – West Moreton didn't know about the cancellation of Redlands until after it had been effected. As soon as the August briefing notes were signed, then, as I understand it, Mr Rashleigh, who I think was from – was he from infrastructure - - -

40 MS WILSON: Yeah.

45 COMMISSIONER WILSON: - - - in the Health Department contacted West Moreton.

MS MUIR: Dr Corbett, in her recent statement gives that evidence, Commissioner, that no doubt – that you're referring to, which I was going to take you to. But, again,

at a point in time Dr Cleary gave some oral evidence about the – he was asked some questions about the coordination of planning and who would be responsible - - -

5 COMMISSIONER WILSON: Well, with great respect to Dr Cleary, my recollection of his evidence is he didn't really know much about EFTRU. He didn't even know what it stood for. Now, I know that he had a very large job, but what it really comes down to, it seems, is it wasn't explained to him or he doesn't recall it being explained to him.

10 MS MUIR: He just says there's something he would have thought that would have – the Hospital and Health Service would have discussed with the chief - - -

COMMISSIONER WILSON: He wasn't responsible for infrastructure at any stage, was he?

15 MS MUIR: No. That was why, I understand, a notice went to Mr Glaister.

COMMISSIONER WILSON: Glaister. And it went to O'Connell too, as I recall.

20 MS MUIR: So, Commissioner, insofar as the point in time is concerned, I can't take you to evidence. I can certainly take you to evidence that points to the concern being raised later in 2013, but that is not - - -

25 COMMISSIONER WILSON: That's not really answering my question.

MS MUIR: It's not answering your question.

COMMISSIONER WILSON: No.

30 MS MUIR: So I don't propose to take you to that evidence. And what I can do is – as I said, we have looked, and I don't know that I'll be able to assist you any further on that.

35 COMMISSIONER WILSON: Alright. I understand that. No doubt Ms Wilson will be able to assist me.

MS MUIR: Yes. Commissioner, would this be a convenient time?

40 COMMISSIONER WILSON: Yes, it would. And as I said, we'll break until 2.30.

ADJOURNED [12.53 pm]

45 **RESUMED** [2.31 pm]

COMMISSIONER WILSON: Yes, Ms Muir.

5 MS MUIR: Thank you. Commissioner, before lunch, from my notes I think I've got five points on notice. The first issue is in relation to Dr Geppert and her role in relation to the coordination of the development of the new services between - - -

COMMISSIONER WILSON: You'll have to speak into the mic.

10 MS MUIR: Sorry. I understand – sorry, I withdraw that. I took a number of issues on notice before lunch.

COMMISSIONER WILSON: Yes.

15 MS MUIR: The first of these is in relation to Dr Geppert - - -

COMMISSIONER WILSON: Yes.

20 MS MUIR: - - - and her role in the coordination of the development of the new services between West Moreton and Children's Health. In her statement at exhibit 55 which is WMS.9000.0004.00001 at 0025 Dr Geppert explains her role as a member of the statewide adolescent extended treatment and rehabilitation implementation strategy steering committee.

25 COMMISSIONER WILSON: And what does she say because it's not the screen.

MS MUIR: Sorry. She says that the purpose of the role is contained in its terms of reference which she exhibits to her statement. And it was to report to the CE a Department of Health oversight committee.

30 COMMISSIONER WILSON: Yes.

35 MS MUIR: I think, Commissioner, there is a useful summary of – that deals more particularly with Dr Geppert and her role at paragraph 450 of our written submissions as well which is at COI.028.0001.0130.

40 COMMISSIONER WILSON: Alright. Well, she seems to be saying – you seem to be saying, I'm sorry, in paragraph 450 of your submissions that her evidence was that she contributed in a two-way direction information from West Moreton and information from that committee back to West Moreton and that she was in almost daily contact with Ms Adamson. She also identified Dr Hoehn who attended the weekly BAC strategy meetings as a conduit between the two Hospital and Health Services. Well, I come back to the point I was making before lunch. If there was someone or if there were people in that sort of role how was it that West Moreton – and I take it that really means the West Moreton board – didn't realise until
45 November that these services were at least 12 months away.

MS MUIR: Commissioner, I can't answer that. I can tell you that there's certainly – I can tell you about other evidence, for example, from Dr Stathis which I have referred to in – we've referred to in paragraph 450 that I thought may be worth getting up on the screen about - - -

5

COMMISSIONER WILSON: Yes.

MS MUIR: - - - the communications being of very high standard and that's transcript 24-38 around line 17. So you will see there this is Dr Stathis' evidence about there being close robust discussion between West Moreton and Children's Health Queensland.

10

COMMISSIONER WILSON: It doesn't say when. More importantly, perhaps, was Dr Geppert questioned about this?

15

MS MUIR: I don't think so, Commissioner. I can't – I'm loath to say not at all because I didn't review that part of the transcript over the lunch break. But we have the transcript here so I can look.

20

COMMISSIONER WILSON: It may be – and I'm speculating when I say this – that she was communicating with employees of West Moreton but it was not getting to the board. I don't know.

25

MS MUIR: I would be speculating if I was to try and answer but it does seem that – I can't give you an explanation.

COMMISSIONER WILSON: Alright. I understand that. We'll see what Ms McMillan says in due course and for that matter, Ms Wilson.

30

MS MUIR: You also asked about whether the minutes of the steering committee which met between 26 August 2013 and 29 November 2013 on seven occasions are in evidence. I can tell you that they are. They're part of exhibit 14 which is Ms Adamson's statement. It's exhibit F, volume 1.

35

COMMISSIONER WILSON: Thank you.

MS MUIR: I also referred you to an email between Dr Kingswell and Dr Harden - - -

40

COMMISSIONER WILSON: Yes.

MS MUIR: - - - which is DBK.001.002.0182. This is in evidence at exhibit 366.

45

COMMISSIONER WILSON: Could exhibit 366 be shown, please.

MS MUIR: That's DBK.001.002.0182.

COMMISSIONER WILSON: Thank you. I'll ask Mr Diehm about that email in due course. Does Mr Diehm – no, who's representing Dr Kingswell? It's Mr Duffy, I'm sorry. Yes. Sorry, Mr Diehm.

5 MS MUIR: You also asked me some questions about what instructions Dr Brennan was given when she took over - - -

COMMISSIONER WILSON: Yes.

10 MS MUIR: - - - the role. In Dr Brennan's first statement – which is exhibit 28, DAB.001.0001.0003 – Dr Brennan says that she was not given a formal job description. She was verbally asked to take over the clinical care of the patients at the Barrett Centre, and that Dr Hoehn would assist with the task. At paragraph 13 of her statement, at 0004, she says no specific instructions were given as to how to carry
15 out her role.

I had taken you, Commissioner, to Dr Brennan's oral evidence, that she knew that replacement services were still being developed when she was transitioning patients from the Barrett, and that they were not ready for this cohort. What I can't tell you
20 or I can't point you to any evidence at this point, of a conversation she had with someone who told her that.

COMMISSIONER WILSON: I see.

25 MS MUIR: It suggests that, perhaps obviously, when she took over the role she just, once she realised what she had to do, commenced doing her job, and we have evidence of the difficulties that she then had in identifying services.

COMMISSIONER WILSON: Seemed to have a pretty realistic understanding of what she had to do, in the sense of she just had to make the most of what was there
30 - - -

MS MUIR: So it may be the reason - - -

35 COMMISSIONER WILSON: - - - which wasn't much, it seemed to me.

MS MUIR: It may be the reason I can't find any evidence. And there may be some; I'm not submitting to you that there isn't. I just haven't been able to - - -

40 COMMISSIONER WILSON: That's alright. I understand.

MS MUIR: - - - locate it. Insofar as your – you also – Commissioner, before lunch you expressed a preliminary view or a request for assistance from Counsel Assisting about the possibility that at the time of May and August 2012, at the time of those
45 briefing notes, the potential problem with the collocation of EFTRU and the Barrett Adolescent Centre did not seem to have been considered.

COMMISSIONER WILSON: Yes.

5 MS MUIR: We have not been able to find any evidence that, as at that time, May and August 2012, there was a consideration of that collocation issue or an assessment of the risks of that location. It was considered subsequently – and as I said to you before lunch, I – there is evidence of those considerations – but to answer your question, I can't point you to any evidence from May or August 2012.

10 COMMISSIONER WILSON: Thank you.

15 MS MUIR: There was only one further matter, Commissioner. I, earlier on in my oral submissions, said that Counsel Assisting had looked at the exhibits in relation to the patient cohort, and I gave some references. And what I thought – I can hand up – there are a number of – I said there were a number of exhibits and a number of volumes. If it would assist – and I, of course, would provide a copy to the parties as – who are legally represented – I can arrange for Mr Hill to scan this – but I can give a list of the exhibits, at least, that refer to the – that contain the medical evidence relating to the transition clients. I'm in your hands, but – I gave a few references; I could have given more.

20 COMMISSIONER WILSON: Well, I suppose what would probably be of more assistance to me and to the parties, if it's available – and I don't know whether it is – is if you've compiled any document which, patient by patient, refers to these references.

25 MS MUIR: Commissioner, I have. I would need to proofread it again, but I certainly would be willing to provide that document, because it does reference the relevant - - -

30 COMMISSIONER WILSON: And it deals with all of the 16 potential transition clients, does it?

35 MS MUIR: It does. It does. In one sense, there's patient profiles that are quite lengthy, and - - -

COMMISSIONER WILSON: Those patient profiles have been provided to the parties - - -

40 MS MUIR: Yes.

COMMISSIONER WILSON: - - - in their online data rooms, haven't they?

