HERBERT SMITH FREEHILLS

Mr Ashley Hill
Barrett Adolescent Centre Commission of Inquiry
Level 10, 179 North Quay
Brisbane QLD 4000

10 May 2016
Matter 82503153
By Email

Dear Mr Hill

Confidential

Barrett Adolescent Centre Commission of Inquiry
Issues arising from further submission of

We refer to your letter dated 28 April 2016 regarding the further submissions provided to the Commission by

Please find **enclosed** by way of service the submissions in response made on behalf of our client, Mr Ian Maynard.

We apologise for the delay in providing these submissions to the Commission. For reasons beyond our client's control, including the pre-existing court commitments of counsel, we were unable to comply with the timeframe stated in your letter. Accordingly, we request that the Commissioner extend the time by which these submissions were to be provided until today, 10 May 2016.

Yours sincerely

Peter A Smith
Partner
Herbert Smith Freehills

Central Plaza One 345 Queen Street Qld 4000 Australia
GPO Box 3124 Brisbane Qld 4001 Australia
herbertsmithfreehills.com DX 255 Brisbane

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

SUPPLEMENTARY SUBMISSIONS ON BEHALF OF MR IAN MAYNARD

PRELIMINARY OBJECTION TO THE FURTHER SUBMISSION AND STATEMENT

1. Mr Maynard adopts the submissions made on behalf of Mr Springborg in paragraphs 1 to 5 of the letter from his solicitors, McCullough Robertson, to the Commission dated 5 May 2016. For the reasons detailed in that letter, it would be inappropriate for the further submission by dated 22 April 2016[1] **(the Submission)** and the supplementary statement of dated 28 April 2016 **(the Supplementary Statement)**[2] to be received by the Commission.

2. In the event that the Commission determines to receive the Submission and the Supplementary Statement, Mr Maynard makes the following submissions.

RESPONSE TO THE FURTHER SUBMISSION AND STATEMENT

3. By letter dated 28 April 2016 from Mr Ashley Hill, Executive Director of the Commission, to Mr Maynard's solicitors, attention was directed to a number of matters raised by the Submission. In that letter Mr Hill observed that, inter alia:

> "There are a number of factual assertions contained within the Submission which may constitute new evidence. Commission staff expect to receive a further sworn statement from attesting to these further factual maters, with a view to making it available to you through your online data room as soon as reasonably practicable".

4. Supplementary Statement addresses some, but not all, of the factual assertions contained in the Submission. In so far as Mr Maynard is able, these submissions seek to engage with the new evidence of , and the matters raised in the Submission. It is, of course, not possible for parties to respond meaningfully to unparticularised factual assertions in the Submission not otherwise supported by evidence.[3]

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1 [COI.028.0028.0001].
2 [FAM.900.0026.001].
3 See, for example, the last bullet point on page 6 of the Submission.

5. As a general response to the supplementary material provided to the Commission by Mr Maynard repeats and relies upon his primary submissions dated 23 March 2016. A number of further observations should be made.

6. The Commission's letter of 28 April 2016 focuses on two key issues: the availability of new services and the timeframe for the implementation of those new services. Before addressing those two issues, a number of minor matters in the Commission's letter should be addressed:

   (a) Ms Dwyer's statement on 8 August 2013, which is addressed under the heading '*Page 1 of the Submission'*, occurred prior to Mr Maynard's tenure as Director-General. Mr Maynard was appointed Director-General on 23 September 2013. He remained in that position until 23 March 2015[4];

   (b) the meeting on 30 August 2013, which is addressed under the heading '*Page 2 of the Submission'*, occurred prior to Mr Maynard's tenure as Director-General;

   (c) the first bullet-point under the heading '*Page 7 of the Submission'* makes inquiry into whether an assessment of the adequacy of existing mental health services was undertaken as at 6 August 2013. Mr Maynard had not assumed the role of Director-General at that time.

7. The two key issues will now be addressed.

Availability of new services

8. The Supplementary Statement addresses the time at which first became aware that transitioning BAC patients would not access a "new suite of services".[5] gave oral evidence before the Commission that it was in August or September 2013 that first became aware that the existing BAC patients would not receive new services that were being developed.[6] seeks to clarify that evidence in Supplementary Statement, stating "it is difficult to pinpoint the exact date that I came to the realisation that BAC patients would not be accessing the new suite of services. It was an evolving situation".[7]

9. During the course of oral hearings, Mr Maynard gave evidence about his understanding about the timing and development of these new services:[8]

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4 Primary submissions at [9].
5 Supplementary Statement at [2]-[3].
6 Supplementary Statement at [2].
7 Supplementary Statement at [2].
8 T12-72: 17-30.

> "My understanding at the time is that a decision had been made to transition patients out of the Barrett Adolescent Centre, that a range of new services were being developed, that it impacted on a number of young people and that the Barrett Centre itself and 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 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."

