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10 **THE HONOURABLE MARGARET WILSON QC, Commissioner**
MR P. FREEBURN QC, Counsel Assisting
15 **MS C. MUIR, Counsel Assisting**

20 **IN THE MATTER OF THE COMMISSIONS OF INQUIRY ACT 1950**
COMMISSIONS OF INQUIRY ORDER (No. 4) 2015
25 **BARRETT ADOLESCENT CENTRE COMMISSION OF INQUIRY**

30 **BRISBANE**
9.04 AM, TUESDAY, 12 APRIL 2016
35 **Continued from 11.4.16**
DAY 27

RESUMED

[9.04 am]

5 COMMISSIONER WILSON: Sorry for the slight delay in starting, ladies and gentlemen. Mr Diehm.

10 MR DIEHM: Thank you, Commissioner. Commissioner, taking up with where we left off yesterday afternoon concerning the evidence of Dr Cleary on his understanding about what was meant by contemporary models of care and of course the inquiry that you raised with me, Commissioner, yesterday afternoon concerned the submission that had been advanced in writing that said that this had a geographical focus to it and, of course, the context for your inquiry as to further submissions about that is also Mr Freeburn's submissions yesterday morning.

15 Now, the transcript references that we took you to yesterday, Commissioner, are better understood by reference, firstly, to Dr Cleary's statement so if I can ask if that can be put onto the screen – DMA900.001.0001.

20 COMMISSIONER WILSON: Yes.

25 MR DIEHM: And if I can ask if we can go to page 7, firstly. And Commissioner, I draw your attention to the submission I made yesterday and what is set out in paragraph 24 where Dr Cleary says that he was not directly involved in the decision to cancel the Redlands project. In paragraph 25 he speaks, though, of his involvement in the budget review committee meetings in about July of 2012 and says that he can recall speaking to Dr Kingswell to obtain advice with respect to certain matters. And then in paragraph 27 he refers to what Dr Kingswell had told him – and it's summarised in the first dot point – about the Redlands project being continuing a model of care that was not now considered contemporary because contemporary models were moving from institutional care to community-based care.

30 The next relevant reference in his statement then – if we can go through to what is paragraph 80 on page 19. Commissioner, I should have said that in paragraph 79 Dr Cleary references a proposed meeting in July of 2013 which he says elsewhere that he wasn't in attendance at with the Director-General, Dr O'Connell.

COMMISSIONER WILSON: Can I just take you back for a moment. You referred to paragraph 27 first.

40 MR DIEHM: Yes.

COMMISSIONER WILSON: Did that relate to the cessation of Redlands?

45 MR DIEHM: Well, it is contemporaneous with the cessation of Redlands so that reflects what he understood to be the reference to the contemporary models of care when that phrase was being used in July of 2012, that is, that it was a reference to moving from institutional care to community-based care.

COMMISSIONER WILSON: Thank you.

MR DIEHM: Though in a context where he wasn't involved in the decision-making with respect to Redlands.

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COMMISSIONER WILSON: Well, that's true and it's not. I mean he had signed off on that first briefing note, hadn't he, in May.

MR DIEHM: No, Commissioner.

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COMMISSIONER WILSON: Redlands?

MR DIEHM: Yes, Redlands. The May 2012 briefing note? That's not my recollection of that document and he wasn't in a relevant role, I think, but perhaps we should have it on the screen to be sure of that.

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COMMISSIONER WILSON: I think we should.

MR DIEHM: My recollection is that it was signed off by Jeannette Young - - -

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COMMISSIONER WILSON: That was the August one.

MR DIEHM: She signed as Acting Director-General in August - - -

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COMMISSIONER WILSON: Yes.

MR DIEHM: - - - and signed as a Deputy Director-General in May, as I recall.

COMMISSIONER WILSON: But I'm pretty sure that Dr O'Connell signed the May one.

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MR DIEHM: Dr O'Connell did, sorry, yes. Sorry, Dr O'Connell did. My reference - - -

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COMMISSIONER WILSON: This is Dr Cleary - - -

MR DIEHM: - - - to not being involved was Dr Cleary.

COMMISSIONER WILSON: I see. Yes. Okay.

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MR DIEHM: Sorry, Commissioner. We're at cross purposes. So at page 19 at paragraph 79 Dr Cleary references what he understood by having seen a subsequent briefing note – sorry, having subsequently seen the briefing note there being a meeting in July of 2013. He says that prior to the date of that proposed meeting – this is in paragraph 80 – he met with Lesley Dwyer and Bill Kingswell and again there was reference in that discussion to the model of care no longer being consistent with best practice. And in paragraph 82 he elaborates upon that picking up reference

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as well to discussions with Dr Steer and again referring to the concept of community-based models as being more contemporary.

5 In paragraph 84 then – and in particular if we can go to page 20 – it’s a long
paragraph with a series of subparagraphs. If we scroll down to (vi) Dr Cleary there
refers to an invitation to a meeting on 18 March 2013 with a number of people from
Children’s Health, Mental Health and West Moreton and it was concerning the work
of the expert clinical reference group over the page and a proposal to include a tier 3
10 service in their recommendations. Commissioner, you may recall that email from
Ms Kelly to Dr Cleary’s office being the subject of some other evidence as well.
And he goes on to explain that given what he had previously been told he had not
anticipated this reference to this concept of tier 3 services. But he explains that Dr
Geppert indicated in the meeting that there was concern regarding options to transfer
all of the clinical services to a community-based model. And he recalls Dr Steer then
15 expressing – it’s a vague recollection he confesses – but expressing a willingness to
consider supporting that level of care through the children’s hospitals.

He then in the next paragraph refers to a meeting on the 6th of May 2013 and he says
later in that paragraph that he believed that he was also provided with a copy of the
20 ECRG recommendations at or prior to that meeting. The final version of the ECRG
report would seem to postdate the meeting but the version that is dated later in May
is described as being version 5. That wasn’t explored with Dr Cleary understandably
enough but he at least had some version of the ECRG recommendations in writing
that he read at that time.

25 So the extent and development of his knowledge by reference to that evidence was
that he initially understood that the issue was about moving services into the
community and away from institutions but came to appreciate by the time the
ECRG’s recommendations were being developed across March to May of 2013 that
30 there would need to still be provision for some inpatient services and in that regard
by that point in time his knowledge as to what would be involved in a contemporary
model of care reflected that that we took your Honour to yesterday with respect to Dr
O’Connell.

35 Now, with that background the references in the transcript that we took you to
yesterday, Commissioner, to Dr Cleary’s oral evidence can be better understood as
reflecting that understanding and elaborating upon it. I can just give you the
references, perhaps, rather than - - -

40 COMMISSIONER WILSON: If you would.

MR DIEHM: - - - taking you to it but it’s covered across about three pages. On day
14, page 20 from about line 25 to page 23 up to about line 5. In that regard,
Commissioner, we maintain the submission that the understanding of Dr Cleary and
45 Dr O’Connell as to what was meant by contemporary models of care is essentially a
geographic one. That’s not just to mean about in which towns are the services to be
located but it means proximate in a physical sense to the communities from which

the adolescents come from but also a model of care that maximises their opportunity to engage with those communities.

5 And in that regard and on that understanding the references that our learned friends, Counsel Assisting, took you to yesterday, in our submission, are somewhat uniform in terms of incorporating that concept of reducing institutionalisation by placing greater emphasis on what the ECRG described as being tier 2, both 2A and 2B, type services to reduce the number of patients who would need to access a tier 3 type service. And so there is nothing inconsistent or problematic about what that
10 understanding of that term was for those witnesses or, indeed, with respect to the several other witnesses who were referred to in our learned friend's submissions.

Commissioner, the other matter about it is - - -

15 COMMISSIONER WILSON: Can I just ask you one question there.

MR DIEHM: Yes.

20 COMMISSIONER WILSON: You said reduce institutionalisation. Was that really shorthand for reducing reliance on tier 3?

MR DIEHM: Yes. It was an unfortunate expression, not a proper one. What you've said, Commissioner, is – more accurately reflects it. Thank you. Commissioner, the ECRG's preamble itself identifies similar notions. I think Mr
25 Freeburn had given a reference yesterday for the ECRG preamble. It might mean that it can still be brought up on the screen, I hope. Though I didn't note down the particular reference he relied upon from the Delium.

30 COMMISSIONER WILSON: It was the 24 May board papers, I think. I don't have the Delium reference, I'm sorry.

MR DIEHM: Yes. If not, Commissioner, I'll just identify the particular passages that we refer to. In the third paragraph of the preamble, it was said this:

35 *Consistent with state and national mental health reforms, the decentralisation of services and the reform of TPCMH site to offer only adult forensic and secure mental health services, the BAC is unable to continue operating in its current form at TPCMH.*

40 So there was identification by the ECRG through that preamble of the role of state and national mental health reforms which might be regarded as plans or planning frameworks as referred to by Mr Freeburn yesterday and the decentralisation of services. And those national mental health reforms – state and national mental health reforms – in our submission, can only be taken to be references to making
45 community services feature greater with respect to the needs of this cohort of patients. In the fourth paragraph, it was said that the work that had been undertaken

by the ECRG included consideration of – sorry, I’m assisted by Mr Freeburn. The reference in Delium is WMS9000.0006.00001 at 861 – 864.

COMMISSIONER WILSON: That’s it.

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MR DIEHM: Thank you. So I’m – the passage I’d taken you to initially, Commissioner, is the one that’s at the commencement of that third paragraph referring to the reforms.

10 COMMISSIONER WILSON: Yes.

MR DIEHM: And then the next passage is in the paragraph beginning “between 1 December” and the second sentence. And then to the next page there is – can I ask if we can scroll up? There might be a difference between versions that I’m looking at here. So the next reference I was to take you to was, in passing, to the references to 15 2(a) and 2(b). As you appreciate, Commissioner, no doubt, day program services were to include existing and new services and then residential services were to be new. And if you go to what I hope is the next paragraph in the document, yes, the – we draw your attention, Commissioner, to the second sentence in that paragraph beginning “the final service model”. 20

COMMISSIONER WILSON: Well, that key principle – I say this with no disrespect to the ECRG, but it seems to be the underlying premise of the National Mental Health Reforms and of the Queensland Plan for Mental Health to the point 25 where it’s almost become a motherhood statement, hasn’t it?

MR DIEHM: About community based treatment?

30 COMMISSIONER WILSON: Yes.

MR DIEHM: Well, it’s not so much a motherhood statement. It’s an underlying philosophy about what should aim – what should be aimed to be done. And that it does not begin – and the ECRG would not be taken to begin to say that you don’t have a tier 3 type facility. But what the effect of what is said there as well as what 35 appears in the rest of the report, including by reference to the new service elements in 2(a) and 2(b) is the service model – not that they were designing service models per se – but, rather, the model should be that there are increased services in the community that mean that less patients need to access a tier 3 service. But we acknowledge that there will still be a small number of patients who will have to. 40

COMMISSIONER WILSON: And that’s consistent, on my interpretation, with almost all, if not all, of the truly expert evidence in this case.

45 MR DIEHM: That’s so, Commissioner. That is so. And it is consistent with the understanding of Dr O’Connell and Dr Cleary as to what was meant by the expression about having contemporary models of care. That is to say that what we have at the moment is too dependent upon tier 3 services. There needs to be more

services provided in the community, less reliance, but still some reliance, on a tier 3 – and I will use the expression “service or facility” to be neutral about that at the moment. But, indeed, their understanding was that a facility would be needed to provide the service.

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COMMISSIONER WILSON: That seems to have been their understanding by mid-2013.

MR DIEHM: Yes.

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COMMISSIONER WILSON: It’s not clear to me – for the moment, I’m not sure the extent to which, if at all, it matters. But it’s not clear to me that they have that full understanding in mid-2012.

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MR DIEHM: Well, Dr Cleary, from what I have taken you to Commissioner, developed the understanding about the need for the tier 3 service in March of 2013. Dr O’Connell’s evidence didn’t make such a distinction. He expressed his view as being his understanding in a way that you should take, in my submission, as meaning that he always understood that to be the case. But probably the more pertinent point is the one you identified, Commissioner. It perhaps doesn’t matter - - -

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COMMISSIONER WILSON: Yes.

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MR DIEHM: - - - because the reasons behind the decision to terminate the Redlands Project wouldn’t have been able to be influenced or changed by having that extra understanding anyway because even if the view was that there was a need to continue tier 3 services, bearing in mind that the Barrett Adolescent Centre was continuing to operate, no decision had been taken to bring it to an end at that point in time, that the problems with Redlands were such that some other option, whatever it was, was going to have to be pursued. And the - - -

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COMMISSIONER WILSON: I must say, Dr Cleary impressed me as a very thoughtful man. And it would seem from the chronology that you’ve given me this morning, that whether or not he had a fully formed view about this issue earlier – and, after all, he was not a psychiatrist – he came away with this understanding from the meeting on 18 March at which the work the ECRG was doing was discussed with him.

40

MR DIEHM: Yes. That’s so.

COMMISSIONER WILSON: Yes.

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MR DIEHM: So, Commissioner, that is what we were to canvass there. Can I just mention, incidental to those matters, yesterday you asked me a question about the position with respect to responsibility for the delivery of and the coordination of delivery of the new suite of services at the point in time when Dr O’Connell saw the briefing note – noting in July of 2013. Commissioner, we simply draw your

attention to the circumstance that the last substantive paragraph of the briefing note, well, noting to Dr O'Connell – which is paragraph number 11 – read:

5 *Agreement has been reached that the strategy will be finalised through a partnership between West Moreton Health and Hospital Service, Children's Health Services and the Department of Health.*

10 So the briefing note to Dr O'Connell, signed by him only shortly before his employment came to an end, recognised that there was a plan in place with respect to how the strategy was to be developed, and that, in our submission, was an appropriate thing for him to be made aware of and for him to place reliance upon at the time of his consideration of that matter.

15 COMMISSIONER WILSON: Well, that meeting in July 2013 with the Minister, I gather, was the culmination of a series of meetings that had been set in place to garner support for the closure of the Barrett Adolescent Centre, a meeting, I think, first of all, with Dr Cleary, then there was one that Dr O'Connell attended, and then there was the one with the Minister; is that right?

20 MR DIEHM: That's so, Commissioner. Yes. And the briefing note was signed by Dr O'Connell, bearing in mind it was a note then to go to the Minister's office.

COMMISSIONER WILSON: Yes.

25 MR DIEHM: It was signed by Dr O'Connell on the day of the meeting with the Minister's office, and I think Mr O'Sullivan, as I recall it, makes reference to there being a – that the – the Minister's evidence was that he hadn't actually seen the briefing paper at the time of the meeting, that the matter proceeded on the basis of discussions, as I recall them. But yes, it was a sequence of events in that regard.

30 Commissioner, the – we'll take up the matter that I commenced with yesterday, regarding the subacute beds, and there was a chronology which was emailed yesterday afternoon so that it would be available to – would be on Delium and all the parties can see, though I don't know the reference number, I'm sorry.

35 COMMISSIONER WILSON: I think that has been attended to. If we can't find it, Counsel Assisting may know something about it. You've got it? Thanks.

40 MR DIEHM: Sorry, it's there. Thank you; looking in the wrong place. So, Commissioner, this document, which includes the Delium and transcript references, in the course of it shows that the first relevant reference is to the meeting of the Chief Executive Oversight Committee on 17 October 2013, and it's probably worth going to that document itself to give a more expanded understanding as to what it was that was raised there. That, if I can give the Delium reference, is IAD900.001.0640.

45 That picks up the part of the minutes that are referred in its section 5.1, and the relevant part starts – Commissioner, it's at the foot of the page, the last dot point, where it picks up:

Discussions had regarding the use of acute inpatient units

and over the page. And it continues, effectively, down to the recommendation.

5 COMMISSIONER WILSON: What is it that Dr Stathis advised in terms of economies of scale and expertise?

MR DIEHM: Yes. So he was recommending, it seems, or advising at that stage that with respect to this – what is effectively, by the sounds of it, a tier 3-type facility,
10 that it would make sense to have one facility in Queensland, but not in isolation from residential solutions. It continues to, of course, be referring to a small group of adolescents, and in the context of the establishment of other services, and hence why, no doubt, it was said that one option explored was of the HHS setting aside four to five beds specifically for extended treatment and rehabilitation until a longer-term
15 solution was established.

COMMISSIONER WILSON: So at this stage there doesn't seem to be any suggestion of subacute beds in an acute unit?

20 MR DIEHM: No. In fact, the suggestion is the opposite, because at the top of that page, 641, Dr Stathis notes - - -

COMMISSIONER WILSON: Can we scroll back up a little bit, so that we've got both the end of the last page and the beginning of this one? Down a little bit. It's not
25 possible, obviously.

MR DIEHM: No.

COMMISSIONER WILSON: Okay. Thank you.
30

MR DIEHM: So it's discussing acute units as an alternative to a bed-based option, and noting that acute inpatient units do not provide an appropriate environment for extended treatment and rehabilitation, and hence the context of the rest of the discussion, including about establishing extended treatment beds for that Hospital
35 and Health Service.

COMMISSIONER WILSON: Well, Dr Stathis being recorded as noting that acute inpatient units do not provide an appropriate environment for extended treatment and rehabilitation, is certainly not inconsistent with the view he subsequently expressed
40 that the swing bed idea was suboptimal.

MR DIEHM: It's not. It's not at all inconsistent with that, and it's not inconsistent with - - -

45 COMMISSIONER WILSON: It's stronger than – not – it's – sorry – stronger than suboptimal.

MR DIEHM: Yes. In fairness to Dr Stathis, of course, it must be appreciated that when he is speaking of establishing swing beds he may well be incorporating the idea that there are mitigating steps that can be taken to perhaps raise it to what still would be described as suboptimal, but perhaps not quite as negative as what that expression there is. But in any case, from a chronological point of view this is the concept that's being developed at that time, and the notions that underlay it. On the – sorry – Commissioner, if you're finished with that document - - -

10 COMMISSIONER WILSON: Yes.

MR DIEHM: - - - we'll go back to the chronology. 22 October is the date of the memorandum from Sharon Kelly that Dr Stathis cited as involving his reference – sorry – the reference to him and the need to contact him if there is a need for patients requiring extended mental health treatment and rehabilitation, and are unable to be managed in your health service. The memorandum, of course, quite pointedly didn't make reference to subacute beds at the Mater Hospital.

20 The next reference, Commissioner, is to the November 2012 meeting of the psychiatrists, and, again, we refer there to what the – sorry – what Dr Stathis' evidence was, and in the next reference have included an extract from the minutes which, in our submission, reflect only a discussion about future models, rather than existing services.

25 Then on 27 November 2013 we pick up a reference to a document that was annexed to the affidavit of Professor McDermott, which spoke about a Children's Health Queensland meeting with him to discuss arrangements aiming to temporarily secure two or three beds for extended treatment and rehabilitation from February 2014. We won't go to each of these documents, Commissioner.

30 But then on 2 December 2013, there's a meeting of the State-Wide Adolescent Extended Treatment Committee, and item 5 for discussion included the reference to interim subacute inpatient unit being discussed with the Mater. So, again, it's speaking somewhat prospectively in that regard, rather than referring to any such services being established at that point in time.

35 Commissioner, a document that wasn't referred to in evidence that became available to us – or at least noted by us as being available after the evidence had been concluded – was an email on 20 December 2013; it's MHS001.003.0084.

40 COMMISSIONER WILSON: Can you tell me who were John O'Donnell and Mish Hill?

MR DIEHM: I can't tell you who they were Commissioner. They – I think this actually referred to in evidence obliquely elsewhere that John O'Donnell was the chief executive of the Mater Hospital Service. I think his name did come up elsewhere; that's what my instructing solicitor reminds me.

COMMISSIONER WILSON: So Mish Hill is, presumably, someone at the Mater too.

5 MR DIEHM: That's the context or the impression one gets from the email, Commissioner. We invite you to read it.

COMMISSIONER WILSON: So did anything become of this?

10 MR DIEHM: Well, what we know became of it was that, eventually, what were described as subacute beds were made available at the Mater Hospital in the acute unit, seems to be the common theme of the evidence. And I pause again to note that what Professor McDermott has described there, obviously, is reference to mitigating factors that may inform, as I submitted before, Dr Stathis' evidence about why he considered it to be suboptimal, but wasn't quite as negative about it as the earlier
15 document seemed to reflect.

But the effect of it from a chronological point of view is, again, to reinforce everything that – sorry – reinforce what appears to be the inference from every document that there is on this topic, and that is that there was not established before
20 the closure of the Barrett Adolescent Centre, as has been asserted with respect to Dr Brennan's evidence, that there was not established what were regarded as designated subacute beds, whether within an acute unit or otherwise, and the rest of the chronology that we have set out in the document is entirely consistent with that. It includes, if we were to go back to the chronology, Commissioner, to jump ahead to
25 10 March 2014 - - -

COMMISSIONER WILSON: I'm sorry. I don't want to keep interrupting, but I'm not understanding what you just said. I think you said that before the closure designated subacute beds were not established.
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MR DIEHM: That's so.

COMMISSIONER WILSON: Alright. I understand that. Then what was your reference to Dr Brennan's evidence?
35

MR DIEHM: Commissioner, the context or the reason for making these references in this – to this material is that it has been said by Professor Stathis with some degree of support from the evidence of Professor McDermott that there were established – and – well, sorry, let me rephrase that – that there were available at the Mater
40 Children's Acute Unit subacute beds in the months before the Barrett was closed, and that that fact had been communicated to Dr Brennan.

Now, the state has made submissions that Professor Stathis' evidence on that matter is plausible and capable of being accepted. One thing that we are in agreement about
45 is that it may not ultimately matter much, because no patient would have gone to it. but given the submissions that were made by the state, we have referred to this chronology because, in our submission, if a finding is to be made about the matter

then the finding would not be that such beds had been established, though undoubtedly it was the case that if a patient needed admission to the acute unit at the Mater Hospital in the ordinary course of things that could occur. But as for the idea that subacute beds were available and that fact had been communicated to Dr Brennan, in our submission, is that the evidence is overwhelmingly against it.

COMMISSIONER WILSON: An impression I have is that probably from the time of Dr McDermott stating to the Carmody inquiry that the Barrett Adolescent Centre was to close, he may well have made it known in conversations with other psychiatrists that if the worse came to the worst, somehow, the Mater would take one or more patients. It was really no more than a gentlemen's discussion, but that there was certainly nothing formalised until after the actual closure.

MR DIEHM: That's what the evidence shows, yes. So it's not a criticism of Dr McDermott or Dr Stathis. They were undoubtedly willing to do what they could to be of assistance, but – and as others were. The Logan Hospital by way of example was, on the evidence, very helpful with respect to managing patients, and the same may be said about the PA Hospital too.

COMMISSIONER WILSON: I think Dr Steer gave some evidence about making – and I'm not sure whether he was talking particularly about the subacute beds issue, but making arrangements between health services takes time. It's just an aspect, really, of the bureaucratic service, and that for whatever reason, making arrangements with the Mater seemed to take a bit longer. He said I've got very good relations with the Mater, but I have found that.

MR DIEHM: Commissioner, what the chronology does show too is that the subacute beds designated as such did seemingly become available before the paperwork poured up.

COMMISSIONER WILSON: Yes.

MR DIEHM: So the paperwork, in fact, happened very late, perhaps by about June, and, certainly, some time soon after that reference to early March it appears on the chronology that the beds were available.

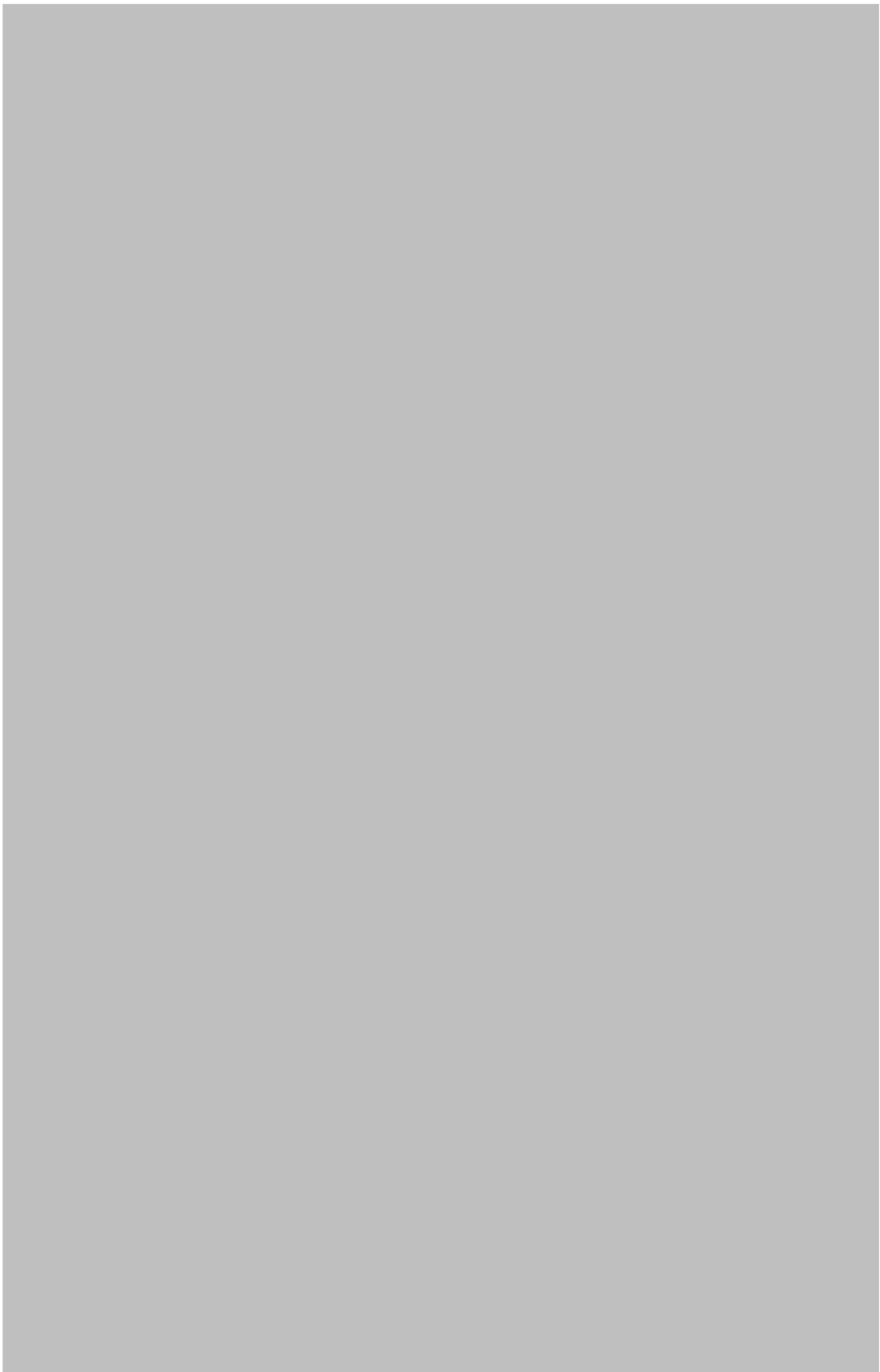
COMMISSIONER WILSON: Right.

