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THE HONOURABLE T. PAGONE QC, Commissioner
MS L.J. BRIGGS AO, Commissioner

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

MELBOURNE

9.17 AM, TUESDAY, 15 OCTOBER 2019

Continued from 14.10.19

DAY 57

MR P. BOLSTER, counsel assisting, appears with MS Z. MAUD
MR G. KENNETT QC appears with MR B. DIGHTON for the Commonwealth of Australia
MR J. DICKIE appears for Ms Yvonne Henderson

MR BOLSTER: Commissioners, I appear with Ms Zoe Maud in relation to the next case study, which will take up the Commission's time for the rest of today's hearing. I understand there may be some other appearances.

COMMISSIONER PAGONE: Yes, Mr Bolster.

MR G. KENNETT QC: If the Commission pleases, I appear for the Commonwealth with MR DIGHTON.

COMMISSIONER PAGONE: Yes.

MR J. DICKIE: Commissioner, sorry about that. I appear for Ms Yvonne Henderson.

COMMISSIONER PAGONE: Yes. Thank you.

MR BOLSTER: Can I begin, Commissioners, by tendering the Menarock Life Greenway Gardens tender bundle.

COMMISSIONER PAGONE: Yes, well, the tender bundle then will be exhibit 11-8.

EXHIBIT #11-8 MENAROCK LIFE GREENWAY GARDENS TENDER BUNDLE

MR BOLSTER: I note for the record that directions have been made concerning the identification of a number of people connected to this case study. Those wishing to report on the events are required to familiarise themselves with those directions and to comply with them. Commissioners, Menarock Life is an approved provider of residential aged care that operates 13 facilities in New South Wales, Victoria and Tasmania. In April 2018, Menarock acquired three Victorian facilities: Camberwell Gardens, McGregor Gardens and Greenway Gardens which is located in Heathmont.

On 2 July 2018, the Aged Care Quality and Safety Commission carried out an assessment contact at Greenway Gardens and found it to be compliant with all standards – all 44 standards were compliant in July. By May 2019, that is, within 12 months of its acquisition, the provider was under sanction by the Department of Health. The sanctions followed from the failure of the facility to meet 21 of the 44 accreditation standards then in place and which was the result of a review audit carried out by the commission from 31 January to 5 February this year. At the time of that audit there were 44 residents in respect of 47 allocated places.

One resident, Mrs Giovanna Buda was in hospital at the time of the review for reasons that will soon become apparent. The facility itself comprises two sections on

two different levels: Jarrah, which is a lower care facility comprising 30 beds, and Blue Gum, a higher care facility comprising 17 beds. The sanctions were for a period of nine months ending in November 2019. They were in a relatively standard form that included restricting the payment of subsidies to the provider under part 3 of the Aged Care Act to existing recipients and revoking accreditation in the event that certain actions were not undertaken; that is, the appointment by 22 February of an adviser, at Menarock's expense, and secondly, the provision of an approved program of training for officers, employees and staff which had to be completed by 15 August 2019.

Of the 21 accreditation standards that were not met, this study will primarily focus on four: education and staff development, human resource management, clinical care, and skin care. All failures were demonstrated by evidence uncovered by the commission during the January and February review. More particularly, the failures were evident in the health outcomes of the residents themselves. In this case study we will be focusing on the outcomes of two residents, although many more were affected by what happened. Mrs Giovanna Buda, who I previously mentioned, and a Mr UG, which is a pseudonym which is to protect the interests of his family.

Mrs Buda, now 86 and residing elsewhere, entered the facility on 20 August 2018 for permanent care. She lived in Blue Gum in room 39. She suffered from Alzheimer's dementia with psychotic features together with a range of other ailments. For a period prior to 7 November 2018, Mrs Buda complained of pain and complained to her daughter that someone had twisted her leg when she was not getting dressed fast enough. Mrs Buda also complained of being slapped and having her hair pulled. On 7 November a nurse recorded that her left knee looked to be larger than the right knee. She was given Panadol on a PRN basis.

Her GP reviewed her that day, noted a swollen painful left ankle and referred her for X-ray. On 9 November, a physiotherapist reviewed her, noting that the knee was warm to touch and that the pain appeared to be stemming from the left hip. The notes indicate that questions were raised as to whether there was a dislocation of the hip or a flaring up of her established osteoarthritis. Later on the same day, a nurse recorded that Mrs Buda had a swollen leg from toes to hip with bruising apparent on knee and inner thigh. No mobile X-ray being available until the following Monday, an arrangement was made to convey Mrs Buda to hospital for further investigation.

A fractured left neck of femur was identified which will resonate with some evidence we heard in Sydney about the criticality of identifying that as a possible result of any fall in someone particularly with osteoarthritis. It was determined at the hospital, it was later determined, I'm sorry, I withdraw that. A review carried out by the facility concluded that Mrs Buda suffered the fracture in an undocumented fall that occurred on the morning of 4 November 2018. It was determined within the nursing home that a carer had found Mrs Buda, having fallen from her bed shortly before the commencement of the morning shift, and had informed the incoming carers of the matter at 7 am but there was no documentary record in any of the systems in place.

When Mrs Buda returned from hospital on 15 November, there was a sore on her sacrum. Her daughter pointed out the sore to staff and they told her that they would look after it. Following a subsequent inquiry, Mrs Buda's daughter was told that the sore had totally healed. Later she was told that the sore was weeping. When she observed her mother seated in a chair, resting on the wound, she asked staff why they had positioned her in that way. Clinical records show that on 20 November staff noted a broken pressure area resulting from pressure to her buttocks. A plan was put in place that involved cleaning the wound, packing it with Betadine gauze and foam dressing, weekly or as necessary with checks daily to ensure that the dressing was in place.

Wound evaluation documentation indicates that although the dressing was changed through December and into January, there is no indication with any clarity that the daily checks actually occurred. It was observed that although there were notes to the effect that the dressing had been changed, the wound had been dressed or the wound dressing replaced, there was no description of the wound progress. Photographs taken of the wound between 18 December and 26 January did not include measurement grids. The photos were not uplifted to the nursing home system.

The commission, when it reviewed the documentation, found that the 26 January photograph showed a significant wound deterioration and breakdown. If you could bring up, please, tab 145 of the bundle. Commissioners, this is the 46-page record of the evidence as found by the commission over their five-day inspection of the facility. I'm going to take you to three paragraphs in relation to their findings. If we could go please to page 1546 and the fourth dot point, if that could be brought up. On 27 January, a wound specialist was contacted and review was planned for 28 January 2019. An enrolled nurse wrote in progress notes:

> *Calling out and crying in pain. Was not looking well. Grey in appearance. General practitioner faxed re wound on sacral for review.*

On 28 January, a registered nurse wrote in progress notes:

> *Next of kin in attendance and agreed to call a locum doctor as the general practitioner was not available.*

Later the same day a locum reviewed Mrs Buda and noted family concerns about her being more lethargic than before. Following the locum discussions about wound management options Ms Buda's representative later requested Mrs Buda go to hospital for further investigation. At hospital, a class 4 pressure wound was identified. Mrs Buda was hospitalised for a considerable period of time. She then went into rehabilitative care and never returned to Greenway Gardens.

Mr UG entered Greenway Gardens in May 2017. He was moved to Blue Gum on 3 October and passed away there on 28 November. There were multiple issues with the treatment of Mr UG as found by the commission. First and foremost, a hidden camera was placed in his room by the family. The footage was provided to the

provider and to the commission and featured in the commission's investigation. The Royal Commission has obtained this footage. Counsel assisting propose to tender the collection of videos in due course, which I will do at the appropriate moment, but on the basis that it not be shown in the hearing or made public in any way. The provider has seen it. The Commonwealth has seen it. But the family do not want anyone else to see it.

Its effect is, however, summarised in the following extract from the Commission's investigations. If we could go, please, to page 1558 of tab 145. On 31 January – if you go to the last dot point, please, on that page, on page 1558. So this is the passage from both pages, Commissioners. So it's a summary of what was in the video. And you will see there, if I just read it out in a moment, the Commission staff viewed the video on 1 February. The video was taken between 14 September and 28 November and it shows, in summary, staff handling Mr UG roughly, instances of staff berating him, telling him to get his damn legs back into bed; saying:

> *I'm really getting tired of this. In and out of the bloody room. I'm sick to death of this.*

Saying:

> *I'm not a slave.*

Saying:

> *Stop wrecking the bed. I don't care. It's bloody 11 o'clock. Everyone is asleep and you keep getting up. I've got more important things to worry about than your feet. Don't talk to me anymore. It's time to go to bed.*

On other occasions staff swore at him in the terms shown there. Staff also spoke to him like a child:

> *Good man. Good boy. Good girl. Good girl. Good boy.*

Staff refused to assist him to the toilet:

> *No, you have got your big pad on.*

Staff telling him to stop moving when he has Parkinson's disease, saying:

> *For goodness sake, stop this fidgeting.*

Staff not giving him a drink on request, while saying they have gone to get some more but apparently not returning. Staff conversing about other staff over him while attending to his hygiene and completely ignoring him. Staff putting him to bed at 2.40 in the afternoon when he was clearly awake and telling them that he has to stay – and then telling him that he has to stay in bed for another hour. Staff not

explaining to him what they were there to assist him about. One incident recorded in the video deserves particular attention and it's not mentioned in that extract. It occurred on 6 November 2018 when a staff member sought to transfer Mr UG alone despite him being characterised as a two-person assist. If we could go to page, please, 1535. And the first three dots on 1535. If we could highlight – if that could come down quickly, please. I will need to read that Commissioners, because it hasn't been redacted. I will read it out:

> *Video footage provided to us by the approved provider shows on 22 November 2018 at 7.30 am –*

I ask Commissioners just to note the time, it will become apparent later –

> *one staff member extended Mr UG transfer although he was a two-person assist. The staff member put him into a stand-up lifting machine with support from a belt at the waist. Mr UG appeared to collapse and be unresponsive. The staff member lifted him up by the shirt to the bed, tapped his face, called his name, asked if he was all right. Commented that he was not right when he was unresponsive. Put him back to bed, changed his continence aid and turned him. No other staff attended to assess Mr UGs condition. At 9.06 pm –*

I'm at the second dot point –

> *… on the same day, the same staff member returned and, again, put him in the stand-up lifting machine while urging him to stand up. Mr UG could not stand up or hold on. With the exception of wound and nutrition assessment updates, staff made no progress notes of Mr UGs condition on 22 November. On 6 November 2018, Mr UGs progress notes at 11 pm by a registered nurse documented that staff reported Mr UG may have had a slight TIA this evening lasting only a few minutes. Unseen by RN who attended promptly when told. He was responsive when RN got to see him satisfactory. There were no observations taken and no notification to a general practitioner or family. Management said this casual nurse has now been terminated. The lifting incident on the 22nd occurred in the last week of Mr UGs life.*

There's one further matter about his care that requires attention. On 24 October, Mr UG – if there could be a direction that that not be published.

COMMISSIONER PAGONE: Yes.

MR BOLSTER: I do apologise.

COMMISSIONER PAGONE: That line ..... I direct that that not be published.

MR BOLSTER: It has been corrected on the feed, Commissioners. We are just pausing to check. Mr UG was seen by a doctor who put in place a palliative care regime and wrote up a number of palliative medications to be given, if needed.

Sadly, however, the palliative care plan was never activated, and he was not receiving palliative care at the time of his death. It must be emphasised that these matters were the tip of the iceberg. The care of numerous residents was inadequate, as the evidence record demonstrates. At the same time, it must also be emphasised that following a two-day assessment carried out in June, on 13 and 14 June, the Commission found that the provider, at that time, met each of the 21 expected outcomes that it had failed in February.

Further, by 4 July 2019, that is, before the nine-month sanction period came to an end, the Department of Health was persuaded to lift the sanctions imposed on Menarock. Commissioners, the first witness statement is the statement of Agatha whose surname is not to be published, although it is known to Commission staff. She is the daughter of Mrs Buda. So if WIT.0480.0001.0001 could be brought up. I tender that statement.

COMMISSIONER PAGONE: Yes, the statement of Agatha will be exhibit 11-9.

EXHIBIT #11-9 STATEMENT OF AGATHA (WIT.0480.0001.0001)

MR BOLSTER: I don't propose to read the entirety of the statement on to the record but there are, Commissioners, two paragraphs that I wish to take you to, to emphasise where Agatha has a view about the staffing situation, this being the workforce hearing. Paragraphs 48 and 49 on page 6:

> *During my mum's time at Greenway Gardens I noticed a lot of staff had left. I would visit every day, so I got to know the faces of the staff members and noticed that they weren't there towards the ends of Mum's time at Greenway Gardens. We were never told about anything. There wasn't good communication. Staff were regularly run off their feet. There were a number of other incidents where staff were unable to attend to Mum's essential needs due to insufficient staffing levels. On one particular occasion, Mum said that she needed to go to the toilet. Staff said they needed to use a lifting machine and when they finally came back with the machine and pulled her pants down, Mum soiled herself right there on the floor in her room as she could not wait any longer. Initially my mum was able to feed herself. Towards the end of her stay there, she needed total assistance at meal times.*
>
> *Mum also lost weight while at Greenway Gardens. I think this is because there were not enough staff to assist residents at meal times. The food would go cold and the staff would remove the meals as soon as the residents said they didn't want it. On one occasion, I found Mum had slid from her chair with her head hanging right over the chair and her legs right off. Staff said they could not lift Mum because they had to wait until another staff member returned from break for a two-person lift. I noticed that staff at Greenway Gardens discouraged Mum from walking. Mum ended up using a wheelchair most of the time.*

Commissioners, that's all I wish to say in terms of opening and Agatha's statement. Ms Maud will call the first witnesses, two of the daughters of Mr UG.

COMMISSIONER PAGONE: Yes, Ms Maud.

MS MAUD: Thank you Commissioners, I call Christine Lynch and Sandra Joy Nisi.

<CHRISTINE LYNCH, SWORN [9.42 am]

<SANDRA JOY NISI, SWORN [9.42 am]

COMMISSIONER PAGONE: Do feel free to sit down if you would be more comfortable. Ms Maud.

MS MAUD: Would you both just come forward so you are closer to the microphone. Thank you. Now, Ms Nisi, I will start with you. You have prepared to statement for the Royal Commission?

MS NISI: Yes.

MS MAUD: Do you have a copy of that there in front of you?

MS NISI: I do.

MS MAUD: Does it have the document ID in the top right-hand corner WIT.0539.0001.0001.

MS NISI: Yes.

MS MAUD: And that's the statement that you've prepared?

MS NISI: Yes.

MS MAUD: Have you had an opportunity to read it recently?

MS NISI: Yes.

MS MAUD: Are its contents true and correct?

MS NISI: Yes.

MS MAUD: Is there any changes that you wish to make to it?

MS NISI: No, but I could add a lot more but obviously I won't.

MS MAUD: We will get to that.

MS NISI: Yes.

COMMISSIONER PAGONE: That statement of Ms Nisi will be exhibit 11-10.

EXHIBIT #11-10 STATEMENT OF SANDRA JOY NISI (WIT.0539.0001.0001)

MS MAUD: Thank you. Now, starting with you, Mrs Nisi, I want to ask you some questions about your father. He was born in 1933.

MS NISI: Yes.

MS MAUD: Yes. And about 10 years ago he was diagnosed with Parkinson's disease; is that right?

MS NISI: Yes.

MS MAUD: At that time, was he living independently?

MS NISI: Yes.

MS MAUD: And about how long was he able to live independently for?

MS NISI: Until about five years ago, I guess.

MS MAUD: And where did he live then?

MS NISI: He lived with my sister. She had him at her place because she had plenty of room and my home wasn't really set up for an elderly person who was frail because it was all stairs and steps, so it seemed to be the best place for him at that time.

MS MAUD: And at some stage was there a need for him to move into residential care?

MS NISI: Yes, he fell in February, I can't think of the year now offhand, and broke his hip, and from then on he had mobility issues. In fact, he broke his hip twice, once before going to hospital and once while in hospital. And then his mobility was compromised as a result of that and also too with the progress of Parkinson's, he became incontinent and needed more care, specific care, you know, two people to look after him, and we couldn't provide that and we didn't feel that we could deal

with his incontinence problems or shower him so that the home was the best option for his needs.

MS MAUD: And so on 3 May 2017 he moved into permanent care at Greenway Gardens.

MS NISI: Yes.

MS MAUD: And when he first moved in there, how often would you visit him?

MS NISI: Three to four times a week.

MS MAUD: And Mrs Lynch, were you also visiting your father at that time?

MS LYNCH: Yes.

MS MAUD: And can you tell the Commission what his care needs at that time were; was he able to walk on his own?

MS NISI: Yes, he used a walking frame. He could walk on his own if you were either side of him to steady him, but his mobility became compromised quite quickly and, you know, he was using a walking frame and then right towards the end he went into a wheelchair.

MS MAUD: So was he able to get out of bed or out of a chair by himself when he first went into care?

MS NISI: No.

MS MAUD: He needed somebody to help him.

MS NISI: Yes.

MS MAUD: You said he was incontinent at that time.

MS NISI: Yes, when he went into the home he was incontinent, yes.

MS MAUD: What about eating, was he able to feed himself?

MS NISI: We bought a special fork for him with a very fat handle and – but with Parkinson's, because he shook, and some of the meals – a lot of the meals there that were provided weren't really suitable for him because soup wasn't a really good option for someone with Parkinson's and so, yes, he could feed himself a little bit but he dropped a lot of it down the front of him and at the start, the food was never – that was provided wasn't really suitable for his needs as far as, you know, a schnitzel when he couldn't cut it up, things like that weren't very suitable, but he managed with sort of soft food, mashed potatoes, those sorts of things.

He managed okay because he had this fat-handled fork but quite often when you went there at meal time, they hadn't provided that equipment for him to use and also, too, we brought a – I don't know what you call it but it was a scoop thing to put around the edge of the plate so that when he ran his knife or his fork along the plate, it would sort of help the food go onto the fork. But not – quite frequently they didn't use that. So he would often have the meal plonked in front of him and unless he had the fork to help him eat, the proper fork, he couldn't grip it.

