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TRANSCRIPT OF PROCEEDINGS

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O/N H-1013575

**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**

**SYDNEY**

**10.04 AM, TUESDAY, 7 MAY 2019**

**Continued from 6.5.19**

**DAY 16**

**MR P. GRAY QC, Counsel Assisting**

**MR A. CROSSLAND appears for Mrs Reeves, Ms McCulla and Ms Smith**

**MS D. HOGAN-DORAN SC appears with MS H. STANLEY for Garden View Aged  
Care**

**MR S. BECKETT appears for Dr Burkitt and Dr Wong**

COMMISSIONER TRACEY: Please open the Commission. Yes, Mr Gray.

MR GRAY: Thank you, Commissioners. Before I call my next witness, I will ask the operator to put up on the screen witness statement WIT.0097.0001.0001.

5 Counsel assisting are not relying on certain text in this statement, which is a statement of Michelle Lauren McCulla concerning an issue I mentioned yesterday relating to three packs of risperidone, in respect of which the Royal Commission has received information from the pharmacist in question that not all of those pills were dispensed and the counsel assisting are not making any issue about it. Of course,  
10 these are contents of Ms McCulla's statement and this is not a redaction exercise. This is simply an indication that counsel assisting are not relying on these passages. I will now identify these passages. Paragraph 81, the second line, in the second line the words:

15 *Was being medicated each day and –*

Paragraph 94, the first two sentences. Paragraph 96, the first sentence, and paragraph 102, the last sentence. In addition, Commissioners, in Mrs Lillian Reeves' evidence yesterday she expressed an opinion on transcript at transcript 1551, lines 14 to 16,  
20 and the counsel assisting team are not relying on the following two passages in those three lines. First:

*And it was because he was coming off the medications.*

25 And secondly:

*And we think it was withdrawals.*

I now call Ms McCulla.

30

COMMISSIONER TRACEY: Yes. Thank you.

35

**<MICHELLE LAUREN McCULLA, SWORN**

**[10.07 am]**

**<EXAMINATION-IN-CHIEF BY MR GRAY**

40 MR GRAY: Ms McCulla, what's your full name?

MS McCULLA: Michelle Lauren McCulla.

MR GRAY: Have you prepared a witness statement in the Royal Commission?

45

MS McCULLA: Yes, I have.

MR GRAY: Do you have available to you document WIT.0097.0001.0001?

MS McCULLA: Yes, that's correct.

5 MR GRAY: Do you identify that as your witness statement?

MS McCULLA: Yes.

10 MR GRAY: Do you have any amendments, corrections or anything of that kind that you need to make to the document?

MS McCULLA: No, I don't.

15 MR GRAY: To the best of your knowledge and belief, are the contents of the statement true and correct?

MS McCULLA: Yes.

20 MR GRAY: Commissioners, I tender that document and it's subject to the words that I spoke, at the commencement of the hearing, concerning which parts counsel assisting are relying on, and which we're not.

25 COMMISSIONER TRACEY: Yes. Subject to the matters already advised as to passages that are not to be read and relied on, the statement of Michelle Lauren McCulla dated 23 April 2019 will be exhibit 3-9.

30 **EXHIBIT #3-9 STATEMENT OF MICHELLE LAUREN McCULLA DATED 23/04/2019 (WIT.0097.0001.0001)**

MR GRAY: Thank you, Commissioner.

35 MR GRAY: Ms McCulla, is your mother Lillian Reeves?

MS McCULLA: Yes.

MR GRAY: And your father is Terance Reeves.

40 MS McCULLA: Yes, that's correct.

MR GRAY: Is your mother the guardian of your father?

45 MS McCULLA: Yes.

MR GRAY: And was that also the case throughout 2018?

MS McCULLA: Yes.

MR GRAY: You're close to your mother; is that right?

5 MS McCULLA: Very close, yes.

MR GRAY: And you discuss the care of your father with your mother very frequently.

10 MS McCULLA: Yes.

MR GRAY: And that's been the case for many years now.

15 MS McCULLA: Yes, always.

MR GRAY: And in the course of those discussions, has the topic of your mother, Lillian, giving your father half a tablet of risperidone on occasion if he was very upset ever come up?

20 MS McCULLA: Yes.

MR GRAY: For how long have you known that that was an experience that your mother, Mrs Reeves, had had with giving your father half a tablet of risperidone?

25 MS McCULLA: Yes, I was aware that on a particular occasion that she had given him half a tablet for a car trip that he was going to make which was over five hours, and I was aware of how he responded after he was given the tablet.

30 MR GRAY: And for how long have you known that information? Is it hard to say, years or - - -

MS McCULLA: Yes, more than two years.

35 MR GRAY: All right. Now, I want to ask you about the period leading up to 1 May 2018. Were you involved in discussions with your mother, your sister and your brother concerning your father going into respite care while your mother went overseas?

40 MS McCULLA: Yes, we had discussed it.

MR GRAY: And were you willing to make visits to your father as often as you could in support of your mother's plan that she be able to go on that overseas trip?

45 MS McCULLA: Yes, we discussed it, we would all be around, and we love to visit dad anyway. and he knew us and we didn't want to lose that, so we would make sure that someone was there, if not every day, every second day.

MR GRAY: Now, I want to ask you about 1 May. The Commissioners will understand from your statement that you weren't present when your father was admitted into Garden View on 1 May; is that right?

5 MS McCULLA: Yes, I was at work that day.

MR GRAY: But in your statement you mention you made a call at about 7 pm.

MS McCULLA: Yes, I did.

10

MR GRAY: Can you tell the Commissioners about that call you made to Garden View that you made on 1 May at 7 pm?

MS McCULLA: Yes, absolutely. I had spoken to my mum and my sister throughout the day to see how dad was settling in. I had finished dinner with my family and decided that I wanted to give dad a call to see how he was going and how he was travelling. I spoke to a nurse when I called the home, and she said that dad was a bit unsettled and was currently with her at the time, following her around. She asked me if there was anything that my father had been previously given to settle his nerves. I repeated that I was aware that she had given him half a tablet of risperidone previously, but it did not sit well with dad. And then I asked to speak to my father and I spoke to him on the phone and told him that it was okay and that he wouldn't be there forever. He will come home and that I would come in and visit him shortly, and he seemed fine with that and we said goodnight.

25

MR GRAY: Operator, please bring up tab 64. Thank you. And please call out the top quarter of – I beg your pardon, no, don't do that. Just leave it at that size. Thanks, operator. Ms McCulla, I want you to have a look at this page that's displayed and if you look carefully, about two-thirds of the way down, there's – adjacent to an entry that says 2200, but don't necessarily be influenced by that because we don't know precisely what that means, whether that's the time things were written - - -

30

MS McCULLA: Yes.

35

MR GRAY: - - - as opposed to the time things occurred, so if we look adjacent to there, do you see:

40 *Resident remains awake and wandering. Received phone from wife and daughter. Wife informed the above.*

Now, the entry then goes on:

45 *Wife said at home when he is perhaps really restless she gives risperidone 5 milligram half tab TDS written in LMO's book.*

I won't read the rest. Now, do you have any comment on the expression TDS?

MS McCULLA: No, I don't know what that is.

MR GRAY: All right. What about the reference to the giving of half a tablet of – it's actually .5 milligram, it looks like 5 but it's .5 milligram half tab risperidone.  
5 Are you able to comment on that?

MS McCULLA: Well, if they're saying that we informed them that that's something that we would do at home, it's 100 per cent incorrect. Dad never – after the occasion that I was aware that he had had the half tablet to make a trip to a  
10 holiday house that we had, he was very dosed out. It didn't sit well with him, and as a family we had discussed that we didn't ever want to do that again. So to recommend that as a treatment in a home, absolutely would never have happened.

MR GRAY: Could I ask about the reference to received phone call from wife and  
15 daughter.

MS McCULLA: I was at home with my family.

