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Department of
Justice and Attorney-General

Your ref:
Our ref: PLF/PRE052/2103
Contact: Paul Lack
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17 May 2016

Mr Ashley Hill
Executive Director
Barrett Adolescent Centre Commission of Inquiry
Level 10, 179 North Quay
BRISBANE Q 4000

Dear Mr Hill

Barrett Adolescent Centre Commission of Inquiry – State Representation
Draft NMHSPF

I refer to your letter dated 10 May 2016.

With respect to your query about whether the State of Queensland intends to respond to the clarifications sought in your letter dated 18 April 2016, it appears that there has been a misunderstanding. It was my impression that the meeting with Mr Fjeldsoe was intended to provide the Commission with the opportunity to clarify all of those matters referred to in its letter of 18 April 2016, as well as any subsequent queries it might have as a consequence of information provided by Mr Fjeldsoe in response to questions during the meeting. When the meeting was proposed, it was suggested that it would obviate the need for a written response to your letter of 18 April 2016.

In those circumstances, I am surprised to receive your letter of 10 May 2016.

Having said that, with respect to your specific query about the need for clarification of the State's submission that '*All States and Territories have agreed the Framework taxonomy*', I note that:

1. Mr Fjeldsoe, my counsel and I met with Mr Freeburn QC and Ms Cornes on 27 April 2016 at 7.30am;

2. at that meeting, Mr Freeburn QC asked many questions of Mr Fjeldsoe;

3. a transcript of that meeting was prepared and circulated to attendees;

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4. a draft statement was prepared by Commission staff;

5. Mr Fjeldsoe swore the statement on 9 May 2016 and it was provided to the Commission on that day; and

6. had the Commission still been wishing to clarify whether '*All States and Territories have agreed the Framework taxonomy*', Commission had adequate opportunity to ask Mr Fjeldsoe the question directly.

In any event:

1. the State maintains its submission that '*All States and Territories have agreed the Framework taxonomy*'. It is not the State's submission that this agreement is reflected in an executed document. However, the existence of the agreement is evidenced by:

   (a) the intention in establishing the project;

   (b) the extent of willing participation by experts from all States and Territories;

   (c) the consensus as to the design of the taxonomy; and

   (d) the subsequent use of the taxonomy;

2. the State does not accept that the statement of Mr Fjeldsoe does not support the proposition that '*All States and Territories have agreed the Framework taxonomy*';

3. the transcript of the meeting reflects the evidence of Mr Fjeldsoe that:

   (a) each jurisdiction was provided a USB of the actual excel modeling document for their use;

   (b) this was the first time in Australia that a taxonomy had been provided to all States and Territories;

   (c) the tool was used extensively in Western Australia by Dr Groves;

4. the Statement of Mr Fjeldsoe does record:

   > *19. At that time, the NMHSPF documents (including the Excel modelling document, or tool) were produced on USB, and a copy was given to the executive representative of each State.*
   >
   > ...
   >
   > *21. The intention was that the tool would be taken away and used by each State to inform service planning work which they may be undertaking with a view to enabling continuous improvement and refinement. This is made clear by the diagram in the NMHSPF Project Charter called "Define/Align/Refine development cycle for the NMHSPF". A copy of this diagram is attached and marked 'KJF-3'.*

5. the tool was used by Children's Health Queensland Hospital and Health Service (HHS) in developing the business case for the AMHETI suite;[1]

6. the unchallenged evidence of Associate Professor Kotze is that:[2]

> '*Approximately 200 experts from across Australia met over a period of more than 2 years to progress the development of a National decision support tool to support planning for the provision of mental health services across all age groups across a population. This process brought together clinicians, managers, consumers, carers, non-government organisations, academics, researchers and technical, financial, epidemiological and planning experts in a comprehensive process that examined literature and databases in relation to service elements, service utilization and best available treatment evidence.*
>
> *The outcome was a taxonomy for agreed service elements in a comprehensive mental health service system and a tool that assists with planning at different levels in the system (for example, at local, district or State level) for different age groups. It is built up from predictions in a population as to the prevalence of mental health disorder/illness, the evidence supporting interventions and the care packages required by consumers. This process involved a comprehensive understanding of the service elements currently provided in the jurisdictions and expert agreement by consensus on what and how much should be provided in an 'ideal system'.*'

7. the unchallenged evidence of Dr Kingswell was that:

> '[the Queensland Plan for Mental Health] *was also made in part obsolete by the National Mental Health Service's Planning Framework. So the fourth National Mental Health Plan which was committed to by all Australian governments had under its remit one action which was to deliver a nationally consistent set of service elements. That work went on between 2011 and 2013. It cost the Commonwealth something like $2 million and it involved extensive consultation with all jurisdictions. There were consumer and carers and advocacy groups and clinicians and so on involved in that consultation. And I think the Commission has those documents and can see the taxonomy and the service element description that that plan envisages.*'[3]

8. the work undertaken, with the commitment of all Australian governments, referred to by Dr Kingswell, is the work also referred to by Associate Professor Kotze in her statement.