MS MUIR: They are – they have.

45 COMMISSIONER WILSON: With the supporting medical documents?

MS MUIR: The underlying documents are an exhibit, yes, and the reference to footnotes are there. Yes. Commissioner, what I can say is that my document – my review of the evidence that I can provide to you – that our review of the evidence that I can provide to you and the parties is up to – only looking at up to the admission
5 of – to the Barrett – it’s not a document that discusses transition arrangements. It’s just looking at the – the presentation and the services that had been accessed prior to the admission from the information available.

COMMISSIONER WILSON: Well, you say you need to proofread it. When could
10 it be ready to be given to the parties?

MS MUIR: I mean, I could read over it again tonight – just in the sense that it’s – I could probably have it done – put it in the – in Delium or arrange for it to be circulated when we finish here today.
15

COMMISSIONER WILSON: Well, I’m inclined to think you ought to do that, but I do want the parties to have a chance to look at it before they make their submissions. Let’s deal with it step by step. Let’s complete your submissions today and work on the assumption that that can go into the data rooms tonight or first thing tomorrow
20 morning, and we’ll see where we go from there.

MS MUIR: Thank you, Commissioner. I have no further submissions.

COMMISSIONER WILSON: Very well. Ms Wilson.
25

MS WILSON: Thank you, Commissioner. Commissioner, in preparing for today, knowing that this is an opportunity for all parties to be of assistance to you, the Commissioner, in framing issues and responding to matters, I came up with a number of issues that I wish to address you, and they were taken from Counsel Assisting’s
30 submissions and addressing it in a couple of issues that other parties raised.

Last week, to ensure that we could be of best assistance we could, my junior counsel, Ms Kefford, rang Ms Muir to say is there any issue that you want us to look at and to address? And I made the same call to Mr Freeburn. And we really got no particulars
35 of any issue. I think that Ms Muir informed Ms Kefford that there may be an issue in relation to the coordination between Children’s Health Queensland and West Moreton, but no further particulars were given.

Today, in Ms Muir’s opening, it was suggested that the – there was the tradition of –
40 the transition of the clients and the development of new services, if we refer back to the opening of the – that Counsel Assisting provided back last year, development – that there was an issue in terms of the transition of the clients - - -

COMMISSIONER WILSON: It wasn’t last year. That was in February, wasn’t it?
45

MS WILSON: Yes, it was. Yes. It seems to have been a long year. Sorry – development of new services occurred in isolation, with no coordination between

5 West Moreton and Children's Health Queensland. Ms Muir said today that it is now accepted by Counsel Assisting that the evidence overwhelmingly demonstrates to the contrary, and now it is submitted that there is an issue that – about whether there was satisfactory communication about the new services and when the new services would be available.

10 The issue that seems to have ignited this issue comes from our paragraph – of paragraph 191 of our submissions, which can be found at page 54, CO8.028.0002.0056. Now, if we can look at paragraph 191, 191 follows on from submissions that have been made previously in 55 that we can see following on from paragraph 190, and if we can go to page 55, just up a bit, and down a bit, and we can look at – and it's responding to submissions made by Counsel Assisting.

15 And then we go on into 191 in response to those matters set out in paragraph 190 and say that there is overwhelming evidence that there was good communication and good coordination between Children's Health Queensland and West Moreton, and that evidence is addressed in detail in 4.6. So if we can go now to 4.6, which we can find at 0058, at page 58, paragraph 199, and this is under the heading The Interaction Between West Moreton and Children's Health Queensland, and it looks at the issue
20 that was being explored between the support and interaction between West Moreton and Children's Health Queensland, and then sets out a number of the evidential bases that we cite to support the proposition that was stated in 191 but not to the detail that has been addressed today. Counsel Assisting has developed in detail a submission that really received not attention in their written submissions but, Commissioner, we
25 appreciate that you are very interested in this issue and it needs appropriate – it needs to be - - -

30 COMMISSIONER WILSON: Can I say two things. Yes, I'm very interested in it and, two, you put in your submissions that there was overwhelming evidence.

MS WILSON: Yes.

35 COMMISSIONER WILSON: I want to know – and Counsel Assisting is perfectly entitled, in my view, to highlight – what is that evidence?

MS WILSON: At paragraph 199 we refer to – I mean, we go through it, Commissioner.

40 COMMISSIONER WILSON: Yes.

45 MS WILSON: And 466. But it doesn't – it looks at the interaction – support and interaction which seems not to be an issue that Counsel Assisting is focused upon now. The matters that we address in 4.6 addresses the matters that we responded to the submissions. It wasn't a submission made in isolation, that is, there is overwhelming support. We specifically address it – go to 4.6 and we can take you through in detail. But it seems to be – that is of little assistance in addressing the issue that is now framed today.

COMMISSIONER WILSON: Well, Ms Wilson, you've been in this matter since the beginning. I've no doubt you are thoroughly on top of the evidence. I've raised today and I will continue to raise that I want this issue clarified and I would hope that you would hence, from your knowledge of the evidence, be able to do so.

5

MS WILSON: Commissioner, we want to clarify it. We want to be of assistance. But for me to make submissions on – while trying to write down the documents that Counsel Assisting were referring to which – as from a preliminary study of their submissions – were not even referred to in their submissions and trying to write those down and trying to piece together the jigsaw – because it is a jigsaw of evidence that if we can piece together we can be of assistance. We just haven't got the time to do it over lunch.

10

COMMISSIONER WILSON: If you're telling me you want time, tell me that's what you want and we'll see what we can do about.

15

MS WILSON: Commissioner, I would be seeking - - -

COMMISSIONER WILSON: At the end of the day I don't want these submissions to turn into a barney between - - -

20

MS WILSON: No.

COMMISSIONER WILSON: - - - any sets of counsel.

25

MS WILSON: No.

COMMISSIONER WILSON: I want submissions that are going to assist me to write the most comprehensive and most factually correct and well-reasoned report I'm capable of. I'm not saying it will be a masterpiece by any means. But if I identify issues I want them clarified. Okay.

30

MS WILSON: Commissioner, can I respond in two points. We want to be of assistance. We want to provide the – in detail – evidence and evidence in support of various assertions. We haven't actually received the particulars back from Counsel Assisting and that would be of assistance to do it. And two, we need time to do this.

35

COMMISSIONER WILSON: Alright. Well, how much time are you telling me you need?

40

MS WILSON: Well, it can't be done overnight and it would require some days to go through the evidence. Ingrid Adamson's statement is 26 volumes in exhibits, as I understand it.

45

COMMISSIONER WILSON: Your solicitors prepared it.

MS WILSON: Yes. I know it is, of course. But I mean, Counsel Assisting – you saw today – was trying to find it on her feet and we were trying to respond to it writing down – we require some time to be able to provide some assistance.

5 COMMISSIONER WILSON: Alright. How much time do you say you require?

MS WILSON: A week would be of - - -

10 COMMISSIONER WILSON: Well, this is getting to be a little out of hand. These submissions were intended to be made before Easter. People complained of wanting more time. Then they said they had children going on school holidays and all sorts of things and this was the first date which seemed to suit everyone. Remember the report is due on 24 June. It has to be at the printer several weeks before then. So we are looking at a date in mid-May at the latest for the completion of the report.

15 MS WILSON: Commissioner, I am acutely aware of the timeframes that are being imposed upon you. But if we had been given an opportunity we could have been responding today and dealing with these issues in the detail.

20 COMMISSIONER WILSON: Well, I'm prepared to consider adjourning until Friday. Is that going to suit you?

MS WILSON: Commissioner, we will take whatever time we can get and I thank you for that.

25 COMMISSIONER WILSON: Well, does anyone else want to say anything about that before I make a decision? Ms McMillan.

30 MS McMILLAN: Well, given it undoubtedly has fallen from both yourself and Counsel Assisting touches my clients in several respects we would want the same time and I will probably need it because if there's going to be a document forthcoming about patient profiles I wouldn't be able to look through 16 patient records overnight. I'm prepared to sit up late - - -

35 COMMISSIONER WILSON: Well, they have all been in the - - -

MS McMILLAN: Sorry.

40 COMMISSIONER WILSON: They have all been in the data rooms for some time.

MS McMILLAN: Can I just say this, Commissioner: there's a lot of documents. We're up to exhibit 900. I don't need to tell you that. It's one thing to say they're in there. It's another thing as to what you make of them and I can tell you, Commissioner, obviously, some days have been spent preparing for this but if we're going to be asked to respond to a patient profile document that needs a little time and that can't be done overnight.

45

COMMISSIONER WILSON: Well, I accept that. But let me say this, it was never going to be possible for every fact to be canvassed in oral evidence and it was never intended that it should be but in an endeavour to be fair to all interested parties so that all interested parties could have an appreciation of the documents from which
5 the Commission was likely to draw conclusions they were put in the data rooms and made exhibits. And I would have thought that the parties would have concluded that they were documents they ought to consider.

