

**In the matter of the Commission of Inquiry Act 1950
Commissions of Inquiry Order (No. 4) 2015
Barrett Adolescent Centre Commission of Inquiry**

**WRITTEN SUBMISSIONS ON BEHALF OF DR MICHAEL CLEARY, DR TONY
O'CONNELL AND DR ANNE BRENNAN IN RESPONSE TO INVITATION
CONTAINED IN LETTER FROM THE COMMISSION DATED 28 APRIL 2016**

1. [REDACTED] states at paragraph 4 of [REDACTED] supplementary statement that [REDACTED] knowledge of the development of new services was based upon a number of sources including a radio interview on 4ZZZ given by Lesley Dwyer on 8 August 2013, a letter from Mary Corbett of 9 August 2013, and a meeting with Lesley Dwyer, Sharon Kelly and Dr Stephen Stathis on 30 August 2013 to discuss models of service. [REDACTED] recalls Ms Dwyer stating in the radio interview that the BAC would continue to operate until such time as there was an agreed model and those models were up and running. The recording reflects that.
2. [REDACTED] says the focus of the August meeting was the need for a Tier 3 extended inpatient service and that there was a tight timeframe for development and delivery of new services given that indications were the BAC would be closing in January 2014. [REDACTED] left the August meeting thinking that the plan was that the BAC would not be closing before the new services were up and running.
3. A chronology of surrounding statements from various documents shows the following:
 - (a) In the briefing to the WMHHS Board for its May 2013 meeting¹ the Executive, having referred to the recommendations of the ECRG, and the Planning Group said:

"The Service Model Elements document (and the associated recommendations for an alternative model of service) allows for the safe and timely closure of BAC. Given 10 out of 16 young people from the current BAC inpatient group are aged 17 years or over, and that the length of stay is up to 2 years in several cases, it is considered clinically adequate to provide a four month timeframe to complete discharge planning and aim to close BAC 20 September 2013.² The closure of BAC is not dependent on the next stages of progressing and consulting on a statewide service model; instead, the closure process is relevant to the needs of the current and wait-list consumer

¹ WMS.9000.0006.00860

² It is noted that when the decision to close was delayed until August 2013 this same four month time period remained the target.

group of BAC, and the capacity for 'wrap-around' care in their local community services. The Planning Group noted this was feasible to commence now." [underlining added]

- (b) The WMHHS Board relevantly resolved on 24 May 2013 to support closure on certain conditions. The resolutions recorded are, in the context now examined, somewhat ambiguous.³
- (c) A meeting was held on 11 June 2013 between Lesley Dwyer, Dr Peter Steer, Leanne Geppert and Sharon Kelly whereby it was agreed:

*".....that the timeliness of the development and implementation of a statewide model is a priority for WMHHS as the decision to cease providing services at the Barrett Adolescent Service is contingent on a viable service model option being available."*⁴

- (d) On 17 June 2013 Sharon Kelly, Lesley Dwyer and Leanne Geppert met with Michael Cleary and Tony O'Connell to discuss the proposed new model of care for adolescents and the proposed discontinuation of services provided through the BAC and to obtain advice as to how to progress the matter.⁵ What took place at that meeting was recorded in a WMHHS Agenda Paper of 28 June 2013:⁶

"In principle support of the plan for closure of Barrett Adolescent Service with an understanding the new model of service is identified and developed."

The State of Queensland made oral submissions that the words *"identified and developed"* did not mean *"operational"*.⁷ The evidence of Dr O'Connell was that his understanding was that the intention was that the BAC would not close until new services were available.⁸ The alternative interpretation advanced by the State is strained and inconsistent with the discussion on 11 June 2013;

- (e) The July 2013 briefing note to Tony O'Connell⁹ stated:

"West Moreton Hospital and Health Board approved the closure of the BAC dependant on alternative, appropriate care provisions for the adolescent target group and the meeting with the Minister for Health."

³ WMB.1000.0001.00012

⁴ As recorded in the WMHHS Board Committee Agenda Paper of 28 June 2013 - WMB.1000.0001.00073

⁵ Statement of Dr Cleary paragraph 84(viii).

