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TRANSCRIPT OF PROCEEDINGS

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

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

PERTH

9.38 AM, MONDAY, 24 JUNE 2019

Continued from 19.6.19

DAY 26

**MR P. ROZEN SC, counsel assisting, appears with MR P. BOLSTER, MS E. BERGIN
and MS E. HILL**

**MR M. BORSKY QC appears with MS M. NORTON and MR J. RUDD for Japara
Healthcare**

COMMISSIONER TRACEY: Please open the Commission. I would like to start by acknowledging the Whadjuk people who are the traditional custodians of the land on which we meet today. I would also like to pay my respects to their elders, past and present, and extend that respect to other Aboriginal and Torres Strait Islander people who may be present. Yes, Mr Rozen.

MR P. ROZEN SC: Good morning, Commissioners. I appear with Mr Bolster, Ms Hill and Ms Bergin to assist the Royal Commission into Aged Care Quality and Safety. Commissioners, this is the fifth hearing of the Royal Commission, the fourth hearing having just concluded in Broome last week. Commissioners, this week, in accordance with paragraph A of its terms of reference, the Royal Commission will continue its examination into the quality and safety of aged care services provided to Australians. As was the case in the Sydney hearing in May, the extent of substandard care being provided, including mistreatment and abuse, will be examined by means of two case studies selected from the many submissions the Royal Commission has received from the general public. I will say a little more about the case studies presently.

The case studies are relevant to and will help us to explore the particular themes of this four and a-half day hearing being person-centred care and palliative care. By paragraph E of its terms of reference, the Royal Commission is required to inquire into how to ensure that aged care services are person-centred, including through allowing people to exercise greater choice control and independence in relation to their care and improving engagement with families and carers on care related matters. Each aspect of paragraph E of the terms of reference will be the subject of evidence that will be called this week. Public submissions are, of course, an extremely important part of the Royal Commission's work. I repeat the call for the public to engage with the Commission via the public submission process.

The staff of the Commission analyse each submission received and use that information to identify potential participants in the Commission's hearings, round tables and community forum. The Royal Commission has received 4564 submissions to date. The importance of person-centred care is demonstrated by being raised in 37 per cent of those submissions. In addition, end of life care, which we will also examine this week, is raised in 27 per cent of submissions. And, finally, 33 per cent of submissions raise independence, choice and control over care as concerns.

Person-centred care. Person-centred care is an approach to care that is derived from the work of the American psychotherapist Carl Rogers and the English social psychologist and dementia expert Tom Kitwood. In his important 1997 book *Dementia Reconsidered: The Person Comes First* and his work at the Bradford Dementia Group in the United Kingdom, Kitwood advocated a new culture of dementia care based around the idea of personhood which he defined as a standing or status that is bestowed upon one human being by others in the context of relationship

and social being. Commissioners, they are themes that run right through the evidence that you'll be hearing this week.

5 Central to Kitwood's work is the idea that having dementia in itself does not entail a loss of personhood, and although Kitwood's work focused on dementia, the evidence this week will demonstrate that person-centred care is a philosophy that applies to all forms of care. More recently, others have built on Tom Kitwood's work by focusing on the importance of relationship centred care. The importance of relationships in the provision of aged care is expected to be a recurring theme in this week's
10 evidence. I want to say a little bit about what has been said in the hearing so far about person-centred care. The Commission has already heard from witnesses who say that person-centred care should be the foundation of all aged care.

15 At first hearing in Adelaide, Mr Ian Yates AM told the Commission that COTA, formally known as the Council on the Ageing of which he is the CEO, believes person-centred aged care is a community expectation. While person-centred care is a term we've heard a lot, there's no consensus on its exact meanings. The Royal Commission has already heard evidence from experts about what they see as the key features of person-centred care in aged care. In the first hearing in Adelaide,
20 Associate Professor Edward Strivens the President of the Australian and New Zealand society of Geriatric Medicine described person-centred care as recognising that a person receiving care is an individual with their own life story, culture, interests and beliefs with care being individualised to meet their own unique situation, needs and goals. He also described the type of care as doing things with
25 people, not to them.

Ms Annie Butler, the National Secretary of the Australian Nurses and Midwifery Federation described person-centred care as respecting and being responsive to the needs preferences and values of care recipients. She described how this type of care
30 enables partnerships between the person receiving care, their family and carers which provide respect, emotional support and physical comfort. Ms Claerwen Little from Uniting Care Australia characterises person-centred care as building a system around the person and not the other way around. She said that the aged care services offered in Australia can often be highly institutional, rather than being responsive to the
35 individual's need to engage in meaningful activity and to maintain premier relationships.

Drawing a distinction between clinical and nonclinical needs, Professor Deborah Parker of the Australian College of Nursing emphasised the need for person-centred
40 care to be about the whole experience and not just the clinical indicator experience. In the Sydney hearing, Professor Elizabeth Beattie of the School of Nursing at Queensland University of Technology told the Commission that person-centred care is built on reciprocal relationships with dignity and respect being vital components. Reflecting on the work of Kitwood, Professor Beattie said that a person-centred
45 philosophy of care values the essential self within each of us, and she explained that by using high quality interpersonal communication, staff can build relationships with residents that affirm personhood by creating recognition, respect and trust.

Professor Beattie also made the point that even where people are severely impaired or have very little communication, they can still share a moment of connection that gives life a quality that is very meaningful. This important observation will be reflected in the first of our case studies later today. Professor Joseph Ibrahim of
5 Monash University, also during the Sydney hearing, identified the central tenets of person-centred care as respect of quality, feeling worthwhile and choice. And, similarly, Associate Professor Stephen Macfarlane the Head of Clinical Services for the Dementia Centre at HammondCare told the Royal Commission at the Sydney hearings that family involvement is vital to the care of people in residential aged care
10 facilities.

As Associate Professor Macfarlane explained, families are often the main advocates for residents and have the detailed knowledge of the resident's past personality, their likes and dislikes, hobbies and occupational interests with that knowledge being vital
15 to the formulation of individualised management plans. Importantly, the Royal Commission has also heard from direct experience witnesses who put, into their own words, their experience of receiving care that was not person-centred. In the first Adelaide hearing, Mr Barrie Anderson spoke of his wife Grace who lives with dementia in the palliative care stage. When asked by people about how to care for
20 Grace, his message for them was as follows and I quote – it's a fairly simple message, actually:

To walk in Grace's shoes, to recognise that she has had a rich past, that there's a present and that she has an evolving future.
25

Mr Anderson's message is simple, but powerful and practical. It really encapsulates what is meant by personhood, recognising a person's history, experience and unique identity. In Sydney, Ms Darryl Melchhart described feeling that her wishes about her privacy are mostly disregarded. She said that staff at her aged care home continued
30 to open the door to check on her at night even though she's told them this disturbs her and she's unable to fall back asleep. Ms Merle Mitchell AM told the Royal Commission in Sydney that with the way the aged care system is currently structured, staff cannot implement compassionate person-centred care. She described slow eaters being harassed by staff to finish their food. Ms Mitchell made
35 the point that many older people just can't physically eat quickly. She sees people acquiescing, just saying, "Yes, I've finished," as they don't want to be a problem.

Also in the Sydney hearing, Ms Eresha Dilum Dassanayake described the experience of her mother in aged care. She told us about a manager referring to her mother in
40 her mother's presence as demented and adding, "She doesn't understand what we're saying." The Commission also heard in the Sydney hearings from providers whose model of dementia care aims to provide person-centred care. Ms Jennifer Lawrence of Brightwater described its model as being based on understanding the person. Representatives of Group Homes Australia talked about their small home
45 environment where there are smells and sounds of home to help people feel humanised. They explained that their workers build a strong connection with the residents, and they involve the residents in all aspects of running the home to give

them a strong sense of purpose and meaning in their lives. The central role of the caring workforce will feature in this week's evidence.

5 Person-centred care and the current aged care system. We've heard in earlier
hearings of some of the challenges of providing person-centred care in the current
system. Professor Henry Brodaty AO who, as noted earlier, gave evidence in the
Commission's Sydney hearings observed that person-centred care aims to provide
10 care for the person, not prioritise the task or the organisation. However, for reasons
that you've already heard and that will be further explored in these hearings, this can
be a challenge. Our aim this week is to lead evidence about how such challenges are
currently being overcome and how our aged care system can be redesigned to make
the provision of genuine, personal and relationship based care the norm and not the
exception.

15 In previous hearings, the Commission has heard of the challenges from the aged care
workforce in delivering person-centred care within the time constraints under which
they labour. In Adelaide hearing 2, you heard about the importance of taking time
with clients in the home care context, Rosemary Dale who works in home care told
you that, I quote:

20 *You've still got to go slow because, sometimes, we're the only people care recipients
see. They don't see their families have gone. Their partners have gone. We're the
only people they see, so it's a slow process.*

25 You also heard that the pressures of time can be distressing for workers as well as for
the older person. Heather Jackson said, and I quote:

30 *And so we're on a time clock, and it can be quite distressing for myself trying to get
the job done if the person is not quite right that day.*

You've also heard that continuity of staffing is important for delivering person-
centred care, reinforcing the importance of building relationships. In Adelaide
hearing 2, Ms Ford from Southern Cross Care told the Royal Commission that, and I
quote:

35 *We know that is the number one thing that people want is continuity of workers.
They want a relationship. They want trust.*

40 The importance of continuity of staffing will be a topic that a number of witnesses
will be asked about this week. We will call evidence of a number of models that are
aimed at ensuring that carers have the opportunity to build relationships with the
older people for whom they care. Dignity of risk. The Royal Commission has heard
of the need to balance safety and autonomy when providing person-centred care. In
45 Sydney, Professor Ibrahim talked about the importance of what he called dignity of
risk, which he described as the principle of allowing an individual the dignity
afforded by risk taking with subsequent enhancement of personal growth and quality
of life.

Both Professor Ibrahim and Associate Professor Macfarlane in the Sydney hearing, and Ms Patricia Sparrow, the CEO of Aged and Community Services Australia in the first hearing have made the point that people in residential care are being cared for in a manner that does not have regard to the dignity of risk. Associate Professor
5 Macfarlane said that the current aged care standards emphasise safety at the expense of a quality aged care experience which would allow people to take reasonably controlled risks to maximise their quality of life.

10 Ms Lawrence of Brightwater and Mr Gavshon of Group Homes Australia in the Sydney hearing described the balancing act required by a provider to allow for the dignity of risk. Mr Gavshon gave the example of a resident who was going on daily walks around the local area. The provider discussed this with the family who were comfortable that these walks were an important part of the resident's daily life and there was a plan in place if she got lost. As Mr Gavshon described it, giving that
15 opportunity and that independence will probably have a much bigger impact positively than taking it away from her.

Last week in Broome we heard about accepting risk in the context of providing culturally safe care. In responding to questions around risk in eating traditional
20 foods such as goanna, Professor Leon Flicker AO noted that:

*Again, this is the sort of risk taking that people have all the time. Aboriginal people in remote communities often eat some traditional foods. It's not necessarily going to be – the goanna that they hunt isn't necessarily going to be certified as safe for
25 human consumption but, again, that's such a traditional part of life of some of these small communities that it seems churlish by people interfering with it, frankly.*

In his statement Professor Flicker noted that:

30 *Risks may include participation in important cultural practices whilst unwell or allowing suboptimal personal care by untrained family members. These risks should be taken after appropriate consultation with the community and family members.*

He told us. The focus for the Commission, autonomy, relationships and the quality
35 of life. Commissioners, there are clear themes emerging in this evidence to date: the importance of relationships, respecting the person's individuality and uniqueness, respect, dignity and trust. The Commission will hear more evidence about the key features of person-centred care throughout this week. Commissioners, you will hear from a number of other witnesses about the importance of understanding and valuing
40 the individual, acknowledging their identity and concept of personhood. We will receive more evidence about the importance of respecting and recognising the autonomy of the individual. We will hear about approaches which recognise self and identity as being pivotal to wellbeing.

45 Later in the week, the Royal Commission will hear from Dr Lisa Trigg, an internationally recognised expert in aged care policy design. Dr Trigg, who is in the hearing room this morning and will be present throughout the week and we're very

grateful for that, will explain that relationship-centred care means that everyone involved in caring, including the resident, their families and care workers, should experience relationships that promote a sense of security, belonging, continuity, purpose, achievement and significance. This hearing will also examine person-centred care and relationship-based care through the lens of palliative care, that is, care that is provided to improve the quality of life of patients and their families facing life-threatening illness.

Dr Elizabeth Reymond, an experienced palliative care physician, will explain that the philosophy of palliative care is built upon person-centred care, however, she will add that palliative care extends the concept of person-centred care beyond the patient as palliative care recognises a unit of care usually composed of the person and their family and significant others. We will also hear from aged care providers about the importance of building strong relationships between carers and staff and the older person who is being cared for. The model of care at Wintringham where many residents do not have strong connections with family is one where small communities of staff and residence are consciously created.

Evidence will be led during the hearing about consumer-directed and consumer-centred care, the latter being an expression that is used in a number of Australian regulatory documents that have been produced by the Aged Care Quality and Safety Commission. In a statement by Ms Janet Anderson, the Aged Care Quality and Safety Commissioner, she states that the terms “consumer-centred care” and “person-centred care” are essentially synonymous and she refers to a definition of consumer-centred care as being care and services that are designed around an individual’s needs, preferences and background. It includes a partnership between consumers and providers.

Dr Trigg, somewhat similarly, distinguishes between treating a person as a patient, as a consumer and as an individual. She describes different types of quality, organisation-focused, consumer-directed and relationship-centred, and as she will explain, consumer-directed quality is more transactional. Relationship-centred quality, on the other hand, values personhood and rights. And as will be demonstrated, these are important distinctions and they’re distinctions of substance, not just of nomenclature. The phrase “person-centred care”; it’s appropriate at this juncture to pause and reflect on this term. At the Sydney hearing Professor Brodaty noted that when describing the principles of person-centred care, some people embrace the principles but others merely pay lip-service to them.

He quoted Dawn Brooker, a leading researcher, who has written that:

It is now PC –

politically correct –

...to say that we do pc –

person-centred care. This week you will hear from at least one provider who prefers not to use the term person-centred and describes their model of care as relationship-based care, noting that the term “person-centred care” is overused in the industry and has lost its meaning. Bryan Lipmann, AM, the CEO of another provider,
5 Wintringham, will tell you that:

We don't use terms such as person-centred care. We treat all residents and clients as individuals and as a starting point when thinking about how to deliver aged care we ask ourselves, how would we like to be treated when we're old and frail.

10 Commissioners, you may consider such an approach to be refreshing in its simplicity. We've floated that the Royal Commission's terms of reference require it to inquire into person-centred care and while we will undoubtedly use the term during this hearing, our aim is really to get behind the label “person-centred care”
15 and to explore models of care and approaches to care that genuinely provide quality of life for older people, show a respect for the individual, respond to the needs of the whole person, and have regard to the importance of relationships that that individual has with their family, carers and community. This will be our focus during this hearing.

20 What the Commission will hear in Perth. The hearing will commence with a case study to examine the experience of Ms Noleen Hausler. In September 2015 Ms Hausler secretly placed a video camera in the room in which her late father, Mr Clarence Hausler, lived at Mitcham Residential Care facility in Adelaide which was
25 operated by Japara Healthcare Limited. To her great despair, the camera filmed her late father being physically assaulted and humiliated by his carers, and she complained to the facility manager about that. The case study will include evidence from Ms Hausler and a number of current and former employees of Japara, including its CEO, Andrew Sudholz. We will examine whether Japara and its employees
30 engaged with Ms Hausler and her late father in a manner that could be described as person-centred in its response to the complaint, or whether it prioritised its own corporate interests and reputation.

35 Commissioners, the 2017 review of Review of National Aged Care Quality Regulatory Processes undertaken by Ms Kate Carnell and Professor Ron Paterson, the report being in evidence as you are aware, which is considered best practice in the response of aged care providers to complaints by residents and their families. In their examination of best practice by aged care providers in responding to complaints about services, the authors of the report considered:

40 *Aged care providers with a genuine commitment to consumer-centred care and improvement recognise that mistakes happen and complaints matter. Rather than fear the consequences they value learning from complaints and embrace open disclosure, apology and careful attention to analysing and rectifying problems.*

45 They went on:

Aged care provider is a service business. They should expect from time to time that consumers or residents' expectations will not be met. How organisations react to resident's complaints is telling.

5 They told us. In the first case study the conduct of the operator of the facility where
the late Clarence Hausler lived will be assessed against this standard. Innovative
providers and care recipients. Commissioners, as you are well aware, the Royal
Commission is required by its terms of reference to examine a report on examples of
10 good practice and innovative models of delivering aged care services. On the second
day of the hearing a number of providers will give evidence about how they seek to
provide person centred aged care with an emphasis on nurturing relationships. In
some cases, you'll also hear evidence from clients or residents as well.

15 Jason Burton, the head of Dementia Practice and Innovation with Alzheimer's WA
will explain that organisation's innovative work based on a care philosophy which
sees dementia through the lived experience of the person experiencing a changed
world due to their condition. Mr Burton will explain how Alzheimer's WA is
seeking to implement the ideas of Tom Kitwood under whom he studied in the
United Kingdom. Mr Burton will tell the Commission that good quality of life is a
20 measurable outcome of good person-centred care. You will also hear from
Alzheimer's WA about the importance of person-centred care being supported by the
management and governing body of an organisation in order for it to be effectively
implemented.

25 The Royal Commission will hear from Ms EA, who has been given a pseudonym,
about the experience that she and her partner have had accessing day respite care
through Alzheimer's WA. Brian Lipmann the CEO of Wintringham and Kate Rice a
manager with that organisation will explain the approach of Wintringham which
provides aged care services to approximately 2000 clients, the majority of whom
30 were previously homeless. They will explain that the key model they employ is
based on respect and the building of relationships, in particular, the relationship
between staff and residents. Mr Lipmann will also discuss the approach that
Wintringham takes to managing risk. He will tell you that all people, whether
elderly or not, should be able to make individual and personal choices about risk.

35 A good example of relationship-based care will be provided by Kevin Chester, the
husband of Maree who is a resident in an aged care facility in New South Wales
operated by Whiddon. Mr Chester who lives near to his wife in a retirement
community will detail their experience of aged care including the positive experience
40 they have had at the Whiddon home. The Commission will hearing from Mrs
Chester's buddy Carolyn Jubb a staff member who will explain the practical
operation of relationship-based care in her day-to-day work at the home. The
Commission will also hear from Whiddon's chief executive officer Chris Mamarelis
about the importance of leadership in providing relationship-based care.

45 A theme that will emerge from this evidence about innovative approaches taken by
some providers is that they strive to conform to what Tom Kitwood calls the caring

organisation. For Kitwood, an organisation's ability to provide genuinely person-centred care relies heavily on the organisation employing the right people and looking after them. Employees who are themselves respected and cared for are more likely to respect and care for residents. Mr Lipmann of Wintringham will explain
5 how genuinely respectful relationships and a culture of admiration and respect for staff on the part of management contributes to Wintringham's high staff retention rates. He will explain the sense of purpose staff get from working in a model of care that prioritises relationships.

10 This reflects evidence the Commission heard from Ms Dale an aged care worker in the second Adelaide hearing. She described what she called the magnificent Australians that she sees every day, and she told the Commission about a 93-year-old resident to whom she provided care for 12 years, and I quote. She said:

15 *The family just loved myself and other carers that went in there. Palliative care towards the end brought her home. I went in on the morning that she passed away. They asked me, "Would you please – are you able just to give mum a wipe down because she's passed," and I said, "Absolute pleasure." I went in there, the next door neighbour, ex-nurse, we did what we did for her, made her beautiful and then I
20 went to her funeral. That is from the beginning to the end. It's what I see and it's what makes me get up at a quarter past 4 every morning to go to work.*

Ms Rice, manager at Wintringham, will explain that when she's recruiting new staff, she looks for people with the right attitude and relies on her gut feel, informed by
25 years in the industry. The newly employed staff are then trained and supported. In this regard, Commissioners, you may recall similar evidence given to the Sydney hearing by Ms O'Flaherty of aged care provider Glenview, that it recruits for kindness and trains for excellence. This also calls to mind the evidence given in Sydney by Associate Professor Macfarlane who told us, and I quote:

30 *The demand to improve staff skills and experience must also be balanced with the need to hire on the basis of attitude and character. No amount of training produces kind and compassionate people. A person may hold a certificate III or IV, but that doesn't mean that they like older people or have a passion for empathising, caring
35 for or relating to them. You can teach a person to provide good care. You can't teach them to enjoy caring for older people –*

he said. Matthew Moore, who you will hear from, is the general manager of Aged and Disability Services at the Institute for Urban Indigenous Health Limited in
40 Queensland. The Institute provides community controlled aged care services to over 1800 Aboriginal and Torres Strait Islander clients with a staff of just under 100 across a vast geographical area. Mr Moore will explain his 27 years of involvement in community services and the implementation by the Institute of the philosophy of person-centred care. He will identify five key values which underpin the provision
45 of person-centred aged care: customer responsiveness, respect, quality, accountability and transparency. Themes that the Commission will hear through these innovative provider witnesses and other witnesses related to person-centred

care include (a) the importance of personal growth and reablement and supporting people to maintain function and capability; (b) how person-centred care promotes quality of life; and (c) the importance of strong governance and leadership to support organisations to deliver person-centred care.

5

Commissioners, you will hear from a number have direct experience witnesses. Anthony O'Donnell is 85 years of age and lives in residential care in Perth. He will share insights from his experience of residential care, that there aren't enough carers on duty, that a carer's role is task oriented and there's no continuity of staff. The requirements of residents fall by the wayside, he will tell us. Mr O'Donnell will give evidence that he was motivated to contact the Royal Commission to give evidence not for himself, but for those around him who aren't able to speak out and for his children's generation and the generations to follow so that, as he puts it, the whole standard of the whole concept of aged care is lifted.

15

On Wednesday morning, Commissioners, we will hear evidence from four women who work in aged care around Australian: Anna Urwin a physiotherapist; Gaye Whitford a registered nurse who's working as an aged care provider; Patti Houston a personal care worker, and Emma Murphy a registered nurse. Each will share with the Commission their experiences of delivering person-centred care in the current aged care system and what are the challenges that they face and what works well on a day to day basis.

20

Valuing old people and rights. Because the aged care system doesn't exist in a vacuum, Commissioners, the hearing will explore the broader societal context in which aged care is delivered. It will explore the way older people are valued or undervalued in Australian society. In the Broome hearing, you'll recall the evidence about the value that is placed on older people in Aboriginal and Torres Strait Islander communities with elders memorably being described as our national treasures. Dr Kay Paterson AO the Age Discrimination Commissioner will provide evidence on Wednesday about ageism and attitudes towards older people in Australia. This is an issue the Royal Commission has heard briefly about before. In the first Adelaide hearing, Mr Yates said and I quote:

25

30

The construction of the aged care sector in Australia, aged care institutions, as we know them, has become – to some degree become – been an outcome of ageism and the lack of priority attached to aged care in public policy terms is pretty unprecedented. That is a function –

40 he told us –

of ageism which is like sexism and racism embedded in many ways in which we all interact.

45 Mr McCallum of National Seniors Australia told the Commission that abuse and neglect of care is the worst demonstration of a lack of respect for older people. The first case study that we will hear later today includes evidence that's a demonstration

of that, Commissioners. Related to this, Dr Patterson will provide evidence about the importance of recognising the rights of older people, particularly older people in residential aged care. She will note that while there has been a reference to rights in the Aged Care Act for many years, those references have not necessarily translated
5 into practice.

Dr Craig Sinclair's evidence will also address the importance of human rights as being fundamental to the concept of supported decision-making. Supported decision-making is a concept that's emerged from the disability rights movement and
10 finds support in the convention on the rights of persons with a disability. He will explain that supported decision-making provides for people with disabilities to have equal recognition before the law and stipulates that they should be supported to exercise their legal capacity. It is part of a shift away from decision-making in the best interests of a person to supporting them to make decisions or, where not possible
15 and substitute decision-making is required, making decisions that are consistent with the person's will, rights and preferences.

Dr Sinclair will give evidence about the work that he has done in developing material for the aged care sector about supported decision-making. His evidence will also
20 cover advanced care planning. In this regard, it's important to note that the Royal Commission has published on its website a background paper on advanced care planning in Australia. It's the fifth such background paper published by the Royal Commission, and as with the earlier papers, it does not represent a position of the Royal Commission's on the issues it covers. The paper has been prepared, rather, for
25 the benefit of the Commissioners and the public and it will be referred to at times during the hearing. Dr Sinclair's evidence also described the importance of people having choice in aged care and the loss of identity and learned helplessness that can result where a person is denied choice or control over their lifestyle.

The evidence of Dr Mike Rungie of the Global Centre for Modern Ageing will focus on the quality of life of people in the aged care system. Mr Rungie will describe his many years of work for aged care provider the ACH Group and the work done there to measure the quality of life of its residence. He will distinguish between quality of life and quality of care. In particular, he will discuss the importance of reablement as
35 part of residential aged care and the barriers that stand in the way of a proper focus on reablement and rehabilitation. Mr Rungie will also talk about the losses a person can be expected to face when they enter residential aged care. Commissioners, you will recall that you already heard evidence about this experience of loss from the perspective of a person going into care. Ms Mitchell, in Sydney, explained that she
40 felt an overwhelming sense of loss when she moved into aged care. She told us, and I quote:

*The sense of loss that comes from moving to aged care is really underestimated. There's the loss of your privacy, the loss of your independence and, for me, it was the
45 fear of the loss of my community as well.*

Ms Mitchell also described the trauma associated with losing access to items like photo albums that were precious to her. She said that living in an aged care facility without her own things around her is not a proper life. Memorably, Commissioners, Ms Mitchell told you that the residential facility is where she lives, but it's not a home. Commissioners, in one short sad sentence, Ms Mitchell sums up a lot about what this hearing will address.

Palliative care. Palliative care will also be considered in this hearing. In this regard, we note that end of life care is listed as a mandatory matter for the Commission to have regard to under its terms of reference. An issue that will arise is the difference between end of life care on the one hand and palliative care on the other. Often, the terms are used interchangeably in Australia. As a palliative care expert panel will explain to you on Thursday, end of life care is actually a narrower notion than palliative care. They're expected to say, that is, the panel members, that end of life care is too limited and has a technical meaning under the Aged Care Funding Instrument, ACFI, whereas, palliative care is the broader term that will generally be adopted during this hearing.

On Thursday, we will hear evidence in the second case study. Shannon Ruddock's father, she will tell the Commission, Vincent Paranthoienne passed away on 16 November 2017 at Calvary Hospital in Kogarah, New South Wales. Prior to his admission to hospital, Mr Paranthoienne has been a resident at Alkira Gardens, a residential aged care facility in the Sutherland Shire in New South Wales. Mr Paranthoienne was referred to Calvary's community palliative care team in September 2017 and Joshua Cohen who is, at that time, a transitional nursing practitioner. Ms Ruddock will give evidence to the Commission of her experience at this time about how because of Alkira Gardens' failure to provide adequate palliative care for her father, the final weeks she had with her father were distressing and exhausting as she tried to ensure that her father was treated with dignity and received the care and attention that he deserved.

As part of this case study, the Commission will hear evidence from Mr Cohen the palliative care nursing practitioner as well as a representative of Alkira Gardens. The Commission will hear, after we've concluded the case study, that approximately 160,000 Australians who die – of the 160,000 Australians who die each year, approximately 60,000 die in residential aged care facilities. Evidence will be led about the extent to which people accessing aged care services are able to access palliative care and the quality of palliative care services that's available to those people. Effective palliative care, you will hear, Commissioners, is founded on a concept of person-centred and relationship-based care. It's fundamental that a person's care in their final stage of life is centred on the preferences and specific needs of that person. As the Commission will hear from Dr Jane Fischer of Palliative Care Australia:

Palliative care is person and family-centred care with the primary goal to optimise the quality of life when living with a life limiting condition.

Dr Elizabeth Reymond the deputy director of the Metro South Palliative Care Service in Brisbane will give evidence as part of that panel of leading palliative care experts. Dr Reymond will explain, and I quote:

5 *The philosophy of palliative care is built upon person-centred care, however, palliative care extends the concept of person-centred care beyond the patient as palliative care recognises a unit of care, usually composed of the person and their family.*

10 Good palliative care also aligns with Dr Trigg’s model of relationship-centred care. The Royal Commission will hear evidence that palliative care should include a collaborative decision-making approach, involving the care recipient, family, clinicians and the provider. Respecting and harnessing relationships is paramount in ensuring a person has a good death, whatever that play be for that individual. Further
15 to the focus on relationships in palliative care, the Commission will hear that good palliative care often extends into bereavement support for the family following the passing of their loved one.

Palliative care was explored in Adelaide hearing one, and the main issue identified
20 was the unequal experience of palliative care services when accessed by aged care residents in comparison to the wider population. As Mr Nicolas Mersiades, the director of aged care at Catholic Health Australia, explained it:

25 *Structural barriers exist in accessing palliative care services by a resident of an aged care facility with the effect that the health system has proved to be varied and problematic in regard to palliative care services.*

Dr Reymond, who you will hear from, will describe this as what she calls a form of
30 post code lottery, that is, where you live determines the access that you get to palliative care in aged care. The hearing will explore the various barriers to accessing palliative care. A key barrier to palliative care services is the shortage of staff with the required skill mix to provide palliative care in residential aged care facilities. This point was made by Dr Anthony Bartone, the president of the Australian Medical Association, and Ms Butler from the nursing union in Adelaide
35 hearing one. In addition, funding arrangements may impede access to palliative care. As Mr Yates and Ms Sparrow said in Adelaide hearing one, palliative care needs to be better integrated into aged care, and the Commonwealth/State divide of funding contributes to diminished access to palliative care.

40 In addition, you will hear that under the Aged Care Funding Instrument funding is only available for the last week or days of a person’s life. These issues will be ventilated in this hearing and explored in more detail in later hearings. Over the coming week the Royal Commission will hear from a number of witnesses about palliative care. The Commission will hear from two witnesses about how palliative
45 care is delivered at home and in residential aged care facilities respectively. Commissioners, you may recall that in Adelaide hearing one Dr Bartone of the AMA reflected that in general older people would like to die at home.