MS MAUD: When he first went into care, he was in the area downstairs known as Jarrah; is that right?

MS NISI: Yes, yes.

MS LYNCH: Yes.

MS MAUD: There's about 30 residents in that area?

MS NISI: Yes.

MS LYNCH: Yes.

MS MAUD: When you would attend at meal time were there people who would sit with him and help him if he needed it?

MS NISI: I don't think so, no.

MS MAUD: When you visited your dad when he was living in Jarrah, were there occasions when he needed assistance?

MS NISI: Lots of times. He had upper dentures that needed to be fixed to his mouth with Polident and we made sure that there was plenty there. But quite frequently, this also added to the difficulties with him eating, is that they didn't put his dentures in place. And quite often I would say, "Where is Dad's teeth?" and they would say, "We will go and have a look for them" or something, or you would go there and they hadn't fixed them in his mouth and they would be on his chest or on the floor or under the table or somewhere. So that added to the difficulties with him eating. Also, too, he sometimes – because he dropped food down the front of him, he wasn't changed regularly and we had the incidents with the shaving.

Either he wasn't shaved and he would have two or three days growth, or one day I went in there and he had a bit chunk out of his cheek and a couple of chunks out of his chin because someone looked like they had attacked him with the razor blade. Then we had the incident with the toe. He had a sore toe.

MS LYNCH: Gout.

MS NISI: I took his sock off to have a look at what was going on and his toe was purple; it was about three times the size it should normally be. I called the nurse over and I said to the nurse "What's wrong with my father's toe?" and she said "Oh, we didn't notice that. Oh." And I said, "So when someone has showered him and/or dressed him nobody has noticed that his toe is three or four times the size?" and then I said, "Well, are you going to get a doctor to look at that?" and she said, "Yes, we will get the doctor in." Then about three days later when I went in, I said to them, "No one has rang me so what's happened about his toe?" And she said, "The doctor said he would get some tests done" and I said, "Well, when will that happen?" and that was the end of that story. So that toe issue was never resolved. It just resolved itself; apparently it was gout.

MS MAUD: Thank you. Then in September last year, 2018, is that when your father moved upstairs to the dementia ward?

MS NISI: We felt that the staffing was – there was more staff upstairs but, unfortunately, the people that needed care upstairs had higher needs. Therefore, although there seemed to be a few more staff up there, the people that were there, the residents, needed a lot more care and they were often people that needed two staff members to assist. And so especially with the feeding, often I went in on a Friday night after work and I would observe a staff member feeding two people with a spoon in either hand and that wasn't uncommon. So the staffing was probably better upstairs but there were higher needs patients.

MS MAUD: So when your father moved upstairs, was he mobile at that stage?

MS NISI: No.

MS LYNCH: No.

MS MAUD: So how would he - - -

MS NISI: He was pretty much bedridden. They did have him in a bucket, like, a bucket chair because he – unfortunately, they kept telling him not to try and stand up, but he had dementia, so he didn't really understand the whole process of, "Don't stand up. Stay where you are." So they put him into a bucket chair so he couldn't try and get up.

MS MAUD: So he would try, but, generally, he needed somebody to help him to get out of bed or out of a chair.

MS NISI: Yes. No, he couldn't do anything on his own in the two months that he was upstairs.

MS MAUD: Was the practice when he was in Blue Gum to have one or two people help your father when he needed to move?

MS NISI: Well, it should have been two but from watching the tapes, no, there weren't. So although he needed two people to do everything, we were often told when – if we went in and one Sunday night my husband and I went in about quarter to seven and Dad had been asking to go to the toilet, and we don't know how long he had been asking. And we went out to get some assistance and I kept getting told, "We're short staffed", and then I got told somebody had gone on their break; "We couldn't come – we can't take him to the toilet because we need two people and such and such is on their break, they won't be back for 15 minutes." And that went on for about three-quarters of an hour and then he soiled himself. And then I went out and spoke to him, two staff members came in with plastic gloves on, and said, "We've come here to take him to the toilet". I said, "Well, it's too bad. It's disgusting. You know, he has already soiled himself".

MS MAUD: At this time in 2018 when he was living in Blue Gum was he still feeding himself using the utensils that you mentioned?

MS NISI: No. No, he needed to be fed because he had trouble with swallowing, he had, you know, difficulty with food, so no.

MS MAUD: And were there people who were able to assist him with that?

MS NISI: Well, when I was there, I would feed him. When I wasn't there, I don't know what happened but my younger sister, she said she used to go in quite often in the morning and he would be sitting there looking at a bowl of porridge, and then someone would come along and say, "You're not hungry today," or, "Have you finished?" and whip the bowl of porridge away. Well, he had no way of eating it himself and no one had bothered to help him. And there were – on one morning there were two staff members who were the only two staff members there in the dining area and they were both having tea and toast at the bain-marie while however many residents sat there staring at their bowl of porridge.

MS MAUD: When you were there to help your dad eat his food how long would it take generally?

MS NISI: It could have been an hour. I have spent an hour there feeding him.

MS MAUD: And at around that time when he moved to Blue Gum, did you become aware of or did you develop concerns about your dad's safety?

MS NISI: Yes. Well, he had dementia, and he, you know, he would ramble about, you know, "I have to get the bus to go to work tomorrow" or, you know, "I built that building over there", things like that. But then amongst all that he would say, "That nurse slapped me" and then he would say about going to work and stuff like that and then he would say someone shook him.

So, for a few weeks, something odd is going on, one minute he is rambling about going to work, have to get up to work, "I've got to catch the bus" and stuff. And

then he would say out of nowhere that someone swore at him or they pushed him against the wall or they shook him and stuff like that. And we were really worried about what's going on here because that seemed like a legitimate thing to say amongst the ramble.

So that's why we decided to put the camera in the room and to see exactly for ourselves what was going on. And if you watch the tapes, if you have or not, I'm not sure, but you will see what was going on, exactly what he was saying: people grabbing his legs and throwing his legs up on the bed and saying, "Stop shaking. You're setting off the night alarm." He's got Parkinson's; that's what you do, especially when the medication starts to wear off because he used to have to have it every four hours during the day, but, of course, during the night, it would start to wear off. So, of course, he would shake and he would set the alarm off.

There was also another resident that wandered around the facility upstairs all the time and he would go into the room and stand on the sensor mats and set the alarm off which would enrage the carer who would, you know, race into the room and say, you know, "I'm sick of this, I'm coming into your room all the time" he would be asleep, you could see this on the tape that this other gentleman had stood on the sensor pad and had set the alarm off.

MS MAUD: And did you raise with anyone at the facility what you had seen in the video?

MS LYNCH: Yes.

MS NISI: Yes, we've shown – we've shown the manager.

MS LYNCH: The manager at the time in that facility.

MS MAUD: Who was the manager; do you recall?

MS LYNCH: Yvonne Henderson.

MS MAUD: Yes. And did you show her any of the footage.

MS NISI: Yes.

MS LYNCH: Our sister did.

MS MAUD: And what was the response?

MS NISI: Well, she was shocked and she was going to, you know, put things in place but they didn't seem to be put in place, not that we saw, things weren't put into place, it just seemed to go on.

MS MAUD: In November last year, did your father deteriorate?

MS NISI: Significantly.

MS LYNCH: Yes.

MS NISI: He was frail. He was just so thin, and yes. So he was in bed most of the time. But when he was – when he was awake we wanted him to be sitting up in the lounge room so that at least he could observe people walking around and things like that. Because if you went to his room and he was in the bed awake, and he is staring at the roof because it didn't even have the TV on. But I mean if he was sleepy, which some of the time he was, I guess that's okay to be in bed in your room. But if you're awake, you should be observing people walking around and perhaps someone says hello to you or, you know, things like that.

MS MAUD: Is that the care that your dad was given; was he being put into a common area?

MS NISI: Occasionally.

MS LYNCH: And sometimes when I would go there and I would say – and he'd be laying in bed and I would go and get a nurse or something and say, "Can you help me get him out of bed so we can get him in the lounge room or we want to take him for a walk outside?" "You're right."

MS MAUD: Would they help then?

MS LYNCH: Yes.

MS NISI: But they didn't really show much initiative.

MS LYNCH: Yes.

MS MAUD: I see. Did you have a conversation with anyone at the facility about whether your dad was going to need palliative care?

MS NISI: I had a call one Wednesday night, probably three weeks, maybe, before he passed away, to say that he – sorry.

MS MAUD: It's okay, take your time.

MS NISI: That he needed palliative care. I didn't know what that meant. And they said that they would start that process but we never got explained what that meant. And then nothing seemed to come about. So I – now when I look back, nobody explained to us that he was at the end of his life and what that meant and so he just was left.

MS MAUD: And did you see your dad the day before he passed away?

MS LYNCH: Yes.

MS NISI: I went in on Tuesday at lunchtime to feed him and I went into the dining area and I asked the staff, "Where is he?" and they said, "In his room." And so I went around there and he was laying – it was horrible, he was yellow and rattling, breathing but I didn't know that he was dying and nobody had told me, and so I wouldn't have gone home. And so they came around and tried to feed him and they were trying to pour sloppy stuff to his mouth and it wasn't going in. And so I was really, really upset and angry. So I went to the – see Yvonne and she had a sign on her door saying she was in a meeting or something or she wasn't there. So I told the girl on the counter because I was really angry, "I've reported you and I'm sick of this."

And so I stormed out, and then I spoke to my younger sister and she said he wasn't very well on the weekend. And then Wednesday morning, I had a phone call at 8.30 to say, "Oh, we are sorry to tell you this, but your father has passed away during the night." And they never rang during the night to say that, you know, he was deteriorating or anything. So we never had an opportunity to go in. And then she said when we asked "well, when did he die", they don't know. "Well, when was he last checked?" "We don't know."

I just find that really appalling that someone, you know, in the afternoon looked so horrible and there's nurses there that, you know, have seen death and they know that the end is approaching and haven't said anything. And then just ring you out of nowhere in the morning and say, "We're sorry. He passed away during the night."

MS MAUD: Thank you, Mrs Nisi. And your father passed away on 28 November.

MS LYNCH: We think.

MS MAUD: Yes.

MS LYNCH: We're not 100 per cent sure. It could have been the 27th during the night. It could have been the 28th.

MS MAUD: And did you raise concerns with the Commission about the care that he was receiving?

MS LYNCH: Yes. I put a complaint in. I had actually spoken to Yvonne and I asked her – I said, "Why didn't you do – I need to know why you didn't do anything?" and all that. And she said, "I couldn't do anything," blah, blah, and all that. She said – and she said – well, she said, "I reported it to the CEO all what was happening," and I thought, "Oh, CEO – who's that?" And she said Brendan Coulton. So what I did was, I rang Brendan Coulton up and I had, like, to say what was happening there and stuff like that, and he seemed very nice, and etcetera.

And then I told him there was a CCTV camera. Apparently, he had already seen the footage, and then he just wrote an email and said, "Do you know –" basically, this is straight – "you know you're breaking the law by using that camera?" and blah. He was more interested in our usage of the camera than what happened. And then he said, "It's 14 December. You've got to understand that we need a break for Christmas, and that on 15 January we're going to come back and then we will look into this."

But, in the meantime, the mandatory reporting, I also brought that up with him. I said, "You know that nurse that assaulted Dad, did you mandatory report her?" And he said, "You know, hiring staff, you don't know, you know?" blah, blah. And I said, "Well, I run an accounting practice. I do hire staff. How hard it is to get rid of them." And then he mandatory reported that assault on 28 December which the assault happened in, I think, in the September. Because I said, "If you don't do it, I'm going to do it."

MS MAUD: Thank you. Thank you both very much for your evidence. Commissioners, may they be excused?

COMMISSIONER PAGONE: Ms Nisi and Ms Lynch, thank you very much for coming and telling us all that. I can only – I can see how it still upsets you and I can well understand that. It's very important that the Commission hears these stories. You have been very brave in coming and thank you very much. Feel free to leave.

MS LYNCH: Thank you.

MS NISI: Thank you.

<THE WITNESSES WITHDREW [10.05 am]

MS MAUD: Commissioners, the next witness is Yvonne Henderson. Whilst Ms Henderson is coming up, might her statement which is WIT.0450.0001.0001, be brought up.

<YVONNE HENDERSON, SWORN [10.05 am]

<EXAMINATION BY MR BOLSTER

MR BOLSTER: Please have a seat, Ms Henderson. Do you see in front of you a screen which has a copy of your statement, which you signed yesterday.

MS HENDERSON: Yes.

MR BOLSTER: Do you wish to make any amendments to that statement?

MS HENDERSON: No.

MR BOLSTER: Are its contents true and correct to the best of your knowledge and belief?

MS HENDERSON: Yes.

MR BOLSTER: I tender Ms Henderson's statement.

COMMISSIONER PAGONE: Yes, Ms Henderson's statement will be exhibit 11-11.

EXHIBIT #11-11 STATEMENT OF YVONNE HENDERSON (WIT.0450.0001.0001)

MR BOLSTER: Ms Henderson, you were the Director of Nursing at Greenway Gardens from around April of last year; correct?

MS HENDERSON: Yes, the end of April.

MR BOLSTER: And you ceased being the Director of Nursing on about 15 January this year.

MS HENDERSON: 14 January.

MR BOLSTER: I want to ask you about the situation in relation to staffing at Greenway Gardens throughout 2018. There was an ACFI coordinator in place at the time when you commenced as Director of Nursing; correct?

MS HENDERSON: That's correct.

MR BOLSTER: What was the name of the ACFI coordinator?

MS HENDERSON: That person's name was Julie Rumney.

MR BOLSTER: Okay. And was there a clinical care manager employed at that time as well?

MS HENDERSON: Not in a permanent position. There was a registered nurse who was acting in the position.

MR BOLSTER: Okay. And did one of them leave?

MS HENDERSON: You mean in the permanent role?

MR BOLSTER: Yes.

MS HENDERSON: The situation was such that there was a person who was the acting person because the position was vacant. And we didn't actually recruit to the position because due to the – due to the restructure that was happening within the company, within Menarock, Julie Rumney was going to become the care coordinator.

MR BOLSTER: At the time Julie Rumney was the clinical care manager how many days a week was she working?

MS HENDERSON: She was working three days a week.

MR BOLSTER: At the start?

MS HENDERSON: Yes.

MR BOLSTER: And that was as a clinical care worker.

MS HENDERSON: As a clinical care coordinator.

MR BOLSTER: And that was reporting to you.

MS HENDERSON: Yes.

MR BOLSTER: Were you delivering clinical care on the floor at Greenway Gardens at that time?

MS HENDERSON: That wasn't my direct role.

MR BOLSTER: All right. Was three days a week sufficient for her to complete her duties as a clinical care manager at that time?

MS HENDERSON: No.

MR BOLSTER: What other job was she given after your ACFI coordinator left?

MS HENDERSON: She was performing the role of an ACFI coordinator within her duties.

MR BOLSTER: How many days a week out of the three days a week that she worked there was she performing ACFI duties?

MS HENDERSON: I would suggest that 50 per cent of her time was taken up gathering documentation and information for ACFI to provide, to put together ACFI documentation for funding.

MR BOLSTER: Now, I want to show you a document. Do we have – we have a bundle of three roster reviews. This may assist, Commissioners. The print is very small, so on the screen is not going to help you very much and we will be comparing the three of them and if we have the – I think we have a bundle for each of the Commissioners and for each witness. So you should have in front of you there, Ms Henderson, three very similar documents that are called roster reviews.

MS HENDERSON: Yes.

MR BOLSTER: Can we look at the first one which should have the handwriting, tab 307, on it.

MS HENDERSON: Yes.

MR BOLSTER: And you will see there's some handwriting at the top.

MS HENDERSON: Yes.

MR BOLSTER: Is that yours?

MS HENDERSON: Yes, it is.

MR BOLSTER: And it says "Brendan" on the top left.

MS HENDERSON: Yes.

MR BOLSTER: Is that Mr Coulton?

MS HENDERSON: Yes.

MR BOLSTER: Did he give you this?

MS HENDERSON: Yes.

MR BOLSTER: When did he give you this?

MS HENDERSON: It was sent attached to an email document. These documents were attached to the email for me to print off and they were given – they were the current hours at the time when I joined Menarock and were given as part of the roster review.

MR BOLSTER: If I could just ask you to look at the – you see the green box at the top left.

MS HENDERSON: Yes.

MR BOLSTER: And you will see CCC.

MS HENDERSON: Yes, clinical care coordinator.

MR BOLSTER: You go over to the right.

MS HENDERSON: Yes.

MR BOLSTER: And you will see days per fortnight – 10.

MS HENDERSON: That's correct.

MR BOLSTER: Can I note for the record that at the bottom right-hand corner of the page there's a note, "Received June 2018".

MS HENDERSON: That's correct.

MR BOLSTER: All right. If we could go over the page, please, to tab 306 and you will see this has a heading Proposed Hours Post Re-Structure.

MS HENDERSON: That's correct.

MR BOLSTER: Was this part of a bundle that he gave in you in June 2018?

MS HENDERSON: There were two documents that were attached to an email.

MR BOLSTER: Right. And if you note the clinical care coordinator role has changed, hasn't it?

MS HENDERSON: That's correct.

MR BOLSTER: So it has gone down, if you go to the days per fortnight column, you see that it's now six days a fortnight.

MS HENDERSON: Correct.

MR BOLSTER: Were you work there when it was 10 days a fortnight?

MS HENDERSON: No, I had just come on board. The person who had been the care coordinator had already left. I was advised by the group manager that I was initially reporting to that she did not wish to continue with the new ownership, so she had left. So I didn't get to work with that lady. And the registered nurse was acting in the role for four days a week.

MR BOLSTER: So let me ask you this: you weren't there when the clinical care manager was doing five days a week - - -

MS HENDERSON: No.

MR BOLSTER: - - - as the clinical care manager.

