



AUSCRIPT AUSTRALASIA PTY LIMITED

ACN 110 028 825

T: 1800 AUSCRIPT (1800 287 274)

E: clientservices@auscript.com.au

W: www.auscript.com.au

TRANSCRIPT OF PROCEEDINGS

O/N H-1037309

**THE HONOURABLE R.R.S. TRACEY AM RFD QC, Commissioner MS L.J.
BRIGGS AO, Commissioner**

**IN THE MATTER OF THE ROYAL COMMISSION INTO AGED CARE QUALITY
AND SAFETY**

DARWIN

9.51 AM, WEDNESDAY, 10 JULY 2019

Continued from 9.7.19

DAY 33

**MR P. GRAY QC, counsel assisting, appears with MR P. ROZEN QC, MR R.
KNOWLES and MS B. HUTCHIN**

MS F. McLEOD SC appears for Assisi Centre Limited i/b MinterEllison

MR B. DIGHTON appears for the Commonwealth of Australia

5 COMMISSIONER TRACEY: Before I call on Mr Rozen, can I just advise those present and those viewing these proceedings online that the Commission has been advised that there will be evidence this morning of a graphic nature which may be of concern to some people, and we simply wish to advise that, in the event that you might find the photographs and other material confronting, you should be ready to cease watching at least for a short period in the course of the morning. Yes, Mr Rozen.

10 MR ROZEN: If the Commissioners please, before I open today's case study, I understand there are some appearances which are to be made.

COMMISSIONER TRACEY: Yes.

15 MS F. McLEOD SC: If the Commissioners please, my name is McLeod. I appear for Assisi Centre Limited and current employees and officers, instructed by MinterEllison.

COMMISSIONER TRACEY: Yes, Ms McLeod.

20 MR B. DIGHTON: If it please the Commissioners, my name is Dighton, appearing for the Commonwealth.

COMMISSIONER TRACEY: Thank you, Mr Dighton.

25 MR ROZEN: Commissioners, yesterday was devoted to the first of three case studies for this hearing in Darwin and Cairns. The second case study will be heard today. This case study is concerned with the late Ms Annunziata Santoro and her experiences in residential aged care at Assisi Aged Care Centre suburban Melbourne. Operator, please display the photograph at tab 210 of the Assisi tender bundle.
30 Commissioners, Ms Santoro was born in Italy in 1924 and migrated to Australia in 1956. She raised a family and enjoyed the outdoors and gardening. Later in her life she lived with her daughter Anna, for about nine years as her health deteriorated.

35 She was diagnosed with dementia, type 2 diabetes, arthritis and arrhythmia. Ms Santoro was assessed for a home care package and received some care at home but as her eyesight deteriorated the family moved her into residential aged care at Assisi in June 2017. At that time, the late Ms Santoro was 93 years of age. She was mobile and in reasonable health for her age. We will today examine deficiencies in the care of Ms Santoro at Assisi and the reasons, systemic or otherwise, for those
40 deficiencies. Some of those deficiencies are as follows. In May 2018 the late Ms Santoro was found to have lost five-and-a-half kilograms since she had last been weighted in March 2018. Her weight loss represented about 10 per cent of her total body weight.

45 Although Ms Santoro was then given dietary supplements her weight was not subsequently monitored on a regular basis. Records about her weight loss, the possible reasons for it and the effectiveness of supplements were inadequate. By

October 2018 Ms Santoro weighted 45 kilograms, having lost a further five kilos. Her family were not informed of the weight loss until October 2018. That is, despite her daughter, Ms Anna Ng, who you will be hearing from today, at all times holding medical power of attorney for Ms Santoro and regularly visiting her mother. In June
5 and July 2018 Ms Santoro had a series of falls at Assisi, so that is some one year after she first started living there.

From early on during her time at Assisi , from early Ms Santoro had been assessed as being at risk of falls. As a result of falls in June and July 2018 Ms Santoro sustained
10 various injuries and was transferred to hospital on a number of occasions. The most significant fall resulted in a broken hip. That occurred in July 2018 and she was hospitalised and underwent surgery on 14 July 2018. On her return to Assisi from hospital three days later on 17 July 2018, the care staff at Assisi noted that her GP, Dr Tay, would review the wound a fortnight after the operation, that is on 28 July
15 2018. Dr Tay in fact saw Ms Santoro at Assisi on 19 July 2018 and 2 August 2018. However, for reasons that are unclear he did not remove the staples which were holding the wound together and when the wound from her surgery became infected it was necessary for Ms Santoro to return to the hospital's emergency department for the removal of the staples.

20 That took place on 6 August 2018. This issue will be explored with both Assisi and Dr Tay. We anticipate, as Counsel Assisting, that we will be critical of the conduct of both in relation to this matter. The pressure injury: after the visit to hospital in July 2018, the late Ms Santoro's discharge report recorded that she had developed a
25 pressure injury on her right heel. Given that Ms Santoro was a diabetic, that she experienced poor circulation in her lower legs and that she was losing weight, any pressure injuries of this nature required careful and prompt treatment by the care staff at Assisi. That did not occur. We anticipate being particularly critical of Assisi and its care staff in relation to this issue.

30 By mid-September 2018, some two months later, the pressure injury wound had deteriorated badly. Proper records of the progression of the wound had not been kept by Assisi's care staff. It was not mentioned at all in progress notes for Ms Santoro until mid-September 2018. Only two photographs of the wound were taken over the
35 entire period, and progression of the wound was not adequately recorded. As the wound worsened, other deficiencies in Assisi's care for Ms Santoro came to light. A physiotherapist employed at Assisi was permitted by Assisi to continue with weight-bearing exercises until 4 October even though, as Dr Tay explained to Ms Ng, pressure had contributed to the worsening of the injury.

40 These exercises were being paid for by Ms Santoro's family over and above the fees that they were paying for the bed. There was no communication by care staff with the physiotherapist about the seriousness of the heel wound. No consideration appears to have been given as to how painful those exercises might be and how that
45 pain might affect Ms Santoro's mood and behaviour, nor was the effect of the exercises on the progress of the heel wound apparently considered. A wound specialist was not consulted by Assisi until 9 October 2018, around two and a half

months after the pressure injury had been first observed and, importantly, several weeks after it had seriously deteriorated. A note made by a care worker records that on 18 September 2018, some three weeks before the wound consultant was engaged, the wound site is:

5

Open to 50 cent size, is stage 3, and black in colour.

By 3 October 2018, the wound had deteriorated to such an extent that the notes record:

10

Significant depth with likely bony involvement.

An entry by an independent nurse practitioner wound consultant on 9 October 2018 recorded that the injury was the most serious grade possible, that is stage 4, and the consultant recorded:

15

Able to see and feel bone.

And noted that:

20

An X-ray shows likely osteomyelitis or bone infection.

It's at this point, Commissioners, that I would ask that the photo to which Commissioner Tracey has already made reference be shown, and it is at tab 130 of the tender bundle. If it could be briefly shown please, Operator. Thank you. I think that can be taken down now, please. There are no recorded pain assessments of Ms Santoro between October 2018, a period of three months. As late as 15 October 2018, that is, after the observation made by the wound consultant that I just referred to, Ms Santoro was not given analgesia before the dressing on her wound was changed, and even after that time, a nurse manager at Assisi insisted to Ms Ng the daughter that Ms Santoro's agitation was behavioural and not related to pain.

25

30

That approach appears to have also played a role in the prescription and administration of antipsychotic drugs for Ms Santoro's behaviours. In this regard, there was no proper assessment of how pain might have affected Ms Santoro's behaviour. The prescription and administration of those antipsychotic drugs may have occurred without the GP Dr Tay obtaining informed consent on the part of Ms Santoro's family members. This is a matter that will be investigated during the course of the day. We note there is no documented record of it having occurred.

35

40

Even worse was to come. On 11 October 2018, eight maggots were found by Assisi care workers in Ms Santoro's heel wound. Operator, please display the photo at tab 138 of the tender bundle. Dr Tay is expected to give evidence that the nurse manager at Assisi even tried to dissuade him from disclosing the discovery of the maggots to Ms Santoro's family. That evidence does not appear to be disputed. Even when the presence of the maggots was disclosed to the family by Dr Tay, the nurse manager

45

sought to make light of it and to shift responsibility for it onto others including the family themselves. Ms Santoro's daughter Ms Anna Ng and her brothers were not told of the seriousness of their mother's heel wound until far too late.

5 Not long after being told on 11 October 2018, Ms Ng was forced to think about palliative care for her mother. Even then, Assisi's makeshift palliative care room where Ms Santoro moved on 17 October 2018 was noisy and unfit for that purpose. The evidence will be that people entered the room to use a sink until a sign was placed on the door. On 23 October 2018, Ms Santoro left Assisi for a dedicated
10 palliative care unit elsewhere. On 25 October 2018, only two weeks after Ms Ng had been belatedly told about the seriousness of her mother's heel wound, Ms Santoro passed away. Her death certificate lists seven causes of death including osteomyelitis. Investigations. The Aged Care Quality and Safety Commission thoroughly investigated a complaint about Assisi made by Ms Ng and reported in
15 May 2019 that there significant gaps in the care provided to Ms Santoro. In a damning report addressed to Ms Ng, it found, and I quote:

*On examination of all the available information, we have found that there were significant gaps in the care provided for your mother's pressure wound.
20 Although the wound was present on her return from hospital, it was not managed effectively to promote healing. The pain associated with the wound was not assessed or managed effectively until later when it was acknowledged that the wound would not heal. Medical and specialist intervention was delayed until the stage of the wound was irreversible. Documentary
25 assessment and monitoring was unsystematic, inaccurate and did not provide a clear picture of the care required or being given.*

The Quality and Safety Commission was also critical of the lack of communication by Assisi staff with Ms Santoro's family. It found that Assisi staff did not inform Ms
30 Ng and her brothers of the seriousness of their mother's heel wound until it was too late, and that Assisi staff were reluctant to inform them about the discovery of the maggots in the wound. Despite, these very serious findings by the Quality and Safety Commission, no sanctions were imposed on Assisi. The Commission finalised the complaint process on the basis that Assisi had addressed the identified
35 concerns. Further, within four weeks of Ms Santoro's death, that is, in November 2018, Assisi was assessed by the former Aged Care Quality Agency as meeting the quality standards for clinical care and skin care. It was not assessed as failing to meet any of the 44 quality standards.

40 If I can turn, then, to the evidence that we will call today. The matters I have referred to briefly in opening, including the potential causes of the deficiencies in care, will be explored in today's case study. Ms Anna Ng will give evidence about her mother's time at Assisi, her concerns about staffing levels and competence at the home, and her dealings with the Safety and Quality Commission. She will describe
45 the dilemma when she faced when she contemplated moving her mother out of Assisi. Commissioners, you will also hear from Dr Eric Tay a general practitioner who visited the late Ms Santoro at Assisi on numerous occasions between April and

October 2018. Dr Tay will be asked about his observations and treatment of the late Ms Santoro.

5 Assisi's interim chief executive officer Mr Paul Cohen will respond to the evidence of Ms Ng. He is expected to concede that Assisi failed in a number of respects to deliver an adequate level of care to the late Ms Santoro. He will detail a number of improvements to procedure and practice that have been implemented at Assisi to address those deficiencies including the establishment of a clinical governance committee reporting to the board of directors. Finally, you will hear from the long-
10 time chairman of the Assisi board of directors, Mr Don Smarrelli OAM. Mr Smarrelli's statement is highly critical of Assisi's former chief executive officer.

Commissioners, we will be submitting that this case study raises significant issues of corporate governance, and Mr Smarrelli is expected to tell the Commission about the
15 steps taken by the board to address the failings in the provision of care to Ms Santoro that were identified in this case. He will tell you that on 15 May 2019, the board decided to terminate the employment of its former CEO who immediately resigned. Mr Smarrelli is expected to explain that the board's decision was based on its concerns that the former CEO had improperly withheld important information about
20 Ms Santoro's case from the board, and that he may have provided misleading information to this Royal Commission in February of this year as part of a submission by Assisi. Counsel assisting anticipate making submissions at the conclusion of this case study that call into question the governance structure and practices at Assisi and the oversight by both the former CEO and the board of the
25 care provided to the late Ms Santoro.

If I can turn, then, to the tender bundle and indicate that before calling Ms Ng to give evidence, I seek to tender, in accordance with the practice that was described on the
30 first day of this hearing, the documents in the general tender bundle for this case study as a single exhibit. The tender bundle includes documents consisting of a selection made by the Royal Commission staff from documents produced to the Commission by Assisi, by Dr Tay, by Ms Ng and also by the Commonwealth Government, together with a number of other documents identified by Mr Cohen in his witness statement. Operator, please tender – please display the index for the
35 tender bundle. I should indicate at this time that we would seek to add – I just formally record this – a further document at tab 38 of the supplementary tender bundle which is an agreed chronology.

40 COMMISSIONER TRACEY: Yes. The Assisi tender bundle will be exhibit 6-13.

EXHIBIT #6-13 ASSISI TENDER BUNDLE

45 MR ROZEN: As was the case with yesterday's tender bundle, Commissioners, the tender bundle in this case study is very large. In order to ensure all necessary redactions are applied to those documents, we propose, consistently with the

approach that was adopted yesterday, that the Commission not publish the tender bundle immediately upon its tender. We propose to make the documents to which witnesses are taken in the hearing immediately available, but not to publish the tender bundle more generally. This will allow further time for consideration of the issues which will be done in consultation with our learned friends.

It's appropriate at this point to mention one other matter. The office of the Royal Commission received the statement of Assisi's board chairman, Mr Smarrelli on Monday, the 8th of July 2019. As noted, that statement is highly critical of Assisi's former CEO. It was, therefore, provided, as is the normal practice with the Commission, to the former CEO to give him notice of its contents. That also occurred on Monday, the 8th of July. Since he received the statement from the Commission, the former CEO has been in regular contact with the solicitors assisting the Commission, and he has expressed his disagreement with many of the claims made by Mr Smarrelli. There are documents in the tender bundle which suggest to counsel assisting that there are genuinely contested facts as between the former CEO and the chairman.

Resolving these disputes, however, is unlikely to be a task that Counsel Assisting will urge the Commissioners to embark upon in any detail. Having said he that, the former CEO has informed the Commission that he wishes to challenge the evidence, but in the short time available to him, he was not able to secure legal representation. He has, therefore, sought a direction from the Commissioners suppressing publication of that evidence. In the alternative, he sought a direction suppressing publication of his own name as it appears in the evidence. It's the submission of Counsel Assisting that there is no justification for the first request, that is, a general suppression of Mr Smarrelli's evidence.

However, we do submit that in these somewhat unusual circumstances, the interests of procedural fairness do provide a basis for a time limited suppression of the publication of the former CEO's name. We submit that it's appropriate for the Commissioners to direct, pursuant to section 6D, subsection (3) of the *Royal Commissions Act 1902* (Cth) that, until further direction, the name of the former CEO, which is identified on the direction itself, not be published except in the limited circumstances identified in the formal notice of the direction.

COMMISSIONER TRACEY: We have considered, on the papers, that application, and we have acceded to it, and a direction has issued this morning restricting any publication of the name of the former CEO until further direction.

MR ROZEN: Commission please. Can I very briefly deal with two minor additional housekeeping matters before I call Ms Ng. The first is to correct an error that I made, and I'm grateful to my learned friend Ms McLeod for drawing this to my attention. I described the physio as an employee of Assisi. She's not; she was a consultant during her time there. The second is to tidy up a matter from yesterday's hearing, and it is to tender the statement of Dr Robert Bird in the Illawarra case

study. If I can indicate the code for that is WIT.0271.0001.0001. It is perhaps appropriate that that be given the next exhibit number.

5 COMMISSIONER TRACEY: Yes. The witness statement of Dr Robert Keith Bird dated the 27th of June 2019 will be exhibit 6-14.

10 **EXHIBIT #6-14 WITNESS STATEMENT OF ROBERT KEITH BIRD
DATED 27/06/2019 (WIT.0271.0001.0001) AND ITS IDENTIFIED
ANNEXURES**

MR ROZEN: Commission pleases. I call Ms Anamaria Ng.

15

<ANAMARIA NG, AFFIRMED

[10.13 am]

20

<EXAMINATION-IN-CHIEF BY MR ROZEN

MR ROZEN: Ms Ng, can you please state your full name for the purpose of the transcript.

25

MS NG: Anamaria Ng.

MR ROZEN: To indicate to you at the outset that if, at any point in the giving of your evidence, you wish to have a break, please indicate that to me or to the Commissioners, and that can easily be accommodated.

30

MS NG: Thank you.

MR ROZEN: Ms Ng, you made a submission to the Royal Commission about the experience of your late mother at the Assisi home.

35

MS NG: That's correct.

MR ROZEN: Why did you do that?

40

MS NG: I did it because it was something I felt I needed to do. I was very concerned about the lack of care and that potential future residents at Assisi and current residents, I suppose, may also suffer the same consequences that my mother did.

45

MR ROZEN: Further to your submission, you've made a witness statement in the Royal Commission's proceedings; is that right?

MS NG: That's correct.

MR ROZEN: The statement, if that could be brought up please, is
5 WIT.0169.0001.0001, a statement dated 18 June 2019 which you should see on the
screen in front of you.

MS NG: Yes.

MR ROZEN: Have you had an opportunity to read through your statement before
10 giving evidence this morning?

MS NG: Yes, I have.

MR ROZEN: Is there anything you would like to change in your statement?
15

MS NG: No.

MR ROZEN: And are its contents true and correct?

20 MS NG: Yes.

MR ROZEN: I tender the statement of Ms Anamaria Ng dated 18 June 2019,
Commissioners.

25 COMMISSIONER TRACEY: Yes, the witness statement of Anamaria Ng dated 18
June 2019 will be exhibit 6-15.

30 **EXHIBIT #6-15 WITNESS STATEMENT OF ANAMARIA NG DATED
18/06/2019 (WIT.0169.0001.001)**

MR ROZEN: Operator, if we could please bring up the photo at tab 210. Tell us
35 who that is on the screen, Ms Ng.

MS NG: That's my mother Annunziata Santoro.

MR ROZEN: Yes. And when was that photo taken, approximately if you are not
40 sure?

MS NG: That was taken on her 85th birthday.

MR ROZEN: On her?

45 MS NG: 85th.

MR ROZEN: 85th birthday. And she was 94 when she passed away, is that right?

MS NG: That's correct, yes.

MR ROZEN: Okay. Tell us a little about your late mother, please.

5 MS NG: Well, my mother was born in Italy in 1924. She came out to Australia when she was 32 years old. She was a seamstress. She got married when she came out to Australia.

MR ROZEN: Yes.

10

MS NG: And she worked very hard during her life, basically, yes. And she enjoyed being outside and being with her family.

MR ROZEN: I will ask you if you could, just keep your voice up please, just so that
15 – it has to be recorded by the transcriber.

MS NG: Yes.

MR ROZEN: Thank you. And you were born in Australia?

20

MS NG: That's correct.

MR ROZEN: And do you have any siblings?

25 MS NG: I have three brothers.

MR ROZEN: Yes.

MS NG: I've got one full brother and two half-brothers.

30

MR ROZEN: Yes.

MS NG: Yes.

35 MR ROZEN: The two half-brothers were born to a marriage prior to - - -

MS NG: Yes, so they weren't my mother's biological children.

MR ROZEN: Sorry, they - - -

40

MS NG: They were not my mother's biological children.

MR ROZEN: They were your father's children from an earlier marriage?

45 MS NG: Previous – that's right.

MR ROZEN: Thank you. And where did you all live when you were growing up?

MS NG: In Melbourne. Do you want the suburb?

MR ROZEN: If you like.

5 MS NG: Grew up in Croydon in Melbourne, yes.

MR ROZEN: And if we can scan forward a number of years. There came a point where your mother's health started to decline.

10 MS NG: That's correct.

MR ROZEN: And approximately when did that decline in her health become significant enough for you to have to consider her moving in with you?

15 MS NG: So she actually moved in with me just before this photo was taken. Her health was actually reasonably well – reasonably good at the time.

MR ROZEN: Yes.

20 MS NG: She moved in with us primarily because I was concerned that she was living on her own and that there were no family close enough should anything happen and she required immediate attention.

MR ROZEN: And so she was living with you and your husband; is that right?

25

MS NG: And my son.

MR ROZEN: And your son, okay. And how was that for you? Was that workable initially whilst your mother's health remained reasonable.

30

MS NG: Yes, so it worked quite well for a number of years.

MR ROZEN: Yes.

35 MS NG: And it was only getting towards, I guess, the 9th or 10th year that she was becoming more forgetful. She was forgetting to eat and take her medication and I worked and so it was actually becoming quite difficult to manage.

MR ROZEN: Okay. Were you getting any external assistance at this point?

40

MS NG: Yes, so we did have a home care package, and we had a worker come once and later twice a week but it wasn't enough. She really needed someone with her just to make sure basic things were - - -

45 MR ROZEN: And what were the major health considerations at this point; how would you describe them?

MS NG: Look, she had had a few falls. The primary concern was that she was actually becoming quite forgetful and forgetting to take her medication even though I left it out for her before I went to work. I would often come home and there would be tablets on the floor due to her visual difficulties, I assume, and probably fine
5 motor difficulties, so she wasn't taking all of her medication. There were some instances of incontinence. She required lots of encouragement to shower and even when we got a worker out to help her, and it was an Italian worker, she still wouldn't always agree to do those sorts of things.

10 MR ROZEN: Had she been diagnosed with dementia by the point of time you are talking about?

MS NG: No.

15 MR ROZEN: Do you recall when that diagnosis was made?

MS NG: That was only made after she was in care, by a geriatrician that the centre had called, I suppose.

20 MR ROZEN: This was once she was at Assisi.

MS NG: That's correct.

25 MR ROZEN: I see. But before that you've described the forgetfulness, the unsteadiness which was leading to falls. She had been diagnosed with type 2 diabetes by that point, had she?

MS NG: Correct, yes.

30 MR ROZEN: All right. And how was that being treated while she was with you at home?

MS NG: That was just with medication and diet.

35 MR ROZEN: Okay. You've mentioned a moment ago that you were able to secure a home care package. In your statement you say that was a level 2 package, initially. Was your mother subsequently assessed for a higher level of assistance?

40 MS NG: She was. And then she was given a level 3 package and that was primarily – or my understanding was that was because of her eyesight; she had macular degeneration.

45 MR ROZEN: And what difference did the level 3 package make in terms of care, the care that she was given; do you recall?

MS NG: Well, that was when we were able to get a carer for a second time during the week, so not a huge difference.

MR ROZEN: Now, you mentioned a moment ago that there came a point, what, in 2017 where you were considering seriously the next step.

MS NG: Yes.

5

MR ROZEN: And you decided to put your mother into residential care.

MS NG: Yep.

10 MR ROZEN: Was there any realistic alternative available to you at that point, did you think?

MS NG: No. No, short of me stopping work and becoming a full-time carer, there really wasn't. She needed someone with her most of the time.

15

MR ROZEN: Was she ever assessed as eligible for a level 4 package, the highest level of home care, do you recall?

MS NG: No, no and, look, I didn't request another assessment.

20

MR ROZEN: Right.

MS NG: Part of it was also I just wasn't coping.

25 MR ROZEN: Yes. Now, the decision to move your mother into residential care, obviously was a difficult one and ultimately you chose for her to go to Assisi. Can you explain to the Commissioners how you went about making that decision; did you access My Aged Care, for example, as a source of information, or what did you do?

30

MS NG: I didn't access My Aged Care. So at that time I think My Aged Care had only just started. So I went through My Aged Care just to get her last assessment which I think was at the end of 2016. That was an incredibly disappointing experience in the past when I had requested assessments. She'd had a few at this stage. They usually came out within the week, whereas with the My Aged Care they said I had to wait for three months. I didn't look at their website. I wasn't aware that there was any information about the residential units. The information I got primarily were just lists of aged care centres that were around locally.

40 MR ROZEN: Yes.

MS NG: She had been in respite in two centres up until then. So she had been into Italian ones so Assisi was one and there was another one. The other one was my first choice, however they did not have a place. I looked at some, I will say English-speaking centres but they were not appropriate in terms of the activities. Culturally they just – they wouldn't have suited my mother at all, as well as the language barrier. When I contacted Assisi a place became available. They also advised me

45

that in terms of the deposit – so we didn't have the money to pay the full deposit and we had been advised by other places that if you don't have the full amount then you pay an extra daily fee. Assisi was willing to offer my mother a place based on what she – what we did have. So given my situation at the time, I accepted Assisi, even
5 though that wasn't my first choice.

MR ROZEN: What about from your mother's perspective; did she express a choice as between the two Italian centres where she had been in respite?

10 MS NG: No, my mother did not want to go into care.

MR ROZEN: She simply didn't want to.

MS NG: No.
15

MR ROZEN: All right. We will come to that in a moment. You've talked about language, you've talked about activities. Was the religious nature of Assisi a relevant consideration for you?

20 MS NG: Yes.

MR ROZEN: And why was that?

MS NG: My mother was quite religious and religion was very important to her so
25 being able to go to a Catholic mass and have a rosary was very important to her.

MR ROZEN: Yes. I neglected to ask you this earlier; perhaps it goes without saying, Italian was obviously your mother's first language.

30 MS NG: That's correct.

MR ROZEN: How proficient was she in English at this time?

MS NG: Not particularly proficient. She – her English was much better years ago
35 when she was working. However, she didn't have a need to use much English any more so she preferred to communicate in Italian.

MR ROZEN: Right. And not all the staff at Assisi spoke Italian presumably - - -

40 MS NG: No.

MR ROZEN: - - - but were there any that did?

MS NG: There were some that were fluent in Italian. Most of them just had key
45 words and phrases that they needed to use with the residents.

MR ROZEN: But the residents themselves would have largely been Italian-speakers, were they?

MS NG: I believe they were all Italian-speakers.

5

MR ROZEN: Yes. Okay. So that was the attraction from the point of view of the language. Was food another consideration?

MS NG: Food was another consideration. So food is obviously relatively important to my mother and, I guess, the Italian culture. Having Italian coffee was particularly important to her which was not even going to be an option elsewhere. Yes, so - - -

10

MR ROZEN: It was an important consideration?

MS NG: Yes, for her it was. Yes, for her it was.

15

MR ROZEN: Now, at Assisi there was – it was described to you as a low-care unit and there was the high-care unit.

MS NG: That's correct.

20

MR ROZEN: In your statement you've described the name of the low care unit that your mother initially went into as St Anthony's; is that right?

MS NG: That's correct, yes.

25

MR ROZEN: In your statement, if I could just ask that paragraph 13 be brought up on the screen, please. It is at the bottom of the second page, 002, you will see that's been highlighted for you.

30

MS NG: Yes.

MR ROZEN: You are there describing what you have just given evidence about; the process of identifying different aged care facilities and a preferred one. It's the last two sentences that I want to ask you about. You will see four lines from the bottom:

35

Clinical care, however, was not one of my reasons for not choosing an aged care facility.

40

You say:

I assumed that all facilities had appropriately trained nursing staff who would adequately monitor and treat my mother's health concerns.

45

And I take it that remains the position today looking back on it, that when you made the decision you weren't assessing whether clinical care would be better; was the position you assumed you'd basically get the same care wherever you went?

5 MS NG: Well, that's right because all of the aged care centres, they all talked about nurses being on staff. So I just assumed that it would not be an issue.

MR ROZEN: Just to clarify that, you're not saying you made any specific requests of the homes to evaluate how good the clinical care. In fact it's the opposite, you just
10 made an assumption that you would get good care wherever you went?

MS NG: That's correct, and the places that I looked at, to be honest, that wasn't what they tended to try and sell. Yes.

15 MR ROZEN: You mentioned a moment ago your mum didn't want to go into aged care. Can you tell the Commissioners how did she react when you visited her in that early time at St Anthony's?

MS NG: She wasn't happy. She kept asking to come home. Yes, it was very
20 difficult. She would be ringing me all the time. She had a landline in her room and she would be ringing me all the time during the week when I was at work as well as on the weekends. Yes, she didn't want to be there.

MR ROZEN: Did she sort of acclimatise over time or did she always remain
25 negative about the experience?

MS NG: I think it's fair to say she always remained negative about the experience.

MR ROZEN: Okay. You took some steps to try and assist the transition, that is,
30 you've identified those in your statement. You prepared a photo book of your mother. Can you tell the Commissioners what that involved and why you did that?

MS NG: I prepared this book. It's essentially a social story. It was really just to
35 help my mother understand why she was there. It had lots of photos of things that were there and people that were there, her room, the dining room, etcetera, and just trying to reassure her, ironically, that she was safe and cared for.

MR ROZEN: Would you like to have a break, Ms Ng? Are you okay? You also
40 prepared a one-pager social story. That was something you were able to draw on your own work experience to do; is that right?

MS NG: Yes. Look, it was just a document. I understood the staff there were very
45 busy. To really – well, the purpose, again, was to help – to help them understand my mother and how they could support her, what she liked and didn't like, and what they could do, potentially, when she was upset and - - -

MR ROZEN: We have tab 211 from the tender bundle please displayed on the screen. Is that the document that you prepared?

5 MS NG: It is. So the staff at Assisi, I think, specifically, the activities person, she said she was going to put these together for all of the residents.

MR ROZEN: Yes.

10 MS NG: She had a specific name for them, but I prepared this because it didn't occur.

MR ROZEN: Okay.

15 MS NG: Yes.

MR ROZEN: Okay. And the intention, as I understand it, was to communicate with the staff on behalf of your mother, essentially.

20 MS NG: That's right.

MR ROZEN: Was she able to communicate with staff about the matters that you've identified in the document at this time?

25 MS NG: At this point that I did this - - -

MR ROZEN: Yes.

30 MS NG: - - - it was June. It was quite – quite late June in 2018. No, I don't think she would have been able to communicate this.

MR ROZEN: You said, "During 2018." Did you not do this when your mother was in low care in – when she initially went in, in 2017, or have I - - -

35 MS NG: No. No, I didn't do them initially - - -

MR ROZEN: I see.

40 MS NG: - - - and I probably should have done them sooner. It was only when I realised how much difficulty she was experiencing that I did it. So the book was earlier and this was - - -

MR ROZEN: Later.

45 MS NG: Quite later – quite a bit later.

MR ROZEN: And what was your experience – sorry. I withdraw that. Did you communicate with the staff at Assisi about your – about this and what your expectations were?

5 MS NG: I did. I showed it to a number of staff, and then I put it up on the wall.

MR ROZEN: Yes.