However, the aged care system doesn't appear to be geared towards palliative care being provided at home. This is one way palliative care services are not ordinarily aligned with an individual's preferences. In this regard the Commission will hear this week from Ms Dale Fisher, the CEO of Silver Chain. Silver Chain is a provider
5 of palliative care services at home and Ms Fisher will explain why palliative care at home should be prioritised. She will also describe how Silver Chain aim to deliver palliative care that is centred on the needs of the person receiving care and their families. The Royal Commission will then hear from Mr Joshua Cohen who's now a nurse practitioner at Calvary Hospital specialist palliative care unit. Mr Cohen will
10 give evidence about how Calvary specialist palliative services operate to deliver palliative care in residential aged care facilities.

He will expand on what makes Calvary's outreach model successful and the challenges associated with delivering palliative care services in residential aged care.
15 Finally, the Commission will hear from a panel assisting of Dr Jane Fischer of Palliative Care Australia, Professor Jennifer Tieman of Flinders University, and Dr Elizabeth Reymond of the Metro South Palliative Care Services in Queensland. Dr Fischer, Professor Tieman and Dr Reymond will describe the policy considerations affecting palliative care and how to improve the accessibility of palliative care
20 services within the aged care system. This panel will also give evidence about key policy initiatives in palliative care.

The final witness to be called in this hearing will be Dr Lisa Trigg of Social Care in Wales Great Britain. Social Care is a government sponsored organisation aimed at
25 providing social care, including aged care, in Wales. Dr Trigg has spent a number of years conducting international research into aged care and particularly international approaches to improving the quality of care and the role of information and choice in quality improvement. In her research, Dr Trigg has examined aged care in Australia, the USA, Japan, England and several other European countries. Recently Dr Trigg
30 has completed a PhD in social policy at the London School of Economics. Her thesis was entitled Improving the Quality of Residential Care for Older People: A Study of Governmental Approaches in England and Australia.

As Dr Trigg will explain when called to give evidence on Friday, the aim of her
35 thesis was to investigate how the English and Australian governments might design regulatory regimes for the residential care sector for older people which encourage quality improvement over and above minimum standards. As part of her study, Dr Trigg conducted interviews between January 2015 and April 2017 with 79
40 individuals in Australia and England who represented different stakeholder groups in aged care as well as a further 24 interviews with individuals who represented provider organisations. Dr Trigg's evidence will traverse her research findings and her views on relationship-based care.

Before attending to two housekeeping matters, Commissioners and commencing the
45 first case study, I wish to quote from the submission of the late Senator Bernard Cooney to which I made brief reference earlier. Commissioners, you may consider that the passage captures much of what person-centred care should be all about.

After reflecting on his experience in residential aged care, Barney, as the Senator was known to the many people who knew and loved him, reminded the Royal Commission that:

5 *The real values of a society as distinct from its stated claims can be measured by the way in which its most vulnerable members, and that certainly includes those in aged care facilities, are treated. Not much empathy is needed to appreciate that it is hard to retain a sense of personal dignity when little by little individual autonomy is lost. Viewed against that standard –*

10

he told us –

...our failures are apparent.

15 Commissioners, before we open the first case study I would like just to attend briefly to two matters for your benefit and the benefit of the others in the hearing room. Firstly, I want to deal briefly with some statements that should be tendered at this point to become part of the evidence before the Commission. Commissioners, you will hear from 28 witnesses during the course of the hearing. In addition to those 28
20 witnesses whose statements will be tendered, the Royal Commission has received a further five statements which will be tendered in evidence without the makers being called.

25 It's likely that witnesses who are called will be asked about some or all of this evidence and so it's convenient that they form part of the evidence at this point. For the benefit of you, Commissioners, and of the parties I will briefly describe the contents of the statements in addition to identifying them. The first statement is by Janet Mary Anderson, I already indicated, the commissioner of the Aged Care Quality and Safety Commission. It's dated 28 May 2019 and the document ID is
30 WIT.0176.0001.0001. Ms Anderson, who you will recall gave evidence in the first hearing in Adelaide, addresses the following topics in her statement: whether and if so how person-centred care is considered during various regulatory functions undertaken by the Commission; the extent that the Aged Care Quality Standards 2019 – which as you are aware are due to become operative in less than a week –
35 encourage care that is person-centred; and the extent that the Quality of Care Principles 2014 and the 2019 standards consider palliative care. At this point, Commissioners, I tender the statement of Janet Mary Anderson dated 28 May 2019.

40 COMMISSIONER TRACEY: Yes. The statement of Janet Mary Anderson dated 28 May 2019 will be exhibit 5-2.

EXHIBIT #5-2 STATEMENT OF JANET MARY ANDERSON DATED 28/05/2019 (WIT.0176.0001.0001)

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MR ROZEN: I assume from that, Commissioner Tracy, that the general tender bundle will be exhibit 5-1.

5 COMMISSIONER TRACEY: No. The evidence that was given and recorded by video at a nursing home last month - - -

MR ROZEN: Mr O'Donnell's evidence?

10 COMMISSIONER TRACEY: Mr O'Donnell's evidence, that his statement became 5-1.

MR ROZEN: I apologise for not remembering that, Commissioners. So exhibit 5-2, Commissioners, is the statement of Ms Anderson. The second statement I will refer to briefly is a statement received from Nigel Murray, the assistant secretary of the funding policy and prudential branch of the Commonwealth Department of Health, also dated 24 May 2019. And the document ID is WIT.0175.0001.0001. Mr Murray addresses various questions the department was asked in a notice that sought data about the number of residents in residential aged care facilities who access palliative care. I tender the statement of Nigel Murray dated 24 May 2019, Commissioners.

20

COMMISSIONER TRACEY: Yes, the statement of Nigel Murray dated 24 May 2019 will be exhibit 5-3.

25 **EXHIBIT #5-3 STATEMENT OF NIGEL MURRAY DATED 24/05/2019
(WIT.0175.0001.0001)**

MR ROZEN: Thank you, Commissioners. The third statement is that of Louise Patricia Riley dated 24 May 2019. The ID is WIT.0226.0001.0005. Ms Riley is the assistant secretary of the primary care, dental and palliative care branch of the Commonwealth Department of Health. Her statement addresses a number of questions about the department's role in relation to palliative care policy and delivery in the aged care system. I tender the statement of Louise Patricia Riley dated 24 May 2019.

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COMMISSIONER TRACEY: Yes, the statement of Louise Patricia Riley dated 24 May 2019 will be exhibit 5-4.

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**EXHIBIT #5-4 STATEMENT OF LOUISE PATRICIA RILEY DATED
24/05/2019 (WIT.0226.0001.0005)**

45 MR ROZEN: If the Commission pleases. Commissioners, we also received a statement of Joanne Toohey, the chief executive of The Benevolent Society, dated 22 May 2019, WIT.0168.0001.0001. Ms Toohey is unavailable to give oral evidence in

5 this hearing but her statement explains how The Benevolent Society seeks to provide person-centred care in the context of its home care services. She provides considerable detail about what person-centred care means in practice, the obstacles to providing person-centred care including the role of ageism, the importance of person-centred care for achieving quality of life and the lack of choice she sees for people accessing aged care services. I tender the statement of Joanne Toohey dated 22 May 2019, Commissioners.

10 COMMISSIONER TRACEY: Yes, the statement of Joanne Toohey dated 22 May 2019 will be exhibit 5-5.

15 **EXHIBIT #5-5 STATEMENT OF JOANNE TOOHEY DATED 22/05/2019
(WIT.0168.0001.0001)**

20 MR ROZEN: The final statement that I seek to tender was made by Karn Nelson, the executive general manager, strategy and innovation at Whiddon dated 30 May, and it is WIT.0207.0001.0001. And Ms Nelson provides a very detailed account of that organisation's innovative work in providing person-centred care. I tender the statement of Ms Nelson dated 30 May 2019.

25 COMMISSIONER TRACEY: Yes, the statement of Karn Nelson dated 30 May 2019 will be exhibit 5-6.

30 **EXHIBIT #5-6 STATEMENT OF KARN NELSON DATED 30/05/2019
(WIT.0207.0001.0001)**

35 MR ROZEN: Commissioners, I want briefly to describe our proposals for document management in the hearing for the benefit of the parties. The solicitors assisting the Royal Commission have prepared and made available to you, Commissioners, three tender bundles. There is a general tender bundle, documents from which will be displayed from time to time during the hearing. I wish at this point to tender the general tender bundle as a single exhibit.

40 COMMISSIONER TRACEY: Yes. The general tender bundle for the Perth hearings will be exhibit 5-7.

45 **EXHIBIT #5-7 GENERAL TENDER BUNDLE FOR THE PERTH
HEARINGS**

MR ROZEN: If the Commission pleases. Documents in that tender bundle may be referred to by tab number according to the index. In addition, there are two separate

tender bundles, one for each of the case studies. We plan to tender each case study tender bundle at the commencement of the case study in question as a single exhibit. And again, each case study tender bundle, once it has been tendered, the documents in that tender bundle may be referred to by tab number according to the applicable index which members of the counsel team will have displayed on the screen at the commencement of that case study. We've put the relevant parties on notice that we intend to tender and may publish the documents in these tender bundles, some of them in a redacted form. Those parties have been given an opportunity to object to the publication of documents including on the basis of confidentiality.

Commissioners, during the course of this hearing you may be asked to consider applications for a direction that particular documents not be made public pursuant to section 6D, subsection (3) of the Royal Commissions Act 1902. Any such application should be made in accordance with part G of practice guideline 1 of this Royal Commission. It may not be possible, Commissioners, for you to hear and determine any such applications during the hearing; they may need to be determined on the papers afterwards. At the end of the hearing on Friday, I will present a closing address which will reflect the themes covered by this hearing. This will be followed by written submissions which the counsel assisting team aim to complete seven days after the hearing. Those written submissions will address proposed findings in relation to the two case studies.

Parties with leave to appear will have seven days, we propose, from the date of counsel assisting's submission to provide you with their own responding written submissions before you make any findings. At the conclusion of the hearing we will ask you to make directions in that regard and a note will be provided to the parties in advance of that. Commissioners, that concludes my general opening. I've been handed a note telling me that the live stream is down. It may perhaps be appropriate then to pause whilst that's rectified.

COMMISSIONER TRACEY: Well, I'm minded to accede to that suggestion, but only for a relatively short time. We've got limited hearing time but I think the best course would be for the Commission to adjourn for a short time to see if the technical problems can be resolved. If they can't, then we will just have to resume without the live feed.

MR ROZEN: Yes.

COMMISSIONER TRACEY: The Commission will temporarily adjourn.

MR ROZEN: Thank you.

ADJOURNED

[10.30 am]

RESUMED

[10.50 am]

COMMISSIONER TRACEY: I think one problem has been solved, Mr Rozen, but another is still a work in progress, but you're able to proceed?

5 MR ROZEN: I'm able to proceed and we're grateful to those who are working hard to resolve those problems, Commissioners. Commissioners, in August 2015, 89-year-old Clarence Hausler was an entirely defenceless man with severe dementia. He needed assistance with eating and all aspects of daily living. Clarence had been living in a residential aged care facility in Adelaide for 13 years, and had been looked after by the carers in the facility and also lovingly cared for by his daughter,
10 Noleen Hausler. Throughout that time, Ms Hausler, who will be the first witness that we call, regularly visited her father.

Mr Hausler's home was Japara Aged Care Services' Mitcham facility, Japara having taken over the running of that facility in 2014, as you will hear. By late August
15 2015, Noleen Hausler had become very concerned about her father's wellbeing. She had raised her concerns with Mitcham's management, but was dissatisfied with their response. She will tell you that out of desperation, she installed a hidden camera in her father's room. She was shocked when the camera revealed what was really going on in her father's room at Mitcham. It revealed that in the space of 10 days, her
20 father was physically assaulted three times by one of his carers who was employed at Mitcham on two occasions and on a further occasion by an agency employee carer. Three assaults on an 89-year-old man with severe dementia lying in his bed in a nursing home by two different carers, all in the space of 10 days.

25 None of this would have come to light without Ms Hausler having placed the camera in her father's room. This, of course, raises questions about what was happening in rooms at Mitcham that didn't have cameras and what had been happening in Mr Hausler's room before 31 August 2015. How did Japara respond when Noleen brought this state of affairs to the attention of the facility's managers? In accordance with good practice and its own written procedures, one might have expected a
30 thorough investigation. However, the evidence will reveal that while Japara did take some positive steps, its primary response was to attack the messenger Ms Hausler. Her written complaint dated 2 September 2015 was responded to by a letter from a senior Japara employee Ms Keevers whose job title was quality manager.

35 Ms Hausler makes her complaint on 2 September. It's considered by the Japara employees in the days after that. Ms Keevers sent a proposed draft response to the written complaint to her superior Ms Julie Reed. Julie Reed was Japara's executive director of aged care services. You will hear evidence from Ms Reed this afternoon.
40 The proposed responding letter was sent under cover of an email drafted by Ms Keevers dated 3 September 2015. In that email, which will be part of the evidence before the Commission, Ms Keevers wrote the following and I quote:

45 *Can you vet the response letter and give it the okay to go. I have dated it the 5th, so it looks like we thought about it seriously.*

Unfortunately, the evidence that we will lead will reveal that this cynical approach by Japara's officers towards Ms Hausler was not isolated. Some two months later, on 9 November 2015, Ms Reed sent an email to Ms Hausler accusing her of breaching the Aged Care Act 1997 and the Occupational Health and Safety Act by installing the camera in her father's room. Ms Hausler had contravened neither Act. A further letter a month later on 9 December 2015 accused Ms Hausler of the serious criminal offence of stalking the staff at the nursing home and warning her that the offence carried serious penalties. Ms Hausler had done nothing of the sort and has never even been the subject of an investigation.

Commissioners, you may well conclude that these letters were calculated to threaten Noleen Hausler. The assault of her father described in detail in Ms Hausler's letter of 2 September 2015 was required to be reported by Japara to the Department of Health within 24 hours under section 63(1)(AA) of the Aged Care Act 1997. No doubt, so that it could be investigated. Section 63 (1)(AA) requires an approved aged care provider to report to the Department of Health or the police any allegation or suspicion of a reportable assault, a term that is broadly defined to include any unreasonable use of force that is inflicted on a resident. Japara did not comply with this obligation. It only reported the matter more than two months later when Ms Hausler herself made a complaint to the external authorities. You may find that the assault would never have been reported by Japara, but for Ms Hausler's actions.

Even when the report was made, it contained incorrect information about when Japara became aware of the assault. You will hear from the two employees who signed the notification, Mitcham's manager Rachael Musico and another Japara quality manager Diane Jones. The latter will give evidence by video link later today. As bad as the incidents of 31 August 2015 and 1 September 2015 were, nothing prepared Ms Hausler for what she saw on the night of 9 September 2015. She watched the video footage taken earlier that day in her father's room in disbelief as it revealed Corey Lucas, a long-term employee of Japara forcing a dessert spoon into Mr Hausler's throat and covering his face with a napkin and twisting his nose, applying some force. Ms Hausler's reaction to what she saw on that video is best conveyed to the Commission by reading paragraph 112 of her statement. She writes:

I only became aware of the assault at approximately 17 pm on 9 September 2015 after I returned home from visiting and consoling father at Mitcham and viewed the footage. Being confronted with the visual images, I went into a state of shock and total concern for father. My heart was racing, my hands were shaking and I didn't know whether to go back to father, ring the facility or to go to the police.

In the event, Noleen went to the police later that night, and on the following morning, two detectives showed the footage to a group of senior Japara employees including Ms Reed and Ms Musico. Japara, in turn, reported that assault to the Department of Health as it was required to do. Mr Lucas was charged with assaulting Mr Hausler by police, was ultimately convicted after pleading guilty and was jailed. Much of the evidence that will be led in the case study concerned the aftermath of the 9 September 2015 assault. We will examine the process that led to

the non-reporting of the earlier incident which was the subject of a written complaint. We will explore the manner in which Japara senior management responded to Noleen's ongoing and understandable concerns about her father. We will examine how Japara responded to a complaint Ms Hausler made to the former Aged Care
5 Complaints Commission, and we will examine how Japara responded to Ms Hausler's application to become her father's guardian.

At the conclusion of the hearing, it's anticipated, Commissioners, that counsel assisting will submit that it's open to conclude that Japara and its senior officers did
10 not adopt a person-centred approach in its dealings with Clarence Hausler or Noleen Hausler. It did not place the interests of Mr Hausler at the centre of its interactions with the Hausler family. Japara did not live up to its stated and published values of honesty and integrity in either its dealings with Ms Hausler or its dealings with the regulator. It was more concerned, we will submit, to look after its own corporate
15 interests.

Commissioners, the evidence of the final witness we will call, Japara's chief executive officer, Andrew Sudholz, will reveal that the 9 September 2015 assault of
20 Mr Hausler at the Mitcham residential aged care facility was one of 298 mandatory reports that Japara made to the Department of Health between 1 September 2015 and May of this year. The evidence will be that another alleged assault of a resident by a staff member at the Mitcham House was reported on 29 November 2016. It involved a different resident to Mr Hausler. The evidence will reveal that every one of
25 Japara's 49 residential aged care homes reported at least one suspected assault during the period.

Commissioners, one of the difficult tasks under your terms of reference is for you to investigate and report not only the extent – not only on the extent of all forms of abuse in aged care facilities, but on the causes of any systemic failures and any
30 actions that should be taken in response. Counsel assisting will submit that this case study may provide a partial insight. We will explore with senior officers of Japara what the company did in general terms to investigate those 298 serious assaults. We will ask how it was that in one home, there were 11 suspected assaults of residents by staff reported in a two and a-half year period, including three allegedly perpetrated
35 by one named carer. We will ask whether thorough investigations by Japara would have revealed systemic issues about staff selection, training or supervision. Was there a culture within the company under which carers knew they could abuse those under their care with impunity?

40 I flag now, Commissioners, that later hearings of this Royal Commission will examine these issues in more detail. They are likely to examine whether Japara is an isolated case or whether there are broader system-wide concerns about deliberate physical and sexual abuse of vulnerable elderly residents in our aged care system. Later hearings would also put the role of the aged care regulator under the
45 microscope. What did it do with these 298 reports? Were they investigated and, if so, how? Did the regulator have sufficient resources to perform that vital task? Does it have sufficient resources now? Were the findings shared with Japara so that it

could use them to address any systemic issues that were revealed? And if not, is that the current practice followed by the regulator? Commissioners, at this point, before calling Ms Noleen Hausler as the first witness, I should tender the Mitcham case study tender bundle which contains 264 documents.

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COMMISSIONER TRACEY: Yes. The Mitcham tender bundle will be exhibit 5-8.

EXHIBIT #5-8 MITCHAM TENDER BUNDLE

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MR ROZEN: And, Commissioners, I neglected to mention that Mr Borsky wants to indicate to the Commission that he is present and has leave to appear.

15 COMMISSIONER TRACEY: Yes. He has leave to appear in the matter, insofar as it involves Japara.

MR M. BORSKY QC: Thank you, Commissioners. I appear with Ms Norton and Mr Rudd, instructed by Arnold Bloch Leibler on behalf of Japara Healthcare and a number of its current and former directors and officers.

20

COMMISSIONER TRACEY: Thank you, Mr Borsky.

MR ROZEN: Commissioners, I call Noleen Hausler.

25

<NOLEEN JOY HAUSLER, AFFIRMED

[11.03 am]

30 **<EXAMINATION-IN-CHIEF BY MR ROZEN**

MR ROZEN: Ms Hausler, can you please state your full name and address for the Commission.

35

MS HAUSLER: Noleen Joy Hausler,[REDACTED].

MR ROZEN: Ms Hausler, for the purposes of this Commission, did you make a witness statement dated 29 May 2019?

40

MS HAUSLER: That is correct.

MR ROZEN: The doc ID is WIT.1124.0001.0001 and, Operator, please bring that up on the screen. Ms Hausler, have you had an opportunity to read through your statement before giving evidence today?

45

MS HAUSLER: Yes, I have. Thank you.

MR ROZEN: Is there one very small typographical error that you wish to fix up on page 13? If I just ask you to turn to that page, please.

MS HAUSLER: Page 13.

5

MR ROZEN: I draw your attention down the bottom of the page to the series of footnotes that are included, and it's a simple typographical matter. In the second of those footnotes numbered 2, there's a number in square brackets, the number 2. Should that be a reference to footnote 1?

10

MS HAUSLER: Yes, it should.

MR ROZEN: And similarly in footnote 3, the reference also should be to footnote 1.

15

MS HAUSLER: Correct.

MR ROZEN: Thank you.

20

MS HAUSLER: Thank you.

MR ROZEN: Do you also wish to make a change to paragraph 258, Ms Hausler?

MS HAUSLER: Yes. Thank you.

25

MR ROZEN: Okay. You will find that on page 34. You will note that there are page numbers both in the top right-hand corner and in the bottom right-hand corner which fortunately line up for us.

30

MS HAUSLER: Thank you.

MR ROZEN: And can you identify the change that you wish to make in 258?

MS HAUSLER: It was only a little bit of wording there that – where is it; it says:

35

...over the years and I do fully support future reform for increased ratios.

MR ROZEN: Yes. So it's the second sentence of the paragraph that starts:

40

While I remain grateful for their support over the years and –

you would like to insert "I" after the word "and".

MS HAUSLER: Yes.

45

MR ROZEN: So that the statement would then read:

While I remain grateful for their support over the years and I fully support future reform for increased ratios –

etcetera.

5

MS HAUSLER: Yes. Thank you.

MR ROZEN: All right. With those changes to your statement, Ms Hausler, are the contents of the statement true and correct?

10

MS HAUSLER: Yes, they are.

MR ROZEN: I tender the statement of Ms Hausler, Commissioners.

15

COMMISSIONER TRACEY: Yes, the statement of Noleen Joy Hausler dated 29 May 2019 will be exhibit 5-9.

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EXHIBIT #5-9 STATEMENT OF NOLEEN JOY HAUSLER DATED 29/05/2019 (WIT.1124.0001.001)

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MR ROZEN: Thank you, Commissioners. I should indicate, Commissioners, that there are identified in the statement of Ms Hausler, exhibit 5-9, 29 exhibits to the statement. They are actually included in the general tender bundle which is – which has been tendered for the proceedings – I'm sorry, they're included in the case study tender bundle, exhibit 5-8.

30

Ms Hausler, you were born on[REDACTED].

MS HAUSLER: Yes.

MR ROZEN: And you're one of five children born to Clarence and Betty Hausler.

35

MS HAUSLER: Yes, I am.

MR ROZEN: And you grew up in the country in a town called Morgan.

40

MS HAUSLER: Morgan, we loved it. Yes.

MR ROZEN: Tell us a bit about life in Morgan growing up with your parents.

45

MS HAUSLER: It's a country town and very community orientated. We actually lived about 10 kilometres out of the township itself on a property called Cordola Fruitgrowers and that's where Dad basically spent his life raising us as kids and I'm sure we were rebels times but generally we had a very good happy life and Mum and Dad strove very much to make sure that we had what we needed and life was fun.

MR ROZEN: Hausler sounds like it might be a German name; am I right?

MR ROZEN: Yes, that's true.

5 MS HAUSLER: Was your father born in Australia?

MS HAUSLER: Dad was, yes.

10 MR ROZEN: Okay. He was an orchardist - - -

MS HAUSLER: Correct.

MR ROZEN: - - - for a living.

15 MS HAUSLER: Correct.

MR ROZEN: And ran the orchard. Did you assist in that as children?

20 MS HAUSLER: Yes, we had to pick oranges quite often. We were taught how to drive the tractor which Dad was very proud of doing those sort of things so we could all be part and parcel of a team and, yes, help around the farm wherever we could.

MR ROZEN: Now, you're a nurse by training.

25 MS HAUSLER: Yes, I am.

MR ROZEN: What sort of nursing have you worked in?

30 MS HAUSLER: Over 40 years I've been a registered nurse midwife, I've got a neonatal intensive care certificate, and I also work with paediatric intensive care children, so babies right through to 18 years of age, very vulnerable people in intensive care.

35 MR ROZEN: Tell us a bit about your relationship with your father, Ms Hausler. Would you describe it as a close relationship as you were growing up?

40 MS HAUSLER: It was a close relationship in the fact that we understood each other really well. We weren't sort of a huggy-kissy-type family but, yes, I certainly knew, when Dad was angry and I knew when he was happy. He had his little ways and idiosyncrasies that he used to do that were very much Dad and, yes, we had sort of a connection that over the years became a lot more between the two of us because I suppose I left home at the age of 17 to go nursing and so there was a gap between that and when Dad needed to go into care. So we rekindled what we had, I think, early in our years and that became very worthwhile while he was in care.

45 MR ROZEN: Yes. Now, in 1991 your dad was diagnosed with dementia.

MS HAUSLER: Around about that time, yes.

MR ROZEN: Around about that time. And at that point all the children had left home.

5

MS HAUSLER: They had done, Yes. They had all grown up, adults and off doing their own things.

MR ROZEN: Yes, and your dad was still in Morgan living with your mother

10

MS HAUSLER: Not in Morgan, on the farm outside of Morgan.

MR ROZEN: On the farm. Sorry. Yes.

15 MS HAUSLER: And Mum was Dad's carer.

MR ROZEN: Yes. You've anticipated my next question.

MS HAUSLER: Sorry.

20

MR ROZEN: He had other health issues which were emerging around that time.

MS HAUSLER: Yes. He had quite severe depression and he was a diabetic which was quite uncontrolled at the time too, so he had lots of needs.

25

MR ROZEN: Type 2 diabetes, presumably?

MS HAUSLER: Type 2, yes.

30 MR ROZEN: All right. You already told the Commissioners that your mother looked after him at that time. Focusing on that early period, soon after that diagnosis of dementia, what did looking after your father involve for your mum?

35 MS HAUSLER: All of his care needs during the day because he couldn't make a decision of his own. He could feed himself, he could walk around, he could do those sort of things but he basically couldn't understand what he needed to be doing as a worthwhile contributor to life, as far as helping out on the farm or making a work environment or anything along those lines, so he was basically at home in Mum's care.

40

MR ROZEN: Yes. And some 10 years or so later your mother passed away.

MS HAUSLER: That's correct.

45 MR ROZEN: And was that expected or was that sudden?

MS HAUSLER: It was very sudden. She had a massive heart attack at home on the farm.

MR ROZEN: Yes.

5

MS HAUSLER: Yes.

MR ROZEN: And presumably then the family had to make a decision about how your dad would care for given that he couldn't presumably care for himself.

10

MS HAUSLER: Yes. Which was a situation of its own because I was living in Adelaide. My younger sister was in Queensland. One of my brothers and sisters were in Roxby Downs and our oldest brother, he was still in Morgan but he had a huge business that he was responsible for, so being on the farm 10 kilometres out of Morgan to try and care for Dad and keep him in his home just was a very difficult decision that we had to make a decision on.

15

MR ROZEN: Yes. Ultimately a decision was made to put your father into residential care in Berri?

20

MS HAUSLER: In Barmera.

MR ROZEN: Sorry, in?

25

MS HAUSLER: Barmera, not far from Berri.

MR ROZEN: Okay. Thank you. And that's upriver from where you had all grown up.

30

MS HAUSLER: That's correct.

MR ROZEN: Is that right? On the Murray. And your father had also around this time fallen and broken his ankle quite severely.

35

MS HAUSLER: That was prior to going into care.

MR ROZEN: Yes.

MS HAUSLER: My sister had come down from Queensland to care for dad at home while we tried to organise what we needed to from the farm so that we could, you know, fix up his finances, all those sort of things, and then get him into care. He accidentally slipped and fell in the shower at home and had a compound fracture of his right ankle. So he had to be hospitalised at Berri, not Barmera, and that kind of was the catalyst; we definitely had to get him into care because we couldn't keep him at home.

45

MR ROZEN: Yes. And he was in that, in care for some 12 months and ultimately you decided to – the family decided to move him to Adelaide.

5 MS HAUSLER: It was probably more my decision, and that was on the grounds of
the 12 months that Dad had been up there. The decision was made first to be at
Barmera so that people locally could come and visit him. That essentially didn't
actually happen very often so I was travelling from Adelaide on my days off to see
him. But over the period of time to the facility actually changed from having their
10 dementia patients intermingling with the other aged care residents that were there to
having a separate wing which they ended up having a locked wing for and that was
just the dementia patients. So we were told that that would always have staff
available in there, and the type of patient – resident that was in there, it didn't matter
whether they had early dementia or whether it was right through to the end stage, and
15 there was both passive and aggressive dementia patients within that environment and
Dad at that time was still quite cognitive with his abilities.

He could play cards and do all those sorts of things, and it just seemed to be he was
mentally becoming worse for the longer that he spent there and there was a number
of times that I went up there and things had been taken from his room. There was
20 reports that there was a aggressive dementia patient that had been using his walking
stick to sort of hit people and things. So I had no ability to sort of know what was
going on with Dad when I wasn't there, so the decision was made, with the family's
approval, to bring him to Adelaide closer to myself.

25 MR ROZEN: All right. And how did your father react to the move to the city for
the first time in his life?

MS HAUSLER: He wasn't very happy to start with for the fact that he didn't have a
liking for the city. He was more of a country person and that was one of the other
30 reasons why we put him in Barmera first but I had to explain to him that I was going
to be his primary person to look out for him, and it was much better to have him
closer to me, and that's when he went into Mitcham Residential Care which was only
five minutes from where I lived.

35 MR ROZEN: Right. Now, I think we have a photo of your father taken at around
the time of him moving, first, to Mitcham. It's tab 264 of the tender bundle, if that
could please be brought up, operator. It's RCD – and there it is. And is that a photo
of your father somewhere no doubt on the Murray?

40 MS HAUSLER: Yes. It's actually at Mannum, and that's very classic of Dad. He
loved being on the river; he enjoyed the paddle boats. He was actually friends with
a couple of the captains so in his earlier days he used to help out actually fixing some
of the engineering side of things there, and it was an opportunity – Dad had only
45 been in care at Mitcham for about two years and – no, it wasn't even two years, that
was 2003, and there was a flotilla of paddle boats coming down the Murray at the
time so we took him up to enjoy it.