MR DIEHM: So that's consistent with Professor Steer's evidence in that regard. Commissioner, the remaining matters would need to be the subject of a hearing in closed court.

COMMISSIONER WILSON: Alright. Do you want the court closed at this stage?

MR DIEHM: Thank you, Commissioner.

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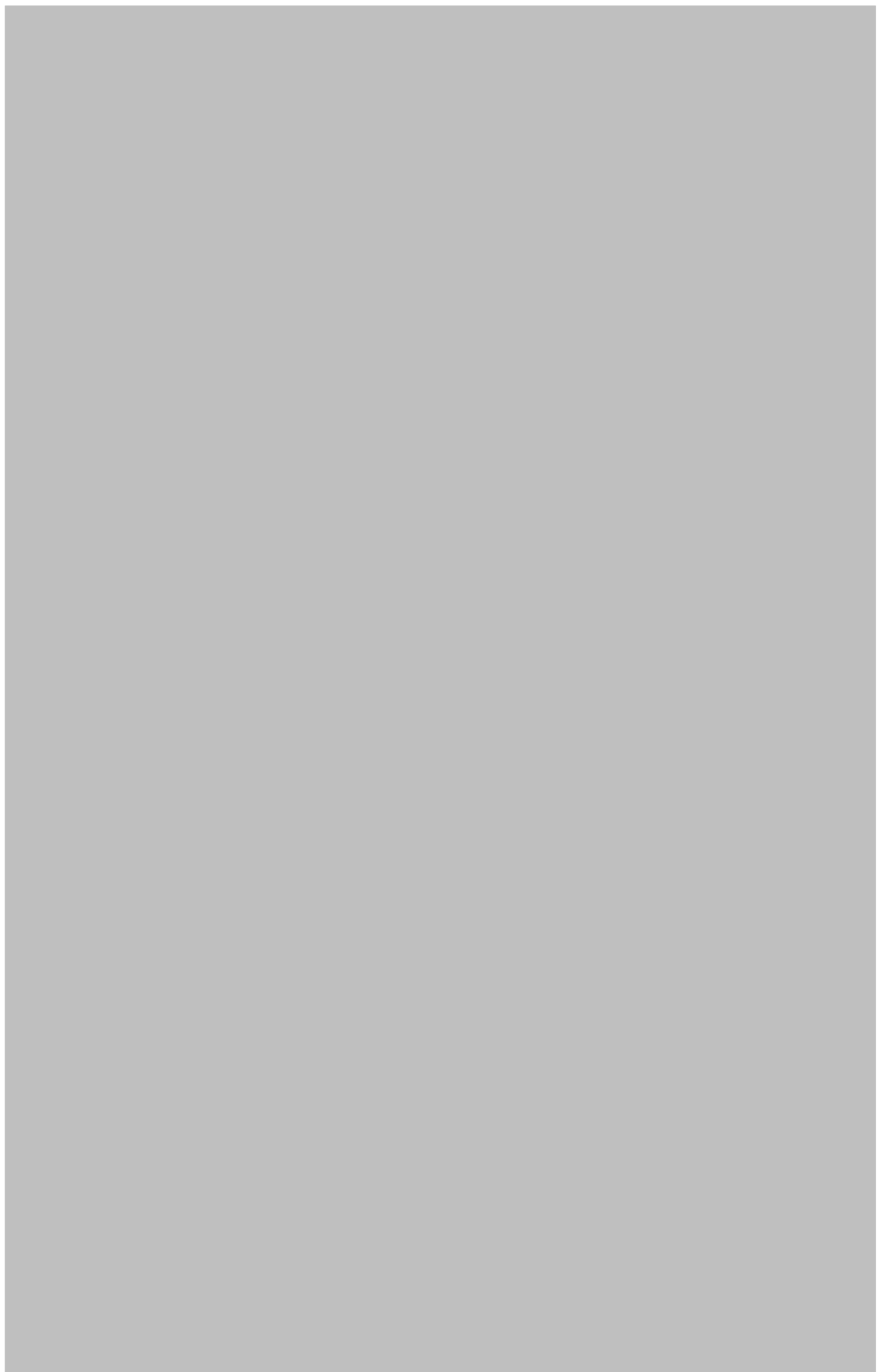
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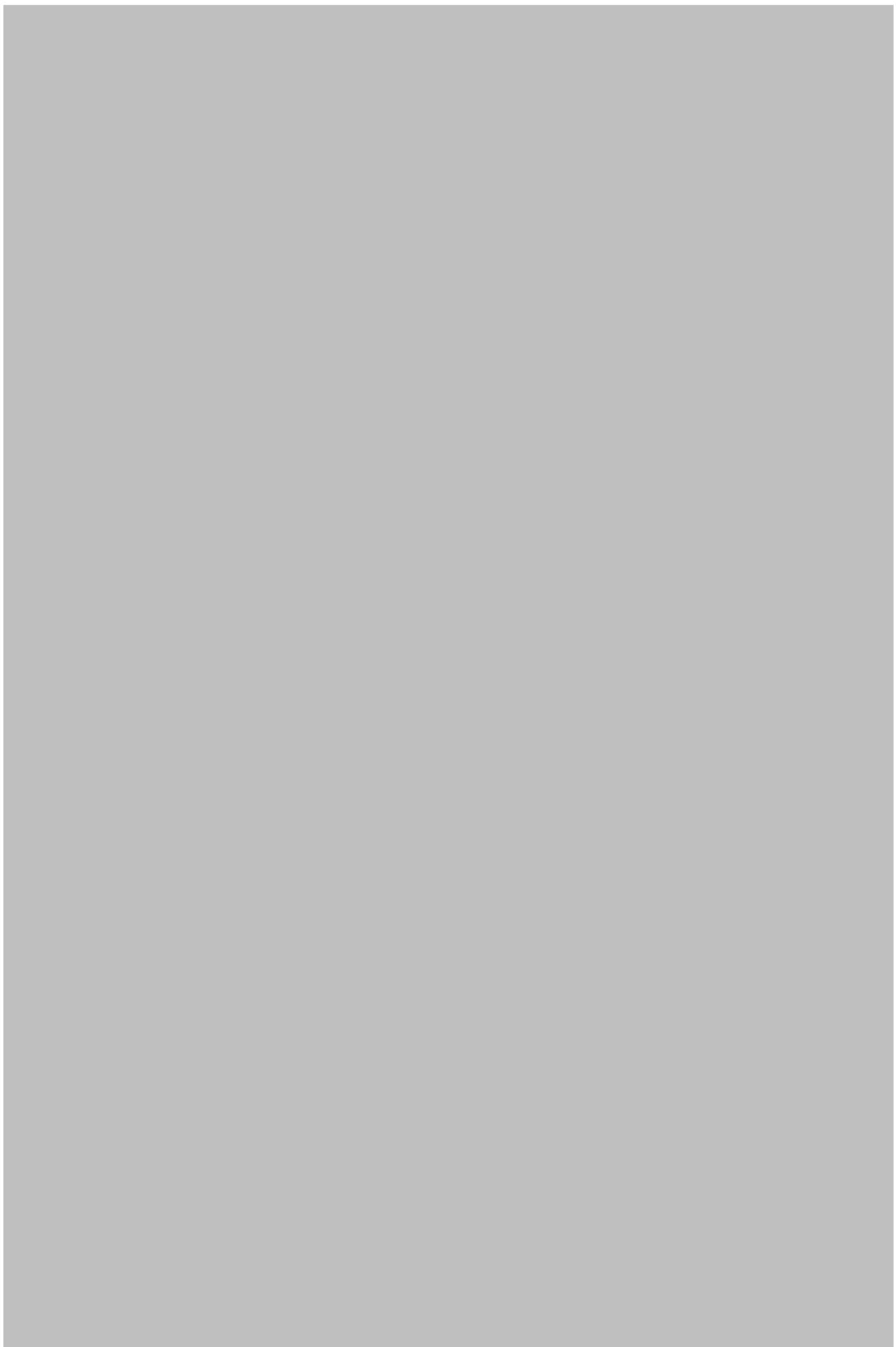
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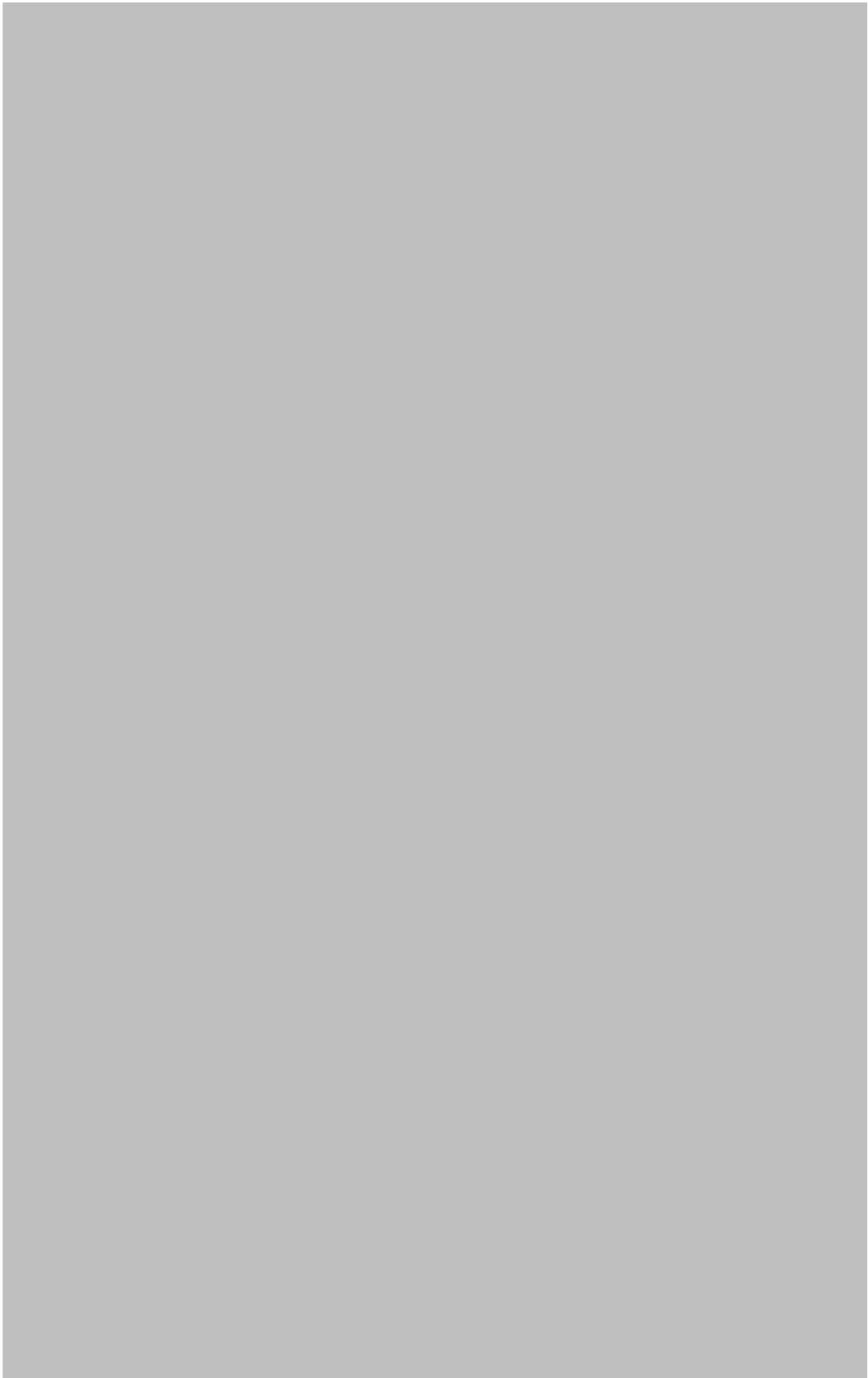
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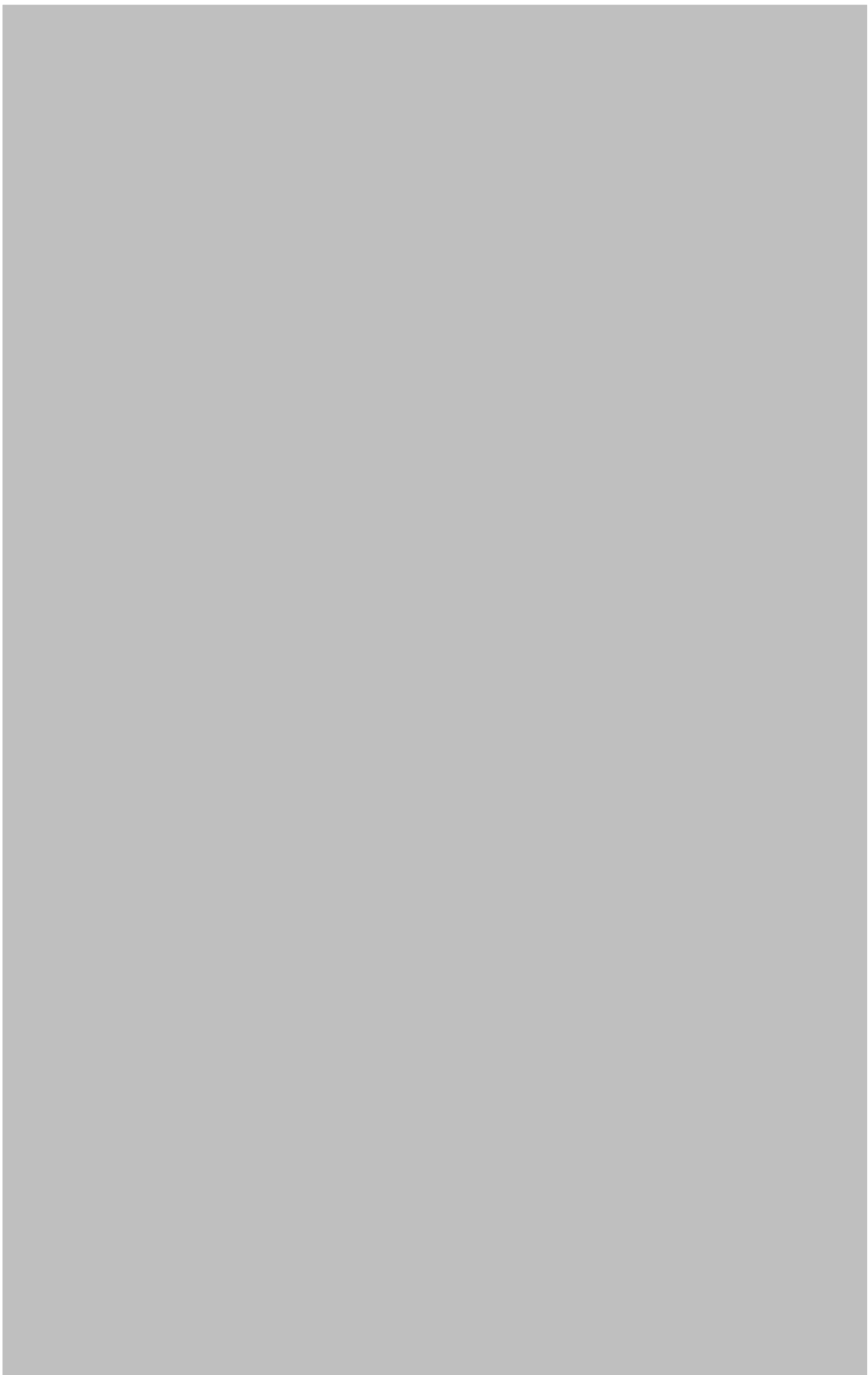
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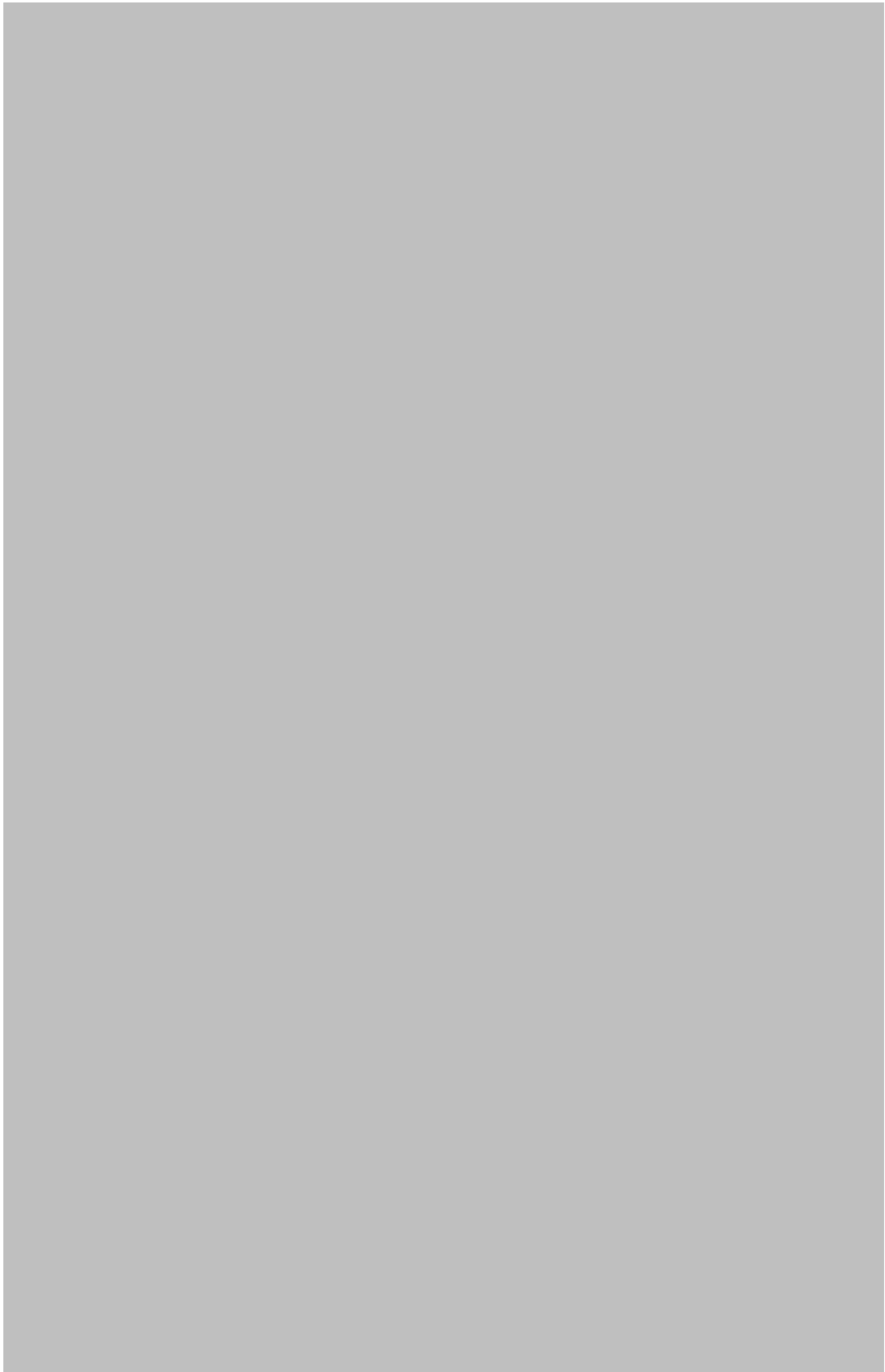
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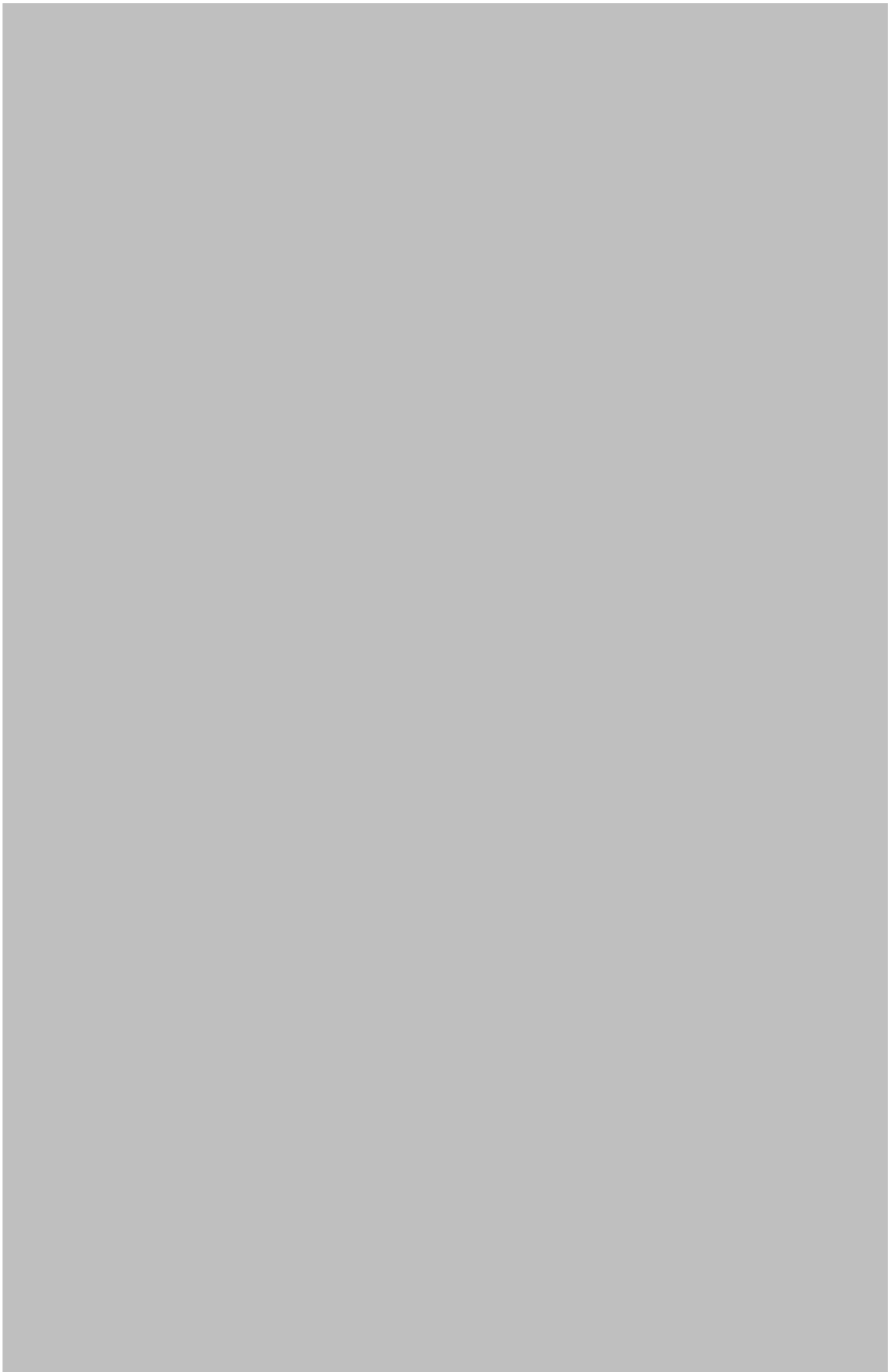
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MS MELLIFONT: Thank you, Commissioner. We perceive this will be largely uncontentious. Some of the parties' submissions refer, using generalised language, to Professor Crompton being in charge of designing the model of care for Redlands. This language should not be taken, we submit, as indicating or intending to indicate that it was Professor Crompton who was, in fact, developing the model of care.

30

As you are aware, Commissioner, the evidence is that in respect of the Redlands process, various jobs were tasked to various subject matter experts. Preparing a model of care was one of them. It was briefed to Judith Krause to prepare in conjunction with a team. As your Honour observed yesterday, adolescent psychiatry was a very specialised subspecialty. And it is little wonder that such a task was given to persons with relevant expertise. Professor Crompton himself was not, of course, an adolescent psychiatrist.

