IN THE MATTER OF THE COMMISSIONS OF INQUIRY ORDER (NO. 4) 2015
BARRETT ADOLESCENT CENTRE COMMISSION OF INQUIRY

SUBMISSIONS ON BEHALF OF MR IAN MAYNARD

SYNOPSIS

1. The brevity of these submissions is not a reflection of the very serious matters this Commission of Inquiry (**the Commission**) is required to consider. Those issues have been comprehensively canvassed in the oral and written evidence presented to the Commission and will, no doubt, be addressed in detail in the closing submissions of the other key parties in this inquiry, such as the State of Queensland, West Moreton Hospital and Health Service (**WMHHS**) and Mr Springborg.

2. Rather, the brevity of these submissions reflects the following indisputable contentions:

   (a) the Terms of Reference of the Commission principally direct attention towards, and require inquiry into, matters with which Mr Maynard had minimal involvement;

   (b) no criticism has been directed towards Mr Maynard by Counsel Assisting, or any other party, during the course of oral hearings;

   (c) no criticism has been directed towards Mr Maynard by Counsel Assisting in their closing submissions; and

   (d) there is no occasion to make, nor any evidentiary basis for, any adverse findings against Mr Maynard.

3. While Mr Maynard was Director General of Queensland Health (**QH**) for most of the transition period, he had little involvement in that process as the transitioning of the Barrett Adolescent Centre (**BAC**) patients involved the making, and implementation of, clinical decisions. Mr Maynard has no clinical expertise or experience. Appropriately, he relied upon the experienced clinicians below him to make such decisions and to oversee putting them into effect.

4. Further, Mr Maynard's limited involvement in operational matters was entirely consistent with his role as System Manager under the statutory framework for delivery of health services in Queensland set up by the *Hospital and Health Boards Act* 2011 (**the *Act***). That statutory framework contemplated that the Director-General of QH would have a high-level State-wide overseeing managerial and administrative role and that clinical and operational

issues associated with the delivery of services to patients was the responsibility of the Hospital and Health Services (**HHS**) set up under the *Act*.

5. To the limited extent Mr Maynard was asked to intervene in the transition process, he did so immediately. And if there were concerns held about the transitioning of BAC patients, they were never raised with Mr Maynard. There is no reason to reject Mr Maynard's unchallenged evidence that if such concerns were raised with him he would have acted.

BACKGROUND

6. Mr Maynard holds the following qualifications:[1]

   (a) Bachelor of Science (First Class Honours) completed at the University of Queensland in 1986;

   (b) Advanced Management Residential Program completed at INSEAD in 2004; and

   (c) Australian Institute of Company Directors course completed in 2011.

7. Prior to his role as Director-General of QH, Mr Maynard held the positon of Chief Executive of the Public Service Commission in Queensland.[2] He has also previously been employed as the Chief Executive Officer of Queensland Urban Utilities, and the Chief Operating Officer at the Brisbane City Council.[3]

8. As will be apparent, Mr Maynard has extensive experience in senior management and public administration. He is not a clinician and has no clinical background or experience.

9. The closure of the BAC was announced on 6 August 2013 by the then Minister for Health, the Honourable Lawrence Springborg. Mr Maynard did not commence in the role of Director-General of QH until after that announcement. He was appointed on 23 September 2013 and remained in the position of Director-General until 23 March 2015.[4]

10. At the time Mr Maynard took up the role of Director-General, not only had the decision to close the BAC been announced, but the operational and governance requirements to manage this process had already been implemented.[5] These arrangements are outlined in some detail at pages 6 and 7 of the *Report: Transitional Care for Adolescent Patients of the Barrett Adolescent Centre* (**Investigation Report**) dated 30 October 2014.[6]

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1 Statement of Mr Maynard dated 1 February 2016, Exhibit 83 [IMA.900.001.0001] at [6] (**Statement of Mr Maynard**).
2 Attachment IGM-2 to the Statement of Mr Maynard at p 18.
3 Ibid.
4 Statement of Mr Maynard at [9].
5 Statement of Mr Maynard at [17].
6 Attachment IGM-13 to the Statement of Mr Maynard.