10 MS NG: Staff didn't seem to take a particular interest in this one. The – the photo book that I did, I would often go through it with my mother to help her calm down, and I would encourage staff to go through it with her because they also were calling me - - -

MR ROZEN: Yes.

15

MS NG: - - - when she was quite agitated and asking whether I could do something or come in or talk to her. But every time, I went in, it was usually put away in one of her drawers, so I'm not convinced that they used it that often.

20 MR ROZEN: Sorry, you mentioned that your mother was agitated. It was quite a common phenomenon, wasn't it, during her time, that she would become agitated, and are you able to tell the Commissioners how that manifested? In other words, did she raise her voice? Was she – what did she do that - - -

25 MS NG: No. Look, with me, she didn't raise her voice, but, you know, she would ring up. She would be in tears. Sometimes, she appeared quite confused. So that's – that's – that's the side that I saw. Staff tell me somewhat different side and tell me she could be quite aggressive, but I didn't see that. For me, it was just she was obviously very unhappy and not settled and – yes.

30

MR ROZEN: So the position was the staff were communicating with you, raising their concerns about your mother's behaviour – well, as it was described, her behaviour, but when you visited, you were able generally to calm her by the methods that you've described; is that right?

35

MS NG: Yes, and as I said, I never saw the extreme behaviours that staff discussed.

MR ROZEN: Okay. Did you talk to the staff about techniques they might employ along the lines of what you were doing - - -

40

MS NG: Yes.

MR ROZEN: - - - to try and calm your mother?

45 MS NG: Yes. Yes, so when I went in, I would talk to them. I sent emails asking them to – to use it. Yes, I did. I talked a lot about – about that, yes.

MR ROZEN: One of the issues that you describe in your statement, which I will just ask you to address in general terms, was the turnover in staff, particularly at the management level.

5 MS NG: Yes.

MR ROZEN: The unit management. Can you tell the Commissioners what your experience was of that?

10 MS NG: Okay. So, at the end of 2017, the nurse manager resigned, and she told me she was going to resign, so I knew that. I didn't receive any formal correspondence from Assisi that that was going to occur, and so I guess – the – the nurse managers were basically your line of contact, your direct line of contact. So, after that period, I didn't have anybody. So I would just speak to whoever was there. If I sent an email,
15 it was usually just the general one to the nurse unit manager. Often, I didn't get a response because it wasn't – I assumed because it wasn't addressed to anyone specifically. Another manager came just before Christmas. She was lovely, but then she sort of disappeared fairly soon after Christmas. Nobody told me anything about that other than when I came in one day and they told me that she had left. So we
20 were, again, back to not having a clear central point of contact, and they eventually put someone on – I can't remember the exact date, but early or later on in the year – early in 2018.

MR ROZEN: Yes.

25

MS NG: So the only formal correspondence I had regarding that was one of the general meetings that Assisi had with families, and they talked about who was going to be appointed and, in that, they actually talked about who was in the acting position, but that was never made clear to me.

30

MR ROZEN: It probably goes without saying, you've dealt with this a bit, but what was the significance of that turnover and the – and you not knowing who the manager was at particular points in time? Was that important in terms of your mother's care?

35

MS NG: Look, it was important. It was just incredibly frustrating, and I can't remember what the specific issues I may have wanted to communicate were, at that time, but, generally, you know, if you send an email to a nurse, you expect that, hopefully, you will get some response in a timely manner, yes. So it was frustrating.

40

MR ROZEN: We do – and I won't take you to them because there are numerous emails, but we do see from the records that have been provided to us from Assisi that there were times when there was quite a bit of back and forth between yourself and particular managers. You weren't always necessarily happy with the outcome, but there – we do see some communication attempts. Is that a fair - - -

45

MS NG: Yes.

MR ROZEN: - - - description.

MS NG: Yes. Yes.

5 MR ROZEN: So it wasn't just emails disappearing into the ether.

MS NG: No. No, but - - -

10 MR ROZEN: There was quite a bit of communication, albeit, maybe not at the level that you think - - -

MS NG: Yes.

15 MR ROZEN: - - - was appropriate; is that right?

MS NG: That's correct, yes.

20 MR ROZEN: All right. Now, if I can turn to medical issues because there were a significant number of medical concerns that your mother had during her time at Assisi. Can't deal with all of them, but did there come a time in early 2018 when you decided it was appropriate to change your mother's GP?

MS NG: Yes, that was actually late 2017.

25 MR ROZEN: Right. Without necessarily mentioning the name - - -

MS NG: No.

30 MR ROZEN: - - - of the earlier GP, if that's all right, what was the issue?

MS NG: Look, I just wasn't particularly happy with the previous GP. He was one of the ones - I had a choice at the beginning of which GP, and I just chose him because he was Italian speaking - - -

35 MR ROZEN: Yes.

40 MS NG: - - - but he didn't want to correspond with me directly which was my main issue. And he - he also - he didn't consult with me in terms of any decisions that he seemed to make. So one example is just a referral to an outreach service which one of the nurses had made for me which he apparently cancelled.

MR ROZEN: This is the Austin Outreach Service.

45 MS NG: That's the Austin Outreach Service.

MR ROZEN: Yes.

MS NG: There was one occasion where I was actually waiting to see him. I had specifically arranged to see him when he saw my mother. I waited for two hours, and I understood he was busy. I went to the office to discuss with the nurse how long it was likely to be. He was actually sitting in the office and did not even
5 acknowledge me on that particular day. So there were a number of issues, a number of concerns that I had with him.

MR ROZEN: Just so this is clear, this – the earlier GP, if we can call him that, was not an employee of Assisi, was he? He was someone who visited patients at Assisi;
10 is that right?

MS NG: That's my understanding. That's my understanding.

MR ROZEN: Right. And, similarly, the replacement GP, if we can call him that, Dr Tay, was also an external general practitioner with his own practice and he visited Assisi from time to time; is that right?
15

MS NG: That's correct, yes.

MR ROZEN: And how did you come to settle on Dr Tay as the replacement GP?
20

MS NG: The nurse that came for a very short time just before Christmas in 2017, she actually recommended him - - -

MR ROZEN: Yes.
25

MS NG: - - - after I discussed my concerns, and that I wanted someone that I could actually communicate with about my mother. So she recommended him.

MR ROZEN: And we know that Dr Tay started to see your mother in April 2018.
30

MS NG: Yep.

MR ROZEN: And between April and October, he was – he frequently saw your mother and was treating her at Assisi.
35

MS NG: That's correct.

MR ROZEN: All right. Did he ever see her at his rooms or was it always at Assisi?
40

MS NG: Always at Assisi.

MR ROZEN: All right. And we will see that you also had – apart from those consultations, you were also in contact with him by email and by telephone
45 discussing your mother's health circumstances.

MS NG: That's correct, yes.

MR ROZEN: All right. At around about that time, your mother was hospitalised on a few occasions for various issues. This is before the fall of July, which I will come to in a moment, but, at one point, she was hospitalised due to a very high heart rate. That was in April of 2018, and whilst you were there, you had a discussion with a
5 social worker about your concerns about Assisi.

MS NG: At the hospital?

10 MR ROZEN: At the hospital.

MS NG: Yes.

MR ROZEN: Yes. What prompted you to talk to the social worker at the hospital about Assisi?

15

MS NG: I was just concerned that she was having continual falls, and I was concerned about her safety.

MR ROZEN: The social worker suggested to you that there was an independent complaints body the Aged Care Complaints Commission, as it was then called, and what did you do with that information?

20

MS NG: So I just called them and had a discussion with them about my concerns and whether anything could be done. At that point, I was looking at – I was wanting for my mother to get a bed that went all the way to the floor, a floor bed - - -

25

MR ROZEN: Yes.

MS NG: - - - to reduce her risks of falling, and Assisi had advised me that she could only have that if she went to high care. So when I rang the Aged Care Quality and Safety Commission, they advised me that she didn't have to move and they discussed Ageing in Place - - -

30

MR ROZEN: Yes.

35

MS NG: - - - which essentially meant that she should be provided with the resources that she needed where she was.

MR ROZEN: Right.

40

MS NG: And that additional funding, you know, would be attached to that.

MR ROZEN: Yes. And then what happened? Did you make any formal complaint at that time with the - - -

45

MS NG: I did.

MR ROZEN: - - - complaints commission?

MS NG: Yes, I did.

5 MR ROZEN: Right. And was there any impact on the circumstances at Assisi from that communication?

10 MS NG: Well, shortly after, I was contacted by the director of care and went in and had a meeting with her. I made it very clear I didn't want my mother, at that time, to go to high care, and she advised me that they had ordered a floor bed as well as an air mattress.

15 MR ROZEN: Also about this time, after your mother was discharged from hospital concerning treatment for a fall, did you have a discussion at Assisi – with Assisi about some physiotherapy for your mother?

MS NG: No. So – look, I was contacted by the physiotherapist. I can't remember when the first contact was. I think it was – she had had an earlier fall, I think - - -

20 MR ROZEN: Yes.

MS NG: - - - in April, where she actually had three fractures. So when she came back from hospital that time, the physiotherapist contacted me and recommended that my mother have physiotherapy.

25 MR ROZEN: Okay. And did you agree that your mother should have physiotherapy?

MS NG: I did. So that was considered private physiotherapy - - -

30 MR ROZEN: Yes.

MS NG: - - - and even though she was a regular physiotherapist at Assisi, one of them, it was not included in the services that Assisi offers.

35 MR ROZEN: Okay. So, in other words, there was an additional payment needed to be made for that additional – for the physiotherapy treatment.

MS NG: That's correct.

40 MR ROZEN: Okay. And you were, I think, perhaps, initially surprised that you had to pay the additional amount, thinking that it would be covered; is that right?

MS NG: I was, particularly - - -

45 MR ROZEN: Yes.

MS NG: - - - as, at that point, we were looking at it as essentially rehabilitation following her fall.

MR ROZEN: Yes.

5

MS NG: I would have thought that was included, particularly, also, as the hospital – because I had also expressed concern when she was in hospital at that time, that they discharged her – I don’t know if it is earlier, but the physios had essentially said, “Look, you know, she’s going back to Assisi. They’ll provide what she needs.” So, yes.

10

MR ROZEN: All right. Did you observe her receiving that physiotherapy treatment at any time? Are you able to describe - - -

15

MS NG: Yes.

MR ROZEN: And what was the physiotherapist doing with your mother?

20

MS NG: So some of it was just strengthening-type exercises, and a lot of it focused on mobility so getting her up and walking.

MR ROZEN: And from your observations, did you think that was assisting your mother? Was it improving her mobility so far as you could see?

25

MS NG: Yes. Certainly early on it was.

MR ROZEN: And that’s why you continued doing it, I assume.

30

MS NG: Yes.

MR ROZEN: Nonetheless there were still further falls that your mother had in that June/July period – we are now in 2018 – and you say at paragraph 58 of your statement – this is on page 10 – you said you were becoming concerned about the frequency of the falls and so you started keeping notes to detail them. What was – sorry, do you have that? It’s paragraph 58.

35

MS NG: No, I haven’t got it – I have now, yes, thank you.

MR ROZEN: The first line, it will be in the hard copy.

40

MS NG: Yes, I’ve got it now.

MR ROZEN: You should also see on the top of the screen at the top of the screen there.

45

MS NG: Yes.

MR ROZEN: What was the reason why you did that? Why did you think you should keep a record?

5 MS NG: Look, I kept a record following my first complaint to the Aged Care Quality and Safety Commission because they asked lots of questions about days, dates, names, so I thought I'm just going to start keeping a record.

MR ROZEN: Right.

10 MS NG: Yes.

MS NG: Times.

15 MR ROZEN: Yes, okay. And we know that your mother had a particularly serious fall on 12 July. How did you find out about that fall?

MS NG: Like with all the falls, they called me.

20 MR ROZEN: Yes.

MS NG: And I'm assuming, I can't remember what I've written – yes. I would have gone to the hospital to meet my mother.

25 MR ROZEN: Right.

MS NG: I usually either went to the hospital or to Assisi. I think in this case I went to the hospital, yes.

30 MR ROZEN: All right. I will have to ask you to keep your voice up, if you could, sorry to do that.

MS NG: Sorry.

35 MR ROZEN: We see the description in the middle of the screen there, don't we, 12 July fall. You were notified, presumably, by the staff, they had found her outside her room in the hallway at about 10 o'clock.

MS NG: Yes.

40 MR ROZEN: And your mum suffered the pertrochanteric fracture of the hip, that is, the right thigh bone, top of the thigh bone, and she was treated in hospital. Which hospital was that that she went to?

45 MS NG: That was Austin Health.

MR ROZEN: Okay. And I think you told us a moment ago you met her at the hospital; is that right?

MS NG: Yes, in this case I did. I've got a feeling my brother might have been there first but I certainly would have arrived at some point.

5 MR ROZEN: Okay. I neglected to ask you a moment ago, during this period in particular, so the first half of 2018, leading up to this time, on average how often would you have been visiting your mother at Assisi?

MS NG: Look, I went in on average twice a week.

10 MR ROZEN: Yes.

MS NG: So usually midweek, when I had my day off, and on the weekend.

15 MR ROZEN: All right. And what sort of time were you spending, once again on average, when you visited?

MS NG: At this time, when things were going okay I was usually just there for an hour or two.

20 MR ROZEN: Right.

MS NG: When things deteriorated, I spent several hours with her.

25 MR ROZEN: You mentioned your brother, that's Tony.

MS NG: Tony.

MR ROZEN: Was he also visiting your mother at this time?

30 MS NG: Tony was. He probably wasn't going as often as me but my other brother, Frank, was visiting every few days.

MR ROZEN: Right. So he was there about as often as you were or maybe more often.

35

MS NG: Possibly more often. I'm not sure he stayed as long, though.

40 MR ROZEN: Okay. And your mum was discharged quite quickly on 17 July 2018 back to Assisi, and we know that there was a report provided – a discharge report, in the ordinary course by the hospital to Assisi and it stated that the GP should review the wound within two weeks. Were you privy to that report? Was that shared with you at the time, do you remember?

45 MS NG: No, I only requested the reports this year, under freedom of information, so - - -

MR ROZEN: In 2019.

MS NG: In 2019. So with Assisi I often did request a copy of the discharge reports or the hospital, but sometimes I got them and sometimes I didn't.

5 MR ROZEN: Okay. And the hospital didn't provide you with a copy either, do you remember?

MS NG: Not this particular one.

10 MR ROZEN: Okay. And were you involved in any discussions with either Assisi or Dr Tay about the removal of the staples that had been put into the surgical wound?

MS NG: No. No.

15 MR ROZEN: All right. We know that the staples weren't removed at Assisi and your mother had to return to hospital to have that done. Were you told in advance that that was going to be happening? How did you find out that your mother was re-hospitalised for that purpose?

20 MS NG: I got a call from Assisi.

MR ROZEN: From Assisi telling you that she had gone or that she had to go, do you recall?

25 MS NG: I knew she had an inflammation because I had been there the previous day and they said her thigh is inflamed. I believe they called a locum doctor but I didn't hear any more about it until the next day when she had been taken to hospital.

30 MR ROZEN: When she had already gone; is that right? You do relate a conversation with Ms Ana Yao. She was the nurse unit manager at that time in low care. Your mum is still in low care at that time; is that right?

MS NG: Yes.

35 MR ROZEN: This is at paragraph 60 of your statement – if that could be brought up please, at page .0011. Under the heading Wound Infection we can see you say:

40 *I recall that when I questioned Ana Yao at Assisi about the failure to adequately monitor and treat my mother's wound following surgery, she said words to the effect that "the doctor saw your mother but didn't do anything".*

At what point in the story does that conversation take place? Is your mum back from hospital at this time and you're talking about why it had to happen?

45 MS NG: Yes, that would have been after the event, yes.

MR ROZEN: All right. And did you ever at any point talk to Dr Tay about that, do you recall?

MS NG: I don't recall.

MR ROZEN: Okay. You say in your statement that around this time you hired an overnight carer to come in privately and assist with your mother. Can you tell the
5 Commissioners about that, please, why you did that?

MS NG: So even though my mother had a floor bed at this time she was obviously still having lots of falls.

10 MR ROZEN: Yes.

MS NG: And so I was concerned that if somebody is not with her overnight this will just continue, and most of the falls were overnight or in the early hours of the morning when staff were at a minimum at Assisi. So she was in her own room. She
15 wasn't within line of sight of any of the staff or the nurses' station. Yes, and as I said, my concern was just that she was going to continue to fall. So they told me that she was getting up out of bed and falling which I must say I struggled to understand or believe that. She was quite frail at this point. But the reality was she was falling regardless of what height the bed was at and yes, I hired the overnight carer just
20 because I was concerned for her safety.

MR ROZEN: And you say at paragraph 63 that that was for a period of about nine days, 17 July to 26 July at a cost of \$5,000 for that period.

25 MS NG: Yes, that's correct.

MR ROZEN: I take it that was just unsustainable for the family to afford that on an ongoing basis.

30 MS NG: Yes, so that was the time that we were back in discussions about high care and it essentially looked like I had no choice at that point, so we were waiting for a bed in high care and my brother was staying with my mother overnight at that time.

MR ROZEN: Right. Could I just perhaps unpack that a little, if I could please, so
35 you spoke, did you, to Ms Yao about your mother moving from low care into high care.

MS NG: I would have spoken primarily to the director of care in terms of that
40 happening.

MR ROZEN: Right. Okay. And can you just relay to the Commission a little bit more about that conversation. What were you told would be the benefits for your mother in being in high care as compared to low?

45 MS NG: It essentially came down to the staff to resident ratio which was apparently double what it was in low care. So even though I did not want her to go to high care,

I didn't really see any other option. So, of course, unfortunately what happened at that time was there was no bed available in high care.

MR ROZEN: Yes.

5

MS NG: So then we had to wait until a bed became available.

MR ROZEN: Just to clarify for the Commissioners, the low and high care sections, is that what they were called or is there another – units.

10

MS NG: Units maybe.

MR ROZEN: It's all on the one premises, isn't it. Is that right?

15 MS NG: It's all on the one premise but they're very separate sections.

MR ROZEN: Okay. And were you shown the high care section at a point before making the decision about your mother moving?

20 MS NG: I was, yes.

MR ROZEN: And can you describe to the Commissioners what you saw, what it was like?

25 MS NG: Look, they showed me the rooms. They were all very small. All had two beds in them. The residents, I was told at that time, certainly don't stay in bed during the day, they get them all up. And the nurse who was there at the time who is not the one that was there when my mother was in high care, she was quite aggressive in the way that she spoke to me. She basically said that my mother would continue to have
30 more falls if she didn't come into high care.

MR ROZEN: Right. And can you describe what impressions you were left from being in the high care area as compared to low care. In other words, were there more residents with, end-stage dementia or late-stage dementia in the high care facility
35 compared to where your mother had been?

MS NG: Yes, I think they had two high care units, so one was a dementia-specific unit, and I think this one was more about residents perhaps that had physical needs so a lot of them weren't mobile. So I certainly saw the residents. That wasn't so much
40 what put me off. It was just the fact that they all just seemed to be sitting in one communal area, not doing anything in particular. There were certainly a lot of staff around but it had a very different feel to – to the low level care unit. Yes, it felt – I guess it felt almost very clinical.

45 MR ROZEN: Yes.

MS NG: Yes, in terms of the sense of being there. Yes.

MR ROZEN: Okay. And ultimately a bed became available and you chose to move your mother into high care. Despite those reservations you had about it, what was the rationale?

5 MS NG: I didn't really have a choice. So, look, I did look at other places, other aged care services, and to be honest, I did not feel reassured that she would receive any better care in those places. The staff ratios appeared to be the same. Nothing was particularly different from what I could see.

10 MR ROZEN: How did you go about assessing the staff ratios at the alternative places? Did you ask questions?

MS NG: I did ask questions, yes, I asked the questions, yes.

15 MR ROZEN: And was part of your thinking there a concern about the effect moving to another place would have on your mother in terms of unsettling her further and so on. Was that a consideration?

20 MS NG: Look, when I first considered it in August, no, it wasn't. I'm not sure it would have made a huge difference to her. It was more about would she receive better care, would she be safer.

25 MR ROZEN: All right. We know from Dr Tay's evidence that he altered your mother's medication regime considerably once he started to treat her. Without going into the detail of the particular medications that your mother was on, do you recall having discussions with Dr Tay before meeting with him in October, which I will come to in a moment, but earlier than that, did you have discussions with him about those matters, about your mother's medication regime?

30 MS NG: I don't recall specific discussions. There might have been a few occasions where he said he would give her something to help her settle. But I don't recall receiving the names or details of any of the medication.

35 MR ROZEN: Was that the principal concern of yours in those discussions that the medication was aimed at settling your mother, as you've said?

MS NG: Yes, that was my understanding. Staff certainly reported lots of concerns about her behaviour and being unsettled.

40 MR ROZEN: All right. We know that quetiapine, I think is the correct pronunciation, was one of the drugs that was prescribed and that was administered to your mother. Did you have a particular concern about what you thought was the effect of that drug on your mum?

45 MS NG: Look, I wouldn't have been aware of the specific drug at the time. When I first raised my concerns they were in September and that was because one day I went to visit my mum around lunch time and she was given some medication and within

about half an hour she was sleepy, non-coherent, slurring her speech, and I asked about what did you give – I asked the nurses, “What did you give her and why?” and I was basically told, “This is for her behaviour. If we don’t give it to her, she will be out of control.” So it was at that time that I contacted Dr Tay with my concerns. He
5 was away at the time, so I ended up communicating with his locum - - -

MR ROZEN: Yes.

MS NG: - - - and she then emailed a list of the medication that my mother was on
10 and had apparently been on since about August. So that was the first time that I became aware of the specific drugs that she was on.

MR ROZEN: All right. And when Dr Tay returned from his break, did you make
15 contact with him about wanting to discuss the medications?

MS NG: Yes. Yes. So that was – well, the meeting on 11 October, which I thought was primarily about the medication, but - - -

MR ROZEN: Yes.
20

MS NG: - - - it obviously ended up being a lot more.

MR ROZEN: Yes. All right. We will come to that in a moment, if I could. Did
25 you have any concerns during this period – we’re now talking August through October 2018 – about your mother’s weight?

MS NG: Yes, I did. It would have been the latter part of that, sort of, date range that you spoke about.

MR ROZEN: Yes.
30

MS NG: So I went in and she wasn’t wearing her jumper as she normally would be, and noticed that she was looking particularly – like she had lost a lot of weight.

MR ROZEN: Right.
35

MS NG: Yes.

MR ROZEN: And did you raise that with anyone?
40

MS NG: Yes, I did. I did. So I raised that with the manager of the high care unit and - - -

MR ROZEN: Was that’s Ms Jacob at this – by this point?
45

MS NG: That’s correct.

MR ROZEN: Yes.

MS NG: Yes, that's correct, and she advised me that the weight loss had actually been picked up when my mother was in low care, and when I questioned about what
5 was being done – ,when I questioned her about what was being done about it, she basically said – she kind of fobbed that part off and said, “Well, it's really – we've started, you know, supplements now.” So she didn't really address my question about what had happened earlier.

10 MR ROZEN: Was there any discussion about increasing the amount of protein in your mother's diet? Do you recall that being raised at all?

MS NG: Look, I knew she said that my mother was having something, but I don't specifically recall what it was - - -

15

MR ROZEN: Okay.

MS NG: - - - to help with her weight.

20 MR ROZEN: All right. I think we – I think the evidence is clear that there was a suggestion of Sustagen as a supplement for your mother. My question is a slightly different one: whether there was any discussion about changing the actual food that she was eating, rather than using a supplement to address the weight issue.

25 MS NG: No.

MR ROZEN: Do you recall that?

MS NG: There was no discussion about that.

30

MR ROZEN: Okay. Now, you mentioned a moment ago of the meeting on 11 October. Before I come to that, you wanted to have a discussion about medication with Dr Tay. The manager Ms Jacob was present during that discussion, and the discussion very quickly turned to your mother's heel injury. Before that discussion,
35 were you aware of the heel wound that your mother had, the pressure injury?

MS NG: I was aware of the heel wound.

MR ROZEN: Yes.

40

MS NG: But I was under the impression that it was not anything to be worried about.

MR ROZEN: Yes.

45

MS NG: I was aware that she – well, just before that meeting, that a wound specialist had been called in and she was having an X-ray, but, again, I was not aware of the significance of the wound.

5 MR ROZEN: Okay. And tell us about a bit about how that meeting progressed. Who was the main speaker during the meeting?

MS NG: Dr Tay.

10 MR ROZEN: So there's Dr Tay, Ms Jacob the nurse unit manager, yourself and - - -

MS NG: My brother Tony.

MR ROZEN: - - - your brother Tony was there as well.

15

MS NG: That's correct.

MR ROZEN: And as best consist you can recall, what did Dr Tay say?

20 MS NG: So, look, following the discussion about the medication, he basically said of more significant concern was my mother's heel. The ulcer had developed into osteomyelitis, so a bone infection, and they had found maggots in the wound that morning.

25 MR ROZEN: So Dr Tay told you that maggots had been found. You said they found them. Did he say who found the maggots?

MS NG: Staff at Assisi, I'm not sure.

30 MR ROZEN: Okay. Was Ms Jacob present when he told you that?

MS NG: She was.

MR ROZEN: All right. Did she say anything?

35

MS NG: The first question my brother asked was how could that have happened? And Dr Tay went on to explain that, obviously, a fly had entered the wound and laid eggs. Ms Jacob said she doesn't know how the wound would have been exposed such that a fly could get in. She said the only time it would ever be exposed would be when my mother was being showered.

40

MR ROZEN: Yes.

45 MS NG: And then she went on to say, basically – I'm not saying that it was a good thing, but basically saying that maggots are used in modern medicine. She has used them herself and was essentially trying to downplay the significance of the whole thing.

MR ROZEN: How did you react to that?

MS NG: I was appalled that she was essentially not prepared to take any responsibility for what had happened.

5

MR ROZEN: We know that a few days later, the – sorry, I withdraw that. The wound consultant had already attended at Assisi to attend to your mother’s wound. Did you have any discussions at all with the wound consultant?

10 MS NG: I only had discussions with her after I had been told that we were looking at palliative care.

MR ROZEN: After your mother moved into palliative care. I will come to that in a moment. There was also a visit from the Austin Outreach team at this time.

15

MS NG: Yes.

MR ROZEN: And an issue arose about the pain your mother was suffering whilst the bandages were being changed. Can you explain to the Commissioners what happened there?

20

MS NG: So I was with my mum and the doctor, and there was a nurse there as well from Austin Outreach. They took off the bandages, and the doctor noted that it was causing her pain, and he asked me if I knew whether she was given any painkillers and I didn’t know, and so he went and spoke to Ms Jacob. He came back and said that, apparently, she wasn’t being given anything for her pain, and he would write something up because she needed something for the pain. It was the only humane thing to do.

25

30 MR ROZEN: The only humane thing to do.

MS NG: Yes. Well, it would be the humane thing to do. Something along those lines.

35 MR ROZEN: Yes. At around about this time, a few days later, you had a communication with the physio that had been – that we discussed earlier who was assisting your mother with her mobility. Can you explain to the Commissioners how that occurred. What led to that communication by email with the physio?

40 MS NG: I think I wrote the initial email. I was quite angry at the time.

MR ROZEN: I will just ask that it be brought up. It might assist you. It’s tab 213, please, Operator, on the second, we can start on the second page. Sorry, Ms Ng. That’s your email in the middle of the page there - - -

45

MS NG: Yes.

MR ROZEN: - - - dated 18 October - - -

MS NG: Yes.

5 MR ROZEN: - - - to the physio, and without mentioning her name - - -

MS NG: Yes.

10 MR ROZEN: - - - we can see that you were giving her an update.

MS NG: Yes.

15 MR ROZEN: So this is about a week or so after you found out the seriousness of your mother's heel injury.

MS NG: Yes. Yes, I was yes, I was essentially giving her an update and expressing my concern that she was still having physio, yes.

20 MR ROZEN: So the physio had, of course, stopped by this time, hadn't it – stopped on the 4th of October some - - -

MS NG: Yes.

25 MR ROZEN: - - - two weeks earlier, but, of course, well after, we know, the wound had deteriorated considerably in the second half of September.

MS NG: That's right.

30 MR ROZEN: And so we can see you wrote to the physio saying if you had known about the significance, then you would not have had any physiotherapy. Do you see that in the second last - - -

MS NG: Yes.

35 MR ROZEN: - - - paragraph there?

MS NG: Yes.

40 MR ROZEN: And you went on – if we go over to page 3, please, which is the second half of that email. This is a continuation. You can see that at the top of the page on the right-hand side of the screen.

MS NG: Mmm.

45 MR ROZEN: You said that:

It appears to me that they –

that is, the care staff

MS NG: Yes.

5 MR ROZEN:

- - - only really addressed the ulcer in the last two weeks. It's now too late to do anything.

10 You talk about painkillers - - -

MS NG: Yes.

MR ROZEN: - - - and a reference to being incredibly angry about this.

15

MS NG: Yes.

MR ROZEN: Contacting the Aged Care Commissioner, taking legal action and potentially taking your mother out of Assisi. You got a response from the physio quite quickly. If we could go to page 1 of that email exchange, please. We can see at the bottom of the page there, she wrote back to you, subject, "Your late mother":

20

Hi Anna. Completely understand your frustration. I was not informed to the extent of how bad the wound on her heel had become until two weeks ago which is when I sent you the email to cease further PT –

25

that's physiotherapy, I think –

input until I hear back from the specialist.

30

And then it continues on the right-hand side of the screen, in the middle, now:

I was only informed yesterday that Annunziata –

35 that's your mother –

is now weight-bearing as tolerated which means she is able to place as much weight through that foot as she can tolerate, although, this will be difficult due to the pain.

40

And she went on:

I also would have informed you earlier about ceasing PT input had I known the significance of the ulcer, but I have to rely on the nursing staff to inform me of these matters.

45

MS NG: Mmm.

MR ROZEN: And then she goes on – I don't need to read the rest. So it appears she is saying that just as you had been in the dark, so, apparently, had she.

MS NG: Mmm.

5

MR ROZEN: Paragraph 92 of your statement, if we could go to that, please, on page 15. That was the case, was it, at this point, you were - - -

MS NG: So I had been in contact with another centre - - -

10

MR ROZEN: Yes.

MS NG: - - - and ready to move her, but, at that point, we were now looking at palliative care, so there was no point in her going there.

15

MR ROZEN: Who raised with you that palliative care was the only realistic option for your mother?

MS NG: That was the Austin Outreach doctor.

20

MR ROZEN: Right. And that was when they attended a few days earlier, was it, when I was – when I asked you about, or was there a subsequent - - -

MS NG: That was a few days after I met with doctor at Assisi. I think it was the next week, so it was early that week.

