

Outline of oral submissions on behalf of the Honourable Lawrence Springborg MP

11 & 12 April 2016

1 Introduction

1.1 These submissions:

- (a) correct errors in and clarify or supplement the written submissions on behalf of Lawrence Springborg MP dated 23 March 2016 (**Primary Submissions**) [COI.028.0002.0001];
- (b) provide a limited response to the written submissions of other parties with leave to appear.

2 Corrections to and supplementing of the Primary Submissions

2.1 To clarify paragraphs 1.2 and 1.5 of the Primary Submissions regarding the Terms of Reference (**TOR**) (and to correct the heading for Part 5):

- (a) Part 4 of the Primary Submissions engages paragraph 3(a), (b), (c) and (g) of the TOR;
- (b) Part 5 of the Primary Submissions focuses on paragraph 3(a) of the TOR but also engages paragraph 3(b), (c) and (g);
- (c) Part 6 of the Primary Submissions engages paragraph 3(b) of the TOR;
- (d) Part 7 of the Primary Submissions engages paragraph 3(c) and (e) of the TOR; and
- (e) Part 8 of the Primary Submissions engages paragraph 4 of the TOR.

2.2 Closure of BAC (supplement to para 7.4 to 7.6):

- (a) Page 54, paragraphs 7.4 and 7.5 of the Primary Submissions records that Mr Springborg's view that there needed to be flexibility in the closure date, and that it should not close unless appropriate arrangements had been made to ensure there was no gap in services, was communicated to Dr Corbett¹ and Ms Dwyer of WMHHS, and to the relevant Directors-General, Dr O'Connell and Mr Maynard.
- (b) As well, Mr Springborg testified that he discussed with Dr Michael Cleary his view that there should be no gap in services if the Barrett Centre was closed, and that Dr Cleary and he agreed that there should no gap in services.² It is noted that Dr Cleary's evidence was to the same effect.³
- (c) In addition, it is submitted that the Commissioner should find that Mr Springborg communicated his view that there should be no gap in services, as well to CHQ, via Dr Peter Steer (the Chief Executive) and to Ms Susan Johnson (the chair of the board of CHQ). That was Mr Springborg's evidence. He testified that Dr Steer and Ms Johnson

¹ As well as the reference at footnote 307 of the Primary Submissions, the Commissioner is also referred to T9-49:14-16 (Corbett).

² Paragraph 60 of Mr Springborg's affidavit (Ex 120).

³ T14-33:6-10 (Cleary).

agreed with him that there should be no gap in services when the Barrett Centre closed (paragraph 59 of Mr Springborg's first affidavit). Dr Steer did not contradict this evidence, and the evidence that he gave was consistent with it.⁴ Ms Johnson was not called to give evidence. The Commissioner should accept Mr Springborg's evidence, and find that Mr Springborg communicated his view that there should be no gap in services when the Barrett Centre closed, also to CHQ.

- 2.3 Queensland Mental Health, Drug and Alcohol Services Plan 2016-2012 (supplemental to para 8.30):
- (a) In addition to the submissions made at page 61, paragraph 8.30 of the Primary Submissions, the evidence is that a Queensland Mental Health, Drug and Alcohol Services Plan 2016-2021 is currently under development within Queensland Health.⁵ This document is not yet complete.⁶
 - (b) The current draft of it is not before the Commission, and the Commissioner has heard no evidence about its content, or of the work that sits behind it. In particular, the Commission does not know what epidemiological or other empirical data, or funding assumptions, underpin the Plan. It would be inappropriate and wrong for the Commission to make clinical recommendations about future service delivery, or indeed clinically appropriate models of care for intensive mental health services to young people, in circumstance where the Queensland Mental Health, Drug and Alcohol Services Plan 2016-2021 has not been finalised, and the Commission has been provided with no information about what it contains.
- 2.4 Miscellaneous corrections:
- (a) page 12 footnote 66: the missing cross-reference is paragraph 5.43 of the Primary Submissions;
 - (b) paragraph 7.2: the reference to "equivocal" should be to "unequivocal";
 - (c) paragraph 8.20, first sentence and footnote 348: the comment by Ms Krause (that the proposal for a new 22 bed facility was a "fiasco") was made in another email, being QHD.013.001.1088 (Exh 277).