MS HENDERSON: No, and I did ask about that because obviously that was my understanding that there had been five initially but that wasn't the case - - -

MR BOLSTER: But after you - - -

MS HENDERSON: - - - moving forward.

MR BOLSTER: Sorry, I didn't mean to speak over you.

MS HENDERSON: Sorry.

MR BOLSTER: After you were there, her role was reduced to three hours a week.

MS HENDERSON: To three – to three days a week.

MR BOLSTER: And then the role of ACFI was added to her role; correct?

MS HENDERSON: Yes.

MR BOLSTER: All right. From your experience, what role does a clinical care coordinator have - - -

MS HENDERSON: My - - -

MR BOLSTER: - - - in a facility such as this?

MS HENDERSON: My experience is that their role is to oversee the daily care within the facility, to ensure that care plans are updated, that everything that is happening in relation to care is reported and documented appropriately, that referrals are followed up, that wound care is managed effectively. Yes, and to make sure that care staff are caring for residents as they should be. Where it's documented that they want one to assist, or two to assist, they should be ensuring that this is happening. If it's not happening, then they should be reporting issues back to me as a DON.

MR BOLSTER: Could you please bring up tab 308 and the first page of that tab, which is an email. That should be redacted. Can you see that email in front of you?

MS HENDERSON: Yes.

MR BOLSTER: You are familiar with that?

MS HENDERSON: Yes.

MR BOLSTER: So this, I want to suggest to you, email was sent to you by Ms van den Berg in August.

MS HENDERSON: Yes.

MR BOLSTER: And it attached the document that we were just looking at that had six clinical care coordinator hours; that is, tab 308. And if we just scroll through a couple of pages, you will see that.

MS HENDERSON: Six days.

MR BOLSTER: Yes, six days.

MS HENDERSON: Not six hours.

MR BOLSTER: Now, in August, what role did Ms van den Berg have in talking about a roster review with you?

MS HENDERSON: Okay. Ms van den Berg was my Group Operations Manager.

MR BOLSTER: Yes.

MS HENDERSON: So she was my first port of call. So if there were any concerns or matters pertaining to Greenway, she was my direct report.

MR BOLSTER: Now, were you and she discussing a staffing restructure at that time?

MS HENDERSON: Yes, we were.

MR BOLSTER: And why were you doing that?

MS HENDERSON: Because we were going to introduce Menarock's model of care which was what was happening and ongoing throughout all of their facilities and the staffing levels were based on the size of the facility, on the bed numbers at the facility.

MR BOLSTER: Had that process started in June 2018?

MS HENDERSON: It had, indeed.

MR BOLSTER: Can I ask you to look, please, at tab 304 of the tender bundle. Do you recall receiving an email from Mr – no, if you have a look at the, just at the screen.

MS HENDERSON: Sorry.

MR BOLSTER: See there an email from Mr Coulton to you of 22 June 2018.

MS HENDERSON: Yes.

MR BOLSTER: Not long after you commenced. Did you discuss with Mr Coulton what he wanted to achieve out of this roster restructure?

MS HENDERSON: My considerations weren't taken – weren't heard.

MR BOLSTER: No, if you could just please listen to my question.

MS HENDERSON: Sorry.

MR BOLSTER: Did you discuss that issue with him?

MS HENDERSON: Yes, I discussed rosters and the restructure with him.

MR BOLSTER: What did he tell you?

MS HENDERSON: That the budget and roster and staffing levels would be applied as I was advised by head office.

MR BOLSTER: And what did you understand that to mean?

MS HENDERSON: What I understood that to mean was that I would be told what the staffing levels would be and I would operate within those staffing levels.

MR BOLSTER: Were you familiar with the Gold Care system, that is Gold Care because it's the – was the name of the previous provider?

MS HENDERSON: I was familiar with Gold Age because - - -

MR BOLSTER: Gold Age; I'm sorry.

MS HENDERSON: That was the system that was in place when I went to work there.

MR BOLSTER: All right. And how did the Gold Age differ from what Mr Coulton was directing you to implement in the second half of 2018?

MS HENDERSON: The staffing levels that were in place when I went there were the staffing levels that were imposed following a restructure that had occurred the previous year under Gold Age. Under the new structure, the care hours would have been reduced again. Not the care hours on the floor in terms of PCA; they would

remain the same, but senior leadership as in care coordinator, ACFI were being reduced.

MR BOLSTER: So the move from 10 hours of a totally focused clinical care coordinator to three hours with half the time doing ACFI was the most significant change, was it?

MS HENDERSON: Yes, huge change.

MR BOLSTER: What effect did that change have at Menarock or Greenway Gardens as 2018 drew to a close?

MS HENDERSON: In my opinion I believe that it meant that the care coordinator was not able to spend enough time on the floor supervising what was happening and observing what was happening. And it meant that she wasn't able to follow up effectively wound care, oversee what was happening generally day-to-day.

MR BOLSTER: Now, you mentioned Julie Rumney who was the person put into the care role in around June or July; is that correct?

MS HENDERSON: July. Yes, mid-July.

MR BOLSTER: And how long did she remain in that role?

MS HENDERSON: She only stayed for a few weeks.

MR BOLSTER: And what happened after that?

MS HENDERSON: After that, the RN stepped back up into the role for three days until we recruited again.

MR BOLSTER: Which RN was that?

MS HENDERSON: That RN was Darryl – gosh, I'm trying to remember the surname, I do apologise. I can't recall the surname at the moment.

MR BOLSTER: That doesn't matter. It was one of the nursing staff.

MS HENDERSON: One of the registered nurses that – a permanent staff member at the facility.

MR BOLSTER: Did that create a hole in roster?

MS HENDERSON: It did, and her shifts were back-filled with a casual RN.

MR BOLSTER: So – and how long did it take you to recruit a permanent clinical care consultant?

MS HENDERSON: She came into the role – it probably took about six to eight weeks.

MR BOLSTER: Now - - -

MS HENDERSON: I think.

MR BOLSTER: Did you have concerns about the level of care in the facility as the year moved into August, September, October?

MS HENDERSON: Yes.

MR BOLSTER: What did you do about it?

MS HENDERSON: I spoke to my group manager and I also - - -

MR BOLSTER: Which group manager?

MS HENDERSON: My group manager was Ms van den Berg.

MR BOLSTER: How often did you speak to her?

MS HENDERSON: I spoke to her regularly. A lot of her time was spent in Tasmania at one of the other sites. And I would speak to her regularly on the telephone. We would email correspondence.

MR BOLSTER: How regular is regular?

MS HENDERSON: Twice a week. If she wasn't going to be in Melbourne, she always touched base with me on a Friday and we would have an update and I always looked forward to those calls because if I had any concerns, I could speak to her.

MR BOLSTER: Okay. What concerns did you relay to her?

MS HENDERSON: Concerns about staffing. Obviously, we had a lot of vacant positions that weren't filled and because of the restructure, I wasn't allowed to recruit to permanent – those permanent staff into those vacant positions because the restructure was still ongoing.

MR BOLSTER: And let me ask you this: how did you manage the roster yourself during that period?

MS HENDERSON: During that period, I – the actual roster was just a document that rolled off the – it was electronic document that came off the system that was in place. But that didn't identify who was on annual leave or what the actual vacant shifts were.

MR BOLSTER: Let me bring up a document for you to have a look at, please. If we could go to tab 2 of the tender bundle and if we could, please, go to page 0241. If that could be highlighted. 0241, I think that's – I was after a different page. In that document, if we could go, please, down because I've got the page number cut off on mine. If we could go to page 51 inside the document. Thank you, Operator. So that should be – no, if we could go to page 51. So the date is 3 September 2018 which I have on page 51 of the PDF. My right-hand column, for the benefit of the operator, is cut off on Lexel. Yes, we have that. You can see that. See that roster?

MS HENDERSON: Yes.

MR BOLSTER: I want you to assume that that was provided in answer to a notice to produce by Menarock Life as being the roster for Greenway Gardens for a period well into – commencing basically the whole of 2018 and into 2019. Are you familiar with that form of roster?

MS HENDERSON: No.

MR BOLSTER: You've seen documents that look like it with the blue RN division 1; correct?

MS HENDERSON: Not coloured.

MR BOLSTER: All right. Well - - -

MS HENDERSON: I haven't seen a coloured print-out document. I used to be given a black and white document. From – what this is suggestive to me of is staff who had permanent shifts.

MR BOLSTER: We will just come back to that in a minute. If we could have brought up underneath it, please, tab 299. Tab 299. Thank you. So is it possible to put them perhaps one under the other? Thank you very much. Now, the top document is a document you produced to the Commission yesterday.

MS HENDERSON: Yes. That's correct.

MR BOLSTER: And the bottom document is a document that was produced by Menarock in answer to a notice.

MS HENDERSON: Yes. Yes.

MR BOLSTER: You will notice there's a couple of differences.

MS HENDERSON: That's correct.

MR BOLSTER: Firstly, the document of yours, although it covers 3 September, is actually dated 2 July 2018.

MS HENDERSON: Yes.

MR BOLSTER: Which you can see at the bottom of the page. And it includes Julie Rumney as the ACFI coordinator.

MS HENDERSON: Yes.

MR BOLSTER: You see that. That handwriting is yours?

MS HENDERSON: That's my handwriting, yes.

MR BOLSTER: And that – when did you make that note on that document?

MS HENDERSON: I made that note on the document when I was doing roster review information.

MR BOLSTER: So back in 2018, when you were actively doing the roster?

MS HENDERSON: Yes – well, no, that was just when we were looking at review. So it would have been around – yes, it would have been between July and September.

MR BOLSTER: All right. Now, you will see on the bottom document there's a blacking out of the RN division 1 admin.

MS HENDERSON: Yes.

MR BOLSTER: How do you account for the blacking out in the system at that time? What does that mean to us looking at it?

MS HENDERSON: Well, comparing that to the top one would mean that that's the ACFI role. If Julie Runney's six – five days a fortnight that were initially there is that those were the hours that were the ACFI role.

MR BOLSTER: Yes.

MS HENDERSON: They were - - -

MR BOLSTER: All right. Looking down at the second document, at the bottom of the screen, that is the document produced by Menarock. You will see that you are listed there in an administrative role. Was that consistent throughout the time you were there?

MS HENDERSON: I can't say I had really taken a great deal of notice of it, but as I – even I'm a registered nurse division 1, my role is pretty much management.

MR BOLSTER: How much of your time, on average, would you have spent attending to care matters at Greenway Gardens particularly in October, November, December?

MS HENDERSON: Look, probably 18, 20 hours a week - - -

MR BOLSTER: Right.

MS HENDERSON: - - - in terms of review and that would be in discussion with my care coordinator and RN.

MR BOLSTER: And how much of that was associated with ACFI related work?

MS HENDERSON: Probably 10 per cent of that. I would get requests for documentation and if I didn't provide it fairly quickly, the care coordinator would be chased for it, to produce it. And if they didn't get it from her, then the person would be ringing the RN on shift to provide whatever documentation because the ACFI person was also under tremendous pressure to produce her work and she was one person managing a number of sites.

MR BOLSTER: So when it came to you actually doing the rosters yourself, you didn't use the Menarock system?

MS HENDERSON: Well, no, because this doesn't give me any information other than tells me permanent staff. It doesn't tell me what the vacant shifts are, who is on annual leave. So I put together a roster that was a four-week roster that I could post on the staff notice board, so that staff could book themselves in four weeks ahead because you can't do that with this system.

MR BOLSTER: All right. And let me ask you about the Menarock system. Were you ever given training in how to operate that system?

MS HENDERSON: No.

MR BOLSTER: How did those documents get to you in the ordinary course?

MS HENDERSON: I would ask the admin person to print this off if I wanted access to any changes, because I – this data, the permanent staffing, to my knowledge, was added at head office level. When people were brought on board as new staff members, that data was entered at head office for payroll purposes.

MR BOLSTER: If we could have a look, please, at tab 309, is that familiar to you?

MS HENDERSON: Yes.

MR BOLSTER: And what's that?

MS HENDERSON: That's sort of my toolbox working roster.

MR BOLSTER: So is that the - - -

MS HENDERSON: That's how I worked out who was on leave. So I would identify on this roster who was on leave. I also identified on this roster what the permanent vacancies were, too, so that when I was allowed to recruit in terms – given the okay to recruit, I knew exactly what permanent vacancies were available.

MR BOLSTER: And why did you use your own system and not the Menarock system?

MS HENDERSON: Because I didn't have access to the Menarock system. It doesn't identify what the permanent vacancies are. So to me this was an easier working roster to follow. The other one was very difficult. What that merely did was it printed off a daily sheet and it would identify which staff were supposed to be in Jarrah, which staff would be in Blue Gum and beyond that it didn't tell me anything.

MR BOLSTER: All right. If we could bring those down and we could go back to tab 2 at the last page that it was on and if we could just turn, please, if we could go forward one page, the next page. Yes. If we could highlight, please, the endorsed enrolled nurses' rows. You see there's a name Wiggins under the heading of Endorsed Enrolled Nurse.

MS HENDERSON: Yes.

MR BOLSTER: Was that person an enrolled nurse?

MS HENDERSON: No.

MR BOLSTER: What qualification did that person have?

MS HENDERSON: That person is a personal care worker cert IV who is medication competent.

MR BOLSTER: Let me make this clear, if we could go back to the broader roster, if we could back to just the whole document, please. That's the roster for Blue Gum for a fortnight; correct?

MS HENDERSON: That's what it says.

MR BOLSTER: And Blue Gum is a 17-bed high-care facility; correct?

MS HENDERSON: Yes.

MR BOLSTER: And you've got a clinical care manager who is there three days a week and you don't have a registered nurse on duty for Blue Gum at any time.

MS HENDERSON: There's an endorsed enrolled nurse on the PM shift, which is the 4-to-10 shift.

MR BOLSTER: Yes, but you don't have a registered nurse on; that's my point.

MS HENDERSON: Not an RN division 1.

MR BOLSTER: Why was that?

MS HENDERSON: Not actually on Blue Gum. There was one on for the facility, one RN division 1 who, for example, in the afternoon shift who would be in charge of the facility.

MR BOLSTER: All right. If we could go then down to the Jarrah, which should be either one or two pages on. Thank you. You see there in black for that period, in the morning shift, there was – the black would suggest that there's no one on at that time.

MS HENDERSON: That's correct, apart from the care coordinator.

MR BOLSTER: So in the morning, the only person at Greenway Gardens who was a registered nurse was the clinical care manager whose time was spent doing ACFI; correct?

MS HENDERSON: The majority of it, yes.

MR BOLSTER: And in Blue Gum, in the morning, there wasn't even an enrolled nurse to deal with 17 high-need patients.

MS HENDERSON: No.

MR BOLSTER: And if the clinical care manager wasn't there, there was no nurse there.

MS HENDERSON: There was only – I was the RN1 on site.

MR BOLSTER: That's you.

MS HENDERSON: Yes.

MR BOLSTER: What's your view of the adequacy of that cohort of staff for those residents?

MS HENDERSON: Inadequate. Totally inadequate.

MR BOLSTER: Why didn't something get done?

MS HENDERSON: It was discussed, and I tried to increase the staffing levels, particularly up on Blue Gum because it was a concern, the majority of the residents are two to assist and I was told what the staffing levels would be. I did have discussions with Ms van den Berg and was advised about the introduction of a tenancy shift to the facility, which could be utilised where needed. But, again, that shift is used based on bed occupancy.

MR BOLSTER: That shift was a 4 o'clock until 8 o'clock shift.

MS HENDERSON: That's correct.

MR BOLSTER: On an afternoon in Jarrah.

MS HENDERSON: That's correct.

MR BOLSTER: And was it ever implemented at any time you were there?

MS HENDERSON: No, it was not.

MR BOLSTER: What difference would it have made if you had, for example, shifted your enrolled nurse from Jarrah in the afternoons to the morning shift in Blue Gum?

MS HENDERSON: Well, with the restructure process that was in place, the plan was to put – endorse – an enrolled nurse on the morning shift and an enrolled nurse on the evening shift would were based on that unit and that was what I pushed for. And it was also a part of the Menarock model to introduce EENs for medications.

MR BOLSTER: Were you aware of the growing acuity of the residents during 2018 as the year progressed?

MS HENDERSON: Sorry; I don't know.

MR BOLSTER: The growing acuity. Put it another way. Was the ACFI assessment of your residents going up or going down in 2018?

MS HENDERSON: To my understanding, it – it wasn't reaching as much as it was hoped it would.

MR BOLSTER: Is that another way of saying that the money that was coming in was not what was hoped?

MS HENDERSON: What was hoped for.

MR BOLSTER: But the need was still going up, wasn't it? The patient need was going up?

MS HENDERSON: Absolutely. Absolutely it was but it – sorry, may I make a comment?

MR BOLSTER: Yes, please.

MS HENDERSON: It's very hard to – you know, we're required to do the documentation for ACFI in order to be able to achieve the highest in funding. Staff are trying to provide care under very difficult circumstances and yet we're expected to do the paperwork. If we don't do the paperwork, staff don't do the paperwork, they're in trouble. Where is our priority: our priority should always be with the resident and the documentation comes after.

MR BOLSTER: Were you given directions about how you should approach the ACFI assessment process?

MS HENDERSON: Only in that when assessments are carried out, everything has to be documented. And often we have to – obviously we're looking to identify the maximum, to maximise funding. To me, you – when you do an assessment, you do an honest assessment. It should never be – you know, it should always be based honestly on what the residents' needs are. And with, you know, within aged care everybody feels that they never get enough money to care for the residents.

MR BOLSTER: I need to - - -

MS HENDERSON: Sorry, may I just finish. And if you don't get the funding, you don't get the staff: simple. If we get maximum funding then we can put in more staff.

MR BOLSTER: Did you understand the Menarock model to be dependent upon anything other than the number of beds and the degree to which they are occupied?

MS HENDERSON: Correct.

MR BOLSTER: Did the Menarock model, as far as you understand it, have any relationship to the needs of your residents?