25

MR ROZEN: All right.

MS NG: I'm not sure what the date was.

30

MR ROZEN: And summarising as best you can, what was the gist of what the Austin Outreach doctor was saying to you.

MS NG: They basically said, look, there's an option of her having her foot amputated which they didn't recommend, and then they talked about palliative care and, you know, realistically, it sounded like the only option for my mother at that point. So I – that discussion, at that time, didn't indicate it would be so quickly – occur so quickly, but, clearly, it did. Yes.

35

MR ROZEN: And just so that we've got the timing right, we know your mother moved into what Assisi called the palliative care room on 17 October.

40

MS NG: Mmm.

MR ROZEN: So it's in that few days leading up to the 17th that - - -

45

MS NG: Yes.

MR ROZEN: - - - you were having these discussions.

MS NG: That's correct.

5 MR ROZEN: And at whose initiative did your mother move into that room? Was it part of the high care area? Can you explain that to the Commissioners, please?

MS NG: Look, it wasn't actually discussed directly with me, so this was on a particularly bad day where she had a lot of pain, and I think – to be honest, I think I
10 was talking to the wound specialist, and when I came out, they were moving her.

MR ROZEN: They were moving her?

MS NG: Yes. So I can tell you the date, if you want.
15

MR ROZEN: Sure.

MS NG: sure it's on one of these.

20 MR ROZEN: If it helps you, it's at paragraph 93 at the bottom of page 15.

MS NG: Yes. It was that day so if you look at paragraph 90 - - -

MR ROZEN: Yes.
25

MS NG: - - - my mum was extremely distressed that day, and after she had eventually settled down, I think that was when I spoke to the wound specialist, and when I came out, she was being moved.

30 MR ROZEN: Okay.

MS NG: Yes.

MR ROZEN: Can you tell us about the room that was the designated palliative care
35 room. Where was it relative to where your mum had been in high care?

MS NG: Look, it was just a room at the end of the corridor.

MR ROZEN: Yes.
40

MS NG: The room had palliative care written on the top of it, at the front of it. It was a room that, I think, was used for visitors. There was a fridge and a microwave and a sink, coffee – tea and coffee facilities. During the day, because I had used it before myself, there tended to be residents who were in bed in that room. There
45 were usually three residents. They didn't appear to be doing anything. There usually weren't staff with them but there were usually always residents in that room. When my mother was moved, they were obviously – they were moved out. I don't – don't

know where they ended up going. So – so the room itself, it was really just a room, I think, with a couple of couches, a small table, some lamps. She was just taken in in the bed that she was already in. It was – I’m just trying to think – it wasn’t a quiet room. It – you could still hear everything that was going on. There were often
5 residents screaming both day and night. I often closed the door, if we could.

At one point when the door wasn’t closed, we had some resident’s family come in to use the sink. They put a sign up after that time. So, yes, look it wasn’t – it was just another room. It wasn’t – it wasn’t quiet. It wasn’t – you know, it wasn’t
10 soundproof. There wasn’t – there weren’t an awful lot of facilities for us. Staff sometimes offered us food and drink but it wasn’t consistent. So sometimes they did and sometimes they didn’t. There was a fold-out bed; the couch folded out into a bed, and at that point we some somebody staying around the clock just to make sure her pain was managed because - - -

15 MR ROZEN: When you say someone, a member of the family?

MS NG: A member of the family, yes. So we basically had shifts so we had someone stay overnight, someone come early in the morning, someone there
20 throughout the day just to make sure her pain was managed.

MR ROZEN: Okay. And at some point Dr Tay proposed moving your mother to a dedicated palliative care facility away from Assisi.

25 MS NG: Yes, I actually asked him. I essentially begged; I did not want her to die at Assisi.

MR ROZEN: Yes. And why was that?

30 MS NG: At this point my mother’s management had been so poor, her pain management, and her care, and as I said, I had just completely lost faith. And I just wanted her out of there.

MR ROZEN: Yes. And a place was secured at a palliative care facility.
35

MS NG: Eventually.

MR ROZEN: Yes, and your mother transferred there on 23 October.

40 MS NG: That’s correct.

MR ROZEN: What was the experience there; she was only there for two days before she passed away but can you tell the Commission what that experience was perhaps compared – contrasting with the previous few days at Assisi?
45

MS NG: It was just much more professional. There were only nurses that attended to my mother. So when she was in palliative care at Assisi there were often, the

PCAs turning her. We didn't have to wait; if you pressed the buzzer somebody would usually come and address our concerns. At Assisi we normally had to go looking for somebody if we wanted any sort of assistance. It was quiet, and she didn't appear to be in pain at all at the time that she was there.

5

MR ROZEN: Which was only two days as it turned out. And she passed away on 25 October, you told us.

MS NG: That's correct.

10

MR ROZEN: You indicate in your statement that you made a complaint about the Assisi experience or further complaint about the Assisi experience to the Aged Care Quality and Safety Commission. Can you tell the Commissioners a little bit about that experience. How did you find that complaints process? You had a number of email communications with staff at the Complaints Commission.

15

MS NG: And a number of phone calls. So look, when I made that complaint, I think it was soon after the meeting where I found out about the extent of the wound and the maggots.

20

MR ROZEN: Yes, that's 11 October meeting.

MS NG: Yes. So – and often when they spoke to me that was when my mother was in palliative care so that made it quite difficult. Look, I found the process generally quite good. They seemed quite thorough in all that they did. It took a long time but understandably they obviously went through everything. But generally I was happy, satisfied I guess, with the outcome, satisfied as I'm going to be.

25

MR ROZEN: I asked you because you ultimately received quite a detailed report from them in May. Perhaps if that could be brought up. It's tab 214 of the tender bundle. We see a letter to you referring to the complaint you made on 15 October.

30

MS NG: Yes.

MR ROZEN: And giving you a bit of information and then if we can go to the third page, the one that ends in .0009, what is described there as attachment A was the report of the investigation into the complaint. I wanted to ask you this: it's clear from the report that a number of defects were identified in the care that your mother had received and we will look at those in a bit more detail later on today. But no sanctions were imposed on Assisi. Do you have a response to that or did you have a response to that in any way?

40

MS NG: Look, my understanding of the process was that sanctions can only be imposed by the Department of Health.

45

MR ROZEN: Yes.

MS NG: They only make a referral to the Department of Health if the recommendations that they make are not followed up on. And as Assisi apparently followed up on all that was recommended, they did not need to make a referral.

5 MR ROZEN: Have you had any communication with Assisi since the events that we've been discussing?

MS NG: I've only received one phone call from the new CEO.

10 MR ROZEN: Yes, that's Mr Cohen.

MS NG: That's correct.

MR ROZEN: And approximately when was that; are you able to tell us?

15

MS NG: It was only one or two weeks ago.

MR ROZEN: Okay.

20 MS NG: And he just asked if he could meet with me to discuss the things that they had put in place at Assisi.

MR ROZEN: Right. And what was your response to that?

25 MS NG: I declined.

MR ROZEN: Commissioners, they're the questions that I have for Ms Ng.

30 COMMISSIONER BRIGGS: Following, if I may, Ms Ng, the sanctions issue, do you think sanctions should be able to be imposed by the regulator without reference to the Department of Health?

MS NG: I do.

35 COMMISSIONER BRIGGS: Based on – yes, you do.

MS NG: I do.

COMMISSIONER BRIGGS: Thank you.

40

COMMISSIONER TRACEY: Ms Ng, thank you very much for what must have been a very difficult time for you in the box this morning, but from the point of view of the Commission, learning about how deficiencies in care can have a drastic effect not only on the person being treated but also his or her family is very important to the understanding the Commission has of these events, and we wouldn't have that
45 understanding without your courage and we thank you for coming and sharing your story with us.

MS NG: Thank you.

MR ROZEN: Can I just raise one matter before we adjourn.

5 COMMISSIONER TRACEY: Yes.

MR ROZEN: I've been provided with a note indicating that the lawyer who is representing Dr Tay wishes to explore one issue in cross-examination with Ms Ng. My suggestion, Commissioner, would be that I have the opportunity to have a chat to
10 him over the break. It may be something that can be resolved, as has been done on previous occasions, by agreement. But I would just ask that, and I can communicate this to Ms Ng as well, that it may be necessary for her briefly to be asked some further questions.

15 COMMISSIONER TRACEY: Yes, all right. Ms Ng, if you wouldn't mind just remaining in the precincts of the court until after what is now going to be a short adjournment. It may be there may be one or two further questions that need to be asked. It may be that there aren't. We will find out.

20 MS NG: Okay. Thank you.

COMMISSIONER TRACEY: The Commission will adjourn until 11.45.

25 **ADJOURNED** [11.24 am]

30 **RESUMED** [11.50 am]

COMMISSIONER TRACEY: Yes, Mr Rozen.

35 MR ROZEN: Thank you for that time, Commissioners. With your leave, if I could just ask two quite brief questions of Ms Ng, that should deal with the issue that has been - - -

COMMISSIONER TRACEY: Very good.

40

MR ROZEN: - - - raised for us. It concerns the prescription by Dr Tay of quetiapine. I think I'm pronouncing that correctly now, and there's just two matters I want to ask you about. Firstly, I understand that Dr Tay will give evidence later about a conversation which took place on 14 June 2018. The date is probably not
45 that important, but in the sequence, it's after your mum's returned from hospital where she had some treatment for a head injury, and he will say, at that time, that he had a conversation with you where he raised the possibility of two drugs being

prescribed for your mother: risperidone and quetiapine. And you indicated – I’ll stop there. Do you recall such a conversation at around about that time?

5 MS NG: I vaguely recall a conversation.

MR ROZEN: Yes. All right. You’re not saying it didn’t occur. You just don’t remember now; is that the position?

10 MS NG: That’s correct.

MR ROZEN: All right. He will say that you communicated to him that you had had previous experience with your mum on risperidone which was not a particularly happy or successfully experience. Does that ring a bell for you?

15 MS NG: That’s correct. Yes.

MR ROZEN: And he’ll say that, on that basis, it was agreed that he would trial quetiapine for your mother. Is it the same – you’re not in a position to dispute - - -

20 MS NG: I don’t disagree with that.

MR ROZEN: All right.

25 MS NG: Yes.

MR ROZEN: The other thing I would just like to ask you about briefly is an email that you received. I can put it in front of you if need be, but you tell me. It’s an email a little while later on the 25th of June 2018, and Dr Tay wrote to you:

30 *Hi Anna. Just an update from last Thursday. I’ve started to reduce her quetiapine to just once daily as her agitation is now settling. I anticipate she will not need it in a week or so.*

35 Does that ring a bell for you that there was - - -

MS NG: Again, I don’t specifically recall it, but I don’t dispute it either.

40 MR ROZEN: Okay. Thank you for that. And just finally, Ms Ng, is there something you wish to say on the record concerning Dr Tay?

MS NG: I just wanted to say that – sorry. Throughout all of this, Dr Tay was very supportive and incredibly professional compared to the staff at Assisi. So, yeah, I just wanted to basically give my praise for him because he was my best support at the time. Thank you.

45 MR ROZEN: Thank you, Ms Ng. That now concludes the questions that I have of Ms Ng.

COMMISSIONER TRACEY: Thank you. Please feel free to leave the witness box.

MS NG: Thank you.

5 COMMISSIONER TRACEY: You're welcome to stay in the courtroom and hear the rest of the evidence or not as you choose. Thank you very much.

10 <THE WITNESS WITHDREW [11.54 am]

MR ROZEN: And Mr Knowles will take the next witness.

15 COMMISSIONER TRACEY: Yes, Mr Knowles.

MR KNOWLES: Thank you, Commissioners. I call Dr Eric Tay. He is appearing by video from Melbourne. If Dr Tay could be given the oath or affirmation.

20 <ERIC TIONG YEW TAY, AFFIRMED [11.54 am]

<EXAMINATION-IN-CHIEF BY MR KNOWLES

25 MR KNOWLES: Dr Tay, can you tell the Royal Commission your full name?

DR TAY: Eric Tiong Yew Tay.

30 MR KNOWLES: And do you have a statement that you've given to the Royal Commission with you there dated the 2nd of July 2019?

DR TAY: Yes, I do.

35 MR KNOWLES: And, Commissioners, that is WIT.0248.0001.0001. Dr Tay, have you read your statement lately?

DR TAY: Yes, I have.

40 MR KNOWLES: And are there any changes that you wish to make to your statement?

DR TAY: I believe my legal representative has been in touch with the Commission about a couple of late adjustments.

45 MR KNOWLES: What are those late adjustments that you wish to make to your statement, Dr Tay?

DR TAY: So the first one relates to events of the 9th of July, and I've become aware that the quetiapine was resumed on the 9th of July by

MR KNOWLES: Okay.

5

DR TAY: The other area is in relation to the date in which Mrs Santoro returned to Assisi after her fractured neck and femur. That was actually the 17th of July, not the 18th.

10 MR KNOWLES: Thank you, Dr Tay. Subject to those changes, are the contents of your statement true and correct to the best of your knowledge and belief?

DR TAY: Yes, they are.

15 MR KNOWLES: I tender the statement of Dr Tay dated the 2nd of July.

COMMISSIONER TRACEY: Yes, the witness statement of Dr Eric Tay will be exhibit 6-16.

20

**EXHIBIT #6-16 WITNESS STATEMENT OF ERIC TIONG YEW TAY
DATED 02/07/2019 (WIT.0248.0001.0001) AND ITS IDENTIFIED
ANNEXURES**

25

MR KNOWLES: Dr Tay you are a general practitioner at Andrew Place Clinic in Bundoora, Melbourne.

DR TAY: Yes I am.

30

MR KNOWLES: And you've been in that role since 2001.

DR TAY: Yes I have.

35 MR KNOWLES: And you presently have five of your patients who are residents at Assisi Centre Aged Care.

DR TAY: That is correct.

40 MR KNOWLES: And is it right to say that you've worked with patients at Assisi Aged Care since June of 2017?

DR TAY: Correct.

45 MR KNOWLES: And one of those patients was the late Ms Annunziata Santoro.

DR TAY: From the 26th of April 2018, yes.

MR KNOWLES: And that was up until the time of her death; is that right?

DR TAY: Up until she was transferred to the palliative care unit, yes.

5 MR KNOWLES: So she ceased to be your patient at that point; is that what you are saying?

DR TAY: Yes. So once the patient moves to a palliative care unit, they take over.

10 MR KNOWLES: Right. And that was on the 23rd of October 2018?

DR TAY: Yes.

15 MR KNOWLES: Now, Dr Tay, other than referring to Ms Santoro and her relatives, I don't generally intend to name those people who have treated her today, and I will instead refer to them by their position descriptions, and I will be grateful if you could do the same.

DR TAY: Can do.

20

MR KNOWLES: Do you understand – yes. How often do you visit Assisi Aged Care?

DR TAY: On a routine basis, every Thursday fortnight.

25

MR KNOWLES: Okay. And was that the case in 2018?

DR TAY: Yes, it was.

30 MR KNOWLES: And do you sometimes go more often than fortnightly in particular circumstances?

DR TAY: Yes, I do.

35 MR KNOWLES: And what would those circumstances be?

DR TAY: Usually, if there is an emergent medical problem, on request from staff, on request from family, if I needed to break from my routine.

40 MR KNOWLES: Okay. Now, you've said in your statement at paragraph 7 that during the period of being the general practitioner for Ms Santoro, you consulted with her on 17 occasions.

DR TAY: Yes, I have.

45

MR KNOWLES: And you were also, during that period, on leave for three weeks from the 15th of September to around the 8th of October; is that right?

DR TAY: Yes, it, I was.

MR KNOWLES: Yes.

5 DR TAY: Correct.

MR KNOWLES: And during that absence, two of your colleagues at Andrew Place Clinic attended to Ms Santoro, one of them twice and the other one, once.

10 DR TAY: Correct.

MR KNOWLES: Does that accord with your recollection?

DR TAY: No, that's absolutely correct.

15

MR KNOWLES: Okay. Now, as you've said in your statement, at all times during your treatment of Ms Santoro, you understood her to be someone who was suffering from moderately severe Alzheimer's dementia, didn't you?

20 DR TAY: Yes, the moderate/severe is really a functional analysis. She, from a practical basis, had advanced dementia.

MR KNOWLES: When you say draw a distinction between functional and practical, on what basis do you do that?

25

DR TAY: The moderate/severe relates to her actual functionality on a day-to-day basis, that she could walk, that she would ambulate, that she could participate in some activities even despite the fact that her Mini-Mental was six out of 30.

30 MR KNOWLES: Okay. And you also understood at all times that Ms Anna Ng, her daughter, held a medical power of attorney for Ms Santoro.

DR TAY: Yes, I did.

35 MR KNOWLES: Yes. So she was the person whom you would consult about Ms Santoro's medical treatment.

DR TAY: Yes.

40 MR KNOWLES: And it was Ms Ng from whom you would obtain consent about such medical treatment?

DR TAY: Yes.

45 MR KNOWLES: Yes. Now, can I ask you a couple of questions, Dr Tay, about record-keeping. Obviously, you are an experienced medical practitioner, and from

your experience, you would appreciate the importance of good record-keeping to provide for proper medical treatment and to ensure continuity of care, wouldn't you?

5 DR TAY: Yes.

MR KNOWLES: Yes. And consultations with patients should be recorded in clinical records for the particular patient in question.

10 DR TAY: Yes.

MR KNOWLES: Yes. And those records should be sufficiently clear and detailed for another person to take up the care of that patient.

15 DR TAY: Yes.

MR KNOWLES: Yes. Now, you've made records for Ms Santoro both in records held by the Andrew Place clinic and records held by Assisi, haven't you?

20 DR TAY: I have.

MR KNOWLES: Yes. Now, can I just go through the documents that you, yourself, have provided to the Royal Commission in respect of your treatment of Ms Santoro.

25 DR TAY: Yes.

MR KNOWLES: We have, at tab 246 of the tender bundle, if the first page could be brought up, operator.

30 DR TAY: Yes.

MR KNOWLES: There you have a document headed Patient Health Summary.

35 DR TAY: Yes.

MR KNOWLES: Are the documents in that tab, are you familiar with them?

DR TAY: Yes, I am.

40 MR KNOWLES: Have you looked through them.

DR TAY: I'm having a look through them now. They represent a copy of my medical notes from my computerised system at Andrew Place Clinic.

45 MR KNOWLES: Yes, and they represent your clinical records for Ms Santoro that were kept at Andrew Place Clinic; is that correct?

DR TAY: Correct.

MR KNOWLES: Yes. Then if we move to the next tab, which is tab 247 of the
5 tender bundle, do you recall this bundle of documents being provided to the Royal
Commission?

DR TAY: Yes. Though this looks like it represents all the email communication
that I was able to retrieve from our backup database between myself and the various
10 parties involved in Mrs Santoro's care.

MR KNOWLES: Okay. And then at tab 248 there is one further set of emails, or
two further emails that you have provided.

DR TAY: Yes. Yes.
15

MR KNOWLES: That's the extent of the documentation that you've provided to
the Royal Commission; is that right?

DR TAY: Yes.
20

MR KNOWLES: Yes. And, in terms of the clinical records at tab 246, they are the
entirety of clinical records held at Andrew Place Clinic; is that correct?

DR TAY: They are, indeed.
25

MR KNOWLES: Yes, thank you. And then the other records that we have in
respect of your treatment of Ms Santoro are at tab 169 of the tender bundle and I
would ask you just to go there for the moment. Do you recognise that document,
which is headed Progress Notes?
30

DR TAY: Yes.

MR KNOWLES: And do you see in the fifth column a heading Event Type and
underneath that the word "Doctor" appears at all times?
35

DR TAY: Yes.

MR KNOWLES: These are progress notes recorded by doctors; do you agree?

DR TAY: I agree.
40

MR KNOWLES: And so this will contain records prepared by yourself and entered
into the Assisi system.

DR TAY: Yes.
45

MR KNOWLES: Yes, thank you, as well as other doctors, of course.

DR TAY: Yes.

MR KNOWLES: Yes. Now, how do you decide where to make a record on having undertaken a consultation with a patient who resides at Assisi?

5

DR TAY: I would like, in an ideal circumstance, to put it in the Assisi system and in my system.

MR KNOWLES: In both, is that what you are saying?

10

DR TAY: Yes.

MR KNOWLES: But, obviously, the records here show that that has not occurred. Is there a preferable place to put particular records?

15

DR TAY: No, and I think you highlight an issue in relation to clinical notes for visiting GPs. We, at the moment, have an issue around duplication.

MR KNOWLES: How do you convey the contents of your notes with others at Assisi who are caring for people such as Ms Santoro and who are part of the clinical team?

20

DR TAY: Sorry, I don't understand the question.

MR KNOWLES: How do you convey matters relevant to the care of people such as Ms Santoro and other residents at Assisi to other members of the clinical care team?

25

DR TAY: I always verbally speak to the nurse unit manager involved.

MR KNOWLES: Yes. And would that suggest that the preferable course is to enter notes in the Assisi records as such, if it is going to be one or the other?

30

DR TAY: It has to be both because there will be times when I'm consulted on a patient, let's say from Assisi, where because I don't have remote access to the Assisi system so I need notes in front of me at Andrew Place if a call comes through. So it has to be both.

35

MR KNOWLES: Or one, if it was an integrated system, I put to you.

DR TAY: Yes, that would be perfect.

40

MR KNOWLES: Now, Dr Tay, can you go back to your statement and at page 9 of the statement, paragraph 63.2.

DR TAY: Yes.

45

MR KNOWLES: About halfway – I’m not sure if that passage has been brought up by the operator, but about halfway through that paragraph you refer to Ms Santoro’s entries in the records at Assisi and Andrew Place Clinic in relation to some of your reviews and medication:

5

... particularly where I have made changes to the medication.

You then go on to say:

10

Not every review has been the subject of a formal entry in the records. I cannot now identify all occasions on which I communicated with Ms Santoro’s family in relation to her medication.

I take it that that should be taken as an acknowledgement by you that in some instances your record-keeping was less than adequate in respect of Ms Santoro?

15

DR TAY: I entirely agree with you.

MR KNOWLES: You just by way of example, in your statement, refer to some instances of not keeping records at paragraphs 56 and 61, which I won’t take you to now but those paragraphs, would you agree, describe a lack of record-keeping at all in respect of particular events.

20

DR TAY: Yes, I would agree.

25

MR KNOWLES: Now, going back to around the time of your first consultation with Ms Santoro in April, do you remember that something that came out of that was a referral to a geriatrician for an overall assessment?

DR TAY: I do.

30

MR KNOWLES: Yes. Now, as I said earlier, it’s not necessary for you to name the geriatrician and I would prefer that you didn’t do so. The assessment was set out in a report that you received from the geriatrician dated 15 May 2018, wasn’t it?

35

DR TAY: Yes.

MR KNOWLES: And do you recall that in that report the geriatrician referred to the health conditions that Ms Santoro had at that time?

40

DR TAY: Yes.

MR KNOWLES: And those health conditions included Alzheimer’s, type 2 diabetes and chronic pain syndrome; do you agree?

45

DR TAY: Yes.

MR KNOWLES: Yes, and I take it that once you've been alerted to the existence of a chronic pain syndrome, you, therefore, are alerted to a need to carefully manage a person's pain?

5 DR TAY: Yes.

MR KNOWLES: Yes. And you will recall also that the geriatrician's report referred to the medications that Ms Santoro was taking at the time?

10 DR TAY: Yes.

MR KNOWLES: And do you recall that the – and I should say, Dr Tay, if you don't recall, I'm happy to take you to the geriatrician's report, but for the sake of doing it as efficiently as possible, I'm not doing so. Do you recall that the medications that
15 were listed at the time didn't include any antipsychotic drugs?

DR TAY: They did not.

MR KNOWLES: Yes. And when you started treating Ms Santoro, she wasn't
20 taking any such medication, was she?

DR TAY: She was not.

MR KNOWLES: Yes, she was on a Norspan patch.
25

DR TAY: 20 micrograms, correct.

MR KNOWLES: 20 micrograms released hourly and that is a patch that lasts about
30 a week.

DR TAY: Yes.

MR KNOWLES: And it's an opioid patch, it's for pain relief; is that right?

35 DR TAY: Correct.

MR KNOWLES: Yes. And so if one reduces that, particularly for somebody who has chronic pain syndrome, there would be an ongoing need to monitor whether or not there were pain levels that were increasing as a result of the reduction of the
40 analgesic.

DR TAY: Yes, though there was a clinical reason for the reduction of the Norspan patch that related to her drowsiness.

45 MR KNOWLES: Yes. And you would also want to bear in mind the potential side effects of withdrawal from an opioid, wouldn't you, as well?

DR TAY: Yes.

MR KNOWLES: Yes. Those side effects being agitation and irritation, potentially.

5 DR TAY: Yes.

MR KNOWLES: Yes. Now, do you recall also that Ms Santoro was, at the time, on anti-dementia medication?

10 DR TAY: Yes.

MR KNOWLES: And what was that?

DR TAY: Rivastigmine.

15

MR KNOWLES: Yes. And do you agree that the effectiveness of medication of that kind can be counteracted by psychotropic medication such as quetiapine and Oxazepam.

20 DR TAY: I think that would be a question for a specialist geriatrician.

MR KNOWLES: Okay. The last thing I wanted to ask you about in terms of the geriatrician's report was in respect of the assessment of Ms Santoro's fitness at the time. Do you recall that the geriatrician regarded her as not being unwell?

25

DR TAY: Yes.

MR KNOWLES: Yes.

30 DR TAY: - - -

MR KNOWLES: What that was your assessment as well at the time?

DR TAY: Yes.

35

MR KNOWLES: Now, you obviously received that report. Did you provide a copy of it to Ms Ng?

DR TAY: I cannot recall.

40

MR KNOWLES: Did you provide a copy of it to Assisi?

DR TAY: There is a copy of it in the Assisi notes. The geriatrician themselves entered a fairly detailed note which largely matches those comments but, no, I did not supply a physical copy of that.

45

MR KNOWLES: The report.

DR TAY: Yes.

MR KNOWLES: Was there any particular reason why you didn't do that?

5 DR TAY: No.

MR KNOWLES: Do you think that providing that report to Assisi might have assisted them with a better understanding of Ms Santoro's various health conditions and their proper treatment?

10

DR TAY: Yes, I do.

MR KNOWLES: So by that, do I take it that you accept that that report should have been provided to Assisi?

15

DR TAY: I do.

MR KNOWLES: Now, one of the conditions that was mentioned in the report, as you acknowledged earlier, was the fact that Ms Santoro had diabetes, and do you agree that as somebody experienced in the treatment of older people, diabetes can affect progression and healing of lower leg pressure injuries?

20

DR TAY: Yes, I do.

25 MR KNOWLES: So if somebody has a lower leg wound, do you accept that the fact that they're diabetic should sound some alarm bells?

DR TAY: Yes, I do.

30 MR KNOWLES: And were you also aware at all relevant times that Ms Santoro who had low blood pressure from time to time?

DR TAY: Yes, I was.

35 MR KNOWLES: Yes, and do you also accept that that is a matter that may well increase risks associated with pressure injuries?

DR TAY: Yes.

40 MR KNOWLES: You would know, also, from your experience that pressure injuries can be very painful indeed.

DR TAY: Yes.

45 MR KNOWLES: And you, as you've indicated, were aware that Ms Santoro already suffered from chronic pain syndrome at all times.

DR TAY: Yes.

MR KNOWLES: And that she had dementia which would limit her ability to communicate about her pain verbally.

5

DR TAY: Yes.

MR KNOWLES: And it's true, isn't it, Dr Tay, that behaviour associated with dementia such as agitation, may, in some instances, result from an inability to communicate about pain being suffered by the person with dementia?

10

DR TAY: Yes, that is the very – one of the definitions of BPSD, so yes.

MR KNOWLES: So pain management is absolutely vital in that context, isn't it?

15

DR TAY: Yes.

MR KNOWLES: If you manage pain properly, that may be something that reduces the likelihood or extent of behaviours.

20

DR TAY: Yes.

MR KNOWLES: Now, you, yourself, conducted an early comprehensive medical assessment of Ms Santoro. Do you recall that?

25

DR TAY: So that was conducted by my practice nurse and - - -

MR KNOWLES: Yes.

30 DR TAY: - - - completed by me, yes.

MR KNOWLES: Yes. Ultimately, it's a matter, though, that you sign off on, isn't it?

35 DR TAY: Yes. Correct.

MR KNOWLES: Yes, and that included an assessment of Ms Santoro being a high falls risk.

40 DR TAY: Yes.

MR KNOWLES: Yes. And going back a step, do you recall the date on which that was prepared by your nurse?

45 DR TAY: It was some time in May - - -

MR KNOWLES: Yes.

DR TAY: - - - 2018.

MR KNOWLES: Perhaps if I can just take you to the document. It's at tab 246, Operator, and page 47 is the first page. You've got that, Dr Tay?

5

DR TAY: Just getting it.

MR KNOWLES: Page 47, Dr Tay.

10 DR TAY: Forty-seven. Okay. Thank you. Yes, I have it.

MR KNOWLES: So do you see that's the first page of the comprehensive medical assessment.

15 DR TAY: Yes.

MR KNOWLES: And about three quarters of the way down the page, there's a reference to doctor details and it refers to yourself, and the date of service - - -

20 DR TAY: Yes.

MR KNOWLES: - - - is 11th of May 2018.

DR TAY: Yes.

25

MR KNOWLES: Now, if you go two pages forward, perhaps go one page forward to the comprehensive medical examination, pardon me. Heading – do you see that at the bottom of the page, the words “comprehensive medical examination”?

30 DR TAY: Yes, yes, yes.

MR KNOWLES: Yes, and that involves looking at various vital statistics of a person. among other things.

35 DR TAY: Yes.

MR KNOWLES: And they include, across to the next page, page 49, a reference to height and weight.

40 DR TAY: Yes.

MR KNOWLES: Yes, and do you see, there, Ms Santoro's weight is recorded as 54.4 kilograms?

45 DR TAY: Yes.

MR KNOWLES: Yes. Now, I take it neither you nor the nurse personally weighed Ms Santoro, but, instead, got the weight from Assisi's records?

5 DR TAY: I think that's – well, I certainly didn't weigh her. I think it's a reasonable assumption that my nurse didn't, but I don't really know.

MR KNOWLES: Okay. Well, did you know that according to Assisi's records, Ms Santoro's weight was recorded on the next day, the 12th of May 2018, at 48.9 kilograms?