MR GRAY: Assuming the reference to the daughter might be a reference to you.  
20

MS McCULLA: Yes, correct. I made that phone call.

MR GRAY: And you weren't on the phone with your mother.

25 MS McCULLA: No. No, I was at my house.

MR GRAY: Thank you. Now, I will ask for tab 88 to be brought up, please, operator. Tab 88. Operator, it looks like that. Is that not tab 88? Could I give you a code number, GVN.001.002.0286. Operator, never mind, I will move to the next  
30 question. Now, I want to ask you, Ms McCulla, about a visit on 4 May. Was that the first visit you were able to make - - -

MS McCULLA: Yes.

35 MR GRAY: - - - to your father.

MS McCULLA: Yes.

MR GRAY: And what did you find when you visited him then?  
40

MS McCULLA: I arrived that day and I found him in an area called the central dining room. It appeared like he was joining in at a table activity, a game of some sort. I was happy to see him. He looked quite well. I told him to come and I'd sit outside and have dinner with him, lunch with him, sorry. We sat down. They gave  
45 me a meal, dad had a meal, we sat down and we ate together. During lunch dad needed to go to the bathroom, so I had to ask someone where the bathroom was.

They pointed it out to dad. He went to the bathroom. Came back. It was quite a nice lunch.

5 MR GRAY: Now, the next visit mentioned in your statement is by your mother on 6 May.

MS McCULLA: Yes, that's correct.

10 MR GRAY: And your mother took a photo on that occasion.

MS McCULLA: Yes, she did.

MR GRAY: Did she share that photo with you close to the time?

15 MS McCULLA: Yes, she did.

MR GRAY: Operator, please bring up tab 16. And is this the photo on 6 May?

20 MS McCULLA: Yes, they walked across the road and into the park that day.

MR GRAY: Thank you. Now, I want to ask you about an event you don't mention having any knowledge of in your statement. On 7 May the evidence will show that a Dr Burkitt filled out a prescription order for risperidone, half a tablet of risperidone at full tablet strength, .5 milligrams, so that amounts to .25 milligrams to be taken as needed, up to three times a day. Did you know about that at the time?

25

MS McCULLA: No, I did not.

30 MR GRAY: Yes. I will just ask now about a visit that you made yourself with your daughter on 8 May, and this is an important event. I will ask you to be as precise as you can in telling the Commissioners about the sequence of events.

MS McCULLA: Yes.

35 MR GRAY: So about what time did you visit Garden View, to the best of your recollection?

40 MS McCULLA: I worked that day and then sat through peak hour traffic so I would have arrived at the home after 5.30, closer to 6 pm. I walked into dad's room. I found him sitting there by himself in a lap belt, a blue restraint that went around his waist and through his legs. He was in his pyjamas just sitting there. I was shocked when I first saw it. I was confused. I had never seen a lap belt before. I didn't understand what it was, what it was used for. Straightaway I bent down and I untied him, and sat on the bed and began to have a conversation with him. He – my daughter was with me and he just engaged with her a lot of the time. I took a couple of photos. As I sat there talking with him, a nurse walked past the room. She seemed surprised that I was there. She called down the hallway to someone else to

45

let them know that I was there. She said to me someone's name – I don't remember the name – needs to speak to you about your father. So I waited.

5 A nurse came into the room. She told me that dad had wandered into someone else's room, had gone to the bathroom on the floor in their room, and then she said that when a male nurse tried to escort him out, he became aggressive. I said, "When you say aggressive, did he try and hit someone?" and she said, "No, he was yelling to stop it, and he wasn't cooperating." So they needed to then restrain him into his chair. She told me that my mum would need to come in and sign a form allowing  
10 them to restrain dad.

MR GRAY: Thank you. Operator, I will ask you to bring up tab 19. Now, you've mentioned in your evidence that you took this – in the sequence you gave your evidence you mentioned this after referring to taking off the restraint.  
15

MS McCULLA: Yes, as soon as I arrived, because it was a little bit shocking and confronting to see the lap belt on dad, I first thing just dropped down and undid it and took it off. And then began taking photos and sending them to the family so that we could see them – see him.  
20

MR GRAY: The next visit I want to ask you about is not a visit you made; it's a visit that Natalie made - - -

MS McCULLA: Yes.  
25

MR GRAY: - - - on 11 May.

MS McCULLA: Yes.

30 MR GRAY: Natalie Smith is your sister; correct?

MS McCULLA: That's correct. Yes.

MR GRAY: Could I ask the operator to bring up tab 20, please. Now, just looking  
35 at this document, have you seen this before?

MS McCULLA: Yes, I have.

MR GRAY: Yes, is this in effect a screenshot of a series of texts, including a photo  
40 that's been texted?

MS McCULLA: Yes, that's correct, it's a group text message between myself, my brother, my sister and my mum.

45 MR GRAY: And there's a caption over one of the messages referring to dad.

MS McCULLA: Yes.

MR GRAY: Who's that referring to?

MS McCULLA: That's my mum. It used to be my dad's mobile phone before he became unwell. So she stored the name as dad because it was dad's originally but  
5 after he no longer could use a mobile phone, mum took over that phone.

MR GRAY: And the blue box at the bottom, who's that come from?

MS McCULLA: That's my sister, so she's sending the text message.  
10

MR GRAY: Right. Now, can I just ask, to the best of your recollection - - -

MS McCULLA: Yes.

15 MR GRAY: - - - after you had had that experience on 8 May - - -

MS McCULLA: Yes.

MR GRAY: - - - did you have discussions - - -  
20

MS McCULLA: Yes.

MR GRAY: - - - with the family about what you found on 8 May including the  
25 restraint?

MS McCULLA: Yes, as soon as I hopped back in my car I called my mum, said  
you wouldn't believe it, when I walked into the room, dad was by himself, they've  
got these belt things that they tie him into the chair with, and I told mum that they're  
going to want you to come in and sign to say that they're allowed to be using them.  
30

MR GRAY: Right. And then again on the 11<sup>th</sup>, is this the very next time you've  
heard of the topic of restraint and consent papers?

MS McCULLA: Yes, to the best of my knowledge.  
35

MR GRAY: And hearing this this time indirectly through your sister.

MS McCULLA: Yes. Yes. So Natalie went to visit him, and after every visit we  
would kind of all discuss and give progress to each other, how he was going, whether  
40 we would send photos or FaceTime and she sent a text message that day saying that  
he's once again strapped into his chair.

MR GRAY: Now, the next event I want to ask you about is the signing of a restraint  
authorisation form which seems to have been on 13 May according to the face of the  
45 document. And you refer to that in your statement, but you weren't present, is that  
right, it's just indirect knowledge?

MS McCULLA: Yes, just a discussion that we had had, that's my knowledge of it.

MR GRAY: The next event again is something you refer to by way of indirect knowledge from your husband Justin McCulla?

5

MS McCULLA: Yes. That's correct.

MR GRAY: And was that a visit on 14 May?

10 MS McCULLA: Yes, that would be correct.

MR GRAY: What did Mr McCulla report to you on that day?

15 MS McCULLA: That he was again in – I think he referred to it being in the naughty corner, and he was strapped into his chair again.

MR GRAY: Well, what did your husband say to you about where he had found your father?

20 MS McCULLA: He found him in the East Wing which was a secured locked dementia unit, yes, and he referred to it as the naughty room and that dad was obviously not complying with what he was expect to do in the home so that they would take him to this East Wing where he would be tied into a chair and unable to leave.

25

MR GRAY: Now, you make a reference in your statement, this is at paragraph 35, when you first mention this information that you received from your husband, and you just, by way of reference to the East Wing, you say this isn't a place that the family had known anything about up to that time. Can you just elaborate on that, please.

30

MS McCULLA: Yes. So when I started to go to visit dad the first time he was in the central dining room. So as you walk through, you've got a dining room, then you've got like a sort of games area and some bedrooms. So all my visits previously had been either in common rooms or I found him in his bedroom. I was unaware that there was a secured area away from mainstream in the home. We weren't aware that that was a part of the facility. It's very, like, off to the side so you wouldn't generally see it passing.