10. Mr Maynard's evidence about the interplay between the transition of existing BAC patients and the development of new services was to the following effect:[9]

> "You did know though, did you, that the transition was occurring at a time when no new services were available; is that a fair proposition? Do you agree with that? The transition occurred at a time when new services were being developed and interim services had been identified.
>
> ...
>
> So were you concerned then about the transitioning of the young people in such circumstances, knowing that you knew that there were no – you knew that there were new services being developed, you've said, but you knew at the time of the transition those new services hadn't been implemented; is that your evidence? -I – I was aware that transitioning services for young people at any time is a – is a risk, and a risk that needs to be closely managed. I was confident through the governance structure that was in place and the strong focus at the clinical level on developing individual transition plans for each young person that their care would be taken account of. And so whether it was a permanent, ongoing service provided by state government, provided by a non-government organisation or an interim service, I was confident that clinicians had full control over that process."

11. It is not necessary to revisit here each of the briefing notes detailed at paragraphs 28 to 45 of Mr Maynard's primary submissions. However, what emerges from a review of these briefing notes is that they are entirely consistent with the evidence of Mr Maynard in relation to the transition plans for existing patients, and the timing for development and delivery of new services. The briefing note of 20 November 2013[10], for example, relevantly provided:

> "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 (CHQHHS)
>
> ...
>
> "CHQHHS has advised that the full range of new statewide services is not expected to be operational until 2015.
>
> ...
>
> Interim investment in Aftercare will maintain clinical safety for BAC and other statewide consumers during the transition period"

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9 T12-74: 1-5 and 20-31.

10 Exhibit 229.

12. The briefing note of of 27 November 2013[11] 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 (CHQHHS) is responsible for the governance of the new service options to be implemented as part of its statewide role in providing health care for Queensland's Children.
> The Minister for Health and West Moreton Hospital and Health Board gave a public commitment to ongoing provision of safe and comprehensive clinical care for BAC consumers during the transition to the new statewide adolescent extended treatment and rehabilitation services.
> 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 in service delivery.
> ...
> The Clinical Care Transition Panels review individual care needs of current and waitlist BAC consumers and support transition to alternative service options. The Panels are chaired by Dr Anne Brennan, and consist of a core group of BAC clinicians, a BAC school representative and other key stakeholders and service providers as required..."

13. The briefing note of 3 January 2014[12] was to the same effect but also included the statement that:

> "Regular contact is provided with the parents/carers of BAC consumers by the BAC clinical team and executive staff of West Moreton. This is being managed through personal emails, phone calls and ongoing BAC Fast Fact Sheets..."

14. The briefing note of 11 December 2013, attached to a briefing to the minister dated 30 January 2014[13], relevantly provided:

> "CHQHHS has advised that the model of care under development is nearing completion, with work being undertaken to finalise the details of all options. Detailed implementation planning will then commence enhancing existing service provision, and establishing new care options. Some service options will be available earlier than others, and implementation will be ongoing as funding and resources are made available.
> The new statewide service options are being developed as a priority and will be rolled out as a priority across the next six to 12 months. In order to ensure there is no gap in service delivery, West Moreton HHS commenced planning interim service options for current BAC consumers and other eligible adolescents across the State that would benefit from extended treatment and rehabilitation..."

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11 Attachment IGM-4 to the Statement of Mr Maynard.
12 Attachment IGM-5 to the Statement of Mr Maynard.
13 Exhibit 23.

15. Mr Maynard had no occasion to call into question the accuracy of the information contained in these briefing notes. The briefing notes, and Mr Maynard's evidence generally, also highlight that none of the persons who reported to Mr Maynard during his tenure as Director-General raised with him any concerns to the effect there would be a gap in services for the BAC patients were it to close in January 2014 or that the proposed transition services were in any way inadequate.[14]

Time frame for the implementation of new services

16. Under the heading *'Page 3 of the Submission'*, the Commission's letter of 28 April 2016 poses the following question:

> "What was the impetus for the tight timeframe for the implementation of the new adolescent mental health services "if they were never intended for BAC patients"?"

17. The question proceeds on a false premise. There was no "rushing to get the new services up and running", nor was there a "tight time frame for the implementation of the new adolescent mental health services". The evidence before the Commission does not support such assertions. Rather the evidence (such as the briefing notes referred to above) reveals that the new adolescent mental health services were always going to take an extended period of time to properly develop and implement. They were never going to be up and running before the BAC closed. It was for that reason that West Moreton HHS commenced, at an early stage, to plan the provision of interim service options for the BAC patients. That planning ensured that there was no gap in service delivery and that patient care and safety was able to be maintained at all times.

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

10 May 2016

[14] T12-83: 25-35.