MS HENDERSON: I would say partially. I wouldn't say - - -

MR BOLSTER: How?

MS HENDERSON: Well, only in that we were able to meet basic needs of all residents as in daily personally showering and assisted basic care. But for those who needed, you know, additional care, for those who were with high care needs and for me particularly up in Blue Gum in dementia who needed more intensive care, we

didn't have appropriate staffing to care for them appropriately, not in my – my feelings.

MR BOLSTER: Let me ask you about the needs of the residents. In the 17 beds in Blue Gum, what percentage were two-person assists?

MS HENDERSON: I would say probably the majority.

MR BOLSTER: What about for Jarrah, the 30 in Jarrah?

MS HENDERSON: Jarrah probably two-thirds. If you actually looked at their care plans, it would be a mixture of one to assist and two to assist and that were varying degrees.

MR BOLSTER: What would you say to the suggestion that for both Blue Gum and Jarrah, and there will be some evidence about this, that there were only one or two or maybe even at the most three people that were two-person assist?

MS HENDERSON: I would disagree. Absolutely disagree.

MR BOLSTER: All right. Let me ask you about Mr UG. That's the - - -

MS HENDERSON: Yes.

MR BOLSTER: You know who I'm talking about?

MS HENDERSON: Yes, I do.

MR BOLSTER: When you saw the video, what was your reaction?

MS HENDERSON: I was very upset, and distressed. And, in fact, when UF showed me – gave me the USB stick to read, I just cried. I couldn't believe that that was going on in the facility, and in the facility that I was managing.

MR BOLSTER: What did you do about it inside the organisation?

MS HENDERSON: I immediately contacted both Ms van den Berg and Mr Coulton.

MR BOLSTER: What did you say?

MS HENDERSON: I told them that - - -

MR BOLSTER: Did you speak to them together?

MS HENDERSON: Well, my first contact, my first knowledge about it was that the Saturday before I saw UF, I met with UF with the USB stick was that she had spoken

to one of the staff that was on duty and the staff member rang me at home on the weekend and told me that she had spoken to her and what she had said and so I rang her back and told her what I had been advised, and we talked on the phone and we arranged to meet. And when she next came into the facility, it was on the Monday and she brought the USB stick in to show me. And we looked at that together and I was just so upset by what I saw and we talked about it. And I immediately reported it to Fiona and to Mr Coulton.

MR BOLSTER: Did you speak to Fiona and Mr Coulton together?

MS HENDERSON: No, separately.

MR BOLSTER: Who did you speak to first?

MS HENDERSON: I spoke to Brendan first because I knew Fiona was in Tasmania and it wasn't easy to speak to her straightaway, and he was here in Melbourne.

MR BOLSTER: What did you say to him?

MS HENDERSON: I told him that I had been advised – well, in fact, to be quite honest with you, if I may just refer back, when I got the call on the weekend from the staff member advising me about the USB, I actually called him over the weekend and told him that I had been advised by a staff member that there had been some footage recorded – excuse me – and that I had arranged to meet with this person, with UF, Mr UGs daughter who I had spoken to on many occasions. He said that I should go ahead and meet her and advise him when I had spoken to her.

So, as I was saying, I met with her. Saw the footage. And to be honest, we didn't watch very much together. It was too hard to watch. It was too distressing to watch. I contacted Mr Coulton and advised him that UF had given me the USB stick for him to view. And it was a couple of days after that that I handed him the stick because he wasn't available and we looked at it and he – I said to him, "What are we going to do about this?" UF had indicated that she didn't want - - -

MR BOLSTER: If you could please not refer to her by the first name.

MS HENDERSON: I do apologise.

MR BOLSTER: If we could just for the record note that that name cannot be published.

MS HENDERSON: Mr UGs daughter. I do apologise.

MR BOLSTER: Thank you.

MS HENDERSON: I spoke with Mr Coulton and asked him what were we going to do about this. I had suggested to Mr UGs daughter that I needed to report this to the

department. And she said yes, whilst she was concerned about care, she didn't necessarily feel it was abuse but clearly it indicated that there were poor care issues because she actually works within care herself and had witnessed similar things at work about where residents had been managed one person rather than two people. And I said, "Well, I need to obviously speak with Brendan, we do need to take some action. I'm very concerned about how staff have been treating not only your dad but this would be happening to other residents too." So we agreed that I would pass on that information and to Mr Coulton - - -

MR BOLSTER: What did Mr Coulton say when you showed him the video?

MS HENDERSON: When I gave him the USB and we saw the video, I said to him, "Where do we go with this? We need to report it but we also need to – what happens with the staff? We need to get the staff in and talk to him – talk to them all because they were clearly identified who they were." And I was told, "We do nothing. Head office will handle it. We can't report it because these people have been filmed without their knowledge and without their permission and the family didn't have permission to put the camera into the room and nor did they advise us or request to do so." And that, to me, was an absolute mystery. To me should they have had to seek permission?

So then a notice came out and was put on the notice board that anyone seeking to put a camera into their loved one's room should seek permission and enter into an agreement with the facility and identify how long they were going to have the camera in the room and the reason for why they wanted to put the camera in there.

MR BOLSTER: Now, you were also made aware of allegations in the case of Mrs Buda.

MS HENDERSON: I was.

MR BOLSTER: Did you report the allegations of an assault when they were conveyed to you by her daughter?

MS HENDERSON: Is this in relation to September?

MR BOLSTER: This was after Mrs Buda was taken to hospital and it was ascertained that she had a broken neck of femur.

MS HENDERSON: Yes, I did report it. I – initially after she went to hospital, and it was reported to me she had a fractured neck of femur, Mrs Buda's daughter came to me afterwards – which we spoke afterwards, and information sort of trickled in to me afterwards that she believed that it was as a result of an injury, and I advised her that I would report it and would carry out an investigation into the allegation. And so I reported it to the department.

MR BOLSTER: All right. Did you report it to the police?

MS HENDERSON: No, I did not at this time.

MR BOLSTER: And why was that?

MS HENDERSON: Because it was felt that there was insufficient evidence given that she had been seen by the GP or the – on a number of occasions and it was considered to be – that it was due to either previous injuries or ongoing medical conditions that she had.

MR BOLSTER: When you say it was considered or it was felt, are you talking about yourself or are you talking about communications with someone else?

MS HENDERSON: Indicated by the GP whether there was any evidence that she may have been harmed or injured in any way, and the GP didn't feel that was the case. He felt – the first I knew about her having any discomfort was on the Wednesday of the week – of the week that she went to hospital when - - -

MR BOLSTER: What day did she go to hospital?

MS HENDERSON: I can't recall the actual date.

MR BOLSTER: How many days before she went to hospital were you made aware of the problem?

MS HENDERSON: I was made aware the middle of the week on the Wednesday, and she went to hospital on the Friday because I was the one that sent her to hospital.

MR BOLSTER: And you formed a view that the police didn't need to be notified; is that right?

MS HENDERSON: Not at that stage.

MR BOLSTER: When did you form the view that the police didn't need to be notified?

MS HENDERSON: After I had reported it to the department to say that there was an allegation had been made. I made inquiries into what had happened, and it was me who identified that Mrs Buda had been found on the floor and it was an undocumented incident.

MR BOLSTER: All right. Before we finish, there's one topic I need to cover with you. Holes in the roster as they developed between – in September, October and November when people were ill, away, whatever. How did you fill those holes on a daily basis?

MS HENDERSON: We had to ring our casual staff, talk with staff that were already on duty to see if they wanted an extra shift, see if they could stay longer, see

if some staff could come in early. If we couldn't, we would then put that information on to Emprevo – or not me personally because I didn't use the system, admin staff would put it out, put it on to Emprevo and it would send out an email to staff to say this shift is available, not only to our staff and casuals but also to anyone else who worked within Menarock to see if anybody wanted to pick up the shift. And we would have to keep a list of everybody that we had contacted by phone before we did this and when all those avenues had failed, then and only then could we request an agency.

MR BOLSTER: Did you have to seek the approval of either Ms van den Berg or Mr Coulton about that?

MS HENDERSON: Mr Coulton was our go-to person; he was the only one who authorised agency.

MR BOLSTER: And how often did that happen?

MS HENDERSON: Well, we tried very hard not to have to ring. We spent hours on the telephone trying to ring staff, literally begging sometimes.

MR BOLSTER: Why was this; were there not enough permanent part-time staff, not enough - - -

MS HENDERSON: Exactly. There were too many vacant positions. We were having to rely on our casuals and our own staff because we weren't allowed to recruit to permanent positions – or I wasn't allowed to fill those permanent PCA positions while we were still doing the restructure because - - -

MR BOLSTER: Commissioner - - -

MS HENDERSON: Sorry, may I just add - - -

MR BOLSTER: Yes, please.

MS HENDERSON: Where the EENs were going to be recruited, the team leaders who were the Cert IVs who were doing medications were going to be reabsorbed back into the roster, into the PCA, so until such time as the EENs moved into the roster into that senior role we couldn't absorb staff into the roster.

MR BOLSTER: There's email correspondence which suggests that Mr Coulton will say that that was your job. You were meant to implement that change in staffing structure. What do you say about that?

MS HENDERSON: I wasn't allowed to recruit anyone to permanent shifts without permission, without a directive to say go ahead. When I received that, that's when I recruited. As with the care coordinator, the leisure and lifestyle coordinator, with an RN who I recruited to the night shift because we had vacant nights.

MR BOLSTER: I have - - -

MS HENDERSON: If the case was that I could just go ahead and recruit, why were we still discussing a restructured roster as far back as October if everything was agreed and understood? Why had I not recruited? Why would I put a notice out in October to the EENs to say it is envisaged that the new – the EEN roles, the new roster will be phased in in November, asking them to apply for the vacant positions.

MR BOLSTER: Thank you, Ms Henderson.

MS HENDERSON: Thank you.

MR BOLSTER: Commissioners, I have no further questions.

COMMISSIONER PAGONE: Yes. Thank you. Ms Henderson, thank you very much for coming to the Commission to give us your evidence.

MS HENDERSON: Thank you.

COMMISSIONER PAGONE: It is very helpful. Thank you.

MS HENDERSON: Thank you.

<THE WITNESS WITHDREW [10.53 am]

MR BOLSTER: Commissioners, the next witness is Bridget Scarff. I expect my examination will be about 15 minutes. Whether we deal with her now or take the break, we are in our hands.

COMMISSIONER PAGONE: Perhaps we could take the break now and resume at five past.

MR BOLSTER: Thank you.

ADJOURNED [10.53 am]

RESUMED [11.10 am]

MR DICKIE: Commissioners, as that concluded Ms Henderson's evidence, I seek to be excused. I will remain in the court, but if I could be excused from the bar table.

COMMISSIONER PAGONE: Yes, of course. You are excused.

MR DICKIE: Thank you.

MR BOLSTER: Thank you, Commissioners. The next witness is Bridget Marie Scarff, who is in the witness box.

<BRIDGET MARIE SCARFF, SWORN [11.10 am]

<EXAMINATION BY MR BOLSTER

MR BOLSTER: If Ms Scarff, you will see on the screen in front of you a statement. Do you recognise that as your statement?

MS SCARFF: Yes, I do.

MR BOLSTER: Which you prepared last week.

MS SCARFF: Yes, I did.

MR BOLSTER: And do you wish to make any amendments to that statement?

MS SCARFF: I think on page 5, rather than 18 December, it was the 17th in relation to Yvonne Henderson going on leave.

MR BOLSTER: So at page 5, let's just get that right. Is it page 5?

MS SCARFF: I'm pretty sure it's page 5.

MR BOLSTER: Or paragraph 5, went on leave on the 17th.

MS SCARFF: Yes.

MR BOLSTER: Okay. All right. Thank you. We will take that as read. Any other amendments?

MS SCARFF: No.

MR BOLSTER: And are the contents true and correct to the best of your knowledge and belief?

MS SCARFF: Yes, they are.

MR BOLSTER: Commissioners, subject to some redactions that are in process following some discussions between counsel assisting and the Commonwealth, I tender that statement.

COMMISSIONER PAGONE: Yes. All right. The statement of Ms Scarff as redacted will be exhibit 11-12.

EXHIBIT #11-12 STATEMENT OF BRIDGET MARIE SCARFF AS REDACTED

MR BOLSTER: Thank you. Ms Scarff, you were recruited by Menarock in around early November 2018.

MS SCARFF: No. I was appointed in my role on 10 December 2018.

MR BOLSTER: 10 December.

MS SCARFF: Correct.

MR BOLSTER: I'm sorry; I got the month wrong. What was the brief in relation to Greenway Gardens?

MS SCARFF: The brief, really, it was a new acquisition home, low occupancy; that it had had a successful accreditation and also an unannounced visit. In the minimal handover that I received from Fiona van der Berg, who was the lead quality group operations manager, I received no information regarding any issues around the quality management system, which would include audits, education program, the workforce governance which would be around the roster management, and given that it was getting up to the Christmas and New Year period I wasn't informed there was any kind of deficits with the roster.

MR BOLSTER: What was the brief, though, from the directors at Menarock?

MS SCARFF: The directors would be Craig Holland, yes, in regards to Greenway Gardens?

MR BOLSTER: Yes.

MS SCARFF: I didn't receive any directives around – around that home being of risk.

MR BOLSTER: What was your directive then from Mr Coulton, what did he task you to do at Greenway Gardens?

MS SCARFF: Yes, so within 24 hours I was tasked and assigned to do a significant root cause analysis based on the UG complaint.

MR BOLSTER: Mr UGs incident.

MS SCARFF: Yes.

MR BOLSTER: You did that. And did you – that's in evidence so you don't need to take us through what you found.

MS SCARFF: Yes. Yes.

MR BOLSTER: In doing that, did you become familiar with the staffing structure at the facility.

MS SCARFF: Yes, I did. I think on the second week, because my first week was also orientation at a couple of other sites. I just basically received phone calls quite regularly in the morning wanting to have staff replaced with agency. But what really alerted me was really on 20 December when I had three phone calls win one hour regarding PCA replacement.

MR BOLSTER: This was after Ms Henderson has gone on leave on the 17th?

MS SCARFF: That's correct.

MR BOLSTER: And who took over her role when she went on leave?

MS SCARFF: That was assigned to me.

MR BOLSTER: And there was a clinical care coordinator.

MS SCARFF: There was at that stage who was doing three days a week which ended up being four days a week.

MR BOLSTER: What was her role?

MS SCARFF: Well, from my – I've heard a lot about ACFI, but in regards to working with Karen Jackson, it was really around the risk that was identified in the root cause analysis was really the basis of profiling the home with her, yes.

MR BOLSTER: Were you made aware that she had a role as the ACFI assessor, coordinator in the facility?

MS SCARFF: I can't really recall. I just – I just know that she had been very – just in her role only for a very brief period of time and that another person had been in the role, the RN that stepped up, it was too much for her. So I really wasn't given – I guess, the model with Menarock Life is that they do that dual role.

MR BOLSTER: Right. Let's just talk numbers. When you walked in the door in December 2018, were there enough nurses, enough enrolled nurses and enough carers given the people that he had to look after in?

MS SCARFF: No, and it was primarily based on within the first six hours of being on site, that people felt the need to – or felt that I was approachable enough to let them know about the staff, the staffing on Blue Gum. I, in fact, asked the lifestyle coordinator who verbally had given many examples particularly around the meals not being able to be provided on time, toileting, asked her to put that in writing, which she did. They actually had staff come to me and just let them know that, you know, there's just not enough hands to do – the acuity was quite high, that there was a lot of manual handling. So I had based on pretty much feedback and also just the – obviously the concerns raised by Mr UGs family.

MR BOLSTER: Is it fair to say you were the DON after?

MS SCARFF: Yes.

MR BOLSTER: And for how long were you the DON?

MS SCARFF: I was the DON right up until I was deployed back into my role which was to look after the six other homes that I was allocated.

MR BOLSTER: When was that?

MS SCARFF: I really can't remember the date, but it was really probably the week before I was terminated which would have been around the week before 21 March.

MR BOLSTER: All right. Now, from the time you arrived and you ascertained that there was a staffing shortage, did you raise the issue with Mr Coulton?

MS SCARFF: Yes, I did.

MR BOLSTER: How many times did you raise it with him.

MS SCARFF: When I was – I was triggered to just look at the roster that had been provided by Yvonne because she did use her own system. It was scanned to me by the administration officer, Kay, and I did a quick analysis. I was actually at the head office in Mont Albert and that's one of my skill sets is to analyse data. So I was able to populate it into just a little bit of a table. Initially, it was around the PCAs, but it was very obvious that there was 21 registered nurse shifts that were not filled and coming up into the Christmas and New Year period. So I emailed Brendan Coulton and I copied in the Group Operations Manager, Leanne Nind, and I thought I would have got a phone call or something and I also texted him to say I had sent an urgent email.

MR BOLSTER: These were problems though associated with gaps in the existing roster.

MS SCARFF: Correct.

MR BOLSTER: Assume the gaps are all filled and everyone is working as they are meant to on that roster, was there enough people there to do the tasks?

MS SCARFF: Particularly on Blue Gum, no. There was, you know, two PCAs in the morning doing – the acuity was high. I had spoken to Fiona van den Berg on site, around – I think around the 18th and I informed her – because she was doing an external complaint to the Aged Care Commissioner, I informed her about the feedback that was accruing and she told me that the staff, the occupancy and the acuity of the residents were largely independent with maybe two or three people requiring manual handling.

MR BOLSTER: She told you that, did she?

MS SCARFF: She did.

MR BOLSTER: From your experience, having been the DON there for the period of time that you were, was that an accurate description?

MS SCARFF: No, it wasn't, and this is like my second week of being in the organisation, when I actually escalated that information to her.

MR BOLSTER: Where you hear – did you hear Ms Henderson talk about the relative acuity of the residents in both facilities this morning?

MS SCARFF: Yes.

MR BOLSTER: Do you disagree with that?

MS SCARFF: Look, I can see that there has been a lot of conflict in decision-making. I guess I was looking at it purely from a work flow perspective.