35

40 MR GRAY: There are no glass windows or transparent sort of areas through which you can see into the East Wing from the main areas; is that your understanding?

MS McCULLA: Well, there may be a small glass window on the door, but it wouldn't be – you wouldn't – you wouldn't notice it. It's not like a big glassed area where you would see people. It was just – I never would have noticed it.

45

MR GRAY: The next event I want to ask you about took place on 15 May, according to the documents on their face, and it was a prescription order for a regular daily dose of a full tablet of .5 milligram risperidone. Did you know anything about that at the time?

5

MS McCULLA: I didn't know that he was – I didn't know as a fact that he was being given risperidone. I suspected that he had been given something as he was starting to – his head was in his – he had his head drooped, he was drooling, he could no longer focus on us. It wasn't normal. To me, it was medicated. So that's when, on the 15<sup>th</sup>, we went, my sister was with me, and we asked to see his medical charts and we said that we don't want them to prescribe or give him risperidone anymore at all.

10

MR GRAY: And you say that was on 15 May.

15

MS McCULLA: To my knowledge it was on 15 May, yes.

MR GRAY: The next event I want to ask you about is your visit on 16 May.

20

MS McCULLA: Yes.

MR GRAY: In paragraph 36, you say that you went to visit your father at around 2 – I beg your pardon, around 12 pm with a good friend.

25

MS McCULLA: Yes.

MR GRAY: Please, doing the best you can to be as precise as you can, relating to the sequence of events - - -

30

MS McCULLA: Yes.

MR GRAY: - - - recount to the Commissioners what occurred during that visit on 16 May.

35

MS McCULLA: Okay. I arrived with my good friend. I went and looked in his bedroom and in the main common areas to find him. I could not find him. I found a nurse and I asked where he was. They told me he was in East Wing. So this was my first time to see East Wing. They – this nurse led me down. We went through a keypad locked door. I found a small room, perhaps 11 metres by five or six metres. There was several patients across from me. There was a line of chairs and everyone was restrained in lap belts along that side of the wall. My father was in a chair with his back towards me restrained in the chair. He had another resident next to him restrained in a chair and then there were quite – maybe two or three in tub beds also restrained. I crouched down in front of my father. He was asleep or he had his head in his chest, eyes closed, drooling. I tried to wake him and I shook his legs. He was shivering. He only had a singlet on. It was quite cold that day and it was all wet with saliva at the front. He had no shoes on. He was in the lap belt.

45

I began to undo the lap belt. I told the – his shirt was hanging over the back of his chair and I grabbed his shirt to put it on him. And then noticed it was wet. So I said to the nurse “I’m just going to go to his room and get him a clean shirt.” At this stage there was one nurse who was currently in the room before I got there, and there  
5 was the other nurse that had walked me in, so there were two. The one that had walked me in said, “I will go back to his room and get a fresh shirt.” So I said “Okay.” I put on his slippers. She came back. I put a shirt on him, I put a jumper on him and I stood him up to walk him outside. There was attached to the room they had some glass sliding doors to a little courtyard. The East Wing room is not a nice  
10 room, not one that you would want to sit down and hang out in. So I took him outside.

As I was walking him out I noticed his pants were wet, and that he was wet. This was the first time I had noticed he was in an incontinence pad. He was toileting  
15 himself the last time I had seen him. I told the nurse he is wet through and would need to be changed, and she took him away and she said, “Okay, we’ll sort that out”. So I went and sat outside in the courtyard with my girlfriend and waited. And then another nurse, different from the first two that I had seen that day, called for me from a resident’s window, I think, called me and said “Can you please come inside and see  
20 this.” As I quickly jumped up and rushed inside and had to go out of the locked East Wing and into a corridor and into a bathroom, she said, “Don’t be upset by what you see”, and by that stage I could hear dad yelling, saying, “Stop it, stop it.”

I walked in and there would have been about six – six nurses hanging onto him. He  
25 had one on each leg, one on – holding both his arms, and this other nurse said to me, “Maybe if he sees you he will settle down.” And another one was grabbing his pants and pulling them down. They were just all hanging off him. There was a lot of yelling and screaming and dad saw me and tried to – he got an arm free and grabbed hold of my arm and he started saying “No. No. Stop it.” It was very traumatic for  
30 him and for me. They sort of rushed, got it all finished, pulled his pants back up. When I turned around my girlfriend was standing in the doorway of the bathroom, and all the nurses left and dad grabbed my arm and said, “How would you like it?” and my girlfriend said to him “No, I wouldn’t like it either.” And that was that.

35 MR GRAY: In your statement, you refer to a walk around the courtyard and returning to East Wing; is that right?

MS McCULLA: Yes. So we then came back and we sat back down. Outside they brought dad’s lunch around and I chopped it up and started helping him eat it, feed it  
40 to him. He was really shaky and angry. It took a long time for him to, like, settle. You could just see he was agitated. He was fiddling with his hands and like looking around, just looked really unsettled. Later as we were getting to the end of his lunch he started to shake his leg and I said, “Do you need to go to the bathroom again?” and he said “Yes.” And I said to my girlfriend I am not doing that again, I will not  
45 send him back in there to go to the bathroom. So I said to dad, “Just go down and go – use the garden.” So he got up and he walked down. I’m not sure whether he went

to the toilet in the garden or if he went in his incontinence pad but by the time I got round the corner he had settled and I said “Have you gone?” and he nodded yes.

5 So then I had to get back to pick up my children from school. So I took him back into East Wing and sat him down and we left really upset that day, just awful – awful.

10 MR GRAY: Ms McCulla, in your statement, you refer – this is at paragraph 37 – to later visits that you make. You just refer to them generally.

MS McCULLA: Yes.

15 MR GRAY: And you say on all those other visits, your father – you found your father in East Wing and - - -

MS McCULLA: Yes.

MR GRAY: - - - in restraints; is that right?

20 MS McCULLA: Yes. So from that day every other day except for one day, which I’m sure we will cover, I found him in the East Wing, sitting in a lap belt, head hanging in his chest, drooling.

25 MS McCULLA: Yes. And when I suggested that you found him in restraints, that was my mistake. That’s not what your statement says. You found him in the East Wing. How often did you find him in restraints during those visits; all except one occasion, did you say?

30 MS McCULLA: Every single time I visited he was in a restraint except for one day when he was completely unconscious in a bed.

MR GRAY: All right. At paragraph 33 of your statement, you give a summary of the visits made by the family.

35 MS McCULLA: Yes.

MR GRAY: And by “the family” you’re including Natalie and Ian, are you?

40 MS McCULLA: Yes.

MR GRAY: And you say:

*Every time we visited dad from this point onwards we found him in restraints.*

45 Subject to the point you just made about the occasion where you found him unconscious in a bed.

MS McCULLA: Yes.

MR GRAY: And you give a total. So that's – you've consulted together and worked out how many visits you made all together.

5

MS McCULLA: Yes.

MR GRAY: In order to give that total.

10 MS McCULLA: Yes.

MR GRAY: And you referred to, in effect, putting to one side the six occasions in the beginning when he wasn't in restraints.

15 MS McCULLA: Correct.

MR GRAY: Where you didn't find him in restraints, there must have been 30 occasions when you did find him in restraints as a family; is that right?

20 MS McCULLA: Yes.

MR GRAY: Now, were you informed that Mr Reeves had had a fall on 21 May? When I ask that question - - -

25 MS McCULLA: When they - - -

MR GRAY: - - - did Garden View inform you on or about 21 May that Mr Reeves had had a fall on that day?

30 MS McCULLA: Not they didn't contact me. They contacted my sister and we spoke about that.

MR GRAY: Well, on 21 May.

35 MS McCULLA: Is this - - -

MR GRAY: I will ask your sister about that.