10 DR TAY: No, I wasn't aware of that.

MR KNOWLES: And it seems highly unlikely, Dr Tay, doesn't it, that she would have lost about five kilograms overnight.

15 DR TAY: Agreed.

MR KNOWLES: So accepting that she was weighed at 48.9 kilograms on the next day, is it fair – and accepting that this piece of information was obtained from Assisi's records, if that is so, is it fair to say that those records used for the comprehensive medical assessment seemed to have been out of date?

20 DR TAY: I just – I – hard to answer that question because I don't know who weighed her.

25 MR KNOWLES: No, I accept that. Now, if she was weighed at 48.9 kilograms on the 12th of May, that would have represented a weight loss of about 10 per cent of her overall body weight; do you agree?

30 DR TAY: Yes.

MR KNOWLES: Do you agree that that is a significant weight loss for a person like Ms Santoro?

35 DR TAY: Yes.

MR KNOWLES: And if you'd been aware of such a loss of weight, would that have prompted clinical questions in your mind?

40 DR TAY: Yes.

MR KNOWLES: Would you have sought to understand the reasons for the weight loss?

45 DR TAY: Yes.

MR KNOWLES: Would you have made inquiries about her diet and nutrition?

DR TAY: Yes.

MR KNOWLES: I take it that, at that time, that was not something that occurred, though?

5

DR TAY: Not that I can recall.

MR KNOWLES: Now, in your statement, if we can go back to your statement at paragraph 63.1, on page 9, you say that you have no recollection of any concern being brought to your attention regarding a loss of weight by Mrs Santoro.

10

DR TAY: Correct.

MR KNOWLES: And you have also no recollection of independently forming a concern regarding any loss of weight by Mrs Santoro.

15

DR TAY: Yes, and that is because, in the geriatrician's report of the same month, there is comment towards her weight, and I had read that as a part of that, and that comment was along the lines that the weight is stable, and she can continue her resource or Sustagen supplement.

20

MR KNOWLES: Yes. Do you recall what the weight was that was recorded by the geriatrician in her report?

DR TAY: I can't recall. I would have to refer - - -

25

MR KNOWLES: It's okay. But – now, do you agree that if there has been weight loss by a person and if it's caused by inadequate nutrition, that could be something that, in turn, bears on other aspects of clinical care?

30

DR TAY: Yes.

MR KNOWLES: Do you agree that it could increase the prospect of falls?

DR TAY: Yes.

35

MR KNOWLES: Do you agree that it could increase - - -

DR TAY: And in fact - - -

40

MR KNOWLES: Have a bearing on the healing of wounds?

DR TAY: Yes.

MR KNOWLES: Now, I think you earlier referred to the Norspan patch that Ms Santoro had when you first started consulting her, and the reduction of the dose of that patch by about half.

45

DR TAY: No. So the story of the Norspan is important. Norspan was originally prescribed by the Austin Hospital in the April of 2018 presentation after Mrs Santoro presented with her pelvic and acetabular fractures.

5 MR KNOWLES: Yes.

DR TAY: So it had been in place for about a month and a half or so before the geriatrician saw the patient. The geriatrician then, after the initial consultation, reduced the Norspan, as per her reasonings, to 15 micrograms. And then
10 subsequently to that, I acted to reduce it to 10 micrograms. But Mrs Santoro had increased pain under that situation, so we were forced backwards to 15 micrograms.

MR KNOWLES: Right. I see. Where is there – perhaps I will ask you, Dr Tay, at
15 some stage, if you or your representative can indicate where the back to 15 micrograms record appears in your records.

DR TAY: Yes. Yes.

MR KNOWLES: Now, in terms of Ms Santoro's weight, do you agree that there
20 were two periods where she sustained significant weight loss that you became aware of subsequently? One in - - -

DR TAY: What do you - - -

25 MR KNOWLES: - - - April to May of 2018, and another in September and October of 2018.

DR TAY: I think – and the – I think if you are referring to the April incident with
30 the fractured pelvis and the fractured acetabular, I would agree. There was also a subsequent admission for urosepsis and tachycardia that was quite significant, and I would add that to that list as well.

MR KNOWLES: Yes, and do you say that there is any relationship between
35 hospital admission and periods of weight loss, or is it - - -

DR TAY: Most definitely.

MR KNOWLES: Yes, and was that - - -

40 DR TAY: Most definitely. A lot of these – in both cases, she was quite unwell. In both cases, it is fair to assume that she had lost weight because of muscle loss. When she came back to Assisi after each incident, I suspect that her frailty increased and that is something that Ms Ng had commented on, on her previous statement as well. That, basically, Ms Santoro, after each incident, came back in a less healthy state
45 than she was beforehand.

MR KNOWLES: And in light of that, does that heighten the need for regular monitoring and recording of weight upon a person leaving hospital?

DR TAY: Yes.

5

MR KNOWLES: That is, by the aged care facility staff?

DR TAY: Yes.

10 MR KNOWLES: Now, can I ask you a little bit about supplements and the supplement regime that was provided to Ms Santoro. Do you have any awareness of that?

15 DR TAY: I only have the awareness of what the geriatrician wrote in her assessment, which I referred to before - - -

MR KNOWLES: And otherwise, did you have any - - -

20 DR TAY: - - - which was that she was on - - -

MR KNOWLES: - - - view about the appropriateness of any use of supplements by the staff at Assisi for Ms Santoro?

25 DR TAY: My view on that is that should have been brought from a professional dietitian.

MR KNOWLES: Did you convey that to Assisi at any time?

30 DR TAY: No, because I was not aware.

MR KNOWLES: I see. When you say you were not aware, was that because you were not aware of her weight?

35 DR TAY: I was not aware of that being a concern because once I had seen the geriatrician report saying that the weight was stable and she was already on supplements, in my mind, that was reasonable assessment of the situation.

40 MR KNOWLES: Did you ever check Assisi's records in respect of weight to see whether her weight was stable, increasing or decreasing yourself?

DR TAY: No.

MR KNOWLES: Why was that?

45 DR TAY: I would normally expect that to be brought to my attention.

MR KNOWLES: Did you ever make any queries about Ms Santoro's weight, whether it was stable, increasing or decreasing?

5 DR TAY: I think it's likely that I did, but as I've previously said, my record keeping isn't great. So, yes, I think I did.

MR KNOWLES: But your records, you say, might not reflect that at all?

10 DR TAY: Yes.

MR KNOWLES: Now, in terms of the prescription of antipsychotic drugs for Ms Santoro, you would acknowledge that like Norspan, antipsychotic drugs also have the potential to create drowsiness.

15 DR TAY: Definitely. These are drugs that have significant side effect profiles and that are obviously at the moment controversial in their use.

MR KNOWLES: Yes, and another side effect, perhaps as a result of that, is that it might increase a person's risk of falls?
20

DR TAY: Yes, through sedation.

MR KNOWLES: And do you agree that if quetiapine is combined with other psychotropic drugs such as Oxazepam that might be even more so?
25

DR TAY: Yes, agreed.

MR KNOWLES: Now, you say at paragraph 26 of your statement that you saw Ms Santoro on 14 June 2018 about a laceration that she had sustained.
30

DR TAY: She had already been to the emergency department at the Austin Hospital. She had had treatment for that laceration with staples.

MR KNOWLES: And that was a laceration to the left side of the back of her head; do you recall that?
35

DR TAY: Yes, I recall that.

MR KNOWLES: And it was an injury for which she had had to go to the emergency department at the hospital.
40

DR TAY: Yes.

MR KNOWLES: Yes. Now, can I take you to a document at tab 246 of the tender bundle and this is in your Andrew Place Clinic records.
45

DR TAY: Yes.

MR KNOWLES: If you go to page 6 of that document.

DR TAY: Yes.

5 MR KNOWLES: And there is the record about three-quarters of the way down the page, relating to a consultation on 14 June 2018.

DR TAY: Yes.

10 MR KNOWLES: Now, you've said there:

History: CTSP –

15 perhaps I will get you to interpret that, Dr Tay. Can you tell the Royal Commission what that all means.

DR TAY: That's called to see patient. "lac" is a laceration. "ED" means emergency department, agitation.

20 MR KNOWLES: And then the next line.

DR TAY:

Liaise with family, geri –

25

refers to geriatrician –

trial risperidone or quetiapine

30 MR KNOWLES: Right. And you don't have any other record of that consultation, do you; that's the extent of it?

DR TAY: Yes.

35 MR KNOWLES: Now, I think you say in your statement at paragraph 26 that Assisi staff had reported to you that they had been unable to manage Mrs Santoro's behaviours.

DR TAY: Yes.

40

MR KNOWLES: Did you ask them what they had done in terms of attempting to manage her behaviours?

DR TAY: Yes.

45

MR KNOWLES: And what was the response?

DR TAY: The response was that they had tried to be with her one-on-one care and that that had failed, that she was still agitated.

5 MR KNOWLES: Right. Did you query whether or not they had undertaken any pain assessment at the time?

DR TAY: No, I didn't query whether they had undertaken a pain assessment.

10 MR KNOWLES: And you knew, obviously, as you've previously indicated that she had chronic pain syndrome, had reduced her Norspan, and had lacerated her head and had gone to hospital for it. In those circumstances, why didn't such a query – why wasn't such a query made of Assisi staff by you?

15 DR TAY: I'm not – not convinced that she had a complete chronic pain syndrome. Like I say, the Norspan came about in April 2018 from her fractured pelvis and her acetabular. Prior to that, she hadn't been on opioid analgesics at all. So, clearly, both the geriatrician and I felt that on a practical basis that the Norspan was no longer necessary for both pain reasons and for side effect like dizziness and sedation.

20 MR KNOWLES: My question to you, Dr Tay, was why you didn't, in all the circumstances, ask the staff at Assisi what they had done to assess Ms Santoro's pain as a possible explanation for her agitation. Are you able - - -

25 DR TAY: It's because I was there and I made the assessment myself that she wasn't in pain at that moment in time.

MR KNOWLES: Now, you haven't made any record to that end, have you, in your records?

30 DR TAY: No.

MR KNOWLES: Did you suggest that there be any review of her pain in future to Assisi staff at this time?

35 DR TAY: No.

MR KNOWLES: Okay. So this was what led to the prescription of antipsychotic, the antipsychotic drug quetiapine; is that right?

40 DR TAY: Yes.

MR KNOWLES: Yes. And in terms of your consultation with Ms Ng and others in the family, the record that you've created going to what was said about that is simply "liaise with family"; is that right?

45

DR TAY: Yes.

MR KNOWLES: So there's no record of precisely what was said.

DR TAY: What, in a medical record – not in a medical record sense, no.

5 MR KNOWLES: No, there's no record of their consent being given to the administration of quetiapine.

DR TAY: No.

10 MR KNOWLES: Would you agree that this is one of the instances that you've acknowledged of poor record-keeping in clinical notes?

DR TAY: Yes, I would.

15 MR KNOWLES: Now, in paragraph 26 of your statement, you say you spoke with Ms Ng about quetiapine and discussed its side effects. That's a matter about which there is no record, as we have just indicated. Now, you also say that Ms Ng was quite keen to avoid excessive sedation. So you knew that at that point onwards, didn't you?

20

DR TAY: Yes.

MR KNOWLES: And did that influence you in terms of communications with Ms Ng about the use of quetiapine and other psychotic drugs – antipsychotic drugs.

25

DR TAY: Yes, and that is why – sorry.

MR KNOWLES: No, pardon me, Dr Tay.

30 DR TAY: Sorry, so yes and that is why when Ms Ng sent me an email on 19 September 2018 telling me about an incident where Mrs Santoro appeared to be sedated as a result of medication, I definitely took that very seriously.

MR KNOWLES: When did you say that was, on 19 September?

35

DR TAY: 19 September. So I was on leave at the time. One of my colleagues assessed it but when I came back to that meeting on 11 October, that was when we started to reduce the quetiapine, even though some assessment had been made around whether it was causing sedation or not.

40

MR KNOWLES: Well, in that sense, it's fair to say that the use of quetiapine was for sedation, wasn't it?

DR TAY: No.

45

MR KNOWLES: Well, it wasn't being used for its usual intended purpose, was it?

DR TAY: No, it was used to treat Mrs Santoro's distress.

MR KNOWLES: By sedation, Dr Tay?

5 DR TAY: No. No, quetiapine is an antipsychotic that works on neurotransmitters like dopamine, serotonin. It's not a sedative. It has a side effect of sedation, which we wanted to avoid.

10 MR KNOWLES: Now, given Ms Ng's indication about a concern of excessive sedation, I take it then you knew that if there was an increase in the dosage of quetiapine or an introduction of some other psychotropic drug she would want to know about that.

15 DR TAY: Yes.

MR KNOWLES: Yes. Okay. Now, after the initial introduction of quetiapine, you gradually reduced the dosage until there was – she was off the drug by 5 July 2018.

20 DR TAY: Yes.

MR KNOWLES: She had started, I think, on 6.25 milligrams twice a day.

DR TAY: Yes.

25 MR KNOWLES: And by 5 July, that had ceased.

DR TAY: Yes.

30 MR KNOWLES: And you've said earlier that one of the things you wished to add to your statement was that then, though, it was resumed on 9 July at that dose of 6.25 milligrams twice a day.

DR TAY: Once a day.

35 MR KNOWLES: Once a day, pardon me. So it was a very mild dose; is that a fair assessment?

DR TAY: It's a quarter of a tablet.

40 MR KNOWLES: Yes. So that prescription on 9 July 2018 of a once a day dose of 6.25 milligrams, where does one see any reference to that at all in your notes?

DR TAY: In my notes there is no reference. I only picked it up in the Assisi notes.

45 MR KNOWLES: Right. And would you say that's an example of poor record-keeping on your part?

DR TAY: Definitely.

MR KNOWLES: Now, soon after the introduction of that – and I’m not suggesting there’s necessarily any correlation between these two things, but soon after the
5 introduction of quetiapine on 9 July, on 12 July Ms Santoro had a fall and suffered a fractured right hip. Do you recall that?

DR TAY: Yes, I do.

10 MR KNOWLES: And that led to her admission to hospital, and she was discharged subsequently on 17 July.

DR TAY: Yes.

15 MR KNOWLES: Now, you learnt about her admission to hospital around 12 July yourself, didn’t you?

DR TAY: Yes.

20 MR KNOWLES: I think the next day you received an email from Assisi staff; do you agree?

DR TAY: Agreed.

25 MR KNOWLES: Yes. And would you also agree that Assisi staff had assessed her at that time as suffering from severe pain as a result of this injury?

DR TAY: Yes.

30 MR KNOWLES: And you were aware of that at the time?

DR TAY: Yes.

MR KNOWLES: Now, at the time of her discharge, there was a document prepared
35 by the relevant hospital in question. I’m going to bring that document up now. It’s at tab 233 in the tender bundle. So if you could perhaps go to that, Dr Tay. Do you have that document?

DR TAY: This document, yes, I have that document.

40

MR KNOWLES: It’s the document numbered ACL.001.0004.0259.

DR TAY: Yes.

45 MR KNOWLES: Thank you. Now, do you see about halfway down the page, there’s the word “dressings” and some handwritten entries beside it relating to the - - -

DR TAY: Yes.

MR KNOWLES: - - - two matters that are referred to by the hospital at the time of discharge of Ms Santoro from hospital on 17 July.

5

DR TAY: Yes.

MR KNOWLES: And one is in respect of the right hip:

10 *Wound review with GP two weeks post op.*

Do you agree that's what that note on the first line means?

DR TAY: Yes.

15

MR KNOWLES: And the second:

Right heel PI – Aquacel dressing.

20 Do you see that?

DR TAY: That's Aquacel.

MR KNOWLES: Thank you. Pardon me. And the PI is a reference to a pressure injury, would you infer?

25

DR TAY: I would infer.

MR KNOWLES: Yes. Now, in relation to this document, did you see it yourself at any time - - -

30

DR TAY: No.

MR KNOWLES: Okay. And you knew that Ms Santoro was in hospital and would be – and had been discharged on 17 July. You knew that.

35

DR TAY: I knew she was in hospital, yes, and when I exactly knew about her discharge, maybe 18th, 19th.

MR KNOWLES: Okay. But it's very soon after she was discharged. I mean, you saw her on 19 July, didn't you.

40

DR TAY: Yes. Yes.

MR KNOWLES: Yes. Did you ever ask Assisi staff for the hospital's discharge documentation?

45

DR TAY: No, I did not. I was expecting to receive it directly from the hospital, as is normal practice.

MR KNOWLES: Right, and you didn't receive it.

5

DR TAY: Yes.

MR KNOWLES: Did you follow it up?

10 DR TAY: No, and I will admit this is one of the things that I've reflected through in this particular case that I have now changed, that I am much more assertive about following up with hospital discharge summaries.

15 MR KNOWLES: So do you see that as a failing on your part in this particular instance?

DR TAY: I think this is – yes, I was too reactive as opposed to proactive.

20 MR KNOWLES: Were you ever otherwise informed of the contents of this record, in particular, the two handwritten lines that I've taken you to earlier?

DR TAY: No.

25 MR KNOWLES: Did you ever ask Assisi staff or anyone else for that matter, about the hospital's directions for Ms Santoro's ongoing care post discharge?

DR TAY: No.

30 MR KNOWLES: And why did you not do that?

DR TAY: I made a conclusion that they would raise those matters with me, and that, at some point in time, I would have received the Austin referral directly, which would have confirmed, in my mind, the actual discharge instructions.

35 MR KNOWLES: Do you think that conclusion was the right one in all the circumstances?

40 DR TAY: Definitely not, and I think – as I've said just before, I think the better solution there would have been for me to ring the medical records department at the Austin, ask – request the medical record be transferred.

MR KNOWLES: Now, you know that the details of the Austin discharge document were recorded in the progress notes for Ms Santoro kept by Assisi.

45 DR TAY: No.

MR KNOWLES: Have you got access to the Assisi progress notes yourself?

DR TAY: I've had access to their system, but I've only got, in my opinion, access to what I think is a limited range of things.

5 MR KNOWLES: Right. Do you have access to progress notes for people who are your patients on their system?

DR TAY: I would assume so.

10 MR KNOWLES: When you say you would assume so, do you know so?

DR TAY: It's a very difficult system to navigate. So it comes up with one window at a time. So you can click on certain things and get lost. You can get other patients' files. It's – was not an easy system to navigate.

15 MR KNOWLES: Can I take you to another document. This is at tab 234 of the tender bundle, and in that document, if I could take you to page .3782.

DR TAY: Yes.

20 MR KNOWLES: Now, do you see there, there's a record for Ms Santoro in the progress notes for Assisi?

DR TAY: Yes, dated 17th July.

25 MR KNOWLES: Yes, and do you see that has, in it, a reference to a discharge plan and follow-up in respect of - - -

DR TAY: Yes.

30 MR KNOWLES: - - - the hip injury.

DR TAY: Yes.

35 MR KNOWLES: And it says at point 2 on that discharge plan:

GP to review the wound, 2/52 post op.

DR TAY: Yes.

40 MR KNOWLES: So I take it from what you've said earlier, you never saw those progress notes?

DR TAY: Correct.

45 MR KNOWLES: And do you, from time to time, review patients of yours at Assisi, their progress notes on this system?

DR TAY: Yes, I do. That's where I found the difficulty.

MR KNOWLES: When you say where you found the difficulty, are you referring to your problems - - -

5

DR TAY: No, navigating – no, navigating.

MR KNOWLES: Navigating the system.

10 DR TAY: Yes. Sorry. Yes.

MR KNOWLES: Okay. Now, at paragraph 32 of your statement, you refer to the consultation that you had with Ms Santoro on the 19th of July that I mentioned earlier.

15

DR TAY: Yes.

MR KNOWLES: That was the first time that you'd seen her since she had had the hip surgery, wasn't it?

20

DR TAY: That's correct.

MR KNOWLES: Now, can I take you to the record that you prepared in respect of that consultation in your clinical records at page 240 – sorry, tab 246 in the tender bundle.

25

DR TAY: Do you have a page number on that?

MR KNOWLES: Yes, it's page 7 of that bundle. At the bottom of the page, you'll see - - -

30

DR TAY: Yes.

MR KNOWLES: - - - a reference to a consultation on Thursday, the 19th of July 2018.

35

DR TAY: Yes.

MR KNOWLES: Now, there's no mention in that record of Ms Santoro having been discharged from hospital.

40

DR TAY: Yes.

MR KNOWLES: Or having a broken hip.

45

DR TAY: Yes.

MR KNOWLES: Or a surgical wound in respect of her broken hip.

DR TAY: Yes.

5 MR KNOWLES: There's no mention of a pressure injury to her right heel; you agree with that as well?

DR TAY: Agree.

10 MR KNOWLES: Yes. Now, you have said in the first line, under "history":

Increasing agitation continues.

15 You – those things that I've mentioned earlier, the hip wound – sorry, the broken hip, the surgical wound, the pressure injury, they could have all been causing considerable pain to Ms Santoro, couldn't they?

DR TAY: Yes.

20 MR KNOWLES: Yes. There's no record of any consideration of those matters bearing on that increased agitation, is there?

DR TAY: No, there is no record.

25 MR KNOWLES: Did you form an assessment of her pain at the time on the 19th of July?

DR TAY: Yes, I did.

30 MR KNOWLES: And how did you do that?

DR TAY: I physically examined Mrs Santoro.

35 MR KNOWLES: Yes. Did you physically examine the site of the hip wound?

DR TAY: No, but I did get her to stand and take a few steps.

40 MR KNOWLES: Yes. Did you physically examine the site of her right heel wound?

DR TAY: I wasn't aware of the right heel wound.

MR KNOWLES: Okay.

45 DR TAY: So, no.

MR KNOWLES: I will come back to that, Dr Tay. Did you ask – you made an assessment at that time, did you ask Assisi staff about any pain assessment or pain management that they had engaged in prior to your visit on the 19th?

5 DR TAY: Yes.

MR KNOWLES: And what did they tell you at the time?

10 DR TAY: They told me that her pain was actually very well controlled, and she was not in much pain at all.

MR KNOWLES: Did you make any query of them at the time about what strategies they were using for attempting to deal with her behaviour?

15 DR TAY: Yes, I did.

MR KNOWLES: And what were you told?

20 DR TAY: They again referenced the one-on-one care. They referenced distraction therapy, music therapy.

MR KNOWLES: That had been undertaken, is that what you're saying, at the time?

25 DR TAY: That's what they had told me, yes.

MR KNOWLES: You say you didn't look at the hip wound at the time. Did you consider the possibility that that surgical site might have been infected at that time?

30 DR TAY: No, because that was two days post discharge. It's a pertrochanteric fracture treated by an intermedullary rod, so it's a much smaller wound than a conventional hip replacement.

35 MR KNOWLES: Did you think that – in retrospect, do you think that you should have looked at the hip wound at that time on the 19th of July?

DR TAY: It would have depended on the instructions of the discharging orthopaedic surgeon. There are some wounds that they want looked at; there are some wounds that they want us to leave alone.

40 MR KNOWLES: Now, you didn't have any further consultation with Ms Santoro until a fortnight later on the 2nd of August 2018, did you?

DR TAY: Correct.

45 MR KNOWLES: Given her recent discharge from hospital, did you ever consider whether you might need to see her more often than the usual fortnightly visit?

DR TAY: No, I wasn't aware of any reason that needed to increase that frequency.

MR KNOWLES: Not the fact that she had a major – or, sorry, that she had had surgery to her hip, may be experiencing pain, may require pain assessment and
5 management on an ongoing basis or other matters associated with that?

DR TAY: No, because aged care facilities sit in that spectrum between hospitals and the community, and there's a reasonable expectation on my part that I would be notified if that was a problem.
10

MR KNOWLES: Okay. Now, going back to the record that you see at tab 246 at the bottom of page 7, at the end of the record, it says, "DW daughter Anna." Is that a reference to having a discussion with Ms Ng?

15 DR TAY: It's just moved – yes. Yes.

MR KNOWLES: Okay. And that's, what, in relation to the medications that are referred to there?

20 DR TAY: It's in reference to the whole thing.

MR KNOWLES: Sorry, the whole thing?

DR TAY: Yes.
25

MR KNOWLES: Okay.

DR TAY: So it's in reference to her behaviours and the blood sugars and the gliclazide.
30

MR KNOWLES: All right. Can I take you, Dr Tay, to tab 247.

DR TAY: Yes.

35 MR KNOWLES: And that's your bundle of emails.

DR TAY: Yes.

MR KNOWLES: Can I take you to page 15 of that bundle, which is an email
40 exchange between yourself and Ms Ng on the 19th of July.

DR TAY: Yes.

MR KNOWLES: And do you see towards the bottom of the page, if we start there,
45 there is your email at 2.20 pm to Ms Ng where you say that:

I saw your mum today and spoke with the nurses.

Do you see that?

DR TAY: Yes.

5 MR KNOWLES: So when you've referred, you recall in the record, to, "Discussed with Anna," is this the discussion, this email?

DR TAY: Yes, this is the discussion.

10 MR KNOWLES: This is the discussion, this email?

DR TAY: Yes.

15 MR KNOWLES: Okay. And this discussion doesn't refer at all to the quetiapine, does it?

DR TAY: Correct.

20 MR KNOWLES: And at the end where you've asked her whether she has any concerns or questions, you're seeking, effectively, her approval for what you – her concurrence or approval with what you are doing for her mum.

25 DR TAY: No, that was just a straight question to be read as does she have any concerns or questions.

MR KNOWLES: Okay. But she wouldn't have known, at that time, that there had been the quetiapine resumed.

30 DR TAY: It's hard to know, but she came – Mrs Santoro came back on the 17th of July from Austin on an increased dose of quetiapine. So she got prescribed 6.25 by me on the 9th. Came back on the 17th with 12.5 milligrams in the evening.

35 MR KNOWLES: And – but you've referred to the diabetes medication there, but not the - - -

DR TAY: Yes. Yes. Yes.

MR KNOWLES: - - - quetiapine.

40 DR TAY: And I should have.

MR KNOWLES: Yes. Now, over the period that followed from this, the quetiapine at this point was how much on the 19th of July? Was it 6.25 milligrams twice a day?

45 DR TAY: It was approximately that. I would have to check my records.

MR KNOWLES: Well, your clinical notes simply said:

So up quetiapine to bi-daily, BD.

DR TAY: So my recollection is 6.25BD.

5 MR KNOWLES: Yes. Okay. And over the next period of time on a progressive basis, that dose was increased, wasn't it?

DR TAY: Yes, it was.

10 MR KNOWLES: To the point where, by 2 August she had – pardon me – so to the point whereby at 16 August the dose was 37 and a half milligrams three times a day with an additional 25 milligrams a day as required.

DR TAY: Correct.

15

MR KNOWLES: Yes. So over the course of a month, the dosage for Ms Santoro had increased almost tenfold, do you agree with that?

DR TAY: Correct.

20

MR KNOWLES: Okay. Now, would a dose increase like that have an effect on a person's level of sedation and drowsiness?

DR TAY: The response in my understanding is it's not linear.

25

MR KNOWLES: And what do you mean by that, Dr Tay?

DR TAY: So a lot of the side effects are hard to predict. They may occur at low dose, they may occur at medium dose, they may occur at higher doses. The important point is close observation. It could occur at any time.

30

MR KNOWLES: All right. And in terms of that observation, it's fair to say, isn't it, that that was observation that was conveyed to you on occasions during that period of a month, simply by telephone, by people at Assisi, by staff at Assisi.

35

DR TAY: So observations would be threefold: (1) I would look at the patient myself, Mrs Santoro, form an opinion of level of her sedation; (2) yes, I would speak to the nurse unit manager. I would speak to staff. They were able to call me at any time to relate that sort of information. And (3), obviously, I had pretty clear lines of communication with Ms Ng and knew that she was looking for sedation.

40

MR KNOWLES: Yes. And in that regard, when you increased the dose of quetiapine on occasions it's fair to say that you might have done so at times when requested by Assisi staff to that end and by telephone?

45

DR TAY: Yes.

MR KNOWLES: And that was without you actually observing her yourself?

DR TAY: Yes.

5 MR KNOWLES: Can I ask you, there was the daily dose that she took every day. There was also the as-required additional dose, which by 16 August was around 25 milligrams a day. What was the nature of the instructions that you gave to staff at Assisi about when medications should be given on an as-required basis?

10 DR TAY: The specific instructions are that the behaviours, distress, agitation have to be greater than what they are normally seeing.

MR KNOWLES: All right. Now, Dr Tay, if I can then come back to the hip wound. You saw Ms Santoro on 2 August 2018. Did you examine her hip wound at
15 that time?

DR TAY: No.

MR KNOWLES: And why not?
20

DR TAY: I put myself in the situation where I was reliant on the information of the nursing staff. So when they did not mention it, I did not think of it and this goes back to an earlier point that had I requested a discharge summary from the Austin hospital with specific instructions, then I would have known then walking into that
25 consultation, that that wound needed to be examined.

MR KNOWLES: All right. You've seen – and I think you refer to it in your statement, that Assisi records make reference to a telephone conversation between yourself and an Assisi staff member on 26 July 2018.
30

DR TAY: Yes, I've seen that reference.

MR KNOWLES: You don't recall that conversation yourself?

35 DR TAY: No, I do not.

MR KNOWLES: So you are not in a position to suggest that it did not occur as per the note itself.

40 DR TAY: I – on recollection, I did not receive that information.

MR KNOWLES: Well, that's not what your statement says, Dr Tay, is it?

45 DR TAY: Well, if you are asking me to say I did or didn't receive the information, I cannot recall but I agree with my statement.

MR KNOWLES: Okay. Well, there is a record of a conversation with you on 26 July 2018 in Assisi's records, isn't there?

DR TAY: Yes.

5

MR KNOWLES: Yes, and perhaps if I go to that, it's at tab 194 of the tender bundle and at page 2 of that document, which is .0132, at the top of the page, you will see there, there's a reference to a wound review conducted by Assisi staff for Ms Santoro on 26 July 2018.

10

DR TAY: Yes.

MR KNOWLES: And that the dressing, the wound was checked. It was:

15 *Reassess the wound and noted that surgical site not ready for removal yet. The staple is still embedded on to the surgical site. Dr Tay informed via phone.*

DR TAY: I can read that, yes.

20 MR KNOWLES: Yes. So you might not – you say you don't have a recollection of that, but that will be a contemporaneous record of such a conversation, don't you agree?

DR TAY: I – I would have thought that had I – had I remembered that, I would recall it.

25

MR KNOWLES: All right. Now, you said earlier that you didn't examine the wound on 2 August essentially because it wasn't brought to your attention by the staff at Assisi.

30

DR TAY: Yes.

MR KNOWLES: Do you accept that, really, you have some responsibility in terms of actively assessing Ms Santoro's wounds at the time?