MR BOLSTER: Just in terms of the acuity, she said that more than half in each were more than two-person assists. Do you agree with that?

MS SCARFF: On Blue Gum?

MR BOLSTER: Yes.

MS SCARFF: No, no. I don't think that that ratio - - -

MR BOLSTER: What do you think the ratio is?

MS SCARFF: I think it would have been three-quarters would have been - - -

MR BOLSTER: Three quarters.

MS SCARFF: - - - manual handling and that there only, you know, 25 per cent that would be not completely independent but would need a one to two assist.

MR BOLSTER: All right. What about in Jarrah?

MS SCARFF: In Jarrah, I must say that in response to the five-day audit, that they did give some observations around Jarrah and staffing rushing. So I actually took that feedback on board and did a quick observation audit for four hours. I guess the acuity – it was definitely not having manual handling. The acuity was probably more the role responsibilities and meeting the resident requests whether to have their meals in their rooms. So there was actually quite a lot of residents requiring meals in their room which would be up to 20. So the acuity was slightly different but in that four hours I didn't identify that there would need to be any revision of the hours there.

MR BOLSTER: There was a change, though, there was a shift moved from Jarrah to Blue Gum.

MS SCARFF: Correct.

MR BOLSTER: Why did that happen?

MS SCARFF: I mean, I've been a consultant and also I've been in quite advanced levels of roles and that's just something that I would do; it's a memory support unit.

MR BOLSTER: What did you have to say to Mr Coulton - - -

MS SCARF: I just - - -

MR BOLSTER: - - - to get that to happen?

MS SCARFF: I needed to do a time-and-motion. It's nothing fancy but it's just really observing – observing and interacting with the staff, asking them what they're doing at whatever period of time.

MR BOLSTER: When did you do that? Did you do that before the Commission review had commenced?

MS SCARFF: Yes, I did.

MR BOLSTER: Okay. You mentioned in your statement that you did some form of time-and-motion study with the staff.

MS SCARFF: Yes.

MR BOLSTER: And it became apparent to you very early on that there were problems.

MS SCARFF: Yes, it was just upsetting for the staff and, you know, a lot of them are very teary and I just had to reassure them within 2.5 hours, you know, it was just not feasible with the staffing.

MR BOLSTER: What did you do for two and a-half hours to allow you to come to that conclusion?

MS SCARFF: I didn't really have to do too much. I went around the unit and, you know, most of the activities in the dining area and where the bain-marie where they actually distribute the meals. I just really went around and checked with the staff who they were prioritising, looking at the role responsibilities of the enrolled nurse at the time and also looking at when the lifestyle staff came on, what they were doing, which they were actually doing manual handling which is not part of their role responsibilities. So, you know - - -

MR BOLSTER: How often did you see that?

MS SCARFF: In that particular - - -

MR BOLSTER: Yes.

MS SCARFF: Yes, well, I had to actually stop them and say to them, "That's not – that's actually not part of your role. You haven't been trained to do that."

MR BOLSTER: How long into your study did you observe that before you intervened?

MS SCARFF: They came on at 9, so it was only within the first 20 minutes of being there. They were, you know, assisting with setting people up for their meals and putting them into princess chairs so I wouldn't say that it was just an immediate observation.

MR BOLSTER: Were there enough staff in Blue Gum to do that resident movement, transfer, handling in the mornings?

MS SCARFF: No.

MR BOLSTER: All right. And did you convey these matters to Mr Coulton?

MS SCARFF: Yes, I did.

MR BOLSTER: How often?

MS SCARFF: Well, I think for me it was really about the feedback, you know? That is a pretty immediate thing. I'm used to escalation around that aspect of it, triangulating not only documentation, so it was in the complaints. It was also observing the staff myself, you know, overlapping into morning tea being given at

11.30 just before lunch. But I had already fed that back verbally and also in a pretty comprehensive email to say that I had actually terminated the observation audit which was going to go until about 12 o'clock. And I detailed the aesthetics of the home or the unit, the infection control issues because there was just food stains all over the furniture, and also just the inability for the staff to be able to perform their role.

MR BOLSTER: What did you observe of the clinical performance of staff? And I'm in particular interested in what you saw about their ability to deal with wound care.

MS SCARFF: Look, I will be honest, I probably didn't always see that whenever I've been up on the units. But I basically would – in terms of looking at the overseeing of the registered nurse scope of practice with the three days a week or four days a week with the care manager, I clearly was concerned about how that was being overseen. And also just on the clinical system, when I did the root cause analysis for Mr UG, it was very apparent that there major gaps with the documentation. So - - -

MR BOLSTER: That was – so what about Mrs Buda's wound care?

MS SCARFF: So with Mrs Buda, there was nothing escalated to me that there was an issue.

MR BOLSTER: When did you first know that there was an issue?

MS SCARFF: During the course of the clinical review by the external auditors.

MR BOLSTER: So did you know about her leaving to go to hospital on 28 January?

MS SCARFF: That was around the time of the audit. So no, I think I may have been aware of that but, from my perspective, I did notice that when I did my review of the quality management system that the case conference hadn't been done with that family for quite some time given the other information that you've overviewed today. So I identified and said to Karen the care manager that I would like – I rang Agatha and organised a case conference which would have been around the middle of January. And I wanted her to go through the care plan and I wanted to go through the assessments and identify what reassessment that she needed to have done.

MR BOLSTER: Right. Let's just focus on this wound issue. Assuming that – and you are a very experienced nurse; correct?

MS SCARFF: Yes.

MR BOLSTER: Assuming you were put on notice of a pressure injury in late November, you would have taken active steps, I take it, to look at that wound every day.

MS SCARFF: That's true.

MR BOLSTER: And if you looked at that wound every day, you would notice it if it turned to a stage 1, correct?

MS SCARFF: Yes.

MR BOLSTER: How long after a stage 1, in your experience, would you observe a stage 2 in someone like Ms Buda?

MS SCARFF: Ms Buda was quite unwell and quite febrile, so she would have been predisposed to increased staging.

MR BOLSTER: That can happen relatively quickly.

MS SCARFF: Yes.

MR BOLSTER: And the same from 2 to 3?

MS SCARFF: Yes.

MR BOLSTER: And then 3 to 4?

MS SCARFF: Yes. I think just given her general ill health as well.

MR BOLSTER: Well, given that you were the DON and under you there was a care manager who was working three days a week.

MS SCARFF: She was working four days a week.

MR BOLSTER: Four days a week?

MS SCARFF: Yes.

MR BOLSTER: Wouldn't one or both of you, in the ordinary course, be appraised of a developing situation like that?

MS SCARFF: I would say in a home that was very stable and a home that actually looked at their clinical indicators, because at that home that type of information staging is actually monitored and that home had – did not actually have consecutive months of that data being actually analysed or being put into end-of-the-month reporting or being able to able to integrate it into the home. So I would just say that Karen was aware that I had flagged Mrs Buda as being a fairly high risk clinical

resident and it's disappointing that I did hear about that on the day of a clinical review.

MR BOLSTER: Did you speak to Karen, that is, the care manager, after you've ascertained the severity of the wound?

MS SCARFF: Yes, I did. And I just – yes. I - - -

MR BOLSTER: What was the explanation?

MS SCARFF: Yes. I – she just thought that it was okay in her assessment and, obviously, monitoring of it because that was her – one of her primary responsibilities was overseeing wound management. She, in her assessment, did not think that it was – you know, it had been healing, and then it had just started to break down.

MR BOLSTER: All right. So all the time you were there, the only change to staffing was an increase from three days to four days a week for the clinical care manager.

MS SCARFF: That's right.

MR BOLSTER: Plus a transfer of an unallocated shift of four hours.

MS SCARFF: Yes.

MR BOLSTER: From the evening in Jarrah.

MS SCARFF: Yes.

MR BOLSTER: To the morning in Blue Gum but it still stayed four hours.

MS SCARFF: Yes. So it was just a tenancy shift that Yvonne had mentioned and it was recommended for myself and Karen that it could be extended because there were just key concerns around the continence program.

MR BOLSTER: Was that enough of itself?

MS SCARFF: No.

MR BOLSTER: Have you ever worked in a facility where the clinical care manager was at work as few as three days a week?

MS SCARFF: I have seen some models like that and they've also, I've seen it revised based on not just the ACFI but because of the clinical risk indicators.

MR BOLSTER: You wouldn't – I mean, you are a consultant, an adviser; that's your job. Would you advise anyone to maintain a system that had a clinical care manager on for three days a week?

MS SCARFF: I think there's - - -

MR BOLSTER: For this sort of patient cohort?

MS SCARFF: Yes. I just think that there's a number of factors. I think just the quality system was very dismantled, given that it was a newly commissioned home. I think that there was just not enough analysis of the clinical indicators, which would be things like falls, behaviours, skin injuries, pressure injuries. So - - -

MR BOLSTER: Wouldn't those things all indicate that you need far more than three days a week, not less?

MS SCARFF: That's right. But as I said to you, that was not driven for organisational governance to actually look at that site and be able to have a look at that data that would suggest that there has been some – quite some differences with the acuity and the needs of the residents.

MR BOLSTER: Thank you, Ms Scarff. I have no further questions.

MS SCARFF: Thank you.

MR BOLSTER: Thank you, Commissioners.

COMMISSIONER PAGONE: Yes, thank you, Ms Scarff.

<THE WITNESS WITHDREW [11.30 am]

MS MAUD: Commissioners, the next witness is Fiona Elizabeth van den Berg.

COMMISSIONER PAGONE: Yes. Thank you.

<FIONA ELIZABETH VAN DEN BERG, SWORN [11.31 am]

<EXAMINATION BY MS MAUD

MS MAUD: Have a seat, Ms van den Berg.

MS VAN DEN BERG: Thank you.

MS MAUD: Have you prepared a witness statement for the Royal Commission?

MS VAN DEN BERG: I did.

MS MAUD: Do you have a copy of that there with you?

MS VAN DEN BERG: I do. Yes.

MS MAUD: Does it have a document ID in the top right-hand corner, WIT.0544.0001.0001?

MS VAN DEN BERG: Yes.

MS MAUD: Yes. Does it have three attachments to it?

MS VAN DEN BERG: It did have three attachments to it, yes.

MS MAUD: Have you had an opportunity to read it recently?

MS VAN DEN BERG: Yes.

MS MAUD: And are its contents true and correct?

MS VAN DEN BERG: Yes.

MS MAUD: Are there any changes that you wish to make to it?

MS VAN DEN BERG: Not at this – no.

MS MAUD: No. I tender that statement, Commissioners.

COMMISSIONER PAGONE: Yes, thank you. The statement of Ms Fiona Elizabeth van den Berg will be exhibit 11-13.

EXHIBIT #11-13 STATEMENT OF MS FIONA ELIZABETH VAN DEN BERG DATED 08/10/2019 (WIT.0544.0001.0001) AND ITS IDENTIFIED ANNEXURES

MS MAUD: Now, Ms van den Berg, you've been a registered nurse since 2012, is that right?

MS VAN DEN BERG: Correct.

MS MAUD: Yes. And you've been employed with Menarock since February 2012.

MS VAN DEN BERG: Yes. Sorry, I've been a registered nurse for longer than that.

MS MAUD: Yes.

MS VAN DEN BERG: Yes.

MS MAUD: That's when the registration scheme came in; is that right? Is that what you mean?

MS VAN DEN BERG: I've been a registered nurse longer than - - -

MS MAUD: When have you been a registered nurse since?

MS VAN DEN BERG: Probably 1990 roughly; I would have to confirm that.

MS MAUD: Okay. But you were employed as a registered nurse with Menarock Life from 2012.

MS VAN DEN BERG: Correct.

MS MAUD: And you've worked with that company since then in various roles.

MS VAN DEN BERG: Correct.

MS MAUD: You were the ACFI manager from December 2012 to 2014 - - -

MS VAN DEN BERG: Correct.

MS MAUD: - - - and you were a clinical care manager then from December 2014 for a year, and you were then the CEO from December 2015 until October 2017, and then you were the group clinical care manager until April 2018. Now, from April 2018 you were the group operations manager, quality lead; is that right?

MS VAN DEN BERG: Correct.

MS MAUD: And what does that role involve?

MS VAN DEN BERG: Quality lead?

MS MAUD: Yes.

MS VAN DEN BERG: To oversee the quality program within the organisation.

MS MAUD: And as part of that role, were you in particular responsible for the operational management of a number of facilities?

MS VAN DEN BERG: I was also looking after a few different homes within the allocated homes within Menarock.

MS MAUD: And was one of those facilities Greenway Gardens?

MS VAN DEN BERG: I was originally appointed to be overseeing Greenway Gardens but at the same time we also had eight accreditations across Menarock Group. So I was offline in the fact that I was looking after – assisting those homes and making sure – doing clinical governance of those homes. So the acting – so the home was supported by another group operations manager during that time.

MS MAUD: Who was that?

MS VAN DEN BERG: It was Kathy Klomp.

MS MAUD: And who, in your role as group operational manager quality lead, who did you report to within the company?

MS VAN DEN BERG: Brendan Coulton.

MS MAUD: So you said you were offline overseeing a number of other accreditations of other facilities, but were you nonetheless still having involvement with Greenway Gardens?

MS VAN DEN BERG: Sorry, yes, I wasn't a direct – yes, I was still a group operations manager but my priority was with the other homes. So that's why we looked at the support of having – using the other group operations managers in the organisation to support those homes.

MS MAUD: From about August, though, were you working with Yvonne Henderson in a roster restructure at Greenway Gardens?

MS VAN DEN BERG: I was asked by Brendan to look at the roster to give a clinical overview of what I thought was appropriate for that home.

MS MAUD: When was that, when did Brendan ask you to do that?

MS VAN DEN BERG: In July/August.

MS MAUD: Operator, could you bring up tab 307, please. It's a bit difficult to read because it's small; could we enlarge just the top section, the top rows that are shaded blue and green. This is a document that was produced to the Commission by Yvonne Henderson, who says that it represents the current hours at the Greenway Gardens facility when she commenced in April 2018. Have you seen this document before?

MS VAN DEN BERG: I saw it last night when it came through email, so I have - - -

MS MAUD: Had you seen it before last night?

MS VAN DEN BERG: I have seen – I haven't seen this particular document with these hours but I've seen something similar.

MS MAUD: Were you aware in around April/May 2018 that at the Greenway Gardens facility, the roster provided for a clinical care coordinator to be on site during the day, five days each week?

MS VAN DEN BERG: To my understanding, there wasn't a clinical care coordinator five days a week. There was actually an ACFI coordinator who was on site. There wasn't actually a clinical care coordinator five days a week.

MS MAUD: So there was no – your evidence is there was no clinical care coordinator.

MS VAN DEN BERG: To my recollection, that's correct.

MS MAUD: So are you suggesting that this document, where it indicates on the right-hand side, you see the column that is highlighted there.

MS VAN DEN BERG: Yes.

MS MAUD: And the cross-reference with the clinical care coordinator row 10 days per fortnight, is that not your understanding of the clinical care hours - - -

MS VAN DEN BERG: Correct.

MS MAUD: - - - in the period May/June 2018. So you thought there was an ACFI coordinator?

MS VAN DEN BERG: There was an ACFI – an RN who was doing ACFI three days a week.

MS MAUD: And was that doing ACFI for that entire time; it wasn't also performing an RN role at the facility?

MS VAN DEN BERG: Definitely doing some ACFI. I'm not too sure if she was on the floor or not, to know, no.

MS MAUD: How did that role develop over time, the ACFI role that the RN was performing?

MS VAN DEN BERG: So within the Menarock group we already had a group ACFI manager, and when we had the acquisition of the Gold Age homes, we actually used another ACFI assistant across – that was with one of the other Gold Age homes

at McGregor and her role was extended and that's when we redeployed Julie into the CCC role at Greenway Gardens.

MS MAUD: Is that Julie Rumney?

MS VAN DEN BERG: Yes.

MS MAUD: So was it your understanding that in the morning shift in the period May to June 2018 was there an RN on duty in addition to the person who was doing the ACFI role?

MS VAN DEN BERG: To my understanding, there was other – there were ENs and there was the director of nursing.

MS MAUD: Right. So is your answer that there was not otherwise an RN apart from the facility manager - - -

MS VAN DEN BERG: Correct.

MS MAUD: - - - and the person doing the ACFI role? Then you were involved, I understand, in a restructure of the roster and that took place over a period of time from about June 2018 at Greenway Gardens?

MS VAN DEN BERG: Correct. I was asked only for my clinical governance over the – which included to have an RN 24/7, as well as having a CCC role employed, but the actual roster was done by Brendan and Yvonne and the HR manager.

MS MAUD: So your role was just to assess whether or not there was a sufficient - - -

MS VAN DEN BERG: To give guidance.

MS MAUD: In relation to the clinical care aspects of the roster.

MS VAN DEN BERG: Yes.

MS MAUD: Operator, could I bring up document tab 308, please. And just highlight the text in the middle. Sorry. Could we just go back for a moment. Can you see there, there's an email - - -

MS VAN DEN BERG: Yes.

MS MAUD: - - - from you to the DoN Greenway and at that time that was Yvonne Henderson; is that right?

MS VAN DEN BERG: Yes.

MS MAUD: 15 August.

MS VAN DEN BERG: Yes.

MS MAUD: And you refer in the body of the email to having attached a roster and you are asking Yvonne to have a look at it, and you say:

> *I've highlighted in green the changes we thought worked better, ie, starting time for handover. I've added comment in the end column in green as to the alteration I've made.*

Then there's a reference to a short shift in Blue Gum that has been removed due to occupancy. And then you say:

> *I'm not sure why this wasn't added on Brendan's master roster.*

And can we go to the third page of this document. Can that be rotated. This is another version of the spreadsheet that I took you to a moment ago.

MS VAN DEN BERG: Yes.

MS MAUD: I take it you've seen this document.

MS VAN DEN BERG: Yes.

MS MAUD: Did you create this document, this version?

MS VAN DEN BERG: Yes.