11. In respect of clinical matters, Mr Maynard deferred to, and relied upon, the experienced senior clinicians in QH who reported to him. There were eight divisions within QH which reported directly to Mr Maynard when he commenced as Director-General in 2013. The divisions, and the persons who led those divisions during Mr Maynard's tenure, were as follows:[7]

    (a) Office of the Director General – Executive Director, Ms Susan Le Boutillier; [8]

    (b) Health Service and Clinical Innovation (**HSCI**) Division – Deputy Director General, Dr Michael Cleary;

    (c) Systems Support Services – Deputy Director General, Ms Susan Middleditch;

    (d) Health Commissioning Queensland – Deputy Director General, Mr Philip Davies;

    (e) Queensland Ambulance Service – Commissioner, Mr Russell Bowles;

    (f) Health Renewal Taskforce – Chief Executive, Mr Brett Heyward;

    (g) Health Service Support Agency – Chief Executive, Ms Kathy Byrne; and

    (h) Information Technology – Chief Information Officer, Ms Ray Brown.

12. The division relevant to the BAC was HSCI. As noted above, during Mr Maynard's tenure as Director-General that positon was filled by Dr Michael Cleary.

13. The Investigation Report outlines the governance structures in place from August 2013 to January 2014 covering the transition phase for BAC patients.[9] The governance structure was overseen by the Children's Hospital and Health Board, being the board responsible for Children's Health Queensland (**CHQ**) and the West Moreton Hospital and Health Board, the board responsible for WMHHS.[10]

14. Mr Maynard had no direct visibility over the day-to-day operation of the transition process.[11] Rather:

    (a) the Chief Executive Officer of CHQ (Dr Peter Steer) and WMHSS (Ms Lesley Dwyer) reported to Mr Maynard as required. Mr Maynard had regular opportunities to meet with both Dr Steer and Ms Dwyer in the event that they wished to raise any concerns with him. There is no evidence that any concerns were raised with Mr Maynard by either Dr Steer or Ms Dwyer;[12]

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7 Statement of Mr Maynard at [12].
8 Statement of Mr Maynard at [14].
9 Investigation Report [Exhibit 71] at p 6.
10 Statement of Mr Maynard at [18(b)].
11 Statement of Mr Maynard at [18(c)].
12 Statement of Mr Maynard at [18(d)].

(b) QH's representatives on the Chief Executive and Department of Health Oversight Committee (**Oversight Committee**) were Dr Cleary and Dr Kingswell, both very experienced clinicians. Mr Maynard received informal updates from Dr Cleary and Dr Kinsgwell during the tenure of this committee and relied upon them to bring any issues to his attention. Again, there is no evidence that any concerns were raised with Mr Maynard by either Dr Cleary or Dr Kingswell.[13] Mr Maynard gave evidence that if there had been any difficulties arising as part of the transition process he would have expected to have been told.[14] When asked about this line of reporting with Dr Cleary and Dr Kingswell, Mr Maynard explained:[15]

> "Dr Cleary and Dr Kingswell gave me confidence that the panel of expert clinicians that was managing the transition period of these young people and the two oversight and steering committees that oversaw that process were managing that process effectively. I was confident that were there concerns about the closure date or were there concerns that appropriate care arrangements could not be provided that they would have been escalated up to me."

STATUTORY FRAMEWORK

15. The *Act* provides the statutory framework under which health services are to be delivered in Queensland.

16. Schedule 2 of the *Act* defines the Director-General to be the 'chief executive' for the purposes of the *Act*.

17. Section 8 of the *Act* articulates the responsibilities of the Director-General in performing the role of 'system manager':

> " **8 Management of the public sector health system**
> (1) The public sector health system is comprised of the Hospital and Health Services and the department.
> (2) The overall management of the public sector health system is the responsibility of the department, through the chief executive (the system manager role).
> (3) In performing the system manager role, the chief executive is responsible for the following—
> (a) Statewide planning;
> (b) managing Statewide industrial relations;
> (c) managing major capital works;
> (d) monitoring Service performance;
> (e) issuing binding health service directives to Services.
> (4) The way in which the chief executive's responsibilities are exercised establishes the relationship between the chief executive and the Services.
> (5) The relationship between the chief executive and the Services is also governed by the service agreement between the chief executive and each Service."