MS McMILLAN: Well, I can say that undoubtedly there have been many
10 documents considered both for the written submissions and clearly not so much the source documentation for today because as the letter that came from Mr Hill indicated this was not meant to be an exercise of detailed examination. It was speaking to the submissions. Two issues – there's the issue that, Commissioner, you particularly raised that has been gone into in a great deal of detail today and,
15 secondly, this patient profile. I accept – and we take comfort from the fact that a lot of matters weren't traversed by Counsel Assisting so that assists us, one would think, to presume that we don't then need to traverse those in detail before you. So that's of assistance undoubtedly but those issues are on a different footing and to be fair there needs to be some time – they're issues of some complexity demonstrated by the
20 fact that – no disrespect to Counsel Assisting. She has obviously tried to go through the documents quickly to give you references but there are a lot of documents to navigate.

COMMISSIONER WILSON: Well, will Friday suit you?
25

MS McMILLAN: Yes. We'll make whatever time is available.

COMMISSIONER WILSON: Alright. Does anyone else want to say anything
30 about the proposal – yes, Mr O'Sullivan.

MR O'SULLIVAN: Was the proposal to adjourn? Is that what you said, Commissioner?

COMMISSIONER WILSON: Yes.
35

MR O'SULLIVAN: Adjourn?

COMMISSIONER WILSON: Until Friday.

40 MR O'SULLIVAN: But – I'm sorry, I'll let Ms Wilson - - -

COMMISSIONER WILSON: Ms Wilson.

45 MS WILSON: I was just thinking that we would be continuing with our submissions and we have got an opportunity to provide further written submissions in relation to this issue.

COMMISSIONER WILSON: I want to get all of the submissions concluded. I'm concerned if I let you put in further written submissions it will drag on and on.

5 MR O'SULLIVAN: It's a matter for your Honour but the course that we would submit may be appropriate is that you continue hearing submissions on the matters that you can hear submissions about where there's no issue and the two days that your Honour has set aside are used profitably in dealing with everything that can be dealt with. What the Crown has said is that they need some more time to deal with particular issues, namely, the consideration of EFTRU in the context of May and 10 August 2012 – Redlands cancellation. That's issue 1, as I understand it.

Issue 2 that the Crown understandably requires more time to address is communication about and the availability of new services. In our respectful submission, they are discrete issues that you could profitably hear further oral 15 submissions about on Friday if you were minded to do so but it wouldn't and ought not stop you hearing from the parties in relation to other issues which fall within the Terms of Reference.

COMMISSIONER WILSON: Well, there seems to be a third matter, Mr 20 O'Sullivan, in relation to which - - -

MR O'SULLIVAN: Patient profile.

COMMISSIONER WILSON: - - - I understand Ms Wilson and Ms McMillan - - - 25

MR O'SULLIVAN: Quite right.

COMMISSIONER WILSON: - - - are seeking time and that's the issue of patient 30 profiles.

MR O'SULLIVAN: That's right. That's absolutely right. There's a third issue which is the table which articulates the evidence setting out the presentation of each of the 16 patients. That is the third discrete issue, if I may put it that way, Commissioner. There are many other issues before you that you need to deal with. 35 It seems to us that, as I say, they profitably could be dealt with without any need for an adjournment because those other issues that we think can be dealt with are, like many of the issues, reasonably discrete.

COMMISSIONER WILSON: Such as what does contemporary model of care 40 mean, what did the ECRG really recommend? Are those the sorts of issues you have in mind?

MR O'SULLIVAN: Well, yes. Those are issues that were raised by my learned 45 friend, Mr Freeburn, that can easily, with respect, be dealt with. One wouldn't need any more time, whether the transitions were adequate. Also, Commissioner, as I understand it, you are interested in hearing brief oral submissions from the parties about their own case, the own - - -

COMMISSIONER WILSON: Yes.

MR O’SULLIVAN: - - - the submissions that the parties wish to make to you based upon the evidence. Again, that task of you hearing the submissions, we would have
5 thought, could sensibly and intelligently be dealt with.

COMMISSIONER WILSON: Well, Mr O’Sullivan, I’ll see what others have to say. If there is consensus that we can move on and that the ultimate process will not be extended by moving on at this stage and just dealing with these three particular
10 issues on Friday, then I’ll go along with the consensus.

MR O’SULLIVAN: Thank you, Commissioner.

COMMISSIONER WILSON: Alright. Mr Diehm, do you want to say anything?
15

MR DIEHM: No, Commissioner.

COMMISSIONER WILSON: Does anyone else want to say anything? Mr Duffy.

MR DUFFY: Commissioner, it seems that I, on behalf of Dr Kingswell, might be
20 concerned with one of those issues. I wasn’t here this morning, so I’ll have to get on top of it. I was planning to deal with it tomorrow. I would think that, in total, I’ll only be something less than 15 minutes in any event. So rather than do it twice, it makes sense - - -
25

COMMISSIONER WILSON: Well, I’m - - -

MR DUFFY: - - - that I do that Friday. But - - -

COMMISSIONER WILSON: - - - a little confused by what you’re saying. What is
30 the one issue that you - - -

MR DUFFY: Sorry. It seems to be that there’s an issue that might concern Dr Kingswell, namely the question of the alignment – dare I use that word – between the
35 opening of EFTRU and the cessation of the Redlands Project.

COMMISSIONER WILSON: Well, I would think, with respect, it will concern him.

MR DUFFY: Yes, that’s what I thought.

COMMISSIONER WILSON: He gave evidence it was something he had known about for years.

MR DUFFY: Quite so. That’s why I’m saying I think it’s an issue that concerns me.

COMMISSIONER WILSON: And the May briefing note, as I recall, went through his office.

5 MR DUFFY: Yes. The only reason for any uncertainty on my part, Commissioner, is I wasn't here this morning to hear it. So I'll have to read about it and get instructions and so on. My only submission about the question of timing is that it would make sense, if that issue was to be deferred until Friday, that I simply deal with everything on Friday as opposed to addressing twice.

10 COMMISSIONER WILSON: Do you want everything put off - - -

MR DUFFY: Well, I'm only - - -

15 COMMISSIONER WILSON: - - - in relation to Kingswell until Friday?

MR DUFFY: I'm only going to address for up to 15 minutes, in my submission.

COMMISSIONER WILSON: Alright. Anyone else?

20 MS MELLIFONT: Thank you, Commissioner. If at all possible, we'd like to be able to utilise some of the time [indistinct] tomorrow. Given the indication that the patient profiles document might be able to be provided by tomorrow morning, in our respectful submission, if we could at least use some part of tomorrow to address as much of the issues as possible. Our concern is that if it all goes over to Friday not
25 everything will be able to be achieved within one court sitting day.

COMMISSIONER WILSON: Alright. Thanks.

30 MS MELLIFONT: Thank you.

COMMISSIONER WILSON: Mr Freeburn, you were on your feet.

35 MR FREEBURN: Yes. Commissioner, I find myself in agreement with Mr O'Sullivan and Ms Mellifont.

COMMISSIONER WILSON: That doesn't happen very often, does it?

40 MR FREEBURN: No, it doesn't happen very often. But, in my submission, we should usefully use what time we can, and if issues have to be dealt with at a later time, such as Friday, then we can do that.

COMMISSIONER WILSON: Alright. Alright. Ms Wilson, if you'd like to continue.

45 MS WILSON: Thank you. Thank you, Commissioner. If I can deal with a number of issues arising from our submissions and from the submissions of the other parties and a number of issues that have been raised by Counsel Assisting this morning, the

first issue I'd like to deal with arises from paragraph 69(f) of our submissions, which you're – Commissioner will find - - -

5 COMMISSIONER WILSON: I'm familiar with the paragraph.

MS WILSON: Yes, at .0027 of our document.

10 COMMISSIONER WILSON: Yes. The issue is whether it is inconsistent with paragraph 65(b).

MS WILSON: No. In my submission, it's not.

COMMISSIONER WILSON: How do you reconcile them?

15 MS WILSON: The way that we were – and perhaps it's ineloquently phrased on our behalf – West Moreton Hospital Health and Services had the clinical and operational responsibility for delivery of its health services. Once agreement had been reached that the service would not be continued at The Park, then the timing of the closing of the doors was within West Moreton Hospital and Health Service's control. That is, 20 in a sense, a clinical – in the clinical sense, and as such that's what we're referring to in 69(f), where it looks at West Moreton Hospital and Health Services have the ability to close the Barrett Centre. I also refer your Honour to page 4, paragraph 5(b) of West Moreton's submissions, of annexure A. That was the - - -

25 COMMISSIONER WILSON: Yes, I know what you mean.

MS WILSON: That is the statutory interpretation part of that. And that refers to the hospital health board may control the way its services are delivered by the HHS.

30 COMMISSIONER WILSON: It's the way they're delivered - - -

MS WILSON: Yes.

35 COMMISSIONER WILSON: - - - not when they're delivered.

MS WILSON: Well – but the way they're delivered and when they're delivered: that's an operational sense about what was required to - - -

40 COMMISSIONER WILSON: Well, that's so on a day to day basis, what's required for a patient today and what's required tomorrow. But the question of whether they would – whether and when they would cease to provide those services in any sense is another matter, is it not?

45 MS WILSON: Well, in the sense of when they would cease to provide those services. They could only cease to provide those services when it was clinically appropriate to do so. And that's why you've got that flexibility of the line that was drawn, and that it was – yeah – but to stop it forever, it had to be agreed, and it's the

process that we've gone – that we've taken the time in the preceding paragraph to go through. That was simply the point that we were making.