⁶ WMB.1000.0001.00073

⁷ T28-30 lines 14-19

⁸ Dr O'Connell at T12-21 lines 5-6; T12-22 lines 1-4; Affidavit of Dr O'Connell of 6 January 2016 paragraph 16(d); Supplementary affidavit of Dr O'Connell of 6 February 2016 paragraphs 15, 19.

⁹ QHD.006.002.1581

A key issue was noted as being:

"The Department of Health is urgently progressing planning for Youth Prevention and Recovery Care (Y-PARC) services to be established in Queensland by January 2014. This service type would be an alternative care option for the adolescent target group currently accessing the BAC."

- (f) It is recorded in Estimates Brief Number 17.0310 that the Planning Group met on 15 May 2013 and supported all 7 recommendations of the ECRG (with caveats) and submitted a paper to the WM Board for review on 24 May 2013 which included the following recommendations:

"The next phase of the project is proposed to be statewide consultation on the service option elements and the implementation of statewide service options in partnership with the children's HHS and MHAOD branch. In principle support of closure of BAC once above options are available noting long term constraints for adolescents at The Park facility."
[underlining added]

The document was prepared or finalised immediately after the meeting with the Minister on 15 July 2013.

- (g) On 26 August 2013 the minutes of a SWAETRI strategy meeting¹¹ record:

"The Department of Health is negotiating with the CE's of CHQ, WM HHS and Metro South for an interim site for a bed based facility in Logan. Decisions re: governance and finances need to be decided at chief executive level. This group is not involved in influencing this interim planning."

- (h) On 27 August 2013 Stephen Stathis emailed David Crompton¹² saying:

"I understand this is still under negotiation. I know you have expressed reservations about the appropriateness of the proposed interim site at Logan Hospital for adolescent beds after Barrett closes. Based on our conversation at the Senior Leadership Forum, I also have concerns."

- (i) The Minutes of the meeting of the Chief Executive Department of Health Oversight Committee of 17 October 2013 record at item 5.1 that Dr Peter Steer *"queried how transition care needs could be managed until future services options were available. One option explored was that of an HHS setting aside 4 to 5 beds specifically for extended treatment and rehabilitation until longer term solutions were established. PS advised*

¹⁰ WMS.1000.0005.000078

¹¹ CHS.003.001.0249

¹² MSS.001.002.0111

that the Mater inpatient unit may become available in November, which could be a longer term option but would require further exploration."

[underlining added] The minutes had earlier noted that such a service would not be within the acute unit.

- (j) On 12 November 2013 Bill Kingswell emailed Michael Cleary¹³ and said:

"I met with Lesley and her team today. She has had advice from Peter Steer that he will not have a model in place to address the closure of BAC for 12 months. That is not a solution useful to Lesley. Lesley proposes:

1. *A 6 month pilot project to deliver a residential support option. Bring Aftercare on board to provide a 4 bed residential support option in leased housing at Goodna. Aftercare has been chosen as they have the capacity, have indicated a willingness to be involved, already provide the TOHI beds in Cairns and are lead agency in the Metro Nth headspace. Given this would be operational by about Australia Day, it will be a type 4 procurement. There will not be time to go to tender."*

- (k) On Friday 20 December 2013 Brett McDermott emailed John O'Donnell and Mish Hill of the Mater stating that:

"Peter Steer has the difficult task of replacing the Barrett service by 31 January 2014. Clearly there will be no purpose built solution by then, he has sought the help of Mater CYMHS in the interim. The proposal is that the Mater will provide a package of care for [REDACTED] who would have otherwise been admitted to the Barrett. There are ongoing Mater CYMHS discussions about what this would look like."