MS MAUD: And so when, in your email, you refer to:

> *I'm not sure why this wasn't added on Brendan's master roster.*

Are you referring to an earlier version of this spreadsheet?

MS VAN DEN BERG: Can you repeat the question, sorry?

MS MAUD: In your email, you said:

> *I'm not sure why this wasn't added on Brendan's master roster.*

The reference to a master roster of Brendan's - - -

MS VAN DEN BERG: Yes, so that would have been his spreadsheet in what he had provided to Yvonne. So we had obviously looked at that and there was just the tenancy shift hadn't been added into it.

MS MAUD: I see. So can we go to tab 306, please. Are you able to read that?

MS VAN DEN BERG: No, I'm sorry.

MS MAUD: Can we highlight the top section, including the heading? Is this the proposed roster that Brendan had created that you've referred to in your email?

MS VAN DEN BERG: Potentially, yes, it was.

MS MAUD: Can you see in the column intersecting for the clinical care coordinator and the days per fortnight, there's the number 6 there.

MS VAN DEN BERG: Yes.

MS MAUD: And in the row for the clinical care coordinator, there's a one for Wednesday, Thursday, Friday of each week.

MS VAN DEN BERG: Correct.

MS MAUD: Was it your understanding in June 2018 that there was to be a clinical care coordinator at Greenway Gardens only three days a week?

MS VAN DEN BERG: That was what we proposed.

MS MAUD: So it was proposed or it was what was in place?

MS VAN DEN BERG: So once the – by June, I think there was a CCC already in place and that was taken off – started off with Julie.

MS MAUD: Julie Rumney. Is it part of the Menarock model that the clinical care coordinator undertakes the ACFI role at the facility?

MS VAN DEN BERG: The ACFI actually just comes from the documentation that is actually done. We don't actually document for ACFI. So the residents have a suite of different assessments completed and from those assessments then we actually use that information to do ACFI. So we don't document for ACFI. We document for the residents' assessment needs and then the ACFI is drawn from that.

MS MAUD: So do you disagree then that the role of ACFI documentation would take up about half of the clinical care coordinator's time?

MS VAN DEN BERG: Yes.

MS MAUD: You don't agree with that? Operator, could you bring up tab 304. And could you highlight the third dot from the bottom – third dot point. So you can see this is an email from Brendan Coulton to the director of nursing at Greenway dated 22 June 2018 and you're also copied into this email.

MS VAN DEN BERG: Yes.

MS MAUD: And you see there Brendan saying:

ACFI role to be reviewed in line with Menarock model. ACFI functions will be incorporated into CC role.

MS VAN DEN BERG: Correct.

MS MAUD: What's your understanding of what is being said there.

MS VAN DEN BERG: So as I said before, with our ACFI, our documentation for our clinical assessments is completed and then our ACFI is taken from those clinical – how we have structured our documentation system. And then because we already had an ACFI manager and an assistant, they then came and reviewed the documentation to help with the CCC put the packs together. So you have to put a whole heap of assessments together in a pack so when we get validations they come and look at that documentation.

MS MAUD: You said earlier that there was a nurse at Menarock when – at Greenway Gardens when Menarock first took over who was performing the ACFI function. So it's not necessarily part of the clinical care coordinator role. It's actually separate to the clinical care coordinator's role. It's separate to managing the care of the residents.

MS VAN DEN BERG: The clinical manager's role is to ultimately look after and oversee the care of the residents. Part of that will be to – doing different assessments in care planning and, as I said, the ACFI comes from those clinical assessments.

MS MAUD: But you accept that the process of documenting the ACFI is separate to the managing the clinical health of the residents?

MS VAN DEN BERG: Well, we would need to document what we are doing for the care of the resident.

MS MAUD: So as at June 2018, your understanding was that the proposed roster for Greenway Gardens was to have a clinical care coordinator there three days per week doing also the ACFI documentation; is that right?

MS VAN DEN BERG: No. The clinical care coordinator oversees the care. The assessments and care planning is done by all the staff members, so all the RNs as well who work there do assessments. And from those assessments and care plans, the ACFI is driven from that.

MS MAUD: But the clinical care coordinator was to be there three days per week.

MS VAN DEN BERG: Correct.

MS MAUD: And in the morning shift there was not otherwise to be an RN on duty on the days that the clinical care coordinator was there.

MS VAN DEN BERG: There was two EENs on.

MS MAUD: Two EENs.

MS VAN DEN BERG: Yes.

MS MAUD: But not another RN?

MS VAN DEN BERG: Correct.

MS MAUD: Can we go back, please, to tab 308. So in August 2018 were you discussing with Yvonne aspects of the proposed changes to the roster at Greenway Gardens?

MS VAN DEN BERG: Yes.

MS MAUD: Yes, and your attachment, the spreadsheet which I took you to a moment ago sets out your understanding of what the changes were to be.

MS VAN DEN BERG: That was my – my recommendations.

MS MAUD: Your recommendation. Can we just go to the third page, please, the spreadsheet. So in the right-hand column highlighted in green, are they your suggested changes - - -

MS VAN DEN BERG: Correct.

MS MAUD: - - - to the roster that Brendan proposed.

MS VAN DEN BERG: Correct.

MS MAUD: So you were proposing adding an RN on the morning shift on the days that the clinical care coordinator was not there?

MS VAN DEN BERG: Correct.

MS MAUD: And you were also proposing that on the days that the RN was there, there would be only one EEN; is that right?

MS VAN DEN BERG: Sorry. Can you repeat that.

MS MAUD: So if you go down to the third point that's highlighted in green - - -

MS VAN DEN BERG: Yes, that's right.

MS MAUD:

EEN removed when – as RN on AM shift.

MS VAN DEN BERG: Correct.

MS MAUD: So on the days when the clinical care coordinator was there, there would be two EENs.

MS VAN DEN BERG: Correct.

MS MAUD: But on the days when the RN was there and there was no clinical coordinator, there would be an RN and one EEN.

MS VAN DEN BERG: Correct.

MS MAUD: And then the next highlighted section, the further one down:

Short shift at Blue Gum not included on master.

What's the short shift that you are referring to there?

MS VAN DEN BERG: That would have been related to the tenancy shift which is an afternoon shift, something that we have developed in our homes. It's a shift sort of between four – it's a four-hour shift, 4 to 8, that looks after residents who may be experiences behavioural support.

MS MAUD: So was it your recommendation that that shift be added to Blue Gum?

MS VAN DEN BERG: If it was needed.

MS MAUD: If it was needed. So in – what was your understanding of the occupancy of the facility in August?

MS VAN DEN BERG: At the time that we were doing this roster review there were 10 empty beds.

MS MAUD: Beg your pardon?

MS VAN DEN BERG: There were 10 vacancies.

MS MAUD: 10 vacancies. Operator, can I ask you to bring up document CTH.4020.3000.2323. Are you able to read that document or is it too small?

MS VAN DEN BERG: Yes, I can, thank you.

MS MAUD: Have you seen that document before.

MS VAN DEN BERG: I have seen that document.

MS MAUD: Were you involved in preparing that document?

MS VAN DEN BERG: No.

MS MAUD: Can you see the table in the middle of the page.

MS VAN DEN BERG: Yes.

MS MAUD: It says – this is under the heading Occupancy and it has the month and you see for August 2018 the average is 42.

MS VAN DEN BERG: Yes.

MS MAUD: And then September, the average is 45. And the maximum capacity of Greenway Gardens is 47 residents, isn't it?

MS VAN DEN BERG: Correct.

MS MAUD: Yes. So do you accept that the occupancy in August 2018 may have only been five less than full capacity?

MS VAN DEN BERG: Yes.

MS MAUD: So with occupancy at that level, 45, would it have been your recommendation that the tenancy shift be implemented in Blue Gum?

MS VAN DEN BERG: It would have depended on the residents that were in the home at the time. And that was something that was up for the director of nursing to decide as well.

MS MAUD: In your email, if we can just go back to tab 308, in the middle of the email you say:

> *Currently, the short shift in Blue Gum has been removed due to occupancy but I'm presuming the expectation will be for this to be reinstated once occupancy improves.*

That suggests you did have some knowledge at that time as to the occupancy of the facility. Do you accept that that is the case?

MS VAN DEN BERG: Yes.

MS MAUD: And so your expectation was that with an occupancy as it was at that time, that you wouldn't have the additional tenancy shift?

MS VAN DEN BERG: I didn't give – I wasn't the person to authorise the actual, when extra shifts were put back in or whatever. That was through discussions with the director of nursing and the Group Operations Manager – Chief Group Operations Manager.

MS MAUD: So your recommendations that you have set out in the attachment to this email, were they provided to Brendan Coulton for his approval?

MS VAN DEN BERG: That email was sent to Yvonne originally, to my knowledge, and he was doing the discussions with Yvonne.

MS MAUD: So you didn't provide a copy of this document to Brendan Coulton along with your recommendation?

MS VAN DEN BERG: I can't – I can't remember if I did or I didn't.

MS MAUD: Whose responsibility would it have been to provide that recommendation to Brendan Coulton?

MS VAN DEN BERG: It would have – it would have been potentially mine and then also the director of nursing because she was working with Brendan, trying to look at what the rosters should have been looking like.

MS MAUD: But Brendan had specifically tasked you to look at the clinical needs of the facility and to consider those in relation to the restructure. So you accept that it was incumbent on you to make a representation to Brendan in relation to that?

MS VAN DEN BERG: Correct.

MS MAUD: But you can't recall whether or not you did that?

MS VAN DEN BERG: I would have said I had but I can't – I can't actually say that I – I would have to go through my emails to see if I did.

MS MAUD: All right. I don't have a tab number for this document, but can we bring up MRA.0003.0001.0102. You see there there's an email from Brendan to Leanne Nind. Who is Leanne Nind?

MS VAN DEN BERG: She is the HR manager.

MS MAUD: And also to you. And it's dated 7 November. Do you recall this email?

MS VAN DEN BERG: I know I've been included in on it. I'm not sure if I – I would have to go over it.

MS MAUD: Well, you can see there that Brendan's expressing the view that the roster at Greenway Gardens has taken too long. He says that:

> *We've been making monthly financial losses at Greenway Gardens, so critical we get it sorted.*

Were you aware, prior to receiving this email that they were making losses at Greenway Gardens?

MS VAN DEN BERG: I wasn't involved with the financials.

MS MAUD: You see in the second line, Brendan says:

> *Let's discuss further but Yvonne appears to need some very clear direction and support with this. She has not prioritised it appropriately.*

Was that your responsibility to provide that direction and support to Yvonne?

MS VAN DEN BERG: It was partly mine, but I was – as I was actually being the acting DON down in Tasmania, I wasn't as – I was working with the home in Tasmania. So the roster review was also involved with Brendan and the HR manager.

MS MAUD: All right. Brendan says here:

> *I'm comfortable with the clinical support requirements for RN and EEN that Fiona has suggested to Yvonne.*

Is that a reference to your recommendations in the email and the attachment that I took you to earlier?

MS VAN DEN BERG: I presume so.

MS MAUD: As far as you are aware, had there not been approval of those recommendations prior to this date in November 2018?

MS VAN DEN BERG: It hadn't been conversed to me.

MS MAUD: But, ultimately, it was Brendan's responsibility to approve the roster before you could then implement it; is that right? Or before Yvonne could implement it at Greenway Gardens?

MS VAN DEN BERG: The roster directions that we had given Yvonne was to move to the Menarock model, which was to take PCAs out of giving medications and providing EENs in replacing – to be providing ENs and – sorry, EENs and RNs only to be giving medications. And to recruit and to look at the roster to make sure that that supported that.

MS MAUD: Yes, and that's the task that you were undertaking and that was what your clinical review had been aimed at.

MS VAN DEN BERG: Correct.

MS MAUD: Is that restructure that you've just mentioned there?

MS VAN DEN BERG: Correct.

MS MAUD: When Bridget Scarff commenced at the facility in December 2018, she undertook an observation audit in January. Were you aware of that?

MS VAN DEN BERG: Yes.

MS MAUD: And she identified a need for an additional personal care attendant for a shift from 7 am to 11 am in Blue Gum.

MS VAN DEN BERG: Yes.

MS MAUD: And made a recommendation that that happen and that took effect from 4 February; is that right?

MS VAN DEN BERG: Correct.

MS MAUD: So the period prior to then, had the tenancy shift been implemented at Greenway Gardens?

MS VAN DEN BERG: The tenancy shift was for an afternoon shift, not necessarily a morning shift.

MS MAUD: Yes, and as I understand it, that was converted to this morning shift in Blue Gum. Those hours were used instead for that; is that right?

MS VAN DEN BERG: That's not my – I can't say the word – I believe the short shift in the morning – that new short shift was a new shift that was put in.

MS MAUD: But had the tenancy shift in fact been implemented prior to 4 February?

MS VAN DEN BERG: I don't believe so.

MS MAUD: What about the 24 hours, seven days a week registered nurse cover? Had that been implemented?

MS VAN DEN BERG: Yes.

MS MAUD: When was that implemented?

MS VAN DEN BERG: From my understanding, it was from back from when the clinical care coordinator started three days a week, then the RN was supported doing the other days, so across the weekend as well as the other days that the RN wasn't working.

MS MAUD: And from when do you think that change was made?

MS VAN DEN BERG: From May 2018.

MS MAUD: I beg your pardon?

MS VAN DEN BERG: May 2018.

MS MAUD: May 2018. So the document that I took you to earlier was June 2018, tab 304. You see this email here is dated 22 June.

MS VAN DEN BERG: Correct.

MS MAUD: And at the bottom, the section that I took you to earlier, Brendan is talking about the ACFI role to be reviewed in line with Menarock model, ACFI functions will be incorporated into the clinical care role. Are you suggesting that notwithstanding this discussion in June 2018, that in fact seven days a week, 24 hours a day RN cover had been implemented prior to this?

MS VAN DEN BERG: I'm not sure.

MS MAUD: In fact, your email of 15 August to Yvonne Henderson where you were outlining the discussions for alterations to the roster that I took you to earlier, where you had added in an RN in the morning on the days that the clinical care coordinator was there, you recall that document?

MS VAN DEN BERG: Yes.

MS MAUD: And that's dated 15 August.

MS VAN DEN BERG: Yes.

MS MAUD: So that suggests that at that time there was not 24-hour, seven-day a week RN cover at the facility. Do you accept that?

MS VAN DEN BERG: Yes, I would have to go back and double-check.

MS MAUD: When Bridget Scarff commenced at the facility, were concerns in relation to the staff levels raised with you?

MS VAN DEN BERG: They were raised mainly with Brendan, but I was aware of them.

MS MAUD: Did you share those concerns?

MS VAN DEN BERG: Did I think they were concerns? After the information that Bridget had presented, yes.

MS MAUD: Are you referring to the observation audit that she conducted?

MS VAN DEN BERG: Yes.

MS MAUD: But prior to that, did you have concerns about staff levels at Greenway Gardens?

MS VAN DEN BERG: Not necessarily the staff levels but looking at the staff that we had on and their education and skill level.

MS MAUD: Were you aware that there were gaps in the roster, there were insufficient permanent staff to fill the standard roster?

MS VAN DEN BERG: So we had encouraged Yvonne to – she had been relying on a lot of casual staff, and we had been encouraging her to make a roster that was more permanent part-time.

MS MAUD: Yes, but Ms Henderson's evidence is that she wasn't able to do that until the restructure was completed.

MS VAN DEN BERG: No, she was - - -

MS MAUD: Do you accept that the two went hand-in-hand, one had to be completed and then the places could be filled?

MS VAN DEN BERG: She was given the direction to look at the roster. It was mainly just the PCAs giving out medications, to make sure that they had spots within the roster to be redeployed into those areas and not necessarily giving out the medications. She was encouraged to do recruitment and selection and make – staff into those permanent part-time positions.

MS MAUD: Was that you that provided that encouragement?

MS VAN DEN BERG: That was from Brendan, and I also encouraged that.

MS MAUD: Following the sanctions in February this year - - -

MS VAN DEN BERG: Yes.

MS MAUD: - - - your role was changed to be the adviser for Greenway Gardens.

MS VAN DEN BERG: Correct.

MS MAUD: So were you based five days a week at the facility.

MS VAN DEN BERG: Correct.

MS MAUD: What changes did you make to the roster after that time?

MS VAN DEN BERG: I didn't actually make any changes to the roster. What we found after doing a lot of review, was looking at the skill mix of the staff.

MS MAUD: What do you mean by the skill mix?

MS VAN DEN BERG: There was education needed.

MS MAUD: So the morning shift, the additional four hours in the morning, was that maintained?

MS VAN DEN BERG: Correct.

MS MAUD: So, from the position as it was at the end of 2018 through to the period after the sanctions, that was the only change to the roster, was that shift

MS VAN DEN BERG: For clinical staff, correct.

MS MAUD: Yes. So otherwise your focus after the sanctions was improving the training that was provided to the staff; is that right?

MS VAN DEN BERG: Correct.

MS MAUD: Are you aware what the occupancy of the facility is now?

MS VAN DEN BERG: As of today?

MS MAUD: Well, as of, let's say, the end of September.

MS VAN DEN BERG: September last year?

MS MAUD: No, this year.

MS VAN DEN BERG: This year, it was probably 95, 98 per cent full.

MS MAUD: Okay. And so is the position now that there is a roster as it was at the end of 2018 only with the addition of those further four hours in Blue Gum in the morning.

MS VAN DEN BERG: For clinical staff, yes, we have added different to cleaning staff and we've redistributed the lifestyle hours.

MS MAUD: What's the change that has been made to the lifestyle hours, have they increased?

MS VAN DEN BERG: We had them – we now have it over five days a week, both – and we changed the times of the – when the staff started and completed, to support the resident need.

MS MAUD: Now, you are aware that the accreditation standards that apply to aged care facilities changed from 1 July this year.

MS VAN DEN BERG: Correct.

MS MAUD: And what was previously standard 1.6, which related to the sufficiency of staff, there's a new standard, that's standard 7. Has Menarock changed the way it approaches the staffing at its facility as a result of the introduction of standard 7?

