

**THE BARRETT ADOLESCENT CENTRE
COMMISSION OF INQUIRY
AT BRISBANE**

SUBMISSIONS ON BEHALF OF 'THE NURSES'

Introduction

- 1 These submissions are provided on behalf of Mara Kochardy, Matthew Beswick, Moira Macleod, Victoria Young, Rosangela Richardson, Peta-Louise Yorke, Susan Daniel, Christie Burke, Lourdes Wong, Janelle Bowra, Stephen Sault, Liam Huxter and Graham Dyer, members of the Queensland Nurses Union of Employees (**the nurses**).
- 2 Mara Kochardy, Matthew Beswick, Moira Macleod, Victoria Young, Rosangela Richardson, Peta-Louise Yorke, Susan Daniel, Lourdes Wong, Stephen Sault, Liam Huxter and Graham Dyer worked at the Barrett Adolescent Centre (**the BAC**) at various times and all were involved in the care and transition of the BAC patients.
- 3 Janelle Bowra and Christie Burke worked at [REDACTED] Adolescent Acute Inpatient Unit and were involved in receiving [REDACTED] from th
- 4 12 of the 13 nurses have given evidence in statutory declarations in response to notices to give information in written statements to the Barrett Adolescent Centre Commission of Inquiry (**the Commission**). Of those 12 nurses, 10 provided supplementary evidence in statutory declarations on request from the Commission. Three of those 13 nurses were called to give evidence.
- 5 Of the three nurses called to give evidence Mr Beswick gave oral evidence to the Commission on 29 February 2016, Ms Macleod gave evidence to the Commission on 7 March 2016, and Ms Daniel was not in the end required for cross-examination by any party and was not called.
- 6 The nurses have provided evidence potentially relevant to the Commission's Terms of Reference at 3(d)(i) and (ii), 3(e) and 3(f), that is, to the Commissions full and careful inquiry into:
 - (d) for BAC patients transitioned to alternative care arrangements in association with the closure or anticipated closure, whether before or after the closure announcement (transition clients):
 - i. how care, support, service quality and safety risks were identified, assessed, planned for, managed and implemented before and after the closure (transition arrangements); and
 - ii. the adequacy of the transition arrangements;

- (e) the adequacy of the care, support and services that were provided to transition clients and their families;
- (f) the adequacy of support to BAC staff in relation to the closure and transitioning arrangements for transition clients

Position and qualifications

- 7 The nurses, as a number of individuals, some of whom worked at the BAC and two of whom worked at Logan Adolescent Acute Inpatient Unit, are not advocating for a particular global narrative, nor for any particular conclusions or recommendations.
- 8 The nurses had various experiences and responded in various ways, as individuals do, however as Counsel Assisting has observed:
- The evidence reveals varying levels of anxiety and confusion during the closure process. Most staff described at least some feeling of stress during this time. It was an inevitably uncomfortable time for staff members, some of whom had been at BAC for many years.¹
- 9 The nurses are not on notice of any potential conclusions or recommendations adverse to their interests and as such, do not address any potentially adverse readings of their evidence.
- 10 On the final day of the Commission's hearings, 11 March 2016, it became apparent that the Commission intended to tender and rely on medical records. The legal representatives of the nurses have not had access to the medical records of the BAC cohort nor the opportunity to obtain instructions with respect to them, save with respect to those of [REDACTED]. No doubt large portions of progress n [REDACTED] record are authored by the nurses.
- 11 Where the patient records are admitted and analysed by the Commission for the purposes of determining the Commission's responses to its Terms of Reference, we assume in the circumstances that there will be no adverse inferences drawn, let alone adverse findings made, against the nurses' interests.
- 12 The nurses take comfort from Counsel Assisting's submissions that we are not overlooking any conflicts in evidence that have material implications for the nurses' interests. The nurses would anticipate notice should this position change, and accept and rely on the assurances to date of such.²
- 13 The following submissions address specific matters that arise with respect to the submissions of Counsel Assisting or with respect to discrete evidentiary issues.

¹ [COI.028.0001.0001] at [.0209] at paragraph 747.

² For example, as provided in an email from Mr Ashley Hill, Executive Director of the Commission, sent at 4.36 pm on 15 December 2015, "Before the report is finalised, notices of possible adverse findings will be given, along with an opportunity to make written submissions in response". See also Practice Guideline 02/2015 published 30 October 2015, amended 18 January 2016 at [4].