MR ROZEN: Is that a wheelchair that he's in or is it an ordinary chair – it's an ordinary chair.

5 MS HAUSLER: No, no. He was actually walking then. He had, like, the Zimmer frame just for stability.

MR ROZEN: Yes.

10 MS HAUSLER: Yes.

MR ROZEN: Okay. Thank you. If we can go back to the statement please, operator. At the time that you made the move of your father into the Mitcham facility, it was originally run by a company called Whelan Care.

15 MS HAUSLER: That's correct.

MR ROZEN: Or the correct name is Oakleigh Glen Pty Ltd; is that right?

20 MS HAUSLER: That's right.

MR ROZEN: Can you describe so the Commission – and you're already done this a little, Ms Hausler, bit a little bit more about your father's general state of health at that time when he moved into Mitcham which was about 2001; is that right?

25 MS HAUSLER: 2002, I think.

MR ROZEN: Sorry, 2002.

30 MS HAUSLER: Yes.

MR ROZEN: How was your dad at that time?

35 MS HAUSLER: He could walk, as I said, with the frame. He played cards. He was happy doing the scoring. He could feed himself, he could drink without any sort of assistance. He was actually told off many times because he used to steal food. He was very happy to engage with other residents and he made a number of good friends with residents that were there. He was involved doing any of the activities so, yes, he was able to communicate with people.

40 MR ROZEN: And can you tell us a little bit about Mitcham. How big was it? How many beds, Mitcham?

MS HAUSLER: 38 bed and it's just a single level facility.

45 MR ROZEN: Right, and you, of course, had a long involvement with the facility. Did that remain the case that there were that number of beds the entire time you were there?

MS HAUSLER: Yes, it didn't change.

MR ROZEN: All right. Or your father was there. How would you describe the
5 general level of care that your father received at that early time whilst that facility
was under that management?

MS HAUSLER: He was really well cared for, he was. He had all of his activities
and things available to him that he could enjoy. His actual hygiene care was done
very, very well. There was a lot of staff who had actually worked in the facility for a
10 number of years, so over the years Dad became very aware of who they were, and it
was, yes, lovely. I had no concerns at all and I was quite comforted for the fact that
he was in a facility that they were caring for him very well.

MR ROZEN: All right. And how often were you visiting your father, on average,
15 during this period?

MS HAUSLER: Probably four or five times a week, depending on what my work
schedule was.

MR ROZEN: Were your other siblings visiting as well or was it mainly just you?

MS HAUSLER: Because they lived a fair distance away, if they were in the city at
any stage, occasionally my younger brother would, and my older sister, my older
brother didn't come down very often. My sister was in Queensland, so if she came
25 to visit, she would do so, yes.

MR ROZEN: All right. And in your experience, how did the management at that
time respond if you raised any concerns about your father's care?

MS HAUSLER: There was concerns raised, and they were usually dealt with quite
well. I was given feedback or they actually talked at the same time about what the
concern was, how they could establish some sort of solution to it, and most times
there was one.

MR ROZEN: Commissioners, I'm about to go on to a new topic. I'm not sure
whether you would like to treat the break we had as the morning break or was it
proposed to have a further break?

COMMISSIONER TRACEY: No. I think we will take the morning break because
40 I'm informed that it may be necessary for a bit more technical work to be done.

MR ROZEN: Right.

COMMISSIONER TRACEY: So the Commission will adjourn for 15 minutes.
45

ADJOURNED

[11.20 am]

COMMISSIONER TRACEY: Yes, Mr Rozen.

5

MR ROZEN: Thank you, Commissioners. Ms Hausler, we had reached the point in the chronology when your father's in the Mitcham facility and it's taken over by the operator that is being referred to as Japara, although it had a name change which I won't trouble you with. That was in August of 2014, the change of ownership?

10

MS HAUSLER: Yes. Yeah.

MR ROZEN: And can you describe to the Commissioners the state of your father's health at that time, please.

15

MS HAUSLER: Dad's dementia had actually progressed quite significantly by that time.

MR ROZEN: Yes.

20

MS HAUSLER: He had minimal ability to be able to communicate. He was bedridden. He was totally dependent on all of his care needs to be met by staff, and he could still eat, but he had to be fed. He could actually just have a drink from a sipper cup that he had if it was in reach, but, generally, he had deteriorated quite rapidly by that time.

25

MR ROZEN: Right. And what sort of assistance did he need for the daily tasks of life? You've talked about eating and assistance with – he could drink himself?

30

MS HAUSLER: Yes, he could drink himself.

MR ROZEN: Yes. Yep. All right.

MS HAUSLER: Yes. Sometimes, he was a bit, sort of, unsteady with it and he'd drop it and those sorts of things, but - - -

35

MR ROZEN: Yes.

MS HAUSLER: Yeah, most times, he wasn't too bad, but, more often than not, he would need assistance, so, yeah. If they were feeding his lunch or whatever, offering it would be a good idea. If it wasn't in front of him, he had no idea where to, sort of, find it or if he could drink from anything if it wasn't there and - - -

40

MR ROZEN: Right. Had his weight changed over the time that he was in Mitcham?

45

MS HAUSLER: It had, quite significantly. As you saw, in 2003, he was quite a robust man.

MR ROZEN: Yes.

5

MS HAUSLER: He had actually lost significant weight. I would say he was probably down to around about 70-odd kilos. I think he went in about 120.

MR ROZEN: Right.

10

MS HAUSLER: So quite a difference, but a lot of that, I kind of expected in the initial stage that that would change because his eating habits were quite horrendous at home.

15 MR ROZEN: Right.

MS HAUSLER: And so, under controlled, sort of, circumstances, that actually did improve, but there was a significant weight loss which I was alerted to in June of 2015. I had actually been overseas for four months – four weeks, and when I got
20 back, the staff had said they were concerned that he had had quite a weight loss over that period of time, and so we tried to improve on what his dietary needs were and I added – added higher proteins, good fats and those sort of things into his diet through using additional almond meal, parmesan cheese and those sort of things into his diet that he was having. So, yeah, there was a – a concern for that weight loss at that
25 period of time.

MR ROZEN: Yes. Did the operation of the facility from your perspective change with the change of ownership?

30 MS HAUSLER: Initially, it seemed to be running quite nicely and all the same. They kept on the same staff and so that was good. There was no obvious change, but over a period of a few months, there seemed to be a number of staff did leave. The care seemed to change within that same sort of period of time with new people coming in. There seemed to be an increased requirement – again, gradually, but
35 definitely over a period of time to rely on agency staff to come in and assist.

MR ROZEN: Yes.

40 MS HAUSLER: So those – those changes made a difference to the care that was being delivered.

MR ROZEN: The facility manager who you say in your statement, [subject to non-publication direction], she – the previous facility manager stayed on after the change of ownership - - -

45

MS HAUSLER: Yes, she did and - - -

MR ROZEN: - - - for a period of some months; is that right?

MS HAUSLER: She did. I think it was July that she left.

5 MR ROZEN: All right. And she was ultimately replaced by Ms Musico?

MS HAUSLER: Correct.

10 MR ROZEN: All right. Apart from those changes to staffing that you've discussed, were there changes to the care that flowed from those changes that you're able to describe, or are you – or not?

MS HAUSLER: The actual care plans didn't change dramatically.

15 MR ROZEN: Yes.

20 MS HAUSLER: Dad's needs for what he was requiring assistance for didn't actually change a lot, but there was a obvious change in – certainly, from an incontinence care perspective that what was on the care plan, what was being told to me, as I would understand too, that there was a degree and a quality of care that should have been delivered. That was all in writing, but Dad's actual skin integrity was compromised and, over a number of months, was continuing to develop issues, and, throughout that time, I was having meetings with management to ask them why there was this discrepancy between what should be doing – what should be being
25 done and Dad's outcomes because he never had any problems prior to that with Whiddon care.

MR ROZEN: Right.

30 MS HAUSLER: And, again, like I said, he was totally dependent so there was a certain degree to be expected, but it just didn't seem to be resolved.

MR ROZEN: All right. Can I just clarify the timeframe we're talking about. In your statement at paragraph 66, you say:

35

From early January 2015, I began to develop serious concerns about my father's safety and wellbeing at Mitcham.

40 Do you see that at paragraph 66 on page 8?

MS HAUSLER: Yes, I do see that.

45 MR ROZEN: Is that – are those concerns what you've just been describing to us, or are they something else?

MS HAUSLER: That is part of the concerns. There was also an issue with – he developed a pressure sore on his right ankle over the area where he had plates, some

pins put in for correcting the fracture that he sustained prior to going into care, but that was many, many years earlier.

MR ROZEN: Yes.

5

MS HAUSLER: And there was also a chronic nail – toenail infection that he had which didn't seem to be, from my perspective, being attended to or anything done with it. So those were some of the issues. There was a number of times where Dad had unusual bruising which didn't have any sort of answer to it as to how that could have occurred.

10

MR ROZEN: Yes.

MS HAUSLER: With Dad being totally bedridden, it was unusual for the fact that he could actually do it to himself or – most of it was dismissed because I didn't have any evidence as to how it was caused. He also, over that period of time, changed in how he was responding to me. We used to have really good eye contact. I could ask him yes and no questions, and so, yeah, there was an overall deterioration in his wellbeing as well as his demeanour.

15
20

MR ROZEN: All right. Just pick up on something you've just said about your communication. Your father, at this time, 2015, is nonverbal?

MS HAUSLER: Correct. Mostly.

25

MR ROZEN: Mostly.

MS HAUSLER: He – he could have the yes and no every now and then, and he would have periods at different times – and I don't know what stimulated it, but – but he would have very lucid periods of a couple of hours - - -

30

MR ROZEN: Yes.

MS HAUSLER: - - - some days, and he – but he would just prattle on about what he used to do on the farm. You couldn't actually engage with him throughout his conversations and things like that, but it was just an internal thing that seemed to come every now and then, but then he would be totally nonverbal, otherwise.

35

MR ROZEN: Okay. And as far as your communications with him - - -

40

MS HAUSLER: Mmm.

MR ROZEN: - - - can you describe them for the Commissioners in a bit more detail. How did you communicate with your father?

45

MS HAUSLER: A lot of it was through eye contact. I could see when he was – when I was talking to him, he would, sort of, raise his eyebrows. Sometimes, the –

like I said, there was a yes or a no nod. Not all the time did I believe that the yes and noes were correct, and so on the times when I felt that, perhaps, that wasn't correct, I would ask him a question which I knew had to have a correct answer to it, and he was fine sometimes and, other times, he wasn't. So he was variable, but there was a lot of communication just through holding hands, those sort of things that I – I – I understood he was comfortable and, certainly, just his body language and demeanour made a big difference from, yeah, one time to another.

MR ROZEN: Now, at paragraph 73 of your statement on page 9, you say that your father's demeanour changed at around this time, and from earlier in that – on that page, it's about August of 2015 that we're now concerned with?

MS HAUSLER: Mmm.

MR ROZEN: How did it change? Can you describe - - -

MS HAUSLER: Again, the ability to connect with him visually. He would – more so, rather than sort of concentrate on what I was saying to him like he did before, he would, sort of, look and then he'd look away. He, at different times, had tears in his eyes which was very unusual for Dad. I asked him on a number of times, you know, was he feeling well? Was something wrong? He couldn't actually answer those questions with any, sort of, degree of clarity.

MR ROZEN: Yes.

MS HAUSLER: So – but that was a change. There was also – he just sort of shut down. There – there was no interest. I used to often sit and read to him. He seemed not to be, sort of, interested in hearing what I was reading to him and there was a lot of times that, when I come in and he was in his room, he'd sort of be curled up in a little foetal position, and he was reluctant – even when I sort of approached him or spoke to him, to sort of come out of that, like he would normally – you know, if I come into the room, he would – he would respond.

MR ROZEN: It was at about this time that you decided to install a video camera in your father's room to film the events in the room.

MS HAUSLER: It was and I had actually become very concerned and suspicious of one of the employees who, it seemed to be – around the times that he was on shift. I didn't know whether he was actually caring for Dad directly or not, but when he was around, Dad seemed to have these moments of worsening, compared to other times. And, initially, it was one of the male staff, and he was very good with Dad. I felt that he was very caring, and he seemed to have a – a nice demeanour about him in caring, but over a period of time, that seemed to change in, if I saw him in the corridor, he would sort of avoid me or if – I don't know. It – it was just a feeling I had, and I was concerned that he may have been doing something that was affecting Dad's wellbeing.

MR ROZEN: And I understand from that, correct me if I'm wrong, but that was the motivation for putting the camera in?

5 MS HAUSLER: It was part of the motivation, but mostly for the fact that the other issues that I've mentioned weren't improving when I was being told that the care was being delivered. So, to me, there was no other way of knowing exactly what care Dad was getting, how it was being delivered and why Dad was deteriorating like he was. So I decided that a camera was the only way that I knew what was happening in his room.

10 MR ROZEN: Now, you – the camera was in place for about 10 days.

MS HAUSLER: Eight days.

15 MR ROZEN: Eight days altogether.

MS HAUSLER: Mmm.

20 MR ROZEN: During that time, it was filming continuously, was it? Is that how it operated?

MS HAUSLER: It was a continuous little video, but it was only sort of during the day. That – there was no night vision on it.

25 MR ROZEN: I understand.

MS HAUSLER: Mmm.

30 MR ROZEN: And was your practice to take the disc out of the camera, so that you could then play it at home to see - - -

MS HAUSLER: That's correct.

35 MR ROZEN: - - - what was recorded?

MS HAUSLER: It had a little SD card in it which was - - -

MR ROZEN: Yes.

40 MS HAUSLER: - - - capturing the images.

MR ROZEN: Card, I'm sorry. Thank you.

45 MS HAUSLER: Yeah.

MR ROZEN: Now, what I would like to do, now, Ms Hausler, is ask the operator to play some film in relation to three dates: 31 August, 1 September and 9 September.

And after each of the pieces of footage, I'm going to ask it to be paused. Then I will ask you some questions about it and then we will go onto the next piece of footage.

MS HAUSLER: Okay.

5

COMMISSIONER TRACEY: The Commission has been advised that some of the footage that's about to be aired is very confronting, and I simply wish to advise those in the hearing room and those watching this proceeding online that that is the case, lest any of you may wish not to watch it.

10

MR ROZEN: Thank you, Commissioner Tracey. So if the first piece of footage could be brought up. It's tab 261 in the tender bundle, and it's from 31 August 2015.

15 **VIDEO SHOWN**

MR ROZEN: Just pause there for a moment. That footage was filmed on 31 August 2015, Ms Hausler; is that right?

20

MS HAUSLER: That's right.

MR ROZEN: And was that your father in the bed?

25

MS HAUSLER: Yes, it is.

MR ROZEN: And the gentleman who's making the bed is Mr Corey Lucas.

30

MS HAUSLER: Could I ask that we don't call him a gentleman. Thank you, but yes, it is Corey Lucas.

MR ROZEN: Yes. And when you saw that footage, was that on the night of 31 August?

35

MS HAUSLER: That may not have been. I can't recall exactly whether I saw that on that particular night.

MR ROZEN: All right.

40

MS HAUSLER: As I said, I worked night duty.

MR ROZEN: Yes.

45

MS HAUSLER: Often I would go in there and get it, not necessarily see it that night so I can't recall.

MR ROZEN: I won't ask you to guess about that.

MS HAUSLER: Sure.

MR ROZEN: It was soon after it was filmed that you saw it.

5 MS HAUSLER: It was soon after it happened, yes.

MR ROZEN: Did you consider raising what you had seen with management at the facility?

10 MS HAUSLER: I didn't specifically raise that because previously there had been issues raised on believing that Dad wasn't actually being treated fairly, with dignity, and so to me that wouldn't have made any difference.

15 MR ROZEN: The next small video clip, and I should indicate these are very small edited clips from a much longer piece of film which we've chosen - - -

MS HAUSLER: That's correct.

20 MR ROZEN: - - - because of the time constraints the Commission is under. The next piece of film is tab 262 which I would ask to be played, please, and this is 1 September 2015.

VIDEO SHOWN

25

MR ROZEN: And that footage on 1 September 2015 once again shows your father in the bed with a different care worker.

30 MS HAUSLER: Yes, it is.

MR ROZEN: A female care worker. And you did make a formal complaint after seeing that footage.

35 MS HAUSLER: Yes, I did.

MR ROZEN: And why did you decide to complain after that, after you saw that?

40 MS HAUSLER: Because, as you've mentioned, that was only a small segment of the footage. Dad at that period of time had had a reassessment and was deemed a risk of aspiration with not being fed correctly, so the positioning of father was very important, the way he was fed and the time frame that was given to him to actually eat properly was certainly where he was at that period of time, and the rest of that video shows that he was put at risk quite significantly for aspiration while that carer
45 was feeding him.

MR ROZEN: Now, the complaint that you made, I would ask you to look, please – sorry, I withdraw that. Initially, you raised it verbally with the staff at Mitcham, your concerns?

5 MS HAUSLER: I – the night that I actually saw the video, I rang the facility and asked who the person was because I didn't – I had no idea of her previously caring for Dad.

MR ROZEN: Yes.

10

MS HAUSLER: So I believe that she didn't know Dad very well. The staff member couldn't give me the name. I was going to work that particular night so I actually documented what was on the video and I delivered that to the facility the following day as a report in letter form.

15

MR ROZEN: Right. I ask you to look, please – I ask to be brought up tab 39 from the tender bundle. Now, some personal details have been redacted from that, as you can see, but do you still recognise that as the written complaint you made to the facility about the incident on 1 September 2015?

20

MS HAUSLER: That's correct.

MR ROZEN: All right. And we can see, about a quarter of the way down the page there, this is your handwriting, I take it, Ms Hausler?

25

MS HAUSLER: It is.

MR ROZEN: You've written:

30

Re agency nurse's rough contact whilst feeding father PM shift 1/9/15.

MS HAUSLER: Yes.

MR ROZEN: You see that about a quarter of the way down the page.

35

MS HAUSLER: Yes.

MR ROZEN: And then you detail there the complaint that you're making, the description of what you had seen on the – on the video.

40

MS HAUSLER: Yes.

MR ROZEN: You, of course, weren't present in the room during any of that occurring.

45

MS HAUSLER: No.

MR ROZEN: The only basis for this concern was what you had seen on the video.

MS HAUSLER: That's true.

5 MR ROZEN: Yes. Okay. And we can see and read – I won't ask you to read through the description of that, but it's a narrative description of what you had seen on the video. And then if we go to the second page, please, you said at the top of the page there:

10 *I welcome you to send a copy of this letter to the agency.*

If I could just pause there; you understood that the carer was actually employed by an agency rather than directly by Japara.

15 MS HAUSLER: Yes, because of what she was wearing.

MR ROZEN: Yes. And you went on:

20 *And I am more than happy to discuss this further with them and the nurse involved if it's necessary.*

Then you said:

25 *My gut feeling is there is a lot more silent misconduct of residents who are secluded in their rooms and nonverbal and who are then subjected to some staff (who don't have their heart in the right place to care for fragile dependent residents).*

What was the basis of that gut feeling, Ms Hausler?

30 MS HAUSLER: A number of things. Certainly from what Dad was showing and demonstrating to me that he wasn't being looked after very well, I, over those period of years, had made quite good friends with a number of residents and their families, and there were other people who were saying that they had concerns about their
35 relatives, but they had no proof of what their concerns were. And so there was a – an understanding from some of those people in my view as well as what I was experiencing through Dad's eyes, that there was misconduct that had been silenced and most times because the people who were telling me their stories also had a wife, in both cases, that was probably one, not as dependent as Dad but one that was.

40 MR ROZEN: All right. Now, a few days later or possibly early the following week, you received a written response to this complaint dated 5 September?

MS HAUSLER: That's correct.

45 MR ROZEN: Is that right?

MS HAUSLER: In the mail.

MR ROZEN: Yes, in the mail. In that period between hand delivering your complaint and receiving a letter in the mail, did anyone in a position of authority at Mitcham or from Japara talk to you about your concerns and particularly that gut feeling that you described there?

5

MS HAUSLER: No, I had no contact in that period of time and to the point where it was, I think, a couple of days that I felt I should have got some sort of response, so that's why I went to ask.

10 MR ROZEN: All right. I just want to ask you about an aspect of the evidence we understand will be given later today by Ms Reed – there's an issue with the sound I'm instructed. I think if we move the microphone it will be of assistance. Sorry about that, Ms Hausler. We understand that evidence will be given later today by Julie Reed from Japara to the effect, and this is paragraph 71 of her statement for the
15 benefit of my learned friend – to the effect that she spoke to a quality manager called [TL] during the period of time we're talking about, and she will say that [TL] spoke to you during this period about your gut feeling. Do you have any recollection of such a conversation?

20 MS HAUSLER: No. No, that – no, not at all.

MR ROZEN: All right. If it helps, she said the conversation happened at the facility at Mitcham; no?

25 MS HAUSLER: No.

MR ROZEN: All right. Returning to the sequence of events, you put in the written complaint, and between putting it in and receiving the letter in response, as you've told us, there was no discussion with you. No one, for example, asked you how you
30 were able to describe those events?

MS HAUSLER: No, they didn't.

MR ROZEN: All right. I just want to ask you to look at tab 40, please, in the tender
35 bundle. It's a letter dated 5 September 2015 to you, and you will see it's headed:

Re letter dated 2 September 2015 relating to issues at Mitcham RCF, agency nurse's rough conduct while assisting your father –

40 and so on. That's the letter, or a copy of the letter that you received in response to your written complaint?

MS HAUSLER: Yes, it is.

45 MR ROZEN: Right. Thank you. Did you have a meeting on 8 September with the facility manager, Ms Musico, about your concerns?

MS HAUSLER: I did, but it wasn't a set meeting.

MR ROZEN: Right.

5 MS HAUSLER: I had actually gone in there thinking because there had been a
changeover of the facility managers at the time. There was a few different ones that
– within a short period of time. Because I hadn't actually had much of a response to
that, I went to the acting clinical nurse, I think she was at the time, to ask her whether
I could actually be in touch with the agency, and was there anything further that had
10 happened. And she said that they had been in contact with the agency, that the
agency staff member denied actually feeding Dad, and that she wasn't there. And I
said well, I'm very suspicious of that and I said, so I need to actually speak to
somebody and at that time I had actually brought the photos in with me of the
previous bruising and the – a couple of the other issues that is had happened because
15 I thought, well, the people that were there as far as the management, they didn't
know Dad and so they needed to have an understanding as to why I was concerned.

MR ROZEN: And how would you describe your relations with the managers at
Japara at this time?

20

MS HAUSLER: At that time, again because we had had a number of concerns
raised, I didn't feel as though we were having sufficient resolve for any of that. The
relationships had actually become a little bit strained. I felt I had still a good
communication with Rachael one on one, but Di Jones, who was the quality
25 manager, I felt that she was a little bit more resistant to any of the things that we
were wanting to address.

MR ROZEN: Yes.

30 MS HAUSLER: And I felt there was also upper management doing strategic
control of a lot of what was being brought up as concerns, trying to find resolutions
to.

MR ROZEN: All right. I will ask you a little bit more about that in a moment but
35 now I would like to turn to the third incident. The third piece of the footage which is
on 9 September 2015. Before showing that, did you visit your father in the afternoon
of 9 September?

MS HAUSLER: The afternoon of 9 September, yes.

40

MR ROZEN: Yes. And how did he appear to you?

MS HAUSLER: It was late afternoon.

45 MR ROZEN: Yes.

MS HAUSLER: He was in bed in his room. There was not anything of concern going on that I could sort of see. I went around to Dad to, sort of, speak to him. He didn't want to respond to me. He was sort of curled up in the bed with the sheet partially, sort of, over and around him, and when he looked up, he had tears in his eyes, he had bloodshot eyes, and I held his hand and I said, "Are you okay?" And he didn't look okay.

MR ROZEN: Would you like to have a break, Ms Hausler?

10 MS HAUSLER: No, I'm fine.

MR ROZEN: Just take your time. I'm sure it would be no trouble if we had a brief break, if you would like to.

15 MS HAUSLER: No, I will continue. I became quite concerned then that I didn't know what was wrong. He had actually had his dinner, and so I couldn't quite get him to communicate anything with me. I asked him a few questions, but he wouldn't answer me. So I said to him, "I'll try and make you more comfortable." I asked him if he had any pain. He – he wouldn't say so. I did what I normally did, just check
20 that his incontinence pad was dry. I think I changed him. I can't remember. I repositioned him, and I stayed with him. We – I read to him, put some music on, and waited for about an hour and a half till he was, what I felt, comfortable for me to leave. And so, yeah, I left, but very concerned with how I found him.

25 MR ROZEN: You removed the card from the video recorder - - -

MS HAUSLER: I did, yes.

MR ROZEN: - - - and took it home.

30

MS HAUSLER: Yep.

MR ROZEN: And you watched the video - - -

35 MS HAUSLER: Yep.

MR ROZEN: - - - recording from that day at home, and I would ask the operator, please, to play tab 263.

40

VIDEO SHOWN

MR ROZEN: Just to be clear, Ms Hausler, they were four edited pieces of footage
45 all taken on 9 September 2015?

MS HAUSLER: That's correct. It was over about a 25-minute period.

MR ROZEN: Yes, and in the bottom right-hand corner of the footage, we – there’s a time stamp. Are you able to say whether or not that depicts the actual time that the recording was made?

5 MS HAUSLER: It was actually out by an hour, but I didn’t know how to adjust it because it was, yeah, on a different time to Adelaide time.

MR ROZEN: All right. Excuse me, Ms Hausler. Commissioners, I just indicate we’ve prepared a table which I’ll provide to my learned friends to see if it could be
10 given – handed up as an agreed document which tries to match the actual time with the time that’s shown on the video. Ms Hausler, how did you feel at home that night when you saw that footage?

MS HAUSLER: Terrible. I had no idea that someone could possibly do that. I felt
15 for Dad in the fact that I didn’t protect him sufficiently, and it was about half past 7 at night. I wasn’t too sure what to do first. I didn’t know whether Corey was still on shift or going to return, and I thought about ringing the facility, but then I thought I knew that this certainly was a huge issue. So I rang – I didn’t ring. I went down to the police station and presented it to them.

20

MR ROZEN: And what did the police officers do? Sorry, did you say you provided them with the footage?

MS HAUSLER: Yes, I did.

25

MR ROZEN: Did you watch it together with them at that time?

MS HAUSLER: No, I presented it to the constable first off who said he couldn’t
30 view it because it was illegal to put a camera in the private room. I said, “You need to see it.” So I asked him to view it first before he made a decision further. He did that and, within a couple of minutes, he said, “I need to take this to the detectives,” and – and that’s what he did.

MR ROZEN: All right. And is that how things were left between you and the
35 police on that night?

MS HAUSLER: Sorry, I didn’t - - -

MR ROZEN: Is that how things were left on that night between you and the police,
40 that he would take it to the detectives?

MS HAUSLER: No. The detectives viewed it.

MR ROZEN: Yes.

45

MS HAUSLER: They came out and they spoke to me. They said that they need to have any other footage that I had that I can give to them, which I did, and they said to

me not to say anything to anybody, that the detectives would be apprehending Corey Lucas as soon as they could.

MR ROZEN: All right.

5

MS HAUSLER: And not to say anything to anybody.

MR ROZEN: Did they put a time – an end time period on that stipulation, not to say anything to anybody? Do you recall?

10

MS HAUSLER: There – there wasn't a time stipulation, but the understanding was until he was apprehended.

MR ROZEN: That was your understanding?

15

MS HAUSLER: My understanding of what they were saying - - -

MR ROZEN: Yes, thank you.

20

MS HAUSLER: - - - which made sense.

MR ROZEN: Now, there was a meeting the next morning at the Mitcham facility at which you and the police attended?

25

MS HAUSLER: That's correct.

MR ROZEN: Yeah. Did you come together?

MS HAUSLER: No, I was actually at the facility about 7.30 in the morning - - -

30

MR ROZEN: Yes.

MS HAUSLER: - - - because I was concerned for Dad and I wanted to stay with him, knowing the state that he was in the evening before as well. So I went in and I did his cares, and I stayed with him until I was of the impression that the detectives would be at the facility at some time, but I didn't know when, and it was around about 9 o'clock that I was asked to go to the office - - -

35

MR ROZEN: Right.

40

MS HAUSLER: - - - with the detectives.

MR ROZEN: At that meeting were the two detectives; is that right?

45

MS HAUSLER: That's correct.

MR ROZEN: Julie Reed from Japara.

MS HAUSLER: Yep.

MR ROZEN: Yourself.

5 MS HAUSLER: Mmm.

MR ROZEN: Rachael Musico the facility manager - - -

MS HAUSLER: Mmm.

10

MR ROZEN: And in – [TM] who was a senior employee at Mitcham.

MS HAUSLER: Yeah.

15 MR ROZEN: Is that right?

MS HAUSLER: I believe she was in the acting clinical nurse role at the time.

MR ROZEN: Yes, and the final person you've – sorry, [TL] a quality manager from
20 Japara was also there.

MS HAUSLER: Yes.

MR ROZEN: All right. The final person you've listed in paragraph 117 of your
25 statement – if that could please be brought up, Operator, on page 0015 – you've
identified Diane Jones a quality manager as being present - - -

MS HAUSLER: Mmm.

30 MR ROZEN: - - - at the meeting. Ms Jones provided a statement to the
Commission in which she responds to that and says that she was elsewhere that day
and wasn't present at that meeting. Is it possible that you were mistaken about Ms
Jones' presence?

35 MS HAUSLER: I actually went back over my notes because the documentation that
you were speaking about there was the – part of the submission that I wrote earlier
this year. And so the typed notes on – is that – the typed notes I had that Di Jones
was present, but when I went back to my original handwritten notes, it wasn't Di
40 Jones that the reference was to. It was actually [TL].

MR ROZEN: Okay.

MS HAUSLER: So Di Jones wasn't there, and I apologise.

45 MR ROZEN: Thank you for that clarification. Did the police – did the detectives
speak first at the meeting? Is that how events transpired, do you remember?

MS HAUSLER: I couldn't be specific.

MR ROZEN: All right. At some point, though, they did talk to the Japara management.

5

MS HAUSLER: Yes. Yes.