5 COMMISSIONER WILSON: Alright. That's all that you mean in 69(f). I understand. I understand.

MS WILSON: Thank you. Thank you, Commissioner.

10 COMMISSIONER WILSON: Whether I agree with it I'm not saying, but I understand what you're saying.

MS WILSON: Yep. Well, I'm thanking you for understanding, perhaps. In terms of the bricks and mortar argument – and that was - - -

15 COMMISSIONER WILSON: Yes.

MS WILSON: - - - the matter that was raised this morning by Counsel Assisting – and Counsel Assisting referred to our paragraph 303 - - -

20 COMMISSIONER WILSON: Yes.

MS WILSON: - - - which can be found at .0080 – and that is the paragraph where we say it's not apparent at the face of the ECRG tier 3 service equates to bricks and mortar. My submission in relation to that is that that paragraph should be read in
25 context, and if we can go up to paragraph 300 and then – to 301, actually – the point that we were making is that – not to conflate the facility, which has a connotation of a standalone building like Barrett, as opposed to a service, which can be within another facility, like subacute beds at Lady Cilento.

30 COMMISSIONER WILSON: Well, if you read the preamble, it was pretty clear what the ECRG was saying, wasn't it, design-specific etcetera?

MS WILSON: It can be a design-specific service. And the question also is that we're looking at the interpretation of the source document, the source document
35 being this ECRG document, and we could be – provide greater assistance about the meaning of this and what was discussed and what they viewed it as. We've got some evidence from Amelia Callaghan, who said it was not necessarily a building.

40 COMMISSIONER WILSON: yes.

MS WILSON: But we haven't got evidence from each of those ECRG members to exactly their interpretation, if that would be of any assistance to the Commissioner.

45 COMMISSIONER WILSON: Well, I think probably not, because I think that it's a matter of interpreting the report which was put forward as the report of the ECRG.

MS WILSON: Well, we're looking at the interpretation of what those words mean
- - -

5 COMMISSIONER WILSON: Yes.

MS WILSON: - - - in this environment.

COMMISSIONER WILSON: Yes.

10 MS WILSON: It would be of, I would have thought, some assistance about what those words meant in the environment of the people drafting the ECRG recommendations.

15 COMMISSIONER WILSON: Well, I hear what you say.

MS WILSON: Also, in terms of looking at whether to conflate the terms "service" and "facility", I refer the Commissioner to the evidence of Professor Kotzé, and we will get you the reference of that, where she said that you could design a service and model of care for subacute beds and how you operate them in acute ward. My
20 learned junior was trying to find the reference to that and I will come back to that when I have that reference.

If I can take the Commissioner to Professor – Associate Professor Kotzé's evidence at 23-9, line 40, to the end of the page. It's under questioning from Counsel
25 Assisting, Ms Muir. It's that last part of the evidence on that page.

COMMISSIONER WILSON: I see that. She was, as I recall, I think the only one of the psychiatrists who gave evidence – the adolescent psychiatrists who gave evidence who seemed, in any sense, to give a tick to the use of beds in an acute ward
30 for subacute patients. Is that correct?

MS WILSON: Commissioner, I haven't done that analysis but I will.

35 COMMISSIONER WILSON: Yes. I'm pretty sure that was so. I mean, many doctors gave evidence in this case who were not adolescent psychiatrists. Some of them weren't even psychiatrists.

MS WILSON: Yes.

40 COMMISSIONER WILSON: I think she was the only one who said that.

MS WILSON: Yes. There were many. The Commission did hear evidence from a number of sources, some psychiatrists. And then we get down to the more specialised specialty, if I can call it that, of youth and adolescent - - -
45

COMMISSIONER WILSON: It is a very specialised sub-speciality, it seems to me.

MS WILSON: Yes, yes. And that's where Associate Professor Kotzé can provide, in our submission, great assistance to the Commission, looking at that specialty.

5 COMMISSIONER WILSON: We did have other people from that sub-speciality.

MS WILSON: Yes, yes. Commissioner, in terms of the – I just wish to address one other issue in terms of alternate services and recommendations regarding the future.

10 COMMISSIONER WILSON: Yes.

MS WILSON: In considering the alternatives to the Barrett Adolescent Centre, it is important not to adopt an approach that is – that may be encouraged by the second real issue that has been identified by Counsel Assisting's closing submissions of focusing only on the subacute beds at the Lady Cilento Hospital. That is one small
15 part of a comprehensive and contemporary suite of services that is known as AMHETI.

COMMISSIONER WILSON: Yes. But, as I understood the point Counsel Assisting was making, perhaps I misunderstood it, that is the only part of that
20 continuum which seeks to address extended inpatient care for young people coming within the Barrett cohort or otherwise needing it. And I'm very conscious when I say that, that the AMHETI suite wasn't designed just for the Barrett cohort. It's much wider than that. But is there anything else within the continuum which might address this point?

25 MS WILSON: The Step Up Step Down units also includes bed based elements of elements of service. They're the planned Step Up Step Down services.

30 COMMISSIONER WILSON: Step Up Step Down or step down from what, acute wards?

MS WILSON: Yes, the resis and the day programs. But – and as – as we've heard the evidence, we just don't see each of these parts of the AMHETI service in
35 isolation. They work together to provide the support, as required, for any individual.

COMMISSIONER WILSON: Well, can I say two things which reflect the way I'm thinking at the moment. One is, yes, they are designed to work together. But my impression of the adolescent psychiatric evidence is that almost all of the witnesses, if not all of them, that's the adolescent psychiatrists, acknowledge that there probably
40 will still be a small subset requiring inpatient care. Now, I know Dr – or Professor Scott said, well, I really just can't honestly say in the light of this new system, we've got to see how it works. That's one concern I have. And the other concern is one which I raised during the evidence of Dr Stathis. And that is, essentially, that these services will be sprinkled around the State. I understand there are reasons for doing
45 that but you will have, for example, the one Step Up Step Down service in Cairns. You might have a patient who needs those services, I think I said, in Brisbane or in

Mt Isa. So it's the geography of Queensland that concerns me. What's your answer to those concerns?

5 MS WILSON: My answer to those concerns is that it – those concerns are, in terms of a clinical concern and clinical expertise, it's been looked at by the YHMCC which is the – it's been referred to in submissions as the elections commitments committee. And whilst we don't want to make any detailed submissions about what, Commissioner, you should find because you've heard the evidence, is that that is a committee that's well placed to continue with the investigation of model service
10 delivery for subacute beds in Queensland, informed by your findings.

COMMISSIONER WILSON: So is what you're saying – and correct me if I'm misinterpreting it – that that issue of how to deal with the small subset which most people with relevant expertise think will still be there is not a matter for the – those
15 designing AMHETI. It's a matter for this other committee. Is that the position?

MS WILSON: Well, no. This other committee is looking at all of the services provided and also looking at subacute beds. It's looking at the whole gambit, so to speak.
20

COMMISSIONER WILSON: So is it – I didn't understand that it was in any way overseeing the AMHETI work.

MS WILSON: Not overseeing. But appreciating and understanding how the
25 AMHETI suite of services works and operates. Sorry, Commissioner. My learned junior was just making the point that there is no evidence that the committee that designed the present AMHETI suite of services, that is, SWAETRI, is continuing to be in operation. Certainly Dr Stathis gave evidence before the Commission, and he is part of that – the commitments committee working through the number of issues.
30

COMMISSIONER WILSON: It is chaired by Dr Allan, isn't it?

MS WILSON: It is. But as we heard - - -

35 COMMISSIONER WILSON: So is it the case that now that the subacute beds paper or whatever it is that SWAETRI has been producing has been produced, it's finished?

MS WILSON: Well, I don't think SWAETRI produced it. I think Children's
40 Health produced it. And Children's Health produced it at the behest of the commitments committee. And you will find that we have addressed the youth mental health commitments committee at page 83 of our submissions to the end of our submissions, if I recall. And only on this committee – yes, and we – were we set out that the committee has reviewed and discussed literature including the Mental
45 Health Alcohol and Drugs Branch Literature Review and the CHQ Statewide Subacute Beds Discussion Paper.

COMMISSIONER WILSON: So – alright. So thanks for clarifying that for me. I was under the wrong impression. The subacute beds paper was produced at the request of what’s been colloquially referred to as the elections committee.

5 MS WILSON: Yes.

COMMISSIONER WILSON: But SWAETRI has finished its task, has it? Is that what you’re saying?

10 MS WILSON: Your Honour, can I just clarify that?

COMMISSIONER WILSON: Yes.

15 MS WILSON: I thought it was on a different basis but I’m hearing mumblings in my ear that it may not be so can I take that question on notice and come back to you.

20 COMMISSIONER WILSON: If you would because I certainly thought that it had been prepared by Ms Morson with considerable input from people like Judy Krause who I associated with SWAETRI but may be I’m wrong.

25 MS McMILLAN: Is this of assistance – I recollect Dr Stathis was very clear saying he commissioned it because Dr Daubney was looking at it and there wasn’t the evidence base so he commissioned the paper as I understand it. He may with others have done it but I understood it to be clearly from his evidence at his behest.