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COMMISSIONER WILSON: So who was – who were those persons with the relevant specialist expertise?

45

MS MELLIFONT: The – can I – I'll come back to you with specific names, if I can, after the break. But the team was headed up by Judith Krause. And I'll give you the particular names. Commissioner, beyond – sorry, and the relevant evidence that those things were tasked to Judith Krause and her team is found at transcript 16

February at page 21, lines 15 to 20. Beyond that, we rely on our outline of submissions and, with respect, adopt Counsel Assisting's submissions where the decision to cease the Redlands Project was made without the consultation of Professor Crompton. Subject to me coming back to you with those specific names,
5 Commissioner, those are our submissions.

COMMISSIONER WILSON: Thank you. Mr O'Sullivan, how long do you think you'll be in your submissions?

10 MR O'SULLIVAN: An hour to an hour and a half.

COMMISSIONER WILSON: Alright. Well, I think we'll have the morning break now and come back at 11.

15 MR O'SULLIVAN: Yes.

COMMISSIONER WILSON: And you're ready to proceed, I take it. 11 o'clock.

20 **ADJOURNED** **[10.37 am]**

RESUMED **[11.02 am]**

25 COMMISSIONER WILSON: Ms Mellifont, is there something you need to finish off?

MS MELLIFONT: I just need to give you the names in respect of the team - - -
30

COMMISSIONER WILSON: Yes.

MS MELLIFONT: - - - convened by Ms Krause.

35 COMMISSIONER WILSON: Yes.

MS MELLIFONT: So I'll give you the team and then I'll give you the reference to the evidence. It was Dr Sadler; Dr Penny Brassey, B-r-a-s-s-e-y, who was the clinical director, Townsville Child and Youth Mental Health Service; Erica Lee, L-
40 e-e, who was the manager of the Mater Child and Youth Mental Health Service; Dr James Scott - - -

COMMISSIONER WILSON: Yes, I know who he was.

45 MS MELLIFONT: Sorry, Commissioner?

COMMISSIONER WILSON: I know who he was.

MS MELLIFONT: Sorry. Thank you.

COMMISSIONER WILSON: He gave evidence.

5 MS MELLIFONT: Dr Michael Daubney. The final person was – provided secretarial support; was Fiona Cameron. The evidence source for that is JKR.900.001.0015 at 62.

COMMISSIONER WILSON: JKR?

10

MS MELLIFONT: JKR, yes. And can I just correct a couple of page references I gave with respect to the first patient I mentioned in closed session. I referred to page 20. It was in fact day 20, page 73 - - -

15 COMMISSIONER WILSON: Just a moment.

MS MELLIFONT: - - - day 20, page 74 and day 20, page 75.

COMMISSIONER WILSON: So that's day 20. Yes.

20

MS MELLIFONT: Thank you, Commissioner.

COMMISSIONER WILSON: Thank you very much. Mr O'Sullivan, when you're ready.

25

MR O'SULLIVAN: May it please the Commission. Commissioner, you have expressed interest in being addressed on a number of issues that are relevant to the Minister. I propose to deal with those issues, among others. The first issue that you, the Commissioner, expressed interest in being addressed about and have indicated that you regarded as important is what I'll call the EFTRU issue, Commissioner.

30

COMMISSIONER WILSON: Yes.

MR O'SULLIVAN: Can I just outline what the issue is – I'll do that shortly. Another issue that you've identified as being, in your judgment, important, and in respect of which you would like submissions is what I'm going to call the new services and existing patients issue, and I'll develop what I understand that issue to be – we'll address that issue as well. The third new point that arose yesterday concerned patient profiles.

40

COMMISSIONER WILSON: Yes.

MR O'SULLIVAN: I won't be addressing that point, Commissioner. We received a 17-page document last night and are not in a position to address on that insofar as I would need to. In addition, Commissioner, I shall be addressing my learned friend, Mr Freeburn's, submissions about what the ECRG recommended, if I might call that the bricks and mortar point. I shall also address you on two observations you

45

indicated that you had in relation to your tentative view of the evidence at the moment. One of those is, essentially, all of the experts agree that there's a small group of young persons within Queensland who require extended treatment in an inpatient service. Another observation you indicated that you had a tentative view
5 about or a provisional view, I should say, Commissioner, with respect, is that prior to the implementation of the new services in 2014 the landscape was a barren one. The landscape for alternatives was rather barren. I shall be addressing that observation.

May I just tell your Honour the sequence of the submissions we propose to present
10 orally. The first is the EFTRU issue; that'll be the first point. The second, related to that, will be developing the written submission that the objections to the concept, the broad concept of Redlands, the clinical objections to it, predated the appointment of my client as Minister, and the discussion about it predated his appointment. The third point we'll address is the August 2012 briefing paper the Minister signed; that
15 was subject to criticism in the submissions of Counsel Assisting.

The fourth point we'll address, Commissioner, is, really, as an overview of the events after August 2012, we draw attention to the fact that there's no criticism at all – in the 250 pages of submissions of Counsel Assisting, there's no criticism at all of the
20 Minister in respect of that period after August 2012. The fifth point we will address is the ECRG point, the bricks and mortar point. The sixth point is your Honour's point, if I may put it that way, the new services and existing patients point. Seventh, we'll correct and supplement in minor respects parts 7 and 8 of our written submissions; that concerns the new services and the future going forward in terms of
25 the Terms of Reference number 4.

The eighth point is your Honour's provisional observation that there is a – the experts agree there's a small group who require extended treatment and the barren landscape point. The ninth point is, really, a wrap-up, which I'll try and do by
30 handing up an aide-memoire, a wrap-up of other minor corrections in our submissions and our summary response to the submissions of those other parties with leave to appear. We should do that rather quickly. And the tenth and final point will be our criticisms of Counsel Assisting and their response to those criticisms. Again, that will be rather brief. I'll attempt to the extent I can to deal with the issues
35 chronologically, because this is a matter where it helps to have the sequence of events, it seems to me, very clear in mind, and it's rather difficult to make sense of it without a chronology.

With that in mind, can I start with the first issue, which is almost in many ways first
40 in time. This is the – what I call the EFTRU issue, Commissioner. Can I identify what the issue is, as we understand it. The Honourable Commissioner has indicated that it appears from the evidence that the following is the position: that the EFTRU issue was percolating away, I think the language was, before May 2012 – in fact, for several years. Now, what that means is that the fact that an extended forensic
45 treatment and rehabilitation unit for adult offenders was going to be established on The Park was known for a number of years. Indeed, it was part of the Queensland

Plan for Mental Health from 2007 onwards and work had been done for a number of years to bring that service online. So it was not a new issue.

5 COMMISSIONER WILSON: Can I interrupt you there. I'm not sure – I can't remember precisely whether an EFTRU was mentioned in the Queensland Plan for Mental Health. But in my analysis, I'm not sure that that matters.

MR O'SULLIVAN: No.

10 COMMISSIONER WILSON: What matters is that the planning for the construction of EFTRU had been going on for some time.

15 MR O'SULLIVAN: Yes. That's right. And, indeed, the language of EFTRU – it may be rather late in the day – but the substance of it, with respect, a 20 bed facility, we respectfully agree, was plainly in contemplation since about 2008.

Now, the next observation that the Honourable Commissioner makes is that, well, it's plain from the evidence that Dr Kingswell knew all about this issue for a number of years. And when Dr O'Connell was asked to sign off on cancelling the Redlands Project in May 2012, I think what your Honour has in mind is that he assumed the BAC would continue to operate when he made that decision. But, in fact, it would only quite soon be able to continue to operate if it was co-located with EFTRU. And co-location of Barrett with an operating EFTRU unit was inappropriate because of the risks to the young people that were presented by that circumstance on the ground.

25 And you've indicated that, prima facie, your impression is that the reasons for thinking that that would be inappropriate, the co-location of EFTRU with the Barrett Centre, the reasons that have been developed in the evidence of Dr Kingswell seem, on their face, quite powerful. They're certainly reasons that, on the face of it, the Commission would accept. And what you would wish to be addressed on is this, as I understand it: what is the evidence that this issue, that is to say the issue of the effect of cancelling Redlands on the Barrett Centre in light of the proposal to open EFTRU – to what extent was this issue actually considered in May 2012 when Dr O'Connell cancelled the Redlands Facility? And to what extent was it considered in August 35 2012 when my client signed the briefing note to reallocate funding, part of the funding of which came from the cancelled Redlands Facility?

40 And, as I understand it, Commissioner, you made the observation that as soon as Redlands was, in fact, cancelled, the issue of EFTRU reared its head, I think you put it. It came into the dialogue on the evidence after Redlands had been cancelled. And you have indicated that it's a difficult point because I think your impression is that it wasn't considered at the time Redlands was cancelled and then it suddenly becomes an issue and how can that be?

45 In our respectful submission, an implication of that kind of analysis might be that there's been a failure in the decision-making process around Redlands because the process failed to take into account a relevant consideration, namely, what does the

cancellation of Redlands mean in circumstances where the EFTRU unit is imminent. As we understand it, that is the possible finding that might be made: there's been a failure in the decision-making process because a relevant consideration hasn't been taken account of.

5

Now, may we address that issue, Commissioner, as we understand it to be in the way I've just described it to you. We firstly observe that that issue is not addressed in the submissions of Counsel Assisting in their opening or closing and one consequence of that is that there is limited evidence on the issue. There is some evidence and I'll

10 take it to you. There is limited evidence on the issue because it appears that that was not – this dynamic was not a matter that was focused on by our learned friends when the oral hearings were conducted.

15 My client's submissions have dealt with the issue not in the way that – not with the – not in specific answer to the points I've articulated but they do deal with this issue. Can I just give your Honour the references to our submissions. We deal with it at paragraphs 410 on page 14 and paragraphs 547 to 555 at pages 24 and 25. Can I just take your Honour to a small part of that discussion. Page 25, Commissioner, at paragraphs 5.50 of our written submissions, we there quote the evidence of Dr

20 Kingswell, the Executive Director of Mental Health Branch that his view at the time – we'll come onto the timing in a moment:

There became an urgency to close the Barrett Centre because of the risk that the extended forensic treatment and rehabilitation unit posed to adolescents.

25

And we quote from his evidence. And at 5.51 we quote from his evidence given in the supplementary written statement that was provided where he developed his explanation for why co-location was unacceptable. We note, Commissioner, that there is no evidence to the contrary. There is no evidence that this professional

30 judgment was wrong. And, in our respectful submission, the Commissioner would accept the judgment of Dr Kingswell was a judgment he was well qualified to make and that his evidence would be accepted in terms of the judgment. The last two lines of the quote at 5.51, in our respectful submission, the Commission would accept.

35 COMMISSIONER WILSON: There was some evidence, I think it was from Dr Stedman, which seemed to me to perhaps downplay the risk. He talked about the careful selection of patients and - - -

MR O'SULLIVAN: Yes.

40

COMMISSIONER WILSON: - - - their close observation. And as soon as there was a problem they'd be transferred back to the secure unit. It's difficult to assess that evidence given that in the short time the two facilities did operate in co-location, it seems the patients who were transferred to EFTRU were very closely – well, were

45 very carefully chosen and very closely monitored.

MR O’SULLIVAN: Yes. That’s so. That’s so. They were carefully chosen. And the evidence also is that only a small number went in to begin with.

COMMISSIONER WILSON: That’s right.

5

MR O’SULLIVAN: There were four, I think, Commissioner. And then there was a very slow and gradual build up. I’ll come on to some other evidence of Dr Kingswell about this. It is difficult to assess the evidence. Dr Kingswell has the advantage that as your Honour mentioned yesterday, his particular expertise is in forensic patients. And we know that means persons – as your Honour has a lot of experience with – persons in the community who have committed very serious offences but cannot be tried in the criminal courts by reason of their mental impairments. And we’ll come onto the evidence he gave about the profile of those at The Park. Now – so we submit that your Honour would accept the judgment of Dr Kingswell at 5.50 and 5.51. We’ll come onto his state of mind at the relevant points in time and whether he communicated it to anybody else. But just - - -

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15

COMMISSIONER WILSON: That seems to me to be the problem, with respect.

20

MR O’SULLIVAN: Yes.

COMMISSIONER WILSON: Provisionally, I accept his view about the nature of the risk.

25

MR O’SULLIVAN: Yes.

COMMISSIONER WILSON: I’m open to be persuaded to the contrary but, provisionally, I think it was a real problem going forward.

30

MR O’SULLIVAN: Yes.

COMMISSIONER WILSON: But I am surprised that it wasn’t brought to the attention of the Director General, Dr Cleary and to the Minister.

35

MR O’SULLIVAN: Yes.

COMMISSIONER WILSON: Because then you’ll have to move on and deal with, in the circumstances as they then were, could it have made any difference? And Mr Diehm submitted yesterday that the problems with the Redlands Project of the delays, the ongoing, it seemed, environmental concerns, the budget blowouts, etcetera, were such that it was never going to be the answer to the EFTRU problem.

40

MR O’SULLIVAN: Yes.

45

COMMISSIONER WILSON: I don’t know whether I accept that. I’m still thinking about it.

MR O'SULLIVAN: No. Quite. And - - -

COMMISSIONER WILSON: But you'll have to deal with it.

5 MR O'SULLIVAN: I'm going to that same point. I'm going to make – I'm going to address the question of, well, were those individuals briefed by Dr Kingswell on this issue. Were they alerted to the issue – question 1 and question 2. If they weren't, why weren't they? If they were, what's the evidence. And also the
10 fundamental question that your Honour has identified is could it have made any difference and that, in our submission, at the end of the day will be – that's the key to the problem. But before I get there I'll just develop the point.

COMMISSIONER WILSON: I won't interrupt any more than I can help, Mr O'Sullivan.

15 MR O'SULLIVAN: No. Please interrupt me because it's useful. We're very much tailoring our submissions to what we understand to be of interest to you, Commissioner. Now, the other aspect – in our written submissions we draw attention to, at 554 and 555 on page 26 – 554 is a quote from the evidence of Dr
20 Kingswell – his oral evidence at 5.54 on page 26, Commissioner. And at 555 the way we characterise it is that it was a structural problem that our client inherited when he was sworn in as Minister. And the structural problem is the problem that Dr Kingswell describes in 554. That's the last point your Honour made. Would it have made any difference. And I will go into the evidence about that in a moment.

25 COMMISSIONER WILSON: Of course, we've got to keep this issue in perspective. It was one of the reasons put forward for the closure of the Barrett Adolescent Centre and at the moment it seems to me it's probably one that had some merit. But there is other evidence that Dr Kingswell considered the Barrett
30 Adolescent Centre a failed institution I think was his expression.

MR O'SULLIVAN: Yes.

COMMISSIONER WILSON: And one that needed to be closed - - -

35 MR O'SULLIVAN: That's right.

COMMISSIONER WILSON: - - - as soon as possible.

40 MR O'SULLIVAN: That's right. And his evidence given very powerfully in terms of his obvious clear and strong views seem to be in terms of the failing institution that there were governance issues but more fundamentally he said a number of times that it's wrong in his professional opinion – and he used pejorative language – to
45 have young people in a therapeutic community which was a dangerous and violent place for up to years on end. That was the way he put it. But dealing - - -

COMMISSIONER WILSON: Well, that was the way he put it. It was his opinion but we do have to bear in mind, I think, that he was not an adolescent psychiatrist and there really seems to be little maybe if any evidence of his consultation with adolescent psychiatrists which one would have thought would have ultimately, probably, led him to what seems to be the conclusion of the adolescent psychiatrists – or the majority of them who have given evidence in this Inquiry – and that is of this small subset who are going to have an ongoing need for inpatient treatment.

MR O’SULLIVAN: Absolutely. We’ll come on to that point because in our respectful submission the evidence does not support the proposition that there is even a general unanimity view that there exists a small cohort – I’ll withdraw that. It doesn’t support the view there ought to be constructed or there ought to be made available and dedicated bespoke inpatient unit for young people in Queensland who suffer from severe mental health.

COMMISSIONER WILSON: Well, we’ll come to that.

MR O’SULLIVAN: Yes, Commissioner. The observation you made, Commissioner, is that one needs to see this discussion we’re having about EFTRU in context - - -

COMMISSIONER WILSON: Yes.

MR O’SULLIVAN: - - - because Kingswell was motivated by – in terms of his support for closure – other considerations. I’m addressing the rather narrower point about EFTRU. Now, I direct your attention, Commissioner, to 554 of our submissions where Dr Kingswell says:

Redlands was not going to deliver us the solution, not in any timely way – a solution to the looming problem.

And looming problem is that there’s going to be a co-location of the Barrett Centre with the EFTRU unit which he says is entirely unacceptable and not a risk that should be run. That’s the looming problem and his evidence is that he considered that Redlands was not going to deliver a solution to that problem and we’ll on to why and his evidence about why that was so. The starting point, Commissioner, is the evidence that you have about the timing of Redlands. At page 23 of our written submissions at the bottom of the page, 5.40, we have extracted from the evidence the chronology of Redlands. We’re putting the chronology of Redlands in terms of when it was anticipated to be opened. We’re putting to one side, Commissioner, the different question of whether Redlands is a good idea at all. That’s a separate question.

We’re just looking at the evidence about when it was to open. One sees that in February 2010 the documents indicated that it was projected to be opened in August or October 2011. Just pausing there, Commissioner. Had that happened – 2011 – pausing there, Commissioner – if that expectation had been realised the EFTRU

problem would never have arisen because EFTRU, on the available evidence was going to be opening at some point after October 2012 – 2011.

5 COMMISSIONER WILSON: Well, I think some of the early documents which are exhibits will show that in the very early stages of the planning of EFTRU it was to open, I think, in early 2012 - - -

MR O’SULLIVAN: Yes.

10 COMMISSIONER WILSON: - - - so that it wasn’t to absolutely coincide with the opening of Redlands - - -

MR O’SULLIVAN: No.

15 COMMISSIONER WILSON: - - - but it was to be round about the same time.

MR O’SULLIVAN: No. Quite. Around the same time and when – it’s always dangerous to look at – from a hindsight point of view – but sitting where we are now one can see in hindsight that in terms of the broad concept of stage 1 of the
20 Queensland Plan for Mental Health, had those expectations been realised the problem that in fact developed would not have arisen because there would have been Redlands. The young cohort would have moved. EFTRU would have been established and the problem that in fact developed never would have.

25 COMMISSIONER WILSON: That’s right.

MR O’SULLIVAN: That’s the submission we make in terms of what we make of that first timing. What we see in September 2011 – the second box at page 23 – is that at that point practical completion had been projected two years forward now
30 October 2013. We then see another document of November 2011 where completion is expected in November 2013. In February 2012 there’s another internal document where practical completion is January 2014. The latest document we’ve in evidence is 2012. Your Honour, that reference – QHD.004.015.733 – that document is the
35 document that we received the night before Mr Springborg gave evidence and that he was cross-examined about. That was one of the attachments to the August 2012 briefing note. I can show your Honour if you wish to see it - - -

COMMISSIONER WILSON: No. It’s alright.

40 MR O’SULLIVAN: - - - but it was the reallocation of the \$41 million that was needed to be found to pay for the urgent work on the 12 hospitals. It’s exhibit 654. There’s no evidence that Mr Springborg in fact saw or reviewed that document in August 2012. Its relevance appears to us to be that it is some contemporaneous
45 evidence as at August 2012 that at that point in time the infrastructure branch who we infer were providing this information are now projecting that Redlands would be competed in the middle of 2015 and of course – and we’ll come on to it – the

evidence is that Dr Kingswell knew by May 2012 that EFTRU would be opening in early 2013. But I'm getting ahead of myself.

5 So that the first point is the evidence that you have about when Redlands would be opened. Now, the evidence that Dr Kingswell believed in May 2012 – or understood in May 2012 that EFTRU would be open in early 2014 is found, Commissioner, in the witness's supplemental statement. May I ask for that to be shown to you. It's DBK.900.002.0001 at paragraph 1(b). This is one of supplemental statements that you directed to be provided after the hearing closed. My client provided one and Dr
10 Kingswell did as well.

COMMISSIONER WILSON: Yes.

15 MR O'SULLIVAN: Paragraph 1(b), Commissioner - - -

COMMISSIONER WILSON: Could you scroll down a little, please.

MR O'SULLIVAN: - - - in the second sentence, he says he doesn't recall exactly what the timetable for opening EFTRU was as at May, but he was aware that it was
20 then likely – we take that to mean in May 2012 – likely to be scheduled to be open in early 2013, and then he says which was well before there was any realistic likelihood of Redlands being available. We submit that evidence of his understanding is, on the documents referred to in the table I directed your Honour's attention to, a correct
25 assessment. It was indeed a correct assessment that Dr Kingswell had, that the opening of EFTRU was well before there was any realistic likelihood of Redlands being available, and that provides further – a further unpacking of that part of his evidence that he gave orally, that Redlands could never provide a solution to the practical problem that I as executive director had, that it was inappropriate for the Barrett Centre to continue on the site once the EFTRU unit opened.
30

Now, at paragraph 1(a), Commissioner, he gives further evidence in support of – I'll withdraw that – further evidence of his view that collocation was completely unacceptable. In his oral evidence, he said twice that Redlands could not provide a solution to the problem created by the opening of EFTRU. The first occasion is that
35 reference that is given in paragraph 5.54 of our written submissions. I'll give your Honour the reference to the other occasion where he says something to the same effect – no need to go to it, Commissioner – it's transcript day 13, page 17, lines 1 to 5.

40 Now, that being rather general evidence about what he believed at the time, the relevant question for your Honour is did – is there any evidence before you that he – firstly, he considered this issue when he – firstly, he considered this issue when he essentially recommended that Redlands be cancelled; that's the first question.

45 Now, as to that the only evidence that appears to have been given that question – I pause there. He was not directly asked about it, Commissioner. He was not directly

asked that question, but a review of the transcript indicates that he did give some evidence about it. The reference, Commissioner, is transcript day 13, page 19.

5 COMMISSIONER WILSON: Do you want that on the screen?

MR O'SULLIVAN: Yes, please, Commissioner.

COMMISSIONER WILSON: Whereabouts on that page?

10 MR O'SULLIVAN: At line 30, Commissioner. At line 31, our learned friend, Mr Freeburn, says to the witness:

So at the time you recommended the Redlands Project cease, did you consider that the Barrett Adolescent Centre would continue in its current form?

15

That was the question he was asked. The answer he gave was, in our submission, instructive. He says:

I thought it would continue until we had satisfactory arrangements for the very few young people that remained in the Centre and that remained on its waitlist.

20

And then he says this:

I thought there was an urgency to close it. I was concerned about the extended – the EFTRU, they call it, the forensic treatment rehabilitation unit, I think, that was open on the site.

25

The proper construction of that evidence, in our submission, is that – which is consistent with the other evidence I've shown you, is about May 2012 – we're at
30 May 2012 – when a briefing note was actioned within the Mental Health Branch under his supervision and provided to Dr Jeannette Young and from there to Dr Cleary, that the executive director at that time, Dr Kingswell, thought that there was an urgency to close the Barrett Centre, and he was concerned about the EFTRU unit in that context. And this, of course - - -

35

COMMISSIONER WILSON: Sorry, I didn't understand what you just said, bringing Dr Cleary and Dr Young into this point.

40 MR O'SULLIVAN: Dr O'Connell, I should have said.

COMMISSIONER WILSON: O'Connell. Well, could you repeat the point you were making? I missed it.

45 MR O'SULLIVAN: I put it badly. Now, the question is what do you make of the evidence, Commissioner, particularly at lines 33 to 35.

COMMISSIONER WILSON: Yes.

MR O'SULLIVAN: He says:

I thought there was an urgent –

5 I'll start again. He says – the question is when you recommended the Redlands Project cease, did you consider that the Barrett Adolescent Centre would continue in its current form? Just pausing there, the recommendation that the Redlands Project cease, Commissioner, was relevantly in May 2012 - - -

10 COMMISSIONER WILSON: Yes.

MR O'SULLIVAN: - - - when this witness actioned the briefing note of May 2012, which – and I put it badly – which went to Dr Young, who gave some evidence about it, and then to Dr – the chief health officer - - -

15 COMMISSIONER WILSON: Yes.

MR O'SULLIVAN: - - - and then it went up the chain to Dr O'Connell.

20 COMMISSIONER WILSON: Yes.

MR O'SULLIVAN: I'm simply noting that at this point in time, May 2012, the relevant actors are this witness, Young and O'Connell.

25 COMMISSIONER WILSON: I see.

MR O'SULLIVAN: That's all I was attempting to do, Commissioner, to put it in context. And the inference that one would draw from this evidence is that this witness thought at that point in time, when he was recommending that Redlands be
30 ceased, at that point in time that there was an urgency to close the Barrett Centre because of EFTRU.

COMMISSIONER WILSON: I accept that, but there's no evidence there that he told Dr Young or Dr O'Connell.

35 MR O'SULLIVAN: I'm sorry. I'm just - - -

COMMISSIONER WILSON: Okay.

40 MR O'SULLIVAN: - - - at the moment focusing on the decision-making process, if we can put it that way, at the level of Dr Kingswell.

COMMISSIONER WILSON: Yes.

45 MR O'SULLIVAN: And, in our respectful submission, the short point is he considered the very point that you, Commissioner, are interested in, namely, the interaction between EFTRU and the closing of Redlands – I'm sorry, I withdraw that

– the cessation of Redlands. He considered it and he came to the view that is there set out.