40 MS McCULLA: Yes, I think this is – you might be referring to the day where they found him just on the floor in the bathroom.

MR GRAY: Yes.

45 MS McCULLA: Yes. I never heard that from them, no.

MR GRAY: What about a possible fall or a fall on 23 May? Were you informed on or about 23 May by Garden View that Mr Reeves might have had a fall on 23 May?

MS McCULLA: I – they did not tell me.

MR GRAY: Operator, please put up tab 23. This is a photograph that you refer to in your statement, Ms McCulla. You say you made a visit on 28 May. I beg your  
5 pardon, 27 May. You made two visits, pardon me, 27<sup>th</sup> and the 28<sup>th</sup>. I will ask you to go to – no, operator, if you could please bring up Ms McCulla’s statement at page 0006, paragraph 52; you refer to a visit on 27 May?

MS McCULLA: Yes.  
10

MR GRAY: And you’ve again found your father in similar state to the state - - -

MS McCULLA: Yes.

MR GRAY: - - - you’ve just described earlier.  
15

MS McCULLA: Yes.

MR GRAY: And you’ve taken some photos on that day, or a photo on that day if I  
20 can take you to paragraph 56, and you’ve also referred to a photograph on 28 May in that paragraph. And I will ask the operator to put those photos up; tab 22 and 23. Can you put them on each screen, and tab 23. Are those photos dating to 27 and 28 May respectively?

MS McCULLA: Yes.  
25

MR GRAY: Did you notice anything about his weight at this point?

MS McCULLA: We could see that he was losing weight. He was – you could see it  
30 in his face. You could see it on his – like, the way his clothes hung. Every time we would take him out to this garden out there, we would ask them to bring us tea, coffee, biscuits and sandwiches, and we would feed him sandwiches by this stage we were starting to question who was taking the time to sit and feed him while he was asleep like this. It took a long time to wake him between each bites of the sandwich.  
35 We also started to bring cooked meals ourselves from home and sit out there and feed him because we were questioning whether he was eating or not.

MR GRAY: So what was – what was your level of concern about keeping him in Garden View, and what was your decision about whether to contact your mother  
40 concerning that?

MS McCULLA: We had discussed it, whether we would pull him out ourselves and try and care for him at home. At that stage, I was working part-time with three  
45 children. My sister was working full-time, and my brother was also contracting work. We discussed how we would possibly do it ourselves. My sister would have – we would have to try and contact mum and ask for all the legal paperwork to show that my sister could make that decision. Then we discussed whether we were

overreacting, whether what we were seeing was really how it was being played out, whether we would risk upsetting my mother while she was overseas on this once in a lifetime trip for her. So it was definitely discussions that we were having. We also spoke amongst each other and said as long as we are still coming every single day, and we are giving him something and watching, maybe that's – maybe that's the best thing considering this isn't a long-term plan for Dad. It was just a short respite. We're talking about something that should have been simple for nine weeks – eight or nine weeks.

10 MR GRAY: I want to ask you now about 1 June.

MS McCULLA: Yes.

MR GRAY: And you did mention this a few minutes ago.

15

MS McCULLA: Yes.

MR GRAY: What happened on 1 June and who did you hear it from?

20 MS McCULLA: Me and my sister were driving separately. She was in the car behind me and she received a phone call around lunchtime when we were headed out to visit dad. She received a phone call to say dad had had a fall. She then called me and I was in the car in front. We were all of 10, 15 minutes away from the home at this stage and she said that dad has had a fall. We were just glad that we were  
25 already headed in and that we would assess the situation when we got there.

MR GRAY: What time of day was this?

MS McCULLA: It would have been around 1.30 pm.

30

MR GRAY: And what happened when you got to Garden View?

MS McCULLA: Similar situation, found dad. He was restrained. We noticed he had quite a large lump and bruise on his head. We were told then by the nurse that he had been assessed and all seemed fine. We asked what had happened, and they said they weren't sure. He was by himself. We asked where it happened. They said it happened in the central dining room. Then we said, well, if you don't know, the central dining room has cameras. Can we go back and have a look at the cameras and see exactly what happened. At that point I was told that that was fine, they could  
35 arrange that with a man calls Hans who I believed was a director of some sort. I'm  
40 not sure. They said that they would arrange with him for us to view the footage.

We went and sat outside with dad, did the usual cup of tea, biscuits, sandwiches. As he kept falling asleep, we would obviously try and keep him awake to try and talk to  
45 him. And as we grabbed for his arm, he gestured that he was in pain and that his shoulder was sore. I went and got a nurse and said, "Can you come and have a look at him, he seems to be in a lot of pain." They told us, being a Friday, that they would

- have to get X-rays done on the Monday, that they would monitor him. We sat with dad for a little while longer, then we were told that Hans was ready to see us and that we could watch the video footage of the fall. So we sat in the director's office and watched the video. And he was sitting in just a chair in the central dining room. He
- 5 was asleep and he just went forwards, just head first onto the ground. From the video to me, it looked like he had knocked himself out. He didn't move for a little bit. It was really confronting to see. We said he will have a sore neck and you can see his shoulder hit the ground quite hard. And that – so we finished up.
- 10 MR GRAY: So can I just ask, when you had seen him previously restrained in his room and then in East Wing - - -
- MS McCULLA: Yes.
- 15 MR GRAY: - - - what sort of chair was he restrained in?
- MS McCULLA: It was always the same type of chair. It had a tall back, padded bottom, with arm rails, just quite a small, like a dinner chair.
- 20 MR GRAY: Was – if we can just put up tab 19 again please, operator, albeit this was a photo taken after you removed restraints.
- MS McCULLA: Yes, that's the chair.
- 25 MR GRAY: Is that the chair?
- MS McCULLA: Yes.
- MR GRAY: So it's a reasonably long-seated chair with the back a reasonable – a
- 30 reasonably long distance from the edge where one's thighs sit, where your knees come over the edge of the chair. Is that a fair description?
- MS McCULLA: Yes.
- 35 MR GRAY: And what about the dining room chair, was that a different kind of chair or the same kind of chair?
- MS McCULLA: The same chair, from memory.
- 40 MR GRAY: Yes. Now, with respect to what happened on 1 June, this might have been some time later on 1 June, there seems to have been a prescription for a sleeping pill Temazepam.
- MS McCULLA: Correct.
- 45 MR GRAY: Did you know anything about that at the time on 1 June? Were you told anything about that by Garden View?

MS McCULLA: I was aware that he – that they were trialling him on a sleeping tablet. We obviously had raised several concerns about why he was always asleep and we couldn't keep him awake. They told us that he was not sleeping at night. And that they felt it was best that we trial him on a sleeping tablet to try and get him sleeping through the night so therefore he would be awake during the day.

MR GRAY: Thank you. Now, just skipping forward two weeks to 15 June, there's a reference to a request from the family to increase the sleeping pill in some notes. Do you want me to show you those notes? I just ask if you've got any knowledge of that.

MS McCULLA: I have no knowledge of that.

MR GRAY: All right. I won't show you the notes. I want to ask about a visit on 17 June that you refer to at paragraphs 71 to 79, and again being as precise as you can about the sequence of events, I would like to you take the Commissioners through what you witnessed on that day at Garden View, 17 June.

MS McCULLA: Again, I arrived, I had cooked a lunch for Dad and we decide that we would – I would meet – I had my husband and children with me. We were meeting my sister and her partner at the home. We were going to have lunch all together. We arrived at the same time. We went straight to the East Wing because now this was where we would always find him, but he wasn't there. We found a nurse and we asked where he was and they said that he was in another – it wasn't the dining room, it was like another common room where a lot of mainstream residents would hang out. We found him in a large tub chair. He was laying down. He was asleep. He looked very unwell. We were shocked obviously and said, "What's happened? Is everything okay?" They said, "Yes, he didn't sleep last night. This is his sleep. He's just asleep." I was like, okay, can we wheel him into the dining room then, and we will wake him up and have our lunch. They said yes, fine, so we wheeled him out.