3 Submissions of parties given leave to appear

- 3.1 This section provides a limited response to the written submissions of other parties with leave to appear. It is restricted to key points relevant to Mr Springborg and is not intended to be comprehensive.

Submissions that are endorsed

- 3.2 The following paragraphs of the written submissions of other parties given leave to appear are specifically endorsed.
- (a) Submissions on behalf of the State of Queensland (**State Submissions**) [COI.028.0017.0001]:

⁴ T24-112:39 – T24-113:8 (Steer) – his view was that there should be no gap in services.

⁵ Ex 282 at 4.1 [QHD.031.001.0464 at .0465]; T14-51:3-20 (Cleary).

⁶ Similarly, the evidence indicates that the Fifth National Mental Health Plan is currently under development but has not yet been released: T24-81:1-2; T25-8:13-15.

- (i) Annexure B, in its entirety.
 - (ii) Paragraphs 21 to 33.
 - (iii) Paragraphs 40 to 50.
 - (iv) Paragraphs 253 to 259.
 - (v) Paragraphs 266 to 308.
- (b) Submissions on behalf of West Moreton HHS and Board (**West Moreton Submissions**) [COI.028.0015.0001]:
- (i) Part 1, paragraphs 2.2 to 2.4.
 - (ii) Part 1, paragraphs 5.1 to 5.40.
 - (iii) Part 1, paragraphs 6.8 to 6.11.
 - (iv) Part 1, paragraphs 7.19 to 7.27.
 - (v) Part 1, paragraphs 7.49 and 7.50.
 - (vi) Part 1, paragraphs 9.1 to 9.17 (including Annexure B).
- (c) Submissions on behalf of Dr Anthony O'Connell (**O'Connell Submissions**) [COI.028.0010.0001]:
- (i) Paragraphs 38 and 39.
 - (ii) Paragraphs 47-54.
 - (iii) Paragraphs 59-62.
 - (iv) Paragraph 66.
 - (v) Paragraphs 81, 99 and 100.
- (d) Submissions of Dr William Kingswell (**Kingswell Submissions**) [COI.028.0019.0001]:
- (i) Paragraph 3, third dot point.
 - (ii) Paragraphs 80-87, and 121-126.
 - (iii) Paragraph 176 (and the subsequent submissions in support of that conclusion).
 - (iv) Paragraphs 196-207.
- (e) Submissions on behalf of Mr Ian Maynard [COI.028.0016.0001]: paragraphs 47 to 50.

Submissions that should not be accepted

- 3.3 The following submissions of other parties given leave to appear, if submitted, should be rejected.
- (a) State Submissions, paragraphs 324 and 325(f).

The inference is that there is a political dimension to the work of the Election Commitments Committee: the Committee arose out of an election commitment that formed part of an explicit attack upon the conduct of Mr Springborg, and of the previous government, as to the closure of the BAC.⁷ For that reason, the Commissioner should not be invited to endorse the work of this Committee, and ought not to do so.