5 Now, the next – just pausing there, before we go onto the next question, which is, well, what did he say to Dr Young and what did he say to Dr O’Connell, which is the next question, before we come onto that, I direct your Honour’s attention to over the page, at 13-20, while we’re here, at lines 1 to 15 – I’ll withdraw that – it’s 13, page 19. It commences – it’s my fault – at 37.

10 He goes onto give an explanation for why he considered in May 2012 that the EFTRU unit proposed a very serious risk, and he says – he’s addressing you, Commissioner – that you’ve heard quite a lot of information that in his view is not true, that there is no risk posed to Adolescents. I’m sure you’re aware that he was the director of forensic services for the southern half of the state for many years, up
15 until 2005. He then said he had been working at Wolston Park since 1994. He had a fair visibility of the Barrett Adolescent Centre and other facilities at that site. He then speaks about the John Oxley Memorial Hospital, and then he importantly says in the last two lines on page 19 that the situation that had existed before 2002 changed with the *Mental Health Act*, which proclaimed that in 2002 mentally ill
20 offenders – over the page to page 20 – to be managed in mental health facilities in the state that were prepared to accept the risk. And then he says:

25 *It constrained the activities of the high secure unit at The Park, Commissioner, to only those persons that have committed very serious offences. So from 2002 onwards – and the offences that they were being held in a secure facility at The Park were homicide, attempted homicide, rape –*

And then he goes on to say that –

30 *The EFTRU was a very new model of service –*

At about line 7 –

35 *There’s a five metre fence around the secure unit – around the EFTRU unit. If there is not they can walk out.*

40 And then further on in the passage down to line 14 he develops the evidence that I took you to earlier. We submit this is compelling evidence that the judgment that this witness formed was absolutely correct and that you would have no hesitation, notwithstanding Dr Stedman’s evidence, in accepting.

45 Now, the question relevantly next is, well, what is the evidence that Dr Kingswell discussed this issue with either Dr Young or Dr O’Connell being the relevant persons in the chain of command. The first observation we would make is that he was not asked that question, Commissioner. The person in the best position to give evidence about it was not asked it. There’s therefore a gap in the evidence in that he hasn’t been asked. I asked Dr Young that question, though, Commissioner. Well, I

withdraw that. I asked Dr Young general questions about this issue and Dr Young's evidence is that she does not – to paraphrase – she does not recall this issue being brought to her attention, Commissioner. Which is consistent with the impression that I think you have obtained, Commissioner. Her evidence – I'll give you the reference.

5

COMMISSIONER WILSON: Her evidence generally I found quite surprising that she had no recollection and hadn't gone back through the records. She said that she no longer had access to them but I found that surprising because - - -

10 MR O'SULLIVAN: Yes.

COMMISSIONER WILSON: - - - she's still the Chief Health Officer.

15 MR O'SULLIVAN: Yes. The surprise you have, Commissioner, is that you would have expected a different approach to be taken and that wasn't the approach that was taken. That makes, again, the position more difficult for you because had that witness been taken to the relevant records or they had been provided to her either by Queensland Health or the Commission – putting aside to whom – she can't have been – I'll put it another way. Dr Young can't have been expected herself to do a
20 search for all the records. You would expected someone to give them to her, either the Commission staff or Queensland Health and that didn't happen. The difficulty – the practical difficulty is that the witness says she doesn't have very much recollection about this but that's unsurprising if all you're going from is your
25 memory about events back in 2012.

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COMMISSIONER WILSON: But, you know, we've got to bear in mind that a very short statement of the reasons that were being put forward for cancellation of Redlands as set out in the briefing note and the briefing note was silent about EFTRU.

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MR O'SULLIVAN: That's right.

COMMISSIONER WILSON: Which is extraordinary.

35 MR O'SULLIVAN: Well, it's not extraordinary for reasons we'll come on to – that it's not extraordinary because the – it's not extraordinary if you accept Dr Kingswell's evidence. And what his evidence is that it was – Redlands was irrelevant. I'll withdraw that. EFTRU was irrelevant to the decision to cease Redlands. It was irrelevant because Redlands could never provide a solution to the
40 problem. It was entirely irrelevant in his mind because it couldn't provide a solution and the reason it couldn't provide a solution is this enormous gap in timing. Redlands had stalled. It had completely stalled. If it was ever occur it was going to be years away. EFTRU was about to open. I may have overstated it. In May 2012 EFTRU would be opening, it was anticipated by him, in early 2013. Why should he
45 have been concerned to tell – to notify Dr Young or Dr O'Connell of this issue which in his mind was irrelevant.

COMMISSIONER WILSON: Well, I hear what you say but I'm having difficulty accepting it.

MR O'SULLIVAN: Well, you would need - - -

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COMMISSIONER WILSON: It just seems to me that the briefing note which went up the chain through Dr Young to Dr O'Connell and then the subsequent briefing note in August which I know originated in a different part of the Health Department – neither presented the decision-maker with a full picture. There were criticisms of the model of care that was apparently being developed for Redlands, criticisms of the model of care at the Barrett Adolescent Centre. But why there was no mention of this I cannot work out.

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MR O'SULLIVAN: Well, the premise of that thinking is that there was some good reason for mentioning the point. There was some good reason for telling the decision-makers that EFTRU was about to come online and EFTRU was incompatible with Barrett. That's the point that is of concern to the Commission, that there was some good reason for that fact being identified in the briefing note in May 2012 to substantiate the proposition that that should have been in there. One would need to see some compelling reason why that was a relevant matter. And in our respectful submission, firstly, there's unsatisfactory evidence about the true position because Dr Kingswell wasn't asked about it but, secondly, in our submission, the evidence that he did give indicates that he regarded the issue as neither here nor there. It was neither here nor there that EFTRU was about to come online because Redlands could never provide a solution to it. It didn't matter.

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The evidence – I'm addressing now on the evidence of whether Dr Kingswell spoke to Dr O'Connell about this issue. The evidence on that is – there's just a gap in the evidence and Dr Kingswell was not asked that question and Dr O'Connell's evidence does not address the question and neither was Dr O'Connell asked that question when he gave his evidence. He was asked in the notice to do with – in the supplementary statement notice he was asked about the position from December 2012 but he was not asked about the position as at May 2012. He was not cross-examined about the relevance of the EFTRU unit to the decision to cease Redlands and he was not asked whether he spoke to Dr Kingswell about. The references, Commissioner – no need to go there – the transcript reference is at T12-8 to T12-9 and T12-20 at line 30. His evidence was that the move of the focusing of The Park on forensic patients was relevant to the closing of the BAC and he doesn't say it was relevant to the decision to cease Redlands.

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We come then to the evidence of the Minister, Commissioner.

COMMISSIONER WILSON: Yes.

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MR O'SULLIVAN: The evidence of the Minister – he was asked some questions about the consequence of ceasing Redlands. He was asked some questions by my learned friend, Mr Freeburn about the consequences of ceasing Redlands but it was

not put to him or asked of him whether he considered or whether he had received any advice about the consequence of ceasing Redlands vis-à-vis the EFTRU unit.

5 COMMISSIONER WILSON: Well, his evidence, as I recall it, was that it was not until around about December of 2012 that the EFTRU issue came to his notice.

MR O’SULLIVAN: That’s right. That’s in his supplemental statement and I’ll go to that, Commissioner. That’s – can I ask your Honour to be shown that. It’s LJS.900.002.0001. Question 1 is the question that he was asked to respond to:

10

The Commission understands that from approximately December 2012, the services provided at Barrett were under review.

And (b):

15

The opening of EFTRU was proposed for early 2013.

And then he was asked if this is correct and if not and outline – he was asked to outline when he first became aware of the proposal to open EFTRU in early 2013, Commissioner. And his response, relevantly, is at paragraph 4, Commissioner.

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COMMISSIONER WILSON: Scroll down, please. A little bit further.

MR O’SULLIVAN: Line 6 is maybe the evidence you had in mind, Commissioner. At best as he recalled it was late 2012. And then further down, he can’t be certain of precisely when he obtained that understanding but it might’ve been in the December 2012 meeting which is consistent, I think, with your Honour’s recollection of the evidence.

25

Now, paragraph 5, Commissioner; the Minister has no specific recollection of receiving an oral written briefing between the date he became the Minister for Health and 16 May about this – about the EFTRU issue in the context of Redlands, which is unsurprising because the evidence is that 16 May 2012 briefing note didn’t get to his office. So that’s unsurprising evidence.

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Just pausing there, the structure you’ve seen of the briefing notes is that one has something to direct a briefing note to the Director General. And then on top of that there’s a briefing note to the Minister. It has “the Honourable Minister”. And what you would expect if the May briefing note about Redlands was escalated to the Minister for the approval is another document on the front of it asking the Minister to approve the Director General’s - - -

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COMMISSIONER WILSON: Well, there’s no suggestion that he was asked to approve the May briefing note.

45

MR O’SULLIVAN: No, no. That’s right.

COMMISSIONER WILSON: There is a question mark about whether it actually got to his office.

MR O'SULLIVAN: That's right.

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COMMISSIONER WILSON: But he doesn't have any recollection of seeing it himself.

MR O'SULLIVAN: That's exactly the case, your Honour. And the only observation we make is that in terms of the physical document even getting to his office, if the process had matured in the ordinary way, there would've been another document to the Minister, a briefing note to the Minister for approval, seeking his approval to cease Redlands. And that document is not in evidence. We don't see any such document. It's – it would be the same structure as the August 2012 briefing note. You have a briefing note to the Minister and behind that, the briefing note to the Director General. So what you would be looking for evidence that it had matured – the process had matured to the point of the document going to the Minister's office even for consideration, is a document that we just don't have.

COMMISSIONER WILSON: But some briefing notes, I assume, would go to the Minister for noting - - -

MR O'SULLIVAN: That's right.

COMMISSIONER WILSON: - - - rather than for action.

MR O'SULLIVAN: That's right. That's right. And those – the evidence that we have is that those two would have a separate page to the Minister, the Honourable Lawrence Springborg MP - - -

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COMMISSIONER WILSON: For noting.

MR O'SULLIVAN: - - - for noting. And then it would say, Minister, note 1, 2 and 3. And then it will have a space for his signature and he would circle it. And that sort of document is also missing in relation to the May briefing note. Now, that's a sidetrack to paragraph 5 which is his evidence that he doesn't recall an oral briefing between when he was appointed on 3 April and 16 May, a period of only some six weeks. Now, the August briefing note, Commissioner, which he did sign, you'll recall that's the briefing note for the reallocation of the funding. He was asked the questions at question 3(a) and (b).

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COMMISSIONER WILSON: Scroll down, please. Yes.

MR O'SULLIVAN: At paragraph 6 and 7 your Honour will see he addresses questions 3(a) and 3(b). And then at paragraph 8 – I ask your Honour to read that.

45

COMMISSIONER WILSON: Scroll down a little, please. Thank you. Yes. I see that.

5 MR O’SULLIVAN: In our respectful submission, the evidence that – I just draw your Honour’s attention to the fourth line. He says “my assumption now”. His assumption now, essentially, is that given the shape of the briefing note that he was given in August – in circumstances where the briefing note of the Director General that was attached to his briefing note for approval had said that Dr Bill Kingswell, the Executive Director of Mental Health, had recommended the cessation of the
10 Redlands Program – that his expectation is that if that individual had considered any consequences of the cancellation of the Redlands Unit in the context of the development of EFTRU.

15 And his assumption is that if Dr Kingswell considered there existed any significant issues about this or he had any concerns, he would’ve escalated – he, Kingswell, would’ve escalated to Dr Cleary who would, in turn, have raised with the Director General and me directly if Dr Cleary or the DG considered that was a matter that he should be – he, the Minister, should be briefed about. And then he says he’s fairly confident that neither Dr Cleary nor Dr O’Connell briefed him in relation to those
20 matters. And, in our respectful submission, the Commission would accept that that assumption is a perfectly proper one for a Minister to make.

COMMISSIONER WILSON: Could you scroll up a little bit, please? I’d just like to look at the question again. Thank you.

25 MR O’SULLIVAN: The assumption, in our submission, is a perfectly proper one for a Minister to make. He is given a briefing note which says in terms that the very officer who has responsibility for this matter, Dr Kingswell, the Executive Director has recommended it be ceased. His assumption is that if there were particular issues
30 to do with EFTRU, of the kind that he’s been asked about in question 3, Dr Kingswell would properly have escalated that up to him if Kingswell believed it was relevant.

35 Now, Commissioner, the difficulty for you is that Dr Kingswell was not asked about this. It was not put to him that he should have told Dr Young or he should have told Dr O’Connell. And it was never put to him that it was a matter of such significance that it should’ve been identified to Dr O’Connell or to Dr Young or, indeed, to the Minister. And in circumstances where it was not put to him, it’s difficult, in our respectful submission, for an adverse inference to be drawn against Dr Kingswell
40 and, a fortiori, an adverse inference to be drawn against either Dr Cleary or the Director General, and certainly not the Minister.

45 And in terms of the merits of it, I think you and I disagree, Commissioner. But in terms of the merits of it, our submission is that it is perfectly understandable that he would properly form a judgment that he didn’t need to escalate it, because Redlands could never provide a solution to the practical problem he had on his hands.

COMMISSIONER WILSON: Well, that seems to me to be a conclusion which you draw without taking account of all of the circumstances. The Minister made it clear, it seems, that in all matters his concern was that of continuity of patient care.

5 MR O’SULLIVAN: Yes.

COMMISSIONER WILSON: It seems, albeit with the benefit of hindsight and what happened after the August briefing note had been signed, that the next step after the cancellation of Redlands was to move for the closure of the Barrett Adolescent
10 Centre, again citing EFTRU. The closure of the Barrett Adolescent Centre, in practical terms, had to or ought to have occurred concurrently with the provision of other services for the patients who were there and the patients who would otherwise have gone there in the future. And, again, with the benefit of hindsight, we know how long it has taken to develop and bring online - - -

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MR O’SULLIVAN: Yes.

COMMISSIONER WILSON: - - - those services, and some are still not online.

20 MR O’SULLIVAN: Yes.

COMMISSIONER WILSON: I would have thought that the Minister would have wanted to know the full picture.

25 MR O’SULLIVAN: Well, you’re right that the Minister would and ought to have known the full picture, but the premise of the observation that the honourable Commissioner makes, that you would have expected Barrett to close at a time when the new services were coming online – that was, I take it, to be thought to be a
30 reasonable assumption – that premise is, in fact, not the premise that West Moreton are operating on at all, and that’s the – that is – and it was not the plan that was to occur, and I’ll – that is the submission that I’m going to address – that is the issue I’m going to address your Honour in relation to, that I’ve called the new services and the existing patients point, and what we will be submitting when we have a look at the evidence is that was never, ever intended by West Moreton to occur and it was
35 always known from 24 May onwards that was impossible.

And the Commissioner might say well, that’s very unsatisfactory, that the plan in place involves one where patients would be discharged not to new services, but to bespoke packages of care in the existing service, but, Commissioner, the practical
40 problem, the practical problem that existed on the ground, was that EFTRU was, in fact, coming online and did come online in July/August 2013, and – I’m so sorry.

COMMISSIONER WILSON: Mr O’Sullivan, you’re leaving out of the facts that you’re putting before me what the Minister said in his public announcement on 6
45 August.

MR O'SULLIVAN: Well, I don't think, with respect, I am leaving it out, in that if it's said – in relation to the public announcement, firstly, the Minister was not cross-examined. He was not asked any questions about his public announcement.

5 COMMISSIONER WILSON: No. What he said was clear: there was a transcript of it.

MR O'SULLIVAN: Yes. And, in our submission, the public announcement does not say – it does not say that Barrett will close and then – and when Barrett closes
10 new services will be – I'll withdraw that – it does not say that the existing patients at the Barrett Centre will all be transitioned through to the new suite of services.

COMMISSIONER WILSON: I don't want to take you off-track. We'll obviously have to come to that in due course, precisely what he said. It was a fairly long
15 transcript. But I think we will have to come to that in some detail. But you follow through your chronology. I'm - - -

MR O'SULLIVAN: Yes.

20 COMMISSIONER WILSON: - - - taking you off-track.

MR O'SULLIVAN: Commissioner, I was making the submission that it is a false premise to proceed on that it was intended that the patients at the Barrett Centre would be transferred to a new suite of services, and I make that submission arising
25 out of the observation you made.

Now, just, again, in terms of the chronology, the first submission we make in relation – we've made our submission in relation to EFTRU, and you'll appreciate that the related submission we'd make in writing is that this was a structural problem that
30 existed and was inherited by my client when he became - - -

COMMISSIONER WILSON: I accept that.

MR O'SULLIVAN: I'm so sorry.
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COMMISSIONER WILSON: I accept that he inherited the problem.

MR O'SULLIVAN: Now, the next - - -

40 COMMISSIONER WILSON: That it was a problem he wasn't aware of.

MR O'SULLIVAN: I'm so sorry.

COMMISSIONER WILSON: That it was a problem he wasn't aware of.
45

MR O'SULLIVAN: It was a problem that he was not aware of in August 2012, and it was a problem in respect of which it was neither here nor there that Redlands was

going to be cancelled. This, of course, leaves aside the next point I'm coming to, which is was Redlands a good idea in any event?

5 Now, the evidence of Dr Young is, in our submission, important, because her evidence is that for several months before the May 2012 briefing note there had been internal discussion at a senior level as to whether, if I may paraphrase it, Redlands was a good idea in any event – whether it was a good idea in any event. Her uncontested evidence, Dr Young's uncontested evidence, is that this dialogue occurred for several months before May 2012; the references are 21, 29, 31 and 32 of
10 her statement.

And the gist of the evidence is that the whole concept of Redlands, namely, a single state-wide facility providing extended inpatient psychiatric care for adolescents, was a good idea clinically. And her evidence is that the discussion about whether it was
15 or not had gone on for several months, and we underline that – the submission that that also predated the appointment of Mr Springborg as Minister. The references in our written submissions to this point, Commissioner, are paragraphs 4.11 – we don't need to go to it – and it's developed at 5.16 to 5.22 and 5.23 to 5.27.

20 Now, the evidence that this dialogue about whether Redlands was a good idea clinically: that dialogue pre-dating the Minister – that dialogue pre-dating the appointment of Mr Springborg as Minister has, in our submission, particular significance, because the evidence of the decision maker, Dr O'Connell, was that clinical considerations were the most important reason why he cancelled the project.
25 He said so in his written statement at paragraphs 10(a), and he confirmed that in his oral evidence, which we've quoted at 5.27 of our primary submissions.

And you might recall, Commissioner, he said that the project would have been cancelled irrespective of whether there had been the commission of audit that was
30 implemented to undertake a budget repair strategy. It would have been cancelled irrespective of that because there were compelling clinical considerations that were against it.

Now, those are my first two issues, the EFTRU issue and then the timing of the
35 advice around Redlands. The third point I wish to address is the – is in a little more detail; the August 2012 briefing paper. Can I just tell your Honour the points I was going to make, and if they're of no assistance to you I'll move on. Now, in the submissions of our learned friends, there is a serious criticism made of the Minister in relation to the August 2012 briefing note. It's not the criticism that your Honour –
40 it's not the point that your Honour has raised with me to do with EFTRU. It's a different point. The criticism is to the effect that he signed that briefing note without any departmental advice, without any consideration that it was a purely political decision.

45 COMMISSIONER WILSON: Well, can I say, with respect to Counsel Assisting, I'm not presently of that view. I'm presently of the view that it was a policy decision

he made. It was within his discretion to make such a decision. But I think that he had been not fully advised.

MR O’SULLIVAN: Thank you, Commissioner.

5

COMMISSIONER WILSON: That’s my present view - - -

MR O’SULLIVAN: That’s of assistance - - -

10 COMMISSIONER WILSON: - - - but it’s subject to persuasion to the contrary.

MR O’SULLIVAN: Well, there has been no attempt by – the position is that you’ve got written submissions from my learned friend, Counsel Assisting, and you’ve got very extensive written submissions in response on our side about this point. I’ll just
15 give your Honour the reference to the submissions because given your Honour’s indication it may be I can shorten this. Firstly, your Honour asked Dr O’Connell – your Honour had an exchange with Dr O’Connell where he confirmed to you that he understood he had authority to make the decision to cancel the Redlands project when he approved the briefing note. The reference is T12-15, lines 20 to 24.

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COMMISSIONER WILSON: T12, I’m sorry?

MR O’SULLIVAN: T12 page 15, Commissioner, line 20 to 24.

25 COMMISSIONER WILSON: Thank you.

MR O’SULLIVAN: We’ve spoken of the evidence that that briefing note didn’t ever get to the office of the Minister. We pass over that and note that the only
30 briefing note that he did sign was the August 2012 document. And what he was asked to do, Commissioner, in that document – he was not asked to – I’ll withdraw that. He was asked to approve the planned strategy for targeted rectifications in 12 rural hospitals. That’s what he was asked to approve and he was asked to note that the 41 million funding came not from new money but from cancelling two projects and deferring a third. That’s what he was asked to note in the August briefing note.
35 And one of the cancelled projects was Redlands. He was asked to note that.

We draw attention to the fact that in this briefing note the Minister is in terms not asked to approve the cessations of the Redlands project. And indeed Dr O’Connell said if it’s relevant in his oral evidence that he did not understand that the Minister
40 was being asked to approve the cancellation of the Redlands project in the August briefing note. His evidence is extracted at 5.61 – or referred to – of our written submissions.

COMMISSIONER WILSON: Well, can I just pause there and make two
45 observations. One, my recollection of Dr O’Connell’s evidence – and I’m not sure whether it’s in one of his statements or whether it was in the oral evidence – was to this effect, that he accepted that his cancellation of the Redlands project in May 2012

had for whatever reason not been actioned as such and it had been overtaken by the August 2012 document which was signed by the Minister. And the practical effect of what the Minister was being asked to do was to approve the cancellation of Redlands and direct the funding that had previously been allocated to Redlands to go in a particular direction.

MR O’SULLIVAN: I think, with respect, that that’s accurate. The practical effect of it is that and the reason – with respect, that’s a correct characterisation – is that about the same time there’s that internal document, you might recall, where West Moreton is told – I think it was West Moreton was told that Redlands was cancelled and it came soon after the August - - -

COMMISSIONER WILSON: That was the - - -

MR O’SULLIVAN: - - - briefing note, that that would be strong support for the conclusion that the practical effect of that as perceived within the Department of Health was as your Honour has indicated. But if your Honour is examining the propriety and appropriateness of the steps taken to make the decision it would be relevant to consider exactly what the Minister was asked.

COMMISSIONER WILSON: But see, it wasn’t put before the Minister the Director-General has already approved - - -

MR O’SULLIVAN: That’s right.

COMMISSIONER WILSON: - - - cancellation of Redlands. All we’re asking you to do, Minister, is to approve the reallocation of the funds.

MR O’SULLIVAN: That’s so. And that is what Dr O’Connell’s own evidence was. It’s extracted at 5.61 of our submissions, Commissioner. Could I trouble you to look at that to close off this point.

COMMISSIONER WILSON: The other thing that I wanted to say about the August briefing note and Dr O’Connell is my recollection is that apart from preparing for giving evidence he really had no recollection of the August briefing note.

MR O’SULLIVAN: Yes.

COMMISSIONER WILSON: He wasn’t asked to sign it - - -

MR O’SULLIVAN: That’s right.

COMMISSIONER WILSON: - - - as the D-G. It was Dr Young.

MR O’SULLIVAN: That’s right.

COMMISSIONER WILSON: So his interpretation of it, I don't know is terribly relevant in paragraph 5.61 of your submissions.

5 MR O'SULLIVAN: Well, it – in our respectful submission, it is relevant in this sense, that he was the Director-General at the time. It was with his authority – well, the authority of his office that it has gone to the Minister for - - -

COMMISSIONER WILSON: Yes.

10 MR O'SULLIVAN: - - - consideration and he is properly able to tell you that – it's not really evidence but it's really a submission by him or it's a statement by him that this kind of briefing note is not one that bears the character of requesting the Minister to approve cessation. It's merely informing him that one of the sources of funds to
15 accumulate the 41 million is one – it comes from the Redlands project. And that is consistent with his evidence in answer to a question from you, Commissioner, that he understood on 16 May he personally had authority to cancel that project.

COMMISSIONER WILSON: Anyway I think this is a very small point - - -

20 MR O'SULLIVAN: It is, your Honour.

COMMISSIONER WILSON: - - - and we shouldn't waste too much time.

25 MR O'SULLIVAN: Now, just to give you a reference – 38 and 40 of Mr Springborg's principal statement he gives some evidence about his awareness of the decision not to proceed with Redlands but I don't need to take you to it. Now, our written submissions in answer to the criticisms of Counsel Assisting that – I take on board what your Honour says that you're not persuaded at the moment by those – but
30 the references are 5.56 to 5.65 of our written submissions, 5.84 to 5.105 and 2.7 to 2.8.

COMMISSIONER WILSON: What was the 2.7 – 2.8?

35 MR O'SULLIVAN: Two point seven to 2.8 of our written submissions, Commissioner.

COMMISSIONER WILSON: Yes.

40 MR O'SULLIVAN: There's there an extended discussion of why it's – there's no proper or valid criticism to the effect that his reallocation of the funds was in any way improper and, with respect, associate ourselves with the observation that your Honour has made that it was something clearly within his discretion as Minister but we also say that it's plain that there was proper consideration given to that decision
45 for the reasons we've set in our written submissions. And moreover, the critical document which sits behind this is the 2010 report into the problems with the rural hospitals has never been placed before you. There's been no evidence about it and equally not all of the August briefing note has been placed before you. The

attachments, as we said in our written submissions, contain discussions of the three options that were being considered. That wasn't placed before you or the subject of any evidence.