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13 Statement of Mr Maynard at [18(e)].
14 T12-78: 15-16.
15 T12-84: 1-8.

18. The Director-General is subject to the directions of the Minister in discharging his or her responsibilities.

19. Mr Maynard's limited role in clinical and operational matters regarding the transition of BAC patients reflects the statutory framework for the delivery of health services in Queensland. As is made clear by s8(3) of the *Act*, Mr Maynard occupied a statewide management and public administration role. The *Act* contemplates that clinical and operational matters associated with service delivery are discharged by individual service providers (the HHSs) under a service agreement with the Director-General.

20. WMHHS and the CHQ HHS were the service providers responsible for implementing the transition of patients at the BAC.

21. Whilst it accepted that the decision to close the BAC required the imprimatur of the Minister and Director-General, the implementation of a transition process to give effect to that decision fell under the purview of WMHHS and the CHQ HHS as the relevant service providers.

KEY ISSUES IDENTIFIED BY COUNSEL ASSISTING

22. The evidence before the Commission reveals that Mr Maynard's direct involvement in the matters the subject of the Terms of Reference is minimal.

23. The written submissions of Counsel Assisting identify four key issues.[16] Mr Maynard's tenure coincides with only one of those issues, being the adequacy of the transition arrangements.[17] That is, the steps taken to transition BAC patients to alternative care arrangements. These submissions are limited to Mr Maynard's involvement in the transition arrangements.

24. WMHHS and the CHQ HHS were the entities responsible for implementing the transition of patients at the BAC.

25. In September 2013, the BAC Clinical Care Transition Panel (**the Transition Panel**), chaired by Dr Anne Brennan, with nominated BAC staff and WMHHS staff as members, was tasked with developing the individual transition plans for BAC consumers.

26. Mr Maynard's evidence about his oversight of the transition was to the following effect:

> "…the transition was being managed by West Moreton Hospital and Health Service and that there was a governance process in place at the clinical level working closely with young people to develop transition plans at the oversight level in terms of the statewide adolescent extended treatment and rehabilitation implementation steering committee and at an executive governance level through the chief executive and departmental committee. I had – the department had

16 Submissions of Counsel Assisting dated 17 March 2016 at [1]-[12].
17 Submissions of Counsel Assisting dated 17 March 2016 at [12].

> through Dr Cleary and Dr Kingswell two very qualified clinical representatives on the executive oversight committee. And I was confident that if there had been any matters that required the department to intervene, that they would have been escalated to me."[18]

27. The otherwise limited extent of Mr Maynard's involvement is borne out by an examination of the briefing notes he received or caused to be sent to the Minister in relation to the BAC. As these briefing notes were few in number and attracted some attention during the oral evidence, it is appropriate to examine them in a little detail.

The Briefing Notes

28. During Mr Maynard's tenure at QH, the usual practice for reporting matters to the Director-General was for the relevant departmental division or board to prepare and issue a briefing note for Mr Maynard to action or note.[19] It was Mr Maynard's practice to sign and date any briefing note and insert any comments as required. If Mr Maynard had any further queries, he would either write them on the briefing note or follow them up with the relevant individual.[20]

Briefing note of 20 November 2013[21]

29. The briefing note of 20 November 2013, requested by the Director of the Funding and Contract Management Unit, seeks approval to fund aftercare for the provision of residential and day program mental health treatment and rehabilitation for adolescents across Queensland requiring extended care in the WMHHS catchment area from December 2013. The briefing note relevantly stated:

> "the BAC will close by the end of January 2014 and this transition plan will ensure there are no gaps to service delivery for adolescent consumers while new service options are being developed by Children's Health Queensland Hospital and Health Services"

30. During the course of this evidence, Mr Maynard was asked about the apparent tension between this briefing note, which cites a definite closure date, and a subsequent note which refers to a flexible closure date of the end of January 2014.[22] Mr Maynard gave evidence that the earlier briefing note was drafted by a procurement Contract Management Unit within the Department for the purpose of approving funding. The author of this note, as Mr Maynard explained, had no responsibility, oversight or role in the clinical decisions associated with transition of BAC patients. The note did not reflect Mr Maynard's clear understanding that