MR ROZEN: And are you able to summarise what it is that they said, not asking you to recall word for word?

10

MS HAUSLER: Sure. They just indicated that, obviously, they had received this footage, that it was yesterday, that it was one of the employees here Corey Lucas, and that they were going to show the video footage to management.

15

MR ROZEN: Yes.

MS HAUSLER: And that they had not apprehended him at that point in time.

MR ROZEN: The footage – I take it the footage was shown during the meeting.

20

MS HAUSLER: It was, in complete, yes.

MR ROZEN: And it was footage that was from 9 September including the footage that we've shown in the hearing room today?

25

MS HAUSLER: Yes.

MR ROZEN: Is that right?

30

MS HAUSLER: Yes.

MR ROZEN: Do you remember approximately how long the clip was that was shown?

35

MS HAUSLER: Approximately 25 minutes – 20 to 25 minutes.

MR ROZEN: All right. And did someone speak on behalf of Japara at the meeting; do you recall?

40

MS HAUSLER: Julie Reed was the – the main person that spoke, yes.

MR ROZEN: Okay. And are you able to summarise what she said?

45 MS HAUSLER: She was horrified to see what she saw. She said that this shouldn't have happened. She stated that she was concerned and asked the detectives whether this would go to the media, along those lines. I don't know the specific wording that she used at the time, but her initial thoughts were that there was going to be an issue

with the media. That I – I, obviously, was not to put a camera back in Dad's room, and that what I had done really had breached a number of Acts, and I think, probably, that was kind of most of what was said, and – and – and that she then presented that there will be changes, obviously, to – to protect Dad.

5

MR ROZEN: And you've listed those changes that were announced at paragraph 122 of your statement. There were four. Perhaps if I could go through them. Firstly, Lucas was not to return to the facility.

10 MS HAUSLER: That's correct.

MR ROZEN: Secondly, your father was to be moved to a visible area in his bed or chair and not to be isolated in his room.

15 MS HAUSLER: Yep.

MR ROZEN: Two staff were to attend your father's care at all times.

MS HAUSLER: Correct.

20

MR ROZEN: And your father was to be examined by the general practitioner for any injuries.

MS HAUSLER: Yes.

25

MR ROZEN: And were each of those steps actioned by Japara?

MS HAUSLER: Yes, they were.

30 MR ROZEN: All right. You saw your father on the following day, 11 September.

MS HAUSLER: Mmm.

35 MR ROZEN: Are you able to describe to the Commission how he presented to you? What did you think when you saw him?

40 MS HAUSLER: The previous day, I had actually told Dad that I had reported the incident and that I knew what had happened, and that the person that was involved in it would no longer be at the facility. So I said – I apologised to Dad, what had happened, and so the following day when I was in there, as in, the next day that you're speaking of - - -

MR ROZEN: Yes.

45 MS HAUSLER: - - - he seemed a little bit more relaxed. He was happy to respond to me, but he still, to me, was distressed to a degree, yes.

MR ROZEN: One of the other steps that was taken by Japara was the offer to you of some counselling sessions.

MS HAUSLER: Correct.

5

MR ROZEN: It's the case, isn't it, that you attended the counsellor, there was some logistical difficulties with clarifying that even though you were not an employee, you were still entitled to the counselling.

10 MS HAUSLER: Yes. Initially they hadn't had correct communication, I think it was, to understand that the counselling had been offered to me because I wasn't an employee.

MR ROZEN: Yes. Did the counselling – was it of any assistance to you?

15

MS HAUSLER: The first time that I spoke to the person that was allocated to me, she was excellent, she was really good. She was compassionate, she listened to what was happening. She gave me sort of some pointers on how to sort of look after myself, and that was okay. And we then made another appointment for the second meeting, of which I can't remember what time frame that was, but the next time round she seemed to be a lot more disengaged in the fact that she had a lot of things happening. She actually said there was a time frame that she was on, and "Was there something that I could help you with?" so she wasn't as engaging as what she was the first time round.

25

And then the third time, we had made arrangements the second time for the third connection, and when she rang me that particular day she inferred that she couldn't remember why she had this in her diary but it was to contact me and am I okay. And so I kind of sort of felt after that period of time there really wasn't a good support happening from that perspective. So I just said that's fine, I'll look after myself.

30

MR ROZEN: All right. Did you speak alternative counselling?

MS HAUSLER: Yes, I did.

35

MR ROZEN: Was that of assistance to you?

MS HAUSLER: It was, yes. I went to my GP a little while after this, because I wasn't coping and, yes, we arranged counselling privately.

40

MR ROZEN: Thank you. Now, I want to ask you about your relations with the other staff members in the period following the events that we've been discussing. You've said in your statement you're attending Mitcham more often and for longer periods of time than you had normally attended there; is that right?

45

MS HAUSLER: That's correct, and it was because I was of the understanding that staff were not going to be told of the incident, and so I felt it was my duty, really, to

be more diligent with being there for Dad to support him, and assist where I could. The staff that normally were doing what they had to do had no idea what had happened, so to me I was kind of the one that really needed to be able to assess and have an understanding of how Dad was relating after the actual incident.

5

MR ROZEN: You've related in your statement some – perhaps hostility is too strong a word, but some difficulties in your relations with some of the staff members, the carers, during this period. Can you tell the Commissioners about what that experience was.

10

MS HAUSLER: It actually became very fractured because they didn't know why I was there. I was being more diligent to attending to Dad's care and in doing that bringing up issues. Staff – yes, I was actually labelled the smiling assassin. There was a lot of things behind the scenes that were being said because Corey Lucas had actually groomed a lot of the people that he worked with, with his colleagues. He had made good friends with them. And I believe that with his leaving there was suspicion and nobody knew why he had to leave, but there was an understanding and it was quite obvious because of what had happened after the 9th that it was related to Dad and myself. And so they didn't know what had actually happened and so they made a lot of assumptions, and I believe that there was a finger pointed at me because I had actually got Corey sacked and they didn't know why.

15

20

MR ROZEN: And did you raise this issue with management, that is, the issue of the staff not knowing about the assaults and not knowing the reason why - - -

25

MS HAUSLER: There were a couple of meetings that I did ask them that somehow, some means that the staff needed to understand what had happened to make the whole situation a little bit easier.

30

MR ROZEN: All right. I will come back to that topic in a moment but in the meantime there was a criminal charge and a criminal process that took place in relation to Corey Lucas.

MS HAUSLER: Yes, that was over 10 months.

35

MR ROZEN: And ultimately he was sentenced, we know, on 6 June 2016, the following year. Did you provide a victim impact statement as part of that process?

MS HAUSLER: Yes, I did.

40

MR ROZEN: All right. Without needing to go to it, Commissioners, the magistrate's sentencing decision is in the materials at tab 215 but I don't need to take Ms Hausler to it. In your statement, you explain some overall impressions you made from looking at the video recording across those eight days. I've taken you to the three specific parts of it which obviously depict some very distressing material. But can you tell the Commissioners what your overall sense was from looking at the many hours of video footage in your father's room?

45

MS HAUSLER: There was a combination. There was a lot of good care that I saw. A lot of compassionate staff that went over and above what they needed to make sure that Dad was comfortable and that he had all his needs met. There was a lot of complacency and noncompliance in delivering Dad's care as far as how the care plan
5 was structured and exactly how the care was being delivered. So not wearing gloves and those sort of things. Not using slip sheets for doing repositioning of Dad so there was a lot of pushing and pulling. The sling, when they applied the sling for Dad, they incorrectly applied it and there was a previous incident where he had quite severe bruising on one of his inner thighs from exactly the same thing.

10 That caused quite a bit of contention when – even when I was in the room there was a couple of times that they didn't do that correctly. I raised the concern and then that was actually seen as me intimidating staff. But on the video there was a combination of good and bad practice, and certainly the other footage that we've seen.

15 MR ROZEN: Thank you. Did you see any – any footage of staff members eating your father's food?

MS HAUSLER: Yes, I did.

20 MR ROZEN: All right. Now, in November of 2015, if I can just take you forward a little in the chronology, you contacted the Aged Rights Advocacy Service, ARAS, and TK – TK from that organisation was of assistance to you from that time on. What made you contact ARAS?

25 MS HAUSLER: Again, because we had had ongoing concerns that weren't meeting resolution, I felt that I had done the best I could using the complaint system, the chain of command at the facility level, and that I wasn't getting the responses that – certainly I was wearing my nurse's hat at the same time in understanding that what
30 should have been resolved in his care issues weren't being resolved, and there just seemed to be a building in dismissiveness and resistance between myself and the management, which I believed wasn't going to successfully give us an outcome that Dad required. And I believed then that the next step was to go to ARAS and ask for assistance.

35 MR ROZEN: Yes. Those care needs, they were the matters that you raised earlier, the care of the right ankle wound, the nail infection, toenail infection.

MS HAUSLER: Yes.

40 MR ROZEN: And there was also a question of dermatitis and whether that was related to incontinence.

45 MS HAUSLER: And there was always hydration issues and those sort of things along the way as well which were repetitive and never seemed to have a solution.

MR ROZEN: Yes. Now, there were a series of meetings between yourself and Ms Musico and Ms Jones from Japara at around this time and TK accompanied you to some of those meetings.

5 MS HAUSLER: He did.

MR ROZEN: Is that right? We know from the material before the Commission that those meetings were minuted. They took place approximately weekly in the period November 2015 to early 2016. Does that accord with your memory?

10

MS HAUSLER: Yes, about that.

MR ROZEN: All right. Whose suggestion was it that minutes be taken of those meetings; do you recall?

15

MS HAUSLER: I actually believe I asked for them at one stage because we were having meetings and I suppose I was under a lot of duress at the time as well and I couldn't remember a lot of the things that we had actually covered, what we were going to put in as far as plans even though sometimes care plans had been changed, and I just wanted documentation to understand where we were at with it, and it was to me a situation – these meetings were of considerable concern and they needed to be minuted.

20

MR ROZEN: Ms Jones has attached to her statement – we understand she will give evidence later today in accordance with the this – that the first of the meetings at around this time that you attended was on 3 November 2015. Now, I'm not asking you to remember the precise date but does that sound right, early in November?

25

MS HAUSLER: It would have been because when I first went to ARAS and [TK] went through the folder of issues that I had, we, in the meantime – and I think that was around about October – we actually met with the accreditation group to go over my concerns that were in the folders for Dad's care, so yes, that would have been around about that time.

30

MR ROZEN: After the first meeting that you had with the ARAS representative and the managers from Japara, did you get a sense of whether they were of assistance in rebuilding the relationship between yourself and the managers?

35

MS HAUSLER: Initially, yes.

40

MR ROZEN: All right. And why was that? Why did you think that the process was beneficial? What was it about the meetings?

MS HAUSLER: I thought with having [TK] assisting me there was a peak body that had a position on the rights for the residents and so they could speak more to those than what I was aware of. He was very in tune with what the Aged Care Act was all about, so he knew what the expectations of care would be, and so to me I felt

45

that we had the right combination of people to ultimately give benefit to what Dad's needs were.

5 MR ROZEN: Right. Now, a few days after that first meeting, which as you describe was helping in rebuilding the relationship, you received an email from Ms Reed, and I will ask that tab 177 be brought up, please, operator. And can I just clarify that this is a copy of the email that you received on 9 November 2015?

10 MS HAUSLER: It's in a bit of a different format, but yes, the content of it is correct.

MR ROZEN: All right. It has been redacted to some extent and you will see that it says:

15 *Dear Noleen, thank you for your email re our website and a policy re video surveillance in residents' rooms.*

20 If I pause there in the reading, it seems you've written asking for some information from Ms Reed; do you recall that?

MS HAUSLER: No, I don't recall an email but I know when we first met after the incident with the detectives, after she had actually accused me of – yes, of breaching the Surveillance Act, I did actually ask her for information from a legal perspective of where that was documented and what it actually said, but I don't remember sending an email for this, no.

MR ROZEN: You will see that she went on in the email to tell you there wasn't a policy on the website and then, and I quote:

30 *It has clearly been explained to you on numerous occasions that by covertly filming in a resident's room you would be seriously breaching multiple Acts, including but not exclusive to the Aged Care Act 1997 and the Occupational Health and Safety Act.*

35 And if I can just end that quote there, she was right in one sense, wasn't she, that that had been said to you on previous occasions by her; is that right?

MS HAUSLER: Yes.

40 MR ROZEN: All right. Did you, having received that email from her, consider that was – whether that was of assistance or not in the rebuilding of the relationship that you were undertaking with her subordinates, Ms Musico and Ms Jones?

45 MS HAUSLER: Because this was November, the incident happened in September, and I had asked – well, I probably persisted, not necessarily asked – persisted in the fact that Dad needed to be protected because he was unable to defend or speak up for himself, and that there was no guarantee the way the facility was run the geographics of where Dad's room was that he could be protected 100 per cent, and they actually

said that they could not guarantee that. So I persisted in asking at different occasions that I would, in time, once I realised what the legal requirements were, where I stood from Dad's perspective, that a camera should go back into his room. I was quite definite about that.

5

MR ROZEN: All right. Now, there were several more meetings and I won't take to you each of them, but I do want to ask you about one other piece of correspondence that you received, and this is behind tab 72, if the operator could please bring that up. And, once again, there's a bit of redaction there, but can you recognise that as a further communication in writing from Ms Reed on 9 December 2015?

10

MS HAUSLER: Yes, it was.

MR ROZEN: And you will see in the fourth paragraph there, Ms Reed said:

15

It is also unlawful for you to keep our staff under surveillance without their permission and with the intention to cause our staff serious apprehension or fear. Stalking is an offence that carries serious penalties.

20

Did you, at any time, have the intention to cause the staff at Mitcham serious apprehension or fear?

MS HAUSLER: Absolutely not.

25

MR ROZEN: There was a meeting on 15 December 2015, so a week or so after this letter was written, which I want to ask you about briefly. We have Ms Jones' minutes of that meeting behind tab 186, if that could please be brought up. The meeting depicts that the representative from ARAS was there – if we could just, for the moment, call him that, if that's all right. And in the very last dot point there, you will see towards the bottom of the page, that representative – it's recorded there that:

30

That representative from ARAS, and Noleen approves, they requested that Mitcham staff be advised of the details of abuse that had occurred in September 2015 –

35

and it goes on:

Following consultations with EDACS.

Do you know what that stands for, E-D-A-C-S?

40

MS HAUSLER: I did actually ask, but I've forgotten what it sounds – stands for.

MR ROZEN: All right. I'm sure there are others that can assist us. It goes on:

45

Julie Reed, Di Jones advised that we do not support this and would not be officially informing staff of the details of this incident.

And it goes on and explained that the ARAS representative indicated that he couldn't understand this as it was a matter of public record and paraphrasing that it would be of general assistance if the staff had more information. Do you recall that topic coming up at that meeting?

5

MS HAUSLER: Yes, I do.

MR ROZEN: All right. And that's, of course, not the only time that that was raised. You've already told us - - -

10

MS HAUSLER: No.

MR ROZEN: - - - that this was an issue that you had raised on several occasions.

15

MS HAUSLER: Mmm.

MR ROZEN: All right. I want to ask you about the application you made in early 2016 to become your father's guardian, an application that was made to the South Australian civil and administrative tribunal, SACAT; is that right?

20

MS HAUSLER: That's correct.

MR ROZEN: Why did you make that application.

25

MS HAUSLER: That was at the time when the complaints folder that I'd taken to ARAS and ARAS had said this needs to be taken to the Complaints Commissioner in South Australia. The delegate, when they received the information that I'd sent to them - - -

30

MR ROZEN: Sorry, can I just ask you to pause there. I'm sorry to interrupt you. So you're seeking to communicate with the Aged Care Complaints Commissioner on the advice of ARAS.

MS HAUSLER: Yes.

35

MR ROZEN: And you're talking about the delegate from that body and what they said to you when you did that.

MS HAUSLER: Correct.

40

MR ROZEN: Is that right?

MS HAUSLER: Yes.

45

MR ROZEN: All right. I'm sorry I interrupted.

MS HAUSLER: No, that's okay.

MR ROZEN: Thank you.

MS HAUSLER: So because it was quite a body of photos which were chronological evidence of the changes in those three areas that we spoke about, the incontinence,
5 acquired dermatitis, his wound on the right ankle and also the nail infection, she said that they are unable to legally cite or take any note of those until they knew who the guardian was and that I had permission from the guardian to take those photos. So I – I wasn't the guardian at the time; my sister was.

10 MR ROZEN: Yes.

MS HAUSLER: But that had been when dad was back on the farm some 12 years earlier, and so through ARAS' assistance again, we got in touch with his sister. She was quite comfortable that we either had a shared guardianship, or she was quite
15 happy to relinquish her guardianship, and I would then be Dad's guardian as well, and so we had to go through a SACAT process to achieve that.

MR ROZEN: All right. And how many times did you need to attend SACAT as part of that process?

20

MS HAUSLER: The process, first off, was done by phone to put in the application, and in that application, I was asked a number of questions about dad, why I needed guardianship which I depicted to them, and there was a question, sort of, towards the end of it, "Was there anything else that you felt there was a need to have the
25 guardianship for," and I made mention wanting to have a camera put back in Dad's room, so I believed that that would be part and parcel of it. So that was over the phone, and then there was just the one meeting at the SACAT office.

MR ROZEN: Right. And you've told us in paragraph 205 of your statement that
30 that was on 21 March 2016.

MS HAUSLER: Yeah.

MR ROZEN: And you had previously been informed by Ms Musico of Japara that
35 Japara had been informed about your application?

MS HAUSLER: Yes. It was about a week or so before the actual meeting was to occur - - -

40 MR ROZEN: Yes.

MS HAUSLER: - - - and I was with dad in his room. Rachael had come down to me, and she just said, "I'd like to let you know that we are aware that you've got the meeting with SACAT," and I thought that was unusual at the time, but I thought,
45 well, maybe that's what happens. And I said to Rachael something to the words of, "Oh, is that what happens?" And she said that's just part of the normal process. I

said, "Is there anything I need to know or do because of that," and she said, "No, that's fine."

MR ROZEN: All right.

5

MS HAUSLER: And it was only a brief conversation. There was no further discussion.

MR ROZEN: All right. When you got to SACAT on 21 March, Ms Jones from Japara was there - - -

10

MS HAUSLER: Mmm.

MR ROZEN: - - - together with a legal representative for Japara; is that right?

15

MS HAUSLER: True. Yep.

MR ROZEN: And what ultimately happened with the guardianship application? What did SACAT do, do you recall?

20

MS HAUSLER: Because I was Dad's power of attorney and medical power of attorney - - -

MR ROZEN: Yep.

25

MS HAUSLER: - - - and the reason for needing the actual guardianship at the time was irrelevant because the guardianship was to do with Dad's lifestyle or home, as in, if I needed to move him which that wasn't part and parcel of why we needed the guardianship, so, basically, it was squashed, but I was very unaware when I got to the meeting that there would be anybody other than myself and the SACAT delegates appropriate to do the guardianship for me. So I was very surprised to see Japara there - - -

30

MR ROZEN: Right.

35

MS HAUSLER: - - - or their representatives.

MR ROZEN: Yes. Now, if I can take you forward in the chronology toward the end of 2016 and what turned out to be the last month of your father's life. He was hospitalised on 13 December - - -

40

MS HAUSLER: He was.

MR ROZEN: - - - 2016, and can you tell us briefly about the lead-up to that hospitalisation?

45

MS HAUSLER: On the Sunday, the 11th, I got a phone call around about 11 o'clock in the morning from the registered nurse to say they couldn't actually rouse dad, and I said, "What do you mean by that?" And she said, "Well, he's very, very sleepy and we're a bit concerned that he's not responding," and I said, "Well, is he breathing,"
5 you know, all those sort of things, and she said, "No, we just can't wake him up." And I said, well, I have intentions of being there, probably, within the next short period of time. I ask them did they have a temp, had they checked his sugar levels because he was a diabetic. That may be it was all part of that. They hadn't done a sugar level. He – they had done his temperature and pulse and they were normal,
10 and it was just a concern that he wasn't being able to be roused, so I said, well, I was on my way over there and I would be there in probably five minutes, but could they do a blood sugar level in the meantime.

And so when I got there, I'd just pulled up and the phone rang and the registered
15 nurse said, "Yes, we've just done a blood sugar level," on dad and it was high – extremely high actually. And so I came in. Dad was in his princess chair in the communal area where they usually had their lunch. He looked a little bit pale, but, otherwise, he didn't feel warm or anything like that. I roused him after a period of time. He responded to me, but very, very sleepy. And so it was getting close to
20 lunchtime when I got there on the overway table, there was three drinks that were completely – like, their cups were still full. One was a juice, one was what looked like tea that might have been sort of there for a while because it was cold, and the other one, I think, was water.

And so I said to the staff members, it looks as though that sugar level is probably a concern. I said dad doesn't look as though he's got anything else, as far as an issue with his temperature. So we did a brief sort of look at the situation. They said that they had actually called the locum in and I said, well, that's good. And so dad then roused enough that I could get a couple of drinks into him. He seemed to be
30 responding to me not too bad, and I thought well, he often would have these moments that he was a lot sleepier than others, and the sugar level was the only thing that was of note at that time, and I asked them when they had done the last sugar level because I knew with his diabetes, he had been quite controlled for quite some time to the point where we were taking him off of all his medications. And they
35 were only doing, I think, twice-weekly sugar levels, and the last one was on Thursday. So this was Sunday. Thursday, it was about 11, and I believe the one on Sunday was around about 18 or something.

MR ROZEN: Yes.
40

MS HAUSLER: So it – it – it had risen. So I said to the staff, assessing what dad was like, knowing who he is, I thought, well, that sugar level might be a result of having too many sugary-type drinks. So I said can we not give him any sugary drinks. They said he didn't actually eat much of his breakfast in the morning. I
45 didn't go into any other details of what he had consumed. And so, at that point in time, I said to them, if he doesn't actually – because I was going out. I said if he doesn't eat his lunch, could we do another sugar level within, sort of, the four hours

to make sure that it wasn't getting any worse or that it might be improving. I said if he doesn't respond, well, then we need to look further, or if he actually had a temperature or anything else had changed.

5 So when I left, the locum had actually rung back and the registered nurse said, "Do you still want them to come in?" And I said, "Well, with how I've assessed dad at the moment," I said, "I will take full responsibility. You can write that in the notes." And I said, "But this is a plan," and I said I don't believe that the locum would need to come in. So the locum was cancelled and that was written in the notes and so - - -

10

MR ROZEN: Okay. Can I just – I will just pause you there.

MS HAUSLER: Yep.

15 MR ROZEN: I only wanted to ask you about one matter which I think is the same day we're talking about, that is, the attempt to contact the emergency paramedic service. Is that on this day that you're describing this, 11 September?

MS HAUSLER: That's correct. Yep.

20

MR ROZEN: All right. Can you tell the Commission about that. What led you to want them to contact the emergency paramedic service - - -

MS HAUSLER: Okay.

25

MR ROZEN: - - - and what happened when you asked them to.

MS HAUSLER: Over the period of the day, dad actually deteriorated - - -

30 MR ROZEN: Yes.

MS HAUSLER: - - - and it wasn't until about 5 o'clock that I got a phone call from the registered nurse to say that he had a temperature and that she was concerned for dad. And so I was still out, but I was intending to be there around about, sort of, 6
35 o'clock, and I said to her, "So what's his sugar levels been?" And she said, "We haven't done another one." And I said, "Well, could you do that because if he's deteriorating, we need to know." By the time I got into the facility, dad looked very grey, he wasn't responding and he certainly was dehydrated, just doing an assessment on him, and I found out, then, that he hadn't actually passed any urine all
40 day, and that the amount of fluids that he had had for the day was minimal.

So the nurse was – when I finally got there, the nurse was actually redoing a set of observations, and she had the oximeter probe which is a little probe that you can put on a finger to see what their oxygen levels are. Dad was breathing faster, but not
45 with any laboured breathing of any sort. As I said, we couldn't arouse him. The oxygen levels were below normal. They should be, sort of, the 95 and above, and I think his levels at – they're quite – accepting at 94 and above. So he had deteriorated

quite significantly to the point where the nurse needed to contact a doctor because the locum had said that's what we need to do.

5 MR ROZEN: Yes. Okay. So you – was it you who asked them to contact the paramedic service or was that their suggestion?

MS HAUSLER: That was – like, it was – it was a combination of what was all happening at the time - - -

10 MR ROZEN: Okay.

MS HAUSLER: - - - because the locum couldn't come, the – the next step was to actually contact the emergency – the EPS which is - - -

15 MR ROZEN: Okay. And - - -

MS HAUSLER: Yep.

20 MR ROZEN: - - - was there an issue about the phone number; do you recall?

MS HAUSLER: The registered nurse couldn't find the phone number.

MR ROZEN: Yes.

25 MS HAUSLER: Yes.

MR ROZEN: And what happened, did she go and try and look for it for a period of time? Is that what happened?

30 MS HAUSLER: She did.

MR ROZEN: All right.

35 MS HAUSLER: She did, and then she came back and because of the intervention that we'd sort of done in that period of time, we were getting to around about half past 7, 8 o'clock, and I said I – I – I think we need to ring Rachael Musico - - -

MR ROZEN: Yes.

40 MS HAUSLER: - - - and ask for some more assistance because she couldn't find the number.

45 MR ROZEN: Okay. And then that was done, and I don't need you to go into detail about that, but ultimately a decision was made for your father to be hospitalised two days later on 13 December.

MS HAUSLER: It was two days later, yes.

MR ROZEN: Yes. Okay. And your dad was taken to the Adelaide Hospital and you've listed in paragraph 244 the various diagnoses, which I don't need to go into detail, other than to ask you whether it's the case that the decision was made there by medical staff that your father's leg problems were inoperable.

5

MS HAUSLER: That's correct.

MR ROZEN: Is that right?

10 MS HAUSLER: Yes.

MR ROZEN: And ultimately he was returned to Mitcham for the provision of palliative care.

15 MS HAUSLER: Yes.

MR ROZEN: That was on 19 December 2016.

MS HAUSLER: Yes.

20

MR ROZEN: Yes. And did you have any discussion at Mitcham about the provision by them of palliative care; did you ask any questions about how they would do that?

25 MS HAUSLER: When we returned to Mitcham I did actually ask whether they had a palliative care nurse so that we could have some sort of understanding of what they do provide but they said they didn't have one.

30 MR ROZEN: All right. Can you briefly describe the experience of those last 10, 11 days of your father's life at Mitcham? How was that experience?

35 MS HAUSLER: It was testing in the fact that the lead-up to Dad coming back as a palliation situation was because of the noncompliance that Dad got for those first two days and that's why he ended up in hospital. And so there was a fractured – yes, staff did not know how to actually react, I don't think. So for the 10 days prior to Dad dying, both myself, family, and my youngest brother, we basically cared for Dad with the assistance of staff when we needed it. There wasn't any forthcoming offers of anything different, particular or special pertaining to palliative care that I remember. And to me, it wasn't any different to what care Dad was having
40 otherwise, until his death.

MR ROZEN: All right. You do say in paragraph 249 towards – in the second last sentence you say:

45 *The staff engaged as needed and most were compassionate and sympathetic but there were little additional palliation measures evident.*

That's the case?

MS HAUSLER: True.

5 MR ROZEN: Your father ultimately passed away on New Year's Day in 2017.

MS HAUSLER: He did.

10 MR ROZEN: And at the conclusion of the statement which you've made to the Royal Commission, there's a heading, My Message to the Royal Commission; do you see that, it's on page 34 of the statement starting at paragraph 254?

MS HAUSLER: Yes, I do.

15 MR ROZEN: If you would like to, Ms Hausler, would you like to read out paragraphs 254 through to 260.

MS HAUSLER: Thank you.

20 MR ROZEN: I ask you to do that now please.

MS HAUSLER:

25 *I believe that my father's quality of life suffered as a direct result of management's culture at Mitcham of risk aversion, dismissive and non-transparent with a profit-driven attitude. Caring for my father during his residential aged care experience was never a task or a chore, it was my pleasure and a privilege to be my father's – by my father's side to appreciate, nurture and walk with him through the challenging dynamics and health issues faced by him and all loved ones with dementia. My*
30 *father was a significant person in my life.*

I always fondly remember and appreciate the special connection we had throughout my father's life, his declining health –

35 I'm sorry, I can't see:

...his declining health and remained until his final hours.

40 COMMISSIONER TRACEY: Ms Hausler, don't trouble yourself further. We will just read through those remaining paragraphs.

MS HAUSLER: I would actually like to read it, please.

45 COMMISSIONER TRACEY: Well, if you wish to, please do.

MS HAUSLER:

As a loving daughter, I believe that I had significant insight into father's needs and feelings and therefore the ability to offer essential contribution to his care decisions. Despite the negative events father experienced at Mitcham, my father was otherwise attended by dedicated, hardworking, compassionate staff. While I remain grateful
5 for their support over the years and truly support the reform for increased ratios of registered nurses and trained registered carers in the sector, if a lesson can be learned, it is that resident-centred care means everyone's voice must be heard and respected regardless of being verbal, nonverbal, advocated, evidenced or witnessed, there must – they must be given an opportunity to be heard and they must be listened
10 to.

In respect and honour of my father, I believe extremely vulnerable loved ones in care who mirror my father's diminished capacity to speak or defend themselves, deserve additional protection in their private rooms. Current governance offers no such
15 focus for this opportunity.

MR ROZEN: Thank you, Ms Hausler. Is there any other comment that you would like to make at this time to the Commission?

20 MS HAUSLER: Yes, I would like to say on behalf of our father and our family, I thank and appreciate the scope, the totality and the sensitivity of the Royal Commission's teams invested commitment shown in this Royal Commission across Australia. The Royal Commission has given an unprecedented voice and opportunity to residents and families, and advocates in a safe, respectful environment
25 to be heard and valued. The reconciliation process has personally assisted me, not that you would think at the moment, in closing this chapter for the past, giving solace to move forward with a positive sense of reform in the future. Thank you.