- (b) West Moreton Submissions:
- (i) Part 1, paragraph 7.10. The submission should be rejected as it ignores the evidence regarding the improved fiscal position of the Health Department in the 2012/2013 and 2013/2014 years and the uncontradicted evidence of Mr Springborg and Mr Maynard: see Primary Submissions at 5.103.
- (c) O'Connell Submissions:
- (i) Paragraph 28, second sentence. The evidence is that the Minister supported the decision, but did not "approve" closure of the BAC: see Primary Submissions, para 5.147-5.152 and 5.158-5.170.
- (ii) Paragraphs 42 and 65: the approval of the August 2012 briefing note by the Minister did not approve the cessation of the Redlands project, but approved the re-allocation of funds. The decision to cease the Redlands project had occurred at an earlier time, and had been made by Dr O'Connell as D-G. That was, indeed, Dr O'Connell's own evidence, in answer to a question from the Honourable Commissioner (T12-15 L20-24): see the Primary Submissions at 5.61-5.63 and 5.87-5.94.
- (d) Kingswell Submissions, paragraph 3, first dot point (and para 133): the approval of the August 2012 briefing note by the Minister did not approve the cessation of the Redlands project, but approved the re-allocation of funds. The decision to cease the Redlands project had occurred at an earlier time: see the Primary Submissions at 5.61-5.63 and 5.87-5.94.
- (e) Submissions from [REDACTED] (**Joint Submissions**) [COI.028.0009.0001]:
- (i) Paragraph 9: this submission should be rejected for several reasons.
- (I) First, the evidence was that government's intention was to bring projected spending within the budget, and not to reduce the budget: see T15-9:44-45 (Mr Springborg); T12-16:14-21 (Dr O'Connell).
- (II) Second, the cancellation of the Redland's project was driven by a number of considerations: see paragraphs 5.66 to 5.71 of the Primary Submissions.
- (III) Third, the discussions between senior clinicians that led to cancellation of the project pre-dated the appointment of Mr Springborg as Minister (and

⁷ See paragraph 8.15 of the Primary Submissions. The political dimension is not only apparent from the face of the ALP Election Commitments document at Exhibit 253, but Ms Dwyer deposes that the then opposition (now government) were opposed to the closure of the BAC in circumstances where Redlands would not proceed: see T12-125:12-24. See also T14-49 (Dr Cleary). Of course, it forms no part of the role of this Commission to enter into political controversies. The Commissioner stands above political contests, which are irrelevant to the proper discharge of *Commissions of Inquiry Order (no 4) of 2015* (as amended).

the election of the LNP government): see Exhibit 186, Affidavit of Dr J Young at paragraph 36; T21-72:1-14 and T21-72:29-36.

- (IV) Fourth, Counsel Assisting accept that financial considerations did not drive the decision to cancel the Redlands project: see paragraph 195 of Counsel Assisting Closing Submissions.
- (ii) Paragraphs 15 and 33 of the Joint Submissions should be struck out (or disregarded) for the following reasons:
- (I) they breach parliamentary privilege;
- The effect of paragraphs 16, 17 and 33 of the Joint Submissions is to submit that the statement Mr Springborg made to Parliament was incorrect or misleading. In those circumstances, paragraphs 15, 16, 17 and 33 of the Submissions impeach or question proceedings in the Assembly, and are therefore made in breach of Parliamentary privilege.
- Paragraphs 15 and 33 should therefore be struck out (alternatively disregarded by the Commissioner)⁸;
- (II) the submissions also lack any supporting evidence (viz. that any parent of any patient actually heard or relied upon the Minister's alleged statements to Parliament, and interpreted those statements in the manner now contended);
- (III) with respect to paragraph 15, the source of the quotation⁹ is not an official record of proceedings in Parliament, but rather an extract from a submission made by parents in a presentation to CHQHHS. The evidence is thus hearsay and should not be relied upon. Further, reliance upon it, rather than the official record of parliament, may contravene the *Parliament of Queensland Act 2001* (see s36 and s57);
- (IV) the submissions proceed on the basis of a particular and contestable interpretation of Mr Springborg's alleged statements to Parliament on 7 August 2013 (viz. particularly because the statement extracted and relied upon is devoid of context).

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JP O'Regan

⁸ The solicitors for [redacted] (Messrs Shine Lawyers) were invited to withdraw the relevant parts of the written submission by letter from the solicitors for Mr Springborg dated and sent on 29 March 2016, and copied to Counsel Assisting and Counsel for the State of Queensland. No response was received to that letter.

⁹ i.e. DSS.001.001.001 at 295.