MS VAN DEN BERG: We have looked at our recruitment and selection. We've reviewed our processes, but they've mainly stayed the same.

MS MAUD: So, in terms of the substantive requirements, you haven't understood the new standards that have operated from 1 July to impose different obligations?

MS VAN DEN BERG: Can you clarify what you're trying to say there?

MS MAUD: Do you understand the new standards that have operated from 1 July - - -

MS VAN DEN BERG: Yes.

MS MAUD: - - - to impose different obligations in relation to the staff for aged care facilities? What's your understanding of any difference?

MS VAN DEN BERG: There's a need for our governance, so making sure of the staff, definitely. I'm not quite sure what you're trying to ask in that question.

MS MAUD: I'm just trying to understand whether you have taken any different approach to whether you're meeting the standard that applies to the staffing that you have at your facilities?

MS VAN DEN BERG: We are meeting our legislative requirements.

MS MAUD: Well, but I'm trying to understand how you are ascertaining whether you are meeting those.

MS VAN DEN BERG: So we are making sure that they have registrations, that we've got position descriptions, that we've got orientation programs, that we've got education, yes.

MS MAUD: And has there been any change in that approach since 1 July?

MS VAN DEN BERG: We've looked at what our education for the on-boarding for our staff.

MS MAUD: How do you now monitor the adequacy of the staff numbers as the resident cohort changes at the facility?

MS VAN DEN BERG: So we review – our directors of nursing review the resident care needs and we look at the staff that support those residents.

MS MAUD: What sort of things do you look at in particular?

MS VAN DEN BERG: We look at their continence needs, whether they need assistance with their activities of daily living. So their assistance with hygiene care, toileting, mobility, and their activities throughout the day.

MS MAUD: So notwithstanding that you're monitoring those factors, there has been no change to the rosters since the imposition of the sanctions?

MS VAN DEN BERG: Correct.

MS MAUD: No further questions, Commissioners.

COMMISSIONER PAGONE: Yes, thank you. Thank you, Ms van den Berg. You are free to leave.

<THE WITNESS WITHDREW [12.13 pm]

MR BOLSTER: Commissioners, in view of the time, I call the last three witnesses associated with the Menarock organisation together. That's the two directors and Mr Coulton.

COMMISSIONER PAGONE: Yes.

MR BOLSTER: So I call Brendan Coulton. I call Craig John Holland. And I call Mr Andrew Seamer.

COMMISSIONER PAGONE: Who was the third?

MR BOLSTER: Mr Andrew Seamer.

UNIDENTIFIED MALE: I wasn't actually aware - - -

COMMISSIONER PAGONE: He's not on my list.

MR BOLSTER: Mr Seamer is here as moral support, Commissioners.

COMMISSIONER PAGONE: He's not on my list.

MR BOLSTER: Well, we will just deal with Mr Coulton and Mr Holland. Actually, if Mr Coulton's statement which is WIT - - -

COMMISSIONER PAGONE: I think we might swear them in first, perhaps.

MR BOLSTER: Thank you.

<BRENDAN COULTON, AFFIRMED [12.14 pm]

<CRAIG JOHN HOLLAND, SWORN [12.15 pm]

COMMISSIONER PAGONE: Gentlemen, feel free to sit down if you would be more comfortable.

MR BOLSTER: Mr Coulton, you have sworn or prepared three statements in relation to the Royal Commission and they will all each appear up on the screen one after the other. And they're fairly recent, but is there any change that you wish to make to any of those statements.

MR COULTON: No.

MR BOLSTER: And the statements are true and correct to the best of your knowledge, information and belief?

MR COULTON: Yes, they are.

MR BOLSTER: Commissioner, if the three statements could be collectively marked together.

COMMISSIONER PAGONE: You want the whole three together?

MR BOLSTER: Yes.

COMMISSIONER PAGONE: All right, the three statements of Mr Coulton will be exhibit 11-14.

EXHIBIT #11-14 THREE STATEMENTS OF BRENDAN COULTON

MR BOLSTER: Thank you, and Mr Holland, you have sworn or – you have made two statements dated 9 October and 10 October 2019.

MR HOLLAND: Correct.

MR BOLSTER: Do you have copies of those with you?

MR HOLLAND: Yes, I do.

MR BOLSTER: You should see copies of them on the screen.

MR HOLLAND: Yes.

MR BOLSTER: Are the contents of those statements true and correct to the best of your knowledge and belief?

MR HOLLAND: Yes, they are.

MR BOLSTER: I tender Mr Holland's statements.

COMMISSIONER PAGONE: On the same basis?

MR BOLSTER: Yes, Commissioner.

COMMISSIONER PAGONE: All right. The two statements of Mr Holland will be exhibit 11-15.

EXHIBIT #11-15 TWO STATEMENTS OF TOM HOLLAND

MR BOLSTER: Mr Coulton, I would like you to have a look at a document that will come up on the screen, it's tab 277 that's MRA.0003.0001.0945. Are you familiar with that document.

MR COULTON: Yes, I am.

MR BOLSTER: You produced that and refer to it in one of your statements. How did you come to prepare that document?

MR COULTON: It was produced as part of our response to the audit from the Quality Agency.

MR BOLSTER: So it was a document given to the Commonwealth after they had sanctioned Greenway Gardens; correct?

MR COULTON: I'm not sure the sanctions were in place then but certainly in response to the assessment.

MR BOLSTER: Right. It was either shortly before sanctions were imposed or shortly thereafter. It doesn't matter for present purposes. I take it you prepared this document yourself.

MR COULTON: Yes.

MR BOLSTER: Did you have the assistance of Ms van den Berg to do it?

MR COULTON: Someone from the support centre, one of our administrators.

MR BOLSTER: Right. The first paragraph:

> *Menalock Life had been monitoring workforce levels each fortnight with the director of nursing and operations managers receiving reports to ensure we have appropriate human resources to deliver care.*

Is that true?

MR COULTON: Yes, there was a fortnightly process of monitoring actual hours against the roster.

MR BOLSTER: Now, the roster, when you say "the roster", are you talking about the master roster hours of some Menarock roster?

MR COULTON: Yes.

MR BOLSTER: Go over the page, please, to page 946 and you will see there, there's a table that begins at the foot of the page. You will see there you've set out a number of columns. They're, effectively, fortnightly pay periods on the left and you note the vacancies for that period in the next column. Then you have this number, this number master roster hours, 2469. If you go down the table, which begins in February, or it's actually we have the end of it, 3 February 2019 and we go back in time to 8 July 2018. That number is fixed; correct?

MR COULTON: Which column – sorry – just to clarify?

MR BOLSTER: The master roster hours.

MR COULTON: Yes.

MR BOLSTER: How was that number calculated?

MR COULTON: So that master roster figure comes from the total hours delivered to the site and was an existing number at acquisition.

MR BOLSTER: Well, who calculated that number?

MR COULTON: It comes - - -

MR BOLSTER: How is it made up?

MR COULTON: It comes from the roster system, ACF is the system that we used. It's an IT and the hours sit there inside that master roster.

MR BOLSTER: What were the inputs to get 2469?

MR COULTON: So each work category has an allocated number of hours. So the DON's hours are in there, the registered nurses, the CCC, etcetera. All the - - -

MR BOLSTER: The cleaners?

MR COULTON: The cleaners.

MR BOLSTER: The cooks?

MR COULTON: The cooks.

MR BOLSTER: The gardeners?

MR COULTON: Not the gardeners and not the maintenance staff.

MR BOLSTER: The admin?

MR COULTON: The admin.

MR BOLSTER: And that seems to be a fixed figure throughout that whole period.

MR COULTON: That's correct.

MR BOLSTER: If you go back a page to 0945, you will see that from April 2018 through to January 2019, the period covered by your table, your average ACFI increased on a monthly basis, right through from $168 per person per day through to $197 per person per day. Now, if you assume that ACFI measures acuity, at least in some respect, you would agree with me that the acuity of your residents was increasing over that period.

MR COULTON: I would agree with you and I do believe that to be the case. I also believe that there were poor record keeping at the site when we took over and we did improve our record keeping and collection of the data required to validate ACFI. So that did have an impact as well.

MR BOLSTER: The master roster figure, the master roster hours figure, does not seem to keep pace with acuity. Is that a fair criticism of it?

MR COULTON: Yes. The system – the master roster is the master roster and it's fixed in the system. So from that perspective, yes, it's a fair criticism.

MR BOLSTER: And you've heard, I take it, the evidence of Ms Henderson and Ms Scarff and Ms van den Berg about aspects of the acuity of your residents. A significant number in Blue Gum – a significant majority were two-person assist. Do you agree with that?

MR COULTON: Certainly now, and certainly over time, yes.

MR BOLSTER: When did you first become aware of how many people in Blue Gum needed two people to move them?

MR COULTON: Myself?

MR BOLSTER: Yes.

MR COULTON: From the audits – observation audits that Bridget completed in early December or mid-December.

MR BOLSTER: Weren't you monitoring workforce levels every fortnight?

MR COULTON: Yes.

MR BOLSTER: Wasn't Yvonne talking to you every fortnight and telling you that care was inadequate?

MR COULTON: Not every fortnight, no.

MR BOLSTER: How often did she talk to you about the adequacy of the roster?

MR COULTON: I don't have a figure. It would have been in a few discussions when I met with her, yes, or over the phone.

MR BOLSTER: Well, let's try and get a time period so we can get a sense of what she was telling you. October, November last year, two months before she leaves, what was she telling you about the number of staff that you had on?

MR COULTON: She would have been telling me that there wasn't enough staff to fill the roster made up because we had a high casual pool and people weren't in permanent part-time shifts, so there was, I guess, a lack of ownership in that and so it's difficult to keep people on the roster. There probably wasn't enough staff to pool from, so filling shifts became difficult.

MR BOLSTER: You say there probably wasn't enough staff.

MR COULTON: As a total - - -

MR BOLSTER: You are talking about the number of staff to fill it.

MR COULTON: As a total pool, yes.

MR BOLSTER: Okay. What did she tell you about the actual roster itself? Was the roster, assuming it's filled, adequate?

MR COULTON: Well not a lot, I think, at that time. So from some earlier directions that I provided about things that she should focus on in terms of looking at the roster, not a lot of that had happened about September - - -

MR BOLSTER: What did you want - - -

MR COULTON: - - - October.

MR BOLSTER: What did you want her to do about the roster?

MR COULTON: So in particular, we wanted to make sure we were meeting the needs of the clients as our number one priority. The high casual pool created some problems around culture and having consistency of permanent part-time staff in the roster. When we acquired the facility, we didn't have a director of nursing or a clinical care coordinator in place, so they were priorities. We had started to advertise for the DON role before we settled in mid-April and there was a two-week gap before that appointment.

MR BOLSTER: You heard, I take it, its evidence about the ACFI role and the clinical care role being merged, and you heard the evidence of Ms van den Berg, effectively, that she didn't understand there was a clinical care manager, that it was an ACFI person. Do you agree with that?

MR COULTON: Yes, the model when we acquired was a little bit different to ours, so they had an ACFI manager on site that looked after that particular site. That was Julie Rumney. We looked at that model for a little while to see what that was about and didn't understand whether that involved what we would consider to be a clinical care coordinator functions as well or role duties as well. We did have a group manager of ACFI already in existence and there was also another ACFI person at McGregor Gardens, one of the other Gold Age facilities. That person's hours were extended to full-time. She did provide support to that site and the other two Gold Age facilities.

MR BOLSTER: Do you agree with the proposition though that by September/October you had a clinical care manager in name only that their major role was an ACFI role?

MR COULTON: No, I don't agree with that.

MR BOLSTER: Well, what do you say the extent of that person's ACFI role was?

MR COULTON: So they had some responsibilities or functions to pull the assessments together into a pack or the evidence pack that was required and the ACFI coordinator and the ACFI manager helped gather that, have a look at it and submit.

MR BOLSTER: And that role, though, had been reduced – the clinical care manager role had been reduced from five days a week to three?

MR COULTON: That's not my understanding. When we acquired the facility, there was no clinical care coordinator in place and hadn't been for quite some time.

MR BOLSTER: So there was a five day a week ACFI person, was there?

MR COULTON: I believe she was three days a week, but I would have to check that.

MR BOLSTER: Well, let's have a look at a document because I want to make sure we are clear about this. Tab 307, please. You've seen that roster review.

MR COULTON: I have.

MR BOLSTER: Can I ask a question. You were served or Menarock was served with a number of notices to produce documents in relation to – and a vast number of documents were produced. But nothing like this was produced. Do you have an explanation for that?

MR COULTON: I think it was time and volume of information and, no, I don't.

MR BOLSTER: You've seen today that there are three versions of this. This is one that Ms Henderson says was given to her in June 2018. You will see that it provides for a clinical care consultant role of 10 hours fortnight, five days a week.

MR COULTON: That's what it said. So it was a working document and it came straight off the master roster. So it was the master roster in the system; it was not what was happening at the time.

MR BOLSTER: All right. Another document, a variation on this, shows three days a week. Was that what you implemented?

MR COULTON: Yes.

MR BOLSTER: But it still shows it to be a clinical care coordinator. You agree with that?

MR COULTON: Yes.

MR BOLSTER: Were you here when there was questioning about the extent to which the clinical care manager was able to deal with clinical matters in relation to Blue Gum and Jarrah?

MR COULTON: Yes.

MR BOLSTER: And did you understand that at Blue Gum at least in the morning shift, assuming the clinical care role is not there and assuming the registered nurse from Jarrah is not there, there would be occasions when there would be no enrolled nurse, only a cert 4 qualified carer. Were you content with that situation?

MR COULTON: No, we weren't content and so we did change the model to what we would have called the Menarock model from Gold Age to have an EEN around medication management but also to have that additional skill.

MR BOLSTER: When did that change occur?

MR COULTON: Towards the end of 2018. I don't have a specific date.

MR BOLSTER: It wasn't after the accreditation visits - - -

MR COULTON: No.

MR BOLSTER: - - - in February.

MR COULTON: No, it was well before that.

MR BOLSTER: And is it fair to say that Ms van den Berg and Ms Henderson asked you to implement a four-hour shift in Jarrah in the afternoons?

MR COULTON: That was one of the recommendations, yes.

MR BOLSTER: And why was it not implemented?

MR COULTON: I don't have an answer to that. It did take some time to look at the whole thing.

MR BOLSTER: Well, you made the decision, didn't you?

MR COULTON: It was implemented but not until late January.

MR BOLSTER: Well, it wasn't implemented – they suggested it in October. Even before that, I suggest, August, September October, and you said no; correct?

MR COULTON: That's right.

MR BOLSTER: And you implemented it in January – in February after the assessors had visited; correct?

MR COULTON: It was before the assessors.

MR BOLSTER: Before the assessors, okay. You implemented four hours in the morning in Blue Gum. What was the reason for you adopting that?

MR COULTON: That was after the observation audit that Bridget Scarff had completed.

MR BOLSTER: Ms Henderson says she was telling you there weren't enough staff at this facility for months. Do you accept that?

MR COULTON: Yes, I accept that she was telling me that.

MR BOLSTER: And what's your reason for not doing anything about it?

MR COULTON: There were more things inside the culture around the casual nature of the staff and permanent part-time staff and not knowing whether that was the reason that they felt rushed or they felt like they weren't able to care. So there were more elements to that total roster that we needed to understand.

MR BOLSTER: What were those elements?

MR COULTON: As I said, the casual staff, so the continuity, lacked continuity of care, you could argue, and if we were able to put the part-time staff that worked five days a week, we would get some more consistency and that might've been the issue. We had poor staff attitudes and so that also had an impact.

MR BOLSTER: When you saw the videos that Mr UG's daughters brought in, what was your reaction?

MR COULTON: I was very upset.

MR BOLSTER: What did you do?

MR COULTON: It was quite confronting. I escalated it to the directors at the time. We hadn't dealt with any family before, and I certainly hadn't personally, having put a CCT or camera in place in place in any of our facilities. And so that was – we were in uncertain territory, I guess, around how to manage that.

MR BOLSTER: The criticism that is made of you by the family is that you reacted to that more with concern about the fact that a video had been taken and that that was unlawful and that it shouldn't have happened as opposed to the care deficiencies that it demonstrated. What do you say about that?

MR COULTON: I think that's a fair comment from the family and I understand that what they were going through at the time. I didn't certainly mean that to be the message that came back. I did, in my very first sentence back to the family in correspondence, say sorry and also acknowledged what grief they were going through. The concerns that I did have were around the privacy laws and how that might play out around confidentiality and how we could use the video. There were industrial relations issues to think about.

MR BOLSTER: You did act on the basis of the information, though, didn't you?

MR COULTON: We did.

MR BOLSTER: Could we bring up, please, tab 20. You recognise that's the letter you sent?

MR COULTON: Yes, it is.

MR BOLSTER: Go over to the second page. In hindsight, would you have talked about a security camera policy in a letter of apology to a family who had just lost a loved one in the future?

MR COULTON: I think that's reasonable to say that I wouldn't include it in that.

COMMISSIONER BRIGGS: Sorry, I just couldn't hear.

MR COULTON: I said that is reasonable to suggest that I wouldn't include it, yes.

MR BOLSTER: Mr Holland, you've observed the evidence today and you are a director of the company that owns this facility.

MR HOLLAND: Yes.

MR BOLSTER: It's one of a suite of facilities in the Menarock group. And the group is quite a profitable organisation, isn't it?

MR HOLLAND: I'm not sure what your definition of "profitable" is.

MR BOLSTER: Well, you have provided us with the financial statements for Menarock Aged Care Services Victoria for 2017, 2018 and 2019.

MR HOLLAND: Correct.

MR BOLSTER: Do I take it that is a group or a consolidated set of accounts for the Victorian facilities?

MR HOLLAND: No, that is a consolidated group for both the – all the aged care facilities including property related entities and other entities, so it's not just specifically aged care.