MR ROZEN: That concludes my examination of Ms Hausler, Commissioners.
30

COMMISSIONER TRACEY: Very well. Ms Hausler, it has been a very difficult morning for you, and we thank you for sharing your terrible experiences with us. But it has been very important to us to understand exactly what occurred in relation to the care or lack of it of your father. And it has certainly improved our
35 understanding of some lack of care that occurs from time to time in this area of aged care. We're very grateful to you for being here and sharing those experiences.

MS HAUSLER: Thank you.

40 <THE WITNESS WITHDREW [1.03 pm]

COMMISSIONER TRACEY: The Commission will adjourn until 2 o'clock.
45

ADJOURNED [1.03 pm]

RESUMED

[2.03 pm]

5 COMMISSIONER TRACEY: Yes, Ms Bergin.

MS BERGIN: May it please the Commission, I call Rachael Anne Musico.

10 <**RACHAEL ANNE MUSICO, AFFIRMED**

[2.04 pm]

<**EXAMINATION-IN-CHIEF BY MS BERGIN**

15 MS BERGIN: Operator, could you please bring up document number
WIT.0231.0001.001. Ms Musico, is this your statement?

MS MUSICO: Yes.

20 MS BERGIN: There should be a hard copy on the table in front of you. Do you
wish to make any amendments?

MS MUSICO: No.

25 MS BERGIN: Are its contents true and correct to the best of your knowledge and
belief?

MS MUSICO: Yes.

30 MS BERGIN: I tender the statement of Rachael Anne Musico dated 12 June 2019.

COMMISSIONER TRACEY: Yes, the witness statement of Rachael Anne Musico
dated 12 June 2019 will be exhibit 5-10.

35

**EXHIBIT #5-10 WITNESS STATEMENT OF RACHAEL ANNE MUSICO
DATED 12/06/2019 (WIT.0231.0001.001)**

40 MS BERGIN: Ms Musico, you were the facility manager at Japara Mitcham from
September 2015; is that correct?

MS MUSICO: Yes.

45 MS BERGIN: You were responsible for ensuring the facility provided optimal aged
care and quality services to residents.

MS BERGIN: Yes.

MS BERGIN: You had worked in aged care for over 15 years.

5 MS MUSICO: Yes.

MS BERGIN: You knew that the key to providing optimal care was building relationships with residents and their families.

10 MS MUSICO: Yes.

MS BERGIN: Also dealing with them with honesty and integrity.

MS MUSICO: Yes.

15

MR BOLSTER: You knew that Clarence Hausler had been at Mitcham since 2002.

MS MUSICO: Yes.

20 MS BERGIN: One of your oldest residents.

MS MUSICO: Yes.

25 MS BERGIN: Noleen Hausler was his loving daughter who regularly visited and cared for him.

MS MUSICO: Yes.

30 MS BERGIN: Not all residents are lucky enough to have a caring, loving daughter like Noleen, are they?

MS MUSICO: No, they're not.

35 MS BERGIN: After Clarence was assaulted by Lucas you commenced weekly meetings with Noleen Hausler.

MS MUSICO: Yes.

40 MS BERGIN: They commenced in about October 2015.

MS MUSICO: From what I can recall, yes.

MS BERGIN: From what you can recall. And ended in about April 2016.

45 MS MUSICO: Yes.

MS BERGIN: They were constructive?

MS MUSICO: Yes.

MS BERGIN: And you worked at the relationship with Noleen.

5 MS MUSICO: Yes.

MS BERGIN: You were mindful of the sensitivity of the situation.

MS MUSICO: Yes.

10 MS BERGIN: At the facility level at Mitcham, you saw it as your responsibility to maintain relationships between staff, residents and their family and friends?

MS MUSICO: Yes.

15 MS BERGIN: Julie Reed did not attend these weekly meetings.

MS MUSICO: No.

20 MS BERGIN: On 3 November 2015 you met Noleen Hausler together with Di Jones. If you don't have a specific recollection of that, I will take you to document number 73 in the tender bundle. Do you recall seeing that document?

MS MUSICO: Yes.

25 MS BERGIN: Is that a minute that you took of the meeting on 3 November 2015?

MS MUSICO: No. I think Di Jones took those minutes.

30 MS BERGIN: At this meeting Noleen expressed concern about being referred to as "weird" by staff for giving her father certain food. Do you recall that?

MS MUSICO: Yes.

35 MS BERGIN: You expressed concern.

MS MUSICO: Yes.

MS BERGIN: And you informed Noleen that this would be addressed by management.

40 MS MUSICO: Yes.

MS BERGIN: You reassured her and said you wanted to continue to work with her to address any concerns promptly; is that right?

45 MS MUSICO: Yes.

MS BERGIN: In December 2015 Noleen gave you positive feedback about the fact that there was less resistance in general from staff.

MS MUSICO: Yes.

5

MS BERGIN: And staff were being thoughtful to Clarry's needs and comfort.

MS MUSICO: Yes.

10 MS BERGIN: Noleen wrote to you and Di Jones by email in early 2016 expressing gratitude about the positive changes. Do you recall that?

MS MUSICO: Yes.

15 MS BERGIN: Julie Reed didn't attend these meetings but did communicate with Noleen by letter and email. Do you agree with that?

MS MUSICO: Yes.

20 MS BERGIN: I will take to you one of those letters now. Operator, could be please bring up tab 177 in the tender bundle. I will just give you a moment to read that email, Ms Musico. Would you agree that the tone of this email was different to the tone of the meetings?

25 MS MUSICO: I'm not sure. I think that, you know, it's more of a serious email in relation to legalities and things like that, more so than the care side that Di Jones and myself would discuss.

MS BERGIN: Would you agree that the tone is directive?

30

MS MUSICO: I think it's displaying their stance on where they sit with CCTV cameras.

35 MS BERGIN: Would you agree that the tone isn't relationship-focused. It's – sorry, please answer.

MS MUSICO: I think it's just stating in writing so there's no miscommunications what the stance is.

40 MS BERGIN: Okay. Would you agree that the tone of the email, being serious, in the sense you've described, may have undermined the work you were doing with Noleen on developing the relationship in weekly meetings.

45 MS MUSICO: I believe that Noleen and our staff at the site had a different relationship aside from this.

MS BERGIN: By that do you mean Noleen had a different relationship with you and Di Jones than she did with Julie Reed.

5 MS MUSICO: So we were more discussing on the care side rather than we didn't focus on the legal side of things.

MS BERGIN: The second letter I would like to take you to is at tab 72 of the tender bundle. I will just give you a moment to read that, Ms Musico. This letter refers to offences and penalties for using surveillance equipment. You agree with that?
10

MS MUSICO: Yes.

MS BERGIN: And it refers to the serious criminal offence of stalking staff at the facility. Do you agree with that?
15

MS MUSICO: Yes.

MS BERGIN: Do you agree that the tone of the letter is threatening?

20 MS MUSICO: I think depending on your perspective it could be seen as that.

MS BERGIN: It warns her that the offence of stalking carries serious penalties.

MS MUSICO: I think the scope in the letter is probably outside my expertise to understand all of that.
25

MS BERGIN: Thank you, Ms Musico. Noleen hadn't done anything of the sort described in that letter, had she?

30 MS MUSICO: I would have to re-read the letter to make sure we're not missing – sorry, can you repeat the question.

MS BERGIN: Sure. I will just go back a couple of questions.

35 MS MUSICO: Yes.

MS BERGIN: So I think we're agreed that stalking is a serious offence.

MS MUSICO: Yes.
40

MS BERGIN: And the letter says that stalking is an offence that carries serious penalties.

MS MUSICO: Yes.
45

MS BERGIN: You haven't done an investigation into whether Noleen had stalked the staff, had you?

MS MUSICO: No.

MS BERGIN: And to the best of your knowledge, Noleen hadn't done anything of the sort described in that letter, had she?

5

MS MUSICO: No.

MS BERGIN: Do you agree that the letter from Julie Reed to Noleen Hausler on the screen may have undermined the work you were doing on improving the relationship between Noleen and the facility?

10

MS MUSICO: No, because I think Noleen and our staff at the site had a different understanding that we were working with Clarry and his care, rather than the legalities.

15

MS BERGIN: Did Julie Reed consult you about the letter?

MS MUSICO: I can't recall.

MS BERGIN: An incident occurred on – were you present in court this morning for Ms Hausler's evidence?

20

MS MUSICO: Yes.

MS BERGIN: You will recall that an incident occurred on 1 September 2015 involving Clarence and Kiranjeet Kaur, an agency nurse.

25

MS MUSICO: Yes.

MS BERGIN: And that footage of that incident was displayed on the screen this morning in the Royal Commission.

30

MS MUSICO: Yes.

MS BERGIN: Noleen Hausler reported that incident by letter hand delivered to the facility, didn't she?

35

MS MUSICO: I hadn't been employed at that time.

MS BERGIN: I understand that, but on the best of your knowledge and belief, Noleen Hausler reported the incident by letter, hand delivered to the facility shortly before you started; is that right?

40

MS MUSICO: From the information I've received, yes.

45

MS BERGIN: From the information you've received. And Japara acknowledged that report on 5 September 2015.

MS MUSICO: From the dates of the letters, yes.

MS BERGIN: After you started on 7 or 8 September, you became responsible for managing this incident and the fallout?

5

MS MUSICO: No.

MS BERGIN: I will take you to tab 219. Native page 3. This is a copy of your position description.

10

MS MUSICO: Yes.

MS BERGIN: And you will see that it sets out under the heading Quality and Compliance. Operator, if you could please zoom in on the middle third of that page. It says that you actively participate in quality activities, ensure that required legislative and statutory requirements are consistently met and compliant. You would agree with that.

15

MS MUSICO: Yes.

20

MS BERGIN: And you would agree that it says at dot point – you would agree that it says at dot point 6:

Has minimal complaints lodged with the Department of Health and Ageing.

25

You would agree with that.

MS MUSICO: Yes.

30

MS BERGIN: And you would agree that it says:

Complaint outcomes rarely result in a breach being identified and if a breach is identified, it is addressed prior to the result or soon after. No complaint or identified breach results in a notice of required action or sanction.

35

So I ask my question again: you became responsible on starting your employment for managing the incident relating to Kiranjeet Kaur, didn't you?

MS MUSICO: Yes and no. Yes, that's part of my responsibility as my position description, but that's in conjunction with senior managers. I don't take the full responsibility of managing those incidents.

40

MS BERGIN: You monitored complaints and provided monthly reports to Julie Reed.

45

MS MUSICO: Yes.

MS BERGIN: And you made a note in your contemporaneous notes that Noleen Hausler was concerned her father was not being looked after.

MS MUSICO: Yes.

5

MS BERGIN: Noleen Hausler stated to you that she had made a complaint about an agency nurse.

MS MUSICO: Yes.

10

MS BERGIN: You made a note, contemporaneously, on 9 September 2015, at approximately 1.30 to 2 pm, didn't you?

MS MUSICO: Yes.

15

MS BERGIN: The incident on the 1st of September 2015 involving Clarence and Kiranjeet Kaur was not recorded in your monthly incident report until November 2015.

20 MS MUSICO: I started employment on the 8th of September. For those incidences, with everything that had happened, I wasn't made aware of what previously happened on the 1st of September, and I can't recall when I first became aware of that.

25 MS BERGIN: Okay. So I will take you to tab 178. This is the note I mentioned a moment ago dated the 9th September 2015. Your contemporaneous note says, on the third line – Operator, if you could bring up the third line:

30 *Concern that her father is not being looked after. Stated she had raised complaint about agency nurse.*

Is this your note?

MS MUSICO: Yes.

35

MS BERGIN: Do you now recall that Noleen Hausler drew to your attention on the 9th of September that she'd raised a complaint about an agency nurse?

40 MS MUSICO: She had mentioned that she'd raised a complaint about an agency nurse, but there was no details given at that time.

MS BERGIN: When you say there were no details given, the detail was given that there was a complaint, and the detail was given that there was an agency nurse, but you weren't aware of the staff member's name?

45

MS MUSICO: No.

MS BERGIN: Now, this incident – the incident on the 1st of September was recorded in your monthly incident report in November 2015. Do you agree with that?

5 MS MUSICO: I can't recall.

MS BERGIN: Operator, could you bring up tab 234. Could you go to point – I will just ask you to identify from the first page, this is your monthly incident and accident report form - - -

10

MS MUSICO: Yes.

MS BERGIN: - - - Ms Musico, and going to page 2 which is at point 0046, please, Operator, would you – turning to about point 8 of that page, Critical Mandatory Report, Mandatory Report for Allegation of Assault. Is that the assault by Mr Lucas?

15

MS MUSICO: No, I believe that would be the one for the agency nurse.

20 MS BERGIN: Okay. And then turning to point 0048, please, Operator. Down to the bottom block Mandatory Reporting. Ms Musico, it says on the bottom line:

Conclusion reported to EDACS and DSS allegation of abuse, 1 September 2015.

25 Does that relate to the agency nurse?

MS MUSICO: Yes.

30 MS BERGIN: Now, I take you to tab two hundred and twenty – 227 in the tender bundle. Is this your monthly incident report for September 2015?

MS MUSICO: Yes.

35 MS BERGIN: Operator, turning to point 0002, please. See about halfway down the page, it says:

Mandatory report. Times one report completed for allegation of assault from staff member to resident.

40 Does that relate to the assault by Mr Lucas?

MS MUSICO: I believe that does.

45 MS BERGIN: Now, this is your monthly report from September 2015, and I will just ask the operator to scroll through it so that you can verify for me whether you included the agency nurse incident in your September 2015 report. Ms Musico, did

you include the agency nurse incident in your monthly incident – accident report form in – for September 2015?

5 MS MUSICO: No.

MS BERGIN: Operator, could you please bring up document 230. Now, this is the monthly incident report register. Do you recognise that document, Ms Musico?

10 MS MUSICO: Yes.

MS BERGIN: Operator, could you please scroll to page 2 when Ms Musico is ready. Just give you a moment to check that report.

15 MS MUSICO: Yes.

MS BERGIN: Could you please go to page 2. Did you include the report about the agency nurse in your October 2015 monthly report?

20 MS MUSICO: No.

MS BERGIN: So you would agree with me that the first time you included the incident on 1 September 2015 involving Clarence and Kiranjeet Kaur was not recorded in your monthly incident report until November 2015.

25 MS MUSICO: Yes.

MS BERGIN: Now, you made the entry in November 2015 because the Aged Care Complaints Commissioner SA office contacted you by telephone; is that right?

30 MS MUSICO: Yes.

MS BERGIN: And the complaints scheme informed you that a mandatory report to the Department of Health was required.

35 MS MUSICO: Yes.

MS BERGIN: Some two and a half months had passed since the incident involving the agency nurse.

40 MS MUSICO: Yes.

MS BERGIN: And you completed a compulsory reporting of assaults form and submitted it to the Department of Health.

45 MS MUSICO: Yes.

MS BERGIN: Did you or Julie Reed decide to complete that form?

MS MUSICO: I believe I completed it under the direction of Julie Reed.

MS BERGIN: And on the form, you describe the incident as a report of an allegation of abuse on 26 November 2015; is that right?

5

MS MUSICO: Yes.

MS BERGIN: You signed the form on page 2?

10 MS MUSICO: Yes.

MS BERGIN: But, in fact, the incident occurred on 1 September, didn't it?

15 MS MUSICO: Yes.

MS BERGIN: And, in fact, the incident was notified to Japara Mitcham on 3 September, wasn't it?

20 MS MUSICO: From what I had been informed of, because it was prior to my commencement date, yes.

MS BERGIN: Therefore, the information you supplied to the department in the information to the department compulsory reporting of assault form was incorrect, wasn't it?

25

MS MUSICO: I don't believe it was incorrect because the 26th was the date that we were informed to report it, and the incident report and the information related to the dates of the 1st of September.

30 MS BERGIN: Operator, could you please bring up tab 61. Ms Musico, I'd ask you to, firstly, review page 1 and verify for the Royal Commission that this is the compulsory reporting of assault form you submitted in respect of Kiranjeet Kaur.

35 MS MUSICO: Yes.

MS BERGIN: And you agree that you notified that the incident occurred on the 26th of November 2015, wouldn't you?

40 MS MUSICO: Yes.

MS BERGIN: Turning to the bottom of that page, you give some further detail.

MS MUSICO: Yes.

45 MS BERGIN: And you attach a letter received from Noleen Hausler dated the 2nd of September 2015.

MS MUSICO: Yes.

MS BERGIN: Turning to page 2, please, Operator. In the description of the incident – is this your handwriting?

5

MS MUSICO: Yes.

MS BERGIN: In the description of the incident, you describe an incident as:

10 *A report being received on 26 November 2015.*

Is that right?

MS MUSICO: Yes.

15

MS BERGIN: But, in fact, the incident occurred on the 1st of September, didn't it?

MS MUSICO: Yes.

20 MS BERGIN: Therefore, the information you supplied to the department was incorrect, wasn't it?

MS MUSICO: I don't believe it was incorrect. It was the date we were informed it was a reportable assault. So that was the date that we put the 1st of September date in there also.

25

MS BERGIN: Could you please repeat that. You put which date in September?

MS MUSICO: The date of the – when the first incident happened, but the date that we were notified to report it to the department was the 26th.

30

MS BERGIN: When was the date that the incident first happened?

MS MUSICO: The incident had occurred on the 1st of September.

35

MS BERGIN: Why did you put a different date in this form for the date of the incident?

MS MUSICO: Because the 26th of November was when we were informed by the department to lodge a compulsory report.

40

MS BERGIN: In fact, the date of the incident was the 1st of September, wasn't it?

MS MUSICO: The date of the incident was, but the 26th was the date that we were informed.

45

MS BERGIN: So you put incorrect information in the form, didn't you, Ms Musico?

MS MUSICO: I don't believe it was incorrect information.

5

MS BERGIN: If Noleen Hausler had not made a complaint to the Aged Care Complaints Commissioner on the 25th of November 2015, Japara would never have reported the Kiranjeet Kaur incident at all, would they?

10 MS MUSICO: I'm not sure.

MS BERGIN: The Aged Care Complaints Commissioner then found that the facility should have made a report at the time Noleen Hausler reported it. Do you agree with that?

15

MS MUSICO: I wasn't there at the time to understand the investigations.

MS BERGIN: I will take you to tab 248, please. This is a report from the Aged Care Complaints Commissioner addressed, copied to Mitcham Residential Care Facility. You'd agree with that?

20

MS MUSICO: Yes.

MS BERGIN: And it's dated the 6th of February 2017.

25

MS MUSICO: Yes.

MS BERGIN: Were you employed at the 6th of February 2017 at Japara Mitcham?

30 MS MUSICO: Yes.

MS BERGIN: Operator, could you please turn to native page 29 which is point 7560. I just ask you to read the bottom paragraph there, please, Ms Musico. I just repeat my question from a moment ago, if I may. The Aged Care Commissioner found that the facility should have made a report at the time Noleen Hausler reported it. Do you agree with that?

35

MS MUSICO: I wasn't employed at the time, so I don't know the full details, but a compulsory report, given the letter, potentially, should have been made.

40

MS BERGIN: So when you say you weren't employed at the time, do you mean you weren't employed at the time this letter was sent to the facility?

MS MUSICO: No – sorry, at the time of the incident.

45

MS BERGIN: Yes. So you would agree with me that you were employed at the time the facility received this letter?

MS MUSICO: Yes.

MS BERGIN: And you would agree with me that, in this letter, the Aged Care
Complaints Commissioner finds that the facility should have made a report at the
5 time Noleen Hausler reported it?

MS MUSICO: Yes.

MS BERGIN: The ACCC considered that the report was over two months late.
10

MS MUSICO: Yes.

MS BERGIN: In submitting the form late to the department, Japara did not comply
with this obligation under the Aged Care Act to report within 24 hours, did it?
15

MS MUSICO: No.

MS BERGIN: Now, turning to a different topic, at Japara Mitcham at the nurse's
station, there was a book with essential phone numbers in it.
20

MS MUSICO: Yes.

MS BERGIN: On 11 December 2016, toward the end of Clarence's life, he needed
an IV cannula to administer fluids because he was dehydrated.
25

MS MUSICO: Yes.

MS BERGIN: The registered nurse couldn't find the telephone number at the
nurse's station for the extended care paramedic on the 11th of December 2016.
30

MS MUSICO: Yes.

MS BERGIN: And the registered nurse called you for guidance as to what to do.

MS MUSICO: Yes.
35

MS BERGIN: The registered nurse asked you for the phone number for the
extended care paramedic.

MS MUSICO: Yes.
40

MS BERGIN: You were not at work at that particular time of the day.

MS MUSICO: No.
45

MS BERGIN: And the registered nurse asked you for the phone number because
the registered nurse couldn't find the number at the nurse's station.

MS MUSICO: Yes.

MS BERGIN: Noleen Hausler says in her statement that it was quite stressful to have a delay while staff at the facility worked out what the contact number was.

5

MS MUSICO: Yes.

MS BERGIN: And you can understand that that would have been stressful for her.

10 MS MUSICO: Yes.

MS BERGIN: The issue was whether the number for the extended care facility – for the extended care paramedic was available on 11 December at the facility.

15 MS MUSICO: Yes.

MS BERGIN: Noleen Hausler raised this in a meeting with you on 13 December about the delay. Do you - - -

20 MS MUSICO: Yes.

MS BERGIN: - - - agree with that? And you informed her had that there was a contact phone numbers book at the nurse's station.

25 MS MUSICO: Yes.

MS BERGIN: Noleen Hausler subsequently made a complaint to the Aged Care Complaints Commissioner which included this as one of the issues raised.

30 MS MUSICO: Yes.

MS BERGIN: And the Aged Care Complaints Commissioner sought Japara's response to the complaint.

35 MS MUSICO: Yes.

MS BERGIN: Mr Woodley consulted with you about how to respond to the Aged Care Complaints Commissioner letter.

40 MS MUSICO: Can't recall.

MS BERGIN: Operator, could you please bring up tab 144. I will just give you a moment to read that email, Ms Musico. Operator, could you please go to the second page. At the foot of that page, Ms Musico, you will see that there's an email from
45 Mr Woodley to yourself and Ms Jones, contact list.

MS MUSICO: Yes.

MS BERGIN: And at the top of the second page, Our Response, and then he says:

Do we have evidence that it was listed somewhere on the day?

5 You would agree that was a question for you and Ms Jones.

MS MUSICO: Yes.

MS BERGIN: Then he says:

10

If not, add it to the contact list now. We are only saying it is on the list, not was.

You would agree with me that Mr Woodley was consulting with you about how to respond to the Aged Care Complaints Commissioner correspondence.

15

MS MUSICO: I don't think he was directly consulting on me on how to respond. I think he was asking a question where the contact was listed.

MS BERGIN: He was asking you two things, I think. Firstly, he was asking you whether the phone number was on the list.

20

MS MUSICO: Yes.

MS BERGIN: And that reference to "was" is a reference to 11 December 2016.

25

MS MUSICO: Yes.

MS BERGIN: And he's also asking you whether it is on the list which is a reference to whether or not the extended care paramedic phone number was on the list by 20 February 2017. Do you agree with that?

30

MS MUSICO: Yes.

MS BERGIN: He asked you if you had evidence that it was listed somewhere on the day.

35

MS MUSICO: Yes.

MS BERGIN: He said to add the phone number to the contact list now.

40

MS MUSICO: Yes.

MS BERGIN: In saying that he was asking you to add the emergency care paramedic phone number to the contact list on 20 February 2017.

45

MS MUSICO: Yes.

MS BERGIN: Mr Woodley's response to the Aged Care Complaints Commissioner said that the phone number is in the contact book. Are you aware of that?

MS MUSICO: Yes.

5

MS BERGIN: However, the phone number for the extended care paramedic was not in the contact book on 11 December, was it?

MS MUSICO: I can't recall.

10

MS BERGIN: I think you just agreed with me earlier that you received a call from the registered nurse on 1 December. Do you agree with that?

MS MUSICO: I can't directly recall what was listed on the telephone list.

15

MS BERGIN: You would agree with me that staff called you on 11 December and asked for assistance with the extended care paramedic phone number.

MS MUSICO: Yes.

20

MS BERGIN: You would agree the staff couldn't find the number, that's why there was a delay in responding.

MS MUSICO: Yes.

25

MS BERGIN: So you would agree with me that it was incomplete for Mr Woodley to say in his letter that the number was in the contact list. Do you agree with that?

MS MUSICO: As I said, I can't recall what was directly listed on the contact list. I do believe it was updated but I can't recall if that was to specifically note that they can call 000 for the extended care paramedic.

30

MS BERGIN: Could you please repeat your answer, Ms Musico. I was having trouble hearing you.

35

MS MUSICO: I can't recall exactly. I think the list might have been updated to reflect that triple O is the extended care paramedic, so they can contact triple O.

MS BERGIN: And do you think it was updated after 11 December 2016.

40

MS MUSICO: Yes.

MS BERGIN: And do you think that the phone number for the extended care paramedic was in the phone book on 11 December 2016; do you think it was in the phone book on the 11th.

45

MS MUSICO: As in it was triple O that they call, I'm not sure if triple O was listed, but I think we clarified it to ensure that they understood that triple O was to call the extended care paramedic also, so we made it quite clear.

5 MS BERGIN: When did you do that?

MS MUSICO: It may have been at that time. I can't recall but I believe it may have been at that time to make it more clearer.

10 MS BERGIN: I just want to ask you about some of your earlier evidence. You talked about your relationship between Noleen and yourself, and as I understood it you include in that – in that evidence you included other staff members of the facility.

15 MS MUSICO: Yes.

MS BERGIN: And you also talked about – I also took you to evidence – correspondence that Julie Reed wrote to Noleen at about the same time.

20 MS MUSICO: Yes.

MS BERGIN: I'm just wanting to understand; are you suggesting that Noleen had two different relationships with Japara staff?

25 MS MUSICO: I think that there was a different level between the staff at the facility and staff at head office.

MS BERGIN: And was the relationship with the staff at head office an unpleasant one?

30

MS MUSICO: I wasn't privy to all of the communications and things like that that happened there, so I don't think I would be able to comment.

35 MS BERGIN: How would you describe the relationship that Noleen had with head office.

MS MUSICO: I'm not – as I said, I wasn't sure of all their communication. I don't think Noleen was happy with some of the responses at times but I'm not open to all of the correspondence that went on.

40

MS BERGIN: Did you explain to staff why Lucas was fired?

45 MS MUSICO: I can't recall when the staff found out but there were staff that were friends with him that knew him outside of work that were – did become notified of what had occurred as well as there was staff on the floor that had also been notified by Noleen as well. So there was a level of understanding.

MS BERGIN: Okay. No further questions, thank you, Commissioner.

COMMISSIONER TRACEY: Ms Musico, you said that on or about 13 December
5 you were contacted by nursing staff who were having trouble finding the contact
number for the emergency service. Do you recall that?

MS MUSICO: Yes.

COMMISSIONER TRACEY: When you had that communication, did you yourself
10 then consult the institution's records with a view to seeing if the relevant number was
there?

MS MUSICO: Yes. Do I recall that above the telephone in the nurses' station is the
15 emergency phone numbers and things like that as well as in the book. I think when
we updated it we just made it clearer so there was no misunderstanding for the
nursing staff to know that - - -

COMMISSIONER TRACEY: You're not answering my question, Ms Musico. Did
20 you look up the records as they stood at the time that you were being asked by the
nursing staff what the number was?

MS MUSICO: Sorry, I'm - I'm not quite getting - - -

COMMISSIONER TRACEY: Well, you get a phone call from the nursing staff
25 who say they can't find the emergency services number; is that right?

MS MUSICO: Yes.

COMMISSIONER TRACEY: And what I'm asking you is when you received that
30 query, did you consult the Mitcham records that - with a view to finding out whether
the relevant number was there?

MS MUSICO: Not that I could recall.

COMMISSIONER TRACEY: Why wouldn't you do that?

MS MUSICO: Because I understand that the emergency numbers were located by
40 the phone and I had a discussion with the nurse that was on that night to make sure
she was aware what the number was.

COMMISSIONER TRACEY: How did you know what number to tell her?

MS MUSICO: Because I knew that the extended care paramedics could be
45 contacted through triple O through the ambulance service.

COMMISSIONER TRACEY: Well, so you made no attempt yourself to find out
what was the state of the records that the nurses had consulted without avail?

MS MUSICO: I can't recall directly what else I did at that time.

COMMISSIONER TRACEY: Yes. Very well. Yes. Thank you very much.
You're excused from further attendance.

5

<THE WITNESS WITHDREW [2.37 pm]

10 COMMISSIONER TRACEY: I'm advised that there will need to be a short
adjournment while a video link is established.

MR ROZEN: Indeed.

15 COMMISSIONER TRACEY: Yes. Very well. The Commission will temporarily
adjourn.

20 **ADJOURNED** [2.38 pm]

RESUMED [2.42 pm]

25 COMMISSIONER TRACEY: Yes, Mr Rozen.

MR ROZEN: Commissioners, the next witness is Diane Jones who is joining us by
video link from Adelaide, as I understand it. Not quite sure how she's going to be
sworn in.

30

MS: I'll be swearing her in.

MR ROZEN: True. I ask you to do that, please.

35

<DIANE JONES, AFFIRMED [2.43 pm]

40 **<EXAMINATION-IN-CHIEF BY MR ROZEN**

MR ROZEN: Ms Jones, can you hear me okay?

45

MS JONES: Yes, I can.

MR ROZEN: And is your full name Diane Jones?

MS JONES: Yes, it is.

MR ROZEN: And you made a statement dated 12 June 2019 for the Royal Commission; is that right?

5

MS JONES: That's right.

MR ROZEN: Yep. Operator, please bring up WIT.0230.0001.0001. Can I just clarify, Ms Jones, can you see what's been brought up on the screen accessible to you?

10

MS JONES: It's too small, but I have a hard copy in front of me.

MR ROZEN: All right. Okay. There may be some other documents that are brought up on the screen. Please let me know if they're too small for to you see them. I think there are also hard copies available, but I don't want you to be in a position where you can't read anything. Please let us know. Do you understand?

15

MS JONES: Yes, I do. Thank you.

20

MR ROZEN: All right. Now, have you had an opportunity to read through your statement before giving evidence this afternoon?

MS JONES: Yes.

25

MR ROZEN: And is there anything in the statement that you wish to change?

MS JONES: No.

30

MR ROZEN: Are its contents true and correct?