35

DR TAY: Yes.

MR KNOWLES: And do you accept, on that basis, that you should have examined her hip wound at the time?

40

DR TAY: I should have known that that hip wound was ready for examination, yes.

MR KNOWLES: And had you done that, you might have assessed that there were early stages of infection.

45

DR TAY: I certainly had the skills and the expertise to deal with the problem at hand, yes.

MR KNOWLES: Yes, and you might have been able to remove the staples.

DR TAY: Yes.

5 MR KNOWLES: Yes. Or you might have been able to direct somebody else to do that.

DR TAY: Correct.

10 MR KNOWLES: And that might have avoided the need for Ms Santoro to go to hospital subsequently with a serious infection.

DR TAY: Yes. Yes.

15 MR KNOWLES: Now, in your statement, you suggest that you didn't know – sorry, pardon me – that you didn't know about the pressure injury to her heel – and this is at paragraph 43 – until much later, until late August of 2018.

DR TAY: Yes. And even then that – that memory is just a recollection.

20

MR KNOWLES: Yes, there's no record, is there, in your records?

DR TAY: Yes, my first record of that is 13 September.

25 MR KNOWLES: That's right. And it may well be, given that that's the first time that you've made any record of it, that it was 13 September 2018 that you first became aware of it.

DR TAY: That was the first time I was aware of it.

30

MR KNOWLES: 13 September.

DR TAY: Yes.

35 MR KNOWLES: Okay. Now, in that regard, how did you not – did you physically examine Ms Santoro over that month and a half to two months from her discharge from hospital up to 13 September?

DR TAY: Yes, I examined her on each visit occasion.

40

MR KNOWLES: And did you take notice of the fact that she had a bandage on her right heel?

45 DR TAY: No, because often she would have footwear on. I wasn't, again, alerted to the fact that this is something that had developed.

MR KNOWLES: All right. And there were no records that you saw at Assisi relating to the condition of her right heel?

DR TAY: No.

5

MR KNOWLES: You were never shown any photographs of her right heel?

DR TAY: No.

10 MR KNOWLES: Now, once you found out about it – you say you found out about it now on 13 September 2018; is that right?

DR TAY: Correct.

15 MR KNOWLES: Yes. Now, did you examine the heel wound on that occasion?

DR TAY: Yes, I did.

20 MR KNOWLES: Yes, and you were obviously mindful that Ms Santoro was diabetic and had from time to time low blood pressure?

DR TAY: Yes.

25 MR KNOWLES: So were you concerned about the progression potentially of that heel wound?

DR TAY: I wasn't that concerned. The physical appearance of the wound did not raise any alarm bells.

30 MR KNOWLES: Did you ask staff at Assisi how long the wound had been on her heel?

DR TAY: No.

35 MR KNOWLES: Why not?

DR TAY: They had – because they had introduced the wound to me as “Can you please have a look at this. This has been here for a little while”.

40 MR KNOWLES: Well, I put to you, Dr Tay, that you might want to know how long a little while is in all the circumstances.

DR TAY: Yes, in – absolutely, I would.

45 MR KNOWLES: Because had you asked that you would have been informed that they had known about it for nearly two months, and that it hadn't resolved.

DR TAY: Yes, and that would have been critical information.

MR KNOWLES: Okay. Now, you went on leave from 15 September for three weeks, didn't you?

5

DR TAY: Yes.

MR KNOWLES: And before you went on leave, did you speak to the people who were going to fill in for you about your patients and including them, Ms Santoro?

10

DR TAY: Yes. So, in fact, the first doctor who filled in for me for the two weeks, I actually brought her into the facility and showed her around.

MR KNOWLES: All right. Commissioners, I'm mindful of the time. I've still got a little way to go with Dr Tay but I'm in the - - -

15

COMMISSIONER TRACEY: We will sit on.

MR KNOWLES: Thank you, Commissioners.

20

And did you tell those that were going to be standing in for you during those three weeks about Ms Santoro's heel wound?

DR TAY: Yes.

25

MR KNOWLES: All right.

DR TAY: And it was in the notes, too.

30

MR KNOWLES: Pardon, what was that?

DR TAY: And it was in the notes, too. And it was in the notes as well.

MR KNOWLES: That is your reference on 13 September that you refer to?

35

DR TAY: Yes.

MR KNOWLES: That's a single line, isn't it?

40

DR TAY: Yes.

MR KNOWLES: And it's the only note that we have from you about Ms Santoro's heel wound until you get back from your leave.

45

DR TAY: Yes.

MR KNOWLES: Yes. Now, when you went on leave, Ms Ng, around that time, emailed you about her concerns in relation to the possible sedating effects of the medications that her mum was on, including the quetiapine; do you agree?

5 DR TAY: Yes.

MR KNOWLES: Yes. And the relevant email, if I could take you to that quickly, is at page 63 of the bundle of emails behind tab 247. Now, she sent you another email, do you recall, Dr Tay, soon, just before you returned from leave on 7 October, and that's at page 65.

10 DR TAY: Yes, I remember both emails.

MR KNOWLES: Yes, thank you. And do you see that in the latter email, she expresses concerns specifically about quetiapine, having done a bit of reading on that medication?

15 DR TAY: Yes.

20 MR KNOWLES: And she also expresses some concerns about oxazepam as well.

DR TAY: Yes.

MR KNOWLES: Now, can you tell us what details you had given in respect of those particular drugs to Ms Ng prior to this? Was it in the nature of - - -

25 DR TAY: Okay.

MR KNOWLES: - - - this type of information about those two drugs and their use for people such as Ms Santoro?

30 DR TAY: The information provided centred on one major thing: sedation. It was a major concern. It was a concern of mine. It was a concern of Mrs Santoro. There were other side effects discussed including Parkinson-like symptoms and cardiovascular complications.

MR KNOWLES: Yes. Now, it was that email and your response to it, which appears at the top of page 65 in the bundle, that then led to you having a meeting with Ms Ng on the 11th of October; is that right?

40

DR TAY: Yes. Correct.

MR KNOWLES: By then, of course, there had been an X-ray of Ms Santoro's heel that had shown - - -

45

DR TAY: Yes.

MR KNOWLES: - - - that she was suffering from osteomyelitis, a bone infection of that wound site.

5 DR TAY: Actually, the X-rays shows osteomyelitis of the first digit. The X-ray is actually silent on the heel wound - - -

MR KNOWLES: Right.

10 DR TAY: - - - and I don't know what to make of that.

MR KNOWLES: Yes. Was, ultimately, a diagnosis of osteomyelitis given in respect of the heel wound as well?

15 DR TAY: Yes, I made that. The clinical definition, once you have bone on view, it's osteomyelitis.

MR KNOWLES: Yes, and did you inspect Ms Santoro's heel wound after you returned from leave?

20 DR TAY: On the 11th after the meeting, yes.

MR KNOWLES: So that was after the meeting?

25 DR TAY: Yes. I walked straight into - - -

MR KNOWLES: Sorry, you go, Dr Tay.

DR TAY: Sorry. I was going to say - - -

30 MR KNOWLES: You walked straight in.

DR TAY: - - - I walked straight into the meeting. Yes.

35 MR KNOWLES: Well, you've described that meeting that you walked in and you met with Ms Jacobs - - -

DR TAY: Yes.

40 MR KNOWLES: - - - and she asked Ms Ng and her brothers to leave the room. Can you just tell the Royal Commission what then passed between you and Ms Jacobs, what was discussed?

45 DR TAY: Yes. So Ms Jacob sat me down and said, "We found maggots in the wound. What do we do?" I replied, "We have to tell Ms Ng and her family." She was tense. She was anxious. By the - the words to the effect that she could get in trouble if this was disclosed. She said that they will get really mad. I said, "I don't think that changes my mind." She was continuing to be anxious and concerned. I

rang the geriatrician for two reasons: (1) I wanted to be sure that I was doing the right thing, and (2) I wanted the answer to the critical question how did the maggots get into the wound because I knew that was going to be a question that was going to be asked of me.

5

MR KNOWLES: And what did the geriatrician say to you on both counts?

DR TAY: So, on the first count, the geriatrician said, in her experience of one similar case, they told the family straightaway. So that was confirming my thoughts.
10 And (2) on the second count, that a fly had to have landed on the wound in order to lay the eggs.

15

MR KNOWLES: And I take it from that that the wound was – would, therefore, have to be exposed.

DR TAY: I take it from that too.

20

MR KNOWLES: And is the gist of your evidence that you found Ms Jacobs to be reluctant to inform the family about the existence of maggots in the heel wound?

DR TAY: I – yes, yes, because my initial thoughts were why am I telling you about this when you've already found it? I don't – and that's something I've never understood to this day. They waited until I got there.

25

MR KNOWLES: Now, you know that there was a wound management consultant who first saw Ms Santoro on the 9th of October 2018.

DR TAY: Yes.

30

MR KNOWLES: Do you, from your understanding of what has happened to – what happened to Ms Santoro, was that simply too late for any effective treatment of her heel wound?

DR TAY: Yes.

35

MR KNOWLES: And do you know why it didn't happen earlier?

DR TAY: I don't know why it didn't happen earlier, no.

40

MR KNOWLES: You say in your statement that you recall speaking with the wound consultant on the telephone a couple of times.

DR TAY: Yes.

45

MR KNOWLES: What was discussed?

DR TAY: The nature of the wound, her suggested management, and her potential follow-up.

5 MR KNOWLES: Yes. Now, do you recall Ms Santoro moving to palliative care, a palliative care room in Assisi?

DR TAY: Yes.

10 MR KNOWLES: And how did you regard Ms Santoro's palliative care needs, whether or not they were being met, that is, at Assisi?

15 DR TAY: I found it difficult to be sure that her needs were being met. I was in constant communication with Ms Ng about various issues, particularly around her pain management, the turning of her. There were definitely issues that, in my opinion, indicated that there was a breakdown in the relationship between Mrs Santoro's family and the facility.

20 MR KNOWLES: Now, Ms Santoro passed away on the 25th of October 2018. Ms Ng subsequently emailed you a copy of her mother's death certificate. Do you recall that?

DR TAY: Yes, I do.

25 MR KNOWLES: And I take it you didn't complete the death certificate yourself?

DR TAY: No.

MR KNOWLES: But you did see it?

30 DR TAY: Yes.

MR KNOWLES: And in the email, you told Ms Ng that it listed seven causes of death, including one of which included osteomyelitis.

35 DR TAY: Yes.

MR KNOWLES: And is it fair to say, in a clinical sense, that the bone infection associated with her foot wounds was one of the factors contributing to her death?

40 DR TAY: Yes.

45 MR KNOWLES: Now, in terms of your observations about Assisi, you were contacted by the Aged Care Quality and Safety Commission in respect of a complaint made by Ms Ng.

DR TAY: Yes.

MR KNOWLES: And do you remember – perhaps if I take you to tab 96. Do you have that, Dr Tay?

DR TAY: Yes.

5

MR KNOWLES: Yes, and that's the email from the Commission to yourself.

DR TAY: I don't think that is.

10 MR KNOWLES: Pardon me. I might have the wrong document. Perhaps I won't worry about the email. Can you just tell the Royal Commission what you told the commission, that is, the Aged Care Quality and Safety Commission in respect of what your views were about Assisi's management of the care of Ms Santoro.

15 DR TAY: I think I would like to have a look at that email again, but, in general, I did feel that it was a bit of a closed shop.

MR KNOWLES: Yes.

20 DR TAY: And I was referring to my area of expertise, that is, general practice - - -

MR KNOWLES: Yes.

25 DR TAY: - - - it was much harder for me to comment, obviously, on nursing and administrative affairs. That's not my area of expertise. So I was referring to the fact that of the one hundred and - - -

MR KNOWLES: Thank you, Dr Tay. What do you mean by "closed shop"?

30 DR TAY: Okay. Of the 150 beds in Assisi, when I started looking after patients in mid-2017, I became aware of the fact that two GPs looked after 75 patients each.

35 MR KNOWLES: Right. I see. Now, Dr Tay, I otherwise ask you, invite you, to say anything further about your reflections of your role in Ms Santoro's care in this case.

40 DR TAY: This has been a very good learning experience for me. I – I am definitely being more proactive now, especially in getting medical records from hospitals and providers. Even last week, I've examined a patient at another facility whose record did not disclose a wound that we picked up on examination. I do that examination now with the nurse manager, so we're both clear about it. There's photography taken, documentation is definitely improved.

45 I think the second point for improvement for me was I should have brought back the geriatrician about August when things started to escalate, and the third one, which you've clearly pointed out, my – my medical records definitely – particularly in relation to phone calls and documentation at the facility and on my record, definitely

need to improve and I'm doing that. And, finally, can I also say on the record as well, that – with Ms Ng, and I thank her for her statement earlier, and I am so sorry that she had to go through what she went through. She was a wonderful daughter, and the effort that she put into caring for her mother Mrs Santoro is an effort that I
5 have not seen ever before in a family member.

MR KNOWLES: Thank you, Dr Tay.

10 DR TAY: Thank you.

MR KNOWLES: Commissioners, that concludes my questions for the moment of Dr Tay, and it may conclude the questions overall. There may be some questions that I'm asked to raise with him, and perhaps if that could occur just briefly on the resumption after lunch.

15 COMMISSIONER TRACEY: Yes. Have we got arrangements with Melbourne to keep the line open while that occurs?

20 MR KNOWLES: I believe so, yes.

COMMISSIONER TRACEY: I'm just conscious that we have got a busy medical practitioner here.

25 MR KNOWLES: Yes.

COMMISSIONER TRACEY: Might it not be better for there to be a short adjournment now while those matters are dealt with, rather than a three-quarter hour break which may not lead to any questions, but would keep Dr Tay riveted in Melbourne.

30 MR KNOWLES: Yes, I'm perfectly happy with that course.

COMMISSIONER TRACEY: All right.

35 MR KNOWLES: Thank you, Commissioner.

COMMISSIONER TRACEY: Well, the Commission will temporarily adjourn, and if you would let our Associate know when you have resolved these issues, we'll return to the bench. Dr Tay, just to explain to you, Counsel are considering asking
40 further questions of you, but they need to have some discussions first, and so, as you've just heard, what I propose to do is adjourn the Commission shortly so those discussions can take place. If you would be so good as to remain in the room in Melbourne until those discussions have concluded, we'll let you know if there are going to be further questions or not, and then you can be excused.

45 DR TAY: Thank you.

MS McLEOD: Can I ask you whether you made any specific inquiry about her weight loss of the staff? In those - - -

DR TAY: At any stage?

5

MS McLEOD: Yes, in those two periods, particularly.

DR TAY: I cannot recall. I may or may not have.

10 MS McLEOD: Okay. And you agree your record-keeping has been generally poor; is that fair?

DR TAY: That's a fair assessment.

15 MS McLEOD: Right. Would you agree with me that a specific inquiry about weight loss should be recorded and should be acted on; that's two questions, I know.

DR TAY: I agree with you and I'm definitely doing it now.

20 MS McLEOD: Okay. In the absence of a note from you about weight loss or a question about weight loss, would you accept that we just don't know with any confidence whether you did or did not make a query of the staff about weight loss?

25 DR TAY: Correct, without any formal documentation, I cannot say for certain either way.

MS McLEOD: And do you accept that in the absence of a note by the staff at Assisi in their progress notes about a request or direction from you about weight loss, that it's probable you did not make any request or direction?

30

DR TAY: About weight loss?

MS McLEOD: Yes.

35 DR TAY: Yes, if there's no note about that as well too, yes.

MS McLEOD: And do you agree that the supplements that were introduced to Mrs Santoro were an appropriate regime for increasing her weight?

40 DR TAY: They – they are part of an appropriate regime, yes.

45 MS McLEOD: Yes. Thank you. The second thing I wanted to ask you about was the removal of the staples and her hip wound, and I won't take you right through the progress notes because it's understood that we can make submissions based on those progress notes, if the Commissioners please, and given Dr Tay's evidence about his access to those progress notes I will try and confine it. Dr Tay, you said you had

access to the patient progress notes and that would have been the case for all of your patients, I assume?

DR TAY: Yes.

5

MS McLEOD: You also mentioned that you had difficulty navigating those notes.

DR TAY: Yes.

10 MS McLEOD: This Manad system is standard program for management of patient records, is it not?

DR TAY: I've never seen it before in any facility.

15 MS McLEOD: You're not familiar with the Management Advantage developers Manad Plus program or the Manad program; is that what you are saying?

DR TAY: Correct.

20 MS McLEOD: Okay.

DR TAY: Most facilities I use use iCare.

25 MS McLEOD: Okay. You would agree with me that it's good practice for you, as the general practitioner, to review the patient progress notes on each occasion before you consult with them.

DR TAY: Yes.

30 MS McLEOD: And the reason you do that is to make sure you are up to date with current observations, any recommendations from other practitioners including specialists; is that fair?

DR TAY: Correct.

35

MS McLEOD: And do I follow from your evidence that you didn't always do that?

DR TAY: Not through the progress record but every time I was there, I spoke to the nurse unit manager.

40

MS McLEOD: Right. So speaking to the nurse unit manager without the progress reports open or available to you means you are reliant on what she tells you as a verbal report, are you not?

45 DR TAY: Yes.

MS McLEOD: And you would agree that the preferable course would be for you to check those progress reports yourself so you could pick up things such as the discharge report from hospital and instructions to you as a GP.

5 DR TAY: I think most of us that have worked in the public hospital system or the aged care facility when we do, in inverted commas, rounds with nursing staff we would expect that it is drawn to our attention the issues at play. So, yes, I think the answer to both questions is I should do both.

10 MS McLEOD: Yes. So you should seek verbal confirmation or a summary or a report from the nursing staff but you should also have access to those progress notes, is that - - -

DR TAY: Yes, correct.

15

MS McLEOD: Right. And particularly if there's a discharge summary recording the preferences of the orthopaedic surgeon about the removal or follow-up in respect of a wound.

20 DR TAY: Yes, definitely.

MS McLEOD: Do I take it that you made no observation of the hip wound yourself?

25 DR TAY: I made an observation when it was healed and I observed it after I was aware that she was returned from the hospital having had the staples removed.

MS McLEOD: Okay. Were you aware that the infection of those – that hip around the site of the staples was relatively minor?

30

DR TAY: I am aware that it did seem to respond fairly well to antibiotics, that the Austin did not keep her, that intravenous antibiotics were not used; that – but, yes, she came back the same day. So in the scheme of things and it was a really confusing case because when I turned up on 6 August, I had two emails, one from one nurse unit manager saying there was a wound infection, have a look at these locum notes. And in the locum notes there was no reference to staples and I thought the locum had appropriately managed the problem. Then I get an email from Ms Ng saying she heard from the locum saying there was a wound infection and possibly dislocation. So I think this case, you know, there is elements to it that were confusing me and there was conflicting information provided.

40

MS McLEOD: So given the information from the locum GP is that what prompted you to then examine the hip yourself?

45 DR TAY: No. So what happened was once I processed that the information from Ms Ng and the information from Assisi was different, that's when I requested Assisi to call RECIPE, or the Austin outreach team. They did that. At that point in time

Austin outreach said they couldn't see the patient, Mrs Santoro, so advised us to transfer the patient to emergency.

5 MS McLEOD: So that's why you transferred her to the hospital.

DR TAY: Yes, correct.

10 MS McLEOD: Okay. Then the follow-up with the treatment of antibiotics was appropriate in terms of treatment of that wound; do you agree with that?

DR TAY: Yes, we followed their recommendations.

15 MS McLEOD: The last thing I wanted to ask you about was the heel wound, the pressure injury, and your statement in your evidence, as I understand it, that you said you examined the heel wound yourself on 13 September. Do I understand that correctly?

DR TAY: Yes.

20 MS McLEOD: Your statement, if that could be brought up, at paragraph 44; my copy has cut off the document number. I will just find that for the operator. It's WIT.0248.0001.0001 at - - -

25 COMMISSIONER TRACEY: Don't worry, Ms McLeod, it's on the screen.

MS McLEOD: Thank you. The operator is clearly ahead of me. In your – in paragraph 44, and I want to put to you that this is what you said in your statement a week ago.

30 DR TAY: Yes.

MS McLEOD:

35 *That Ms Jacob –*

is the relevant line –

40 *also reported to me that heel pressure was fine and Assisi staff would continue to manage it. I've made a note to that effect in the Assisi records.*

So, insofar as you now give evidence that you yourself investigated the wound on 13 September, the first thing is you did not mention that in your statement of the 2nd of July, did you?

45 DR TAY: No.

MS McLEOD: And is it fair to say that you now do know or do not know with any certainty whether you, in fact, observed the wound yourself on that day?

5 DR TAY: It's with certainty that I say I examined the wound on that day.

MS McLEOD: On that particular day.

10 DR TAY: The 13th of September 2018, I remember bending down with Ms Jacob because Mrs Santoro was sitting in a chair and we were unable to get her onto a bed, and, also, Ms Jacob reported to me that the heel pressure area was fine. So that's the context.

15 MS McLEOD: And you made no record of that observation in your contemporaneous notes, I suggest.

DR TAY: I think there's a note of that briefly in the Assisi notes.

MS McLEOD: All right. We can double-check that, but – let's just check.

20 DR TAY: That's just under the note where I say the wound has healed, which I was referring to the hip wound.

25 MS McLEOD: Yes, which would also, I suggest, be consistent with you accepting Ms Jacob's report of that fact, would it not?

DR TAY: Sorry, I don't understand the question.

MS McLEOD: Okay. If the entry is:

30 *Wound has now healed –*

in the progress notes - - -

35 DR TAY: Yes.

MS McLEOD: - - - are you saying that was Ms Jacob's observation or yours?

DR TAY: Mine, 100 per cent.

40 MS McLEOD: Right. What were your observations of the wound at that time?

DR TAY: Which wound are you talking about?

45 MS McLEOD: The heel wound.

DR TAY: The heel wound?

MS McLEOD: The - - -

DR TAY: My observation – yes, the heel wound?

5 MS McLEOD: Yes.

DR TAY: So my observation of the heel wound at the time was that it was a grade 1 to 2 pressure area.

10 MS McLEOD: And where have you recorded that?

DR TAY: I haven't recorded that.

MS McLEOD: What treatment did you recommend for a grade 1 or 2 wound?

15

DR TAY: Continued pressure monitoring.

MS McLEOD: And where is that recorded?

20 DR TAY: Continued – that's not recorded.

MS McLEOD: Right. Is it possible, Doctor, that you are confused about this in terms of the date of your examination of the wound?

25 DR TAY: No, it is not because that was a significant date, in the sense that I was just about to go on leave, so I do remember that day fairly well.

MS McLEOD: The previous paragraph, paragraph 43 on the previous page, makes a reference to:

30

Ms Jacob showing me the area and the pressure boot.

Do you see that?

35 DR TAY: Yes.

MS McLEOD: And at that time, your recollection was the pressure area was not felt to be significant. Was that a report by Ms Jacob or was that, again, a reference to you actually looking at the wound – visualising the wound?

40

DR TAY: No, that's a recollection at paragraph 43, and I cannot recall whether that recollection refers to the 30th or the 13th, or separately altogether.

45 MS McLEOD: Pardon me for a moment, Doctor. Was it the case that you looked at the heel again after - - -

DR TAY: I did.

MS McLEOD: - - - the 13th of September?

DR TAY: On what date?

5 MS McLEOD: On any date?

DR TAY: I looked at – I looked at it on the 11th of October when I returned and after that meeting for maggots.

10 MS McLEOD: At any stage, did you observe the progress of the wound to a black appearance or necrosis?

DR TAY: No.

15 MS McLEOD: The pressure monitoring that you prescribed, you say, on the 13th of September that's not recorded in the notes, would you expect that to have included a cessation of physiotherapy?

DR TAY: No.

20

MS McLEOD: So weight bearing was acceptable in your mind?

DR TAY: Yes. When you're talking about, particularly, a pressure 1 area, if you withhold walking, you increase the risk of other issues.

25

MS McLEOD: Even with a 93 year old diabetic patient?

DR TAY: Even though – they're also at risk of chest infections, pneumonia. There are hurdles wherever we turned.

30

MS McLEOD: Okay. The last thing I wanted to ask you about was the criticism you made of Assisi, generally, in the conclusion of your evidence, and I wanted to ask you about your entry in the progress notes of the 19th of October 2018 which concluded with these words, if I can just read them to you:

35

Please call me if any issues. Please note these medication decisions are my responsibility and any concerns from the family are mine to address. Having said all that, I think you are all doing very well, and they are as calm and satisfied with their care as they could be given the situation. Give yourselves all a big pat on the back.

40

Why did you say that to the Assisi staff?

45 DR TAY: The mood in the – in the facility – specifically in the area of care Mrs Santoro was in was very flat. Perhaps tense, anxious might be better descriptors of it. There are lots of office staff members here who were involved at a, shall I just say, lower level, so not at managerial level who were being – who were feeling

pressured, were teary. They – they felt that – the stress of the situation. I just felt the need to write a comment to try to perk everybody up. If we're going to look after Mrs Santoro to the best of our abilities, we need to try to – to not be upset, try not to get involved in what was going on in terms of the relationship.

5

MS McLEOD: And your statement:

Give yourselves a big pat on the back –

10 was intended to be complementary of them and their care, was it?

DR TAY: It was meant to be a perk up. It was meant to try to improve performance. It was meant to be positive. There'd been a lot of negative feedback provided to the staff over a sustained period of time, and I could see it in their eyes.

15

MS McLEOD: Yes. Thank you Dr Tay. Thank you. I have nothing further.

COMMISSIONER TRACEY: Thank you. Anything arising - - -

20 DR TAY: Thank you.

COMMISSIONER TRACEY: - - - nothing arising out of that, Mr Knowles?

MR KNOWLES: No. Thank you, Commissioners.

25

COMMISSIONER TRACEY: Dr Tay, thank you for your evidence, and you are now excused from further attendance before the Commission.

DR TAY: Thank you.

30

COMMISSIONER TRACEY: The Commission will adjourn until 2.30.

<THE WITNESS WITHDREW

35

ADJOURNED

[1.58 pm]

40

RESUMED

[2.32 pm]

45 COMMISSIONER TRACEY: Yes, Mr Rozen.

MR ROZEN: Thank you, Commissioners. I call Paul Stephen Cohen. I think Mr Cohen is already in the witness box.

5 <PAUL STEPHEN COHEN, AFFIRMED

[2.33 pm]

<EXAMINATION-IN-CHIEF BY MR ROZEN

10

MR ROZEN: Mr Cohen, can you please state for the transcript your full name.

MR COHEN: It's Paul Stephen Cohen.

15 MR ROZEN: Mr Cohen, you are the interim chief executive officer of Assisi Centre Aged Care.

MR COHEN: I am.

20 MR ROZEN: We'll call it Assisi for present purposes. And for the purposes of the Royal Commission have you made two witness statements?

MR COHEN: I have.

25 MR ROZEN: All right. I will identify the first one first. It's WIT.0258.0001.001. It's a statement dated 1 July 2019. Have you had a chance to look at that before coming into court today?

MR COHEN: I have.

30

MR ROZEN: I understand there's a couple of corrections you want to make.

MR COHEN: There are, if I may.

35 MR ROZEN: Yes.

MR COHEN: The first is on paragraph 4 which was, it says that I got my degree in 1983; it was actually 1986.

40 MR ROZEN: 1986.

MR COHEN: '86.

MR ROZEN: Thank you.

45

MR COHEN: And the second one was on page 43, a reference – it's in question 12, paragraph 208(e) which is the medication section, just that the medication policy was updated in March 2019.

5 MR ROZEN: So, sorry, page 43, 208, paragraph (e) where it first appears on the page, about a third of the way down, have I got that right?

MR COHEN: It says:

10 *The medication policy is now outdated given the recent changes.*

MR ROZEN: Yes.

15 MR COHEN: I was subsequently made aware that it has been updated in March 2019.

MR ROZEN: Right. So how would you like it to read, the medication policy - - -

20 MR COHEN: Medication policy was updated in 2019 given the recent changes.

MR ROZEN: Was updated, yes, okay. So we delete the words "is now outdated" and we inserted was updated.

25 MR COHEN: Yes, please.

MR ROZEN: Okay. With those two changes made, are the contents of your statement dated 1 July 2019 true and correct?

30 MR COHEN: They are.

MR ROZEN: I tender the statement of Paul Cohen dated 1 July 2019, Commissioners.

35 COMMISSIONER TRACEY: Yes, the witness statement of Paul Stephen Cohen dated 1 July 2019, subject to two minor amendments will be exhibit 6-17.

40 **EXHIBIT #6-17 WITNESS STATEMENT OF PAUL STEPHEN COHEN
DATED 01/07/2019, SUBJECT TO TWO AMENDMENTS
(WIT.0258.0001.001)**

45 MR ROZEN: Thank you, Commissioners. And you've made a second statement dated 7 July, WIT.0258.0002.0001; is that right?

MR COHEN: I did.

MR ROZEN: Are there any changes that you would like to make to that second statement?

MR COHEN: No.

5

MR ROZEN: And are the contents of that statement true and correct?

MR COHEN: They are.

10 MR ROZEN: I tender the statement of Paul Cohen dated 7 July 2019.

COMMISSIONER TRACEY: The supplementary witness statement of Paul Stephen Cohen dated 7 July 2019 will be exhibit 6-18.

15

EXHIBIT #6-18 SUPPLEMENTARY WITNESS STATEMENT OF PAUL STEPHEN COHEN DATED 07/07/2019 (WIT.0258.0002.0001)

20 MR ROZEN: If the Commission pleases. Mr Cohen, your first statement, exhibit 6-17, was produced in response to a request from the Royal Commission to your employer, Assisi, to provide a statement or statements dealing with the matters that are under investigation in this case study; you understand that.

25 MR COHEN: Yes.

MR ROZEN: And I might just ask you to look at the letter from the Commission that initiated that process; it's tab 244, which should appear on the screen in front of you. It's a letter dated 6 June 2019, and it was addressed to the proper officer of
30 Assisi, care of Assisi's lawyers, MinterEllison, as you can see. And without reading out all of it, you will see in the fourth paragraph it says:

35 *At this hearing the Royal Commission may examine the care provided to the late Ms Annunziata Santoro while a resident at Assisi. Should the Royal Commission proceed to examine the case, we anticipate providing you with a statement from Anna Ng.*

And it then went on in the final paragraph there; it starts:

40 *However, in the event the Royal Commission proceeds to examine that case at the Darwin/Cairns hearing we would be assisted by your client's cooperation at this time in identifying the appropriate persons authorised to speak on behalf of Assisi with the necessary personal knowledge to respond to any statement received from the late Annunziata Santoro's daughter, Anna Ng.*

45

Do you see that there, Mr Cohen?