18 T12-72: 20-30.
19 Statement of Mr Maynard at [19].
20 Statement of Mr Maynard at [19].
21 Exhibit 229.
22 T12-80: 5-25.

the closure date of the end of January 2014 was a target date only and was flexible if the BAC patient's clinical requirements demanded that the BAC remain open for a further period. [23] The issue of the flexibility of the closure date is addressed further below.

Briefing note of 27 November 2013[24]

31. The briefing note of 25 November 2013 proposed that the Director-General note the current status of consumers at the BAC and provide the written brief to the Minister for information.

32. Relevantly, the briefing note stated:

> "In August 2013, the Minister for Health announced that adolescents requiring extended mental health treatment and rehabilitation will receive services through a new range of contemporary service options from early 2014. Children's Health Queensland Hospital and Health Service (CHQ HHS) is responsible for the governance of the new service options to be implemented as part of its statewide role in providing healthcare for Queensland's Children.
>
> …
>
> a flexible closure date of the end of January 2014 for the BAC building has been announced. This date may change dependent on all consumers having appropriate transition plans in place and continuity of service delivery.
>
> …
>
> In recognition of this potential gap in services, West Moreton HHS has commenced planning interim and transition service options for current BAC consumers and other eligible adolescents across the State that would benefit from extended treatment and rehabilitation. These interim options will be provided as needed until the new services are available, ensuring no gap to service delivery…"

33. When questioned about the note, Mr Maynard's evidence was that in terms of the transition services, and in particular the interim nature of some of those services during transition, he deferred to the clinicians who were managing the process and had oversight through the Executive Steering Committee.[25] Mr Maynard signed the briefing note on 2 December 2013.

Briefing note of 3 January 2014[26]

34. During the course of his evidence, Mr Maynard had reference to a briefing note of 3 January 2014 which outlined the broad nature of interim services that were to be provided until more permanent services were put in place for BAC consumers.[27] The note refers to a flexible closure date of the end of January 2014 and identifies a number of key issues in respect of inpatients at the BAC.

35. Importantly, in relation to patient [redacted] the note states:

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23 T12-80: 5-25.
24 Attachment IGM-4 to the Statement of Mr Maynard.
25 T12-75: 22-27.
26 Attachment IGM-5 to the Statement of Mr Maynard.
27 T12-76: 1-5; Exhibit 229.

[redacted]

36. The note recommends that the Director-General undertake four steps, being:

> "**Note** the current status of consumers and the changing clinical environment at the Barrett Adolescent Centre (BAC).
>
> **Note** the recommendation that the date of the proposed media event for 10 January 2014 be reconsidered to occur post closure of BAC.
>
> **Approve** the recommendation to convene a Director-General (Queensland Health) to Director-General (Department of Communities, Child Safety and Disability Services) meeting to progress [redacted].
>
> **Provide** this brief to the Minister for information."

37. Mr Maynard signed the note on 6 January 2013 and made the following hand-written note on it:

> "Trish to arrange meeting with Michael Hogan & Bill Kingswell".

38. As a consequence of this briefing note, Mr Maynard attended a meeting of Directors-General concerning the transition arrangements for [redacted][28] Mr Hogan, Acting Director General of the Department of Communities, Child Safety and Disability Services, Dr Kingswell, Mr Harvey and Mr Maynard were in attendance at the meeting. Mr Maynard's evidence is that the meeting was convened as a consequence of the briefing note dated 6 January 2014 which identified that [redacted] needed assistance sourcing accommodation.[29] Importantly, Mr Maynard's notes of the meeting record that a decision regarding [redacted] accommodation had been made *prior* to this meeting.[30] His notes state "[redacted] a placement at [redacted] from tomorrow". Mr Maynard was advised that this accommodation was satisfactory and appropriate.[31]

39. The written submissions of Counsel Assisting state:[32]

[redacted]