MS JONES: They are.

MR ROZEN: I will tender the statement, Commissioners.

35

COMMISSIONER TRACEY: Yes. Just remind me of the date, please.

MR ROZEN: The date of the statement is 12 June 2019, Commissioner.

40

COMMISSIONER TRACEY: Thank you. The statement of Diane Jones dated 12 June 2019 will be exhibit 5-11.

**EXHIBIT #5-11 WITNESS STATEMENT OF DIANE JONES DATED
12/06/2019 (WIT.0230.0001.0001) AND ITS IDENTIFIED ANNEXURES**

45

MR ROZEN: Commission pleases. Ms Jones, you have worked in aged care since 1988?

MS JONES: Yes, I have.

5

MR ROZEN: And you're a registered nurse.

MS JONES: Yes, I am.

10 MR ROZEN: And you've been a registered nurse for a little bit longer than that, back to 1980?

MS JONES: Yes.

15 MR ROZEN: Yep, and in your time in aged care over the last 30-odd years, you've performed various roles including managerial roles.

MS JONES: That's right.

20 MR ROZEN: Yep, and you commenced your employment with Japara on 1 September 2015.

MS JONES: Yes.

25 MR ROZEN: And your job title was quality manager.

MS JONES: Yes.

MR ROZEN: And is it the case that you remain in that role to this date?

30

MS JONES: That's true.

MR ROZEN: Yep, and you currently have responsibility for five residential aged care facilities.

35

MS JONES: That's right.

MR ROZEN: Right. And one of those within your current area of responsibility is the Mitcham facility.

40

MS JONES: Yes.

MR ROZEN: And did you have responsibility for the same five facilities when you started back in September 2015?

45

MS JONES: Yes, I did.

MR ROZEN: All right. You also spent a little bit of time working – filling in as the facility manager for Mitcham soon afternoon you started; is that right?

5 MS JONES: Oh, as an ad hoc fill in role. So if the facility manager is not on site for some reason, typically – well, annually, we would occasionally spend some time in their seat.

MR ROZEN: Okay. You say “we”. It was you and others that filled that role?

10 MS JONES: Me and other quality – yes.

MR ROZEN: I’m sorry. I didn’t catch that last answer, Ms Jones.

15 MS JONES: Me and other quality managers.

MR ROZEN: Yes. All right. And if I can summarise your role as a quality manager, which you deal with in paragraph 6 of your statement, you are required to assist facilities to achieve and maintain compliance with legislative requirements. That was one of your duties.

20

MS JONES: Mmm.

MR ROZEN: And you’re also - - -

25 MS JONES: Yes.

MR ROZEN: Yes. And you’re also required to assist facilities to achieve and maintain compliance with Japara’s organisational policies and procedures.

30 MS JONES: Yes.

MR ROZEN: Yep. You presently answer to Mr Stuart Woodley the group quality manager.

35 MS JONES: That’s right.

MR ROZEN: Is the role that Mr Woodley performs equivalent to the role that Julie Reed performed before she resigned her, or left her employment with Japara; do you know?

40

MS JONES: No, it’s not the same role.

MR ROZEN: Okay.

45 MS JONES: But it - - -

MR ROZEN: Were you answering to Julie Reed when you started in September 2015 or Mr Woodley?

MS JONES: Julie Reed.

5

MR ROZEN: Julie Reed. Okay. So the role Mr Woodley performs is different to the role Ms Reed performed. That's your evidence; is that right?

MS JONES: That's right.

10

MR ROZEN: But in terms of the reporting lines, the quality managers that reported to Ms Reed back then are now reporting to Mr Woodley; is that correct?

MS JONES: Right. That's correct.

15

MR ROZEN: Yep, and was it a direct reporting line between you and Ms Reed back in September 2015?

MS JONES: Yes.

20

MR ROZEN: Okay. In your statement – and I can take you to it if need be, let me know, but you detail the importance of relationships as part of the provision of care in aged care facilities.

25

MS JONES: Yep.

MR ROZEN: This is at paragraph 20. You would agree, I take it, that relationships between staff, residents and family members are very important part of the provision of quality aged care?

30

MS JONES: Yes, I do.

MR ROZEN: All right. Why is that?

35

MS JONES: Residents' needs are better met by people who are familiar with them and with their routines and their preferences, and residents prefer to be cared for by people they know.

40

MR ROZEN: The Japara organisation has certain stated values that its staff are expected to adhere to. Do you agree with that?

MS JONES: Yes.

45

MR ROZEN: Were they drawn to your attention when you commenced your employment?

MS JONES: Yes.

MR ROZEN: I wonder if you could have a look, please – if the operator could bring up tab 161. Do you have a copy of the staff handbook in front of you – I think it's being handed to you now.

5 MS JONES: Yes.

MR ROZEN: Just to make sure we're looking at the same thing, Ms Jones, does it have a number that ends in 3142 in the top right-hand corner? Maybe you didn't hear that question, Ms Jones. Does it have the number that ends in 3142 in the top
10 right-hand corner?

MS JONES: Yes, it does.

MR ROZEN: Okay. Thank you. And was this the staff handbook at the time that
15 you commenced your employment in 2015 or, at least, an earlier version of it? Are you able to tell us that? I see it bears the date March 2016 at the bottom.

MS JONES: It – well, it – there may be some differences; I'm not sure. It certainly looks like it – it looks the same, but without reading every word, and I really can't
20 remember, there were – there were updates frequently.

MR ROZEN: Yes. All right.

MS JONES: Yes.
25

MR ROZEN: I won't ask you to read every word, you will be pleased to know, but I think, for our purposes, that's sufficient. I want to draw your attention to what is the third page of the document. It's got the number that ends in 3144 in the top right corner and is headed - - -
30

MS JONES: Yes.

MR ROZEN: - - - Vision and Mission Statements.

35 MS JONES: Yes.

MR ROZEN: Do you see that?

MS JONES: Yes.
40

MR ROZEN: And there's a reference to the corporate slogan, the corporate vision, the corporate mission, and then do you see a heading Our Values halfway down the page?

45 MS JONES: Yes, I do.

MR ROZEN: Yep, and you'll see that the second value identified there is integrity. Do you see that?

MS JONES: Yes.

5

MR ROZEN:

To be ethical, confidential and accountable.

10 And then the fourth value is honesty. Do you see that?

MS JONES: Yes, I do.

MR ROZEN:

15

To be open, trustworthy and truthful.

And I assume that you, at all times, would have tried to adhere to those values and continue to do that as an employee?

20

MS JONES: Yes, I do.

MR ROZEN: All right. And you'd agree with me, wouldn't you, that those important relationships that we discussed a few minutes ago can be undermined by conduct that does not adhere to values of honesty and integrity?

25

MS JONES: Yes.

MR ROZEN: Yep. So there's a link, isn't there, between the importance of relationships and the way staff conduct themselves in dealing with the residents and their families? Do you agree with that?

30

MS JONES: I do.

MR ROZEN: Right. And I don't think I need to take you to this, unless you want me to, but your job description which you've attached to your statement, that's exhibit DJ2, tab 280 in the tender bundle, that also identifies the importance of honest behaviour and behaviour that is characterised by integrity. Do you agree with that?

40

MS JONES: Yes.

MR ROZEN: Right. Now, I'm going to ask you some questions about a document that you signed and that Ms Musico also signed. It was a report to the Department of Health in November 2015, and what precipitated that report made by Japara was a complaint that was made by Noleen Hausler on the 2nd of September 2015. Do you – you're following me in relation to this?

45

MS JONES: Yes.

MR ROZEN: Now, I know that you only started working on the 1st of September, and I understand in those early few days, you probably had very little to do with Ms Hausler; is that correct?
5

MS JONES: That is correct. I – I spent the 1st and 2nd of September in Melbourne for orientation.

10 MR ROZEN: Yes.

MS JONES: So I hadn't – I didn't meet Mrs Hausler at all until later.

MR ROZEN: All right. Was part of that orientation some training about the mandatory reporting requirements under the Aged Care Act? Do you recall, Ms Jones?
15

MS JONES: I – I don't recall that there was any specific training. It was mostly to do with operational matters, how to navigate the IT system, that sort of thing.
20

MR ROZEN: All right. Have you received – I withdraw that. Before 26 November 2015, so in that first three months or so of your employment, had you received any training from Japara about the mandatory reporting requirements under the Aged Care Act?
25

MS JONES: I believe I did, yes.

MR ROZEN: I see. Presumably your induction was provided with the current version of the staff handbook? Is that right, Ms Jones? Do you - - -
30

MS JONES: Yes. Yes, I was.

MR ROZEN: And did you notice that there is a section in the staff handbook about Japara's obligations in relation to mandatory reporting?
35

MS JONES: Yes.

MR ROZEN: Yes. Now, we know from evidence which we understand is to be given by witnesses later today, including Ms Julie Reed, that the complaint that was made by Ms Hausler on 2 September did not result at that time in a report to the Department of Health, and I will ask you to accept that. I know that initially that was – that was not a decision that you were a party to; is that right?
40

MS JONES: That's right.
45

MR ROZEN: But you were ultimately a party to a later decision on 27 November of 2015 to make a report in relation to that matter? That's true, isn't it.

MS JONES: Yes. That's right. That's true.

MR ROZEN: Of course, that report was made some 10 weeks after the incident that was the subject of the report. Do you agree with that?

5

MS JONES: Yes.

MR ROZEN: You would have been aware at least, wouldn't you, that matters that were required to be reported under the Aged Care Act had to be reported no more than 24 hours after the facility became aware of an incident. Did you know that?

10

MS JONES: I did know that.

MR ROZEN: All right. Whose decision was it, as you recall, for the report to be made in relation to this incident on 27 November 2015?

15

MS JONES: I – I believe the initial – we first heard that it was a mandatory report when the department rang the facility and spoke to one of the staff members, Rachael – that Rachael Musico would then have rung Julie Reed and been advised that it was now a compulsory report.

20

MR ROZEN: All right.

MS JONES: That's to the best of my knowledge.

25

MR ROZEN: Okay. We will see if we can unpack that a little bit, Ms Jones, and I don't want you to speculate. If you're not sure how the decision was made, if you could just confine yourself to what you know. We know that your name ultimately appeared on the report. When you signed it, had everything else in it been completed and you were just given a completed document to sign or were you – did you participate in inserting information into the report.

30

MS JONES: I did participate in information, yes.

MR ROZEN: Okay. Now, you told us that there was a discussion between Ms Musico and Ms Reed, and were you involved in those discussions about what to do in response to this communication from the department?

35

MS JONES: Not that I recall.

40

MR ROZEN: You would accept, wouldn't you, Ms Jones, that an incident is either reportable at the time the incident occurs or it's not. That must be the case, mustn't it?

MS JONES: Yes.

45

MR ROZEN: It either falls within the criteria of a matter that needs to be reported, or it doesn't. Do you agree?

MS JONES: Yes, I do.

5

MR ROZEN: And so this particular incident was either required to be reported by Japara on 2 September when it was first notified to Japara or it wasn't required to be reported. Do you agree with that?

10 MS JONES: Yes.

MR ROZEN: Yes. And if that's the case, then whether or not the incident had to be reported can't have changed at the end of November 2015 by virtue of some communication by an external regulatory authority, can it?

15

MS JONES: No.

MR ROZEN: Right. But that was what, in fact, triggered the report, wasn't it? Contact by – was it the Aged Care Complaints Commission?

20

MS JONES: I think back then it was the Department of Health that we then reported to.

MR ROZEN: Okay. And as you understand it, what they said was, look, we've received a complaint from Ms Hausler about this matter. Were you a party to those discussions with the department's officer?

25

MS JONES: I don't think so.

MR ROZEN: All right. Who relayed to you that the department had contacted Japara about the complaint?

30

MS JONES: I can't recall whether it was Rachael Musico or Julie Reed.

MR ROZEN: All right. Could you please have a look at tab 61. It's a document on letterhead from your employer headed Information to the Department Compulsory Reporting of Assault Form, and the code in the top right-hand corner ends 5591.

35

MS JONES: Yes.

40

MR ROZEN: Do you have that in front of you, Ms Jones?

MS JONES: I do.

MR ROZEN: If you turn to the second page, which is 5592, can you confirm for us that that's your name and signature at the bottom of the page?

45

MS JONES: It is.

MR ROZEN: Right. Do you see immediately above your name there's a line:

5 *Risk assessment tool used.*

Do you see that?

MS JONES: Yes.

10

MR ROZEN: And there's nothing filled in there.

MS JONES: Because that's in – that's relating to falls.

15

MR ROZEN: I see.

MS JONES: It's a falls risk.

MR ROZEN: I see. This report covers a range of circumstances; is that right?

20

MS JONES: It has, that's right.

MR ROZEN: All right. Now, if you go back to the first page, about a third of the way down there's a line with a question on the left-hand side says:

25

When did the incident occur?

Do you see that?

30

MS JONES: Yes.

MR ROZEN: Okay. And just to be clear, the incident that's the subject of that question was the incident that gives rise to the obligation to report, the reportable assault. That's right, isn't it, that's what the form is getting at?

35

MS JONES: Yes. Normally, yes.

MR ROZEN: Yes, what do you mean "normally", Ms Jones?

40

MS JONES: Well, normally you are filling this out within 24 hours of the incident occurring, and the incident is as dated but when we filled this form out it was two months later, and we were using the date of the day we became aware of the compulsory incident.

45

MR ROZEN: You knew that Japara's obligation was to report within 24 hours. You had that training, you told us earlier; is that right?

MS JONES: That's right.

MR ROZEN: Yes. Did you ask Ms Reed why this incident had not been reported in
5 accordance with the legal requirement back in early September 2015 when you filled
out the form?

MS JONES: I – I don't recall if I asked her and – no, I don't think I did.

MR ROZEN: Why not?
10

MS JONES: Because she's – it was her call. It was her decision. I didn't question
her.

MR ROZEN: It was your name that was appearing on the form, wasn't it, Ms
15 Jones?

MS JONES: Yes.

MR ROZEN: And you've already told us that you knew that it should have been
20 reported – if it was reportable, it should have been reported back in September, but
you didn't think to ask Ms Reed why it was that you were providing this report now?

MS JONES: No.

MR ROZEN: Okay. Now, halfway down that page, you will see a question:
25

When did the approved provider become aware of the incident?

Do you see that?
30

MS JONES: My answer – that's the date that they became aware that it was a
compulsory report. Look, I'm not saying that the way we filled this out – it doesn't
seem logical now, but at the time it seemed logical to us that we were reporting the
day that we found out about this compulsory report. We also know – we also state
35 that the incident happened on 2 September on the same form.

MR ROZEN: I see that, and in fairness to you, you attached a copy of the
complaint, I think, did you not?

MS JONES: Yes.
40

MR ROZEN: But without wanting to labour the point, the date, 26 November 2015,
was not the date that the approved provider became aware of the incident, was it?

MS JONES: If you follow the logic that we were using, the incident that we were
45 discussing was the fact that it was a compulsory report we became aware of on the
26th and that is the day that Rachael Musico notified head office of that incident.

MR ROZEN: Yes. Now, if you turn to the second page again, please, Ms Jones. Do you see towards the bottom of the page there's a heading Possible Cause, Action Taken, Recommendations; do you see that? It's - - -

5 MS JONES: On page 2?

MR ROZEN: Yes, second last box, Possible Cause, Action Taken, Recommendations; do you see that?

10 MS JONES: Yes, I do.

MR ROZEN: Can you read out the third line that appears there, please.

15 MS JONES: to site 27 November 2015 at 10.50, report number given.

MR ROZEN: Is that your handwriting?

MS JONES: No, it isn't.

20 MR ROZEN: It's Ms Musico's is it?

MS JONES: Yes.

25 MR ROZEN: Was that written there when you put your signature at the bottom of the page?

MS JONES: I would think so.

30 MR ROZEN: Did the police attend the site on 27 November 2015 at 10.50?

MS JONES: I can't actually recall but I would think so if it's written in.

MR ROZEN: Really? We know the police attended the site on 10 September 2015.

35 MS JONES: Yes.

40 MR ROZEN: We've heard evidence about that. Are you telling us that there may have been another attendance by the police on 27 November, the day that you made this report?

MS JONES: Yes. It's not uncommon.

MR ROZEN: Okay.

45 MS JONES: When we make a compulsory report the police frequently come to the facility to investigate. Not always but frequently.

MR ROZEN: Sorry, I'm not sure I'm following this. Are you saying the police attended in response to this report? Is that what you're saying?

5 MS JONES: When we make a – yes, when we make a compulsory report to the department, we also have to make a report to the police.

MR ROZEN: Yes.

10 MS JONES: And they will either attend in person or sometimes they investigate over the phone.

MR ROZEN: Okay.

15 MS JONES: But on this occasion they may well have attended.

MR ROZEN: I see. You have no specific recollection of them attending; you're just saying if it's on the form it must have happened; is that right?

20 MS JONES: Yes, because it's a common occurrence.

MR ROZEN: I see. But perhaps Ms Musico would be in a better position given that it was apparently her handwriting, she might be in a better position to tell us whether, in fact, the police did attend; is that right?

25 MS JONES: She may recall. That's right.

MR ROZEN: Okay. Did you ask Ms Musico about that? Whether the police had attended?

30 MS JONES: Did I ask Ms Musico?

MR ROZEN: Yes.

35 MS JONES: At the time?

MR ROZEN: Yes.

MS JONES: recall asking her.

40 MR ROZEN: Okay. We know when the police attended on 10 September there was at least one quality manager who was present for the police. That would be normal practice, wouldn't it, where the police attend one of the sites where you're the responsible quality manager, you would ordinarily be there for that attendance; is that correct?

45 MS JONES: Not necessarily but sometimes.

MR ROZEN: Okay, but you weren't there on the 27th when the police attended; is that right?

5 MS JONES: I'm not sure. I filled out the form on the 27th so I would assume I was at the site.

MR ROZEN: I see. Would there be some record kept by the facility of an attendance by the police ordinarily?

10 MS JONES: Yes. Normally they would write something in the compulsory report register perhaps.

MR ROZEN: I see. I call for the compulsory report register, Commissioners.

15 COMMISSIONER TRACEY: Has it been the subject of a notice?

MR ROZEN: A request? I would have thought that it would be covered by the notice. I'm not in a position to say that with any certainty. We will make some inquiries.

20 COMMISSIONER TRACEY: Yes. If your instructors could consult with Mr Borsky's instructors, if the document is available then it can be produced.

MR ROZEN: Yes, I'm sure that process is - - -

25 COMMISSIONER TRACEY: As soon as possible.

MR ROZEN: Underway as we speak. We've all heard that, Commissioner. Thank you.

30 You would accept, just before leaving this topic, Ms Jones, that it would be a serious matter to include incorrect information in a report of this nature?

MS JONES: Yes. As I said, we didn't consider it was incorrect at the time.

35 MR ROZEN: No. You can see how it might appear incorrect now though, can't you?

MS JONES: I can. I can. In retrospect I can see how it would be read, yes.

40 MR ROZEN: It wasn't the case, was it, Ms Jones, that you were pretending to the department that the incident occurred on 26 November so that your report would be within 24 hours of the incident?

45 MS JONES: No, not at all.

MR ROZEN: Okay.

MS JONES: The department was already aware that it happened in September. They were the ones that us and we did include information that showed that it happened in September - - -

5 MR ROZEN: Yes.

MS JONES: - - - with the report.

10 MR ROZEN: Yes, I understand that. Thank you. Now, if I can change topics with you, Ms Jones, we've heard some evidence just before you from Ms Musico and earlier today from Ms Hausler that, after the assault that you and I have just been discussing and the subsequent one on 9 September 2015, there were a series of weekly meetings that were organised between Japara management and Ms Hausler. Do you recall attending some of those weekly meetings?

15 MS JONES: Yes, I do.

20 MR ROZEN: All right. You actually include a list of the dates of those in your statement, in fairness to you, at paragraph 40. And if I can summarise the intent behind the meetings, it was really to build a relationship with Ms Hausler as between Japara and Ms Hausler; is that right?

MS JONES: That was my understanding, yes.

25 MR ROZEN: Yeah. She had a number of concerns about clinical care and, obviously, safety of her father, and you were providing a forum for her to tell you what those concerns were; is that right?

30 MS JONES: That's right.

MR ROZEN: And I take it that you approached the opportunity to do that in good faith?

35 MS JONES: Yes.

MR ROZEN: And so far as you were aware, so did Ms Musico; is that right?

MS JONES: Yes, that's right.

40 MR ROZEN: And you would agree, would you, that those meetings were a good idea because Ms Hausler had been through a particularly difficult period finding out about the different incidents involving her father?

45 MS JONES: Yes.

MR ROZEN: Whose idea was it to take minutes of the meetings; do you remember?

MS JONES: I actually don't remember. It's not uncommon to write summaries of meetings though. It may have come from Julie Reed, but I'm – I'm speculating. I don't know.

5 MR ROZEN: All right. In fairness to you, Ms Hausler has given evidence that she supported the idea of minuting, so can we take it, then, that it was an agreed process. No one was forcing it - - -

MS JONES: Yes.

10

MR ROZEN: - - - upon anyone else, the minuting.

MS JONES: That's right.

15 MR ROZEN: And you were the minute taker.

MS JONES: Mostly, yes.

MR ROZEN: Yep, and Ms Reed tells us that you passed on the minutes to her after
20 each meeting. Do you recall doing that?

MS JONES: Yes, I do.

MR ROZEN: All right. Now, it appears from your list of the meetings, and there
25 doesn't seem to be any contrary evidence to this, that the first meeting was on the 3rd of November 2015. Does that – is that your recollection now?

MS JONES: Yes.

30 MR ROZEN: Yep, so - - -

MS JONES: I think so.

MR ROZEN: Yep. No trick here, Ms Jones. You've got the list of meetings in
35 paragraph 40, and the first of them would appear to be the 3rd of November 2015. Do you see that?

MS JONES: Yep.

40 MR ROZEN: All right.

MS JONES: Yep.

MR ROZEN: What was Ms Reed's role in relation to this process?
45

MS JONES: She – she was, generally, the decision-maker. So if something came up in a meeting that we weren't sure of the answer, then we would refer that to Julie Reed, and she would make a decision.

5 MR ROZEN: Yes. And you've already told us that you provided her with the minutes to keep her in the loop about the issues that were arising; is that right?

MS JONES: That's right.

10 MR ROZEN: All right. Ms Hausler earlier told us and Ms Musico agreed that they both thought that the meetings were going well. They were a good process. Do you agree with that?

MS JONES: I do.

15

MR ROZEN: All right. Now, we know that shortly after the first meeting or, in fact, six days after the first meeting, an email was sent to Ms Hausler by Julie Reed. I'd ask that tab 177 be brought up. It's an email dated 9 November.

20 MS JONES: I have it.

MR ROZEN: Thank you. Do you want to just take a moment to have a look at that, please, Ms Jones.

25 MS JONES: Okay.

MR ROZEN: You will see that you were copied into the email. Do you see that in the top – in the cc column?

30 MS JONES: Yes, I do.

MR ROZEN: All right. Did Ms Reed consult with you before sending this email to Ms Hausler?

35 MS JONES: I don't think so.

MR ROZEN: Do you see in the second paragraph:

40 *We do not have a policy, per se, on our website. However, it has clearly been explained to you on numerous occasions that by covertly filming in a resident's room, you would be seriously breaching multiple Acts, including, but not exclusive to the Aged Care Act and the Occupational Health and Safety Act.*

Do you see that?

45

MS JONES: Yes.

MR ROZEN: It's not a friendly email, is it, Ms Jones?

MS JONES: No. No. Bit formal.

5 MR ROZEN: Bit formal. Okay.

MS JONES: Mmm.

10 MR ROZEN: It's a bit more than formal, isn't it?

MS JONES: I would call it formal.

15 MR ROZEN: Okay. Would you agree that it wasn't really of assistance to you in your genuine attempts to build the relationship with Ms Hausler?

MS JONES: No, probably not.

20 MR ROZEN: No. Would you go so far as to say it was to the opposite effect, wasn't it? It was likely to undermine your attempts of building the relationship?

MS JONES: I guess it wouldn't have helped.

25 MR ROZEN: No. Do you think it would have been preferable if Ms Reed had consulted with you before sending it?

MS JONES: In – for what purpose?

30 MR ROZEN: Well, to check with you whether you thought it would be a good idea, given what you were trying to do in the meetings?

MS JONES: I guess so, yes.

35 MR ROZEN: Yep. There was a second letter to similar effect sent on 9 December. I'll take you to it if need be. It's slightly different, but in, perhaps, a more stern tone. Would you like to see it before I ask you about it?

MS JONES: Yes, please.

40 MR ROZEN: All right. It's at tab 72.

MS JONES: I have it.

45 MR ROZEN: Yep, and if you just take a moment to read that to yourself, please, Ms Jones.

MS JONES: Okay.

MR ROZEN: Do you see in the third last paragraph, Ms Reed wrote:

5 *It is unlawful for you to keep our staff under surveillance without their permission with the intention to cause our staff serious apprehension or fear. Stalking is an offence that carries serious penalties.*

Do you see that?

10 MS JONES: I do.

MR ROZEN: Once again, did Ms Reed consult with you before sending this letter to Ms Hausler?

15 MS JONES: No.

MR ROZEN: I suggest to you that this letter, even more than the earlier one, was spectacularly unhelpful in your attempts to build the relationship with Ms Hausler. What do you say to that, Ms Jones?

20 MS JONES: I would probably agree with that.

MR ROZEN: Yep. What's the Commission to make of this, Ms Jones? It's like there were two processes operating simultaneously. Ms Reed having one sort of relationship with Ms Hausler which was characterised by this correspondence and, on the other hand, you're genuinely trying to build a relationship aimed at improving the care experience. Are you able to explain that? Because, from our perspective, it seems most curious.

30 MS JONES: I can't explain that. I – I don't have a lot of knowledge of what was happening from Julie's perspective.

MR ROZEN: I understand that. You've already told us you weren't consulted about this correspondence. I want to ask about one last issue on this topic and it concerns the question of the tension that existed in the relationship between Ms Hausler and some of the caring staff at Mitcham. Do you follow me?

MS JONES: Yes.

40 MR ROZEN: Do you recall that one of the issue that kept coming up at the meetings was Noleen saying that she was having difficulty getting on with the carers, they had nicknames about her and they felt intimidated by her constant presence at the facility? Does that ring a bell?

45 MS JONES: It does.

MR ROZEN: Yes, and at the heart of that issue, I suggest to you, was that the caring staff were never really told clearly what had happened in early September

2015 that had led to Corey Lucas being dismissed from his employment. You're nodding. I think you need to say something for the transcript, please, Ms Jones.

5 MS JONES: Yes, I – yes, I know that that's true, yes.

MR ROZEN: Yes.

MS JONES: They weren't told.

10 MR ROZEN: And that was being raised by Ms Hausler at these meetings and by her representative from the Aged Care Advocacy Service. Do you recall that?

MS JONES: I do.

15 MR ROZEN: Yep, and the minutes record you saying, "Look, we'll need to go back to Julie Reed about that." Do you remember telling Ms Hausler that, that that was a matter for Ms Reed to determine?

MS JONES: Yes.

20

MR ROZEN: Yep, and without taking you to the minutes, but I can if need be, the information that you conveyed back was that Ms Reed was quite content with the status quo, that is, with the staff not knowing about the assault and about the reason why Mr Lucas had been dismissed.

25

MS JONES: I'm not sure that's the exact wording, but, yes, that – basically, that's what was said, yes.

MR ROZEN: Yeah. Did you talk to Ms Reed about that at this time?

30

MS JONES: Not that I can recall.

MR ROZEN: You understood the point that was being made by Ms Hausler and her representative, didn't you, that if the staff knew then that could put the relationship between Noleen and the staff on a better basis?

35

MS JONES: Yes.

MR ROZEN: Yep.

40

MS JONES: I – I understood what she was saying, yes.

MR ROZEN: Did you agree with that?

45 MS JONES: I felt that – and this is only my opinion.

MR ROZEN: Sure.

MS JONES: That – that it may have been better to tell them because some of them seemed to know that something had happened anyway.

5 MR ROZEN: Yes, and better that they had the correct information, rather than it being based on rumours; correct?

MS JONES: True.

10 MR ROZEN: And did you advocate that position to Ms Reed and try and change her mind about the position that she had taken?

MS JONES: Look, I may have had a conversation with her, but, in the end, Julie made the decision.

15 MR ROZEN: Yes. She was not for turning; is that what you're telling us, Ms Jones?

MS JONES: She was strong. Her decision stood.

20 MR ROZEN: Yep. Can I ask you about another topic briefly, if I could. I wonder if you could have a look, please, at tab 68. It's an email chain with the number 5670 in the top right-hand corner.

25 MS JONES: Yes.

MR ROZEN: And if we could start on the second page which ends 5671 – as with any email chain, we need to read it in reverse. Do you see that?

30 MS JONES: Yes.

MR ROZEN: And you will see that it starts with an email to you from facility manager Mitcham. That's Ms Musico, is it not?

35 MS JONES: Yes.

MR ROZEN: And it was on the 3rd of December 2015 and the subject was:

Clarence Hausler, sling lifter transfers.

40 Do you see that?

MS JONES: Yes.

45 MR ROZEN: And Ms Musico wrote to you:

See progress note entry by the physio for Clarence Hausler. I will call you shortly about this and another issue.

Do you see that?

MS JONES: Yes.

5 MR ROZEN: Do you remember - - -

MS JONES: Yes, I do.

10 MR ROZEN: Do you remember this email exchange or this topic?

MS JONES: Yes.

MR ROZEN: You do?

15 MS JONES: Yes, I do.

MR ROZEN: All right. If you go back to page 1, there's a further email shortly after this one, once again from Ms Musico to you, same topic, and do you see she says:

20

Hi. Spoke with Julie. So sling underneath. They can lay the chair back and roll him to get it into position, and I need to speak to Will. He is not to document that.

And it goes on. Do you see that?

25

MS JONES: Yes.

MR ROZEN: All right. Just to understand this, the reference to Will was a reference to a physiotherapist that was doing some work at Mitcham; is that right?

30

MS JONES: That's right.