5 COMMISSIONER WILSON: Well, can I say two things: one, I don't know that it would have assisted the Commission to have had the report on the rural hospitals. But secondly, the documents that have been placed before the Commission in terms of what went to the Minister are all that was provided on the request for information from the Crown.

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MR O'SULLIVAN: Yes. Well, I'm not sure whether that's right. Well, we can come back to that if we need to. The briefing note that did go to the Minister of August, in our submission, one critical aspect of it is paragraph 14 of the briefing note to the Director-General – could I ask your Honour to look at that.

15

COMMISSIONER WILSON: Well, could it come up on the screen, please.

MR O'SULLIVAN: It's LJS.900.001.001 at 0039. While that's coming up, in our submission, there is no proper basis at all for submitting that it was a purely political decision. That submission never should've been made. It should be withdrawn.

20

COMMISSIONER WILSON: I'm not asking for it to be – well, going to direct that it be withdrawn. I will either act on it or not and I've indicated my current view with respect to it. I don't think it needs to be.

25

MR O'SULLIVAN: I don't think it's proper for me to ask you to so direct. I'm simply making clear that our submission is it never should have been put and it should be withdrawn.

30 COMMISSIONER WILSON: Alright. Well, you've made your point.

MR O'SULLIVAN: Thank you, Commissioner. Zero-zero-three-nine, in context, Commissioner, if you go back to 0037 - - -

35 COMMISSIONER WILSON: Yes.

MR O'SULLIVAN: This is the briefing note to the Director General that's attached to the Ministerial briefing note, Commissioner.

40 COMMISSIONER WILSON: Yes.

MR O'SULLIVAN: The Ministerial briefing note, just so you have the context, is the previous page, 0036. It is in the terms I described to you a moment ago. He's asked to approve the strategy. And note bullet point 2, uncontroversial. The next page, 0037, is the DG, Director General briefing note for approval. Your Honour, at page 40 it's signed on behalf of the Director General by Dr Young. Relevantly, paragraph 14, Commissioner, on page 0037 - - -

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COMMISSIONER WILSON: Paragraph 14, did you say?

MR O'SULLIVAN: On 0039.

5 COMMISSIONER WILSON: Yes.

MR O'SULLIVAN: Now, the context in terms of the decision-making is that the Executive Director, it's recorded, has recommended that Redlands be ceased. And the Acting Director General has noted that on 17 August. That's Dr Young. There is, in our submission, nowhere in the evidence and no submission that there existed any basis for either Dr Young or the Minister to gainsay that recommendation in paragraph 14.

15 And, in our submission, insofar as one is concerned with the way the August briefing note in a practical sense approved the cancellation of Redlands, insofar as one is asking that question, the proper conclusion is that there cannot be any proper basis, and there is no proper basis for a finding that the Minister's decision to approve the August briefing note, and in so doing to signify his approval of the cessation of Redlands, there's no proper basis for criticising that at all in circumstances where the Executive Director of Mental Health has recommended that course.

25 In our respectful submission, in addition, insofar as your Honour is concerned with it, our submission is that Dr Kingswell's recommendation was a correct recommendation to make. And, in particular, as we've said in our written submissions, the discussion paper that Children's Health Queensland generated in January 2016, in our submission, provides further support to the appropriateness of the judgment he made that this was a project that ought not proceed.

30 COMMISSIONER WILSON: Sorry, you're saying that the subacute beds paper 2016 provides further support retrospectively?

MR O'SULLIVAN: No, no, no. What I mean to say is in terms of the merits, whether he was right or wrong to approve the cessation of Redlands, insofar as that is a matter that you consider is relevant, whether he was right or wrong. It's plain that was his view and he recommended it. Our submission is that in terms of whether that was a correct decision or an incorrect decision, we say that it was one that was plainly open to Dr Kingswell to form that view. And if it's relevant to inquire into whether he was right or wrong, we say it's not necessarily but that the subacute beds paper, when looked at, indicates that he was almost certainly correct because that paper, when one looks at it, essentially comes to the same conclusion.

COMMISSIONER WILSON: Well, we'll come to that in due course.

45 MR O'SULLIVAN: Yes. Now, that's the end of point 3. Our point 4, your Honour, is that – our fourth point, Commissioner, is that in the 250 pages of submissions of our learned friends, Counsel Assisting, after August 2012 there is no criticism of the Minister for his conduct at all. And the relevant parts of the

submissions of Counsel Assisting are 119 to 162 which concerns the authority to close the Centre and 163 to 269. Now, the next – that’s our point 4.

5 Our next point, point 5, Commissioner – and we’d only add to our point 4 that that, in our respectful submission, is entirely appropriate. And no criticism has been made by Counsel Assisting of the Minister because there is no proper basis – I’ll withdraw that. There is no basis for a criticism of his conduct after 2012. We would characterise it as being conduct whereby he was provided with advice and acted in accordance with it. And I can develop that if I need to but we’ve developed it in our
10 written submissions.

COMMISSIONER WILSON: One issue which you haven’t really touched upon is the fiscal context in which the decision to cease Redlands was made. You’ve dealt with Dr Kingswell’s view. You’ve dealt with Dr – very quickly, with Dr O’Connell
15 saying, well, the clinical reason was compelling.

MR O’SULLIVAN: Yes.

COMMISSIONER WILSON: But the fact of the matter seems to be that money
20 was very tight, that they had to find money or they had to prioritise projects, it seems, because the kitty was only so deep. And that that involved reallocation of funds.

MR O’SULLIVAN: Yes.

25 COMMISSIONER WILSON: And that it was a reallocation of funds which was involved in the August briefing note. Dr O’Connell’s evidence, as I recall, his written evidence, is to the effect that for several years there had been an overspend in the Health Department. That I think he said in 2010 to 11 – so that’s before the change of government – there’d been an overspend of, was it 291 million? Then
30 there is the evidence that in the first three months, I think it was, of the new government they were told they had to find 100 to \$120 million in savings. It’s somewhat unrealistic not to discuss that at least as part of the context - - -

MR O’SULLIVAN: Yes.
35

COMMISSIONER WILSON: - - - in which Redlands was cancelled.

MR O’SULLIVAN: With respect, we don’t differ from you, Commissioner. We’ve dealt with that issue in our written submissions. I may deal with it orally briefly at
40 page 29 of our written submissions at paragraphs 5.72 through to 5.78 we consider that contextual point. The first submission we make at 5.73 is that there’s no evidence that funding issues caused the project to be ceased. And, indeed, notwithstanding their criticism of the Minister surrounding the August briefing note, Counsel Assisting themselves concede – this is 5.74 – they concede that there is no
45 direct evidence that the Department’s need to find savings altered the decision making in relation to the Redlands Project.

COMMISSIONER WILSON: Well, why, in your submission, did Dr Kingswell give such colourful evidence in this regard? He said we were directed to find savings etcetera, etcetera.

5 MR O'SULLIVAN: Well, in relation to Dr Kingswell's evidence, there's firstly a problem of timing, because he says that he spoke to Dr Cleary about this. That's evidence - - -

COMMISSIONER WILSON: About what?

10

MR O'SULLIVAN: About what your Honour just said, that we were directed to find savings, and I spoke to Dr Cleary about that. You might recall that evidence he gave. The problem with that evidence is that it's very unlikely to be May 2012, because Dr Cleary didn't become involved in mental health until after July 2012. He then slotted in where Dr Young had been. So if there was a discussion of the kind that the witness recalls, the inference is that that occurred after July 2012. That's our first - - -

15

COMMISSIONER WILSON: Is that correct? Pre-July, Dr Kingswell reported to Dr Young.

20

MR O'SULLIVAN: Yes.

COMMISSIONER WILSON: Did she not report to Dr Cleary, who reported to the Director-General?

25

MR O'SULLIVAN: That's right.

COMMISSIONER WILSON: So in that way, it went Kingswell, Young, Cleary, Director-General - - -

30

MR O'SULLIVAN: That's right.

COMMISSIONER WILSON: - - - pre-July.

35

MR O'SULLIVAN: Yes.

COMMISSIONER WILSON: And post-July, it went Kingswell, Young, Director-General?

40

MR O'SULLIVAN: No. It went – after post-July, it went Kingswell, Cleary, in relation to Mental Health. Young stepped to one side.

COMMISSIONER WILSON: That's right, Dr Young dropped out of it.

45

MR O’SULLIVAN: She stepped to one side. And her evidence is that I had – I, the chief medical officer, had oversight of mental health, and that was within my responsibility, but after July I stepped out of that role. And - - -

5 COMMISSIONER WILSON: Well, she was still chief health officer, but she didn’t have responsibility for mental health.

MR O’SULLIVAN: Yes. Yes, Commissioner.

10 COMMISSIONER WILSON: So pre-July, the hierarchy, going from the bottom up, was Kingswell, Young, Cleary, Director-General, was it not?

MR O’SULLIVAN: Yes. That’s right, your Honour. And - - -

15 MR DIEHM: Commissioner, if I might, just because it might be - - -

COMMISSIONER WILSON: If I’m wrong, tell me.

20 MR DIEHM: My understanding – my recollection of the evidence was that Dr Young did not report to Dr Cleary prior to 1 July 2012.

COMMISSIONER WILSON: To whom did she report?

25 MR DIEHM: The Director-General.

MR O’SULLIVAN: Yeah. I’m told that’s the case by my learned – by Mr O’Regan.

30 COMMISSIONER WILSON: I really need to check that, because I’m not sure.

MR O’SULLIVAN: We’ll check that. My perception from the evidence is that Dr Cleary had no involvement with mental health pre-July 2012. That was my impression from the evidence. But he did have an involvement after July 2012, which is – which would be consistent with a chain of command which went Young, O’Connell.

35 COMMISSIONER WILSON: Well, I will look at my own research over the lunch break, because I’m - - -

40 MR O’SULLIVAN: We’ll check that and - - -

COMMISSIONER WILSON: I stand to be correct.

45 MR O’SULLIVAN: Now, the context is important, because if there was a discussion of the kind the witness recalls, where he spoke to Dr Cleary about this, we say the proper inference is that he must have been speaking after July 2012 about

that, and that would be consistent with that discussion occurring in the context of the August 2012 briefing note.

5 Commissioner, the way in which – we make a second submission. Firstly, our
second submission is what appears at 5.78 of our written submissions. The detailed
evidence of Dr Cleary is that in searching for savings to bring the budget – to bring
the spending back within budget processes were put in place to ensure that the
savings strategies were clinically appropriate and didn't cause any loss of services,
and he spoke about a committee that was formed, the Budget and Fiscal Examination
10 Committee, and that it included Dr Cleary and others, and that the focus was to
ensure savings were clinically appropriate.

Now, the third aspect of it is this, your Honour: in our submission, the proper
characterisation of this contextual issue is really as follows: the request to find – to
15 bring the budget back into surplus and to focus on spending forced the Department to
focus on what was appropriate and not appropriate to go forward, and what it did,
really, was crystallise – it crystallised the significant problems that existed with the
Redlands Project, both from a purely project point of view, Commissioner – the site
problems, the budget problems, the fact that it was so out of date, it was regarded, as
20 some of them say, to be unviable – and it also crystallised the more significant
problem, that it was regarded as clinically inappropriate. It crystallised the problem
that it was clinically inappropriate, and it forced attention to be given to whether it
was a proper use of public money to commit to this project.

25 Dr O'Connell says very clearly – and he was not – there's no contrary evidence and
he was not challenged on this – that that clinical consideration was the key driver that
motivated him when the decision was made.

30 COMMISSIONER WILSON: You haven't commented on a document which I
know is in evidence. It consists of about two pages of a CBIC submission - - -

MR O'SULLIVAN: Yes.

35 COMMISSIONER WILSON: - - - in 2012 - - -

MR O'SULLIVAN: Yes.

40 COMMISSIONER WILSON: - - - which, from recollection, said relevantly that the
deferral of Redlands was – I can't remember the word used, but the possibility or a
possible source - - -

MR O'SULLIVAN: It was being - - -

45 COMMISSIONER WILSON: - - - of a saving.

MR O'SULLIVAN: That's right. Your Honour is right. In our written
submissions, what we've said about that is that the author of that document probably

was unaware – that he sent the one needs to make a finding about it – was probably unaware of the Director-General’s cancellation of the project. However, another construction – if your Honour wishes to make a finding about it, another construction is that the author was aware – we don’t know who the author was, your Honour – he
5 was aware of it, but it was considered that it needed some sort of imprimatur to the Minister.

But the difficulty with that construction is that there’s nothing in the May briefing note to do with deferral. The May briefing note is about cancellation. The exact
10 origin of the concept of deferral is the subject of a lacuna in the evidence, which is unsurprising, because it appeared in a Cabinet-in-confidence document.

COMMISSIONER WILSON: But then you get the August briefing note, which originated not with Dr Kingswell, but in another section of the Department, which
15 clearly is to do with the need to find money in a tight environment. The priority had been assessed as the hospitals, and that’s – that was the assessment that had been made. The money had to be found somewhere - - -

MR O’SULLIVAN: Yes.

20 COMMISSIONER WILSON: - - - and it was found in part in the cancellation of Redlands.

MR O’SULLIVAN: That’s so. And the alternative was to go to Treasury and ask
25 for more money. So the two options were to go to Treasury and to ask for more money or to cancel existing projects or to defer them so that the budget stays the same. They’re not asking Treasury for more money. That was the decision that was taken. We wouldn’t disagree that that was a matter for an elected government to make; it has charge of taxpayers’ funds.

30 But, your Honour, in our respectful submission, it’s an unsurprising sequence of events to find that if there was a desire not to go to Treasury, but rather to look for savings within the existing budget, if \$41 million was needed urgently because these issues, in that rural hospitals were very urgent issues, it’s unsurprising that one of the
35 projects that was identified as a source of funding was a project which had, a number of months ago, been the subject of the Director-General’s decision to cancel it, and
- - -

COMMISSIONER WILSON: Yes, but the – I keep coming back to the point that
40 there was nothing before – there was nothing, as I recall, in the August briefing note to the D-G or the August briefing note to the Minister to say the Director-General has already formed the view that this should be cancelled. There was, perhaps, something which might have given the decision makers some comfort in paragraph
14, which you took me to earlier, which said Dr Kingswell recommends the cessation
45 of Redlands - - -

MR O’SULLIVAN: Yes.

COMMISSIONER WILSON: - - - and he has no objection to whatever they were going to do in Townsville to save money.

5 MR O'SULLIVAN: The point your Honour makes is, with respect, not insignificant and we say this about it, that the Director-General briefing note that is attached to the August paper does not in terms seek approval for the Director-General to cancel the Redlands facility. You may recall that instead Jeannette Young has simply circled that she notes that that is being done. She notes it.

10 COMMISSIONER WILSON: Because it was seeking the approval of the Minister who was a higher authority than the D-G.

15 MR O'SULLIVAN: No. With respect, the structure of these is that one has the Director-General who must approve or note as the case may be and then the Minister after that is asked to approve or note as the case may be and what one finds at LJS3 which is the August briefing note is a document for the Minister to approve or note
- - -

20 COMMISSIONER WILSON: Yes.

MR O'SULLIVAN: - - - and behind that, Commissioner, there's another briefing note for approval to the Director-General to approve or note - - -

25 COMMISSIONER WILSON: For approval or noting?

MR O'SULLIVAN: I'm so sorry.

COMMISSIONER WILSON: For approval or noting by the D-G?

30 MR O'SULLIVAN: It has an entry where the D-G can either approve or note and what has in fact happened on this document is that Jeannette Young has circled noted. So she hasn't - - -

35 COMMISSIONER WILSON: Yes.

40 MR O'SULLIVAN: - - - in terms. The only reason we mention it, Commissioner, is because one would ordinarily require approval of the Director-General to cease the Redlands facility. On the evidence before you that had indeed occurred on 16 May 2012. It doesn't provide an answer to your Honour's observation why does the August note not note somewhere that the Director-General has already approved it. It doesn't provide an answer to that question. It's the sort of thing that one might expect to see there. The answer is that there's no evidence about that. The author of the briefing note was someone called Rosemary Hood from infrastructure and the content was verified by Glenn Rashleigh, the chief health infrastructure officer but
45 those individuals didn't give evidence in - - -

COMMISSIONER WILSON: No. I don't know what they would have added, with respect.

MR O'SULLIVAN: No, well - - -

5

COMMISSIONER WILSON: I mean, the facts – I don't want to keep repeating it because I think we're wasting time – but the facts as I see them are these: Dr O'Connell approved cessation in May. For whatever reason that seems not to have been actioned. He accepts that what he did in May was overtaken by the August documents. In August the Minister approved the redirection of funds and that redirection of funds necessarily entailed approving the cessation of Redlands.

10

MR O'SULLIVAN: Yes.

15

COMMISSIONER WILSON: I think it's as simple as that.

MR O'SULLIVAN: I think that's right, with respect, your Honour. It is as simple as that. I was simply attempting to assist you in relation to your observation it's odd that the August briefing doesn't refer to May. And I suppose all I'm saying is we don't really know what that's the case.

20

COMMISSIONER WILSON: Okay.

MR O'SULLIVAN: That is our point 4. Our point 5 is the ECRG report. It arises out of submissions of our learned friend, Mr Freeburn, where he made submissions to you, Commissioner, in relation to what's the proper construction of the ECRG report – a sort of an interpretation point. Now, the submissions are made against the background where you've heard evidence from Dr Kingswell and others to say, well, we understood – or Kingswell says I didn't understand what exactly tier 3 was meant. Other said, well, we thought it was a service, it didn't need to be bricks and mortar. And the thrust of the submission from our learned friend is, well, if you look at it carefully they were talking about a bricks and mortar facility. If you look at it carefully you can see that. And the most powerful – the point most strongly in support of that submission is that part of the ECRG elements document which spoke of – the words were designed, specific and clinically staffed bed-based service.

25

30

35

COMMISSIONER WILSON: I think that's in the preamble, isn't it?

MR O'SULLIVAN: Yes. It's in the preamble. Yes. Now, in our submission, that a discussion of the evidence is profoundly incomplete because what it has ignored is what happened after that – what happened after that in relation to the reception of that recommendation by the planning group and thereafter what the West Moreton board did. I want to simply focus on the planning group. Can I ask your Honour to look at our submissions – I'll take your Honour to the document if that's convenient.

40

45

COMMISSIONER WILSON: Yes.

MR O’SULLIVAN: The planning group took the ECRG recommendations – and you were not taken to this document by our learned friend – and said some very important things about this particular recommendation. The planning group can be found exhibited to the statement of Dr Corbett. It’s exhibit MC19. The reference is
5 WMB.900.0001.0001 at 00162. What your Honour sees at attachment – what your Honour sees at 162 is an attachment to the board committee paper of 24 May 2013.

COMMISSIONER WILSON: Yes.

10 MR O’SULLIVAN: A very important event. What you have is the planning group recommendations. Can I ask your Honour to look at item 2(a).

COMMISSIONER WILSON: Yes.

15 MR O’SULLIVAN: Planning group recommendation. What the planning group says is that:

Models involving a statewide clinical bed-based service such as the Barrett Adolescent Centre –

20

And we would add also or equally the Redlands centre, equally the Walker centre –

are not considered contemporary within the National Mental Health Service Planning Framework in draft. However, there are alternative bed-based models involving clinical and non-clinical service components, eg, YPARC in Victoria, that can be developed in Queensland to meet the requirements of this recommendation. Contestability reforms in Queensland may allow for this service component to be provider agnostic.

25

30 Just pausing there, that last point simply means, I think, that a non-government organisation can provide the service.

COMMISSIONER WILSON: Can I foreshadow something. If there is going to be reliance upon the assertion that models involving a statewide clinical bed-based such
35 as the Barrett Adolescent Centre or the Walker centre are not considered contemporary within the National Mental Health Service Planning Framework I’m going to have to have some detailed submissions from Counsel Assisting and from others who are interested in the point as to just how to interpret that framework.

40 MR O’SULLIVAN: Yes.

COMMISSIONER WILSON: Because I am conscious that both the Barrett Adolescent Centre and the Walker Unit get express mention in the framework.

45 MR O’SULLIVAN: That’s right. And Dr Kingswell gave evidence about that very point and his - - -

COMMISSIONER WILSON: Well - - -

MR O'SULLIVAN: I'm so sorry. I don't want to pre-empt - - -

5 COMMISSIONER WILSON: No. The framework – the relevant documents are in evidence.

MR O'SULLIVAN: Yes.

10 COMMISSIONER WILSON: And I really am going to have to have submissions, not on what Dr Kingswell says the framework means but on how, looking at it from the point of view of the interpretation of a document - - -

MR O'SULLIVAN: That the words on the page - - -

15

COMMISSIONER WILSON: - - - it really means. And I'm willing to set aside time for that because I think this seems to be an issue on which a number of people are purporting to rely - - -

20 MR O'SULLIVAN: Yes.

COMMISSIONER WILSON: - - - without that sort of detailed analysis.

25 MR O'SULLIVAN: That can be done, your Honour, certainly. There are two issues. What do the words mean and, two, what did Dr Kingswell believe.

COMMISSIONER WILSON: Yes. Which may be the same and they may be different.

30 MR O'SULLIVAN: No, no. Quite, quite. And I suppose the other – in terms of what the words mean you may or may not take the view that you need some sort of expert assistance to interpret it. It may be that you don't need it but let's put that to one side.

35 COMMISSIONER WILSON: Well, I'm not at this stage proposing that we bring in an expert with respect to it.

MR O'SULLIVAN: No. Well - - -

40 COMMISSIONER WILSON: I'll listen to submissions but I'm saying that's how I presently feel.

45 MR O'SULLIVAN: I understand, your Honour. There's no doubt from the evidence that – this was Dr Kingswell's belief, indeed, fervently held belief – what we see in planning group 2(a). It was his belief at the time the planning group recommendations were handed down and it continues to be his belief today, as expressed forcefully when he was cross-examined by our learned friend Counsel

Assisting about the National Mental Health Service Planning Framework. And he said, you will recall, and I'll give your Honour the references:

5 *I know that Barrett Centre is referred to. It's simply one of the things that was
– one of the services that was examined when this was put together. And it in
no way means that it's being endorsed.*

The contrary is true – I'm paraphrasing. The National Framework is against the
Barrett Centre and, we would say, equally against a Redlands type facility. And he
10 also gave evidence that one real world reason why you must toe the line – because
you don't get Commonwealth funding unless you bring yourself within the National
Framework. And I think Dr Kingswell gave that evidence and perhaps others did.
Now, what's relevant for your Honour's consideration is you've been – submissions
have been made to you about what the ECRG recommended about a tier 3 service.
15 We direct your Honour's attention to the fact that the Planning Group said something
very important about that recommendation which is set out here, that:

20 *A statewide clinical bed based service is not considered contemporary within
the National Framework. However, there are other types of services that can
be developed in Queensland to meet the requirements of this recommendation.*

And then there's a reference to non-government organisations. Now, there can be, in
our respectful submission, no proper engagement with whether what West Moreton
did or what the Department of Health did was in some sort of disconformity to what
25 they should've done by reference to the ECRG. You can't properly engage with that
question until you go through the door which is the Planning Group. And we simply
make the point that when assessing what occurred, one must look at what appears at
paragraph 2(a). That's our first point.

30 Our second submission about that is that – our second submission about that is as I
will show you in a moment, Commissioner. Later, when we get to July 2013 there's
the briefing note to the Minister which I'll come to, which he didn't see at the time
but which came to his office and which was signed by Dr Cleary – I'll withdraw that
– signed by Dr O'Connell. When we get to that document, what you will see is that
35 the advice given to Dr O'Connell was that a YPARC type facility is being – can
come online by January 2013. And we draw the link between that reference to
YPARC to the Planning Group recommendations.

40 And the third point we'll come to in due course is that the evidence of Dr Steer was –
and I'll take your Honour to the evidence – was that the Greenslopes facility that was
brought online in, I think, March, was very similar to a YPARC.

COMMISSIONER WILSON: But it's not, is it?

45 MR O'SULLIVAN: Well, that's his evidence.

COMMISSIONER WILSON: Well, that's not my – the analysis that I understand to be correct. My understanding is that looking at the AMHETI continuum, the YPARC seems to be more like a Step Up Step Down and the Greenslopes is a youth resi.

5

MR O'SULLIVAN: Yes. I'm not speaking about AMHETI. I'm speaking about the question of whether what was done at Greenslopes can be said to match what – can be said to match two things. I'll withdraw that. Can be said in any way to match what the Director General was told in July 2013 was being worked on, namely - - -

10

COMMISSIONER WILSON: And I don't know that it can be.

MR O'SULLIVAN: Well - - -

15

COMMISSIONER WILSON: That's the difficulty I have. And I thought that at the time, sort of post 24 May, leading up to closure, Dr Kingswell, for example, was of the view that both a YPARC and a youth resi could be got up and running by closure.

MR O'SULLIVAN: Yes.

20

COMMISSIONER WILSON: And that he was frustrated that this was not happening.

MR O'SULLIVAN: Yes.

25

COMMISSIONER WILSON: But that is two separate things.

MR O'SULLIVAN: There's support for what your Honour says in that there was certainly a plan for a youth resi at Logan which didn't eventuate. What I'm drawing attention to is the evidence that we have from Dr Steer at paragraph 57.

30

COMMISSIONER WILSON: Yes.