MR BOLSTER: So when I see, for example, in the accounts for Menarock Greenway Gardens, which you produced in a separate statement, and I see rent payments of $350,000 per annum, I take it that's a transfer pricing issue between a property holding company in the group that you acquired when you acquired Greenway Gardens?

MR HOLLAND: Can you just clarify what – the amount you are referring to?

MR BOLSTER: If you go to your first statement, which is the profit and loss statement for Menarock Aged Care Services Heathmont, which is WIT.0561.0001.0007, there is a rental. I'm sorry; I'm on the wrong page. I do apologise. If you go to page 8 of that bundle, you will see a rent figure of $350,000 for this facility.

MR HOLLAND: Yes, correct.

MR BOLSTER: And that's a payment to a related entity.

MR HOLLAND: Yes, correct. The business operates through one legal entity and the property is held in another legal entity, yes. Correct.

MR BOLSTER: Yes. There's a substantial depreciation figure on page 9 in the 2019 accounts of around $216,000.

MR HOLLAND: Correct.

MR BOLSTER: If we take out the rent and depreciation, this facility would be a positive, would return a profit; correct?

MR HOLLAND: I disagree. I'm not sure you can take out the rent. The rent has to be paid either internally or to an external landlord.

MR BOLSTER: So it's paid to a group and the group account appears in your second statement and the group account which takes into account all of the property holding companies, I take it.

MR HOLLAND: Correct.

MR BOLSTER: When all of those effects are brought to account or brought to book, for 2017, the net profit for the group was $3,992,000; correct?

MR HOLLAND: Correct.

MR BOLSTER: For ’18, it was $4,073,000.

MR HOLLAND: Correct.

MR BOLSTER: And in 2019, the year when all of this was happening at Greenway Gardens, it was $6,243,000.

MR HOLLAND: Correct.

MR BOLSTER: Putting that into the equation, how do you regard the way in which staffing was funded at Greenway Gardens over the nine months leading up to the sanctions that were imposed this year?

MR HOLLAND: Sorry. Could you just rephrase your question?

MR BOLSTER: What’s your reaction to the criticism you have heard today of staffing in the period leading up to the imposition of sanctions?

MR HOLLAND: It is concerning what I’ve heard today.

MR BOLSTER: What concerns you?

MR HOLLAND: What concerns me, I suppose, has been, on reflection, the inadequacy of the proper training and education for the staff. We did have a problem at Greenway Gardens in relation to our high casual staff usage and as part of the roster restructure that was trying to convert many of those casuals into permanent part-time employees so that they would have greater ownership of the roster. This facility also had a high usage of agency as well over that period of time, and as an organisation, we tried to fill our shifts with existing employees, if not from that facility, from one of our related facilities. But obviously if we need to rely on agency we will rely on agency.

MR BOLSTER: Were you aware that your staffing roster seemed to impose a fixed number for master roster hours that was not dependent upon the acuity of your residents?

MR HOLLAND: That master roster hours on the assumption that the facility is fully occupied, yes, but you are correct in that it does not take into account the acuity level of the residents because the acuity level of the residents fluctuates as time goes on.

MR BOLSTER: Well, how did it fluctuate at Greenway Gardens according to your experience of the situation during 2019?

MR HOLLAND: I can’t comment specifically on the acuity level of the residents within Greenway Gardens. I can comment more generally, but not specifically on Greenway Gardens.

MR BOLSTER: Well, according to Mr Coulton's report that he provided to the government, acuity only ever went up.

MR HOLLAND: When we acquired the facility in April 2018, we found with the previous owners that they were not properly documenting the ACFI. So the numbers would suggest that the ACFI has – did increase over that period of time since we've owned it. One argument would be that we've actually – the ACFI, when we first acquired it, was very low given the profile of the residents. With improved documentation we were able to increase the ACFI. So I would suggest that the answer to the question is partly as a result of improved documentation, that has improved that ACFI, and partly because of the acuity increase in the residents.

MR BOLSTER: I might ask you to reconsider that answer. When you have a look at tab 277, and have a look at the paragraph above the heading – under the heading Resident Care Levels, 277, this is what your general manager said:

> *Average ACFI has increased since April 2018 to January 2019, which does support and reflect an increase in the acuity and care needs of residents. In particular this reflects those residents in Blue Gum specific dementia unit. The change has coincided with the reviewed clinical care model and increased hours of support staff.*

Do you wish to reconsider your previous answer?

MR HOLLAND: No. I'm not denying that the acuity level of residents in Greenway would have increased over that period of time. I agree.

MR BOLSTER: What if anything does Menarock Life propose to do to associate staffing and rostering decisions with acuity in the future, or are you going to stay with the same system that you have now?

MR HOLLAND: Any time in terms of when it gets to rostering, we always do take into account the clinical care needs of the facility and of the residents. And that is the primary driver upon which the rosters are determined.

MR BOLSTER: Well, Mr Holland, that certainly didn't happen on the basis of this document, from April 2018 to January 2019. Are you telling the Commission that that situation and that approach has changed?

MR HOLLAND: I'm sorry, can you rephrase the question?

MR BOLSTER: You say that rostering is linked to acuity; correct?

MR HOLLAND: Correct. Structure – one of the factors is that we structure our rosters around the acuity level of our residents.

MR BOLSTER: This document, may I suggest to you, suggests the opposite. It suggests that the rostering hours are fixed by reference to the master roster hours and the bed vacancies and nothing more.

MR HOLLAND: That is correct but also when there's proposed changes to the roster, we also – management will also consider the acuity levels of the residents.

MR BOLSTER: So is the approach that's evident in this document still the approach at Menarock?

MR HOLLAND: I believe so, correct.

MR BOLSTER: Across all 14 facilities?

MR HOLLAND: We have 13 facilities.

MR BOLSTER: 13.

MR HOLLAND: Yes.

MR BOLSTER: Is it going to change in the light of what you have heard today?

MR HOLLAND: Yes, it will.

MR BOLSTER: Commissioners, I have no further questions.

COMMISSIONER PAGONE: Yes. Thank you gentlemen, you are free to go.

<THE WITNESSES WITHDREW [12.45 pm]

MS MAUD: Commissioners, the last witness is Ms Ann Wunsch.

<ANN DOMINICA WUNSCH, AFFIRMED [12.46 pm]

<EXAMINATION BY MS MAUD

COMMISSIONER PAGONE: Yes, Ms Maud.

MS MAUD: Ms Wunsch, you've already prepared two statements for the Royal Commission, and now as I understand it, prepared a third one which is dated 23 September 2019. Do you have a copy of that there?

MS WUNSCH: Yes, I do.

MS MAUD: Does it have the document ID in the right-hand corner, WIT.0470.0001.0001?

MS WUNSCH: That's correct.

MS MAUD: Are there a number of attachments to the document?

MS WUNSCH: Yes, that's correct.

MS MAUD: Have you had an opportunity to read it recently?

MS WUNSCH: Yes.

MS MAUD: Are its contents true and correct?

MS WUNSCH: That's correct. Yes.

MS MAUD: Are there any changes that you wish to make to it?

MS WUNSCH: No.

MS MAUD: I tender that statement, Commissioners.

COMMISSIONER PAGONE: Yes. Well, the statement of Ms Wunsch of 23 September 2019 will be exhibit 11-16.

EXHIBIT #11-16 STATEMENT OF MS WUNSCH OF 23/09/2019 (WIT.0470.0001.0001) AND ITS IDENTIFIED ANNEXURES

MS MAUD: Now, Ms Wunsch, what's your current role with the Aged Care Quality and Safety Commission?

MS WUNSCH: I'm the executive director of the quality – sorry, the quality assessment and monitoring operations group.

MS MAUD: And your role involves the administration of accreditation and quality of review processes undertaken by the commission?

MS WUNSCH: That's correct.

MS MAUD: And those processes involve accreditation audits and review audits and assessment contacts. Can you just briefly tell the Commission what the difference between those are?

MS WUNSCH: Yes. The processes in relation to the accreditation of residential aged care services are accreditation audits, re-accreditation audits and they are cyclical and involve an assessment against the Aged Care Quality Standards. The assessment contacts are conducted as part of our compliance monitoring program, and review audits are conducted in accordance with the rules in circumstances where we have a view that a service may not meet the standards or where we're directed or requested by the secretary of the department to undertake a review audit. In relation to home care services, we undertake quality review which occurs in a three-year cycle and also we undertake a compliance monitoring program which involves assessment contacts.

MS MAUD: Now, I want to ask you about the Quality of Care Principles 2014 which applied prior to 1 July this year.

MS WUNSCH: Yes.

MS MAUD: And in particular about standard 1.6 and the expected outcomes associated with that standard.

MS WUNSCH: Yes.

MS MAUD: Is in general the methodology that's applied by quality assessors when they're assessing facilities for compliance with this standard to gather information based on observation and interviews with care recipients and their families and staff and a review of documents?

MS WUNSCH: Yes, also interviews with staff and management of the service.

MS MAUD: And the quality assessor handbook which you have referred to in your statement, directs assessors to use numbers of personnel in the service form.

MS WUNSCH: That's correct.

MS MAUD: And that's a form that's provided to providers at the entry meeting at the beginning of an audit; is that right?

MS WUNSCH: It is now, as we conduct our audits unannounced. It was developed in a period of time when audits were announced and the purpose of that form was to understand the basis by which the service created a starting profile. It was to determine whether the service – partly the purpose was to determine whether the service may have inflated the figure or the numbers of staff at the audit as we were announced then. It also gave the – and continues to give the assessment team a basis by which it has – it can ask questions and pursue lines of inquiry about how the service provides a staffing profile to meet the needs of consumers.

MS MAUD: Operator, can I ask you to bring up a document, the ID CTH.4020.1100.0882. You see there the record of the entry and exit meeting for an

audit that was conducted at Greenway Gardens facility in January and February of this year.

MS WUNSCH: Yes, I do.

MS MAUD: Could we turn to the next page of the document, please. Is that an example of the numbers of personnel in the service form that assessors are directed - - -

MS WUNSCH: Yes, it is.

MS MAUD: - - - to have completed.

MS WUNSCH: Yes.

MS MAUD: Can we turn to the next page, please, operator. So this is the document that's included in the bundle produced by the commission of the assessors' records from the audit - - -

MS WUNSCH: Yes.

MS MAUD: - - - in January and February this year.

MS WUNSCH: That's right.

MS MAUD: So this is a document that would have been prepared by somebody at Greenway Gardens and provided to the assessors; is that right?

MS WUNSCH: That is right.

MS MAUD: Yes. Can you see there in the third row, in the AM shift, it says "care personnel" and it has the number 102 across the row.

MS WUNSCH: Yes, I can see that.

MS MAUD: Yes. There is evidence before the Commission that that in fact that number is incorrect, and it should have been 38.

MS WUNSCH: That's correct.

MS MAUD: Yes. Do I take it from that, that that error may not have been identified by the assessors?

MS WUNSCH: No, I don't believe that was the case. That, I believe from my review of the matter, that the error was understood and inquiries – further inquiries were made by the assessment team of the service.

MS MAUD: What's the basis for your understanding of that?

MS WUNSCH: The notes that were taken by the assessor during that particular audit.

MS MAUD: So is the purpose of having a provider produce this document so that the assessors themselves can form a view as to whether or not there are sufficient staff present at the facility?

MS WUNSCH: The form, as I previously described, had two purposes, and one purpose is still relevant and that is that it provides a basis by which the assessor can understand or begin to explore the staffing that is provided at the service. For example, the team would make observations as they walk around the service during the audit about the numbers of people that they see undertaking – providing care. It also provides a basis for interviews with staff and with management about how the service provides supervision, support, what the particular designations are on particular shifts, etcetera. So it's – but it's not by any means the sole document to inform because the roster and the way the service evidences through other documents are taken into consideration.

MS MAUD: Are assessors instructed to also gather information about, to give a complete picture of the acuity of the residents for that corresponding time?

MS WUNSCH: Certainly, the sampling that we do – that the assessment teams does, the purposeful sampling seeks to understand consumers with complex care needs. We also have various other ways to understand the acuity. The audit commences with interviews of consumers and their representatives, and the other information that is used to understand these matters includes looking at the call bell response times, the repositioning charts or documentation, site charts, medication administration times, particular care practices associated with people with complex needs, for instance, if there are consumers that have peg feeds, alternative feeding regimes and whether they occur on time as per requirements.

MS MAUD: Do you accept, though, that it's difficult to form an assessment of whether the staff numbers are sufficient without a complete picture of those kinds of acuity needs of the residents that you have just mentioned?

MS WUNSCH: Do I accept that? Well, yes, I do but it's not the case that this is a document that is used as a standalone piece of information to inform an assessment team. In fact, it's far more the case that the other observations and interviews and document reviews inform that picture.

MS MAUD: Does the commission provide guidance to assessors in relation to a range of care staff to resident ratios that might be considered an adequate range to provide adequate care?

MS WUNSCH: No, it doesn't.

MS MAUD: No. Does the commission provide guidance to assessors as to the nurse hours per day that might be regarded as reasonable to provide care?

MS WUNSCH: No, we don't but we certainly require assessors to seek to understand the basis by which the service provides the nurse hours to a consumer by describing the assessments that inform that rostering, and we seek to understand that the experience of that care through our observations and interviews with consumers and their representatives, we also seek to understand that through interviews with staff about whether there is adequate time to undertake the tasks associated with supporting consumers with complex needs.

MS MAUD: Operator, could I just ask you to bring up document ID CTH.4020.3000.1520 and could we turn to page 58. You see there that's the same table that I took you to earlier.

MS WUNSCH: That's correct.

MS MAUD: And you will see that there's still that number 102 that is in the table in this report.

MS WUNSCH: Yes, that was the information provided to the assessment team by the service. Yes.

MS MAUD: Yes. But it hasn't been qualified in the report; do you accept that?

MS WUNSCH: I accept that the team did not qualify that they had understood this to be an error in the report, yes.

MS MAUD: All right. Could we go now, please, to another document, CTH.4020.1400.0001. You will see there there's assessment contact report for a visit at Greenway Gardens facility on 2 July.

MS WUNSCH: Yes.

MS MAUD: Yes. And could we turn to page 0006 please. And could we highlight, please, the bottom bullet point. Do you see there that the assessors in this particular instance are relying there on what they're told by management as to what they're proposing to do in relation to the roster?

MS WUNSCH: I'm not familiar with the detail of the evidence-gathering in relation to this particular assessment contact but I can see what the report says, yes.

MS MAUD: Are the assessors instructed to always look at the numbers that an agency has in relation to the usage of agency staff?

MS WUNSCH: It's certainly routine to understand the pattern of deployment including the use of agency staff as agency staff is known by us to be an indicator of potential risk for consumers, yes.

MS MAUD: So a facility with a high usage of agency staff would – that would be one piece of evidence that might suggest that they have an insufficient number of staff to provide adequate care?

MS WUNSCH: It could be, yes.

MS MAUD: Does the Commission provide guidance to assessors in relation to what might be an unreasonable usage of agency staff?

MS WUNSCH: No, the Commission does not, no.

MS MAUD: So that's left to assessors to form their own assessment, is it?

MS WUNSCH: Well, ultimately, the assessment team must make a judgment about the evidence in front of them and that evidence comes from a range of sources. It comes from information provided from consumers, from their representatives, from documents reviewed, from observations they make of care, from any other information, other regulatory intelligence that is provided to the team. But it's ultimately a judgment about that particular expected outcome for each of the 44.

MR BOLSTER: And that concept of whether there are sufficient staff, that also appears in the new standard 7.

MS WUNSCH: Yes, it does, yes.

MS MAUD: Yes. And do you accept that that's a concept on which minds might reasonably differ?

MS WUNSCH: On which?

MS MAUD: The concept of sufficiency of staff, whether there are sufficient staff.

MS WUNSCH: Sorry, I didn't hear the first part of your question.

MS MAUD: I will put it again. Do you accept that the concept of whether there are sufficient staff - - -

MS WUNSCH: Yes.

MS MAUD: - - - is one on which minds might reasonably differ?

MS WUNSCH: Minds – sorry, minds might reasonably differ?

MS MAUD: Yes.

MS WUNSCH: Yes. The Aged Care Quality Standards under standard 7 have a significantly enhanced piece in relation to human resource management. So under the new standards we have five specifically separate requirements that look at the – and there are four concepts underpinning that in relation to sufficiency of appropriately skilled staff, the second in relation to attitudes and attributes, the third in relation to the organisational support, the fourth in relation to the review and monitoring. So those four concepts underpin those five requirements. So it is a significantly different – it has enhanced representation in the standards in that there is a whole standard dedicated to this particular issue.

MS MAUD: Do you accept that the fact that compliance with the standard involves an evaluative judgment of the sufficiency of staff, makes it difficult for approved providers to determine or to ensure that they're complying with the standard?

MS WUNSCH: I don't necessarily accept it makes it difficult. I believe that providers have sufficient information in our guidance material that talks to the issues that are relevant to coming to a view about sufficiency and competence, recruitment and all those other elements that make up the staffing profile. It's the provider's responsibility to evidence how they come to a view that they have deployed sufficient appropriately skilled people and it depends on the acuity and the individual needs of the – of consumers that are in their care.

MS MAUD: Commissioners, I notice the time. I have no further questions for Ms Wunsch.

COMMISSIONER PAGONE: I'm sorry, you notice the time and what was it?

MS MAUD: No further questions for Ms Wunsch.

COMMISSIONER PAGONE: You have no further questions. Can the witness be excused?

MS MAUD: Can she be excused, please.

MR BOLSTER: That's the evidence for today, Commissioners. There are some minor housekeeping matters, but we will deal with those in the morning.

COMMISSIONER PAGONE: Yes. All right. Ms Wunsch, thank you for your evidence. You are free to leave.

MS WUNSCH: Thank you.

<THE WITNESS WITHDREW [1.05 pm]

COMMISSIONER PAGONE: Adjourn until 9.15 am tomorrow, please.

MATTER ADJOURNED at 1.05 pm UNTIL
WEDNESDAY, 16 OCTOBER 2019

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