MR ROZEN: Okay. And the reference that Ms Musico made to a progress note, can you have a look, please, at tab 67 which ends in 5663 and it's headed Total Care Progress Notes.

35

MS JONES: Yes, I have it.

MR ROZEN: Is that the progress note that this email exchange was about?

40

MS JONES: Yes, I think so.

MR ROZEN: Okay. And you will see it's dated the previous day, 2 December '15.

45 MS JONES: Yes.

MR ROZEN: And then if you look, I won't ask you to read all of it, but the fourth last line, I can't read the first word and then there's an oblique line and then:

Recommend Clarry to have a sling left in position.

5

Do you see that?

MS JONES: Yes.

10 MR ROZEN: That was the issue, wasn't it, the recommendation about the sling being left in position?

MS JONES: That's right.

15 MR ROZEN: If you go back to the email, you – and make sure you've got it in front of you, this is the email exchange between yourself and Ms Musico on 3 December.

MS JONES: Yes.

20

MR ROZEN: Do you see about halfway down the page you're responding at 10.23 to Ms Musico?

MS JONES: Yes.

25

MR ROZEN: And you say:

Yep, that's what I thought she would say –

30 The "she" there is Ms Reed?

MS JONES: Yes.

MR ROZEN: Yes. So you had anticipated what Ms Reed would say and you wrote:

35

Is it possible to remove his note?

Do you see that?

40 MS JONES: Yes.

MR ROZEN: What did you mean, is it possible to remove his note?

45 MS JONES: The physio has written the note with the perspective of protecting staff by not having to put a sling in and out every time they use it.

MR ROZEN: Yes.

MS JONES: I knew that Julie would not agree with that because it's a risk to the resident to have the sling under him all the time. Slings are bulky, they have hardware, they have velcro and they tend to bunch up underneath residents and cause greater risk of pressure injuries. So I knew that Julie was probably going to say that.
5 We didn't want the note to be left in case staff followed the directive.

MR ROZEN: Well, firstly, it's not a directive. It's a recommendation, isn't it, Ms Jones?

10 MS JONES: Well, it is written as a recommendation but that doesn't mean that staff don't read it and take it as a directive.

MR ROZEN: Just so that I can understand this, this was the physiotherapist exercising his professional judgment writing a note in the progress notes maintained
15 by Mitcham; is that right?

MS JONES: That's right.

MR ROZEN: And you were suggesting, were you, or at least asking Ms Musico, if
20 what, it could just be deleted from the record because of what Ms Reed had said; is that right?

MS JONES: Well, not necessarily deleted but we would want Will to review and
25 rewrite the note.

MR ROZEN: But that's not what I asked Ms Musico, is it? You asked her very
clearly:

30 *Is it possible to remove his note?*

Didn't you?

MS JONES: Yes, I did.

35 MR ROZEN: And what you meant by that, I suggest, is that it should just be expunged as if it had never been written by the independent physiotherapist.

MS JONES: What we meant is for the physio to review and reassess.

40 MR ROZEN: I see.

MS JONES: And change – change the order to protect the resident.

MR ROZEN: You will see at the top of the page that in response to your question,
45 "Could the note be removed", it's apparent that Ms Musico understood exactly what you wanted because she said:

Yes, I have the note. Lucky it's on a new page with only his note. I'm following up now when he is in next to speak to him.

Do you see that?

5

MS JONES: Yes, and that would be to get Will to review and reassess the resident and write a new note.

10 MR ROZEN: Okay. And in the meantime the note was to be removed; is that right?

MS JONES: Yes.

15 MR ROZEN: I see. Did you think that was appropriate to remove a note that had been written by an independent professional physiotherapist in the progress notes?

MS JONES: No, look, it probably would have been wiser to cross it through and write that it was in error or something along those lines but it would have had the same effect.

20

MR ROZEN: But it was a matter for the physiotherapist to decide whether it was in error, wasn't it, not for you?

25 MS JONES: Yes, but physios work in consultation with the staff. He was probably responding to care staff saying that it was difficulty to get the sling in and out, could we leave it under Mr Hausler. I'm speculating - - -

MR ROZEN: Yes.

30 MS JONES: - - - but that's - that's what happens.

MR ROZEN: All right. I will ask you about another topic if I could, please, Ms Jones. This concerns an application for guardianship that was made by Ms Hausler to the South Australian Civil and Administrative Tribunal. Do you recall that occurring?

35

MS JONES: I do.

40 MR ROZEN: In fairness to you, you deal with this at paragraph 39 of your statement, if it's of assistance - - -

MS JONES: Yes.

45 MR ROZEN: - - - for you to see what you said. In paragraph 39, you wrote - you refer to what Ms Hausler said about this topic in her statement. You said this, and I quote:

I attended the hearing for a short period of time at the request of Ms Julie Reed. I recall that Ms Reed was not available to attend the hearing on that day and asked me to do so in her place.

5 Do you see that?

MS JONES: Yes.

10 MR ROZEN: The suggestion you seem to be making there, I suggest to you, Ms Jones, is that you were just warming a seat for Ms Reed because she couldn't get there. Is that what we're to understand by that line?

15 MS JONES: Well, I probably wouldn't put it that way, but I knew that the SACAT hearing was scheduled but I had never been asked to attend. And on the day of the hearing I received a phone call from the solicitor who was attending asking if someone from was coming. So I rang Julie and she said – I think it had slipped her mind and she asked if I could attend. So I did but because I had to travel a distance I missed most of it and I think I was there for maybe 10, 15 minutes at most. So I didn't have any real impact on the meeting at all.

20

MR ROZEN: So you're telling us, are you, that your first involvement in this issue was a phone call the day before the hearing from the solicitors?

MS JONES: The day of the hearing.

25

MR ROZEN: The day of the hearing?

MS JONES: The day of the hearing.

30 MR ROZEN: And what was that date, do you know, Ms Jones?

MS JONES: The day of the hearing?

MR ROZEN: Yes.

35

MS JONES: I don't recall.

MR ROZEN: Ms Hausler's evidence is that it was 26 March 2016. Does that assist you? I'm sorry, I stand corrected, 21 March; does that sound right to you?

40

MS JONES: Yes.

MR ROZEN: If you're not sure, I'm not asking you to guess.

45 MS JONES: I'm not sure.

MR ROZEN: Okay.

MS JONES: I don't remember the date.

MR ROZEN: All right. You had quite a bit of involvement in this issue prior to that date, I suggest to you. Do you recall that now?

5

MS JONES: In the guardianship hearing?

MR ROZEN: Yes.

10 MS JONES: No.

MR ROZEN: You had been given some work to do by Ms Reed, hadn't you, Ms Jones, in relation to this application?

15 MS JONES: She had only asked that I read through the notes and see if there was any notes that would indicate that Noleen was putting her father at risk by providing care herself. So I did that; I sent some note through, but there wasn't a great deal.

20 MR ROZEN: No, but your first involvement wasn't the day of the hearing when you got the phone call from the solicitor, was it, Ms Jones?

MS JONES: Not in the actual hearing, no, that was my only involvement prior to reading through some notes.

25 MR ROZEN: Yes. Can you have a look at tab 91 for us, please, Ms Jones. It's an email dated 2 March 2016 from Julie Reed to you.

MS JONES: Okay.

30 MR ROZEN: Now, Ms Hausler – before I take you to that, Ms Hausler's evidence about this topic is that the reason she was applying for guardianship of her father was to enable her properly to make a complaint to the Aged Care Complaints Commission. Did you understand that that's - - -

35 MS JONES: Okay.

MR ROZEN: Did you understand that's what lay behind the application she was making to become her father's guardian?

40 MS JONES: I think I was only aware of that at the hearing that was - - -

MR ROZEN: I see.

MS JONES: That they made reference to that at the hearing.

45

MR ROZEN: Did Ms Reed tell you something else about the basis for the guardianship application?

MS JONES: I don't think she told me what the basis was.

MR ROZEN: Okay. So she asked you to look for notes, did she, to look through the notes; is that what Ms Reed had asked you to do?

5

MS JONES: She did. I vaguely remember that Julie said something about Noleen looking to have medical power of attorney with special powers but I don't know what special powers referred to or what that meant.

10 MR ROZEN: I see.

MS JONES: It's not something I've heard of before.

15 MR ROZEN: But it was clear to you, wasn't it, that Ms Reed wanted that not to happen, she wanted it to stop, didn't she? She wanted Noleen to be unsuccessful in her application; do you understand that?

MS JONES: Well, she – I do understand that though she didn't actually voice that to me.

20

MR ROZEN: No. And she was asking you to find some evidence that would support her quest to undermine Noleen's application for guardianship. That's the gist of it, isn't it?

25 MS JONES: That's how it looks, yes.

MR ROZEN: Yes. Well, it's how it looks. It's how it is, isn't it, Ms Jones?

MS JONES: I don't know.

30

MR ROZEN: I suggest you do know and the reason you said it's how it looks is because that's how it is and that's how it was, do you agree?

MS JONES: I can't speak for Julie Reed.

35

MR ROZEN: Okay. I'm asking you what your understanding was, Ms Jones, you appreciate that, don't you?

MS JONES: I do.

40

MR ROZEN: Yes.

45 MS JONES: I – look, I understand what you're saying and yes, when you read this it seems that perhaps Julie didn't want Noleen to have any special powers or whatever they were.

MR ROZEN: Because you wrote to Julie and I quote:

I've attached a few notes I've located as evidence that Noleen puts Clarry at risk by her actions.

Do you see that?

5

MS JONES: Yes.

MR ROZEN: So that's what Ms Reed had asked you to do, is it, to find some evidence that Noleen Hausler was putting her father at risk by, what, her conduct visiting him; is that right?

10

MS JONES: No, it was more to do with manual handling. Clarry was a two person transfer so two staff always must attend him, and Noleen would reposition him herself. We had discussed it with her and recommended that she not do it because she was putting herself at risk as well as Clarry but she said that that was her right and she would continue.

15

MR ROZEN: Ms Jones, your reference here is only to her conduct that puts Clarry at risk, isn't it?

20

MS JONES: Yes, but it also puts herself at risk.

MR ROZEN: But that's not what's said in the email, is it?

25

MS JONES: No.

MR ROZEN: Can you read out the next line in your email, please, after the word "actions".

30

MS JONES:

There is not as many as I hoped unfortunately. I've also attached a bit of a summary about each attachment. Hope this is of some value.

35

MR ROZEN: What did you mean "unfortunately"?

MS JONES: Because Julie was hoping for more.

40

MR ROZEN: More evidence - - -

MS JONES: That was I was hoping - - -

MR ROZEN: She was looking. Sorry, go on.

45

MS JONES: She wanted some evidence that Noleen's actions were putting Clarry at risk, and I was only able to find a few things.

MR ROZEN: Right. So you couldn't do the job that she had set for you to the standard that she was expecting, is that the reading of "unfortunately"?

5 MS JONES: Yes, I was – I thought there would be more than there was and there wasn't.

MR ROZEN: It's hardly unfortunate, is there, that there wasn't much evidence that Noleen Hausler was putting - - -

10 MS JONES: It think it was unfortunate for Julie.

MR ROZEN: Unfortunate for Julie's quest?

15 MS JONES: Yes.

MR ROZEN: But not unfortunate for the care of Mr Hausler?

MS JONES: No.

20 MR ROZEN: No. I suggest to you what this email demonstrates, Ms Jones, is that by 2 March 2016 there was something of a war going on between Ms Reed and Ms Hausler and that Clarry's interests were almost irrelevant. What do you say to that?

25 MS JONES: I don't think that's true.

MR ROZEN: I see. She responded:

Thanks Di, every bit helps.

30 Do you see that at the top of the page?

MS JONES: I do.

35 MR ROZEN: Yes. And she meant by that it helps in achieving the ends that she was trying to achieve. Is that right?

MS JONES: I guess so.

40 MR ROZEN: It wasn't about improving the care of Clarry Hausler, was it?

MS JONES: Well, I guess that depends. If you thought that Noleen was putting him at risk then it was about improving his care.

45 MR ROZEN: I see. Now, the final topic I want to – sorry, I withdraw that. Just before I leave that topic, could you look at tab 85, please, which is an email exchange – another email exchange between yourself and Ms Musico. Do you have that in front of you? It's the email date at the top is 17 February 2016.

MS JONES: Yes.

MR ROZEN: Do you see that?

5 MS JONES: I do.

MR ROZEN: If we start at the bottom of the page, it's an email from Ms Musico to Ms Reed copying you in, do you see that?

10 MS JONES: Yes.

MR ROZEN: And N. Hausler podiatry complaint.

MS JONES: Yes.

15

MR ROZEN: This was an issue that was being raised and that concerned fungus under the Clarry's toenail. Do you recall that that was the subject of a lot of concern on the part of Noleen Hausler?

20 MS JONES: I do.

MR ROZEN: Yes. And you will see that Ms Musico wrote:

25 *Hello, I've just had [REDACTED], the podiatrist from Wellness and Lifestyle, inform me that Noleen has made a complaint about her to the Health Complaints Commissioner and the Podiatry Board is following this up.*

Do you see that that's what Ms Musico told you and Ms Reed?

30 MS JONES: Yes.

MR ROZEN: And your reply came back very quickly. Do you see that in the middle of the page, some few minutes after that?

35 MS JONES: I do.

MR ROZEN: Same day?

MS JONES: I do, yeah.

40

MR ROZEN: And you wrote:

45 *Good grief. I felt a moment of sympathy for Noleen yesterday. What was I thinking? No one is safe from this woman.*

Do you see that?

MS JONES: I do.

MR ROZEN: Yep. That's a very unfortunate thing to have written in an email, isn't it, Ms Jones?

5

MS JONES: It probably wasn't wise.

MR ROZEN: Yep, and b

10 MS JONES: It – this was a very stressful time, and Rachael and I would talk to each other to vent, and I guess that was just a moment of venting.

MR ROZEN: Yes.

15 MS JONES: No malice in there.

MR ROZEN: And Rachael's response is at the top of the page, isn't it:

My thoughts, exactly –

20

exclamation mark, exclamation mark:

Watching my back.

25 Do you see that?

MS JONES: Yep.

MR ROZEN: More venting.

30

MS JONES: You'd have to ask Rachael. I would say so.

MR ROZEN: Yeah. It's not consistent, is it, with building good relationship with Noleen Hausler in the interest of looking after her father who'd been assaulted several times, is it?

35

MS JONES: Oh, no, but I guess everyone says things that they regret at times.

MR ROZEN: Yes, I suspect that other things were said along similar lines, but not recorded in emails between you; is that the case?

40

MS JONES: I can't recall exactly.

MR ROZEN: I bet you can, Ms Jones. Last question I want to ask you – last topic I want to ask you about, Ms Jones, concerns a complaint that Ms Hausler made after her father's death on the 1st of January 2017. And just for the record, the complaint, because there are several, is S17/006439, and I don't expect that to mean much to

45

you, Ms Jones, but do you recall being involved in discussions with Mr Woodley and others about how Japara would respond to certain – a complaint that had been made by Ms Hausler after her father’s death? Is that - - -

5 MS JONES: In January?

MR ROZEN: Well, actually – yes, in early 2017.

MS JONES: Quite possibly. I’m – I’m not sure.

10

MR ROZEN: All right. I – I don’t – once again, I don’t want you to guess. I suggest to you that the documentary evidence before the Commission – and if you need to see it, I can certainly arrange for that, but Mrs Hausler made a complaint where she raised 11 issues for consideration by the Aged Care Complaints

15 Commission, and one of them was about whether or not there was a phone number for an emergency paramedic service that was able to be located at – in the nurses station. Does that ring a bell for you, Ms Jones?

MS JONES: Yes.

20

MR ROZEN: Yep.

MS JONES: Yes, I do remember, yes.

25 MR ROZEN: And the evidence the Commission has heard was this was about an incident on 13 December 2016 where a nurse at Mitcham had been apparently unable to locate the telephone number for the emergency paramedic service. You understand that’s what was at the heart of this aspect of the complaint?

30 MS JONES: Yes.

MR ROZEN: Yep, and you understood that when the Aged Care Complaints Commission wrote to Japara asking for its response to Noleen’s complaint about that issue, that what they wanted to know was whether or not this phone number was, in fact, available on the night in question in the nurses station. You understand that’s what this was about, didn’t you?

35

MS JONES: Yes.

40 MR ROZEN: Yep, and you understood that they wanted to establish whether the information was available, but not found by the nurse, which is one scenario, or, alternatively, the information was not available at all. That’s what you understood they were trying to sort out, didn’t you?

45 MS JONES: Yes.

MR ROZEN: All right. Now, we know that the letter responding to the inquiry from the Commission came from a gentleman who, I think by this time, was probably your boss Mr Woodley. Were you answering to Woodley in early – Mr Woodley in early 2017?

5

MS JONES: Yes, I think so.

MR ROZEN: All right. If you could have a look, please, at tab 144.

10 MS JONES: Yes, I have it.

MR ROZEN: Do you have that? This is an email chain between yourself and Mr Woodley. Do you have that?

15 MS JONES: It was between Mr Woodley and Rachael Musico.

MR ROZEN: Yes, and, at some points, you. Do you see at the bottom - - -

MS JONES: Cc'd to me. Yep.

20

MR ROZEN: Yeah, see at the bottom of the page.

MS JONES: Yep.

25 MR ROZEN: The first – and you're – I stand corrected, Ms Jones. The first email in this chain was from Mr Woodley to yourself and Ms Musico, subject "contact list", do you see that at the bottom of the page?

MS JONES: Yes.

30

MR ROZEN: And what Ms Woodley has done, I suggest, is set out precisely what it is that was the issue that was being investigated. Do you see that?

MS JONES: Yes, I do.

35

MR ROZEN:

Concern that the service could not locate the contact details for the extended care paramedic on 13 December 2016.

40

MS JONES: Yes.

MR ROZEN: And if you go to the second page, I suggest to you that Mr Woodley had set out a proposed response to that inquiry. Is that how we're to understand this email?

45

MS JONES: Yes, that's how it looks.

MR ROZEN: And then underneath his proposed response – and the response is in the present tense, isn't it?

5 *The extended care paramedic phone number is on the homes list of contact numbers.*
Do you see that?

MS JONES: Yes.

10 MR ROZEN: It doesn't deal with what you understood to be the issue that was being investigated, and that is was it there back in December of 2016? Do you see that?

MS JONES: Yes, I do.

15 MR ROZEN: And Mr Woodley asked you and Ms Musico:
Do we have evidence that it was listed somewhere on the day?

20 Do you see he asked you that.

MS JONES: Yes.

25 MR ROZEN: And he wrote:
If not, add it to the contact list now. We are only saying it is –
emphasised –

30 *on the list, not "was".*

Do you see that?

35 MS JONES: I do.

MR ROZEN: And you understood, didn't you, that what Mr Woodley was doing there was essentially ducking the question and answering a different one. You understood that's what that email was about, didn't you?

40 MS JONES: Again, I – I can't second-guess what Stuart was thinking, but, sometimes, when we write responses to the department from a complaint, we identify what the gap was and then we say what we've done to fix it.

MR ROZEN: Sure.

45 MS JONES: And it may be that that was where he was heading with that response.

MR ROZEN: Jumping to the second part, not worrying too much about the first one. IS that what you're saying?

MS JONES: That's not what I'm saying.

5

MR ROZEN: Okay. What are you saying?

MS JONES: What I'm saying is I don't know what his motivation was or his intent, but my guess would be that he was trying to show the department that we have addressed any issue with the phone book contact list.

10

MR ROZEN: Yes. I suggest to you that what he was doing, and you well understood this, was avoiding the difficult question, knowing that it wasn't there at the time and answering a different one by making sure it's there now and answering in the present tense. You understood that's what was going on here, didn't you, Ms Jones?

15

MS JONES: No.

MR ROZEN: Okay.

20

MS JONES: That's not my understanding, and I don't know if the phone number was on the list or not at the time.

MR ROZEN: The – okay. You weren't a party to the next communications, I see. If you scroll up that page you will see that there was an email from Ms Musico to Mr Woodley asking:

25

Do you have the contact list still open? I can't update.

30

Do you see that?

MS JONES: Yes. Yep.

MR ROZEN: And top of the page, he responded:

35

Closed. Can you add nonemergency ambulance and police too. Regards, Stu.

Do you see that?

40

MS JONES: I do.

MR ROZEN: What did – if you don't know the answer, I don't want you to guess, but what did Ms Musico mean when she asked:

45

Do you have the contact list still open?

Does that mean anything to you.

MS JONES: If – if Stuart had the contact list open on his computer, she would only get a read only copy and she wouldn't be able to alter it.

5

MR ROZEN: I see.

MS JONES: So I think that's what she was saying.

10 MR ROZEN: But that exchange makes it pretty clear, doesn't it, that the number wasn't there as at 20 February 2017? Do you agree with that?

MS JONES: I don't know.

15 MR ROZEN: Well, there would be no need to update if it was there, would there, Ms Jones?

MS JONES: Possibly not.

20 MR ROZEN: Excuse me. That concludes the questions of Ms Jones, Commissioners. Do you have any questions for her, Commissioner Briggs?

25 COMMISSIONER BRIGGS: Ms Jones, it's generally the case that when new people come in to work in an organisation, they can have quite a significant impact on that organisation. You and Ms Musico were both very new to the organisation at the time, at least, the first incident and then the second one occurred. Why is it that you so quickly fell into line with the predominant approach of the organisation and didn't flag that there were, in fact, serious problems here that needed to be addressed?

30

MS JONES: We were trying to address those problems on the floor at the facility by communicating with Noleen and trying to address any concerns that she might have. I don't think I fell into line with any kind of poor culture or – or – I – we were trying to address issues at the – at the facility with Noleen.

35

COMMISSIONER BRIGGS: How effective were the feedback loops available to staff within the organisation to initiate changes and quality improvements?

40 MS JONES: I – I can't tell you exactly how effective they were. I guess some – in some areas, they were more effective than others. Staff certainly had the opportunity to give feedback. We had – we had written processes for them to offer suggestions or make complaints, and the facilities had staff meetings quite regularly where staff could talk to the managers and offer suggestions or give feedback. I guess – if things can always improve, but I do think those processes were in place.

45

COMMISSIONER BRIGGS: How effective were the processes around whistleblower behaviour?

MS JONES: I'm not aware of any concerns where any whistleblower had any negative impact.

5 COMMISSIONER BRIGGS: Is it the case that you were largely instructed what to do and then complied with those instructions, rather than taking more seriously the responsibilities of your position?

10 MS JONES: I did follow directions, but I wouldn't follow a direction that I knew was a breach of legislation or would put residents at risk.

COMMISSIONER BRIGGS: Thank you.

COMMISSIONER TRACEY: Yes. Anything arising out of that?

15 MR ROZEN: No, there isn't, sir. Thank you.

COMMISSIONER TRACEY: Yes. Thank you for your evidence, Ms Jones. You're excused from further attendance, and we will now break the link to Adelaide.

20

<THE WITNESS WITHDREW [3.52 pm]

25 MR ROZEN: I note the time, Commissioners. We have at least one more witness available this afternoon, Ms Reed.

COMMISSIONER TRACEY: We will sit on.

30 MR ROZEN: Would it be appropriate to have a break before calling her? I'm entirely in your hands and happy to proceed now.

COMMISSIONER TRACEY: We will have a five-minute break.

35 MR ROZEN: Commission pleases.

ADJOURNED [3.53 pm]

40 **RESUMED [4.02 pm]**

COMMISSIONER TRACEY: Yes, Mr Rozen.

45 MR ROZEN: Thank you, Commissioners. I call Julie Elizabeth Reed.

<EXAMINATION-IN-CHIEF BY MR ROZEN

5

MR ROZEN: Ms Reed, is your full name Julie Elizabeth Reed?

MS REED: Yes, it is.

10

MR ROZEN: And did you make a statement dated 12 June 2019 which is WIT - - -

MS REED: I - - -

15

MR ROZEN: I'm sorry to talk over you. WIT.0228.0001.0001; you will see that on the screen in front of you.

MS REED: Yes.

20

MR ROZEN: Is that a copy of the statement that you made to the Commission?

MS REED: Yes, it is.

25

MR ROZEN: And have you had an opportunity to read through that statement before giving evidence today?

MS REED: I have.

30

MR ROZEN: And are the contents of your statement true and correct?

MS REED: I do need to make one amendment.

MR ROZEN: Please tell me where.

35

MS REED: And that is at – sorry, I haven't got it right here.

MR ROZEN: We might be able to assist you from here, Ms Reed. Apparently it's paragraph 75 if that helps you.

40

MS REED: Yes, thank you. I've written there that the department contacted me on 26 November 2015.

MR ROZEN: Yes.

45

MS REED: That's incorrect. They contacted [TM], the registered nurse.

MR ROZEN: All right. So you would delete the word "me" in the third line.

MS REED: Yes.

MR ROZEN: And you would insert the name – can you spell it for us, [TM]; is that right?

5

MS REED: [TM], you want me to spell [TM]?

MR ROZEN: [TM].

10 MS REED: Yes.

MR ROZEN: [TM], [TM].

MS REED: Yes.

15

MR ROZEN: With that change being made are the contents of your statement true and correct?

MS REED: Yes, they are.

20

MR ROZEN: I tender the statement of Ms Reed dated 12 June 2019, Commissioners.

25 COMMISSIONER TRACEY: Yes, the statement of Julie Reed dated 12 June 2019 will be exhibit 5-12.

**EXHIBIT #5-12 STATEMENT OF JULIE REED DATED 12/06/2019
(WIT.0228.0001.0001)**

30

MR ROZEN: Ms Reed, you haven't been in the hearing room during the course of today before coming in to give your evidence now, have you?

35 MS REED: No, I have not.

MR ROZEN: Right. Have you spoken to Ms Musico about any of the evidence that she gave?

40 MS REED: No, not really.

MR ROZEN: Well, what does "not really" mean; you did talk to her or not?

45 MS REED: No, she was upset when she came into the waiting room and she was just crying for a bit. That was it.

MR ROZEN: Without wanting to pry into that very personal relationship, are you saying that you just consoled her about the experience.

MS REED: That's right.

5

MR ROZEN: You didn't discuss the contents of her evidence?

MS REED: No.

10 MR ROZEN: Thank you. And I take it you haven't had any opportunity to speak to Ms Jones about any of the evidence that she has given to us?

MS REED: No, I have not.

15 MR ROZEN: All right. Thank you. Now, Ms Reed, you have been a registered nurse since 1970?

MS REED: I was a student nurse in 1970. My registration began in 1978.

20 MR ROZEN: '78.

MS REED: Yes.

25 MR ROZEN: My apology. And you've worked in aged care since 1980 – or you're now required, I think; is that right?

MS REED: I am retired, and I did work until 1980. Sorry.

MR ROZEN: From 1980.

30

MS REED: From 1980.

MR ROZEN: Yes. Until you retired - - -

35 MS REED: It's a bit stressful sometimes, sitting here.

MR ROZEN: Yes, yes. And you retired when in 2017; is that right?

MS REED: Very early 2017, January.

40

MR ROZEN: So that period 1980 to 2017 you worked in aged care and you filled very senior positions including as a director of nursing.

MS REED: That's correct.

45

MR ROZEN: Yes. And also as the director of aged care services which is the role you had with Japara.

MS REED: That's correct.

MR ROZEN: You worked with Japara from the beginning, from 2005 when the organisation was established by Mr Sudholz; is that right?

5

MS REED: Yes, I did.

MR ROZEN: And did you know him before that time?

10 MS REED: No, I did not.

MR ROZEN: All right. In your time with Japara you were part of the executive leadership team; is that right?

15 MS REED: Yes.

MR ROZEN: And that reported to the board of directors?

MS REED: Yes.

20

MR ROZEN: And in your individual capacity you reported directly to Mr Sudholz, the CEO.

MS REED: Yes, I did.

25

MR ROZEN: All right. In your statement you've set out at paragraph 18 – and please look at that if it assists you in answering my questions – you set out a number of roles, a number of tasks that you were required to perform in your role at Japara. Do you see that?

30

MS REED: Yes, I do.

MR ROZEN: I just want to ask you about two of those. Firstly, do you see paragraph K down at the bottom.

35

MS REED: Yes, I do.

MR ROZEN: Part of your responsibility was managing complaints both internally and externally in consultation with facility managers and the quality team. Do you see that?

40

MS REED: Yes, that's correct.

MR ROZEN: All right. And as you understood it, what did managing complaints mean?

45

MS REED: Well, what that meant was that complaints were dealt with mainly at the facility level, but if there were complex complaints they would come to me and I would advise and tell people what might need to be done to resolve the complaint and I did look at complaints virtually on a monthly basis as they came in in monthly reports, too.

MR ROZEN: They were the reports that came in from the facility managers; is that right?

10 MS REED: That's correct.

MR ROZEN: All right. And in fulfilling that function, that is, the management of complaints, you worked together with quality managers such as Diane Jones; is that right?

15 MS REED: I did. Yes.

MR ROZEN: And also facility managers such as Rachael Musico.

20 MS REED: Yes, I did.

MR ROZEN: They both answered to you whether directly or indirectly in relation to this function; is that right?

25 MS REED: That's correct.

MR ROZEN: Now, Japara as we know, took over the Mitcham facility in 2014. That's your recollection, is it not?

30 MS REED: Yes, it is.

MR ROZEN: And one of the issues that has been raised with the commission by Ms Hausler as you know is what happened to the staffing upon Japara taking over. You're aware that's one of the matters that she has raised in her evidence.

35 MS REED: I am aware of that.

MR ROZEN: Yes. And you deal with this issue at paragraph 25 of your statement. Do you see that on page 4? Do you see it starts:

40 *Japara did not change the composition or number of staff at Mitcham upon taking over the facility.*

MS REED: That's correct.

45 MR ROZEN: Okay. And you go on to say that:

The majority of existing staff stayed on, including the CEO of Whelan who became the state manager for Japara.

Do you see that?

5

MS REED: Yes.

MR ROZEN: We know from other evidence that[subject to non-publication direction], who had been a facility manager under Whelan; she stayed on at least for some time.

10

MS REED: Yes.

MR ROZEN: Do you recall that?

15

MS REED: Yes, [subject to non-publication direction] left in June 2015.

MR ROZEN: Do you recall the circumstances surrounding [subject to non-publication direction]leaving at all?