MR COHEN: I do.

MR ROZEN: And some examples of the sort of person that might be appropriate are identified there: a general manager or care manager at Assisi. And then it went
5 on to talk about the sort of information that that person identified should have at their disposal. Now, you, of course, weren't employed at Assisi whilst the relevant events that are under examination here took place; is that right?

MR COHEN: That's right, yes.
10

MR ROZEN: It necessarily follows, obviously, that you don't have any personal knowledge of these events.

MR COHEN: I have the knowledge that I've gained over the last – over recent
15 weeks, as chief executive.

MR ROZEN: Yes, I understand that. It's not personal knowledge in the sense of you having experienced the relevant events yourself though. It's knowledge you've
20 gained from reading documents; is that right?

MR COHEN: That's correct.

MR ROZEN: And talking to people who themselves had personal knowledge of the relevant matters.
25

MR COHEN: And talking to people who have had that knowledge, yes.

MR ROZEN: Yes, okay. You would have, of course, read in the statement of Ms Anna Ng when it was provided by the Royal Commission.
30

MR COHEN: I did, yes.

MR ROZEN: That was a statement that we were asking you to respond to, you understood that.
35

MR COHEN: Of course.

MR ROZEN: And you would have seen, for example, that the statement certain nurse managers who were personally involved in the events in question were
40 identified. Do you see that?

MR COHEN: I did.

MR ROZEN: We have had a few mentioned this morning: Ms Jacob who was in
45 charge of the high-care ward and Ana Yao was another one who was identified as being the nurse unit manager of the low-care ward. Did you give any consideration

to whether the statement that was being sought should come from either one or both of those people?

5 MR COHEN: Not particularly, no. I mean, majority of the events are around the
move into to St Francis and later so I think Ana was more peripheral in my reading
of this and Jamuna, once we went through the notice to provide, which is the first
week that I joined the organisation, we started looking at those – that – really raised
an issue around where the level of representation should be and therefore as CEO, I
10 just thought it's appropriate that I come and the board were, that's where – they
corroborated that.

MR ROZEN: Okay. I understand that in terms of seniority, but it was personal
knowledge that was identified as the Commission's requirement, was it not?
15 Personal knowledge of the evidence under examination.

MR COHEN: Yes.

MR ROZEN: So did that not rather suggest that someone a bit closer to the
coalface, if I can use that expression, would be a more appropriate witness such as
20 Ms Jacob, for example?

MR COHEN: So it – part of the changes that we're making and the board have
made, a number of the senior leadership team have moved, are no longer with the
organisation.
25

MR ROZEN: Yes.

MR COHEN: So, in a sense, you know, there was very few people left with the
personal knowledge that you are talking about, and given some of the issues in this
30 are more around, in my view, around governance, that's - - -

MR ROZEN: Can I just clarify – sorry, I didn't mean to talk over you. Can I just
clarify; Ms Jacob is no longer working for Assisi?

35 MR COHEN: No.

MR ROZEN: When did her employment come to an end?

MR COHEN: It was in – from memory, around mid-June.
40

MR ROZEN: Okay. So the date the letter of 6 June was received, she remained an
employee.

MR COHEN: She was an employee, yes, at that point.
45

MR ROZEN: And is there any reason why a statement couldn't have been provided
from her detailing her personal knowledge, for example, of the conversations

involving the discovery of the maggots which we have already heard about this morning. It's obviously a matter the Commission was investigating.

MR COHEN: Yes, well, I didn't consider that.

5

MR ROZEN: Okay. You see, the reason I'm asking you this is because there are at least two areas in your statement on matters of fact which I want to draw to your attention. The first is at paragraph 60, if that could be brought up. It's on page 10, and you will see that the way your statement is structured, you were asked to respond to a number of specific matters that were addressed in Ms Ng's statement; isn't that the case? And here the question was – and we see it at (e):

10

In respect of paragraphs 33 and 34 of her statement, whether and when Assisi sought to engage with Austin Outreach and if it did not do so why not.

15

That's the question that you're addressing. And then you will see that your response at 60 is:

20

Assisi engaged with Austin Outreach on a number of occasions during Mrs Santoro's residence in response to changes in her condition including on –

25

and then there's a number that are listed there with references to documents, and do you see (d) and (e) – and it's a little bit difficult because it has been redacted, but the name that you have referred to there as being from Austin Outreach is a doctor who I suggest to you is not from Austin Outreach but rather was a locum working for Dr Tay. Do you accept that that is right?

MR COHEN: I do, yes.

30

MR ROZEN: Can I ask how you reached the conclusion that that doctor was from Austin Outreach?

35

MR COHEN: So we had had – we'd had a very short period of time to respond to the notice to give.

MR ROZEN: Right.

40

MR COHEN: And with the 17 questions, all have had – called for great amounts of detail. There were people working right up to the deadline trying to pull this thing together.

MR ROZEN: Right.

45

MR COHEN: So if something like that slipped through, my apologies.

MR ROZEN: Okay. That's all right. Now, the other one is paragraph 144, which I'd ask you to look at, which is page 26, and you will see that at paragraph 144, you, in the third line, state:

5 *Dr Tay referred Mrs Santoro to Banksia Palliative Care on the 7th of June 2018.*

The evidence of Dr Tay and of Ms Ng is that that referral was made on the 17th of October 2018.

10

MR COHEN: October. Yes. Yes.

MR ROZEN: Is that another error that is explained by trying to meet the deadline?

15

MR COHEN: It is.

MR ROZEN: Right. In a similar vein, can I ask that tab 119 be brought up, please. Now, this is a matter that you refer to in your statement, your concern about some backdating of records in the progress notes.

20

MR COHEN: Yes.

MR ROZEN: And as I understand the evidence you're giving, you're saying that one of the concerns you have in relation to this particular case is that some of the progress notes have got entries about events on a particular day where the entry was made some time later.

25

MR COHEN: That's correct, yes.

30

MR ROZEN: And that's what I mean by backdating, and that's, essentially, your concern.

MR COHEN: Yes. We refer to it as retrospective.

35

MR ROZEN: Okay. What's the concern there, at a conceptual level, Mr Cohen? Why is that a problem?

MR COHEN: So at a conceptual level, our policy was and is that documentation is accurate and timely.

40

MR ROZEN: Yes.

MR COHEN: So any documentation that's not timely raises concerns.

45

MR ROZEN: That's a concern.

MR COHEN: That's part of our professional practice that we're timely in documenting.

5 MR ROZEN: Yes. It's good practice to make notes about clinical decisions and observations as close to the time that those decisions were made.

MR COHEN: Exactly.

10 MR ROZEN: Ordinarily, that would be the same day.

MR COHEN: Ideally, the same day.

MR ROZEN: Might be a day later.

15 MR COHEN: It can be, yes.

MR ROZEN: Once we get out beyond a week or two or three, the problem that you've described arises.

20 MR COHEN: Yes.

MR ROZEN: If you look at tab 119, and I might need your assistance here in understanding the way this is done, you will see that there are three records entered there, and we don't need to refer to the names of the person who entered the first
25 record, but you will see that we have an event date, 3 October 2018, at 11.50. Do you see that for the first record?

MR COHEN: Absolutely.

30 MR ROZEN: You see that on the left-hand side, "event date"?

MR COHEN: Yes.

MR ROZEN: 3 October 2018.
35

MR COHEN: Yes.

MR ROZEN: Yes, and then immediately underneath it, created date, 3 October 2018, a minute later. Do you see that?
40

MR COHEN: Yes.

MR ROZEN: Am I correct in understanding that the event date records literally that, the date on which the event that's being described occurred; is that right?
45

MR COHEN: That's correct.

MR ROZEN: And then the created date is the date that the entry was actually made on the computer – is that right?

MR COHEN: That's right, started typing. Yes.

5

MR ROZEN: And that there, given that there was a minute that passed between the two, would be good practice.

MR COHEN: Very good practice.

10

MR ROZEN: Yes. The next one down is an entry which was created on the 3rd of October 2018, the same date that that first one was created, but it relates to an event that is said to have occurred on the 17th of September. Do you see that?

15 MR COHEN: I do.

MR ROZEN: And that entry was made, if I am reading it correctly and you will correct me if I am wrong, by Jamuna Jacob. Do you see that on the right-hand column?

20

MR COHEN: I do.

MR ROZEN: And that record ID, two places above that line, what's that? Do you know?

25

MR COHEN: Each of the records in a clinical system is given a unique number.

MR ROZEN: I see.

30 MR COHEN: So it's just the unique number allocated to the record.

MR ROZEN: Yes, and then if you – and you will see that the notes that are part of that record, that second record, say:

35 *Noticed a small black area inside the open wound, so the wound is soaked –*

I think that that should be soaked –

in Betadine to review tomorrow.

40

Do you see that?

MR COHEN: I do.

45 MR ROZEN: Yes. And as I'm sure you're aware, that's a reference to the heel wound about which there's already been a great deal of evidence given today.

MR COHEN: Yes.

MR ROZEN: So are we to understand from that record that, until the 3rd of October, there wasn't a record in the system for the event on the 17th of September? Is that
5 how we are to understand that?

MR COHEN: That's correct.

MR ROZEN: Yes, and then immediately - - -
10

MR COHEN: Unless there's another record, of course, on the 17th of September.

MR ROZEN: Sure.

15 MR COHEN: Yes.

MR ROZEN: I'd ask that you accept from me that, in relation to this wound, there is not. That is the record in the records. The third record is by the same person, Jamuna Jacob, entered, it seems, two minutes after that one, on the 3rd of October
20 2018, and it purports to describe something that happened on the 18th of September. Do you see that?

MR COHEN: I do.

25 MR ROZEN: And you will see at the bottom, the notes say:

Wound reviewed again today. The wound site is open to 50 cent size. The wound is stage 3 and black in colour. Note left for GP to review -

30 and so on. Do you see that?

MR COHEN: I do.

MR ROZEN: In your preparing for this hearing to give evidence, Mr Cohen, did
35 you speak to Ms Jacob about these entries?

MR COHEN: I did.

MR ROZEN: You did, and what did you ask her?
40

MR COHEN: I asked her why there were apparent late entries that had been made in the record.

MR ROZEN: Yes, and what did she say?
45

MR COHEN: She said that, sometimes, she was too busy to record on, at the time, but that she documented it separately on a notepad.

MR ROZEN: So she told you that she had a separate, what, handwritten note, did she - - -

MR COHEN: Yes.

5

MR ROZEN: - - - made contemporaneously - - -

MR COHEN: Exactly.

10 MR ROZEN: - - - which she then used to make this computer entry; is that right?

MR COHEN: Mmm.

15 MR ROZEN: Looking at the chronology there and the very short periods of time between the entries of the second and third reports relative to the first one, there's some cause for concern here, isn't there, about these entries and about whether they - well, I will leave it at that. There's some cause for concern, isn't there, about these entries?

20 MR COHEN: Absolutely, there's cause for concern, and that was why we had the meeting and the conversation.

MR ROZEN: Yes. I mean, it's not necessarily limited to poor practice in the sense of being slow in putting in the data. I will be as clear as I can be here.

25

MR COHEN: Mmm.

MR ROZEN: There's a sense of some creating of history in the way these notes are recorded. Do you understand what I'm asking?

30

MR COHEN: And when that question was posed - - -

MR ROZEN: Yes.

35 MR COHEN: - - - it was explained that notes were taken, not in the system, but on a pad.

MR ROZEN: I see. Did it not occur to you, given that this is a Royal Commission examining the conduct of the organisation of which you are the CEO, that some evidence ought to be put forward directly from Ms Jacob about that matter?

40

MR COHEN: Not to the Commission, no.

MR ROZEN: I see. Is Ms Jacob one of the nurses that's under investigation by AHPRA that we read about in the board minutes?

45

MR COHEN: That's my understanding.

MR ROZEN: I see. Can you tell us who the other one is?

MR COHEN: Is Ana.

5 MR ROZEN: Ms Yao.

MR COHEN: Ms Yao.

10 MR ROZEN: I see. And do you know whether the AHPRA investigation is concerned with this issue?

MR COHEN: I'm not certain where that is focused.

15 MR ROZEN: All right. Nonetheless, I take it, Mr Cohen, from the fact that you've made the two statements and you're here today that you consider you are the appropriate person at Assisi to assist us in understanding aspects of this case?

MR COHEN: I think so, yes.

20 MR ROZEN: Right. Now, you were in court this morning when Ms Ng gave her evidence, and you heard her refer to complaints that she had made to the Aged Care Complaints Commission at the time, and it's since changed names. It's now the Aged Care Quality and Safety Commission, you understand that, and she gave evidence that she'd received correspondence back from them in May of this year
25 attaching a report - - -

MR COHEN: Yes.

30 MR ROZEN: - - - that they had prepared looking at the matters that she'd complained about. I will ask you please to look at tab 207, if that could please be brought up on the screen, and this is a letter that was addressed to your predecessor as CEO of Assisi, and I think you understand that we are not mentioning his name in the proceedings today.

35 MR COHEN: Yes.

40 MR ROZEN: And I ask you to refer to him as the former CEO or your predecessor or whatever you'd like to. This letter is dated the 22nd of May, and we know that it was referred to at a board meeting on the 25th of May, so we can assume it was received in that period.

MR COHEN: Yes.

45 MR ROZEN: What date did you start as the interim CEO?

MR COHEN: I started on the 21st or – whatever the Monday was of that week.

MR ROZEN: Okay. So this would have been one of the important things in your in-tray when you started.

MR COHEN: It was.

5

MR ROZEN: And did you read it?

MR COHEN: Of course.

10 MR ROZEN: Could you have a look, please, at page 2. I will ask that it be brought up. It's actually the page .0006, native page 2 and, no doubt, you would have been interested to know what the findings were of the Complaints Commission, Mr Cohen.

15 MR COHEN: Yes. Of course.

MR ROZEN: You will see the heading Our Findings there, about two-thirds of the way down the page.

20 MR COHEN: Yes.

MR ROZEN: And the findings that are set out there are, as you can read:

25 *On examination of all the available information, we've found there were significant gaps in the care provided for your mother's pressure wound.*

This is obviously written to Ms Ng:

30 *Although the wound was present on her return from hospital, it was not managed effectively to promote healing.*

Without reading all of it, there's a reference to medical and specialist intervention being delayed until the stage of the wound was irreversible.

35 MR COHEN: Yes.

MR ROZEN: I suggest to you that that's a very, very serious finding to be made by an independent investigator looking at the conduct of Assisi.

40 MR COHEN: We'd agree.

MR ROZEN: Did you have any discussion with members of the board about this report when it was received?

45 MR COHEN: I'd had discussion with members of the board of the clinical governance committee. We – our first clinical governance committee was organised this – my second week in the organisation.

MR ROZEN: Yes.

MR COHEN: And I tabled the full report in the June board meeting where we discussed it.

5

MR ROZEN: Can I ask you about – before we get to the June meeting, can I ask you about the May meeting. So that was the first meeting that you attended as the interim CEO; is that right?

10 MR COHEN: Yes.

MR ROZEN: It's in the supplementary tender bundle at tab 18, if we could please have that brought up on the screen. You will see, there, that these are the minutes of a meeting held on the 27th of May. So that's just a few days after the date of the
15 correspondence that I just took you to, and if you look about two-thirds of the way down that page, you will see a three-line paragraph:

The Complaints Commissioner has finalised their investigation in the Santoro complaint, and Assisi has received an extensive report.

20

Do you see that?

MR COHEN: Yes.

25 MR ROZEN: Is that recording something that you said to the board or – what is that – what's the status of that part of the minutes? Can you help us?

MR COHEN: When I joined and at that board meeting – and prior to that board meeting, the board had asked me for a full and frank assessment - - -

30

MR ROZEN: Yes.

MR COHEN: - - - of the organisation. And those – you know, part of my comments was that I was new.

35

MR ROZEN: Yes.

MR COHEN: I was very – you know - - -

40 MR ROZEN: Appreciate that.

MR COHEN: - - - just starting to learn the organisation, and I would come back with a – there were certain strategies that we would undertake to get a deeper understanding than ones that I would get just by the work that I did personally. So it
45 was talking about some of the processes that we put in place at that point.

MR ROZEN: Okay.

MR COHEN: In those first weeks.

MR ROZEN: The next sentence is what I want to ask you about. It says:

5 *The recommendations of that investigation will be included in a review of our practices and policies.*

Do you see that?

10 MR COHEN: Yes.

MR ROZEN: There were no recommendations in the Quality Commission's report, were there?

15 MR COHEN: There were – there were three areas where they concluded that we had provided care that wasn't at the level that we would expect and anticipate.

MR ROZEN: Yes.

20 MR COHEN: And what I've been doing extensively since I started, and with my deputies, is we are looking at where our policies and practices need to be updated to reflect good practice and, therefore, if there's anything in the complaints – even though they may not have made any further recommendations, we wanted to make sure that we picked everything up.

25

MR ROZEN: If we leave the board minutes for the moment, I want to ask you about some specific aspects of Ms Santoro's care. You, at paragraph 208 of your statement, if that could please be brought up. It starts on page 38 at the bottom of the page there. Do you see you say:

30

I have identified a number of areas where the care provided to Mrs Santoro departed from relevant guidance, procedure or policy documents in place at Assisi during the period in question.

35 Do you see that?

MR COHEN: Yes.

40 MR ROZEN: Then you list a number of them and I'm not going to take you through each of them but I would ask you to accept that there are 13 different areas identified in which you accept that the care either departed from an Assisi policy or the policy itself is deficient in some way.

45 MR COHEN: Yes.

MR ROZEN: And they include undue waiting times for attention, a failure to remove the hip wound staples until they became infected, unmonitored weight loss,

unexplained medication changes, poor wound management, and a failure to manage pain appropriately. There are others but they seem to be the most significant ones that you identified. Do you agree with that?

5 MR COHEN: I do.

MR ROZEN: You then go on to add two more areas of concern. If you go to page 44, paragraph 209 please, operator, it's page.0044. You will see in the middle of the page:

10

There are two additional areas where –

that should probably read –

15

the care provider departed from relevant guidance, procedure or policy.

The first is the documentation issue that we have been discussing a moment ago. Do you see that?

20

MR COHEN: I do.

MR ROZEN: That is the making entries several days after the relevant events took place. And then there's also a reference to monthly resident meetings. Therefore, 13 plus 2, you've identified 15 specific areas of, can we call them substandard care; is that a fair description?

25

MR COHEN: I'm not sure they would be exactly within the definitions of substandard care but certainly care that wasn't at the level that we would expect.

30

MR ROZEN: Okay. We won't quibble about the language.

MR COHEN: Yes.

MR ROZEN: It's the next paragraph that I'm interested in, 210. You say:

35

I otherwise consider that the care provided to Mrs Santoro met the processes, policies and procedures that were in place at Assisi at the relevant time.

?---Yes.

40

MR ROZEN: My question is what did you have in mind there, Mr Cohen? In what way did it meet the processes, policies and procedures?

MR COHEN: In respect to the other elements that were in her – in the statement and generally speaking.

45

MR ROZEN: So putting the 15 deficiencies to one side, it was acceptable care. Is that - - -

5 MR COHEN: The 15 deficiencies are significant deficiencies, at least some of them.

MR ROZEN: Well, can you tell us this: what do you think Assisi got right in relation to the provision of care to Mrs Santoro?

10 MR COHEN: So I think it got right a number of areas. I think on admission, the organisation worked with family around the best place to admit. The organisation suggested that St Claire would have been the appropriate unit for Mrs Santoro, and I think it got that right. I think continued to raise issues around more appropriate areas such as St Francis. I think it got right, you know, we haven't particularly talked
15 about falls but if I look at the falls policies, we assessed Mrs Santoro against the falls policy at the start of her admission. We put in place some strategies allowing for the fact she wasn't in the area where there would have been more staff. We then experienced more falls. Every time we experienced a fall, we – we managed the fall in accordance with the policy.

20 MR ROZEN: If I can ask you about the removal of the staples question. You would have heard the evidence of Ms Ng this morning and there was some further evidence given by Dr Tay, so I think you are familiar with the topic that I am asking you about. You deal with this in your statement at page .0041 towards the bottom of the
25 page under the heading Removal of Hip Wound Staples. Do you see that?

MR COHEN: It hasn't been explored yet.

30 MR ROZEN: We are getting there. There it is, bottom of the page there; do you see that, Removal of Hip Wound Staples?

MR COHEN: Yes.

35 MR ROZEN: You note that in paragraph (a):

Ms Ng describes being informed by an RN that her mother developed an infection because the staples were not removed in a timely manner.

40 And then you say:

I would be disappointed if this occurred.

Do you see that in (b)?

45 MR ROZEN: Do you doubt that it occurred?

MR COHEN: No, I'm certain that it occurred.

MR ROZEN: Why did you couch it in terms of “if this occurred”?

MR COHEN: Because my expectation would be that the RN would be able to remove the staples, irrespective.

5

MR ROZEN: Well, I’m not sure I follow that. In paragraph (a) you note that Ms Ng claims that she was informed that an infection developed because the staples hadn’t been removed in a timely manner. Is that what you are referring to, that whether or not they had been removed in a timely manner in paragraph (b) when you say you would be disappointed if this occurred.

10

MR COHEN: Absolutely. The discharge came with instructions around removal of the wound. It came with the tool to remove the staples and, therefore, I am disappointed – that I would be disappointed that it had happened.

15

MR ROZEN: Yes, there’s no doubt it happened, is there?

MR COHEN: No. No, there’s not.

MR ROZEN: And therefore you are disappointed, I take it.

20

MR COHEN: Yes.

MR ROZEN: Have your investigations got to the bottom of why the staples weren’t removed at Assisi rather than Ms Santoro having to be sent back to hospital? Or is that what the root cause analysis is trying to do?

25

MR COHEN: No, not on this – not on this particular matter. I think there is an issue – and it’s around the – you know, it stems from clinical governance around the independence of RNs, and how much RNs rely on the GPs in aged care and in our facility. And one of the things that we are now doing is, you know, I think the RNs through this case, and reading through all of the documentation as I have done a number of times, were left on the floor without necessarily the director of care and other support coming, which I think led to a culture of more deferring to the GPs.

30

35

MR ROZEN: In fairness to you, Mr Cohen, we heard the evidence of Dr Tay and as a matter of fairness, I have to acknowledge in this context that it was a combination of the errors Dr Tay himself identified in his evidence along with whatever happened at Assisi.

40

MR COHEN: Yes.

MR ROZEN: But my question for you is, it’s happening at Assisi and the question is, well, how is it that the information wasn’t brought to Dr Tay’s attention when it was there in the records? What is it about the way so far as you understand it, that care was being provided at that time that led to that - - -

45

MR COHEN: You know, the original note two weeks after says she doesn't think that the staples are ready to be removed.

MR ROZEN: Yes.

5

MR COHEN: Yes, and asked for a review when he is next on site. And then it appears from the notes that it – we waited for the GP to do what the GP would do, and the GP didn't take the staples out. My disappointment is because I would expect our nurses to just remove the staples when they are ready to be removed.

10

COMMISSIONER TRACEY: We started this line of questioning with a question that you have yet to answer and that is, did you conduct an investigation with a view to determining why this happened?

15

MR COHEN: We are undertaking a root cause analysis.

COMMISSIONER TRACEY: No, you are not answering my question now. Did you conduct an investigation to determine why it was that these shortcomings in relation to the removal of the staples occurred?

20

MR COHEN: Not into the removal of the staples.

COMMISSIONER TRACEY: So the answer to the question that you were originally asked is no.

25

MR COHEN: My apologies.

COMMISSIONER TRACEY: Yes, thank you. Yes, Mr Rozen.

30

MR ROZEN: Thank you, Commissioner. Why not?

MR COHEN: The staples were a smaller part of a much broader issue.

MR ROZEN: But an important one nonetheless, don't you agree?

35

MR COHEN: In respect to the culture, absolutely.

MR ROZEN: And so the question is: what has been done by way of investigation at Assisi to get to the bottom of these apparent deficiencies in culture?

40

MR COHEN: So what has been done is the board – so from a governance level, the board have – have investigated the matter inasmuch as they were able to with the previous CEO. They've acted at a level to remove the CEO and bring somebody – and bring somebody new in. What we've been doing is looking systematically at how we improve all aspects that need to be improved, particularly with the focus on – on this matter. But the specific investigation in terms of a specific question, the root cause analysis into the issues is the specific investigation.

45

MR ROZEN: Okay. Well, I did ask you that a moment ago, Mr Cohen, whether the root cause analysis was the process that is seeking to get to the bottom of these issues. I thought you said it wasn't, it wasn't looking at the hip staples. What is it looking at?

5

MR COHEN: The root cause analysis looks at the whole admission, you know, the whole admission end to end.

MR ROZEN: Yes.

10

MR COHEN: And then tries – then looks at what are the key issues that are coming out.

MR ROZEN: So the root cause analysis is also concerned, presumably, with the failure properly to treat the heel wound.

15

MR COHEN: Yes.

MR ROZEN: Perhaps we can turn to that, then. At paragraph 71 of your statement, which is on page .0013, you are asked the question whether there was a wound management plan in place for the late Ms Santoro; do you see that?

20

MR COHEN: Yes.

MR ROZEN: You said that a wound management chart was commenced on 18 July 2018.

25

MR COHEN: Yes.

MR ROZEN: Do you see that, following Ms Santoro's discharge from Austin Hospital. Now, I want to clarify if I understand what you're talking about. You note over at paragraph 117 on page .0022, if I could just ask that that be brought up. You say:

30

35 *Throughout Ms Santoro's stay at Assisi she had a number of wounds which were assessed and monitored.*

And I want to ask you about the fourth of those (d):

40 *A stage 2 pressure injury on her right heel post discharge from hospital.*

Do you see that?

MR COHEN: Yes.

45

MR ROZEN: You say:

Wound monitoring was commenced on 18 July 2018.

I wonder if tab 159 can be brought up. I will see if we're talking about the same
5 thing. That appears to be some sort of download from the Assisi records that sets out
observations in relation to the heel wound.

MR COHEN: Yes.

10 MR ROZEN: Is that how we are to understand this document?

MR COHEN: Yes.

15 MR ROZEN: And if I can just clarify with you, if possible, is the document we see
here, which runs to some 20 pages double-sided or so, that's something that's
produced after the event, in a sense, is it? It's a compilation of all of the records that
were made during the course of the period that's the subject of the records?

MR COHEN: So which – I'm not – I don't quite follow you. I'm - - -

20 MR ROZEN: No, that – I'm sorry. Probably the question. We'll – perhaps we'll
do it this way. If we look at that first page, we have got some patient details in the
top left-hand corner. On the right – top right corner:

25 *Date reported, 18 July 2018. Created by –*
the name, and then - - -

MR COHEN: Yes.

30 MR ROZEN: - - - the primary position. And then we've got some entries under the
heading Details. Do you see that?

MR COHEN: I do.

35 MR ROZEN:

Has origin: no. Originated from –
And then we've got:
40 *Issue: wounds. Status: chronic. Type: pressure injury. Location: heel right.*

45 And there's a number of gaps, and I will come back to those in a moment, but for the
moment, that's a record that we are to understand was made on the 18th of July by A.
Yao, and she entered that data into the computer system.

MR COHEN: Yes.

MR ROZEN: And then we can trace our way through and see there are other records entered on other dates, and my question is, is this a compilation of all of the records that were made - - -

5 MR COHEN: Yes.

MR ROZEN: - - - in relation to the right heel?

MR COHEN: Yes, the others would have been.

10

MR ROZEN: Yes. Okay.

MR COHEN: This is the start – the first note, and that would be the cumulative.

15 MR ROZEN: Okay. And so is the system at Assisi that, as new records or new observations are made in relation to the heel injury, they're entered into this database, and then, later on, you can interrogate it by producing a report of all the entries.

20 MR COHEN: Yes.

MR ROZEN: All right. Now, I think you accept, don't you, that there are some sizeable gaps between the records in this document?

25 MR COHEN: Yes.

MR ROZEN: Date gaps. We just take a simple example. We've got two entries on the 18th of July. We've got one on the 19th of July, and then if we turn to the next page that ends in .0328, the next entry is the 26th of August. Do you see that?

30

MR COHEN: Mmm.

MR ROZEN: That's a completely unacceptable delay, isn't it, of what, nearly five weeks?

35

MR COHEN: It is. It is, and at five weeks, it triggered the deviation from policy.

MR ROZEN: I do apologise. Yes. Maybe – sorry, I – it's been pointed out that that jumps from page 1 to page 15, so there well may be records in the - - -

40

MR COHEN: No problem. Yes.

MR ROZEN: - - - interim period in fairness to you, and I'm indebted to my learned friend. Putting the gaps and the dates to one side, there are also significant gaps in the sense of no entries at all about certain matters in relation to the wound. To take one example, we see no records of the dimensions of the wound - - -

45

MR COHEN: Yes.

MR ROZEN: - - - at any point, do we, throughout this document?

5 MR COHEN: Until the 50 cent, which is an observed

MR ROZEN: Fifty cent.

MR COHEN: Yes.

10 MR ROZEN: Yes. That's 18th of September

MR COHEN: Yes.

15 MR ROZEN: - - - isn't it?

MR COHEN: Well - - -

MR ROZEN: Each entry is made by a nurse or someone superior to the nurse in the
20 hierarchy, and several nurses are making entries in this document - - -

MR COHEN: Yes.

MR ROZEN: - - - aren't they? That rather points to a systemic problem, does it not,
25 Mr Cohen?

MR COHEN: In respect to wound management at that time, yes.

MR ROZEN: Well, it's a pretty fundamental aspect of clinical care, isn't it, as we
30 know from this case?

MR COHEN: Mmm.

MR ROZEN: Have your investigations revealed any explanation for the lack of
35 entry about information concerning wound dimensions and size in these records?

MR COHEN: No.

MR ROZEN: Is that another job for the root cause analysis?
40

MR COHEN: No, we've changed the policy to reflect the need to always measure –
we bought sterile measures. We've taken – we bought cameras so people can take
photographs of the wound, and we've also – you know, there's a lot of education
training around this, but the key issue there is this record is five weeks after the
45 wound appeared first, but there's no reference to referral to a wound specialist which
was in the policy.

MR ROZEN: That was a matter that the Complaints Commission was particularly concerned with, wasn't it, the late referral to a wound specialist?

5 MR COHEN: Yes. We now have a wound specialist who visits monthly with all reviews.

10 MR ROZEN: The significant change, if one relies on these records, to the condition of the wound took place on the 17th of September, did it not? If you look at the page .0332, if that could be brought up. Do you see that? It's actually circled there on the page, 17 September.