28 Statement of Mr Maynard at [69]-[75].
29 Statement of Mr Maynard at [72].
30 Statement of Mr Maynard at [73] and [75].
31 T12-83: 40-45.
32 Submissions of Counsel Assisting dated 17 March 2016 at [524].

following exchange with Junior Counsel Assisting illustrates the extent of Dr Brennan's concern and her efforts on behalf:

> So, ultimately, as you say, the situation was becoming desperate. It got elevated to a meeting of Director Generals [sic] of the Department of Health, Department of Communities and Disabilities Services. And was it your understanding that this was to try and resolve a funding impasse or to identify an appropriate service? – To identify an appropriate service having understood that some of their facilities weren't available in the past because of funding. I assume funding got discussed but I know nothing about it…"

40. So far as Mr Maynard's involvement in the question of appropriate accommodation being found, a number of points should be made:

    (a) *first*, the alleged funding shortfall and the apparent 'desperation' of Dr Brennan were not matters put to Mr Maynard by Counsel Assisting during the course of oral hearings; nor was he directed by the Commission to answer questions about these matters in his written statement;

    (b) *secondly*, the briefing note of 6 January 2014 makes no reference to funding issues, nor does it speak to the language of 'desperation' or a risk of homelessness for any patient of the BAC; and

    (c) *thirdly*, Mr Maynard's notes of the meeting of Directors-General on 23 January 2014, convened as a consequence of the briefing note of 6 January 2014, also make no mention of a perceived funding shortfall or apparent risk of homelessness for any patient.

41. Any concerns Dr Brennan had about a 'desperate' accommodation situation or any potential risk of homelessness were not raised with Mr Maynard at the time of, or subsequent to, the BAC's closure.

Briefing notes to the Minister

42. Mr Maynard was taken to a further two briefing notes by Counsel for Mr Springborg during the course of his evidence.

43. The first of these notes, dated 11 December 2013, was attached to a briefing to the Minister dated 30 January 2014.[33] The briefing note of 11 December 2013 records the proposed implementation of the transition service in three phases. Mr Maynard's evidence was that the briefing note gave him comfort and confidence that appropriate transition arrangements and services could be put in place for the BAC patients.[34]

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33 Exhibit 23.

34 T12-85: 1-5.

44. The second briefing note is dated 24 January 2014 and was attached to a note to the Minister dated 30 January 2014.[35] The briefing note of 24 January 2014 records that the BAC was in final stages of closure and that all remaining inpatients had been discharged to alternative care options. Mr Maynard's evidence was that again the briefing note gave him confidence that appropriate care options had been provided for the patients of the BAC.[36]

45. There is no reason to doubt Mr Maynard's evidence that these briefing notes led him to believe that the transitional arrangements were being appropriately handled. There was no reason for him to second-guess the advice he was receiving from experienced clinicians and departmental officers.

The Closure Date was Flexible

46. There is only one matter which deserves further comment.

47. The written submissions of Counsel Assisting state:[37]

> "There was evidence before the Commission that the closure date was 'flexible'. In reality, any flexibility proved illusory."

48. The submission that any flexibility was illusory is unsupported by evidence. It should be rejected as the evidence before the Commission was to the following effect:

    (a) the briefing notes to Mr Maynard and to the Minister consistently referred to the closure date being flexible if the BAC patient's clinical requirements demanded it;

    (b) Mr Maynard's evidence, as outlined in some detail above, was that he always believed the closure date was flexible. Counsel Assisting did not seek to challenge his evidence to that effect;

    (c) Mr Springborg's evidence, as the relevant Minister at the time of closure, was that his direction to QH was there should be no closure of BAC until such time as the transition services had been properly delivered to the patients who were resident there.[38] Again, it was not put to Mr Springborg that the closure date was not flexible or that any suggestion of flexibility was illusory;

    (d) Senior Counsel Assisting asked Ms Kelly about perceived flexibility in the timing of closure and she responded in the following terms:[39]

> "Was Dr Brennan ever told that the closure date was flexible?---I believe Dr Brennan would have been aware that there was some flexibility within the