20

MS REED: Yes, I do.

MR ROZEN: And what were they?

MS REED: [subject to non-publication direction] had some issues at home, she had a young child and she wanted to spend more time at home.

25

MR ROZEN: Did she express any concerns about Japara's oversight of the Mitcham facility in her decision to leave?

30

MS REED: No, not at all.

MR ROZEN: You also say there that a clinical care nurse who left in 2015 of her own accord was not replaced. Do you see that?

35

MS REED: Yes.

MR ROZEN: When that nurse left, how many registered nurses were there working at Mitcham. Do you know?

40

MS REED: There was a registered nurse 24/7 on duty and during Monday to Friday there was – to the best of my recollection, there was the other RN who was doing ACFI and other work on care plans and things like that, and then there were two registered nurses who were quality managers at the facility.

45

MR ROZEN: Quality managers who worked at the facility.

MS REED: They were stationed there fairly regularly, probably not every day.

MR ROZEN: I see, but they weren't working as nurses, were they, the quality managers?

5

MS REED: Not on the floor delivering personal care or clinical care.

MR ROZEN: No. And nor was the facility manager doing that despite the fact that she was also a nurse.

10

MS REED: That's correct.

MR ROZEN: All right. So correct me if I'm wrong, but am I understanding you to be saying that when this nurse that you're referring to left, that halved the number of nurses that were performing those clinical care roles? In other words, it went from two to one; is that what you're saying?

15

MS REED: We had one – we had an EEN on as well, I'm sorry, so when you say registered nurse, I interpreted that as a registered nurse, not the EEN so there was an EEN on as well.

20

MR ROZEN: Right. But just so that this is clear, when that nurse left there was just the one the one nurse on call 24/7 performing nursing duties. Am I understanding you correctly?

25

MS REED: With access to the other nurses like the quality managers and that that were on site.

MR ROZEN: Yes. Okay. Now, I suggest to you that one of the things you had learnt in the 35 years or so working in aged care by 2015 was that relationships between staff and residents were key to the successful delivery of quality aged care services?

30

MS REED: That is correct.

35

MR ROZEN: Yes. And not only are relationships between staff and residents vital but relationships between staff and residents' families are also, they're important to delivery of quality aged care, do you agree with that?

40

MS REED: I do agree with that.

MR ROZEN: Yes. It's something you deal with, in fairness to you, in your statement at paragraph 43, if you need to see it. I don't need to take you to it. Do you agree that central to the building of such relationships is the display of honesty and integrity by staff members in their dealings with residents and family members?

45

MS REED: Yes, I do.

MR ROZEN: They're values that are identified expressly in the staff handbook which bore your name on the front page, are they not, Ms Reed?

5 MS REED: Yes, they are.

MR ROZEN: Yes. There were five stated values of Japara, weren't there, set out in the staff handbook?

10 MS REED: Yes, there were in the vision and mission.

MR ROZEN: Yes. And one of them was honesty and another was integrity. Do you agree with that

15 MS REED: Yes, I do agree with that.

MR ROZEN: And I think that – sorry, I withdraw that. I suggest that as part of the inductions that staff members received, those values would have been drawn to their attention; is that right?

20 MS REED: Yes, they were.

MR ROZEN: All right. Were you involved in delivering induction training to quality managers such as Ms Jones?

25 MS REED: Yes, I – I've just got to think back to that one because I met with Ms Jones when thee first started, I think, the first day.

MR ROZEN: Yes.

30 MS REED: And then the other quality managers would induct her.

MR ROZEN: I see. Clarry Hausler, as you knew, had been at Mitcham since 2002. Were you aware of that - - -

35 MS REED: Yes, I was.

MR ROZEN: - - - back in 2015? It would have made him one of the oldest residents there – one of the longstanding residents, I mean, at the facility.

40 MS REED: Yes, it would.

MR ROZEN: Right. And before the formal complaint that she made, which I will come to in a moment, you understood that Noleen Hausler his daughter regularly visited him.

45 MS REED: Yes, I did understand that.

MR ROZEN: Yep, and that's not always the case in aged care, is it, that a resident is fortunate enough to have family members who regularly visit?

MS REED: Not always.

5

MR ROZEN: No, but where they do, I think you've already agreed that building good relationships with such family members is important.

MS REED: That's correct.

10

MR ROZEN: All right. I want to ask you about a written complaint that Noleen Hausler made on the 2nd of September 2015. It's in our document system here as tab 39 which I will ask be brought up, please. You will see it on the screen in front of you as it's brought up. Do you see that there - - -

15

MS REED: Yes, it's not - - -

MR ROZEN: - - - Ms Reed?

20 MS REED: It's not a very good copy or - - -

MR ROZEN: I'm not sure if we can make it any better. Would you be assisted by having a hard copy in front of you? Is that better being made a little bit bigger for you to read, Ms Reed?

25

MS REED: Yep.

MR ROZEN: All right.

30 MS REED: It's very faint, but I will try hard.

MR ROZEN: All right. You understand the black boxes are where people's personal details have been what blacked out. That wasn't how it looked when it was provided. Do you understand that?

35

MS REED: No, not at all.

MR ROZEN: All right. This complaint was initially provided in written form to the facility manager at Mitcham, was it not?

40

MS REED: It was provided to one of the registered nurses - - -

MR ROZEN: Yes.

45 MS REED: - - - who provided it to one of our quality managers through the lock box system.

MR ROZEN: I see, and you've had cause to look again at this document as part of preparing your evidence in this Royal Commission, I take it?

MS REED: Yes, I have.

5

MR ROZEN: Yep. In fact, you attached to your statement, don't you, a series of emails surrounding this complaint being made.

MS REED: Yes, I have.

10

MR ROZEN: Yep, and you were provided with a copy of this complaint shortly after it was made, were you not?

MS REED: I was – this complaint was sent to me with an email - - -

15

MR ROZEN: Yes.

MS REED: - - - and I did not receive it till the 4th of September 2015.

20

MR ROZEN: Okay. And it was provided to you under cover of an email by Kim Keevers, was it not?

MS REED: Yes, it was.

25

MR ROZEN: I'm told there might be a better copy of it. Perhaps if tab 21 could be brought up, please. Is that a bit easier to read, Ms Reed?

MS REED: Yes, it is. Thank you.

30

MR ROZEN: Yes. Okay. And you would have noticed when you read it, that Ms Hausler wrote that the agency nurse who was attending to her father repositioned him by herself by wrenching his right arm. Do you see that about five lines down - - -

MS REED: Yes, I do.

35

MR ROZEN: - - - in the main body?

MS REED: Yes.

40

MR ROZEN: "Wrenching his arm." You would have seen she also made reference to, "Jerked his head sideways"? Do you see - - -

MS REED: Yes, I see that.

45

MR ROZEN: Yes, and:

...pushed his head back and hyper extended his head.

Do you see those – they’re being highlighted for you.

MS REED: Yes, I can see that.

5 MR ROZEN: And there is a reference to him being in an extremely compromised position whilst he was being fed, two lines further down. Do you see that?

MS REED: Yes, I do.

10 MR ROZEN: What was being described in that complaint was, obviously enough, the use of force by the agency nurse in relation to Mr Hausler. Do you agree with that?

15 MS REED: I would be concerned about the way she had interacted with him, yes, by reading that.

MR ROZEN: All right. I’m not sure that you’ve answered my question. Perhaps if I can just clarify. It’s clear that expressions like, “Wrenching his right arm, hyper extending his head, extremely compromised position,” what’s being described there
20 is the use of force by the carer. Do you agree?

MS REED: I would agree that it would suggest that.

25 MR ROZEN: Yep, and you’d also agree with me, wouldn’t you, that any use of force in those circumstances achieving those outcomes, “Hyper extending the head, extremely compromised position,” that’s force that’s unreasonable, is it not?

30 MS REED: I think when you read a document like this and the person who submitted it has observed the behaviour, that it would be a good idea to speak with that person around what they actually did observe and what it meant.

MR ROZEN: We will come to that question of investigation in a moment, but for the moment, I just wonder if you could answer my question. You’ve agreed with me that the references in the complaint are to references of the use of force, and my
35 question’s a simple one: do you agree that it was unreasonable – the unreasonable use of force? Perhaps I will put it another way for you: would it ever be reasonable, in your view, to do those things to an elderly resident in your nursing home, particularly one as frail as Mr Hausler?

40 MS REED: It’s not reasonable to move someone inappropriately or position them inappropriately, no.

45 MR ROZEN: No, and that means, therefore, that this was the unreasonable use of force, wasn’t it, Ms Reed?

MS REED: As I said, it's unreasonable to position people in that manner and there may – it does suggest some force, but whether it was unreasonable or not has to be checked with the people that are – the person that's observed this and reported it.

5 MR ROZEN: So you think, without doing that, you couldn't conclude whether or not this was reasonable or unreasonable; is that your evidence?

MS REED: For – this letter that we received from Ms Hausler did not reflect what she had reported to us on the 2nd, and we had asked her to put it in writing. So when
10 we got it, we thought, well, this isn't what was first reported, so we need to check with her what the facts are.

MR ROZEN: Ms Reed, this is going to be much quicker if you try and answer my questions, if you could. It's a very simple question.
15

MS REED: I'm sorry.

MR ROZEN: You've agreed with me that it's the use of force. We seem to be a bit stuck on whether it's reasonable or unreasonable. Your evidence ultimately is
20 without asking some questions of Ms Hausler, you couldn't reach a conclusion about that. Is that what you're telling the Commission?

MS REED: Well, I think it's not reasonable to move people like that. It is unreasonable to move - - -
25

MR ROZEN: Yep.

MS REED: - - - them like that.

MR ROZEN: Yep, and if it was use of force and unreasonable, you know that, under the Aged Care Act, it was reportable, wasn't it? It was a mandatory report situation.
30

MS REED: If it was – we have the right to investigate the incident and then make a decision around whether it is unreasonable or not. So that is why we would still confer with Ms Hausler who witnessed this.
35

MR ROZEN: Did you do that?

MS REED: Yes. [TL] conferred with her about it, and Ms Hausler told her that it was poor manual handling and that she was happy to ring the agency to speak to them about it to explain it.
40

MR ROZEN: When did you speak to [TL] about that?
45

MS REED: On the Friday which would have been the next – the day that I received this in the morning.

MR ROZEN: That's Friday, the 6th of – Monday was the 2nd, Tuesday the 3rd, Friday was the 6th of September, was it not, Ms Reed?

5 MS REED: It must have been – I'm sorry, I thought that the Friday was the 5th, but it must have been – it was the 5th – 4th, when I received it, that I spoke to her.

MR ROZEN: I'm sorry. I stand corrected. Thursday was the 3rd, my apology. Friday was the 4th. You're saying you spoke to [TL] on the 4th, did you?

10 MS REED: Yes, I did.

MR ROZEN: You received the complaint on the 3rd, didn't you, the Thursday?

15 MS REED: No. It was sent to me, and I didn't receive it until the 4th.

MR ROZEN: Could you have a look at tab 38, please, to be brought up on the screen for you.

20 MS REED: Yes.

MR ROZEN: That's how you got the complaint, wasn't it, in an email from Ms Keevers?

25 MS REED: I did.

MR ROZEN: Are you saying it came late on the Thursday, but you didn't actually see it till the Friday? Is that your evidence?

30 MS REED: That's correct because Ms Keevers rang me before I even saw this email early in – on the Friday to draw my attention to it.

MR ROZEN: She attached a draft letter, didn't she - - -

35 MS REED: Yes, she did.

MR ROZEN: - - - seeking your approval to send to Ms Hausler in response; is that right?

40 MS REED: Yes, she did.

MR ROZEN: And in her email, you will see that she was asking you two things, wasn't she: firstly, whether you consider it to be reportable; is that right?

45 MS REED: That's correct.

MR ROZEN: And, secondly, whether you were happy for the letter to be sent?

MS REED: It was common practice for the person – the quality manager or the facility manager - - -

MR ROZEN: Yes.

5

MS REED: - - - if they did a letter to anyone, to send that letter to me to vet – to look at and make sure that it was all right to go out.

MR ROZEN: All right. Try if you can, please, Ms Reed – and I don't want to be rude, but just try and listen to my question. I'm not asking whether it was common practice. I'm just asking you to confirm that that's what you were being asked in this email: to vet the letter and give approval for it to be sent; is that right?

10

MS REED: Yes, that's correct.

15

MR ROZEN: Yep. And in relation to the first issue, whether or not it was reportable, Ms Keevers wrote and this is in the third paragraph:

I've only read this complaint letter tonight. It's rough handling, but I don't like two word, "wrenching him".

20

Perhaps the word "two" was meant to be "the". Perhaps that should read, "I don't like the word 'wrenching him'." Do you see that?

25

MS REED: Yes, I do.

MR ROZEN: Yeah, and what she was saying to you was if that if it was rough handling, whatever that might mean – I'll ask you in a moment – the word "wrenching" made it a particularly rough form of rough handling. Do you agree with that?

30

MS REED: You would think that.

35

MR ROZEN: Yep, and that's what she was getting at there, isn't it, that - - -

MS REED: Yes.

MR ROZEN: - - - it's on the edge of rough handling.

40

MS REED: Yes.

MR ROZEN: What does "rough handling" mean at Japara, by the way?

45

MS REED: If a staff member attends a resident who needs two people to attend them and they do that on their own, then that's – that – that's rough handling.

MR ROZEN: And that's not reportable; is that the point? Rough handling is not a reportable assault, is that - - -

MS REED: Not - - -

5

MR ROZEN: Am I understanding the distinction?

MS REED: Not necessarily because if – if a staff member moved a resident in the bed on their own with a slide sheet, I would still consider that rough handling because they've done it on their own. But if they – they move people round and do things like that, I still consider that rough handling. But if they were worse than that, then, you know – there's degrees of rough handling is what I'm trying to say.

10

MR ROZEN: There's no suggestion of this being movement on a slide sheet, was there?

15

MS REED: No.

MR ROZEN: No. What I'm trying to understand is this dichotomy between rough handling and reportable assaults. That's really at the heart of this communication, isn't it? If we can categorise it as rough handling we don't have to report it, is that right? Were they the rules at Japara as you understood it?

20

MS REED: No, not at all.

25

MR ROZEN: So why the question of whether it was merely rough handling in this email?

MS REED: Well, inappropriate manual handling of a resident, you would not be reporting that as a compulsory report.

30

MR ROZEN: But was this inappropriate handling of a resident, wrenching the arm, hyper-extending the head?

MS REED: Well, that's why we needed – we spoke to Ms Hausler about it to get the full picture.

35

MR ROZEN: Then you say based on what Ms Hausler said to Ms [TL] it confirmed that it wasn't reportable. Is that your evidence?

40

MS REED: Well, yes, it is actually, yes.

MR ROZEN: Well, it was your decision, ultimately, wasn't it, not to report it?

MS REED: And it was my decision, yes.

45

MR ROZEN: And you stand by that as you sit there in the witness box.

MS REED: I do stand by the decision.

MR ROZEN: I want to ask you something that Mr Sudholz says on this subject of rough handling and I will quote you paragraph 60 of his statement, which perhaps
5 should be brought up, WIT.0229.0001.0001. That's paragraph 60 so it's at page 0010. Just wait while that comes up. I will just read it to you while it's coming up, Ms Reed, and you tell us if you need to see it in front have you. Mr Sudholz was being asked about his understanding of rough handling and he said this:

10 *Any allegation or suspicion of rough handling is to be dealt with in accordance with Japara's incident reporting procedure. Any incidents of rough handling are subject to monitoring and review in accordance with the incident reporting procedure. There are no separate criteria applied in distinguishing rough handling from reportable assaults.*

15

Do you disagree with that last statement, that there are no criteria to distinguish rough handling from reportable assaults?

MS REED: This has only just come up here.

20

MR ROZEN: Yes.

MS REED: So where am I looking at that to read it?

25 MR ROZEN: That's the paragraph. Perhaps read it to yourself and then tell me whether you agree or disagree with what Mr Sudholz says there, in the last sentence.

MS REED: I – I can't comment on that because I don't know the context of – that he was making that statement in.

30

MR ROZEN: I see. But you say there is a distinction between rough handling and reportable assaults, don't you, putting aside what Mr Sudholz says, you see a difference?

35 MS REED: There's a difference between reportable assaults and inappropriate manual handling and it's a common term to call it rough handling.

MR ROZEN: All right. I think you've answered my question. Can I take you back to Ms Keevers' email of 3 September, please. The second last paragraph – I'm
40 waiting for that – wait while that's brought up. That's tab 38, please. Do you see the second last paragraph after the word "thanks"; it starts:

Can you vet the response letter and give it the okay to go.

45 Do you see that?

MS REED: Yes. That's correct.

MR ROZEN: And then Ms Keevers wrote this:

I have dated it the 5th so it looks like we thought about it seriously.

5 Do you see that?

MS REED: Yes.

MR ROZEN: Did you read that when you first saw the email?

10

MS REED: Yes, I did read it.

MR ROZEN: Did it concern you?

15 MS REED: I think at 9 o'clock at night or whatever it was that this was being written, that it was an unfortunate turn of phrase, really.

MR ROZEN: It's more than an unfortunate turn of phrase, isn't it, Ms Reed?

20 MS REED: I don't really think that that was the intention of Ms Keevers and I can't answer for her on that but knowing her, I would say it was an unfortunate turn of phrase.

MR ROZEN: You met her the next morning.

25

MS REED: No, I spoke with her on the telephone.

MR ROZEN: Did you tick her off for saying in an email that Japara were pretending to have taken seriously such a serious complaint?

30

MS REED: No, I did not.

MR ROZEN: You did not?

35 MS REED: No, I did not, because I don't believe that was her intent.

MR ROZEN: So you would have asked her what her intent was, I suppose.

40 MS REED: No, I did not ask her what her intent was because I believed that she was just meaning that, you know, where Ms Hausler would realise that we had looked at it seriously.

MR ROZEN: No, Ms Reed, what she was saying to you, I suggest, is let's pretend we looked at it seriously by dating it two days hence.

45

MS REED: I don't believe that's correct and I would never do that with a letter or a response to anyone, pretend to have looked at it seriously. I would have – I did look at it seriously.

5 COMMISSIONER TRACEY: Did you direct her to change the date on the draft?

MS REED: No, I did not.

COMMISSIONER TRACEY: Why not?

10

MS REED: The 5th? I didn't see any reason to because I was – I posted the letter on the 7th, I think. I didn't make any changes to the letter.

15 MR ROZEN: I suggest, Ms Reed, that you well understood that what Ms Keevers was saying is to put a date a few days away from today, it will look like we've taken this complaint seriously when we, in fact, haven't?

MS REED: I don't agree. I'm sorry. Knowing Ms Keevers, I don't agree with that at all.

20

MR ROZEN: Can you suggest an alternative explanation for what she wrote, Ms Reed?

25 MS REED: I think you would really have to ask her that, but I know Ms Keevers and I know that she would not mean that.

MR ROZEN: What did you understand her to mean when you read the email?

30 MS REED: That it was that she would know that we had looked at it seriously. We were still investigating this at that stage, we didn't post the letter until the 7th until we had finished, you know – until Ms [TL] had spoken to Ms Hausler and we then made the decision.

35 MR ROZEN: You wrote back to Ms Keevers on 6 September, didn't you? Do you recall that on the Sunday morning?

MS REED: Are we bringing that email up?

40 MR ROZEN: Tab 41, please, operator. That's the email you sent back to Ms Keevers, isn't it?

MS REED: Yes, it is.

45 MR ROZEN: And you wrote to her:

Dear Kim as discussed you're correct, it's rough handling.

If I can just pause there, in other words we don't need to report it; correct?

MS REED: We didn't need to report it because it was inappropriate manual handling.

5

MR ROZEN: I see. You maintain that, don't you - - -

MS REED: I do.

10 MR ROZEN: - - - that that description of wrenching the arm, hyper-extending the head, that's all just inappropriate manual handling; is that right?

MS REED: The - the information that Ms Hausler gave - - -

15 MR ROZEN: Ms Reed, just try and answer my question.

MS REED: I am trying to answer your question with all due respect.

MR ROZEN: Well, do go on.

20

MS REED: The information that Ms Hausler gave Ms [TL] when she contacted her was that it was - she wasn't happy with the manual handling, she didn't - she explained that the term "wrenching" was that the nurse had pulled - the carer had pulled him across, and that she volunteered to ring the agency and tell the agency that that is what she meant. So based on the fact that Ms Hausler had claimed that she had observed this behaviour with the carer, that she hadn't reported it on the night that she was visiting and observed it. The next day Ms Hausler reported it to the registered nurse only to say that she didn't like the carer and she didn't want the carer caring for her father again, and when [TM] told Kim that that had happened, Kim said to her, "Well, that's all very vague, can you please get Ms Hausler" - sorry, I stopped because I didn't think you were listening.

25

30

MR ROZEN: No, I am, I'm sorry. I'm trying to do two things at once, always a bad idea for a man, I think, Ms Reed.

35

MS REED: So the part where I - that I got to; did you hear everything that I said?

MR ROZEN: I did, and it's recorded on the transcript, more importantly. Thank you.

40

MS REED: Okay. So when - when Ms Hausler put it in writing, she put it in an envelope, put it in the drop box. It wasn't seen until much later in the day and that - and that was on the 3rd, and I saw it on the 4th, and [TL] spoke to her on the 5th, and Ms Hausler said that it was - she had observed it and it was not appropriate manual handling and she was happy to call the agency and tell them that.

45

MR ROZEN: Ms Reed, have you seen the video of the incident on 1 September that's described in the complaint of 2 September?

MS REED: I have since seen the video.

5

MR ROZEN: Yes.

MS REED: And I saw that video on 22 November 2016.

10 MR ROZEN: Yes, and despite having seen the video you still maintain this was rough handling and not reportable; is that right?

MS REED: That's not what I've said. I've seen the video.

15 MR ROZEN: Yes.

MS REED: And what I would say to you is I would have reported that.

MR ROZEN: You accept that it was reportable.

20

MS REED: I do accept, once having seen the video, that it was reportable.

MR ROZEN: I see.

25 MS REED: But based on the facts that we had at hand and what Ms Hausler had told us, the decision I made was not to report.

MR ROZEN: A pretty important bit of investigating this matter was to work out how Ms Hausler was in a position to give this description, wasn't it?

30

MS REED: Well, she led us to believe that she was in the room.

MR ROZEN: You just answer my question, please, Ms Reed. That was a pretty important matter to investigate, wasn't it?

35

MS REED: Yes.

MR ROZEN: It's a central issue, really, isn't it? In any complaint, how do you know this? Did you see it or is it hearsay? Did you ask Ms Hausler that?

40

MS REED: Ms Hausler had told [TM] that she had observed the carer attending to her father.

MR ROZEN: Ms Reed, you're on oath here.

45

MS REED: Yes, and I'm telling you the truth.

MR ROZEN: Okay. So we will just tease that out if we can. You say Ms Hausler told [TM] that she had seen the carer do this with her own eyes. Is that your evidence to this Royal Commission?

5 MS REED: At the time she said that she had observed the carer with her father and she did not want the him to – the carer to care for him again.

MR ROZEN: Yes, when did she say that to [TM]?

10 MS REED: I believe that it was on 2 September.

MR ROZEN: Ms Reed, you never asked Ms Hausler how she was in a position to make this complaint, did you?

15 MS REED: I did not personally ask her how she made the complaint.

MR ROZEN: Nor did [TL], did she?

MS REED: No, she did not.

20

MR ROZEN: No. You didn't investigate that question, did you, Ms Reed?

MS REED: I didn't - - -

25 MR ROZEN: Either you personally or anyone else.

MS REED: We didn't have any reason to investigate that.

30 MR ROZEN: Yes. But you've already told the Royal Commission that without investigating it, you couldn't ascertain whether it was reportable; correct?

MS REED: I don't really understand what you're getting at there. I'm sorry.

35 COMMISSIONER TRACEY: Ms Reed, would you stop looking behind questions and trying to be a jump ahead of the questioner. Concentrate on the question and answer it. Many questions you've been asked already can be answered yes or no but you have branched off in unresponsive ways. Now, there will be other questions where you do need to elaborate more, but would you please concentrate on the questions and answer them.

40

MS REED: Yes, Commissioner. I apologise.

45 MR ROZEN: Ms Reed, do you think that the way that this complaint was responded to by Japara and in particular the email you received from Ms Keevers was consistent with the value of honesty?

MS REED: Yes, I do.

MR ROZEN: And do you think it was consistent with the value of integrity?

MS REED: Yes, I do.

5 MR ROZEN: Japara had a procedure in place, didn't it, for investigating critical incidents. Are you aware of that procedure at this time?

MS REED: Yes.

10 MR ROZEN: Can tab 202, please, be brought up. I will just ask you a couple of questions about it. That was the incident reporting and investigating procedure, was it not, at this time? That's what Mr Sudholz tells us. That's right, isn't it, Ms Reed?

MS REED: That's not the one that was in place when I was – at the time.

15

MR ROZEN: Excuse me for a moment. I will come back to that if I need to. Can I just ask you this, Ms Reed: are you satisfied that what Japara did in response to the complaint of the 2nd of September met the investigation standard that applied in Japara as at that time?

20

MS REED: Yes.

MR ROZEN: Including Ms Hausler not being asked how she was in a position to make the complaint?

25

MS REED: Yes.

MR ROZEN: Wouldn't that be the first step in any investigation, Ms Reed?

30 MS REED: Ms Hausler – oh, yes, it would be to ask to speak to people.

MR ROZEN: Yep. So how can the investigation have been done without asking that question?

35 MS REED: So do I give an – a respond a yes or no here? Sorry.

MR ROZEN: Well, you respond as you wish, Ms Reed, but what I'm - - -

40 MS REED: But we – we received the letter on the – late in the evening and Ms Hausler was contacted the next day to speak to her about it.

MR ROZEN: But she was never asked – I think you've agreed with this. She was never asked how she was in a position to make the complaint. In other words, did she see these events or not, was she?

45

MS REED: I think if she has told the RN that she observed the carer doing this, that she must have seen it.

MR ROZEN: How did you find out that she had said that to the RN, Ms Reed?

MS REED: Because I was told that is what she had told [TM], that she'd observed the carer tending her father and that she didn't want the carer attending him again.

5

MR ROZEN: Just so this is clear, Ms Reed, are you saying that Ms Hausler told [TM] that she observed the events that she's describing in her complaint of 2 September? Is that your evidence?

10 MS REED: Yes, it is.

MR ROZEN: All right. Do you want to say something? Apparently, Mr Borsky has got something to say.

15 COMMISSIONER TRACEY: Yes, Mr Borsky?

MR BORSKY: Commissioners, I need not interrupt the examination of my learned friend.

20 COMMISSIONER TRACEY: There is some ambiguity about the use of the word "observed". It could mean observed physically or observed on tape. I don't know whether that makes any difference, but it may be something we need to be clear about.

25 MR BORSKY: In due course, no doubt, the Commissioners will come carefully to consider Ms Hausler's own evidence on this subject at paragraph 86 of her statement, and that may assist in resolving the ambiguity. The Commissioners please.

COMMISSIONER TRACEY: Yes. Thank you, Mr Borsky.

30

MR ROZEN: Thank you, Commissioners. Are you able to assist us at all there, Ms Reed? Is your understanding that in this conversation that you're describing between Ms Hausler and [TM] that she told – that Ms Hausler told [TM] that she observed the events directly or that she saw film footage of the events?

35

MS REED: It was my understanding that she had observed it directly.

MR ROZEN: And that's what she told [TM]; is that what you're saying?

40 MS REED: She said she had observed it. She didn't differentiate between whether it was on a CCTV film or in person.

MR ROZEN: I suggest to you, Ms Reed, that you are making that up. That Ms Hausler, at no point, told [TM] that she'd observed the events that she described in her complaint of the 2nd of September.

45

MS REED: Well, that's incorrect. I'm sorry. That is what she was told.

MR ROZEN: Now, I've already asked you a number of questions about the reporting of this issue. It was ultimately reported, wasn't it, on the 27th of November?

5 MS REED: Yes, it was, 2015.

MR ROZEN: Was that your decision to report it?

MS REED: No, it wasn't.

10

MR ROZEN: So when Ms Musico told the Commission that it was, she's wrong, is she?

MS REED: Well, she must have made a mistake because on the twenty – sorry, yes, she is wrong.

15

MR ROZEN: Okay. Who decided to report it at Japara?

MS REED: It wasn't Japara who reported it in the November. It was Ms Hausler who reported it to DSS.

20

MR ROZEN: Perhaps we're at cross-purposes. After Ms Hausler reported it, Japara put in a written report about it too, didn't they?

MS REED: Yes, we were requested to do that by DSS.

25

MR ROZEN: So you say that there was no decision as such to report it. It was just a compliance with, what, a direction from DSS, was it? Is that right?

MS REED: Yes.

30

MR ROZEN: Is that what happened?

MS REED: Yes.

35

MR ROZEN: I see, and did you look at the report before it was sent in?

MS REED: No, I did not.

MR ROZEN: Okay. I want to change to a different topic. I'm conscious of the time, Commissioners. I know there's a desire to finish Ms Reed today.

40

COMMISSIONER TRACEY: Well, there is, but there's also a concern about staff and building requirements. How long do you think you've got to go?

45

MR ROZEN: It will be shorter if I have the opportunity to review the transcript and recommence in the morning, I can put it that way.

COMMISSIONER TRACEY: Yes.

MR ROZEN: I won't finish – if I continue now, I've got at least 20 minutes,
perhaps 25, but in the morning, it may well be that I can do it in less time than that.

5

COMMISSIONER TRACEY: Yes, all right. Well, in that event, I think that this
may be a convenient time. Ms Reed, I'm sorry that we're not able to complete your
evidence this evening, but logistics are going to prevent that, but we would expect
you to be available, please, at 9.30 tomorrow morning to conclude your evidence. In
10 the meantime, you are, of course, free to discuss that evidence with your legal
advisers, but not otherwise.

MS REED: Thank you, Commissioner.

15 COMMISSIONER TRACEY: Commission will adjourn until 9.30 am tomorrow
morning.

MATTER ADJOURNED at 4.52 pm UNTIL TUESDAY, 25 JUNE 2019

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