We tried to wake him up and he just wouldn't wake. We were asking, like, what's happened, what's he been given. He started to gag a little bit and we opened his mouth and could see there was something lodged at the back of his throat. So really quickly I had to reach my hand into his mouth and dislodged a piece of meat. Took it over, threw that in the bin, all the while as I've got my hands in his mouth trying to hook a bit of meat out he wouldn't wake. Then we could smell him. We went and found a nurse and said he's soiled quite badly. It was all up his back. She said it will take a few of us to try and change him. They took him away to change him. We had asked them, several people that day, a lot of nurses walked past and would comment. They would say to us "What's happened to this man?"

Me and my sister were in tears in the central dining room this day saying, "You tell us. He – he is no longer the man that he came in." I went to the front desk and said "I want to again see his medical charts." They showed us and said – I said you've given him something, this is not a man who is asleep. He has been given something,

and they said “No, no, look at his charts.” I was convinced that it was risperidone, and they said, “No, look, we haven’t given him anything since 15 May when you told us not to.” I couldn’t see it on the chart. I showed them a photo that was on the front of his pack which was a photo of him, and I said, “This is no – this is him when  
5 he came into your home. This is no longer him. What has happened?”. I was told that this is what happens when they come into a home, that he is just tired. It just seemed to be the norm.

I said, “I think he – if you haven’t given him anything and this was what today is, is  
10 he sick?”. They came and took his temperature and said, “No, he’s fine, he’s just tired.” And we left that day in tears. We couldn’t feed him. We couldn’t wake him.

MR GRAY: I will ask the operator to put up the photographs you referred to in your statement as taken on 17 June. Operator, please put up tab 28. Please put up tab 29.  
15 Yes, I’m sorry. Reorient it correctly. Can you orient it correctly, please. All right. Tab 29, please. And tab 30, please. Are these the photos that you took on that day?

MS McCULLA: Yes. Yes. The one where he’s in a singlet, that’s when we moved him forward and could see that he had soiled all up the back of him. We’re holding  
20 him forward trying to get him to wake up. He was – there was no communication. He couldn’t open his eyes. And I was told that he was tired, and that he didn’t sleep that night and that this was now his night.

MR GRAY: I will ask you just to refer to another photograph, not taken on this day.  
25 Operator, please put those photographs away and put up tab 31. You refer to a visit by your sister the next day, on the 18<sup>th</sup>. And is this a photo showing the lap restraint that you’ve referred to previously, to all appearances the same as the one that you saw your father in on previous occasions?

30 MS McCULLA: Yes. Right.

MR GRAY: Now, I will ask – I will ask you about a visit you made in your statement at paragraph 86. You say it was on 25 June and you noticed that your  
35 father was missing a tooth.

MS McCULLA: Yes.

MR GRAY: Now, is it – there seems to be a dispute about what date a report was made by the family concerning Mr Reeves having lost a tooth.  
40

MS McCULLA: I didn’t know there was a dispute - - -

MR GRAY: How certain are you - - -

45 MS McCULLA: - - - in the date.

MR GRAY: Yes, there's a dispute about the date. There's a record in the progress notes to the effect that the report was made on 28 June.

MS McCULLA: Yes. Yes. Yes.

5

MR GRAY: Do you have any comment to make on that? Are you - - -

MS McCULLA: I'm 100 per cent on my date because I have a text message that I sent to my sister to say, "Did you notice that he's missing a tooth?" and, yes, my date is correct.

10

MR GRAY: Okay.

MS McCULLA: Then when we went back to look at the progress notes, yes, they had written a different date. They wrote:

15

*Daughter noticed missing tooth.*

But their date is incorrect.

20

MR GRAY: Operator, please put up tab 64 at page 0298. You say you got to view the progress notes.

MS McCULLA: Yes.

25

MR GRAY: Just to be clear, when did you get to view the progress notes?

MS McCULLA: I went back in December to view Dad's progress notes.

MR GRAY: You hadn't seen them before then?

30

MS McCULLA: No.

MR GRAY: Now - - -

35

MS McCULLA: I went on two occasions in December.

MR GRAY: Thank you. If we look at this page, about the bottom third, about two-thirds of the way down, you see there's an entry under – or adjacent to where figures 2030 appear, a few lines down from that point in the text:

40

*Daughter noted that resident's one bottom tooth missing.*

MS McCULLA: Yes.

45

MR GRAY: That seems to be under 28 June 2018 but you've given your evidence that you're clear that it was 25 June that you made your report.

MS McCULLA: Correct. Yes, and I have a text message on my date to my sister saying I went, he's missing a tooth.

MR GRAY: And had you reported it to Garden View on that day?

5

MS McCULLA: As soon as I saw it, I went – I arrived to see dad. I crouched down in front of him to sort of wake him and get him to acknowledge that I was there. And straightaway, I noticed that right in the middle of his bottom teeth a tooth was missing and I said to the nurse that was – there was always one nurse in the East Wing with all these residents, I said to her, “What’s – what’s happened, when did he lose his tooth?” and she isn’t know anything about it and said “I didn’t know”. I said “Well, he’s missing a tooth, like, it’s right down the bottom”.

10

MR GRAY: Did you ever receive any explanation for how that had come about?

15

MS McCULLA: No, everybody said they didn’t know. It was like, “Okay, I didn’t know”. No one was concerned.

MR GRAY: In paragraph 88 of your statement you refer to the effect of long periods – your opinion about the effect of long periods being kept in the chair on your father.

20

MS McCULLA: Yes.

MR GRAY: What is your opinion about the effect of the long periods that he was kept in the chair?

25

MS McCULLA: You could notice every time we would visit, we were – it was routine that we would go, we would find him, we would unstrap him, take him out, take him out into a garden somewhere nice where we could sit down and chat with him. You could notice he was no longer able to walk unassisted. We had to hold him upright. On occasions it took two of us to walk dad out. I remember being concerned sometimes when I would have to stop and open a door to go outside, whether dad would be okay just to stand there for that moment while I grabbed the door and helped walk dad out. He was very unsteady on his feet. I – I believe that it had to do with being medicated and continuously being strapped into a chair and unable to walk. He had dementia; I was concerned he was losing the ability to walk as a result of this.

30

35

MR GRAY: In paragraphs 99 and 100 of your statement, you sum up your opinion about the effect of the 61 days that Mr Reeves spent at Garden View.

40

MS McCULLA: Sorry, what point was that?

MR GRAY: Paragraphs 99 and 100, and in particular at 100 - - -

45

MS McCULLA: Yes.

MR GRAY: Well, in paragraph 99 you refer to weight. Let's just go to that topic first. Did you weigh Mr Reeves straight after his return home from Garden View or was it not until he was admitted into [REDACTED]?

5 MS McCULLA: Yes. No, I – we didn't weigh him ourselves when he got home. It was quite – mum only had small scales, and it was obviously quite difficult for someone who was now not responding to anything to get him to stand on a set of scales. It was when he went with my mother into hospital when mum was unwell. They there at [REDACTED] weighed him. And when we found out his weight, and  
10 his weight going into the new nursing home, we were shocked. We were aware of his weight going into Garden View and then to what it was two months later.

MR GRAY: So just looking at that a little closer - - -

15 MS McCULLA: Yes.

MR GRAY: - - - when he was admitted to [REDACTED] - - -

MS McCULLA: Yes.

20

MR GRAY: - - - that was a little over two weeks after his return home on 24 July; is that right?

MS McCULLA: Yes, correct.

25

MR GRAY: And you hadn't weighed him in between.

MS McCULLA: No.

30 MR GRAY: All right. Had he been eating over that period?

MS McCULLA: A lot. A lot. He was becoming more alert. He was awake during the day. He was – always had a big appetite, and we had the time to spend with him to feed him, giving him good hot meals, breakfast, lunch, dinner, snacks between.  
35 He even began to use a fork himself and he could feed himself again.