MR COHEN: Yes.

15 MR ROZEN: And if we could just scroll down the page a tiny bit more, we'll see in notes:

Noticed a small black area inside the open wound, so the wound is soaked in Betadine to review tomorrow.

20 Do you see that?

MR COHEN: I do, and this was the one that was entered on the 3rd of October, of course.

25 MR ROZEN: Indeed. Now, the problem with that – one of the many problems with that, I suggest to you, is that what was being put to Dr Tay earlier by Assisi counsel is that he ought to have been looking at the records to get an up to date on the spot understanding of what was being observed - - -

30 MR COHEN: Of course.

MR ROZEN: - - - by the nursing staff. Do you recall that - - -

35 MR COHEN: I do.

MR ROZEN: questioning of Dr Tay? But, of course, if you looked here on the 17th of September, he wouldn't have seen anything, would he?

40 MR COHEN: Yes, it would've been

MR ROZEN: Yes. He would have had to wait till the 3rd of October to see that entry; that's right, isn't it?

45 MR COHEN: Yes.

MR ROZEN: Yes. And so this is not just a matter of poor practice in the sense of not following a policy. This really goes to the heart of Assisi's ability to deliver quality care, doesn't it, this problem with the records?

5 MR COHEN: So I think this particular one flags – so what's happened is on the 3rd of October, the locum has come - - -

MR ROZEN: Yes.

10 MR COHEN: - - - and put the note in that says the wound is black - - -

MR ROZEN: Yes.

15 MR COHEN: - - - and it's the first time it has been documented. Prior to that, the – all of the notes had been, you know, "The wound is coming along, looks okay today. It's still pink."

MR ROZEN: Yes.

20 MR COHEN: Even on the 17th of September, there's a note that says it's pink. And what happened on the 3rd of October is once that entry has been made - - -

MR ROZEN: Yes.

25 MR COHEN: - - - there is - - -

MR ROZEN: It's a contemporaneous entry was made.

30 MR COHEN: There's an issue around – I have a non-disclosure in place with a staff member around this. Now, am I instructed to – how do I manage the non-disclosure?

MR ROZEN: I'm not sure I understand what you are asking me. Can you - - -

35 MS McLEOD: Can I assist with this - - -

MR ROZEN:

40 MS McLEOD: - - - Commissioners, please. Mr Cohen is referring to the termination agreement with the former CEO and asking is he directed to answer the question, in effect.

MR COHEN: No, I'm not. I'm – it's the termination agreement with another staff member.

45 MS McLEOD: With another staff member. So he's in your hands and looking for a direction, I think.

COMMISSIONER TRACEY: Yes. Well, one imagines that any agreement like that is subject to law, and I direct that the question be answered.

MR ROZEN: Thank you, Commissioner.

5

MR COHEN: So what's happened is on the – after the 3rd, once that note has gone in, the individual in question has realised that there's been a gap in the care that's been provided - - -

10 MR ROZEN: Yes.

MR COHEN: - - - and has then entered the retrospective notes to show that there was – there were things happening - - -

15 MR ROZEN: Yes.

MR COHEN: - - - all the way through. And subsequent to this, we can see wound audits now starting to happened quite soon after, so that – you know, the then safety and quality manager undertakes wound audits. We bring in people for wound
20 training. We have a wound specialist referral that happens, and now – and it – and it's a realisation, in my view, of the gap. Now, whether that is just the responsibility of a particular nurse, and, in my view, one of the things I've been brought in to do is to start being visible, walking the floors, talking to families, talking - - -

25 MR ROZEN: Yes.

MR COHEN: - - - to residents, trying to find out, you know, where are the – what's happening today. What's – what can we do, what can we assist with, and as is my
30 colleague the director of care. So the two of us are very visible. We're ask – we're looking for complaints. We're asking people to – you know, to formally record things. I think the nurses on the floor, at that point, weren't supported in that same way.

MR ROZEN: Can we just come back to this. I don't want to labour the point, but
35 your evidence, as I understand it, is the entry of the 17th of September and the entry of the 18th of September which describe - - -

MR COHEN: Yes.

40 MR ROZEN: - - - graphically, the deterioration of a wound, they're entered, not at that time, but on the 3rd of October.

MR COHEN: Certainly.

45 MR ROZEN: The events of the 3rd of October, of course, were the trigger for the escalation, the engagement of the wound consultant and so on.

MR COHEN: Yes.

MR ROZEN: It's possible, isn't it, Mr Cohen that had these entries been made back on the 17th and 18th of September, there might – and recorded the deterioration of the wound, the presence of blackness, in particular, that that might have been a trigger to earlier engagement of a wound consultant?

MR COHEN: It almost, undoubtedly, would have done.

10 MR ROZEN: Yes.

MR COHEN: Yes.

MR ROZEN: Hence my question about this being relevant, not just in some theoretical sense, but goes directly to care, does it not?

MR COHEN: Yes.

MR ROZEN: Sorry, is there something you wanted to add?

20

MR COHEN: No.

MR ROZEN: Can I ask you about a related matter, and that is the evidence we heard this morning about the infestation of maggots in the wound - - -

25

MR COHEN: Yes.

MR ROZEN: - - - which was described to Ms Ng by Dr Tay on the 11th of October. You deal with this in your statement. I can take you to it if need be, but you note that, not surprisingly, you consider it to be entirely inconsistent with acceptable clinical practice; correct?

30

MR COHEN: Yes.

MR ROZEN: What you don't deal with, so far as I can see, Mr Cohen, and correct me if I'm wrong, is the question of communication about the discovery - - -

35

MR COHEN: Yes.

MR ROZEN: - - - with the family, and you would have heard that evidence this morning.

40

MR COHEN: Yes.

MR ROZEN: And you would have heard Mr – Dr Tay's evidence about his dealings with that same nurse Ms Jacob about whether or not she was prepared to inform the family. Do you recall hearing that evidence from Dr Tay.

45

MR COHEN: Yes - - -

MR ROZEN: And I suggest to you that the evidence that he gave about a concern on Ms Jacob's part that she would – and I'm paraphrasing here, but that she would
5 get into trouble if there was a reporting to the family of the find that there were maggots there.

MR COHEN: Yes.

10 MR ROZEN: That goes to the heart of a very serious cultural problem, doesn't it, at Assisi, if that's true?

MR COHEN: If that's true, at – is what I just said in evidence that this – you know, it's an issue around where is the director of care, where is the CEO - - -
15

MR ROZEN: Yes.

MR COHEN: - - - supporting and assisting the nurse if things go wrong? You know, we know things go wrong in health, and when they go wrong, we're open and
20 transparent about it. We don't – we don't cover up, and so it is not a – you know, it's not a place that any of us would be comfortable with, but what I don't think is it's an example of how Assisi is.

MR ROZEN: Well, how do you say that, Mr Cohen?
25

MR COHEN: Because we've spent an awful lot of time over the last few months and weeks reinforcing the fact that we expect a different way of communicating and far more open communications.

30 MR ROZEN: What is perplexing about this case to this Commission, Mr Cohen, I suggest, is that the events that we've heard about today have occurred in suburban Melbourne.

MR COHEN: Yes.
35

MR ROZEN: In a well-established residential aged care facility that's been in operation for several decades, that is seen, certainly, within the Italian community, as an important part of – an important place for the elderly to go. Do you agree with that?
40

MR COHEN: I do. That's what's impressed me about the place since I've started.

MR ROZEN: Yes, and it has got a board which we can see is stacked with very well credentialed people with legal, financial and other skills. Do you agree with that?
45

MR COHEN: I agree that there was a board that didn't have clinical skills on until - - -

MR ROZEN: Yes.

5

MR COHEN: - - - it was identified as a deficit towards the end of last year.

MR ROZEN: Yes.

10 MR COHEN: At which point, they brought in some – they brought in a very well credentialed aged care specialists and have worked really hard to drive, you know, a far more contemporary approach to clinical governance.

MR ROZEN: You see, this Commission has, this week been hearing evidence about
15 the challenges faced in delivering aged care in remote parts of the Northern Territory. You understand that?

MR COHEN: Yes.

20 MR ROZEN: Many of the challenges that have been described don't face an aged care facility in suburban surrounded as it is by some of the finest hospitals in the country; do you agree?

MR COHEN: I do.

25

MR ROZEN: No shortage of wound consultants, for example.

MR COHEN: No.

30 MR ROZEN: So how is the Commission to understand how this situation was allowed to occur at Assisi?

MR COHEN: So I think leadership culture is, you know, something that occurs in every single organisation, whether it's in a major metropolitan area or a small
35 country rural town. And it's important always for board to have appropriate controls in place where they are monitoring and getting information about the performance of the organisation that's independent of whether leadership is telling them and I think that's something the board went through at the end of last year.

40 MR ROZEN: It was your predecessor - - -

MR COHEN: - - - matter if you are in Melbourne or New York or London or in Darwin.

45 MR ROZEN: What is striking about this case, I suggest, Mr Cohen, is that it's not just the problem with the hip wound and it's not just the problem with the heel

wound but we see a pattern here, don't we, of poor care and at some levels an unwillingness to accept responsibility for that. Do you agree with that?

5 MR COHEN: I would – it goes – the communications, absolutely, yes.

MR ROZEN: You would agree with me, wouldn't you, that what Ms Ng went through in the last months of the life of her mother is not something that any daughter should have to suffer.

10 MR COHEN: Of course not. It's terribly sad.

MR ROZEN: Has anyone in Assisi apologised to Ms Ng, Mr Cohen?

15 MR COHEN: As far as I'm aware, I reached – I'm the only person that has attempted to contact Ms Ng.

MR ROZEN: Has there been any discussion at board level about whether it would be appropriate for there to be an apology conveyed to Ms Ng, to your knowledge?

20 MR COHEN: There was a conversation at board level and it was agreed that I should reach out.

MR ROZEN: I see. And do we see that conversation recorded anywhere in the minutes, do you know?
25

MR COHEN: I'm not certain.

MR ROZEN: Sorry?

30 MR COHEN: I'm not certain.

MR ROZEN: Can you tell us what the meeting was; was it the first meeting you attended? There's only been, I think, two since - - -

35 MR COHEN: This was – it was discussed at a – it was in a board meeting where we had a conversation, a discussion with the board on this matter.

MR ROZEN: You were in court when Ms Ng gave evidence about a conversation that she had with you. Do you recall that earlier today? She certainly didn't say
40 anything about you offering an apology during the course of that conversation, did she? Do you say that you did or was – sorry - - -

MR COHEN: No.

45 MR ROZEN: Do you say that you did?

MR COHEN: No, it was a very short conversation.

MR ROZEN: Yes.

MR COHEN: A very brief conversation. Ms Ng wasn't in a place where she wanted to have a conversation, and I respected that. I asked her if she had my mobile
5 number if she wanted to make contact, I would welcome that.

MR ROZEN: Could I ask you to have a look, finally at tab 146, please. If I could ask that that be brought up. Sorry, second to finally, my apology. I will just give you a moment to read through that. I don't know if you've read this document
10 before. It appears to be some analysis of the deterioration in the pressure wound on the heel. Do you see that?

MR COHEN: I do.

15 MR ROZEN: And there's some dot points under the heading The Nature Of The Event and then there's some dot points under heading Actions in Response to the Event and then, finally, Improvement: Actions in Response to the Event at the bottom; do you see that?

20 MR COHEN: Yes.

MR ROZEN: I won't ask you about the detail of those but it's the last line I want to draw your attention to in bold. Do you see that:

25 *This was not a systemic failure.*

MR COHEN: I do.

30 MR ROZEN: Are you able to assist us with who wrote this – and I'm not asking for a name – but are you able to tell us the position of the person that completed this document.

MR COHEN: It was the then safety and quality manager – sorry, quality and risk manager.
35

MR ROZEN: Quality and risk manager. So your quality and risk manager concluded that this wasn't a systemic failure; is that what we're to understand by this?

40 MR COHEN: The quality and risk manager who was employed at the organisation at that time. This was written, I think, in around early or mid-January, was – concluded that it wasn't a systemic event failure. It's not a view that is shared by our current management team.

45 MR ROZEN: I see. That was my next question. It clearly has aspects of systemic failure all over it – doesn't it, Mr Cohen?

MR COHEN: Yes.

MR ROZEN: What does that tell us about the organisation, that a person – that's quite a senior position, isn't it, quality and risk management?

5

MR COHEN: It told me that the – there was a level of naiveté.

MR ROZEN: Of naiveté?

10 MR COHEN: That existed.

MR ROZEN: Naiveté or unwillingness to confront the obvious?

MR COHEN: I think – I – I put it down to the former.

15

MR ROZEN: Can I just ask you briefly about staffing levels. It's a matter that Ms Ng raised a concern about.

MR COHEN: Yes.

20

MR ROZEN: I'll see if I can do it in an abbreviated way. In your statement at paragraph 172, doing the best I can to understand the figures – that's not intended as a criticism – what you seem to be saying – this is at page .0031, bottom of the page, para 172, am I understanding correctly that for the period while Ms Santoro was a resident at Assisi, which is the period you are there describing, that on the overnight shift – that is between 2145 hours and 0715 hours there was one RN rostered across the entire facility.

25

MR COHEN: There was.

30

MR ROZEN: And that's for, what, 150 residents?

MR COHEN: Yes. We have now moved – we now have two rostered overnight.

35 MR ROZEN: Yes. That has been doubled, that was my next question. That's a decision that has been taken. Do you, as CEO, consider that is adequate?

MR COHEN: I think it's far more adequate than one. I think we would all like to have more funding to put more people into position. Our board have approved for the current financial year, or the new financial year an additional five-and-a-half PCWs and additional – we have got a clinical nurse coordinator now who is more senior than the RNs who is employed to walk around the floors to assist the RNs which is additional. We have moved the lifestyle program from five day a week to seven day a week which requires another two, give or take, EFT, and the board have approved all those changes. It's meant that we have a budget with zero profit on next year which takes our contingency and ability to manage uncertainty but it's – they are all important increases.

40

45

MR ROZEN: I promise this is the last topic I'm going to ask you about, the root cause analysis; you referred to it earlier.

MR COHEN: Yes.

5

MR ROZEN: The genesis of this idea of conducting a root cause analysis, if I'm reading the minutes correctly, was your predecessor, wasn't it? It was his idea that there should be a root cause analysis conducted.

10 MR COHEN: That's not my understanding.

MR ROZEN: Okay.

MR COHEN: My understanding is – did you want my understanding?

15

MR ROZEN: Yes, please.

MR COHEN: Was that the board have asked – had asked for a root cause analysis for quite some time.

20

MR ROZEN: I see. In any event, as you say in your statement, it was not formally commissioned until you did that in - - -

MR COHEN: Yes.

25

MR ROZEN: Presumably as one of your first tasks in May of this year; is that right?

MR COHEN: That's right.

30

MR ROZEN: And you've engaged some external party to perform the root cause analysis?

MR COHEN: Yes.

35

MR ROZEN: Without taking you to the minutes unless you want me to, there's a record in the meeting of 25 June 2019, so that's the last board meeting, I think, before today.

40 MR COHEN: Yes.

MR ROZEN: Most recent board meeting. It says there that:

45

The root cause analysis should be finalised prior to our appearance at the Royal Commission.

It looks, as I understand it, that that was something you were advising the board at that time. Does that accord with your recollection?

5 MR COHEN: It does, I was hoping that it would be concluded before this time.

MR ROZEN: It sounds like the work was quite advanced at that time, given that you were talking about a period a fortnight away; is that right?

10 MR COHEN: It's getting there. It's getting there.

MR ROZEN: It obviously – sorry, you understood at that time that it would have been relevant for the hearing to have that before it? This hearing.

15 MR COHEN: I think so. The reason for root cause analysis, though, is to really inform the organisation about what was the absolute root of these issues, such that they, the organisation is able to put in place changes that will make sure that, you know, it removes or reduces the risk of things happening in future. So that process needs to be allowed to follow its path.

20 MR ROZEN: In your second statement, exhibit 6-18, paragraph 28, which is on page 4 of the document, you tell the Commission that you've:

... made inquiries of the external reviewers and that the analysis is progressing in accordance with the original schedule.

25 MR COHEN: Yes.

MR ROZEN:

30 *A very early draft has been produced which requires discussion by the RCA panel.*

Do you see that?

35 MR COHEN: Yes.

MR ROZEN: It would appear that things are not quite as advanced as might have appeared at the previous board meeting.

40 MR COHEN: I think at the previous board meeting was well – I was hoping it was well ahead of its previous schedule but it's progressing really in accordance with the original schedule.

45 MR ROZEN: All right. Are you able to estimate when it will be provided to Assisi in its final form?

MR COHEN: I am expecting we have a clinical governance subcommittee in two weeks' time; I'm hoping to get it to that meeting.

5 MR ROZEN: Now, you know that the Commission has made a requirement of Assisi that it be provided and that's an ongoing requirement. You understand that?

MR COHEN: Yes.

10 MR ROZEN: There's a reference in the minutes to something else, a gap analysis. Is that a separate process, the gap analysis that's being conducted, do you know?

15 MR COHEN: That was – not on the root cause, that's on – that was a review I commissioned when I started, which is also in the – referred to in those minutes which was essentially it's a pulse test. So an external reviewer came into the organisation in, I think the first week of June, and interviewed something like 10 per cent of residents and a slightly higher percentage of staff to – and walked around, you know, sat and observed the organisation to then give me advice about where there are issues that I might expect.

20 MR ROZEN: Do you think a written apology to Ms Ng might have been a good idea, Mr Cohen?

25 MR COHEN: It's – for me a written apology afterwards is, you know, not – what should happen in these matters, is that senior people are involved much earlier. Things don't escalate.

MR ROZEN: No further questions, Commissioners.

30 COMMISSIONER TRACEY: Mr Cohen, when was the board's clinical governance subcommittee established?

35 MR COHEN: It was established early – my understanding is it was established early this year, this calendar year but the first meeting didn't happen until 24 May, I think is the date.

COMMISSIONER TRACEY: So it was operating after the events that we have been hearing about?

40 MR COHEN: Yes.

COMMISSIONER TRACEY: Most boards have subcommittees such as risk and audit and subcommittees of that kind that are required to keep a close eye on what is going on on the ground in the organisation.

45 MR COHEN: Yes.

COMMISSIONER TRACEY: Was there such a subcommittee of the board of Assisi during the events that we've been hearing about?

5 MR COHEN: There's a finance and risk subcommittee – not a clinical governance subcommittee.

10 COMMISSIONER TRACEY: And who, apart from the CEO, reported to that subcommittee on risks to the organisation arising from the day-to-day operations of Assisi?

15 MR COHEN: The finance and risk meeting as the chief financial officer and the director of care and the CEO attend and that's so there's clinical perspective when budgets are being discussed. The safety and quality – sorry, the clinical governance subcommittee includes the CEO, the director of care and the quality and risk manager.

COMMISSIONER TRACEY: So the principal work of that subcommittee would have been directed to financial matters and associated risks.

20 MR COHEN: Yes, they're two separate subcommittees so the finance and risk absolutely is around, as you've described, which is why a clinical governance subcommittee is so important in health.

25 COMMISSIONER TRACEY: And am I right in understanding from something you said in the course of your evidence, that there was at those times nobody with clinical experience on that subcommittee?

MR COHEN: So on the board - - -

30 COMMISSIONER TRACEY: Well, it's a subcommittee of the board.

35 MR COHEN: There wasn't – there wasn't a subcommittee of clinical governance until recently but on the board itself a clinical – a person with clinical expertise and aged care expertise was brought in, I think, August of last year and she was made a full member of the board in November last year.

40 COMMISSIONER TRACEY: I'm just trying to understand that. If the board – and we're talking about the times during which the unfortunate events which we've been hearing about today occurred – had someone with clinical expertise on it, was that person on the risk subcommittee?

MR COHEN: There wasn't anybody with clinical governance expertise on board through this period until right at the end.

45 COMMISSIONER TRACEY: Yes. Thank you.

COMMISSIONER BRIGGS: Just a quick question, if I may. The witness statements indicate that work is still proceeding to properly identify instances of substandard care within the organisation. How many have you identified so far in addition to those affecting Mrs Santoro?

5

MR COHEN: Yes, so in terms of the requirements to provide data for the February submission, there were originally 16 occasions of substandard care and 28 complaints reported. We've found and we're just finalising this report at the moment, a further 20 occasions of substandard care. They're mostly around resident on resident aggression and absconding where most of them are, and 37 additional complaints. So there should be – which would take the total of complaints to 65 complaints.

10

COMMISSIONER TRACEY: Anything arising out of that, Mr Rozen?

15

MR ROZEN: No, thank you, Commissioner.

COMMISSIONER TRACEY: Yes. Mr Cohen, thank you for your evidence, you are excused from further attendance.

20

MR COHEN: Thank you.

<THE WITNESS WITHDREW

[3.48 pm]

25

MR ROZEN: Would it be appropriate to have a 10 minute break or should we - - -

COMMISSIONER TRACEY: A matter for you. We will sit on but if you wish to have a break, we will have it.

30

MR ROZEN: It probably would be of assistance, I think, if that is acceptable.

COMMISSIONER TRACEY: Yes, very well. If you let our associate know when you are ready to proceed, we will return to the bench.

35

MR ROZEN: Thank you.

ADJOURNED

[3.49 pm]

40

RESUMED

[4.00 pm]

45

COMMISSIONER TRACEY: Yes, Mr Rozen.

MR ROZEN: Thank you, Commissioners. Thank you for that break. I call Donato Smarrelli.

5

<DONATO SMARELLI, SWORN

[4.01 pm]

10 <EXAMINATION-IN-CHIEF BY MR ROZEN

MR ROZEN: Mr Smarrelli, can you please state your full name for the transcript.

15 MR SMARRELLI: Donato Smarrelli.

MR ROZEN: And, Mr Smarrelli, you prepared a witness statement for the Royal Commission.

20 MR SMARRELLI: I did.

MR ROZEN: And the document ID is WIT.0288.0001.0001. On the front of it, as you can see, it bears the date the 5th of July 2019, but if you turn – if we can go to the very last page, please, which is page .0011. Perhaps you've got a hard copy in front
25 of you. We see that it's – you actually signed it on the 7th of July; is that right?

MR SMARRELLI: I did – I did.

MR ROZEN: Okay. It's not a criticism. We just like - - -

30

MR SMARRELLI: No.

MR ROZEN: - - - to be accurate about such things. Have you had an opportunity to read through your statement before giving evidence today, Mr Smarrelli?

35

MR SMARRELLI: I have.

MR ROZEN: And is there anything that you would like to change?

40 MR SMARRELLI: No.

MR ROZEN: Okay. Is the – are the contents of your statement true and correct?

MR SMARRELLI: They are.

45

MR ROZEN: I tender the statement of Donato Smarrelli dated the 7th of July 2019, Commissioners.

COMMISSIONER TRACEY: Yes, the witness statement of Donato Smarrelli dated 7 July 2019 will be Exhibit 6-19.

5 **EXHIBIT #6.19 WITNESS STATEMENT OF DONATO SMARRELLI
DATED 07/07/2019 (WIT.0288.0001.0001) AND ITS IDENTIFIED
ANNEXURES**

10 MR ROZEN: I understand from your counsel, Mr Smarrelli, that before my
questioning commences, there's something that you would like to say.

MR SMARRELLI: I do. Assisi is an organisation which I – as you rightly pointed
out earlier on, I have been involved with for such a long time. It is a matter that's not
15 only near and dear to me, but also to the past and current board members. And the
issue that we've been – not grappling with, but we have been mindful of is the fact
that – of an apology going out to the family. Now, it may seem, at this point in time,
something that we're just putting forward, but it has been the subject of a number of
meetings, one in particular in June, as to how we would address the apology to the
20 family. And if I could also just add my position at Assisi during my time as chair has
– well, not only just the time as chair, but throughout the 14 years or such that I've
been there, I make it my business to actually walk the floor.

I would go and speak to families and in matters where there are issues that require
25 me to meet family or I report matters from family to the CEO, I have done that
repeatedly over the years. And the issue of this apology, and I say – not this, but I
mean it's an apology that's well and truly overdue to the family, and I just wanted to
make that point that we are devastated as to what has taken place as a board. It's not
something that Assisi obviously wants its name associated with, but, no doubt,
30 throughout our questioning this afternoon, hopefully, I'll be able to explain some of
the matters. But on behalf of the board members, myself and everyone at Assisi, I
unreservedly apologise for what's occurred to the family. I have my own mother
there, so I wouldn't want that to be something that would happen to me. So I'm
personally devastated over this incident. So I just wanted to get that out early.

35 MR ROZEN: Have you formed a – thank you, Mr Smarrelli. Have you formed a
view – in your own mind, you've obviously had plenty of time to reflect on this. It's
been subject of a number of board meetings; this case has been examined. Have you
formed a view in your own mind as to how it is that these events occurred at such a
40 well-resourced, well established, apparently, properly governed association such as
Assisi?

MR SMARRELLI: Well, from a properly governed point of view, I've – over the
time that I've been as chair and on the board or committee previously, once I became
45 the president and then subsequently the CEO, it became an objective of mine to
improve that area of Assisi and have been going through that procedure over the last
almost seven years now that I've been in a role. And – so the records will show that

we have enlisted, as you pointed out, a number of legal people, senior partners at Deloitte.

5 So we have improved our governance significantly, and it was an issue that goes back to, I think, August of 2017, when we reviewed our skills matrix, and it was, at that point in time, recognised that we were lacking in the – in clinical – in the clinical area. And then it became an objective to fill that role, and through the recommendations of one of our board members, the name of the current chair of that subcommittee was made known to me, and we then went through the process of
10 interviewing the person and subsequently inviting that person on as – firstly, as an observer prior to formally coming on board. I recall I think August or – August, I think, last year, from memory.

15 MR ROZEN: Mr Smarrelli, you're a lawyer by training?

MR SMARRELLI: Correct.

20 MR ROZEN: I suggest to you that you've just deftly avoided answering a pretty straightforward question. My question of you was how did the events that we've heard about today over a lengthy period of time involving, not just substandard care, but an unwillingness to acknowledge fault, an unwillingness to communicate findings of infestation of maggots in wounds, how did that happen on your watch as chairman of the board?

25 MR SMARRELLI: Well, firstly, I say, prior to the clinical governance – well, it occurred on the basis – ultimately the board is the ultimate responsible party for all the matters that are here before the Commission today.

30 MR ROZEN: Yes.

MR SMARRELLI: Secondly, from a board perspective, I – I – it was an escalating scenario where I wasn't probably being informed of what was happening from management – management point of view and the control and the policies that we have in respect of care. It was something that began in October, as my statement
35 refers to, and there was a lack of feedback that I was not getting in respect of what was happening.

40 MR ROZEN: Mr Smarrelli, maybe the question is not clear. It didn't begin in October. It ended in October.

MR SMARRELLI: Sorry.

45 MR ROZEN: I'm asking you not about deficiencies in communication from the CEO to the board - - -

MR SMARRELLI: Mmm.

MR ROZEN: - - - which we understand you have concerns about. I want to know, from you, what your explanation is as chairman for the various deficiencies in care that were provided to Mrs Santoro. Why did they occur?

5 MR SMARRELLI: Well, my only explanation for that is that I – I have a CEO that we discuss the operations of Assisi. He manages the organisation and reports back to me. And I rely heavily on – on – on his reporting but, from my perspective personally, I – I can't give you a direct answer on that.

10 MR ROZEN: Is that why you've commissioned a root cause analysis? Is that going to provide the answers?

MR SMARRELLI: Well, again, I would hope it will give us the answers that we – and the reporting that we should have been receiving.

15

MR ROZEN: Mr Smarrelli, you know that the Aged Care Quality and Safety Commission provided a report to Assisi of its investigations into Ms Ng's complaint, don't you?

20 MR SMARRELLI: Yes, I do.

MR ROZEN: And you heard me questioning the previous witness Mr Cohen about that, and I can read it out to you if you'd like me to, but you might recall me reading out to him the finding that was made by the commission about significant gaps in
25 care, that medical and specialist intervention was delayed until the stage of the wound was irreversible. That's a very damning finding, isn't it, Mr Smarrelli, of the organisation?

MR SMARRELLI: It is.

30

MR ROZEN: It's really hard to imagine a more serious finding being made about an organisation that exists solely to provide care for elderly people, isn't it?

MR SMARRELLI: Correct. It is.

35

MR ROZEN: Has the report of the Aged Care Quality and Safety Commission been tabled at a board meeting?

MR SMARRELLI: It has.

40

MR ROZEN: And have all members of the board read it, to your knowledge?

MR SMARRELLI: Yes.

45 MR ROZEN: Has a summary of the report been provided to care staff?

MR SMARRELLI: I'm not – not sure of that.

MR ROZEN: Well, when you say you're not sure, you'd know, wouldn't you, as the chairman of the board in this context - - -

MR SMARRELLI: Well - - -

5

MR ROZEN: - - - whether or not a summary had been provided?

MR SMARRELLI: Well, my answer is I'm not sure. [REDACTED] sorry, I retract that. The former CEO would have received it and, in his normal conduct and running of the organisation, I assume, would have attended to that, and he would then come back to me on the third week of each month and would be telling and reporting back to me prior to the board meeting taking place on the last Monday of the month. So there will – it was discussed in our – in our meeting, he and I, but I can't recall exactly whether or not it's - - -

15

MR ROZEN: This report was provided under cover of a letter dated 22 May 2019. It was addressed to your previous CEO, but I suggest to you, by the time it was discussed at the following board meeting a few days later, he'd left the organisation, hadn't he?

20

MR SMARRELLI: Correct.

MR ROZEN: So to the extent there's been any briefing provided to staff about the contents of the report since 22 May, that could only have been under the auspices of the current CEO, couldn't it?

25

MR SMARRELLI: Exactly.

MR ROZEN: And isn't that the sort of thing that you as chairman would be very keen to see happen? That some information be provided to the people on the shop floor, so to speak, about the findings of this report and the response of the organisation to them?

30

MR SMARRELLI: I would expect that, and I'm of the understanding – whether or not it's been tabled, but there was a recent clinical governance meeting and I'm not totally – we probably were expecting a report to come at the end of this month's meeting, so I'm not briefed on that at the moment.

35

MR ROZEN: Mr Smarrelli, in the circumstances, I suggest to you that it's a little surprising that you're unaware of whether or not a briefing has been provided to the staff at Assisi.

40

MR SMARRELLI: Well, it's an honest answer. I don't have that knowledge.

MR ROZEN: Is that information that could be provided to the Commission, please?

45

MR SMARRELLI: I can make that available.