MR O'SULLIVAN: I'm going out of sequence but I just wanted to tell your Honour where I was going. But given we're here, I'll take your Honour to it. It's exhibit 125, Commissioner.

35

COMMISSIONER WILSON: This is Dr Steer's statement?

40

MR O'SULLIVAN: Yes, Commissioner. Would you be - - -

COMMISSIONER WILSON: Yes. Paragraph 57?

MR O'SULLIVAN: May I go to that paragraph?

45

COMMISSIONER WILSON: Yes, if you want to.

MR O’SULLIVAN: CHS.900.002.0001 at point Delium 013, paragraph 57.

COMMISSIONER WILSON: Scroll down, please. Thank you.

5 MR O’SULLIVAN: He does not say it’s a YPARC. And I think that’s consistent with your Honour’s understanding. He doesn’t say it is but he says it’s very similar to that and it was established in Greenslopes in February, accepted its first patients in March.

10 COMMISSIONER WILSON: Well, I see he says that.

MR O’SULLIVAN: Well, he wasn’t – now, your Honour may not like this submission but it wasn’t said to him that he was wrong. And I’m not aware of evidence, direct evidence, from any person as to exactly what Greenslopes consist of or exactly and to what extent - - -

COMMISSIONER WILSON: Well, there is evidence. There is evidence from people from Aftercare as to what it does – someone with a very Welsh name, a woman. And there’s a man too.

20 MR O’SULLIVAN: Yes, yes, yes.

COMMISSIONER WILSON: I think they have a German name.

25 MS McMILLAN: Miff Pitcher, I think it is.

COMMISSIONER WILSON: That’s right.

MR O’SULLIVAN: Thank you. Going back to the Planning Group document, what we see is a rejection of the idea that it’s contemporary to have a statewide clinical bed based service. It’s rejected on that document and it’s said, well, there are alternative models and YPARC is something that’s put forward at that point as a possible model of service, if I can put it that way. The other aspect we draw attention to, Commissioner, is that the ECRG document itself it says very clearly is a high level and conceptual document only. The relevant references can be found in our submissions at 5.127 and 5.128.

COMMISSIONER WILSON: Keep an eye on the time, Mr O’Sullivan.

40 MR O’SULLIVAN: Yes, your Honour. Your Honour has a – may I proceed? It’s not on the screen but your Honour has a hard copy?

COMMISSIONER WILSON: Yes. I’ve got a hard copy.

45 MR O’SULLIVAN: 5.127 is evidence of the chair of the Group that it was not their role to develop a precise model of service that could be implemented. And that Dr Geppert says it was a systemic approach. The aim was to

recommend broad components of a service continuum. Importantly, at 5.128 if you look at the language of the report itself, it calls itself an elements document and it states that it's not a model of service but is, instead:

5 *A conceptual document that delineates components of a service continuum and it does not define how the key elements would function at a service delivery level. And nor did it incorporate funding and implementation processes.*

10 The reference at 235 is to page 2 of the report. I can take your Honour to that if you wish but the important point is that the report does not set out to be a model of service at all. It's a much higher level of abstraction. The burden of the submission of our learned friend is they were recommending a bricks and mortar, design specific, bed based service. We accept that there's support for that interpretation in the preamble. But when one looks at it in context in a responsible and complete way,
15 one would conclude that tier 3 is properly to be regarded as a service element.

 How you provide tier 3 is not something that the ECRG purports to mandate. That would be entirely inconsistent with its remit and mandate as described in itself to be a conceptual document that does not define how they key components would
20 function at service delivery level. It's highly unsurprising that that would be the qualification to the report given the timeframe and the absence of direct input from key planners within the Department of Health – for example, Dr Kingswell. Now, I see the time, Commissioner.

25 COMMISSIONER WILSON: I think we'll adjourn til 2.30.

 MR O'SULLIVAN: Thank you.

30 COMMISSIONER WILSON: And can I make it clear that I will want some submissions on the National – whatever that framework is called.

 MR O'SULLIVAN: Yes. Thank you.

35 MS WILSON: Commissioner, would that be – how do you envisage that to be done?

 COMMISSIONER WILSON: How do I envisage it to be done? The way submissions are always done.

40 MR O'SULLIVAN: Well, for Friday, I think, your Honour.

 MS WILSON: For Friday.

45 COMMISSIONER WILSON: Well, if you're not in a position to do it today, we'll do it on Friday. But I will want those submissions.

 MR O'SULLIVAN: They'll be done, your Honour.

and bricks and mortar facilities. Secondly, your Honour requires assistance in terms of what the document means if you read it.

5 I propose to deal with the first point, that – what Dr Kingswell understood. I haven't had time over the lunch adjournment to deal fully with the second point, but I will come back, the second point being when you read the document whole as it mean, but I'll do the best I can.

10 COMMISSIONER WILSON: Well, with respect to the second point, don't make any submissions at this stage. Before we conclude this afternoon, I'll discuss with all of the counsel in the room when we're going to slot in those submissions - - -

MR O'SULLIVAN: Yes.

15 COMMISSIONER WILSON: - - - and in what form.

MR O'SULLIVAN: Thank you, your Honour. When I touch on the evidence that you do have from Dr Kingswell, there will be some page references, but I doubt it's comprehensive. The other – the only – and, finally, should arise in the context of the
20 – under the heading ECRG Report is the January 2016 discussion paper that your Honour indicated that you would wish to hear submissions on if I was going to say that it, as a merits point, in terms of the correctness of the decision, supported the decision to cancel the Redlands facility. I'm going to deal with that document in this context as well, because the submission we'll make is that the planning group
25 recommendation, as a matter of substance, dovetails precisely with – I'll withdraw that – dovetails largely with the discussion paper produced by Children's Health Queensland in terms of what is the correct way in which to direct public resources in caring for this cohort.

30 The national framework document – the references to – in the evidence to Dr Kingswell's statements before you as to what he understood it meant or what he understands it to mean, I have five references. I was planning to take your Honour to them, if that would assist. The first is transcript day 13, on page 19, your Honour – it's the first of the five references – line 5, your Honour, lines 5 to 25. Can I just put
35 this in context, that the witness, in the previous page, is – he says that the Queensland Plan for Mental Health was obsolete by May 2012. He says, firstly, that was funding reasons; they had moved to unit funding. And then at the top of page 19, the witness says at line 5 – this is the end of the funding point:

40 *This plan was obsolete for that reason.*

We put that to one side; that's the funding reason. The witness then goes on to say:

45 *It was also made in part obsolete by the National Mental Health Services Planning Framework.*

I invite your Honour to read what appears from there down to line 22, if it please the Commission.

COMMISSIONER WILSON: Yes, I've read that.

5

MR O'SULLIVAN: To summarise, he says in this piece of his evidence that the national framework document endorses a YPARC model for treating this patient cohort, if I can use that abbreviation. By planning group, he means the planning group for the national health framework paper, and available to them other potential models such as Walker and Rivendell in New South Wales and the Barrett Centre in Queensland. They did not come back and say that they thought the Barrett Adolescent Centre or the Redlands unit that would have replaced it was a service element that they wanted to see in Australia. That's his assertion.

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15

Now, the next piece of evidence is at page 28, at lines 10 to 30. Again, if I may contextualise it for your Honour, at page 28 the witness was being asked questions about a visit that was made to Victoria to examine the YPARC facilities in 2013, at line 7. And at 10 to 15, he's being shown a document which consisted of a communication, and it's authored by him; one sees that at 10 to 15. He there asserts that the tier 3 recommended by the ECRG is at odds with the National Mental Health Services Planning Framework and will struggle to attract attention in the ABF model, which is a funding model prior to the state funding. And then he gives additional evidence down to line 28, your Honour.

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COMMISSIONER WILSON: Yes, I see that.

MR O'SULLIVAN: I'm sorry. Did you say you read it?

COMMISSIONER WILSON: I see that.

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MR O'SULLIVAN: That, I think, is the evidence that I had in mind when I said that there was some evidence that if you don't come within the framework you don't get funded; that's one piece of – that's one occasion in which that evidence was given.

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Third reference: page 36, your Honour, line 40. At line 30, the witness has been taken to a document, a very thick document, which is the national framework document. It happens be the 2013 version, and he's giving evidence about it. To make it comprehensible, may I hand up a copy of the hard copy? It's on its way. The reference – the Delium reference, your Honour – we'll give you a hard copy in a minute – is DBK.500.002.0620. It's much easier to manage with a hard copy because it's so long.

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45

Your Honour will see that this is dated October 2013, so it's – I draw attention to the fact that it's not – it, on its face, does not appear to be the document that – it's not dated May 2012, nor is it dated August 2012. The witness is giving evidence about page 253 of the document. If the Commission could be shown page 253, which is

Delium number 0872. Commissioner, at – the context is 0871. If it's convenient, I'm handing a hard copy to the bailiff. 0871, Commissioner, has a heading 3.3 – has a heading, 2.3.2, 0871, page 252 in the bottom right-hand corner.

5 COMMISSIONER WILSON: Yes, I have that in hard copy now.

MR O'SULLIVAN: Thank you, your Honour. The – at 252, there's the heading, and you'll see the subheading, Step Up Step Down, Rehabilitation, Intensive Care; that appears on 252. Over on 253, there's a heading, Inclusions and Exclusions.
10 And in due course, you'll need to be given submissions as to where this fits into the whole document. But just looking at what the witness was asked about, your Honour will see there's a heading Inclusions on 253, the first bullet point is:

Community-based residential units which provide subacute services –
15
Just pausing there, that's quite different and – from either the Barrett or Redlands model, and at the second point there's further development of that. Third, fourth, fifth, sixth and seventh, really, explain what this subacute – this particular subacute service is, and at the bottom of the page your Honour will see example services, adult
20 prevention and recovery care park units in Victoria.

And in the witness' evidence at page 36, at line 44, your Honour – 43 and 44, his evidence is The Park Centre for Mental Health – I withdraw that. His evidence is:

25 *So they're the services that were surveyed and considered as potential models that be included in the service element description.*

So the gist of his evidence is that what you see on the last line is an exemplar.

30 COMMISSIONER WILSON: So that is on page 253. Now, go over the page to 254.

MR O'SULLIVAN: Yes, your Honour.

35 COMMISSIONER WILSON: The Barrett Adolescent unit features.

MR O'SULLIVAN: That's right. And he was asked about that and he said that was one of the units that was looked at and he says that in his interpretation that is in no way intended to be an endorsement of that model of care. And I'll find the reference
40 in the evidence to that. So your Honour, I was taking you to – in his evidence 13-36 at line 43 down to 47 and then if you look at the top of the page 13-37 and at lines 1 to 12 he gives the evidence, I think, that I just described a minute ago.

COMMISSIONER WILSON: Sorry, I'm not following. So I think what you need
45 to do is go to the A3 - - -

MR O'SULLIVAN: Yes.

COMMISSIONER WILSON: - - - which I've referred you to - - -

MR O'SULLIVAN: That's right. Because - - -

5 COMMISSIONER WILSON: - - - and have a look at the services.

MR O'SULLIVAN: - - - in support of his contention that Barrett is not being identified as an example, he refers to the A3 document. Can I hand up a copy of the A3 document. I'll give you the exhibit number when we have it, Commissioner.

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COMMISSIONER WILSON: Thank you.

MR O'SULLIVAN: It's exhibit 234, I'm told.

15 COMMISSIONER WILSON: And what do I look at on the A3 document?

MR O'SULLIVAN: It's the green, your Honour.

COMMISSIONER WILSON: Yes.

20

MR O'SULLIVAN: Third from the right.

COMMISSIONER WILSON: Yes, I've got that.

25 MR O'SULLIVAN: And you will see there's a heading – this is what I interpret his evidence to be, your Honour. There's the heading Acute Inpatient Services Hospital-based.

COMMISSIONER WILSON: Yes.

30

MR O'SULLIVAN: And one has different age categories: acute child and youth. So these are acute units for children and youth, your Honour. Then there's a heading Subacute Services, your Honour.

35 COMMISSIONER WILSON: Yes.

MR O'SULLIVAN: And the first box under the heading is Step Up Step Down – youth (residential).

40 COMMISSIONER WILSON: Yes.

MR O'SULLIVAN: Underneath that it says Step Up Step Down adult residential. Then there's rehabilitation adult and older adult residential. Then there's subacute older adult over 65 hospital and then subacute intensive care services hospital. And his evidence at the stop of page 37 is to the effect that the subacute services – as I understand his evidence the subacute services that are endorsed for youth is a Step Up Step Down – Step Up Step Down residential service and is not something like the

45

Barrett Adolescent Centre. Now, the question arises what about the last box – subacute intensive care services hospital. Now, in this part of his evidence he doesn't explain – because he wasn't asked – what he has to say about that. But he does later in his evidence and I will take you to it. What he says is that subacute
5 intensive care hospital is not a youth service as he understands it. It is a service only for adults and I'll come to that part of his evidence.

Now – and one infers that the first box says Step Up Step Down – youth – one infers he's interpreting this to mean the youth services for subacute care in a residential
10 setting is the Step Up Step Down and they are not a subacute intensive care service because that doesn't have any youth identifier with it. But that's not – I'll take your Honour to his evidence and then to the relevant piece of the framework. The next piece of his evidence after page 37 appears, your Honour, at page 48. And at lines 1
15 through to 48 he gives some further evidence about – I understand this to be in relation to the A3 document before you, Commissioner. You will see at line 14 he speaks of the green - - -

COMMISSIONER WILSON: Yes. Yes.

20 MR O'SULLIVAN: And at lines 40 to 44 he gives the evidence that I indicated earlier.

COMMISSIONER WILSON: Yes, I see that.

25 MR O'SULLIVAN: So he says – in relation to the box I would direct your Honour's attention to:

30 *It was never envisaged that this sub-category would include a child and youth element.*

And where did you get that understanding from?---From the planning team.

He means there the planning team that sat behind this document that's said to have cost \$2 million. But that's not – there's one more piece of evidence that's important
35 to your Honour. I'll just give your Honour the reference. It's at page 63 and 64 where I ask the witness some questions and I took him to some other parts of the document. I won't ask your Honour to read it but I will just – let me withdraw that. I'll take it in stages. I asked him about page 255 at line 4, your Honour, then at line 19 I took him to page 268. And then at line 30 to 34 his evidence that the Barrett
40 Centre was not part of the subacute intensive care hospital model. And then at line 35 of page 63 – I want to take you to, firstly, two hundred and fifty - - -

COMMISSIONER WILSON: Before you do that. I'm watching the clock. I don't want to spend too much time on this. We started off with a reference to the Barrett
45 Adolescent Centre. Now, we seem from the transcript to have a reference to the Walker unit as being included. Is that correct?

MR O'SULLIVAN: That's right. And that's what I was going to take your Honour to. That's right. Because that's exactly right, your Honour, and that's what I want to show you.

5 COMMISSIONER WILSON: Okay.

MR O'SULLIVAN: Page two hundred and – if you don't want me to cover this, your Honour, I won't.

10 COMMISSIONER WILSON: No, do, do.

MR O'SULLIVAN: Two hundred and – if your Honour goes to the actual planning document, page 255. That's the service element for Step Up Step Down youth resi, 255. And the sources are down there and they don't include Barrett. And he says:

15

I am reassured that Barrett wasn't intended.

COMMISSIONER WILSON: Yes, go on.

20 MR O'SULLIVAN: But – and this is what I wanted to show your Honour. Page 268, this is the subacute intensive care hospital. And if I draw your Honour's attention to the target age - - -

COMMISSIONER WILSON: Two sixty-eight?

25

MR O'SULLIVAN: Two sixty-eight, your Honour.

COMMISSIONER WILSON: Yes.

30 MR O'SULLIVAN: So this is the unpacking of that for the last box under the green headings.

COMMISSIONER WILSON: Yes.

35 MR O'SULLIVAN: Does your Honour see that?

COMMISSIONER WILSON: Yes, I do.

MR O'SULLIVAN: And the evidence here - - -

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COMMISSIONER WILSON: It includes:

...selected young people with special needs.

45 MR O'SULLIVAN: That's right.

COMMISSIONER WILSON: It's proposing, is it, to put these selected young people with special needs in the same unit as adults and older adults?

5 MR O'SULLIVAN: I don't think that one can draw that conclusion. I mean, that's one interpretation that's open.

COMMISSIONER WILSON: Alright. Well, I'm glad that conclusion ought not be drawn because it did seem a strange one to me.

10 MR O'SULLIVAN: It does.

COMMISSIONER WILSON: Yes. Well, I see this. Now, what else do you want me to look at about it?

15 MR O'SULLIVAN: Nothing at all, your Honour. Nothing at all I wanted to draw to your attention. And his evidence at 1363 is to the effect that the Walker Unit and – the Walker Unit in New South Wales is completely different to the Barrett Centre and was completely different, as I understand his evidence, to what was being
20 proposed at Redlands. And because, he says, it's dealing with people with psychotic and treatment resistant illness with very short stay. That's his evidence at page 263. Now, the other document, your Honour, that we – I understand that your Honour wished to be taken to is the discussion paper of Children's Health Queensland.

25 COMMISSIONER WILSON: It's up to you if you wish to take me to it. Go on, do.

MR O'SULLIVAN: Exhibit 278, your Honour. The submissions we make about this document are to be found at 821 to 823 of our written submissions, and 824.

30 COMMISSIONER WILSON: That's not the paper itself.

MR O'SULLIVAN: I'm sorry, your Honour?

35 COMMISSIONER WILSON: Have you got the Delium reference for the subacute beds paper?

MR O'SULLIVAN: It's CHS.500.001.0001.

COMMISSIONER WILSON: Yes, go on.

40 MR O'SULLIVAN: Page 6, Executive Summary.

COMMISSIONER WILSON: The Delium reference at page 6. We've got it. Yes.

45 MR O'SULLIVAN: Under the heading Inpatient Care for Young People.

COMMISSIONER WILSON: Yes.

MR O’SULLIVAN: The first two paragraphs and the third paragraph.

COMMISSIONER WILSON: Yes.

5 MR O’SULLIVAN: Page 7, the last paragraph. Page - - -

COMMISSIONER WILSON: Just a moment.

10 MR O’SULLIVAN: Page 8, the first paragraph, particularly the last sentence of the first paragraph. The second paragraph, just in summary, the fourth line there’s a –

It’s undoubted that extended inpatient admission involves exposing a young person to considerable emotional risk even in short-term admissions.

15 Further down: Contagion Risks and Dislocations. And then there’s the heading The Future, your Honour. I invite your Honour to read that paragraph and one, two and three. Now - - -

COMMISSIONER WILSON: Yes.

20

MR O’SULLIVAN: The key aspect of the document is to be found in paragraphs 1, 2 and 3 on page 8. Having a look at all the evidence and all the clinical evidence, and as my learned friend Mr Freeburn said it’s principally an academic document, a clinical document, the first recommendation is that:

25

...adolescents requiring extended inpatient - - -

COMMISSIONER WILSON:

30 *Most adolescents requiring extended inpatient care –*

it says.

MR O’SULLIVAN: I’m sorry, most.

35

COMMISSIONER WILSON: It says most adolescents.

MR O’SULLIVAN: That’s right.

40 *(2) Any proposed service –*

and I understand (2) to be something more than is currently available, and that is to say a unit within Lady Cilento –

45 *be based on a clearly articulated model of service –*

pausing there, the evidence is that they couldn't find a model of service when they did the literature search. They couldn't find one anywhere in the world –

with explicit attention to addressing the risks outlined above –

5

the risks of contagion, dislocation, stigma and so on. And then, critically:

(3) The recommendation is that additional resources be directed towards establishing a comprehensive continuum of community based adolescent mental health services across Queensland.

10

That's the recommendation of this paper: community based adolescent mental health services. And underlying that recommendation is not only what appears at (1) and (2) but elsewhere in the document the author refers to the evidence base that supports the effectiveness as a therapeutic intervention of community based care for young people. Now - - -

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COMMISSIONER WILSON: Can I take you back, please, to page 6 of that document.

20

MR O'SULLIVAN: Yes, your Honour.

COMMISSIONER WILSON: A little further up the page, please. Further still. The sentence beginning "however, a small subgroup", to the end of that paragraph.

25

MR O'SULLIVAN: Yes. That's important, your Honour. They may benefit from an extended admission. This small subgroup may benefit from the extended admission but, firstly, there is a lack of compelling evidence - - -

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COMMISSIONER WILSON: One way or the other.

MR O'SULLIVAN: Yes. And, second - - -

COMMISSIONER WILSON: That's - - -

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MR O'SULLIVAN: I'm sorry, your Honour.

COMMISSIONER WILSON: Go on.

40

MR O'SULLIVAN: And, secondly, there is no doubt – and it's accepted – that there are serious risk attended upon extended inpatient admission in a hospital setting for a young person. And that explains, in our respectful submission, why one does not see in the recommendations, number 4, you should built a new unit for the small subgroup of young people who might benefit from an extended admission, especially if compounded by significant comorbidity, including intellectual/development impairment, those experiencing severe psychosis. There's no recommendation that public resources be devoted to a unit of that kind.

45

And, may I say, in terms of the evidence, what your Honour has directed attention to also dovetails precisely with the Royal College's view as expressed to you through Dr Fryer. She also says that, clinically, the only group that might – that may benefit, looking at it clinically, are those suffering from psychosis which is treatment
5 resistant, a very severe presentation. They might benefit from extended – and I can take you to Dr Fryer if you want – admission. But that submission to you says that there are significant risks associated with extended inpatient admission, and it does not recommend to you – in fact, it strongly recommends that you do not adopt the view that the appropriate course is to recommend in favour of an extended inpatient
10 unit.

COMMISSIONER WILSON: Well, I think you're not reading the whole of this sentence on – under Overview, because it's not just those with unremitting psychosis. It refers to severe psychosis.
15

MR O'SULLIVAN: Quite right. Quite right.

COMMISSIONER WILSON: But it says:

20 *And/or eating disorders compounded by significant risk factors and a lack of protective factors or those young people with severe and/or complex mental illness that have failed to respond to the less restrictive form of care.*

25 Young people with severe and/or complex mental illness that have failed to respond to the less restrictive form of care: isn't that a description of the Barrett cohort, of some of them at least?

MR O'SULLIVAN: That's right.

30 COMMISSIONER WILSON: Okay. Go on.

MR O'SULLIVAN: That's a fair summary, your Honour. But, your Honour, if the view of the authors of this paper were that that cohort – let's just focus on that cohort – ought properly be serviced in Queensland by way of investment of funds into a unit
35 of the kind we're currently discussing, one would expect to see that in the recommendations that have been made. And instead, the recommendation is that resources be put into community-based funding. And remember also, your Honour, the passage to which you've directed attention is that they may benefit, they may benefit, and the observation also in the document is that there is a lack of compelling evidence, there is a lack of compelling evidence, is how it's put, that extended
40 inpatient admissions are therapeutically effective. And that is developed at length through the document, but a summary of it appears at the top of page 8, first paragraph, second sentence.

45 Your Honour, there's probably not time to go through other aspects of the document, but what we emphasise, with respect, is that the planning group recommendation that was made in relation to item 2(a) of the ECRG report, which is, to paraphrase, don't

5 go towards a state-wide extended bed-based model, go towards a more community-based YPARC model. That's what they say should be done. They attach their reasoning to the national framework, which is not discussed here, your Honour. They don't just – that argument or that position is attached to the national framework.

10 We say that precisely the same conclusion is supported by what appears in the Children's Health Queensland paper from a different direction, which is an academic clinical analysis of the best evidence available. Of course, this was not available at the time, but what we say, with respect, is that in terms of the merits that – the underlying merits of the decision that was made insofar as your Honour requires – feels it's necessary to investigate that, the decision that was made in the planning group document, and equally to council, Redlands, that, in our submission, the correctness of that decision is strongly supported by this detailed paper. I'm
15 conscious of time. May I move on, your Honour?

COMMISSIONER WILSON: Yes, please do.

20 MR O'SULLIVAN: The next point is an important one. It's – I'm calling it the new services and existing patients point, your Honour. Can I identify the point - I understand it to arise out of – it does arise out of matters that have fallen from the Commissioner. Can I just identify the issue. Your Honour asked a series of questions and indicated interest in the following matters, and I'll home in on what I suspect is relevant to the Minister. You asked yesterday our learned friend, Ms Muir,
25 and I think Ms Wilson to the following effect: between 26 August 2013 and 29 November 2013, what conclusion did the SWAETRI committee come to about developing and implementing new models of care, and when was that information transmitted to West Moreton? And then you said whose responsibility was it? So it's a question about the timing of the SWAETRI committee's work in developing
30 and implementing the new continuum of care, and you asked whether on 26 August the SWAETRI committee knew then how long it would take to actually develop and implement the new models of care - - -

35 COMMISSIONER WILSON: Yes.

MR O'SULLIVAN: - - - or the new continuum of care, and you asked did Dr Geppert go back to West Moreton board. You might recall you were taken to evidence that Dr Anne Brennan understood that the patients in her care would not be transitioned to the new suite of services that were being developed. And then you
40 said that your provisional view was that the West Moreton board didn't appreciate until November 2013 how long it would take to develop the new services, and I think you said their discussion with the Minister in July needs to be seen against that background.

45 Your Honour, we understand that line of inquiry to underline the question you asked of my learned friend, Mr Diehm, and you said something to this effect: what basis was there for the Director-General or the Minister, for that matter, to reasonably

believe that replacement services in lieu of the Barrett would be operating by the time the Barrett Centre was to close. We understand that that question – underlying that question is the notion that when the West Moreton board approved the closure of the centre on 24 May, your Honour, that was, as you know, subject to appropriate care provisions being put in place - - -

COMMISSIONER WILSON: Yes.