30 COMMISSIONER WILSON: That’s accords more with my memory when you say it.

35 MS WILSON: Yes. And - - -

MS McMILLAN: I stand to be corrected but - - -

40 MS WILSON: No. And – but we – that does accord with my memory but then it certainly – the election commitments committee has received that document and is reviewing it and we will take that question on notice just to clarify that to provide - - -

45 COMMISSIONER WILSON: Yes. If you could give me clarity, please, on whether it has been part of the brief of the SWAETRI committee to consider whether there should be a bed-based service and if so the form of it or whether that’s always been outside its brief and always been with Dr Allan’s committee, I’d be grateful.

MS WILSON: And can I take that on notice - - -

COMMISSIONER WILSON: Okay. Thanks.

MS WILSON: - - - and we can back to you – we’d get back to you when we can provide that answer. Just in terms of that committee, I note that the written submissions of the Honourable Mr Springborg has made some comment about that. Just – if I can address it in this way. The election committee is a multidisciplinary committee. It has consumer reps, adolescent and youth psychiatrists and it is looking a number of models. And if I can take you to the evidence of Ingrid Adamson at 25-65, lines 1 to 15. Now, there were some questions by Mr O’Sullivan, if you recall, that it was referring to a somewhat intemperate email – that was on the last day – which I took objection to. And Mr O’Sullivan refers to that in his written submissions and says that’s it’s a criticism – that this committee was set up as a criticism for – to Mr Springborg. And I will – I’m just paraphrasing that. There’s no evidence of that. And if we look at here from Ms Adamson where we say at line 10:

15 *It’s fair to say, isn’t it, that this committee is looking at the 22-bed facility and other options in a very considered way and looking at taking – looking a data, scoping advice with a consumer representative and a carer representative on that committee.*

20 And all of that feeds into, Commissioner, our final submission that you will find I think on the last page of our submissions that this committee is well placed to continue the work informed by your recommendations.

25 COMMISSIONER WILSON: Just remind me, was there either a consumer representative or a carer representative on SWAETRI?

MS WILSON: There are nods at the bar table but can I take that on notice too - - -

COMMISSIONER WILSON: Yes.

30 MS WILSON: - - - and get back to you with a degree of accuracy.

COMMISSIONER WILSON: Go.

35 MS WILSON: Commissioner, they are my submissions.

COMMISSIONER WILSON: Alright. Thank you. Mr Diehm, are you in a position to start?

40 MR DIEHM: I’m sorry, Commissioner?

COMMISSIONER WILSON: Are you in a position to start?

MR DIEHM: I am, Commissioner. Yes.

45 COMMISSIONER WILSON: Very well. Do you want to come forward or you happy to do it from there?

MR DIEHM: I'm happy to do it from here. Commissioner.

COMMISSIONER WILSON: Just speak into the mic.

5 MR DIEHM: Thank you. Commissioner, the matters that I will address firstly concern Dr Brennan.

COMMISSIONER WILSON: Yes.

10 MR DIEHM: And I will try and distinguish between my respective clients as I deal with matters. The first matter arises out of a submission made in writing by the State and relevantly the submission commences at page 51 of its written submissions in a section that commences 4.5.1 under the heading of Availability of Subacute Beds.

15 COMMISSIONER WILSON: Yes.

MR DIEHM: And in section 4.5.2 deals with knowledge of the availability of those beds. Commissioner, you will recall, no doubt, this becoming an issue especially during the course of the evidence of Dr Stathis but also arising during the course of
20 the evidence of Professor McDermott. A couple of things need be said at the outset concerning the cohort of patients at the Barrett at the time that the transitions were being managed. Firstly, even if contrary to the submission made – or to be made on behalf of Dr Brennan that such beds had been available, on the evidence there is little
25 prospect that they would have been used for that cohort. That seems to be common ground between the submission made on behalf of the State and that we make on behalf of Dr Brennan.

Secondly, something else that is also seemingly common between us is that beds in the acute unit at the Mater were undoubtedly available for patients in the usual
30 course of things during that time period. Where the difference arises is with respect to the evidence advanced on behalf of Dr Stathis through these submissions that there were available in particular beds that could be rightly described as subacute beds and which had been identified as such as opposed to ordinary acute beds in the acute unit.

35 COMMISSIONER WILSON: Can I just be clear. The beds we're talking about at the Mater as subacute beds, they were swing beds, were they?

MR DIEHM: As it happened, yes, that is the case. That is what was eventually to become available. There – we will take you to in a few moments – occasions where
40 what was being discussed, it seems particularly in the latter part of 2013, was a model that would have seen dedicated subacute beds not necessarily located and, indeed, perhaps positively not located within an acute unit. But as it transpired what came to be provided or made available even if not necessarily used were swing beds within the acute ward.

45

COMMISSIONER WILSON: I must say – your saying now that what was in issue in late 2013 was dedicated subacute beds not necessarily in an acute unit – it's the

first time I've realised or thought that that may have been what they were talking about.

5 MR DIEHM: Commissioner, can we provide to you a chronology of relevant references to documents and oral evidence that we've compiled. A copy for Counsel Assisting, a copy perhaps as an exhibit and a copy of you, Commissioner, as a working copy. If I can hand up those three.

10 COMMISSIONER WILSON: Yes, please.

MR DIEHM: Ms Wilson has a particular interest in this matter, no doubt, so I will provide a copy for her as well.

15 COMMISSIONER WILSON: What about everyone else in the courtroom? Is there any chance of putting this up on the screen? If it's emailed to you. Can someone attend to that.

MR DIEHM: I'll have that attended to, Commissioner.

20 COMMISSIONER WILSON: It's not really very satisfactory when it's handed out to some people but not to everyone.

25 MR DIEHM: Sorry, Commissioner. That may take a few minutes to happen, Commissioner. I can come back to this.

COMMISSIONER WILSON: All right. I think you'd better come back to it when that's sorted out.

30 MR DIEHM: Thank you, Commissioner. Commissioner, to move to a discrete topic then, in paragraph 118 of the submissions on behalf of the State reference is made to the ITO category change – Commissioner, I appreciate, as I've started to speak of this, that this involves matters concerning a particular patient. I'll try and deal with it this way: I won't ask for that particular part of the submissions to be put on the screen, that is, the State's submissions. Excuse me, Commissioner.

35 The submission that was advanced was by reference to evidence that was given by

40

45

MS WILSON: Commissioner. I'm reluctant to interfere, but perhaps this should be done in closed court, in terms of referring to a facility, where we only know that there was one – I won't make any further submissions, but - - -

5 COMMISSIONER WILSON: Mr Diehm, can you move onto something else and we'll come back to this and close the court, whatever you want to say about it, I think.

10 MR DIEHM: Yes, Commissioner. Commissioner, the only other matter that I was going to raise on behalf of Dr Brennan was – or is a matter that would be best dealt with as well in closed court. I can proceed to address a matter that concerns both Drs O'Connell and Dr Cleary in open court now.

15 COMMISSIONER WILSON: We'll deal with that.

MR DIEHM: Thank you. Commissioner, it goes to the question of contemporary models of care and the matters that were addressed by Mr Freeburn in his oral submissions this morning. Commissioner, Mr Freeburn identified a number of examples from evidence in a document that contained extracts from evidence of several witnesses, Mr Eltham, Dr Corbett, Dr O'Connell and I think, from memory, 20 Dr Cleary; certainly Dr Kingswell as well. And he identified from it a number of different respects in which the submission went, that these witnesses were using this expression, contemporary models of care, but speaking of different things.

25 In our submission, an examination of that and the other evidence shows that, in fact, those witnesses are speaking of the same thing. The one particular example, that bears isolation though for special attention was the reference in Dr Kingswell's evidence that Mr Freeburn referred to, in which Dr Kingswell spoke of a therapeutic community. And Mr Freeburn said of that reference that that appeared to be a 30 reference to the type of therapy that was being provided; this is my paraphrase and my understanding of the submission that was being advanced.

Mr Freeburn did not, though, take you to any particular evidence that showed that that's what should be understood by that phrase when used by Dr Kingswell. In our 35 submission, it would be unsafe to assume that Dr Kingswell meant such a thing from such a statement. The reference to therapeutic community, in our submission, is more likely to be a reference to a circumstance where a group of people in a therapeutic setting end up with some kind of interdependence upon each other and upon the environment within which they exist, their community - - -

40 COMMISSIONER WILSON: So what - - -

MR DIEHM: - - - rather than being a reference to any particular mode of treatment.

45 COMMISSIONER WILSON: Could you repeat what you said? It's more likely to be a reference to circumstances in which a group of people - - -

MR DIEHM: In a hospital or therapeutic setting have developed an interdependency upon each other and other matters in their therapeutic environment. Now, we can't particularly point you to evidence that – at least at this point in time, and perhaps ever, that says that that's the conclusion that you should reach as to what
5 Dr Kingswell meant, but nor does it appear, as far as we're aware, that there is evidence that he meant that it was a particular type of therapy. And, indeed, one might imagine though that if that is what Dr Kingswell had meant he wouldn't have referred to a therapeutic community, but, rather, would have referred to the mode of therapy or, even more directly, to the therapy that was being provided there. But
10 instead, he seemed to attach the adjective to the community aspect of it.

COMMISSIONER WILSON: Mr Diehm, I note what you say on that, but there's another aspect of contemporary care on which I'd appreciate your submissions. I think it's in your submissions on behalf of Dr O'Connell you say, in effect, that there
15 has been some misunderstanding of what people were talking about. What they were talking about was it not being contemporary to have patients cared for in a state-wide institution, but they should be cared for in their local communities if possible. They may well have been the view of some.