The above evidence supports the submission made by the State. Further, I note that the Commission has no evidence to the contrary and could not make a finding to the contrary unless notices have been issued to each State and Territory and the Commonwealth and contrary evidence has been provided by each of those entities. It is assumed that the Commission has not undertaken this exercise given the State has not been afforded the opportunity to consider and respond to such evidence.

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[1] See, for example, Ingrid Adamson's statement.
[2] Exhibit 71 Statement of Associate Professor Kotze p 15 para 61.
[3] T13-19/L6-15.

In relation to the balance of the queries in your letter of 18 April 2016, it is the State's position that:

1. with respect to paragraph (1)(b)(i) of your letter, page 14 of Exhibit 233 contains a figure depicting an '*Overview of the NMHSPF Taxonomy structure*' but contains no explicit statements about how the document is to be interpreted, nor any definitions;

2. with respect to paragraph (1)(b)(ii) of your letter, page 15 of Exhibit 233 provides some assistance;

3. it is not appropriate to attempt to construe the draft National Mental Health Service Planning Framework ('*NMHSPF*') as though it is a legal document and, as such, with respect, your query in paragraph 1(b)(iii) is misguided;

4. with respect to paragraph 2 of your letter, Counsel Assisting's concession that the draft NMHSPF does not provide an endorsement of the BAC is appropriate in light of the submissions made above;

5. as to the matters stated in paragraphs 3(b)(i); (ii) and (iii) of your letter, the State's submission was not in response to any specific statement included in Counsel Assisting's submissions. The State reiterates its position as stated in paragraph 13 of its Submissions;

6. with respect to paragraph 17 of the State's submissions, the submission is supported by the evidence of Associate Professor Kotze referred to above;

7. paragraph 18 of the State's submissions ought be considered in conjunction with the evidence in paragraphs 36 to 45 of Mr Fjeldsoe's statement and, as such, your analysis by reference to length of stay referred to in various service elements is incorrect;

8. with respect to paragraph 5(b) of your letter, service elements 2.3.2.5 and 2.3.3.1 are part of the taxonomy, but ought not be used as a guide for a service other than that to which each part refers;

9. with respect to paragraph 5(c) of your letter, Associate Professor Kotze's evidence ought be accepted in its entirety;

10. an amendment of the model of service for the BAC would change the nature of the service provided such that, with respect, the proposition referred to in your paragraph 5(c)(iii) is of no utility;

11. the taxonomy provides service elements with a stay on average of 365 days. For further information on that issue, see the business case prepared by Children's Health Queensland HHS and the statement of Mr Fjeldsoe;

12. the evidence in support of the State's submission at paragraph 24 is found at paragraph 23 of the Statement of Dr Kingswell;

13. with respect to paragraph 7 of your letter, Associate Professor Kotze's evidence ought be accepted in its entirety and, to the extent that the State's submissions do not

refer to every available piece of evidence about the draft NMHSPF, that is explained by the limited time within which the State was required to provide the submissions;

14. with respect to paragraph 8 of your letter, as noted at paragraphs 21 and 33 of the Statement of Mr Fjeldsoe, the draft NMHSPF is a document that is intended to be subject to continuous improvement and should be understood in that context. Further, as is stated by Mr Fjeldsoe in paragraph 29:

> '*I am aware that the NMHSPF has been used in a number of jurisdictions to support service planning work. The proposition that the NMHSPF is in draft form and should not therefore be used is, in my view unreasonable. While it has its limitations, it is clear that it represents more than three years work to systematically collect and consolidate evidence and views of a large number of academics, practicing clinicians, non-government service providers and consumers and carers on the best mix and quantum of services which should be provided to a given population. A resource of this type has never previously been available, to ignore it would not seem to me to be a reasonable option.*'

15. paragraphs 35 to 45 of Mr Fjeldsoe's statement and the transcript of his evidence, provides clarification as requested in paragraphs 9 and 10 of your letter;

16. the basis for the distinction in paragraph 31 of the State's submissions is that none of the BAC patients were admitted to an adult or adolescent hospital-based intensive care facility;

17. it is accepted that the submission in paragraph 33 was badly put. By way of clarification it is the State's position that the reference to the BAC in the draft NMHSPF records that BAC was an example of an existing service that was considered by the experts. The fact that the BAC model of service is not part of the taxonomy nor detailed in the service elements is evidence that it was not considered to be a contemporary model of service delivery. This issue is explained in the evidence of Associate Professor Kotze.

In relation to paragraph 13 of your letter dated 18 April 2016, I note that the State provided the contact details for Mr Brian Woods. I am unaware of whether Commission staff have availed themselves of an opportunity to speak with him.

Paul Lack
Director and Instructing Solicitor
Barrett Adolescent Centre Commission of Inquiry – State Representation
for **Crown Solicitor**