4. Several things emerge.
5. WMHHS considered from at least May 2013 that the existing inpatients at BAC, by virtue of their ages and length of stays (which already exceeded the 12 months referred to by the ECRG) should not be accessing extended treatment inpatient services, independent of the new services to be established. That remained the position as at August through until closure (see Kelly at T11-65.20; T11-66.01).
6. Concurrently however, there were communications being made by it to Dr O'Connell, Dr Cleary, the Minister and others, reflecting shared objectives of those within Children's Health and MHAODB, that new services were to be established that would be available before BAC closed. No doubt they would not be the full range of services ultimately to be developed across the state but it is clear from the above that there was an expectation shared by a

¹³ Exhibit 439 DMZ.001.001.0305

number of people and engendered by a number of the communications above that they would include relevant services for the cohort such as tier 3 beds, “resi” services and a YPARC like facility.

7. It is also apparent that some endeavours were being made to establish such services in that time frame. At one time there was an expression that a YPARC would be established by January 2014. At another time it was said dedicated Tier 3 beds could be available in November (with later expressions being about February 2014 though the collocation in an acute ward was not explicitly reported) and a “resi” was being urgently pursued in November.
8. Those involved in managing the transition were not given any expectation that such facilities would be available to the existing patients as an option for their transition and were not expected to await their establishment. Despite the intent reflected in the documents above, the services were not established by the time of closure. Many documents however do reflect a commonly held belief that sub-acute beds at the Mater were available from February 2014 though it was in fact a few months later that they were.
9. In that context, given what was being sought to be done by the likes of Dr Stathis and the communications about those matters, it would be unsurprising if [REDACTED] received such advice about alternative services.

National Standards for Mental Health Services 2010 and Carers (Recognition) Act 2008 (Qld)

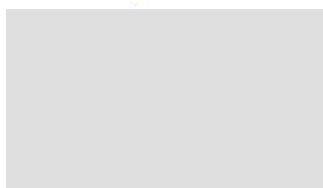
10. Whilst the National Standards for Mental Health Services 2010, in particular, standards 3, 7 and 10.6, contain criteria relating to consumer and carer participation, they do not provide any obligations on the part of mental health services nor do they bestow any enforceable rights on carers. They do not create any benchmark for assessing the adequacy of the care, support and services provided to BAC patients and their families.
11. The *Carers (Recognition) Act 2008 (Qld)* (“the Carers Act”) refers in Part 2 to decisions that affect carers and in Part 3 establishes a Carers Advisory Council to advance the interests of carers. The Queensland carer’s charter is a schedule to the Act which endeavours to help carers to be heard by government and be better understood in the community.
12. Section 8(2) in Part 2 of the Carers Act provides that “*this part is directory only and does not create rights or impose legally enforceable obligations on the State, a public authority or anyone else.*” Subsection 8 (3) provides “*failure to comply with this part does not affect the validity of any decision.*”
13. The Act does not create any rights or obligations but recognizes the contribution of carers and aims “*to provide for the interests of carers to be*

*considered in decisions about the provision of services that impact on the role of carers.*¹⁴

14. There is no evidence to suggest that the clinicians engaged in transitioning patients out of the BAC, including Dr Brennan, in the performance of their duties, did anything other than appropriately respect the role of carers of relevant patients.
15. Consideration of the issues raised as to the standards to be applied concerning “carers” is complex. It must take into account provisions such as ss.144, 145, 147 and 148 of the *Hospital and Health Boards Act 2011* and the *National Privacy Principles*, amongst other considerations no doubt.
16. It is noted the Act creates no benchmarks in any event in relation to adequacy of care provided.
17. It is not open for the Commission to use the standards or the Act as a “benchmark” for TOR 3(e) as floated in Mr Hill’s letter of 28 April 2016. Firstly, as noted, neither contain benchmarks. Secondly, because of the timing of the raising of this issue, the evidence has not been directed to addressing such an issue and nor have submissions been made by Counsel Assisting on the topic. The affected parties have been given no notice by any means as to what issues they should address.



GW Diehm QC



CJ Conway /

Counsel for Dr Anthony O’Connell, Dr Michael Cleary and Dr Anne Brennan
9 May 2016.

¹⁴ Section 4 *Carers (Recognition) Act 2008*.