20 What I would be interested to know your submissions on is this: was it not also the view of some – for example, those who worked on the model of care for Redlands – that while it was not contemporary to have care provided in an institution over the very long periods, the very long lengths of stay which, on occasion, marked the care at the Barrett Adolescent Centre, it was nevertheless contemporary to be cared for in
25 an institution such as that plan for Redlands or the Walker Institute in Sydney, where there are – there is a modernised modus operandi with a reduced length of stay?

MR DIEHM: Commissioner, that was the view of many witnesses that you heard from. It was also the view of Dr O'Connell, and there's nothing inconsistent with the
30 notion of it in Dr Cleary's evidence, and, indeed, in fact, Dr Cleary's evidence is positively consistent with it. The difficulty lay in the model of care, as it were involving a facility of the magnitude of the Redlands facility without the benefit of closer to the community-styled care being involved.

35 What Dr O'Connell said – and we'll come to this evidence in a moment – was that he always envisaged that there would be a need for a small number of patients to have access to such a – to use that expression – tier 3 facility, and Dr Cleary's understanding of the ECRG report and what was to follow from it was to the same effect, that there would be a need for a small number of beds of that kind.
40

But, nevertheless, what the references to contemporary model of care involved was that there was a need for there to be in a form, no doubt, of things like the resi facilities that came to be contemplated, and, indeed, established. There was a need for those sorts of facilities to be available to reduce, as it were, the dependence upon
45 tier 3 services to provide for those patients.

COMMISSIONER WILSON: I want to make sure I'm understanding what you're saying, and if I have misinterpreted it please – I'm sure you will – tell me.

MR DIEHM: Yes.

5

COMMISSIONER WILSON: Are you saying that the evidence of people like Dr O'Connell and Dr Cleary was that a contemporary model of care would include things such as the youth resi and the other components which subsequently have been developed by AHMETI and would include a state-wide facility catering for a smaller number of patients and with an updated model of service delivery? Is that what you're saying?

10

MR DIEHM: In effect, yes, without necessarily then having identified all of those elements or all of those words. Can I take you, Commissioner, to some oral evidence that was given by Dr O'Connell; it was on day 12 in the transcript, at page 13.

15

COMMISSIONER WILSON: Yes.

MR DIEHM: And at the top of the page, Commissioner; indeed, the first three paragraphs.

20

COMMISSIONER WILSON: So – again, tell me if I'm misunderstanding it – Dr O'Connell was saying that the emerging clinical preference was for community-based, closer to home models such as were subsequently developed in the AMHETI continuum - - -

25

MR DIEHM: Yes.

COMMISSIONER WILSON: - - - but there would still be a need for a small number of beds, and that that need could be met, in his view, by beds that might be added when the new Lady Cilento Hospital opened.

30

MR DIEHM: Yes.

COMMISSIONER WILSON: Now, when he said beds that might be added when the new Lady Cilento Hospital was opened, did he go on to identify them as subacute beds within an acute unit or did he leave it up in the air?

35

MR DIEHM: It wasn't taken up any further with him, I don't think, Commissioner. In the instance of Dr Cleary, can I ask the Commission to see – sorry – day 14 of the transcript, and at page 9. If I can draw your attention, Commissioner, to line 25 - - -

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COMMISSIONER WILSON: Just a moment. Yes.

MR DIEHM: - - - and to just over the page, once that has been read.

45

5 COMMISSIONER WILSON: Could you scroll down a little, please. Yes. I'm having difficulty where he is – in seeing where he is acknowledging or saying, in effect, what you say Dr O'Connell said, namely, that the contemporary model would have many more options within the community or closer to home, but it would nevertheless have some beds.

MR DIEHM: Commissioner, there are some further references to Dr Cleary's evidence, if you can bear with me for a moment, please.

10 COMMISSIONER WILSON: Certainly.

MR DIEHM: Commissioner, if I can draw your attention to page 22, and at line 15.

15 COMMISSIONER WILSON: Is that page 22 that's up at the moment, or is it still page 17?

MR DIEHM: That should be – that is page 22, I think, Commissioner.

20 COMMISSIONER WILSON: Right.

MR DIEHM: So where it starts with "Ms Muir, if we could go to the ECRG report."

25 COMMISSIONER WILSON: Yes. Yes. That doesn't seem to me to say what you're suggesting.

MR DIEHM: Well, it's speaking of his familiarity with the ECRG report - - -

30 COMMISSIONER WILSON: Yes.

MR DIEHM: - - - and the reference to a tier 3 service that he gave weight to.

COMMISSIONER WILSON: Yes.

35 MR DIEHM: I might have to come back to seeing if I can provide you with a better reference to that, Commissioner. And if the – in due course, too, I will be able to go to what was advised to Dr Cleary during the course of the Chief Executive Oversight Committee reports that were being provided about the development of subacute facilities.

40 COMMISSIONER WILSON: But with respect, isn't the issue what people meant by it not being a contemporary model of care at the times the decisions were made to cease Redlands and to close the Barrett Adolescent Centre rather than what they may have thought that meant at a later time when the new services were in fact being
45 developed?

MR DIEHM: I accept that, Commissioner. That is so. And I will endeavour to take you to Dr Cleary's evidence more precisely about what his understanding was at those relevant times bearing in mind that with respect to the Redlands decision he was not involved in the making of the decisions that are reflected in either of the briefing notes that have been referred to – the May or the August ones.

COMMISSIONER WILSON: Well, when the May one was the mental health policy was still within his bailiwick, as it not?

MR DIEHM: When the May one was made, no. He had that responsibility from 1 July 2012.

COMMISSIONER WILSON: I see. Right. Okay.

MR DIEHM: But you will recall, Commissioner, that the August briefing note didn't pass through his office. He is not one of the people mentioned on it. I'm sorry, I apologise for not being able to take you to that reference to Dr Cleary's evidence but we will aim to do so, Commissioner. Commissioner, the point of reference though to that first passage from Dr Cleary's evidence that we did take you to was to say that when people were speaking of the plan or the planning framework with respect to contemporary models of care – or when people spoke of therapy services that were closer to the community of origin for the patients and when people spoke of institutionalisation they were speaking of one and the same concept, that is, the idea – the overarching philosophy that care should be provided to patients of mental health services including, in the instance of adolescents, that kept them more engaged with their communities of origin and less dependent upon an institution as may be the case in a hospital setting to the extent possible. So each of those references that Mr Freeburn took you to, Commissioner, in our submission, are just different ways of these people saying effectively the same thing even though they acknowledge that there will be a residual need for a small number of beds to continue to be provided.

And in our submission, the matters that were advanced by Mr Freeburn don't detract from that notion just because one described as being de-institutionalising or avoiding institutionalisation as opposed to another one describing it as being closer to the community care and another one describes it as being consistent with national planning frameworks.

COMMISSIONER WILSON: Of course, all of this is very well in theory but my understanding is that at the time the Barrett Adolescent Centre was operating the landscape for community-based services for adolescents was still a pretty barren landscape.

MR DIEHM: That's so.

COMMISSIONER WILSON: And the decision was taken to cease – or decisions were taken, one, to cease the development of the alternative at Redlands and, two, to

close the Barrett Adolescent Centre at a time when that landscape was still barren and as events have proven it was going to take a long time to develop and implement new models of care.

5 MR DIEHM: Commissioner, from the point of view of Dr O'Connell, with respect to the decision that he received the briefing note for noting - - -

COMMISSIONER WILSON: Well, let's be fair to Dr O'Connell. Did he actually receive the - which one are you talking about?

10

MR DIEHM: I'm talking now about the July 2013 - - -

COMMISSIONER WILSON: Right. Okay.

15 MR DIEHM: - - - document.

COMMISSIONER WILSON: Yes.

20 MR DIEHM: That was - and Commissioner, you saw this in documents - this reflected in documents throughout this morning as you will have done throughout the course of this Commission - the decision to close that was being mooted was wholly conditional upon there being appropriate services in place in lieu. And so Dr O'Connell's involvement in the process that led to the decision to close the Barrett Adolescent Centre was wholly and solely in that context.

25

COMMISSIONER WILSON: All right. Well, let's accept that for the moment.

MR DIEHM: Yes.

30 COMMISSIONER WILSON: That the decision to close was wholly conditional on there being appropriate services in place in lieu. Well, at the time that decision was made - and we'll just say roughly in mid-2013 - - -

MR DIEHM: Yes.

35

COMMISSIONER WILSON: - - - what, if any, basis was there for people such as Dr O'Connell as the Director-General of Health and, indeed, the Minister to reasonably believe that replacement services would be in place in lieu?

40 MR DIEHM: Because the decision was expressed as being one that the Centre would not close without it.

45 COMMISSIONER WILSON: So are you saying - and tell me if you're not - but are you saying that if that belief was ill-founded - well, you're saying the decision was conditional and it would seem to follow that you are putting some responsibility on West Moreton to ensure that those alternatives or were in place or could be in

place and if you are, on what basis at that time could West Moreton have thought that they would be in place?

5 MR DIEHM: Well, Commissioner, it was the responsibility of others, that is, whether it be West Moreton, whether it be Children's Health to see the development of the appropriate services and the decision reflected in the document was that the Barrett Adolescent Centre would not close until they were.