35 Exhibit 120 at [0058].
36 T12-85: 5-30.
37 Submissions of Counsel Assisting dated 17 March 2016 at [384].
38 T15-30: 35-40.
39 T11-39: 20-25.

closure date";

(e) Mr Eltham's evidence was that he was advised that the date for the closure of the Centre was dependent upon all patients having appropriate transition plans in place and continuity of service delivery. Indeed, that was something which the Board had insisted upon;[40]

(f) Dr Hoehn's evidence was that the Board and the Executive had always made it clear to her that the closure date was flexible;[41]

(g) Dr Stedman's evidence was the closure date was flexible and, in his clinical opinion, it was reasonable to expect that safe and effective transition of patients would be achieved within that timeframe;[42]

(h) Ms Dwyer was asked about the closure date and gave the following response:[43]

> "Was it your understanding that the position of the board and your position was that the centre would not close for as long as it required to be open to provide services for its patients? Correct.
>
> It would only close after you and the board and Ms Kelly and those others charged with responsibility for these vulnerable young people were satisfied that appropriate arrangements had been made for their care following their discharge from the Barrett Centre? Correct.
>
> Do you consider that is what, in fact, happened? Yes, I do.";

(i) Dr Brennan gave the following evidence about the closure date:[44]

> "There was a general guideline that the Centre was to close in January 2014. That's right? That's right.
>
> You had assurances though that it would stay open until everybody had appropriate care in place, didn't you? That's right.
>
> At one stage, you were attempting to transition patients by 13 December? That's right.
>
> So they could try a new service out and come back to Barrett if necessary, if the transition failed? Yes.
>
> And that was a contingency plan? Yes."

49. There is no principled basis on which this evidence could be rejected. Indeed, the contention that a Minister for Health, senior clinicians and senior health managers would insist on meeting the deadline of 31 January 2014 come what may, and irrespective of the health requirements of the BAC patients, need only be stated for its absurdity to become apparent.

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40 T9-22: 45 – T 9-23:5.
41 T19-39: 10-15.
42 T 19-42: 1-7.
43 T 12 – 123: 10-20.
44 T 20 -69: 6-20.

50. The evidence supports a finding that the closure date was, in fact, and was known to be, flexible.

CONCLUSION

51. What emerges from these briefing notes, and Mr Maynard's evidence generally, is that none of the persons who reported to Mr Maynard during his tenure as Director-General raised with him any concerns to the effect that it would be inappropriate to close the Centre at the end of January 2014.[45] Similarly, no concern was ever raised with Mr Maynard to the effect that there would be a gap in services for the BAC patients were it to close in January 2014.[46]

52. Relevantly, Mr Maynard recalled that there were only two matters on which he was specifically asked to act in relation to the BAC between the time he commenced as Director-General and the time the Centre was closed:[47]

    (a) the first occasion was to approve funding for the provision of interim services, which he duly approved. There is no evidence that any other concern about transition funding was ever raised with him;

    (b) the second occasion was in relation to meeting with a peer at the Department of Communities, Child Safety and Disability Services. As a consequence of that meeting, accommodation which Mr Maynard was advised was satisfactory and appropriate was obtained .

53. It is not surprising then that no criticism has been directed towards Mr Maynard by Counsel Assisting (either during the hearing or the closing submissions) or any other party.

54. In summary, there is no occasion to make, nor any evidentiary basis for, any adverse findings against Mr Maynard.

55. To the contrary, the Commission should find that:

    (a) the closure date of the BAC was, and was known to be, flexible and conditional on the safe and effective transition of BAC patients;

    (b) during the transition process, no concerns were raised with Mr Maynard in relation to either the closure of the BAC or the transitioning of the BAC patients;

    (c) Mr Maynard maintained an appropriate level of oversight for his position as Director-General of QH in relation to the closure of the BAC and the transitioning of BAC patients; and

45 T12-83: 25-35.
46 T12-83: 25-35.
47 T12-83: 34-45.

(d) Mr Maynard appropriately discharged his duties as Director-General of QH during the transitioning of BAC patients.

Damien O'Brien QC and Anastasia Nicholas
Counsel for Mr Maynard

23 March 2016