MR GRAY: All right. But he didn't do very well to begin with when he first came home.

40 MS McCULLA: No.

MR GRAY: Is that right?

MS McCULLA: Yes. So he was quite unwell in the car coming home the first day.  
45 A couple of days later, it's in my statement, the exact date, but I couldn't tell you off the top of my head he – mum messaged us to say that dad really wasn't well. I had been over the previous day to see dad and he seemed okay but then the next day he

was on the floor, unresponsive to mum. She couldn't get him off the floor. He – she had called a home doctor the day before to come out and see dad; his signs seemed okay that day. And then we all had discussions and said, okay, if – if he's like this tomorrow, we're going to come over, we'll take him to the hospital, call an ambulance, do what we need to, because we believed at that stage he was coming off medications cold turkey.

MR GRAY: Commissioners, I've been told that I should not have mentioned the name of that hospital. It's not remotely the case that any allegation is being made against them but they haven't been told of this proceeding, so out of an abundance of caution, if you would kindly indicate to any reporters present that they should forebear from reporting the name of that hospital I would be grateful.

COMMISSIONER TRACEY: Yes, I give a direction that the redacted hospital name that appears in paragraph 99 of the statement and was referred to by senior counsel should not be published.

MR GRAY: Thank you. Operator, please put up tab 72. Is this the weight chart that you referred to in your statement on the topic of weight and - - -

MS McCULLA: Correct.

MR GRAY: - - - I think you mention that had it made you angry.

MS McCULLA: Yes.

MR GRAY: Just to be clear, are you disputing the accuracy of this weight chart?

MS McCULLA: 100 per cent.

MR GRAY: After your father had come home on 17 July, and then after your mother became ill and your father had entered into permanent residential care at another facility, and some months had passed, you were able to obtain access to Mr Reeves' file; is that right?

MS McCULLA: Yes, that's correct.

MR GRAY: And you refer to this at paragraph 34 of your statement, and was that in about December?

MS McCULLA: Yes.

MR GRAY: And those were the two occasions you mentioned a little earlier in your evidence.

MS McCULLA: Yes.

MR GRAY: When did you first read the restraint chart?

MS McCULLA: I noticed it briefly on the first visit. It wasn't a – it wasn't really what I was looking for, like we saw it, we noticed it was lengthy. It wasn't until my  
5 sister and I left that day, discussed it, and we realised that, hang on, this is – it wasn't just every now and again that he was in this restraint, it was for a long period of time. And that's when we made the decision that we needed to go back again, and we needed to record every moment that he was in that lap belt, because that's – that's not right. That's not okay.

10

MR GRAY: Okay. I will just ask the operator to put the restraint chart up. It's tab 61. Now, it's a series of pages that are not necessarily all in the correct date order. But you can take it from me that the first mention date is 28 May 2018.

15 MS McCULLA: Yes.

MR GRAY: Indeed, that's something you refer to in your statement.

MS McCULLA: Yes.

20

MR GRAY: Was something said to you about any records predating 28 May 2018?

MS McCULLA: Well, I - - -

25 MR GRAY: Records of this kind – of the kind kept in these restraint charts?

MS McCULLA: Well, I – my – a big focus for me going back to look for them, was I was aware that I had visited him on early May, the 8<sup>th</sup>; he was restrained. I know that my sister had seen him being restrained, and I knew that my mother had not  
30 signed a consent form when we were sighting these, and I wanted to know whether Merrylands, since they had a restraint chart, which at the first, I didn't – during his stay I didn't realise that there was such thing that they would log, so I wanted to know whether they had actually written on their restraint charts those dates that we had seen him being in there. When I arrived, I saw that it began on the 28<sup>th</sup>. I asked  
35 – can I say her name, the director?

MR GRAY: Yes.

MS McCULLA: Who sat with me.

40

MR GRAY: Yes.

MS McCULLA: I asked her, well, this starts on 28 May. You've been restraining him since 8 May to my knowledge. Where's that? And she told me that it was  
45 misplaced.

MR GRAY: And who's that person you're referring to as the director, what's your name?

MS McCULLA: Kim or Kee or Kim.

5

MR GRAY: All right. And you then had a better opportunity on that second occasion to review this restraint chart?

MS McCULLA: Yes.

10

MR GRAY: And did you make some calculations?

MS McCULLA: So I, with my sister, we split the form, the restraint chart into two and we sat there and we wrote every date, every time he went in, every time he came out, every time he went in, out, for every single page that they had recorded. And we took that home and started adding up the hours, and we were horrified to see, and particularly that they would start to restrain him at 3 o'clock in the morning to sit in a chair, and then told us that he had trouble sleeping. I would have trouble sleeping tied into an upright chair, of course.

20

MR GRAY: I want to ask you about something said by Ms Lau in her statement. That's Kee Ling Lau. It's a statement of Kee Ling Lau, not yet tendered into evidence but we expected it will be, WIT.0137.0001.0001. Operator, please go to page 21 at paragraph 119. It's said there – thank you, operator – it said there in the last sentence:

25

*Ms McCulla or Ms Smith said words to the effect "You did a reasonable job with him and I can see there have been a lot of improvements since then, but it isn't me you have to convince, it's the ABC".*

30

Do you have any comment to make about the allegation that you or your sister said words to that effect?

MS McCULLA: That would be a conversation that I had. That is not correct. In that time that we sat down, she told me that they have changed their ways, that they no longer restrain residents, that they have entered their staff with better training in how to deal with someone with dementia. And I responded to her, "I'm glad that you are changing your ways, and I am pleased that you have done this, but that no longer helps me or my father." I never said that I felt they did a reasonable job with looking after my father. She held my hands and begged me to be kind, and I told her I have said all I needed to say to the ABC and that I was done.

40

MR GRAY: No further questions, Commissioners.

COMMISSIONER TRACEY: Yes. Thank you, Ms McCulla, for your evidence. We're very grateful to you for taking the time to come to the Commission and provide it.

45

MS McCULLA: Thank you.

COMMISSIONER TRACEY: You're excused from the witness box.

5 MS McCULLA: Thank you.

**<THE WITNESS WITHDREW [11.15 am]**

10

MR GRAY: Commissioners, shall we proceed to our next witness? The next witness I wish to call is Natalie Sonya Smith.

15 **<NATALIE SONYA SMITH, SWORN [11.18 am]**

**<EXAMINATION-IN-CHIEF BY MR GRAY**

20

MR GRAY: What is your full name?

MS SMITH: Natalie Sonya Smith.

25 MR GRAY: Have you made two statements in this Royal Commission?

MS SMITH: I have.

30 MR GRAY: I will ask that they be brought up so you can see them on the screen. Firstly, WIT.0147.0001.0001 dated 26 April 2019. Do you recognise that as the first statement you've made in this Commission dated 26 April 2019, Ms Smith?

MS SMITH: That's correct.

35 MR GRAY: Are there any amendments you wish to make to the statement?

MS SMITH: No.

40 MR GRAY: To the best of your knowledge and belief is the contents of the statement true and correct.

MS SMITH: Yes.

45 MR GRAY: Secondly, you made a statement on 3 May 2019.

MS SMITH: Yes.

MR GRAY: Is that right? WIT.0147.0002.0001. Do you recognise that as the statement you've made on 3 May 2019?

MS SMITH: Yes.

5

MR GRAY: To the best of your knowledge and belief are the contents of that statement true and correct?

MS SMITH: Yes.

10

MR GRAY: Thank you. You made regular visits to your father, Terance Reeves, at Garden View between 1 May and 7 July 2018; is that right?

MS SMITH: That's correct.

15

MR GRAY: You say in your longer statement that statement is not comprehensive of all the visits you made and it relates in particular to a visit on 11 May, a conversation you had on 11 May, and observations regarding physical restraints on your father after that date; is that right?

20

MS SMITH: That's correct.