[REDACTED]

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[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

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³ Exhibit 156, [FAM.900.014.0001].
⁴ Ibid at [.0009]-[.0010] at paragraphs 43(a) and (b).
⁵ Ibid at [.0010] at paragraphs 46.
⁶ Exhibit 157, [FAM.900.015.0001] at [.0002] at paragraphs [2] and [3].
⁷ Ibid.

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⁸ Exhibit 84, [PBM.001.002.001], affidavit of Brett McDermott, at [.018] at paragraph 101, '[t]he closure of the BAC was not a new discourse, and had been a point of discussion amongst child and adolescent psychiatrists, other mental health workers and consumers for many years'. No doubt Professor McDermott contributed to that discourse, not least of all by his evidence at the Child Protection Commission of Inquiry in 2012, see [.019]-[.020] at paragraphs 103 and 108 – on that point, see the submissions of Counsel Assisting at [.0077] at paragraph 280.

⁹ [COI.028.0001.0001] at [.0209] at paragraph 747.

¹⁰ At paragraphs 347 to 359.

¹¹ Exhibit 66, [WMS.9000.0006.00001], affidavit of Sharon Kelly at [.01144], exhibit 'SK-36' at [.01147] under the heading 'Procedural instructions'.

¹² Ibid at exhibit 'SK-5' at [.00066], at page [.00072]-[.00073] under headings [REDACTED] and '2.1 Techniques used'.

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Stephen Sault's evidence as paraphrased at paragraph 401

29 At paragraph 401, Counsel Assisting's submissions read:

401. There is also evidence from Mr Sault that:

¹³ COI.028.0001.0001, exhibit number yet to be assigned, at [.0098] at paragraph 355 referring to T20-14 I19-23.

¹⁴ Oral evidence of Vanessa Clayworth at T22-48 I42-45; [QNU.001.003.0020] (to be tendered), supplementary statement of Rosangela Richardson at [.0032]-[.0034]; [QNU.001.012.0001] (to be tendered), statement of Liam Huxter at [.0012]-[.0015]; exhibit 184, [QNU.001.006.0025], supplementary statement of Peta-Louise Yorke [.0035]-[.0035]; exhibit 178, [QNU.001.002.0024], supplementary statement of Matthew Beswick at [.0043]-[.0044] and [.0050]-[.0051]; exhibit 70, [QNU.001.001.0023], supplementary statement of Mara Kochardy at [.0032]-[.0034]; exhibit 141, [QNU.001.009.0016], supplementary statement of Lourdes Wong at [.0024].

¹⁵ Exhibit 28, [DAB.001.0001.0001], affidavit of Anne Brennan at [.0006] at paragraphs 22 and 23 and at [.0073], exhibit 'AB-4'.

¹⁶ See the 'BAC Weekly Update Meeting Issues registrar' at exhibit 66, [WMS.9000.0006.00001], affidavit of Sharon Kelly at [.00913], exhibit 'SK-21'. The entry at number 34 at page [.00916] reads 'nursing and allied health staff increasingly distressed about inquiry and impending closure and their futures, their concerns for patients and their grief', raised by 'Anne'. To be addressed by 'Michelle' and 'Will', 'monitor and support staff as required'. Entries at numbers 14 [.00914], 19 [.00914], and 25 [.00915] are also relevant to the perception of the nurses' experience.

¹⁷ Exhibit 66, [WMS.9000.0006.00001], affidavit of Sharon Kelly at [.00025] at paragraph 18.2.

¹⁸ T11-50 I33-47.

- (a) on two separate occasions, a nurse was rostered to the BAC after being removed from another area due to disciplinary issues;
- (b) one nurse was placed on reduced hours on morning shifts while allegedly being investigated for misconduct; and
- (c) another nurse was transferred to HSIS following an incident at HSIS.

30 For completeness, Mr Sault's evidence on the matter, and the questions in response to which it was provided, is as follows.

31 In his first statutory declaration, Mr Sault gave the following evidence in response to the following question (the question is in italics):

9. *Describe your experience and observations of the operations and management of the BAC during the time of your involvement or employment.*

...

- (c) Throughout the time that I was employed at the BAC, there were occasions when it seemed to me to be used as a 'dumping ground' for nurses from other areas who may have been experiencing performance or conduct issues.

...