MR O’SULLIVAN: - - - and that, we understand, the implication is that appropriate care provisions means a new suite of services coming online. We understand that to be the issue. In our submission, it is correct to focus attention, when you consider this issue, firstly, on the 24th of May 2013 board meeting. That’s critical. And it’s next relevant to answer the question you asked: what is the evidence about what the Minister was told in July 2013? We – with respect, and that is the correct question to ask. That’s a question you have asked.

You were shown parts of the minutes. Can I deal firstly with the minutes of the West Moreton board meeting. You were shown relevant parts of the minutes yesterday. In our respectful submission, you weren’t shown all of the relevant parts of it.

COMMISSIONER WILSON: Okay.

MR O’SULLIVAN: The minutes are to be found exhibited to Dr Corbett’s statement, MC19. The reference, your Honour: WMB.900.0001.0001 at page 144. This is, I think, the agenda paper.

COMMISSIONER WILSON: They seem to be minutes, because there’s provision for signature by Dr Corbett and the date.

MR O’SULLIVAN: Could I ask you be shown page 145. This is the board paper. One turns to the next page - - -

COMMISSIONER WILSON: When you say 145, are you talking of a Delium number or the number in the bottom right-hand corner?

MR O’SULLIVAN: Delium, if it please the Commission.

COMMISSIONER WILSON: Alright. 145 of this document, please.

MR O’SULLIVAN: Ninety-six is the bottom number. If the Delium number – that’s the correct document, your Honour. That’s the correct page.

COMMISSIONER WILSON: That’s the one. Okay. Good. That’s the [indistinct]

MR O’SULLIVAN: The next page, you’ll see board committee agenda paper, agenda item 4.3 at the top of the page, so this is the board paper for the meeting of 24

May. Author is Sharon Kelly. We ask your Honour to read paragraphs 7 to 10 and then page 11 at Delium number 147.

COMMISSIONER WILSON: Yes. I've read that.

5

MR O'SULLIVAN: Paragraph 11 is the critical paragraph. This board paper says that the closure was not dependent upon the next stages of the development of a statewide model progressing. Instead, the closure process is relevant to the needs of the current and wait-listed consumer group and the capacity for wraparound care in their local community. The planning group noted this was feasible to commence now. That's an accurate reflection of what the planning group said. No need to go to it but the Delium reference number is 163. It's item 3(b) of the planning group document – that they did say it could start immediately, that is to say the process of transitioning and discharge.

10

15

The minutes themselves – item 5.1, Delium number 173, your Honour.

COMMISSIONER WILSON: Delium 173, please. Scroll down if you would.

20

MR O'SULLIVAN: The bottom of the page, Commissioner, and then over the page – so this is a record of the minutes. Over the page the relevant line item is the second last one:

25

The service to pursue discharge appropriate current patients with appropriate wraparound services.

30

We don't have time to go to it but Dr Corbett gave evidence about this, about her understanding at the time and what happened at the broad meeting. The references to her evidence are at day 9, page 59, lines 35 through to page 60 at line 33. In summary, she says that she – no need to go to it – she read that – those entries, understood them and understood that there was, really, a two-string process going on. One is discharging patients and the development of wraparound services which obviously were wraparound services within the existing services that were available and the second stream being the development of a statewide model.

35

Ms Dwyer – her evidence, relevantly, is at day 12, page 123, line 15 to 25. Again, to paraphrase she confirmed in her evidence that she understood the position to be from May onwards that the Barrett Centre would stay open for as long as it was required to provide services for the young persons who had been admitted to it. So the position as at 24 May 2013 in terms of what the West Moreton board understood and what it decided, in our respectful submission, is that it was plain to the board at that time that there would commence immediately a process of discharging patients who could properly be discharged and also of providing wraparound services from within what then existed and that that process was not dependent upon the establishment of the new suite of services which were being developed.

45

Moving on to the meeting with the Minister, your Honour, about seven weeks after this meeting there was a meeting with the Minister for Health that was attended, it seems, by Dr Corbett and Ms Dwyer. You indicated that you were interested to know what evidence there is as to what was discussed at that meeting. There's no
5 record anywhere in the evidence of what happened at that meeting. In our submissions at paragraph 5.154 we identify what we say is the best contemporary evidence. No need to go to it, your Honour, for time reasons. But we say that's the best contemporary evidence. The document that we identify at 5.154 is another is another briefing note that was prepared a couple of days after the meeting with the
10 Minister. It was a briefing note to the Mental Health Commissioner and it says, to paraphrase, we had a meeting with the Minister. He supported closure. It doesn't enlighten you.

The three witness to the meeting – Dr Corbett, I asked her what her recollection of
15 the meeting was. She says she has no recollection of it. The reference is day 9, page 74, lines 5 to 45. I didn't ask Ms Dwyer if she had any recollection of it and neither did any other person. Mr Springborg's written statement doesn't descend to what was said at that meeting. In his oral evidence, your Honour, the only reference appears to be – I'll give your Honour the reference – day 15, page 32, line 5 to 30.
20 And what he says there is that he recalls that they told him about the issues in a briefing note which, of course, he says he didn't see at the time.

In our submission, we do have good evidence of what Dr Corbett understood was proposed as at May 2013 because she gave evidence that she understood that there
25 was this two-stream process going on but we don't have any direct evidence as to what she told the Minister. We've got direct evidence that Ms Dwyer understood that from 24 May the Centre would remain open for as long as it's needed. The briefing note itself – the evidence is – didn't go to the Minister before the meeting. The evidence is that it was emailed – the document was emailed to his principal
30 policy adviser that morning. We deal with that in our submissions at paragraph 5.150. The evidence also is that Dr O'Connell signed it on 15 July. The evidence also is that Mr Wood, the principal policy adviser, noted it on 31 August. That principal policy adviser, Mark Wood - - -

35 COMMISSIONER WILSON: 31 August, did you say?

MR O'SULLIVAN: Yeah. 31 July, I'm sorry, your Honour. That's my mistake. 31 July 2013. I only wish to take your Honour to one aspect of that briefing note. It's to be found at LJS.900.001.0001 at Delium number 45. Delium number 45 is the
40 attached briefing note to the Director-General, your Honour, and as you pointed out earlier that appears to have been signed by Dr O'Connell on 15 July. You'll see that at page 47. I draw your Honour's attention to paragraph 6.

COMMISSIONER WILSON: Could I have paragraph 6, please.

45 MR O'SULLIVAN: On Delium number page 45.

COMMISSIONER WILSON: Yes.

MR O’SULLIVAN: This briefing note that I am talking your Honour to was authored by Leanne Geppert, cleared by Sharon Kelly and content verified by Lesley
5 Dwyer. The conclusion, in our submission, that you would reach is that certainly Dr O’Connell was aware of the advice he was given at paragraph 6. Dr O’Connell was aware of that. He signed the briefing note. There’s evidence from the Minister that he spoke informally with Dr Cleary and Dr O’Connell about the issues concerned with the Barrett Centre. Insofar as it’s necessary the inference you would draw, in
10 our submission, is that the information at paragraph 6 was probably conveyed to the Minister in one of those informal conversations insofar as your Honour needs to make a finding about it. Importantly, paragraph 6 which says that:

15 *The Department of Health is urgently progressing planning for a Youth Prevention and Recovery Care (YPARC) to be established in Queensland by January –*

is consistent with the Planning Group recommendation, your Honour.

20 COMMISSIONER WILSON: Yes.

MR O’SULLIVAN: The gist of that recommendation by the Planning Group is don’t go towards a statewide – single statewide bed based service. That doesn’t accord with the national framework. Instead, what you must go towards is a YPARC
25 type facility which is a community based residential type model, decentralised model. And then we see, a number of months later, precisely that advice being reflected in paragraph 6. And we would pause to note that no evidence has been given. To my recollections, Dr O’Connell was not asked about this, nor was Mr Springborg. But the Commission would find this sequence of events unsurprising.
30 Now, when your Honour asked the rhetorical question what was the basis upon which either the Director General or the Minister might have thought in July that services could be up and running by early 2014, in our submission, one finds that in paragraph 6 of this briefing note.

35 COMMISSIONER WILSON: No, that’s that YPARC would be up and running.

MR O’SULLIVAN: Yes.

40 COMMISSIONER WILSON: That’s all.

MR O’SULLIVAN: I’m sorry?

COMMISSIONER WILSON: That is all. Only YPARC, nothing else.

45 MR O’SULLIVAN: Well, it’s likely that they were told that there would be more than just YPARC, your Honour. It’s very likely that they were told that. That,

indeed, was what was contemplated. What was contemplated was a continuum of care.

5 COMMISSIONER WILSON: You see, I'm looking at the moment at the next step is the Minister's announcement, is it not - - -

MR O'SULLIVAN: Yes.

10 COMMISSIONER WILSON: - - - on 6 August. I'm looking at the transcript of that. And the transcript begins, in the words of the Minister:

15 *So it is true that sometime by early 2014 that Centre will be closing as we actually come up with a range of new options to actually deliver those services to people closer to their own home in their own hometown. But we do understand that there will need to be acute inpatient type options for youth. At the moment you've only got one and that's at the Barrett.*

And he goes – talks about that for a while. And he says then:

20 *And, also, an expert clinician panel will be made up of clinicians from within Queensland and also outside of the state, plus a resident and a resident's parent, or a former resident's parent, who will be providing advice to us. The other thing about it is it's going to be auspiced in the future youth mental health in Queensland under statewide Children's Health Service which is the*
25 *statewide body to look after children's health. So we can actually make sure we get a statewide approach to this.*

The interviewer asked:

30 *So just to be clear, Minister, come the end of 2013, the Barrett Adolescent Centre will close?*

And he responded:

35 *Probably early – well, we expect to have the options available to people in early 2014. And the transition will start sometime in the early part of 2014 as we build up services in other areas around the State.*

And the interviewer said:

40 *And will you guarantee that there will be services in other parts of the State that provide residential care?*

Response:

45 *Absolutely.*

And the interviewed continued:

5 *Because I think that's what I'm hearing from the patients that I've spoken to and the parents that I've spoken to, that this is not about acute care. This is not about trauma when a teenager attempts suicide. This is about the long-term care plan.*

And he replied:

10 *Absolutely.*

And then he was asked:

15 *So – so just – sorry, to be clear, will you guarantee that there will be services operating that offer inpatient care for teenagers in Queensland before Barrett shuts?*

And the reply was:

20 *That's the whole point of this: to actually leave no one who's currently a patient or resident there and those that are hopefully on – you know, that are on the waiting list, so that they can have services closer to their own home. And we're allocating an additional \$2 million for that. And that's why we've got an expert clinician panel and also a former resident and a parent who is*
25 *also guiding the experts along the way, because I'm very keen to make sure that we can provide the service across Queensland. And that's why I put on hold the closure of Barrett when I became the Minister. We understand these*
30 *young people have got very, very complex mental health needs. And that would involve that they have inpatient or very supported residential requirements around the State and including working with Education Queensland to make*
 sure that they have the education plans that are necessary as well.

So that seems to be a different message from the one you've been describing.

35 MR O'SULLIVAN: In what respect, your Honour?

COMMISSIONER WILSON: Well, the Minister seems to be talking about new services coming online early in 2014:

40 *We expect to have the options available to people in early 2014 and the transition will start sometime in the early part of 2014 as we build up services in other areas around the State.*

45 MR O'SULLIVAN: Yes. And there's an ambiguity about what the word transition means there. It can mean one of two things: it can mean the transition from the way we used to do things where we had only Barrett available in a long-term institutional care to the new regime where what we have available in Queensland is a new suite of

services of the kind described. Or it may mean the patients themselves who are in there will be transitioned themselves sometime from the early part of 2014 as we build up new services. It could mean one of those two things, your Honour. Transition could be from one service to another, it could be transitioning of patients.

5

Now, insofar as it's necessary or desirable for you to interpret what he meant, in our submission, must've meant the former. It must've meant that when he says transition, that what will be occurring is a transition in service delivery in Queensland. Now, we can't say for sure because it was not probably fairly put to him what did he mean or what did he have in mind, I suppose, would've been a more relevant question. But we say, in our submission, that's what – that's the proper construction of what he says. Why do we say that? Because if he was given accurate information from Dr Corbett and Ms Dwyer about what was proposed, he would well have known that immediately there were plans to be transitioning patients to wraparound services.

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COMMISSIONER WILSON: Well, if you're correct, can you tell me, what did he mean when he talked about:

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...an expert clinician panel will be made up of clinicians from within Queensland and also outside of the state, plus a resident and a resident's parent, or a former resident's parent.

25

And then he talked also about involving Education Queensland. Now, is that, in your submission, a reference to SWAETRI? And if it is, did that include these people?

30

MR O'SULLIVAN: I don't know, your Honour. It could be either one of two things: it could be his understanding, his imperfect understanding of the ECRG, which would be wrong because it had already reported. That's one - - -

COMMISSIONER WILSON: And it did have representatives from families.

MR O'SULLIVAN: Yes, and carers.

35

COMMISSIONER WILSON: Carers.

MR O'SULLIVAN: Yes, your Honour.

40

COMMISSIONER WILSON: And education. Is that the one that – or was it the Planning Group that had Michelle Bond?

MR O'SULLIVAN: I don't know.

45

COMMISSIONER WILSON: Planning Group.

MR O'SULLIVAN: It might've been his imperfect understanding of the ECRG. It may have been – you'll recall his evidence is he had not read the ECRG report. It

might be his understanding of SWAETRI. We don't know. It may have – in our respectful submission, it's the sort of thing you might imagine a Minister to say, who's got a very large portfolio, this is his understanding – high level understanding of what's happening. And it was in detail and your Honour may be right that insofar
5 he talked about a carer being on the panel that's not – and a parent being on it – no, that's not right. The evidence is that SWAETRI asked for involvement from parents, I think, in November – involvement from parents. There was some interest in hearing their views. You might recall that evidence, your Honour.

10 COMMISSIONER WILSON: But that didn't make – it wasn't an invitation to join the committee.

MR O'SULLIVAN: No, no. I'm not suggesting it is, your Honour. I'm simply saying that it could have been his mangled understanding of the ECRG or it could
15 have been his understanding of SWAETRI. But in substance, in our submission, his understanding is correct that work is being done to develop the new model of service delivery that's going to be provided.

20 COMMISSIONER WILSON: So as at August 2013, what work was being done?

MR O'SULLIVAN: Well, your Honour knows that the first meeting was on 26 August.

25 COMMISSIONER WILSON: Yes. But not at the time of this announcement which was three weeks before that.

MR O'SULLIVAN: We know that from the evidence, your Honour. We don't know what the Minister was told by either Mr Wood, his policy adviser, or by Anthony West, the departmental liaison officer or by Dr O'Connell or by Dr Cleary.
30 We don't know what he was told. This reflects, you would infer, his understanding and we emphasise that this is, in substance, correct.

35 COMMISSIONER WILSON: Well, what did he mean when he said that put on hold the closure of Barrett when he became the Minister?

MR O'SULLIVAN: I don't know, your Honour, because in his evidence he doesn't say that. He doesn't say that in his evidence that he put it on hold but he does say that in the interview. That's so.

40 COMMISSIONER WILSON: And there's no evidence that he did put it on hold, is there?

45 MR O'SULLIVAN: No. It may be – I mean, it's a matter of speculation – but you might recall that there was a proposal to close Barrett in December 2012 – I withdraw that. There was some evidence given to the Carmody Inquiry that it was proposed to be closed in late 2012.

COMMISSIONER WILSON: But there's no evidence that the Minister intervened.

MR O'SULLIVAN: No. None at all. I'm only drawing attention to the fact that there did seem to be some delay. There's no evidence that the Minister did put it on
5 hold. In terms of - - -

COMMISSIONER WILSON: See, he finishes the interview coming back to this notion of having put it on hold. He says:

10 *An additional \$2 million has been put into it over and above the money which is currently allocated so we believe that that will be able to not only properly have facilities and support for these young people with complex needs but to accommodate additional young people as well who have these care needs. But I think you've been fairly raising this issue over the last couple of weeks. We*
15 *wanted to be in a position to give you and those that are concerned that have been talking to you some guidance about what's being suggested because we are aware of the importance of this facility, that it was always going to close. Previously I put that on hold. We want to actually say this is the proposal. It's now being worked through. This is the idea behind it. We'll have a much*
20 *clearer picture by the latter stage of this year and the final details around it will be the early part of next year. Where we are in August now so we're probably looking in that six-odd months down the track.*

Now, the next thing that happened after this, as I recall, was a letter which Dr Corbett
25 wrote to a parent on about 9 August. You know the letter I'm referring to?

MR O'SULLIVAN: I know the one that was referred to by my learned friend, Mr Freeburn. I don't have it with me but I know what Mr Freeburn said it said.

30 COMMISSIONER WILSON: Yes. Well, that is, it seems, consistent with Dr Corbett thinking on 9 August anyway that the Barrett Adolescent Centre would continue to operate until the new services were available.

MR O'SULLIVAN: Well, that's difficult to reconcile with her sworn evidence that
35 she understood from 24 May that there was a process of discharging patients to and developing wraparound services using the existing services. It may be explicable because it appears equally that the expectation was that by the time that process was completed in early 2014 the new services – at least some of them – would be available. Look, I don't – that is speculation, your Honour, but it's difficult – that
40 letter is difficult to reconcile with her evidence in terms of what she understood on 24 May.

COMMISSIONER WILSON: Okay.

45 MR O'SULLIVAN: One – it seems in terms of the way in which one analyses this questions there is a need to distinguish between what was happening with the particular patients within the Barrett Centre on the one hand and with the question of

in general across Queensland what is being done to provide services to the kind of cohort with which your Honour is concerned. And it's a mistake – one needs to look at the statements that have been made with some care. Statements to the effect the Barrett will close once we've got new services up and running may well be an accurate reflection of the expectations of individuals who did, indeed, understand that that is what would happen. But it doesn't follow from that expectation that those young persons who were patients at Barrett would all be – it would stay open until the new services were up and running and then they would all be transferred across to the new services. That second point does not follow from the first and one can imagine it's unsurprising if those involved slip from the first point to the second.

In terms of what basis – I'm addressing the question your Honour, as I understand it, wished to be addressed upon. What basis was there for the Director-General or the Minister in July/August to think – to have a view, if they had that view, that services would be up and running by early 2014. I direct your Honour's attention to a briefing note that came up which said – certainly in relation to YPARC – the Department of Health was planning on opening that by January 2014. But the Minister's statement doesn't say that and one would infer that if he had been told that on 6 August he probably would have said it.

There hasn't been any real investigation by the witnesses – of the witnesses, I should say – either Mr Springborg or Dr O'Connell or Dr Cleary as to the precisely what information was given how about the issues that are discussed in the interview with the Minister on 6 August. There is really a complete dearth of evidence. That wasn't the focus of questioning of either the Minister or Dr O'Connell or Dr Cleary. In our submission, you would conclude in relation to this transcript that the Minister was presenting his honest view as to what was happening then and what was happening in the future based upon the advice he was given. The precise source of that advice – the precise source of it, who said it to him – we just don't know.

COMMISSIONER WILSON: So is what you're saying that the Minister was giving his honest understanding based on advice he must have been given – we don't know what that advice was but either he completely misunderstood it or the advice was wrong.

MR O'SULLIVAN: No. We don't say the advice was wrong. Why would you - - -

COMMISSIONER WILSON: Well, that he should be saying things would be up and running in early 2014, etcetera, and he's talking about a range of services. He's not just talking about one service like YPARC.

MR O'SULLIVAN: Well, he says we expect to have the options available to people in early 2014. We expect to have the options available in early 2014 and he says later, in terms of the timeframe, he says:

We've probably got another seven or eight months –

Third-last paragraph:

...before it's completely formalised.

5 And he says later:

We'll have a much clearer picture by the latter stage of this year and the final details around it will be the early part of the year.

10 That, in our submission, is accurate. That is an accurate reflection of the position that existed as at August 2006.

COMMISSIONER WILSON: Okay.

15 MR O'SULLIVAN: And, with respect, we don't see how it could be said that the advice he had got was wrong, because at paragraph 6 of the briefing note to the D-G, the Director-General is told the Department of Health is urgently progressing
20 planning for a YPARC to be open in January 2014, and we know that the planning group said that YPARC was the thing that should be progressed in place of the Barrett Centre. Not Redlands, but YPARC. In our respectful submission, there is no basis at all, in view of the briefing that was provided to the D-G, for saying that he must have got it wrong. And if it's to be suggested that either the Minister was given incorrect advice or that he misunderstood the advice, those very serious allegations
25 need to be put.

25 COMMISSIONER WILSON: Well, what's concerning me is that I accept that what he said on 6 August was said in good faith; I don't suggest for one moment that it wasn't. But it's – the flavour of it – it's more than flavour – the content of it is different from what was in that July briefing note, is it not?
30

30 MR O'SULLIVAN: It's different – the flavour is different from what's in the July briefing note. That's absolutely correct, your Honour.

35 COMMISSIONER WILSON: So was he given some – I mean, I don't know whether he was given advice in the meantime.

40 MR O'SULLIVAN: Well, he must have. One infers that either Anthony West, who is the department liaison officer, on his evidence – at the time liaison between the Minister's office and the Department – either West – I'm sorry – Anthony West or Mr Wood, who is his principal policy advisor, or Dr O'Connell, sat him down and said look, Minister, here's what's happening. They would have briefed him before he went on radio. Someone would have briefed him – we don't know who it was – but he received a briefing and then he made the announcements. And, with respect, your Honour's absolutely right that it – in here, one doesn't see it marrying up with
45 the briefing note, and he says, of course, to you, I didn't see that at the time.

COMMISSIONER WILSON: Well, there is a suggestion somewhere in the material that at one stage it was intended that Dr O'Connell be with him when he made the

announcement, and that – when he made the announcement, and that changed, and they thought that maybe Dr Steer was with him. But no one seemed to know who was with him.

5 MR O’SULLIVAN: No, no. And it’s said to be an announcement. It’s a radio interview at which the Minister explains to a radio interviewer what’s happening and answers questions.

10 COMMISSIONER WILSON: That seems to be the announcement. There’s no formal press release by the Minister that we’ve been able - - -

MR O’SULLIVAN: No.

15 COMMISSIONER WILSON: - - - to find.

MR O’SULLIVAN: No.

20 COMMISSIONER WILSON: And the media statement that was prepared by West Moreton: it’s not clear whether that was actually issued.

25 MR O’SULLIVAN: No. I think that’s right, your Honour. That’s right. Whether it’s – however one characterised it, in the real world, as you know, Commissioner, a Minister for Health does not go on radio and speak about something of public importance like this without receiving a briefing, and I’m simply drawing attention to the fact that whether it was West, the Department allows an officer, would the principal policy advisor, O’Connell, the Director-General, Cleary, the Deputy Director-General, we don’t know. But, plainly, he was briefed and he provided his honest interpretation of what he was told and conveyed it to the public.

30 We go back to the submission, with respect, that if it’s to be suggested that the advice he got was wrong or that he, in some material way, understood the advice, those are very serious matters which would need to be put, in our respectful submission, to the Minister, and indeed, to anyone who is said to have briefed him.

35 COMMISSIONER WILSON: Well, we don’t know if anyone briefed him. All we really know is that what he said does not marry up with the July briefing note.

40 MR O’SULLIVAN: That is so. But, in our submission, it does marry up with the big picture of what was being proposed, in our submission. Now, I’m conscious I’m consuming a lot of time, your Honour. Can we say on this point, finally, at the witness’ – in the witness’ statement, Mr Springborg’s statement, at paragraph 63, 64 and LJS he exhibits a series of briefing notes that were provided to him or his office from late 2013 through to early 2014, and they were, in summary, what was happening with the young persons who were being transitioned out.

45 The advice he was given is that they were being transferred to appropriate care options, and also he was being given advice about the new services that were up and

running. He was given advice about the new services that were up and running. In particular, he was given advice in a briefing note that he signed in March of 2014 that there were a series of new facilities that were – new services that were being provided.

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Can I just give your Honour the reference for time reasons: it's LJS9, Commissioner, signed by the Minister on 28 March 2014. It's signed by Ian Maynard, Mr O'Brien's client, it seems also in March. But, importantly, it was dated February. Ingrid Adamson was a co-author with Deborah Miller and there was Peter Steer. They verified it in 5 February. It was also co-authored by Geppert and cleared by Kelly and Dwyer, and input was provided by three other individuals.

10

So it's very early in February, but what the Minister was advised is that new adolescent mental health extended treatment and rehabilitation services were being established. He's told there was a five-bed residential rehabilitation unit at Greenslopes. He says – he's told here from early February the Mater Hospital would provide interim subacute beds until new funding is sourced for a longer-term option at Lady Cilento. He's told that there's recruiting for six AMYOS services, new day programs and further investigation in relation to a Step Up Step Down in Cairns, and then there's submissions about funding. And he signs that.

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So in March, he was signing a briefing note which told him what was happening, and he had been told by this stage, Commissioner, that the Centre had closed, and he had been told also that all the patients had been transferred to appropriate care options. He signed a briefing note on that very point; it's LJS8, your Honour. So he knew – the Minister knew in February he had been advised that the patients had been discharged to appropriate care options, and then, shortly afterwards, he's told about the new services being established.