MR GRAY: I want to ask you about the visit on 11 May.

25

MS SMITH: Sure.

MR GRAY: How did you find your father when you arrived at Garden View and went looking for him?

30

MS SMITH: When I arrived at Garden View I had to go looking for my dad because I was unsure of where I would find. I went to the central dining room and to one of the other general rooms and I couldn't find him there. I was then told that he had been relocated to the East Wing. One of the other nurses showed me where the East Wing was. It was a room at the back of the facility. It required a PIN code to get through the door. It was the same PIN code as the front door of the nursing home. In there, I found my dad sitting in a chair and he was strapped in with a lap sash.

35

MR GRAY: Can I ask you to look at a text or a screenshot of some texts. Tab 20, please, operator. Now, what are you able to say about this screenshot? Have you seen it before?

40

MS SMITH: I have.

45

MR GRAY: What is it?

MS SMITH: It's a text message between me, my sister, my brother and my mum.

MR GRAY: And is your mum referred to as dad?

MS SMITH: Yes.

5 MR GRAY: Which you've explained in your statement.

MS SMITH: Yes, that's correct. So it did used to be my dad's mobile number and after he was unable to use a phone any long, my mum acquired his number, and I just never changed the detail in my phone but it is a picture of my mum.

10

MR GRAY: Up at the very top.

MS SMITH: At the top.

15 MR GRAY: Yes. In the rectangular picture in the upper part of the screenshot - - -

MS SMITH: Yes.

MR GRAY: - - - is that a photo of your father and yourself on the day?

20

MS SMITH: It is.

DR NESPOLON: And then is that the caption that you've written, "tea and cookies", underneath?

25

MS SMITH: Yes; that's correct.

MR GRAY: And then your mum has texted:

30

*How is he tonight?*

MS SMITH: Yes.

MR GRAY: Have you written what appears in the bottom rectangle?

35

MS SMITH: Yes; that's correct.

MR GRAY: If you could just please read that out into the transcript.

40

MS SMITH:

*He's strapped to the chair again and they want you to sign the consent forms, the consent papers. He seems okay though, moments of conversation then back to slippers on, slippers off.*

45

MR GRAY: Just taking that in pieces, you've referred to:

*He's strapped to the chair again.*

MS SMITH: Yes.

5 MR GRAY: To the best of your recollection, what do you mean by saying:

*He's strapped to the chair again.*

10 MS SMITH: I was aware that my sister had gone in a few days earlier and had found my dad sitting in his room alone, and she found him strapped to a chair in that room.

MR GRAY: All right. Now, taking the next element of this message you've said:

15 *And they want you to sign the consent papers.*

What's that referring to?

20 MS SMITH: So when I was shown to the room one of the nurses said that they had some consent papers that they needed my mum to sign. We didn't discuss the rest of it then. I said that I would speak to her on my way out.

MR GRAY: All right. And I think I will leave the rest of the message that you sent, but are you able to verify, was the content of the message that you sent a true  
25 statement of your observations on that day?

30 MS SMITH: That's correct. I arrived to find him in a chair in the East Wing and he was strapped in with a – with a lap sash. It was one that went around each leg and then around the chair and around his – his lap.

MR GRAY: I will skip now to the conversation you just alluded to that you must have had after sending this text message.

35 MS SMITH: Yes.

MR GRAY: With regard to the consent papers.

MS SMITH: Yes.

40 MR GRAY: Doing the best you can, and being as precise you can about the sequencing in which things were said and what was said, what was that conversation?

45 MS SMITH: One of the nurses brought a form to me, and she said that I would need to – I would need to sign the form in order to authorise them to restrain dad. I – I knew that my sister had seen him in a restraint and I obviously arrived that day to see him in a restraint also, and we were – we were pretty concerned about what that

meant and what it was about. So I had a lot of questions and, you know, I wanted to know more about the restraint, and I certainly wasn't comfortable signing it at all. She tried to put my mind at ease by saying that they were only looking for consent to sort of restrain him at really busy or peak periods. It would be something like a shift  
5 change or a medication round that – that it was only as an absolute last resort, that during a shift change or a medication round there might be limited staff to be able to keep an eye on my dad who frequently wandered around.

And that it would be for his safety and in his best interest if they could keep him  
10 secure for a very short period of time. She alluded to possibly an hour but it wouldn't be any more than two, but it was – but it was regulated that they would have to be checking on him frequently. So - - -

MR GRAY: Now, in your text message you refer to somebody wanting your  
15 mother to sign consent papers and in the conversation you've just related there was a request for you to sign them; is that right?

MS SMITH: So the first conversation was, "Your mum would need to sign them",  
20 and the second conversation, she seemed happy if I was going to sign them, if not to take them home to my mum and have my mum sign them.

MR GRAY: And what was the outcome of the conversation?

MS SMITH: I said I - - -  
25

MR GRAY: What happened after the conversation?

MS SMITH: I said I wasn't very comfortable with what I was reading and to – to  
30 just let me take it home, and I would have a conversation with my family.

MR GRAY: All right. And then is that what happened, that you took - - -

MS SMITH: That is what happened.

MR GRAY: You took a form home.  
35

MS SMITH: Yes.

MR GRAY: And you had a conversation with your family.  
40

MS SMITH: Yes, I did.

MR GRAY: With whom did you have a conversation to begin with?

MS SMITH: I rang my mum when I left the facility. So I got into the car and on  
45 my drive home I rang my mum and gave her a brief rundown that one of the nurses or one of the staff had come to see me with a form and that they had wanted to

restrain dad and that we needed to sign it in order to give them authorisation to do so, that it was only supposed to be for a very brief period of time.

5 MR GRAY: Thank you. With reference to this topic of giving consent or Garden View obtaining consent to apply constraints, what happened the next day? We don't need to know everything that happened the next day, but with reference to that topic, please tell the Commissioners what occurred on the day next, 12 May.

10 MS SMITH: The 12<sup>th</sup>; my mum came out to – to my place with my nieces and my nephew. It was my niece's birthday that day, so we took them out to lunch, and then we took them to Madame Tussauds to see the display there. During the lunch that we had, my mum and I more extensively discussed the restraint form that they had given me. I had mentioned that it was only supposed to be for a limited amount of time, that – that it was only as an extreme last resort, that this wouldn't be regular  
15 practice, that it was only for my dad's safety during very peak periods, and that I – I didn't need to worry.

MR GRAY: What happened with respect to the form?

20 MS SMITH: I was given a form. Did my mum take it home that day; I'm not a 100 per cent sure. I don't know. We went from my house to the city, to the museum back to my house. The form could have gone anywhere. I'm not sure.

25 MR GRAY: Did you see her sign the form?

MS SMITH: No. No, I did not.

30 MR GRAY: Do you have any basis for a belief as to what happened with respect to this topic of the signing of a consent form for Garden View to apply restraint to your father?

MS SMITH: Are you asking - - -

35 MR GRAY: Do you have a belief, even if you don't have direct knowledge - - -

MS SMITH: Yes.

MR GRAY: - - - do you have a belief based on discussions - - -

40 MS SMITH: Yes, absolutely.

MR GRAY: - - - around 12, 13 May, thereabouts - - -

45 MS SMITH: Yes. So - - -

MR GRAY: - - - as to - - -

MS SMITH: So in conversations, after my mum had signed the form she had explained to us her experience in speaking with the nurse and what they had explained to her.

5 MR GRAY: And just stopping you there. When did – according to what she told you at about the time, when did she sign the form?

MS SMITH: She signed the form on the 13<sup>th</sup> when the nurse brought her a copy.

10 MR GRAY: Is that what she told you at about - - -

MS SMITH: Yes.

MR GRAY: At about that time, around 13 May.

15

MS SMITH: Yes, that's correct.

MR GRAY: Could I just ask you about risperidone.