32 In his second statutory declaration, Mr Sault gave the following evidence in response to the following question (the question is in italics):

9. *Further to question 9, the Commission understands from paragraph 9(c) of Mr Sault's statement that in his opinion, BAC was "used as a 'dumping ground' for nurses from other areas who may have been experiencing performance or misconduct issues". Please explain the basis for this opinion and provide examples, where possible.*

- i. During my employment at the BAC there were two separate occasions when a nurse was placed at the BAC after having been removed from another area.
- ii. I recall one nurse being placed there on reduced hours on morning shifts while allegedly being investigated for misconduct. I believe the nurse's employment was terminated.
- iii. The other nurse was transferred from High Secure to the BAC following an incident in the High Secure.

33 In his first statutory declaration Mr Sault articulated an *impression* he had formed that nurses who 'may have been experiencing performance or conduct issues', presumably while working at other areas of The Park, were on occasion placed at the BAC. Mr Sault's choice of words implies that he thought those nurses were unable to work where they had been working because of concerns regarding their performance and that 'operations and management'

perceived the BAC an appropriate place for them to work.

34 As clarification as to Mr Sault's impression was solicited by the Commission, Mr Sault provided further evidence on his best recollection of the subject. Aspects of his evidence are clearly speculative. At the highest, Mr Sault's evidence is:

- (a) he believes two nurses were given shifts at the BAC having been taken off the roster elsewhere at The Park;
- (b) he recalls that one nurse was placed at the BAC on reduced hours and that that nurse was alleged to have been under investigation for misconduct, and he believes that nurse's employment was terminated; and
- (c) he recalls the second nurse was transferred to BAC following an incident where that nurse had been working.

35 Mr Sault's evidence is not inconsistent with other evidence provided to the Commission.

36 In her first statutory declaration, Rosangela Richardson provided the following response to the following question (the question is in italics):¹⁹

11. Describe briefly your experience and observations of the operations and management of the BAC during the time of your involvement or employment.

...

- (b) I believe the BAC was used on occasions (and up until it was closed) by senior management to accommodate staff from other areas within The Park who may have been subject to disciplinary matters and were sent to BAC as a form of 'punishment'. There were instances where permanent RN positions became available and were filled by staff from within The Park who had no interest in working in the area. The long term casuals who showed a genuine interest in adolescent mental health nursing were passed over.

...

Mr Sault's impression as communicated in his evidence is not inconsistent with the impression Ms Richardson imparts in her evidence.

37 Ms Richardson's evidence was paraphrased and put to William Brennan in a way that distorts her evidence:

Now, can I ask you this: in a statement by a Ms Richardson she said that nurses were deployed to Barrett as a disciplinary measure. Now, what do you say about that? Just – that's just not the case. There were occasionally where I had to move one or more nurses out of units while disciplinary matters were being investigated or followed through but wherever those nurses were placed was due to a range of factors, operational

¹⁹ Exhibit 109, [QNU.001.003.0001].

convenience being one and suitability another.²⁰

However, the relevant point for present purposes is that Mr Sault's evidence is also not inconsistent with the response provided by Mr Brennan, nor for completeness is Ms Richardson's.

Evidence attributed to Susan Daniel at paragraph 331

38 At paragraph 331 of Counsel Assisting's submissions,²¹ evidence is attributed to Ms Daniel:

There was also evidence that the resources which were made available to BAC staff to assist with transition planning, management and implementation were limited and not always kept up to date. For example, Ms Daniels and Dr Sadler gave evidence about the existence of a folder containing details of referring agencies and alternative services which was kept at the BAC nursing station, and a list of services that was maintained on a WMHHS shared drive.³⁵⁰ However, Ms Daniels said that while some of this information was current and up to date, other things needed to be updated and there was often a need to research further information to supplement the broad statements about a referring agency that were contained within the resource materials.³⁵¹

39 As mentioned above, Ms Daniel did not provide oral evidence. The references in footnotes 350 and 351 are to T19-72 118-28 (and in footnote 350, to a statement of Dr Sadler). On a review of the transcript, it appears this evidence was given by Carol Hughes.

A standing invitation issued to care-coordinators to attend transition planning meetings?