10 COMMISSIONER WILSON: Well, we know that, in fact, the Mental Health Alcohol and Other Drugs Branch seems to have had some ongoing – I don't know whether it's keeping an eye on the development of these services. After all it was the policy unit within the Department, it seems – the relevant policy unit.

15 MR DIEHM: Yes.

COMMISSIONER WILSON: It was part of the Department of Health. Your client was the Director-General of Health. Was it just doing that because it was trying to be nice to people or did it have a responsibility to do it?

20 MR DIEHM: Well, Commissioner, whether the responsibility fell to the Mental Health Branch, whether the responsibility fell to West Moreton, whether it fell to Children's Health is ultimately a matter for those other parties to make submissions on collectively between those bodies. At least there was a responsibility that was being undertaken - - -

25 COMMISSIONER WILSON: Well, just let me stop you there. I take your point, yes, it is for them to make submissions, but is it not also a matter on which your client has a particular interest? Because as Director-General, he was, under the Minister, the head for Queensland Health, and that branch was part of the
30 organisation he was head of.

MR DIEHM: And, Commissioner, had he have remained in the position beyond about a week after the decision was announced by the Minister, no doubt he would have had some responsibility for seeing that those matters were attended to. But he
35 wasn't.

COMMISSIONER WILSON: So his ceasing to be D-G is the answer to it so far as he's concerned, in your submission?

40 MR DIEHM: Yes, Commissioner.

COMMISSIONER WILSON: I see. Thanks. Thank you. Go on.

MR DIEHM: Sorry, Commissioner. Commissioner, another matter that I should
45 address concerns the interaction between the May and the August 2012 briefing notes. And I won't ask the operator to go to this particular document on the screen, but on behalf of Mr Springborg, in his written submissions at paragraph 5.58, it is

said that there was no evidence that the May 2012 briefing note went to the Minister's office.

5 Can I ask if document COI027.0002.0001 can be put on the screen. This is an email of 25 June 2012 between several staff members in the Department of Health, and there's a request to get back to the deputy director-general by 3 pm or we need to get back to the deputy director-general by 3 pm. And it goes on to say that there's also a requirement to comment on the Redlands proposal:

10 *Can I advise our DDG that this is now cancelled.*

in attachment at page 3 to that document, if we can scroll down a little further, please – sorry – yes. In the centre of the page, a reference there to the Redlands adolescent facility, if I could invite you to read that, Commissioner.

15

COMMISSIONER WILSON: Well, I know it says that, but is that the only evidence that it was sent to his office?

20 MR DIEHM: There was a further email then. If I could ask that this document be put on the screen: QHD008.002.9853. Commissioner, the earliest email in that trial, from Leanne Geppert, refers to that circumstance as well. The remaining matter - - -

25 COMMISSIONER WILSON: Who are Jackie – it's Jackie Ball, I take it, who is referred to above. And who is Paul?

MR DIEHM: Paul would appear to be Paul McGuire from Queensland Health; not otherwise identified in terms of a position. The other matter that supports the inference is the circumstantial one that Dr Cleary's – sorry – Dr O'Connell's May 2012 decision – and he believed it to be that, he believed it to have been an effective decision to end the Redlands Project – was, as the document itself showed, to be sent to the Minister's office for approval. And in turn, what we know is that, in August, a briefing note, the August 2012 briefing note, came to be prepared at the request of the Minister's office, incorporating, as it did, the decision to end the Redlands Project, but with a different decision with respect to what was to happen regarding the reallocation of the capital funding from that noted in Dr O'Connell's email.

40 So that bit of circumstantial evidence corroborates the content of the emails, in essence, by pointing to a circumstance that the document was to go to the Minister's office, the Minister's office asked for a document to be created which is consistent enough with its knowledge of the contents of the original document, but adapting it in a manner that the Minister or at least somebody in his office thought fit to do.

45 COMMISSIONER WILSON: But that – at its highest, that evidence might show that the May briefing note was sent to the Minister's office. There is, as I recall, no evidence that the Minister remembered seeing it himself.

MR DIEHM: That's so. The import of it is modest, at the end of the day, because what's not denied by any of the relevant parties involved is that the decision insofar as it affected Redlands itself and the proposal to proceed with the project was supported by the particular individual, whether it be those who provided the briefing note to Dr O'Connell, Dr O'Connell himself, or, for that matter, the Minister, ultimately.

But it simply – it's raised simply in terms of assisting you, Commissioner, to be able to identify what are the proper findings as to what decision was made and by what means, not rather to try and escape responsibility for the decision, because responsibility for the decision is accepted by Dr O'Connell. And indeed, he has sought to explain why he made the decision and doesn't shy away from his view as to the correctness of it.

COMMISSIONER WILSON: That's the decision to cancel Redlands?

MR DIEHM: Yes.

COMMISSIONER WILSON: And to be fair to Dr O'Connell, the issue of it not being a contemporary model of care was only one of several reasons put forward for the cancellation of Redlands.

MR DIEHM: It was, but an important - - -

COMMISSIONER WILSON: There were the building delays and budget blowouts.

MR DIEHM: Yes. That all formed part of the context for the decision but he said that nevertheless the consideration of the contemporary model of care was an important feature in terms of the decision that he made. In fairness to him, he was not a psychiatrist let alone a child and adolescent psychiatrist and was dependent upon advice that he received not just in the form of the briefing note but in terms of discussions that he had had but he also made clear that he did so in the understanding from years of exposure to relevant opinion that contemporary models of mental health care did involve increasing emphasis upon community-based care in favour of hospital-based or to use a more pejorative term institutionalised-based care.

And in my submission, when it comes to Dr O'Connell and for that matter Dr Cleary with respect to the extent that he had an involvement in relevant decisions influenced by an understanding about what were contemporary models of care they were in each instance relying upon advice from specialist psychiatrists employed in responsible positions and in particular Dr Kingswell whose job it was was to provide that kind of advice to - - -

COMMISSIONER WILSON: But Dr Kingswell himself was a forensic psychiatrist, wasn't he?

MR DIEHM: He was. He was not a specialist child and adolescent psychiatrist but nevertheless he was the senior person in the Mental Health Branch of the Department of Health and the senior person in that role will always be a person no doubt who has a particular background within the speciality of psychiatry and that can't of itself be
5 a reason why a Director-General or a Deputy Director-General would not listen to that person's advice expecting it to be informed by a collective of knowledge acquired from a variety of sources and appropriate sources at that. So - - -

10 COMMISSIONER WILSON: Well, whether it was sufficiently informed no doubt is a matter Mr Duffy can assist me with.

MR DIEHM: Yes. That's so. But persons in the position of the Director-General and Deputy Director-General would be expected to take the advice from the senior person in the Mental Health Branch but not just at face value but without going so far
15 as to say show me all of your source documents, bring before me the group of eminent persons that you've spoken to that helped you reach this view. Those sorts of matters, with respect, are quite impractical to the functioning of the Department. But to have some sense from their general knowledge that what is being spoken of seems right and that's the point that Dr O'Connell was able to illustrate in particular
20 in his second statement to say, look, over the years I have been exposed to literature and to orally expressed views about what are contemporary models of care in mental health. So what I am being told sounds consistent with what I have heard before. And that is in itself a reason to be prepared to accept the advice of your senior person in the Mental Health Branch that this is the course that should be followed.

25 COMMISSIONER WILSON: Would it not be reasonable to expect of someone in Dr O'Connell's position that he would have asked, well, if I cancel Redlands what are the implications of my doing so?

30 MR DIEHM: Commissioner, I heard, of course, what went between yourself and Counsel Assisting before the lunch break about the EFTRU matter. That matter was not canvassed with Dr O'Connell. Can I say that in his primary statement – I'll get the reference for you – he referred to the EFTRU matter as not being relevant to the decision to cancel the Redlands project. If I can turn up that reference. It's in
35 paragraph 29(b) of his primary statement and the Delium reference – it may not be able to be put up on the screen – but the Delium reference is DTO900.0001.0001 at 0022. And he was asked a specific question there regarding the redevelopment of The Park as an adult forensic facility and the opening of the EFTRU facility. He said that – so that was at page 22 – that the decision to not proceed with the Redlands unit
40 – he said he was not aware that the redevelopment of The Park or the opening of the Kuranda of EFTRU facility was relevant to the decision to not proceed with the Redlands unit and he then referred back to what he had set out as being the reasons for the Redlands unit not proceeding. And as best as we're able to tell that matter wasn't taken up with him in his oral evidence.

45 COMMISSIONER WILSON: But his supplementary statement?

MR DIEHM: Yes. In his supplementary statement there were questions asked of him relating to EFTRU and I'll just identify it. Just so you've got the document perhaps it might be able to be put up on the screen. The Delium reference is DTO900.0003.0001. And in question 1 – the questions are set out in the statement.

5 You will see on the first page there it starts by referring to the Commission's understanding that from approximately December 2012 and it then refers to the opening of EFTRU being proposed for early 2013. So that seems to relate to matters pertaining to coordination, as it were, that you, Commissioner, expressed interest in before lunch, of – within Queensland Health of the opening of one and the closure of

10 the other. He said that he was unable to provide any answer about that matter. He said he was unable to recollect from the exact date that when the services and the BAC could be considered to be under review, nor the logistics of the opening of EFTRU. And he said though that the management – this is in answer to question to 1(c) – the management of the closure of the BAC - - -

15

COMMISSIONER WILSON: Could you scroll down, please.