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Now, there's no suggestion he was not entitled to rely upon the advice he was given in these briefing notes, that it wasn't entirely proper for him to rely upon the advice, particularly that appropriate steps had been taken, having regard to patient safety and welfare, to transition them. But, critically, your Honour, it was never said to him, it was never put to him, well, there's some sort of inconsistency between the advice you got and what – the announcement you made on 6 August. If that's going to be said, that needed to be put to him. And indeed, it hasn't been suggested by our learned friends, Counsel Assisting, that there is any inconsistency.

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I need to truncate my remaining points right down. I'll hand up a note at the end, Commissioner, which has been circulated to counsel for the other parties yesterday. That note will provide some corrections to our written submissions and will develop a couple of points at paragraph 7 – parts 7 and 8 of our submissions. That's my point 7. I'm not going to deal with it otherwise and then hand up a note at the end.

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My point 8 – and I've probably run out of time for this – was I wished to address you on the proposition that all experts agree there's a small group who require extended treatment. We rely upon our written submissions on that issue. They are – the

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references, Commissioner: Dr Scott's evidence at 225 and 227; Dr Fryer's evidence, our submission is, 230 to 233; also her oral evidence to the effect that with a full suite of services it's possible there's no need for any subacute inpatient service.

5 COMMISSIONER WILSON: Which of Dr Fryer's "submissions" are you referring to there?

MR O'SULLIVAN: The first ones, if it please the Commission.

10 COMMISSIONER WILSON: The first ones. Not the second one?

MR O'SULLIVAN: Yes.

15 COMMISSIONER WILSON: Well, there are, in fact, three things she wrote, weren't there?

MR O'SULLIVAN: I think – I'll just check it. I think I'm referring to the first one. It's – I'll give you the exhibit number.

20 COMMISSIONER WILSON: Because there is a definite shift between the first long submission she wrote and the second.

MR O'SULLIVAN: It's exhibit 144 to which our submissions refer, Commissioner.

25 COMMISSIONER WILSON: Could that be up on the screen, please, exhibit 144.

MR O'SULLIVAN: It's at 230 to 233 of our submissions. And it is exhibit 144. That's the 3 December document.

30 COMMISSIONER WILSON: 3 December last year?

MR O'SULLIVAN: Yes.

35 COMMISSIONER WILSON: Well, there's another – there's another submission that she put in after that.

MR O'SULLIVAN: I know. I know there is, your Honour. Her oral evidence we cite again in these paragraphs: 230 to 233.

40 COMMISSIONER WILSON: Yes. I thought that was the earlier one.

45 MR O'SULLIVAN: And the key aspect of her clinical opinion which, as we understand it, has the authority of the Royal College is that in terms of purely clinically looking – putting money to one side, the only cohort that might benefit those with severe treatment resistant psychosis – and there's some reference also to those with severe eating disorders and the number of adolescents was extremely small. We draw attention to the fact that she doesn't, as we understand it, resile from

her statement in the first written document that inpatient units are extremely expensive. And one needs to be very careful before making a decision in favour of supporting them because you need to look at other less expensive ways of dealing with it and what might be given up if you go down a path of that kind.

5

I don't have time to deal further with it. Can I just give you, your Honour, the paragraph references: the view of Dr Stathis, 234 of our written submissions, particularly his oral evidence that the evidence base for the inclusion of subacute beds in the extended treatment model is limited and non-existent whereas, there's good evidence that supports treatment in the community; his evidence that there are very few dedicated subacute units anywhere in the world and, internationally, they're not the preferred service option; and where alternative community options are available, existing subacute unit beds are being closed, not opened. And, of course, he stands behind and supports the findings in the January discussion paper, the final aspect of which is that existing resources should be devoted to more intensive community care. We also point to his evidence that there's been only two referrals to the Lady Cilento subacute unit, if I can use that term, the subacute beds in the Lady Cilento Centre.

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COMMISSIONER WILSON: The swing beds.

MR O'SULLIVAN: But I don't have time. It's in the written submissions, your Honour.

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COMMISSIONER WILSON: Well, this is all covered in your submissions.

MR O'SULLIVAN: Yes, it is.

COMMISSIONER WILSON: Unless there's anything extra that you want to say.

30

MR O'SULLIVAN: Yes, the barren landscape point, your Honour. Your Honour made the observation that at the – before the new continuum of services was developed in 2014 and implemented, the landscape was rather barren, I think, was the language your Honour used.

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COMMISSIONER WILSON: Yes.

MR O'SULLIVAN: In our submission, I think your Honour's observation was that is the impression from the evidence. In our submission, that is not a safe or accurate assumption to – I'll withdraw that, not a safe or accurate conclusion to reach. Firstly, there was very limited evidence as to precisely what was available in Queensland up to January 2014. Certainly, the landscape was significantly enhanced after January 2014. But if your Honour is minded to go so far as to make a finding of that kind, it would be appropriate, in our submission, to at least allow the Department of Health to make some submissions on that.

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COMMISSIONER WILSON: Well, let's just – I really don't want to spend a lot of time on this point.

MR O'SULLIVAN: There's one other thing I wanted – I'm sorry, your Honour.

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COMMISSIONER WILSON: Can I just interrupt you. You will recall that amongst the materials, which I think started as a discussion paper and may even now be an exhibit, was a schedule prepared by Commission staff. It was in four different colours. I can't remember the colours.

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MR O'SULLIVAN: Yes.

COMMISSIONER WILSON: But there were the services at different times.

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MR O'SULLIVAN: Yes.

COMMISSIONER WILSON: If you look at the services that were there up to closure, you'll find there weren't really very many. There were some acute services, there were some day services. What else?

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MR O'SULLIVAN: I can't tell you off the top of my - - -

COMMISSIONER WILSON: I think you'll find that there was very little there.

25

MR O'SULLIVAN: One reason, in our respectful submission, that that is very likely to be a – I'll withdraw it, that that is not a safe conclusion is this: what, in fact, happened was a transitioning of the inpatients of the Barrett Centre into existing services. That's what happened.

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COMMISSIONER WILSON: Yes, it did.

MR O'SULLIVAN: And the only evidence that you have – I'll withdraw that. The investigation that was done into the appropriateness of that transitioning found that it was appropriate.

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COMMISSIONER WILSON: Well, it found that, in the submission of Counsel Assisting, that there were four cases where there was reason for concern. Now, I say that in the context of Counsel Assisting not having made any criticism of the work Dr Brennan did.

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MR O'SULLIVAN: Yes.

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COMMISSIONER WILSON: But it was simply a reflection of what was or wasn't available, including a reflection, I would've thought, of the fact that, as a general rule, there was a clear – how shall I put this? As a general rule, once someone reached the age of 18, then it was to the adult mental health services that that person had to look.

MR O'SULLIVAN: Yes.

5 COMMISSIONER WILSON: And that this raises the issue of the non-alignment of adolescent and adult mental health services in that many of these patients could be expected to – I'll say that again, that one should be looking at the developmental rather than chronological age of these patients and should bear in mind evidence, I think, given by several of the psychiatrists that mental illness really impacts on every aspect of someone's being and can, in itself, in some cases, delay that maturation process.

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MR O'SULLIVAN: Yes.

15 COMMISSIONER WILSON: So that without necessarily going into bat for all of the modes of treatment at the Barrett Adolescent Centre or for the lengths of stay in some cases, one has to give consideration and probably considerable weight to four points I recall Dr Sadler making about the length of stay. He talked about the absence of other services such as a Step Down, such as supported accommodation. And there were a couple of other points he made. My comment about a barren landscape was, in a sense, drawing a comparison between the world as it was when the Barrett Adolescent Centre was operating and the world as we hope it's going to become when the AMHETI services are all up and running.

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MR O'SULLIVAN: Yes. I understand, your Honour.

25 COMMISSIONER WILSON: Alright.

MR O'SULLIVAN: And, certainly, Dr Martin's evidence is – from the outside he says there's been something of a revolution and he's very, very impressed with what the AMHETI services are providing in Queensland. But the relevance of – I understand that. Insofar as it's going to be suggested that there was some – there was a structural problem with the plan to discharge young people into existing services and provide bespoke wraparound care, insofar as it's going to be – it might be suggested that that was a problem because there was an absence of services, we submit that's not a finding that your Honour would make.

35

And even if we travel down that path, what is missing from an analysis of this kind is whether anything would've been different in the counterfactual world where the AMHETI services were all up and running in January. That is not something that – that is not something to which, as we understand it, attention has been directed. Put another way, the fact that there may be problems could be – is not necessarily a reflection of the landscape that existed. It's – it is an imperfect world with obviously very, very troubled young people.

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45 COMMISSIONER WILSON: Very troubled young people. It seems that the amount of money being spent in running the Barrett Adolescent Centre, which was not inconsiderable, was nevertheless a good deal less than it's going to cost with the AMHETI services when they're all up and running.

MR O'SULLIVAN: That's right. The evidence is it goes from 3.9 for Barrett, another two. And then Dr Kingswell's evidence is that it went to 8 million that was being spent on AMHETI. And then there's another document that says that the full rollout was 22 million per annum. There's no doubt that the recurrent funding was
5 vastly increased.

COMMISSIONER WILSON: Well, the 22 million, has that actually been provided?

10 MR O'SULLIVAN: No.

COMMISSIONER WILSON: Or was that an estimate of what it would cost if it were fully rolled out?

15 MR O'SULLIVAN: That's the latter. Dr Cleary says – the document is from October 2015 after my client ceased to be Minister. And Dr Cleary's evidence is that there was not approval given for the \$22 million recurrent funding. There's no evidence before you as to why it hasn't been approved or what processes are being
20 undergone. The only evidence you've got is that 8 million has been committed. And for reasons that the evidence doesn't reveal, the 22 million has not been approved. It's certainly the case, your Honour, that your Honour's impression that the AMHETI services will cost vastly more than Barrett is well borne out by the evidence. By the time Mr Springborg ceased to be Minister, it had been more than
25 doubled. As I understand Dr Kingswell's evidence, it had gone from 3.9, an extra two and then it had gone to 8 million. So it had been more than doubled and it was projected to be vastly higher. And, of course, the context is you have six AMYOS services operating all throughout Queensland staffed by psychiatrists and other mental health professionals. You've got proposals for the building of further
30 infrastructure. You may recall that I think six million – I don't want to go on – about \$6 million was committed to a facility in North Queensland which has indeed been built but in terms of costs, the costs of AMHETI is no doubt vastly in excess of what was being committed by government to the Barrett Centre – vastly in excess. The 22 million exceeds by a significant margin the capital funding – the expected capital
35 cost of building Redlands.

COMMISSIONER WILSON: Yes. But - - -

MR O'SULLIVAN: And that was every year. So over - - -

40 COMMISSIONER WILSON: As I understand the evidence there had been delays in implementing all of the AMHETI components and some of them seemed to relate to funding delays. Some relate to delays and other difficulties in recruiting appropriately experienced and qualified staff. And there seem to have been some
45 delays in getting approvals along the way. I mean, Dr Stathis made the point that they couldn't really get under way with their work until they had the approval of their project plan and that took until November - - -

MR O'SULLIVAN: Yes.

COMMISSIONER WILSON: - - - of 2013.

5 MR O'SULLIVAN: Yes.

COMMISSIONER WILSON: And the business plan was some months further down the track.

10 MR O'SULLIVAN: Yes. And in relation to that your Honour would, in our submission, accept that – this is trite – Queensland Health – the evidence of Dr O'Connell has 85,000 employees. It has a budget of about \$13 billion a year. And to some degree inevitably with an organisation that size it has a bureaucratic element to it and that underpinned, I think, Dr Stathis' evidence. It doesn't mean it's not a
15 powerful and effective organisation to deliver outcomes. It just means that it may be by virtue of its size somewhat slow.

COMMISSIONER WILSON: Alright. Anything else?

20 MR O'SULLIVAN: The document I handed up to your Honour.

COMMISSIONER WILSON: Yes, I've got that.

25 MR O'SULLIVAN: I don't propose to say anything about it. It's self-explanatory in terms of corrections that are made. Our submissions in relation to other parties – those which are endorsed and those which we say should not be accepted. I don't propose to say anything about any of it. We draw attention to what appears at 3.3(e)(2) but I don't propose to make any oral submissions about that.

30 COMMISSIONER WILSON: Alright. Thank you very much. It's been very helpful, Mr O'Sullivan. Now, I do want to take a break before we go any further. Who else is a position to address this afternoon and how long will it take? I'll run through the list. Mr Duffy for Dr Kingswell.

35 MR DUFFY: I can address. I won't finish by 4.30 by any stretch if I started now.

COMMISSIONER WILSON: How long do you think you'll be?

40 MR DUFFY: I think it's more likely half an hour or so and that is, of course, subject to your Honour's direction about – may I call it the construction issue in relation to the planning framework.

45 COMMISSIONER WILSON: Alright. I'll come to that in a tick. Mr Mullins, I understand, is not going to make any oral submissions at this stage. Mr Allen for Metro North.

MR ALLEN: I will take five minutes plus any time needed to address any matters that - - -

COMMISSIONER WILSON: Thank you.

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MR ALLEN: - - - you raise, Commissioner.

COMMISSIONER WILSON: Ms Rosengren, you wanted to address on Friday. Is that – are you here?

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UNIDENTIFIED SPEAKER: Commissioner, Ms Rosengren had to leave for the day but had indicated, I think, that she had hoped to make a brief address on Friday.

COMMISSIONER WILSON: Alright.

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UNIDENTIFIED SPEAKER: I don't purport to speak for her. I'm just aware she has left.

COMMISSIONER WILSON: Okay. You're in the same position, Friday.

20

UNIDENTIFIED SPEAKER: I am. Thank you, Commissioner.

COMMISSIONER WILSON: Alright. Mr Ben Mcmillan for Deborah Rankin.

25

MR McMILLAN: Your Honour – Commissioner, I only had a couple of moments of submissions but they do primarily respond to the submissions of West Moreton so if your Honour is inclined to adjourn today I would prefer to go on Friday but I can address today if that suits your Honour better.

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COMMISSIONER WILSON: Alright. And Dr Groves' representative. Yes.

MR ATHANASELLIS: Yes, your Honour. Nothing has changed. We can proceed today. We'll be about five minutes but we can happily proceed on Friday if you're minded to adjourn.

35

COMMISSIONER WILSON: Alright. Well, thank you for that. Now, before I make a decision can I ask Counsel Assisting with respect to the National Mental Health Service Planning Framework, I would like some submissions on the construction of it. Do you want to make any suggestions to me as to the form of those submissions and how you might present yours?

40

MR FREEBURN: Commissioner, it seems – in my submission, it's one of those matters that's better done in writing. I say that because of the nature of the framework document. It's a collection of different documents and it will, I think, be easier to explain that in writing than it will be orally and it will probably take less time.

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COMMISSIONER WILSON: Well, when could you have written submissions?

MR FREEBURN: Sorry, I mean, less Commission time.

5 COMMISSIONER WILSON: Yes. Less hearing time.

MR FREEBURN: Less hearing time. We could have ours ready by Thursday and perhaps submitted it Thursday.

10 COMMISSIONER WILSON: Well, thank you - - -

MR FREEBURN: Can I just address one point, and that is to what issue the submissions ought to be directed. I notice that Mr Duffy expressed it as a construction issue, that is, how do we construe the document. There is also the
15 question of the application of the document and the surrounding evidence. To give one example, it's a draft. There are communiqués about the progress of the document and how far it had got. So there isn't a question about the extent to which it applies as a policy document. We would propose that the submissions not be
20 restricted in any particular sense, but be directed to the framework and its assistance or its role in the reasons.

COMMISSIONER WILSON: Well, I think that's correct, that the focus should be on the framework. I know it was in draft and may still be in draft, but as it was, when it was being used as – well, sorry – when it was being used in the reasoning
25 process - - -

MR FREEBURN: Yes.

COMMISSIONER WILSON: - - - that led to the recommendations made by Dr Kingswell, if he says he took it into account with respect to Redlands, if he says he took it into account with respect to the Barrett Adolescent Centre, the form it was in when the planning group referred to it - - -

MR FREEBURN: Yes.
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COMMISSIONER WILSON: - - - it's – I mean, it's of interest to know in passing what has happened since. But the focus of this inquiry is the decision-making process, so it goes back in time.

40 MR FREEBURN: Yes.

MR DUFFY: Well, your Honour, that raises some issues of evidence, of course, that aren't presently before you. For example, did Dr Kingswell take it into account at the time of the Redlands Project. I don't think that's ever been dealt with.
45

COMMISSIONER WILSON: Well, if it's not in evidence, well, you don't need to go into it.

MR DUFFY: Quite so. So - - -

COMMISSIONER WILSON: But it is in evidence, as I recall, that he has said that it was relevant to the closure of the Barrett Adolescent Centre.

5

MR DUFFY: Yes. And the planning group refers to it, of course, in its document. The reason I referred to it as a construction issue is this: there is oral evidence about it. My learned friend, Mr O'Sullivan took you to that of Dr Kingswell. I was going to take you orally in due course to some additional oral evidence about it, that is, of
10 Dr Kotzé. The evidence about it is one thing. I understand your Honour's concern to be this, that it – what does it actually say?

COMMISSIONER WILSON: Well, I do want to know what it actually says.

15 MR DUFFY: And that's why I called it a construction issue. I didn't anticipate that there'd be a wider submission made about things like what's happened to it since and so on.

COMMISSIONER WILSON: I don't think that's really directly relevant.

20

MR DUFFY: No. But that's why I described it that way.

COMMISSIONER WILSON: Alright. Well, can I ask those – who amongst
25 counsel wishes to make submissions or feels he or she ought to make submissions with respect to this framework? We've got Mr Freeburn, obviously. Mr O'Sullivan.

MR O'SULLIVAN: We would wish to deal in writing with what Mr Duffy has called the construction point. What does it mean in a short way?

30 COMMISSIONER WILSON: Alright. Mr O'Sullivan, Mr Duffy – Ms McMillan?

MS McMILLAN: Yes, yes.

COMMISSIONER WILSON: And Ms Wilson? Okay. Well, can I ask all of you if
35 you – when you give me written submissions, I really don't want any submissions, written or oral, to go beyond the end of this week. It's really getting out of hand.

MR O'SULLIVAN: Friday, your Honour.

40 COMMISSIONER WILSON: Alright.

MR O'SULLIVAN: Only because I have to go to Sydney tomorrow, but is Friday acceptable?

45 COMMISSIONER WILSON: Well, I'll see what the others say, Mr O'Sullivan.

MR DUFFY: Well, I'll need that to - - -

COMMISSIONER WILSON: Ms McMillan.

MS McMILLAN: Well, we'll have to do close of business Friday.

5 COMMISSIONER WILSON: Alright. And Ms Wilson?

MS WILSON: Yes.

10 COMMISSIONER WILSON: Alright. Well, this will be on the basis that all of the submissions about the framework will be in writing. We won't take up Friday's hearing time dealing with it, understand? Okay.

MS McMILLAN: Sorry, when will we have Counsel Assisting's? Was it - - -

15 COMMISSIONER WILSON: Thursday lunchtime.

MS McMILLAN: Thank you.

20 COMMISSIONER WILSON: As I say, I do want to take a break. I don't want to sit too long this afternoon. I think it becomes counterproductive; everyone's tired. Perhaps we could, this afternoon, deal with the submissions on behalf of Dr Groves and those on behalf of Metro North, and the others will have to go until Friday, which is going to be a long day, but we're going to have to divvy up the time. Alright. Well, we'll have a break until 25 to 5.

25

ADJOURNED [4.21 pm]

30 **RESUMED** [4.36 pm]

COMMISSIONER WILSON: Right. I'll start with you, Mr Allen.

35 MR ALLEN: Commissioner, my submission should be in closed session.

COMMISSIONER WILSON: Very well. The live streaming off, please, and no one in the courtroom who doesn't have leave to stay during closed sessions.

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MR PRATT: The point I'd like to make, Commissioner, is that that note – the handwritten note has been attributed to Dr Groves in two of the written submissions that are before you. We don't need to turn to those. I do have the references however. It's in the Queensland Government submission at annexure C at page 123
5 of their submissions. And in the submissions for the Honourable Mr Lawrence Springborg at page 24, paragraph 5.44 – that's 5.44, the paragraph.

COMMISSIONER WILSON: I'm sorry. I didn't catch the first one. It's attributed to Dr Groves - - -
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MR PRATT: In the Queensland Government submission - - -

COMMISSIONER WILSON: Yes.

15 MR PRATT: - - - at annexure C.

COMMISSIONER WILSON: Yes.

MR PRATT: And that is - - -
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COMMISSIONER WILSON: And in Springborg's.

MR PRATT: Yes. So two of the submissions attribute that handwritten note to Dr Groves. Now, the issue is that, of course, that was never put to Dr Groves as to whether he's the author of it. Not a great deal turns on it. It's a matter of correcting the record because, of course, the Commission's task partly with working out who was in relevant positions at relevant times. And Dr Groves' evidence is that he was offline from October 2011 working on something quite different to Barrett and Redlands. It was the Mental Health Commission project that he was working on
25 from October 2011.
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Now, his evidence of that – again, I don't need to take the Commission to it, but I can give the Commission reference to Dr Groves' affidavit, particularly paragraphs 22 and 23 where he says:
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Between October 2011 and April 2012 I relinquished my role as Executive Director. Dr William Kingswell undertook that role from October 2011.

And then in 23 he goes on to talk about the statutory role which he continued to maintain, but describes those statutory functions as more of a compliance oversight role. The point I wanted to make is that whilst it isn't in evidence as to who is the author of that note, my instructions are that it's not Dr Groves. And as high as the Commission could take it is that the author of that note – whoever the author of that note is – is not in evidence.
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COMMISSIONER WILSON: Alright. Thanks, Mr Pratt.

MR PRATT: That's all I - - -

COMMISSIONER WILSON: Can I ask Ms Wilson; do you accept that it was not Dr Groves?

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MS WILSON: We don't have any contention with that submission. We don't oppose - - -

COMMISSIONER WILSON: What about Mr Springborg's representatives, are they still here?

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UNIDENTIFIED SPEAKER: No, they're not.

COMMISSIONER WILSON: Okay.

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MR PRATT: We did send around an email, Commissioner, highlighting this issue to all of the parties about a week ago, I think. It doesn't appear to be contentious, if I can say that.

COMMISSIONER WILSON: Alright.

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MR PRATT: If that assists the - - -

COMMISSIONER WILSON: Well, I'll be cautious in – if I go to refer to this to make sure that I don't inadvertently attribute it to Dr Groves.

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MR PRATT: Alright. That's all I have, Commissioner. Unless there's any questions.

COMMISSIONER WILSON: No. That's all. Thank you very much.

30

MR PRATT: May it please the Commission.

COMMISSIONER WILSON: Turning to Friday, Ms Wilson, you've made a lot of your submissions. How much longer do you think you'll be?

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MS WILSON: Just the additional ones that we need to make and I would estimate about 45 minutes.

COMMISSIONER WILSON: Ms McMillan.

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MS McMILLAN: Commissioner, obviously, I'll be adopting some of the very helpful submissions from Dr Mellifont, Mr Diehm and Mr O'Sullivan. I have the issues to still respond to that you've raised and then, of course, I will need to address separately the assertions made against my client by counsel assisting and the legal bases.

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COMMISSIONER WILSON: So how long are you going to be, is what I really need to know.

5 MS McMILLAN: Sorry. Probably an hour and a half – hour and three quarters.

COMMISSIONER WILSON: I'll say two hours, but it mustn't exceed that.

MS McMILLAN: I understand that.

10 COMMISSIONER WILSON: Mr Duffy, half an hour. And that leaves Ms Rosengren and I know she's left for the afternoon. Mr Ben McMillan?

MR McMILLAN: Five minutes.

15 COMMISSIONER WILSON: Five minutes. And Ms Robb?

MS ROBB: Between zero and five minutes.

20 COMMISSIONER WILSON: Okay. I take it you work on the basis if you can't say it in that time, it's not worth saying.

MS ROBB: Something like that. Thank you, Commissioner.

25 COMMISSIONER WILSON: Alright. Well, I'll allocate the times in this way: we'll start at 9.30 on Monday.

UNIDENTIFIED SPEAKER: Isn't it Friday?

30 COMMISSIONER WILSON: Friday, I'm sorry. Yes, Friday. Nine thirty to 10, Mr Duffy; 10 to 10.45, Ms Wilson; 11 o'clock to one o'clock, Ms McMillan. And then after lunch, Ms Rosengren, Ms Robb and Mr Ben McMillan. That's everyone. Alright. Do you want to say anything? I haven't asked you – Mr Maynard's representative.

35 MR O'BRIEN: No, your Honour.

COMMISSIONER WILSON: Sorry. My mind's gone blank. I know your name very well.

40 MR O'BRIEN: No. Not at all, your Honour. We rely upon our written submissions. Unless anything else arises that your Honour wishes to hear from us. There's been no criticism against Mr Maynard in the written submissions by counsel assisting. Everything that we need to say is in writing. We didn't intend to repeat that. If there's any questions that your Honour has then, so we'll answer them.

45 COMMISSIONER WILSON: Alright. Thanks, Mr O'Brien. So 9.30 to 10, Mr Duffy; 10 to 10.45, Ms Wilson; 11 to one, Ms McMillan; and in the afternoon the

other three finishing, we hope, by about 3 o'clock. Well, thank you all for your submissions in the last couple of days. And we'll see where we go. And can I thank Mr Hinge, who's been our bailiff. He won't be with us beyond today. You've been of tremendous assistance to us. Thank you very much.

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MATTER ADJOURNED at 5.02 pm UNTIL FRIDAY, 15 APRIL 2016