40 Counsel Assisting's summary of membership of the transition panel that represents that there was a standing invitation issued to care coordinators to attend is reductive so as to be misleading.²²

41 That representation that a standing invitation to attend transition planning meetings had been issued to care-coordinators is inconsistent with the evidence of the care coordinators,²³ Dr Brennan and Vanessa Clayworth. It is also somewhat at odds with the evidence regarding the change in the way transition planning was undertaken before the closure announcement on 6 August 2013 and after.²⁴

42 It does appear that the transition panel felt that there was a need for confidentiality with respect to some adolescents' transition plans more than others, for various reasons including risk mitigation.

²⁰ T16-60 1112-17.

²¹ At [.0092].

²² Submissions of Counsel Assisting at [.0107] at paragraph 376(g).

²³ For (non-exhaustive) example: exhibit 178, [QNU.001.002.0024], supplementary statement of Matthew Beswick at [.0026] and [.0040]; exhibit 77, [QNU.001.007.001], statement of Moira Macloed at [.0009].

²⁴ Some of which is identified by Counsel Assisting in their submissions at [.0090] at paragraphs 326 and 327.

- 43 By way of example, Dr Brennan gave the following evidence in cross-examination with Mr Mullins:

The transition panel was not – how can I express this, it was not a sort of exclusive club of any sort. It was essentially a group – a small group of people within the staff of the Barrett staff who, as well as everybody going to case conferences and talking about the patients, there was this small group who did, if you like, the hard work that was fairly tedious in a way but not – it wasn't really about creating transition, sort of creating care. It was about identifying services and trying to pull this all together. Care coordinators were absolutely welcome to give their input and to convey it back to families and to patients. In particular, regarding – I'll just think who. [REDACTED] of your clients and some others, and not many others, there was a ne [REDACTED] ntiality just in the, if you like, early to middle phases of developing those plans. Because had it come

[REDACTED]

that would've been highly dangerous, I think, to the point that then it did become time – I'm probably steering, going off the question a little bit about Moira. So I'll come back to that. So this panel was exploring the options until they were at a point for those just few and not many that you could make it safe or that it was likely to happen. And then you could involve other people. Now, that didn't mean that Moira was excluded from input into that or kept updated. But she probably wasn't told about looking at this and looking at that and looking at somewhere else. I don't think she would've had any knowledge of those receiving services and, therefore, I didn't think that that was relevant. There were case coordinators who did come to transition care panels. And that wasn't because they were issued a specific instruction or invitation to come. And some panels invited external people like the Department of Child Safety, or [REDACTED] clinic, or parents. They all varied. But for that small group who had these sens [REDACTED] ou like, issues about where they would be placed, that was more limited, if you like.²⁵

- 44 On the topic, Vanessa Clayworth gave the following evidence in examination in chief with Mr Freeburn QC:

And was it – was there an active decision to keep the care coordinator, the therapeutic side of it, separate? Yeah. It – it took much consideration and many discussions. In the beginning, when there was heightened anxiety and the young people were having difficulty with Dr Sadler have leaving, Dr Brennan coming in, they were having trouble identifying with somebody that they could trust. So in order to keep the therapeutic relationship and the therapeutic trust there was a decision initially that the case coordinators would be there to support and be an advocate for the young people and the young people's families.

And so not necessarily on the panel? They were welcome to join the – welcome to join

²⁵ T20-68 I23 – T20-69 I5.

the panel, but we wanted to make it known to the young people should it be somewhere that the young people found it difficult to consider or comprehend the placement that they still had somebody to identify with and feel safe with, and that was the CCs or associate CCs.²⁶

45 Ms Clayworth gave further evidence in cross examination with Ms McMillan QC to similar effect.²⁷

46 It is not suggested that there is a conflict in evidence that needs to be resolved. Rather, a more balanced summary of the evidence on the matter could be represented, demonstrating that the care coordinators had a peripheral relationship with the transition panel established after the closure announcement. That while the care coordinators were integral to implementing the transition plans, they were in effect kept out of the decision making for pragmatic and clinically sound reasons – as accepted by Ms Macleod in oral evidence.²⁸

Conclusion

47 The evidence of the nurses put before the Commission in statutory declarations and at the hearing speaks for itself.

48 The nurses are largely content with the representation of the facts in the submissions of Counsel Assisting. These submissions address specific matters that arise with respect to the submissions of Counsel Assisting or with respect to discrete evidentiary issues.

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Counsel for the nurses

23 March 2016

²⁶ T22-52 I36 – T22-53 I2.

²⁷ T22-80 I33 – T22-81 I10.

²⁸ T21-17 I12-14.