MR DIEHM: Management of the closure of the BAC, identification of replacement services and opening of EFTRU is a joint responsibility of West Moreton and

20 Children's Health, in consultation with the Mental Health Branch, and that no single person is entirely responsible. Now, strictly speaking, his question was with respect to matters from approximately December 2012.

COMMISSIONER WILSON: What was the next question he was asked? That's

25 June 2013.

MR DIEHM: Yes.

COMMISSIONER WILSON: You see, my concern is this: as I understand the

30 evidence, when Dr O'Connell was asked to sign off on the cancellation of Redlands he seems not to have asked, well, what are the implications of this. He seems to have – and I'm not sure whether he says he was told or whether he assumed that the Barrett Adolescent Centre would continue to operate.

35 Now, if it were to continue to operate it was going to do so in circumstances where it was operating in collocation with EFTRU. That was going to happen in the new year. No one seems to have said to him that's going to be a real problem, you know? It's not going to be safe. But as soon as the cancellation of Redlands had been absolutely signed off on, then this issue seems to have reared its head.

40

Now, I find that odd, because it seems to have been an issue which was percolating away, at least in the Mental Health Branch, because Dr Kingswell said that he was always aware of it. I don't know to what extent he was aware of the program for the opening of EFTRU, but, certainly, the facilities branch should have been. Now, as

45 the head of the Department, was it not Dr O'Connell's responsibility to see that there was coordination between what the Mental Health Branch on the one hand – which

was part of policy and innovation, I think it was called – and what the facilities were doing on the other? Someone surely must have been responsible for that.

5 MR DIEHM: Commissioner, the briefing note to Dr O’Connell passed through the Mental Health Branch office - - -

COMMISSIONER WILSON: Yes.

10 MR DIEHM: - - - the May 2012 briefing note. And so if there was some relevant matter to be brought to his attention, if there was, then one would expect it to have been done. But, secondly – and it’s somewhat speculative, because these matters weren’t canvassed with Dr O’Connell, and the evidence he gave on the topic seemed to be accepted without further inquiry- but one might wonder what difference it could make anyway, because the difficulties with respect to the Redlands Project
15 were such that it was hardly any answer to any problem with respect to EFTRU at the Wacol site.

COMMISSIONER WILSON: Could we scroll down through this document, please, and see if there are any more questions after question 2. No, there aren’t. All right.
20 I find it a difficult point, to be honest.

MR DIEHM: Commissioner, what those making the decision about Redlands had in mind, whether this Commission accepts it to be right or not, there can be no doubt that it’s what they had in mind, was that the Redlands Project wasn’t going to happen
25 any time soon.

Now, our submission is that they were right, that the contemporaneous documents show that that was a sound judgment. But even if they were not right, but they believed that to be the case, why should any of them think that continuation of the
30 Redlands Project at the pace that it might be expected to proceed was going to be any answer to a problem about the collocation of EFTRU and the Barrett Adolescent Centre come 2013, one might ask rhetorically.

COMMISSIONER WILSON: I understand what you’re saying there. Thanks.
35

MR DIEHM: Mr O’Sullivan has pointed out to me some evidence that Dr Kingswell gave, Commissioner, and has given me a reference to that evidence that’s referred to in his written submissions, and perhaps whilst I’m on my feet it might be put on the screen. It’s in the transcript, day 13, at page 11, lines 10 to 13. You might
40 need to – for context, to read some of the earlier part of the passage.

COMMISSIONER WILSON: He’s saying there was a looming problem, and Redlands wasn’t going to deliver a solution for that.

45 MR DIEHM: Yes. And it seems to be a reference to the – a looming problem at the Barrett Adolescent Centre on the site.

COMMISSIONER WILSON: Yes.

MR DIEHM: It seems, contextually, to only refer to EFTRU.

5 COMMISSIONER WILSON: All right. Thanks for that.

MR DIEHM: I'm indebted to my learned friend.

MS McMILLAN: Can I just hear that reference again?

10

COMMISSIONER WILSON: T13, page 11, about line 10.

MS McMILLAN: Thank you.

15 MR DIEHM: If I may just have a moment, please, Commissioner. Commissioner, I note the time. I wonder if the Commission were to adjourn today and if I could resume briefly tomorrow morning to deal with three things. One, the references to Dr Cleary's evidence that I said we would provide.

20 COMMISSIONER WILSON: Yes.

MR DIEHM: And secondly, to return to the two matters that I was to advance on behalf of Dr Brennan that would need to be dealt with in a closed court.

25 COMMISSIONER WILSON: Well, in order to make the most of tomorrow would it be convenient for everyone if we started at 9 rather than 9.30?

MR DIEHM: It would for us, Commissioner.

30 COMMISSIONER WILSON: Is it inconvenient to anyone? Alright, we'll start at 9 tomorrow morning.

MR DIEHM: Thank you, Commissioner.

35 MS WILSON: Commissioner, before we adjourn, I can provide you a transcript reference note in terms of the issue about the subacute bed discussion paper.

COMMISSIONER WILSON: Yes, yes.

40 MS WILSON: If I can take you to day 24, page 53. Dr Stathis is giving evidence. He is being questioned by Counsel Assisting, Mr Freeburn QC, at lines 20 to 35.

COMMISSIONER WILSON: What does it say? Let's have a look.

45 MS WILSON: It says that he asked Dr Daubney to do a – to look at a document, pull together a discussion paper, and that was the start of the concept, the discussion

paper, and then the discussion paper then, ultimately, was commissioned by the Youth Elections Commitments Committee.

5 COMMISSIONER WILSON: So both arguments were right.

MS WILSON: Yes.

MS McMILLAN: Commissioner - - -

10 COMMISSIONER WILSON: Just a tick.

MS McMILLAN: Sorry.

15 COMMISSIONER WILSON: Yes, Ms McMillan.

MS McMILLAN: I might seek to follow suit, as Mr Duffy has indicated, if I do all of mine Friday, rather than splitting it.

20 COMMISSIONER WILSON: Well, can we fill up tomorrow with the other submissions?

MS McMILLAN: That's what I was just going to flag. I expect, probably, that's the case.

25 COMMISSIONER WILSON: Ms Robb, will you be ready tomorrow?

MS ROBB: Whether or not I have anything may be contingent on the submissions of my learned friends from West Moreton.

30 COMMISSIONER WILSON: All right. I understand your position.

35 MS McMILLAN: Could I just say – it might assist my learned friend, Ms Robb – I was going to say the differences between are not particularly material, so I won't really have anything much to say about her submissions, if that assists her. Yes, it does, apparently.

COMMISSIONER WILSON: Ms Mellifont, what do you say? Will you be ready to proceed tomorrow?

40 MS MELLIFONT: Yes.

COMMISSIONER WILSON: Alright. Mr O'Sullivan?

45 MR O'SULLIVAN: Yes, Commissioner.

COMMISSIONER WILSON: Mr Duffy, ready tomorrow or not?

MR DUFFY: Well, I can be, subject to that particular issue.

5 COMMISSIONER WILSON: All right. Well, look: Ms McMillan, I'll put your submissions aside for the moment and proceed on the basis that the other counsel who've said they wish to address will be in a position to start tomorrow.

MS McMILLAN: Thank you, Commissioner.

10 MS ROSENGREN: Commissioner, could I say at this point as to whether I will have submissions and if so the length of them? I expect that they will be very brief. It will also depend, to a very large extent, to a number of submissions by counsel for West Moreton.

15 MS McMILLAN: Again, I didn't really have anything much to say about Dr Sadler. I was going to adopt, in fact, largely what my learned friend, Mr Duffy, had to say about the standing down of Dr Sadler. So if that's of any assistance - - -

20 COMMISSIONER WILSON: Well, let's say this, Ms McMillan: on Friday I'll start with Ms Wilson, then hear your submission, so that others, if they wish to make submissions - - -

MS McMILLAN: Yes.

25 COMMISSIONER WILSON: - - - in response to what you say will have the opportunity to do so.

MS McMILLAN: Absolutely. I just wanted - - -

30 COMMISSIONER WILSON: Will that - - -

MS McMILLAN: - - - to give some indication.

COMMISSIONER WILSON: - - - answer the concern?

35 MS WILSON: Thank you. Thank you, Commissioner.

MS ROSENGREN: Thank you, Commissioner.

40 COMMISSIONER WILSON: Any other concerns?

45 MR ALLEN: I did flag with the Commission when inquiries were made about the availability of these two dates that I would have to absent myself during part of the morning tomorrow. So I expect I should be here by about 11.30. If I'm making submissions, they wouldn't be much more than five minutes.

COMMISSIONER WILSON: All right. Well, if there's anything that affects Metro North you'll have to rely on what your solicitor tells you of the submissions that have been made.

5 MR ALLEN: That's so, Commissioner.

COMMISSIONER WILSON: Very well. Anyone else?

10 MR PRATT: Commissioner, for Dr Groves.

COMMISSIONER WILSON: Yes.

MR PRATT: We'll be about five minutes. Tomorrow's fine.

15 COMMISSIONER WILSON: And you're ready to proceed?

MR PRATT: Yes. Thank you.

20 COMMISSIONER WILSON: Okay. Thanks for that. Anyone else? Okay. 9 o'clock tomorrow morning.

MATTER ADJOURNED at 4.31 pm UNTIL TUESDAY, 12 APRIL 2016