MR ROZEN: Thank you. Now, as you say in your statement, your role as chairman, I think you've already acknowledged just today, is to ensure and facilitate responsible corporate governance and effective leadership with Assisi. You're comfortable with that as a description of your role - - -

5

MR SMARRELLI: Correct.

MR ROZEN: - - - as chairman? I should have asked you is it a paid or voluntary position that you hold with Assisi?

10

MR SMARRELLI: It's voluntary. All members of the board are voluntary.

MR ROZEN: And, of course, Assisi is a social purpose organisation, isn't it?

15

MR SMARRELLI: Yes.

MR ROZEN: It's not a profit making business.

MR SMARRELLI: It's a not-for-profit.

20

MR ROZEN: And Mr Cohen has told us what the mission of Assisi is. He set it out in his statement:

25

It's to provide professional and compassionate care for those who come into our community.

It's in his statement. You would be familiar with that as being the mission.

MR SMARRELLI: Correct, yes.

30

MR ROZEN: And I suggest to you that the governance role, the board, CEO, is necessarily aimed at achieving that mission. That's the purpose of the organisation, is it not?

35

MR SMARRELLI: Correct.

MR ROZEN: He also tells us that there are a set of official values that the organisation holds to be important. You would be familiar with the acronym RESPECT?

40

MR SMARRELLI: RESPECT, yes.

MR ROZEN: He tells us that the R is residents and families first, for example.

45

MR SMARRELLI: Correct.

MR ROZEN: The evidence we heard about Ms Jacob, the nurse unit manager's unwillingness to inform – apparent unwillingness to inform the family of the late Ms Santoro about the presence of the maggots is the very antithesis of residents and families first, isn't it?

5

MR SMARRELLI: Well, exactly. So we – obviously, we don't support that type of conduct within our organisation.

MR ROZEN: As you say in your evidence, and you say it in your statement, a board is necessarily reliant for performing its governance role on information provided to it by those that are involved in the day-to-day business.

10

MR SMARRELLI: Yes.

MR ROZEN: Day-to-day operation of the organisation.

15

MR SMARRELLI: Correct.

MR ROZEN: You meet, what, once a month or so.

20

MR SMARRELLI: As a board, once a month unless there are special meetings that need to be held, obviously of recent times but normally it's once a month being the last Monday of the month.

MR ROZEN: All right. And the Commission is interested, as you heard from the questions that were asked of the previous witness, in what structures were in place to facilitate reporting of information to the board. Leaving aside the clinical governance committee which is a recently established committee, as I'm reading the minutes towards the period at the end of last year and before that, there were two standing committees that that were providing reports to the board; is that right?

25

30

MR SMARRELLI: The finance and audit.

MR ROZEN: Finance Risk and Audit Committee is one.

35

MR SMARRELLI: We have a Nominations Subcommittee which – its activities aren't – not that great. It's only at times when we need to consider recruiting and then the director of care attends and provides a report on – or with the CEO provides a report to the board meetings.

40

MR ROZEN: Can I just ask you to look at supplementary tender bundle tab 8. It will come up on the screen. I don't think you've got a hard copy in front of you. It's the Minutes of the Board Meeting held earlier this year on 25 February 2019, as you can see, and if we can go to the second page of those minutes, please, the page that ends in .5126; do you see item five, Finance Risk and Risk Committee.

45

MR SMARRELLI: I do.

MR ROZEN: Yes. And we see in each of the Board Meetings a report from that committee; do we not?

MR SMARRELLI: Correct.

5

MR ROZEN: And if we just look at the three matters that are identified under the heading 5.1.1 Key Performance Metrics, the first is a report on the occupancy rate. Do you see that?

10 MR SMARRELLI: Correct.

MR ROZEN: Occupancy rate was still an issue in January and so on. Do you see that, Mr Smarrelli?

15 MR SMARRELLI: Yes, I do.

MR ROZEN: The second part of the report was the ACFI rate, that's the Aged Care Funding Instrument rate per day per bed. Do you see that?

20 MR SMARRELLI: Yes, I do.

MR ROZEN: And then the third is a government announcement about additional funding for the aged care sector. Do you see that?

25 MR SMARRELLI: I see that, yes.

MR ROZEN: And is the Commission to see that as being a relatively typical report from the Finance Risk and Audit Committee, that is, it's concerned primarily with financial issues to do with the running of the business side of the organisation?

30

MR SMARRELLI: In essence, yes, it is.

MR ROZEN: And then skipping over the CEO operational report, and going to the next page, the other Committee that I wanted to ask you about was the Strategic Planning Committee. Do you see that, item 8?

35

MR SMARRELLI: Yes, I do.

MR ROZEN: And what's its remit?

40

MR SMARRELLI: It's involving – Assisi has recently in the last three to four years, undergone refurbishment and new building being constructed, and we're now exploring and proceeding through plans to develop the remaining parts of the Assisi Centre. And we have a strategic planning committee that is headed by one of our board members, Mr Finanzio, and we are essentially at the moment almost ready to lodge an application for town planning, but it has been put on hold temporarily.

45

MR ROZEN: That structure that we see with those two committees, that had been in place for some time, had it not, as of the date of this meeting, February 2019?

MR SMARRELLI: Correct.

5

MR ROZEN: And I suggest to you that that structure reflected the priorities that were set by the board, including by you as chairman as you describe them which was recruiting people with legal, financial, business skills on to the board. Do you agree with that?

10

MR SMARRELLI: Yes, save and except, though, I mean the board is not just concentrating on finance and audit and strategic planning and nominations committee. We do have underneath – or paramount, rather, not underneath is the core reason why we are all there and that is to provide care.

15

MR ROZEN: That's what I'm really steering towards, Mr Smarrelli. Until the establishment of the care governance committee, which is a recent phenomenon, which has occurred really since this case, has it not, there was no formal mechanism for reporting about care governance issues up to the board, was there?

20

MR SMARRELLI: Well that's not correct. [REDACTED] I do apologise, the former CEO, his role was to report to me on matters that related to anything to do with care management, even though we didn't have in place a clinical governance subcommittee. But through the former CEO and the director of care, we were

25

MR ROZEN: That came to the board via the CEOs operational report; is that the mechanism that was in place?

30

MR SMARRELLI: It generally would be a matter contained in the report that the CEO would provide at the time, and would always have the director of care there at the meeting as well, in case we needed to elaborate further on any matter involving care.

35

MR ROZEN: I suggest that the establishment of the clinical governance committee is a recognition by the board that that was an inadequate reporting mechanism.

MR SMARRELLI: Correct.

40

MR ROZEN: And why was that seen by the board as being inadequate? What was it about that? Was it because it was too ad hoc, not specifically focused on - - -

MR SMARRELLI: More so specifically focused.

45

MR ROZEN: And we heard from Mr Cohen that in recent times the board has recruited members who have clinical care backgrounds; is that right?

MR SMARRELLI: Correct. The name – we have, and I’m not able to give you the name. It has escaped me at the moment.

MR ROZEN: All right.

5

MR SMARRELLI: But we have, can I just go back one step also? Previous compositions of the board did have doctors, medical practitioners on the committee and board at previous configurations of the board. So we relied on that type of assistance as well together with the director of care and CEO at the time.

10

MR ROZEN: Now, I want to ask you a little bit about a matter that you deal with in some detail in your witness statement and that is the departure of the previous CEO from the organisation and see if I can understand what led to that and the significance of it. Can I start by asking you to look at tab 10 in the supplementary tender bundle.

15

This is the minutes of the next board meeting, the one that was held on 25 March 2019. If you look at the second page of that, we – firstly, at the top of the page we see a reference to the clinical governance issue, which is now a standing item at board meetings. That’s the change that we see reflected there.

20

MR SMARRELLI: Correct.

MR ROZEN: Then at the bottom of that page, item 5.4, we see CEO Review into Complaint. Do you see that?

25

MR SMARRELLI: Yes, I do.

MR ROZEN: And if I could just summarise this: at this time, at the time of this meeting, Assisi had provided a submission to this Royal Commission as requested, as all approved providers were requested.

30

MR SMARRELLI: Correct.

MR ROZEN: And in the submission, Assisi listed or responded to the question:

35

How many instances of substandard care have there been since 2013.

MR SMARRELLI: Correct.

40

MR ROZEN: What the board was discussing at this meeting was a concern that there may have been some instances of substandard care that didn’t make their way into that submission.

MR SMARRELLI: Correct.

45

MR ROZEN: That was really at the heart of what started the concern with the CEO, was it not?

MR SMARRELLI: Correct.

MR ROZEN: We then go to a meeting on 1 April which is tab 15 in the supplementary tender bundle. If that could please be brought up. And if we could
5 go to item 5.4, please. Sorry, I think I've got the wrong – my apologies, Mr Smarrelli. The case that was initially the concern of the board is not – that hadn't been reported in the submission wasn't this particular case; it wasn't Ms Santoro's case but another one.

10 MR SMARRELLI: No, not at all. It was another one that related back to 2013.

MR ROZEN: Yes. But it's the case, isn't it, that this case is not mentioned in the submission either, is it? The Santoro case is not described in the submission that was provided to the Royal Commission either.

15 MR SMARRELLI: That's my understanding and also, well, yes, that's my answer.

MR ROZEN: Do we understand from that, that the position of Assisi when the submission was filed in February of this year was that the case involving the late Ms Santoro was not a case of substandard care?

MR SMARRELLI: As my understanding was, that had fallen out of the five-year period but that was my – the way it was described to me and it wasn't part of the current submission, as my understanding was.

25 MR ROZEN: I will just see if I can clarify that with you. If we could have tab 218 brought up, please. This is a submission that was provided by Assisi to the Royal Commission.

30 MR SMARRELLI: Correct.

MR ROZEN: We see that it bears the title of the former CEO, as the contact officer. And the question that was asked of you in relation to substandard care is set out on the third page of the submission, which is .0389, if that could be brought up, please.
35 Do you see at the top of the page question 1(a):

Since 1 July 2013 have there been any occasions when your service or outlet has provided substandard care including mistreatment and all forms of abuse.

40 Do you see that?

MR SMARRELLI: I do.

MR ROZEN: Is your evidence that you understood the question to be time limited
45 to a period of five years after 1 July 2013? Is that what you're saying?

MR SMARRELLI: No. I – no, my understanding is that we were referring back to – the – the issues that were put to me, I discussed with [REDACTED] when he was coming up with these numbers were that we’ve only had X number of matters of substandard care totalling approximately about five – five or 10, which we felt was quite a low number. But as far as the Santoro matter is concerned, it was a matter that was obviously – well, I will stop there, I will take the question again, if I can, sorry.

MR ROZEN: Yes, of course. My question to you is – well, I was putting to proposition to you that the Santoro case is not described in the submission.

MR SMARRELLI: No, it’s not.

MR ROZEN: The submission was made in February of 2019.

MR SMARRELLI: Correct.

MR ROZEN: When I asked you a moment ago about why that was I understood your evidence to be that it fell outside the five year period of inquiry by the Commission.

MR SMARRELLI: I withdraw that answer; I didn’t understand the question at the time.

MR ROZEN: Okay, because as at February 2019 there was no doubt at all in Assisi that the Santoro was a case of substandard care, wasn’t it?

MR SMARRELLI: Well, can I clarify that?

MR ROZEN: Yes.

MR SMARRELLI: I – it certainly was from a matter of – for those that knew of the incident. We were not, as a board, informed other than back in October that there was reference to a complaint, an investigation, that we weren’t totally across the full circumstances of the Santoro matter until the middle of March when I was approached by the CEO at the time, and it was explained to me what it was all about. Other than that, it was referred to as a complaint. It was being investigated, and that was essentially my understanding of it and as was the board. And then when – after the – at the end of the March board meeting, or during the course of the board meeting, it became, obviously, a significant issue for us as a board.

MR ROZEN: Mr Smarrelli, as a matter of fairness to you, I should indicate that there was a cut-off end date in the request from the Royal Commission which was the 30th of June 2018.

MR SMARRELLI: Mmm.

MR ROZEN: That being so, that may well provide an explanation for why the Santoro case doesn't feature in the submission.

MR SMARRELLI: Yes.

5

MR ROZEN: Do you understand?

MR SMARRELLI: Yes.

10 MR ROZEN: Now, if I can go back to the question of what led to the departure of the previous CEO from the organisation. You've already told us that there was one concern about a failure to include a particular case that was identified in the submission. It was a case from - - -

15 MR SMARRELLI: Correct.

MR ROZEN: - - - some years earlier, and in your statement, you describe a concern that dated back to October of last year concerning this issue of the infestation by maggots of the heel wound. Do you recall hearing the evidence about that earlier, and you refer to that in your statement at paragraph 14.

20

MR SMARRELLI: Mmm.

MR ROZEN: If I could just draw your attention to that. You recall there that you are describing a meeting that you had with your former CEO when, by coincidence, in your capacity as a private solicitor, you had taken instructions from someone who'd had a similar experience, it seems, of - - -

25

MR SMARRELLI: Correct.

30

MR ROZEN: - - - maggots in a wound while in an aged care facility.

MR SMARRELLI: Correct.

MR ROZEN: And if I am understanding what you're saying at paragraph 14 correctly, you seem to be saying that your former CEO's failure to alert you to this very same occurrence having occurred at Assisi led to a concern about the extent to which he is keeping the board informed; is that right?

35

MR SMARRELLI: Absolutely.

40

MR ROZEN: All right. Are you assuming, in paragraph 14, that as at the 24th of October, the former CEO was aware of the maggot infestation?

MR SMARRELLI: That is exactly what I felt. When I became aware of the circumstances of Ms Santoro's circumstances, I then referred back and, in fact, I was able to identify dates, etcetera. I've got them available, but - - -

45

MR ROZEN: Yes.

MR SMARRELLI: - - - yes, that is exactly what I thought. That he was – he may have been aware of it.

5

MR ROZEN: Okay. Because you were in court earlier today, weren't you, when Dr Tay gave evidence about what he said the nurse unit manager said to him about a fear on her part of escalating bad news? Do you recall - - -

10 MR SMARRELLI: I do.

MR ROZEN: I'm paraphrasing - - -

MR SMARRELLI: I do – no, I do - - -

15

MR ROZEN: But you know what I'm talking about.

MR SMARRELLI: - - - recall. Absolutely. I do.

20 MR ROZEN: And if that's the case, then it is possible, isn't it, that the former CEO didn't know about the incident at that time?

MR SMARRELLI: Well, yes, that's possible.

25 MR ROZEN: Yes. More importantly, though, it speaks poorly of the culture within the organisation, doesn't it, if there was, in fact, a fear of escalating bad news in the way that appears to have been described. Do you agree with that?

30 MR SMARRELLI: Well, if that were to be the case, yes, I agree, but I just say that we don't conduct our affairs in that manner. We are transparent. We – the board is a transparent body of people who expect to be informed, expect to be able to deal with these matters and not prevent such information being reported or – we don't operate in that manner.

35 MR ROZEN: It's of the utmost importance, isn't it, for an organisation committed to continuous improvement for bad news to filter up so that it can be addressed?

MR SMARRELLI: Absolutely.

40 MR ROZEN: Yes, and if there was, in fact, a culture of a unwillingness to escalate bad news, then that would undermine the ability of the board to - - -

MR SMARRELLI: Correct.

45 MR ROZEN: - - - govern the organisation.

MR SMARRELLI: Correct.

MR ROZEN: What have you done as chairman of the board to ascertain if such a culture existed as at October of last year? Has that been the subject of investigation?

5 MR SMARRELLI: We were about – or we discussed the setting up of a residents’ –
what’s the word I’m looking for? Where we send out notices to families as well to
make sure that we’re finding out if there are concerns within the organisation about
the conduct of Assisi or the operations of Assisi. We have residents’ meeting. We
only had one last Wednesday where we had quite a significant number of people,
whereupon we divulged and explained that we were going to be here today giving
10 evidence.

MR ROZEN: Yes.

15 MR SMARRELLI: So we’re being quite open with – with our residents and trying
to improve our communication skills with, not only residents, but, through Paul, staff
and further training of staff.

MR ROZEN: Mr Smarrelli, the evidence the Commission’s heard is that just about
everyone who was at the organisation in a position of authority, at the date of the
20 events that are being examined today, is no longer there. Do you agree with that as a
general proposition?

MR SMARRELLI: Yes, I do.

25 MR ROZEN: CEO’s gone; risk manager’s gone; one of the nurse unit managers
has gone.

MR SMARRELLI: And the former director of care left in - - -

30 MR ROZEN: Director of care gone.

MR SMARRELLI: And her replacement left soon after being appointed, through
health reasons, but - - -

35 MR ROZEN: Yes. We – does that tell us something about the organisation that’s a
real instability at the management level, isn’t it? It’s referred to in the minutes of the
board meeting as a concern - - -

MR SMARRELLI: Well, it’s been recognised, yes, by the board.

40

MR ROZEN: How do you address that?

MR SMARRELLI: Well, we are addressing it, I believe, and we will be, obviously,
concentrating our efforts in improving the management role of the organisation and –
45 and, hence, we’ve approached Paul, highly recommended through one of our board
members, involved in another major health aged care provider. So we’re on the hunt

for improvement and recruitment of people that will assist us in that role of achieving what we need to achieve.

5 MR ROZEN: If I can go back to the board's concerns with the former CEO. We've identified the incomplete – concern about incomplete information in the submission to the Royal Commission. There was also a concern about the lack of information provided to the board about the Santoro case; is that right?

10 MR SMARRELLI: Correct.

MR ROZEN: And then there was a third concern which I want to ask you about. It was also related to the submission that was provided to this Royal Commission, and it concerned the identification of an initiative that was identified in the submission that had been introduced as an improvement for care. Do you know what I'm talking about? It's the question of wound photographs.

15 MR SMARRELLI: Yes.

MR ROZEN: And without necessarily taking you to the documents, am I right in understanding the board's concern was that in the submission that was provided to this Royal Commission, the introduction of weekly photographs of all active wounds is identified as an initiative that had been put in place as an improvement of care; is that right?

20 MR SMARRELLI: That's right, yes.

MR ROZEN: And the board's concern was that the facts of this very case, where there were only two photographs taken over a period of four months, rather suggests the opposite: that that's not the practice in place in the organisation.

30 MR SMARRELLI: Well, we did recognise that our policy in respect of wound care management was obviously not being met and - - -

MR ROZEN:

35 MR SMARRELLI: Yes.

MR ROZEN: My point's a slightly different one, though. The board's concern was that the Royal Commission had been misled about the introduction of that new policy. Is that – am I understanding correctly what the board's concern was?

40 MR SMARRELLI: Well, I'm not sure how to answer that. We certainly have – there may have been discussions, but since then – since the recommendations and reports have come in from the complaints, we've gone ahead and purchased and rectified some of the issues that were not being met including the acquisition of cameras for purposes of taking photographs of wounds. Yes, I think that's where - - -

MR ROZEN: No, I think we might still be at cross-purposes.

MR SMARRELLI: Okay.

5 MR ROZEN: I understand - - -

MR SMARRELLI: Start again.

10 MR ROZEN: I understand that, as we speak now, changes have been made and implemented which involve regular photographing of wounds. Understand that. It's also the case that that didn't happen in the Santoro case.

MR SMARRELLI: Correct.

15 MR ROZEN: Yes.

MR SMARRELLI: Once we became aware, yes.

20 MR ROZEN: Yes. As I read the minutes of the board meetings, a concern the board had is that the information provided to the Royal Commission would suggest that that initiative had been introduced earlier than this year, that is, the weekly photographing of wounds, was a misleading impression. That was the concern the board had with the submission that had been provided.

25 MR SMARRELLI: Yes.

MR ROZEN: Yes.

30 MR SMARRELLI: Yes.

MR ROZEN: Excuse me. I want to ask you about the root cause analysis that has been commissioned by Assisi via the CEO. From the board's perspective, what are you hoping to learn from the root cause analysis?

35 MR SMARRELLI: Well we hope to learn exactly what we did that was wrong, or - - -

MR ROZEN: Yes.

40 MR SMARRELLI: - - - that we weren't aware of and to ensure that, once we do get the report, that we implement and recognise our shortcomings and to ensure that this type of incident or any incident, for that matter, occurs again. That is very important to us. Very important. Especially, I mean for any community, it's - - -

45 MR ROZEN: A matter that is a little difficult to follow, Mr Smarrelli, is why, in an organisation devoted to care where you've been on the board now for, what, more than 15 years, chairman for, what, the last seven - - -

MR SMARRELLI: Almost seven, yes.

MR ROZEN: Is that right? Why did it take this incident and the investigation by the Care and Quality Commission and the interests of this Royal Commission – why
5 did it take those external things to make you and the board realise there needed to be more of a focus on clinical care governance?

MR SMARRELLI: I – it's a difficult question to answer in many ways, but I can assure you that there is – no complacency on the part of the board. They are people
10 who recognise very highly and regarded very highly in their respective professions, and this is so foreign to us, and to answer your question, I don't – other than to say it has occurred, it's fallen through the net, so to speak and, yes, we are ultimately responsible for what's occurred. But for – that it took this time or this incident and the Royal Commission, probably.

15

MR ROZEN: No further questions of Mr Smarrelli.

COMMISSIONER BRIGGS: Just – might I ask, Mr Smarrelli, if you think it's common in boards of aged care facilities to not focus on clinical governance matters
20 at the committee level?

MR SMARRELLI: Could I have that question again, sorry.

COMMISSIONER BRIGGS: Do you think it's common amongst boards of aged
25 care facilities to not focus on clinical governance matters?

MR SMARRELLI: Again, that's a pretty difficult question, on the basis that my own personal experience at Assisi. I come – I come from a time when Assisi had a
30 managing committee of 26 people and I can assure you that there were amongst us two doctors and one pharmacist and that was probably the extent of any form of medical background, and it ran as a community operation, or board of people running the organisation. But then, as I said, we tried to improve on that within our own organisation but I can't speak for other organisations. But certainly our objective and paramount concerns are our residents. It forms part of my constant addresses to
35 residents and at meetings and that our number one and even our year books and reports refer to our residents as our very special - - -

COMMISSIONER BRIGGS: Why, then, were your compliance and monitoring arrangements through your finance and risk committee so poor that they failed to
40 pick up any number of both complaints and instances of substandard care that the new interim CEO has now identified to the Royal Commission?

MR SMARRELLI: Again, the answer to that, in recent times particularly, with the advent of recent new appointed board members it was something that even was the
45 subject of many discussions with the CEO at the time about these type of matters. And as I said earlier, our – the board is ultimately the paramount or the ultimate,

until the formation of the subcommittee on clinical governance, we were the people that – and we're reliant on what is fed back to us from – from the CEO below.

5 COMMISSIONER BRIGGS: Do you think there was a general attitude that it didn't really matter because the regulatory framework was so light on that you wouldn't be sanctioned anyway?

10 MR SMARRELLI: No, I wouldn't agree with that. Again, I repeat, the calibre of the people that sit on the board wouldn't allow for that to enter their own professional lives let alone where we are looking after 150 residents that we would consider that not to be of paramount importance.

15 COMMISSIONER BRIGGS: But the board did, in fact, sit on top of the case of – the case that we have discussed today and, indeed, another one and seemingly weren't aware of them. So something was clearly wrong in your clinical governance and, indeed, your corporate governance.

20 MR SMARRELLI: I accept that but having said that, there was an escalation of our concerns and which then ultimately led to the termination of the then CEO. We were recognising very rapidly and that was only a question of time and like the Easter break and things of that nature and availability of board members who were overseas on their respective employment jobs and we weren't able to convene earlier meetings but that certainly became a major concern for us as a board as we were getting – our reporting was not up to standard. And that's not to say that [REDACTED]
25 apologies, the former CEO, when he first came on board, his reporting procedures were – were an improvement on what we previously had. So I'm not totally - - -

30 COMMISSIONER BRIGGS: I hear what you are saying but it's interesting that, for the most part in the evidence we've heard today, there was one registered nurse on covering about 150 people for most of the time. I should have thought that the board might have been aware of that and might have found that to be lacking without it being pointed out by a new CEO.

35 MR SMARRELLI: But, no, that was also brought to the attention of the former CEO some time ago to the point where he, himself, then subsequently identified other issues and came back to us. But that was, I would say, somewhat late in the piece for him to then confirm some of the other issues that were – were prevailing at the time in the care - - -

40 COMMISSIONER BRIGGS: So the board raised this matter directly about the level of nursing coverage with the former CEO?

45 MR SMARRELLI: That and I would come back to the former CEO with matters where I'm getting complaints from resident families saying during the night that we haven't got X number of people available during the night, and, for instance, that was mentioned to the former CEO who then conducted his own investigation and then came back to the board and said he recognised that there was an issue that there were

staff members taking, for instance, a tea break all at the one time. And he then changed that – that routine. But it was only after we prompted where I had mentioned there were some issues with the residents’ families complaining.

5 COMMISSIONER BRIGGS: Thank you. Mr Rozen.

MS McLEOD: Can I just clarify one thing arising from, Commissioner Briggs, your questions. Mr Cohen’s evidence in his statement at paragraph 172 was that there was a minimum of one registered nurse for each unit.

10

COMMISSIONER BRIGGS: Thank you.

COMMISSIONER TRACEY: Anything arising?

15 MR ROZEN: There is one matter arising, I perhaps could just clarify that. The evidence of Mr Cohen is there was one registered nurse for the entire facility overnight. One per unit during the day. We’re both right. Can I just clarify one matter arising from the questions you’ve been asked and that is about the removal of the CEO by the board. The CEO was not removed because of a concern by the board
20 about the lack of care provided to Ms Santoro, was he?

MR SMARRELLI: No, that’s not correct. It was a combination of – ultimately when we became aware of the circumstances of the Santoro matter, going back even to the point where we spoke about my October discussions with him because I was of
25 the view that I hadn’t been informed even though he knew about the matter, possibly, and then because of the lack of detailed reporting. And the way in which the preparation for the submissions to the Royal Commission were undertaken from the moment it was announced, for instance, we had the head of our clinical governance committee now, over Christmas, keeping in contact with the former CEO to ensure
30 that we were on track. And that came out loud and clear throughout the period before filing our material on the 8th.

MR ROZEN: Yes. I’m not sure that you have answered my question, Mr Smarrelli. The board’s concern with the former CEO was not the lack of care; it was the lack
35 of reporting about the incident that was at the heart of the board’s concern with its former CEO.

MR SMARRELLI: Well, my understanding, and my view of it all, and including that of my fellow board members was that the Santoro matter was also an integral
40 part of what led to his demise.

MR ROZEN: Thank you. I’ve no further questions, Commissioners.

COMMISSIONER TRACEY: Yes, thank you. Thank you for your evidence, Mr Smarrelli. You are excused from further attendance before the Commission.
45

5 COMMISSIONER TRACEY: 10?

MR ROZEN: Yes.

MS McLEOD: Could I ask if that concludes the Assisi evidence and might we be excused?

10 COMMISSIONER TRACEY: Yes, certainly.

MS McLEOD: Thank you, Commissioner.

15 MR ROZEN: Just in relation to that, lest there be no misunderstanding, as I've discussed with my learned friend, we are not formally closing the case study in the sense that it's conceivable that there will be evidence given later in the Darwin hearings and potentially in the Cairns hearings by experts that might have some impact on the evidence that has been led today.

20 COMMISSIONER TRACEY: This will be drawn to Ms McLeod's instructors so she is not prejudiced by not being in the courtroom later this week or in Cairns next week.

25 MR ROZEN: Indeed. And that will certainly be done, sir. And can I just deal with one housekeeping matter before the Commission rises and that is just to clarify that the tender bundle which I tendered at the commencement of the case study today, which is exhibit 6 – someone will tell me –

30 COMMISSIONER TRACEY: 6-13.

MR ROZEN: 6-13, thank you Commissioner Tracey. I just want to clarify that includes both the documents that are in the tender bundle itself and the documents that are in the supplementary tender bundle. In other words, they are both part of the one exhibit. I think there are 38 in the supplementary tender bundle.

35 MR ROZEN: I'm hearing from behind me, 9 am tomorrow. But that has come as a surprise to me, too. But I am assuming there have been some discussions.

40 COMMISSIONER TRACEY: Well, we have got a lot of witnesses to hear tomorrow.

MR ROZEN: We certainly do.

45 COMMISSIONER TRACEY: I am not totally surprised. The Commission will adjourn until 9 am tomorrow morning.

MR ROZEN: If the Commission please.

MATTER ADJOURNED at 4.55 pm UNTIL THURSDAY, 11 JULY 2019

Index of Witness Events

ANAMARIA NG, AFFIRMED	P-3046
EXAMINATION-IN-CHIEF BY MR ROZEN	P-3046
THE WITNESS WITHDREW	P-3082
ERIC TIONG YEW TAY, AFFIRMED	P-3082
EXAMINATION-IN-CHIEF BY MR KNOWLES	P-3082
EXAMINATION BY MS McLEOD	P-3125
THE WITNESS WITHDREW	P-3133
PAUL STEPHEN COHEN, AFFIRMED	P-3134
EXAMINATION-IN-CHIEF BY MR ROZEN	P-3134
THE WITNESS WITHDREW	P-3170
DONATO SMARELLI, SWORN	P-3171
EXAMINATION-IN-CHIEF BY MR ROZEN	P-3171
THE WITNESS WITHDREW	P-3191

Index of Exhibits and MFIs

EXHIBIT #6-13 ASSISI TENDER BUNDLE	P-3044
EXHIBIT #6-14 WITNESS STATEMENT OF ROBERT KEITH BIRD DATED 27/06/2019 (WIT.0271.0001.0001) AND ITS IDENTIFIED ANNEXURES	P-3046
EXHIBIT #6-15 WITNESS STATEMENT OF ANAMARIA NG DATED 18/06/2019 (WIT.0169.0001.001)	P-3047
EXHIBIT #6-16 WITNESS STATEMENT OF ERIC TIONG YEW TAY DATED 02/07/2019 (WIT.0248.0001.0001) AND ITS IDENTIFIED ANNEXURES	P-3083
EXHIBIT #6-17 WITNESS STATEMENT OF PAUL STEPHEN COHEN DATED 01/07/2019, SUBJECT TO TWO AMENDMENTS (WIT.0258.0001.001)	P-3135
EXHIBIT #6-18 SUPPLEMENTARY WITNESS STATEMENT OF PAUL STEPHEN COHEN DATED 07/07/2019 (WIT.0258.0002.0001)	P-3136
EXHIBIT #6.19 WITNESS STATEMENT OF DONATO SMARRELLI DATED 07/07/2019 (WIT.0288.0001.0001) AND ITS IDENTIFIED ANNEXURES	P-3172

