

BARRETT ADOLESCENT CENTRE COMMISSION OF INQUIRY

CONFIDENTIALITY PROTOCOL

Introduction

1. The Commission is obliged to conduct the Inquiry in an open and independent manner in accordance with *Commission of Inquiry Order (No. 4) 2015*. However, the Commission is sensitive to the need to keep some documents, material, information or statements (**Document** or **Documents**) provided to it confidential, particularly patient records, and documents which identify patients and/or their families or may lead to the identification of patients and/or their families. For that purpose, the Commission has developed this protocol.

Documents Supplied to the Commission

2. A person may claim confidentiality for specific Documents, or specific parts of Documents, in accordance with Part G of *Practice Guidelines – 01/2015* (issued 14 September 2015). The merits of all claims of confidentiality will be determined by the Commissioner.
3. However, the Commissioner, whether at the request of any person or on her own initiative, may treat any Documents supplied to the Commission as confidential and take any steps appropriate to preserve that confidentiality, including by making a non-publication order and/or an order excluding the public or any portion of the public from a sitting of the Commission.
4. Persons supplying Documents to the Commission, or their legal representatives, must take care to properly identify any part those Documents which are confidential or which are claimed to be confidential.

Confidentiality within the Commission

5. In the event that the Commissioner determines certain Documents (or parts of Documents) are confidential, the following rules apply.
6. The Commission operates on an electronic database (via the Commission's *eDocs* and *Delium* documents management systems). The Documents (or parts) identified as confidential will be flagged as confidential and secured within those systems.

7. Generally, the Commissioner, Counsel Assisting, all Commission staff and any authorised consultants of the Commission will have access to all documents provided to the Commission for the purpose of exercising their functions and duties, and for that purpose only.
8. The Commission has set up four levels of confidentiality within its document management systems, for those cases where it is necessary to further restrict access to certain documents within the Commission:
 - Level 1 – Referred to above, namely confidential to the Commissioner, Counsel Assisting, all Commission staff and any authorised consultants or experts.
 - Level 2 – Confidential to the Commission’s Legal Management Team¹ (and the Commission’s Document Manager).
 - Level 3 – Confidential to the Executive Director.
 - Level 4 – Confidential to the Commissioner.Those levels of confidentiality will be maintained within the Commission, and the access to documents restricted in that way, where necessary.
9. ‘Level 1’ confidentiality (see above) will enable the Commission to carry out its work.

Correspondence and Exchange of Documents

10. In some cases it will be necessary for the Commission to provide Documents to the legal representatives of persons granted leave to appear, or to other persons, for the purposes of the Commission’s work. For example, a person such as a medical practitioner, required to provide a witness statement to the Commission, may need to refresh his or her memory from contemporaneous documents in the possession of the Commission.
11. In those cases, where it is necessary for the work of the Commission to supply Documents to such a person, the Commission will:
 - (a) provide any such Documents only to the extent necessary for the Commission’s work;

¹ The Legal Management Team comprises the Commissioner, Counsel Assisting, the Commission’s Executive Director, Senior Solicitor and Research Director.

- (b) require that person, or their legal representative, to give an undertaking to maintain the confidentiality of the Documents so supplied.

What Must Not be Published or Disclosed

12. Generally, no person or party shall publish or share with another person or party:
 - (a) any patient, medical or clinical records, including health information under the *Information Privacy Act 2009* (Qld) and confidential information under the *Hospital and Health Boards Act 2012* (Qld); or
 - (b) any Document that identifies or may identify patients, or former patients of the Barrett Adolescent Centre, or their families (unless the relevant person or their legal representative give their written consent to the publication); or
 - (c) any Document that contains details of the method or location of any incidents of self-harm or death of former patients of the Barrett Adolescent Centre; or
 - (d) any Document that contains the names of students at the Barrett Adolescent Centre school; or
 - (e) any Document provided by the Commission to a person under clause 10.

Hearings

13. The Commission's hearings are required to be public unless the Commissioner makes an order pursuant to Section 16A of the *Commissions of Inquiry Act 1950*. Subject to the next paragraph, the public nature of the hearings will mean that transcripts² and non-confidential evidence will be made publicly available on the Commission's website.
14. However, the Commission anticipates that, having regard to the nature of the Inquiry and the likelihood that evidence of the medical treatment and care of individual patients of the Barrett Adolescent Centre will be heard by the Commission, it may well be necessary to consider excluding the public (or a portion of the public) from certain sittings. The Commissioner will consider making such orders having regard to the subject matter of the Inquiry, and the

² See paragraph 22 regarding transcripts.

nature of evidence likely to be heard, and the other matters required by section 16A of the Act.

Hearings – Guidelines for Evidence of Patients and Family

15. Before former patients or family members give evidence before the Commission, the Commissioner will consider, either on the application of a party or the witness, or on her own initiative, whether it is necessary to make a non-publication order and/or an order excluding the public, or any portion of the public, from the relevant sitting. That shall be done on a case-by-case basis.
16. Where it is necessary for a particular witness to refer to patients or family members in evidence, patients' names and family members' names will be given codes, along the lines of "ABC" or "XYZ" etc. A list of codes will be kept by the Executive Director of the Commission, and any parties who may need to use these codes in the provision of their evidence will be notified of the relevant code to use prior to giving their evidence.

Publication of Evidence

17. Documents (or parts of Documents) determined to be confidential by the Commissioner or Commission staff will not be published.
18. Where a Document contains some confidential information, but can be redacted without disclosing any confidential information, the following rules will apply.
19. Before the Commission publishes a document or makes a document publicly available, Commission staff will create an electronic copy of the document and redact any confidential information from that electronic copy, for example, to delete patients' names or to delete other identifying material. Redacted copies of documents will then be kept separately within a folder of documents that may be published, subject to the Commission's internal approval processes.
20. Prior to publication of any Documents containing names of patients or family members, Commission staff will de-identify this material using the codes.³

³ See paragraph 16 above.

21. If de-identification will not preserve the confidentiality of a relevant Document, the Document will not be published or made publicly available by the Commission.

After the Hearings and Commission

22. The transcripts of the Commission's hearings will be subject to the Commission's internal processes and will be redacted as appropriate before publication on the Commission's website.
23. Once the Commission of Inquiry is complete, all confidential information will remain confidential.

Conclusion

24. The Commission is willing to discuss and consider any concerns about confidentiality with those providing documents and information to it.

The Honourable Margaret Wilson QC

12 October 2015

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