20 MS SMITH: Yes.

MR GRAY: The documents in the case seem to suggest that a doctor, a Dr Burkitt signed a prescription order in respect of risperidone, .5 milligrams for half a tablet to be taken at need for up to TDS. Do you know what TDS means?

25

MS SMITH: I have no idea.

MR GRAY: Right. And did you – on about 7 May or about that time, did you know anything about Garden View obtaining a prescription for risperidone of that nature?

30

MS SMITH: No, I did not.

MR GRAY: Right. What about on 15 May when a prescription order appears to have been signed by another doctor, Dr Wong, for a regular daily dose of a full tablet, .5 milligrams risperidone; did you know anything about that at about the time of 15 May?

35

MS SMITH: We didn't know, or I didn't know that it had been charted or scripted. We did become suspicious that he was being given something, due to his increased drowsiness and his – he started to drool, just become a little more incoherent. So we became suspicious that he was being given something. I know there was a point in time where my sister and I asked to see the charts, where we did see that risperidone had been dispensed to my dad and we had said that we wanted to cease that, that we did not want him having risperidone.

45

MR GRAY: When I mentioned a daily prescription, would it change anything you've said if I mentioned that the time of day at which the dose was prescribed to be taken was at night-time?

5 MS SMITH: No.

MR GRAY: Now, I want to ask you about your observation of restraints placed on your father. You say in your statement you made about 20 visits.

10 MS SMITH: Yes, that's correct.

MR GRAY: And you say in your statement that you found your father almost always restrained after 11 May, paragraphs 17 and 18.

15 MS SMITH: That's correct. Sometimes it was a lap sash and sometimes it was a – a lap sash that went around both legs. There were two different forms.

MR GRAY: Thank you. Were you informed by Garden View of a fall on or about 21 May 2018 at about that time?

20

MS SMITH: I don't recall.

MR GRAY: Were you informed by Garden View of a fall on 23 May, on or about 23 May?

25

MS SMITH: I don't recall.

MR GRAY: What about 1 June, were you informed - - -

30 MS SMITH: Yes.

MR GRAY: - - - that Mr Reeves had had a fall on that day?

MS SMITH: Yes.

35

MR GRAY: When did you get the information?

MS SMITH: My sister and I were on our way to go and see dad anyway. It would have been about lunchtime, so maybe about 1 pm, 1.30, thereabouts. We were  
40 driving separate cars. I got a call from the nursing home to say that – that they had found dad sitting on the floor, and I didn't quite understand what she was getting at, and I – I did ask her what – what do you mean. She said, well, I just need to inform you that we've found your father sitting on the floor. And I said I don't – I don't  
45 understand what – what you're getting at here; is there a problem that he was sitting on the floor, like, I don't – I don't understand. And she said, well, we think that he may have fallen, and I said okay, well, we are already on our way and we'll be there in 10 minutes.

So after I hung up from her I rang my sister and I said it sounds like dad's taken a fall so we've got to go and see somebody as soon as we get there.

5 MR GRAY: I won't ask you too much about what you observed on that occasion, the Commissioners have already heard - - -

MS SMITH: Okay.

10 MR GRAY: - - - a bit about it. But is it the case that he appeared to have an injury to his forehead?

MS SMITH: Yes, there was a large lump and bruising on his forehead.

15 MR GRAY: Did you also discover during the rest of the day that he seemed to be having pain around his shoulder area?

MS SMITH: Yes. In his shoulder he seemed to be very tense and very sore whenever he was moving around.

20 MR GRAY: I want to ask you about the topic of what's been called a sleeping tablet or a sleeping pill, Temazepam.

MS SMITH: Yes.

25 MR GRAY: Were you told on 1 June anything about Temazepam or were you asked anything about that?

30 MS SMITH: I don't recall if there was a conversation but I do know that it was tableted that had since my dad was not sleeping well at night, that it was a recommendation that we could trial a sleeping tablet to help him sleep through the night and stay more alert through the day, that Temazepam was widely used and it was relatively safe.

35 MR GRAY: I will ask the operator to bring up tab 88 at page 0291, please. Do you see there in the second line that is visible, it looks like in handwriting on the left-hand side, 15.6.2018. That seems to be 15 June 2018 and then the words are written:

*Terance Reeves, family requested to -*

40 And then there's an arrow pointing upwards -

*...sleeping pill.*

45 Did you make an request to increase the dose of the Temazepam sleeping pill?

MS SMITH: I didn't specifically request an increase. I had had a discussion with one of the nurses at one point around the fact that my dad was taking a single

5 Temazepam at night but it seemed to have no effect. So I asked what they were suggesting, and if that meant that we were looking at giving him two tablets. And the – the nurse or the staff member I was speaking to at the time said, “Yes, we can – we can try two tablets. That would be a good idea to see if the higher dose works better for him” because the single dose of Temazepam wasn’t getting him a full night’s sleep.

10 MR GRAY: Thank you, but to return to the topic of risperidone, is it your evidence that you never in any form suggested that risperidone be given to your father?

MS SMITH: Never. Never. We had had previous discussions with my family around a time that my mum had given it to him once before, and the – the result wasn’t – wasn’t a good one. He didn’t – he didn’t handle it very well. He became very drowsy, very confused.

15 MR GRAY: Operator, please display Ms Kee Ling Lau’s statement, WIT.0137.0001.0001 at page 21, paragraph 119. Thank you. And I just want to ask you about an allegation that’s made about either your sister or yourself saying words on an occasion in December when you were speaking with Ms Lau who’s the director of nursing.

MS SMITH: Yes.

25 MR GRAY: Do you see the last sentence:

*Ms McCulla or Ms Smith said words to the effect “You did a reasonable job with him and I can see there have been a lot of improvements since then, but it isn’t me unfortunate to convince, it’s the ABC”.*

30 Do you have any comment on the allegation that those words were said by one of you?

35 MS SMITH: I believe that was a conversation or a statement made by my sister, but it’s – it’s incorrect. My best memory of that moment, we never ever said that we thought that they did a reasonable job because we absolutely think they did not. We may have mentioned that there were improvements because they had said to us, you know, we’ve removed the use of restraints within the facility now, so we acknowledged that that was a good move but that it was far too late to help my dad. And I don’t believe my sister said it, she had to convince the ABC, because we’d already – Michelle had already spoken to the ABC. I don’t recall that part of the conversation.

MR GRAY: No further questions, Commissioners.

45 COMMISSIONER TRACEY: Yes. Thank you for your evidence, Ms Smith. We’re very grateful to you for coming to the Commission and explaining the difficult issues that have confronted you. You’re excused from the witness box.

MS SMITH: Thank you.

**<THE WITNESS WITHDREW**

**[11.39 am]**

5

MR GRAY: Commissioners may I tender Ms Smith's two statements.

COMMISSIONER TRACEY: Yes.

10

MR GRAY: WIT.0147.0001.0001 and would you wish to mark that - - -

COMMISSIONER TRACEY: I will mark them separately. So the statement of Natalie Sonya Smith dated 26 April 2019 will be exhibit 3-10.

15

**EXHIBIT #3-10 STATEMENT OF NATALIE SONYA SMITH DATED  
26/04/2019 (WIT.0147.0001.0001)**

20

MR GRAY: And next, the statement coded WIT.0147.0002.0001.

COMMISSIONER TRACEY: Yes. The second statement of Natalie Sonya Smith dated 3 May 2019 will be exhibit 3-11.

25

**EXHIBIT #3-11 SECOND STATEMENT OF NATALIE SONYA SMITH  
DATED 03/05/2019 (WIT.0147.0002.0001)**

30

MR GRAY: If the Commissioners please. Commissioners, should I proceed to our next witness?

COMMISSIONER TRACEY: How long is that witness likely to take?

35

MR GRAY: 15 minutes.

COMMISSIONER TRACEY: Yes. We will proceed to hear that evidence.

40

MR GRAY: I call Ms Jayanthi Kannan.

**<JAYANTHI KANNAN, AFFIRMED**

**[11.42 am]**

45

**<EXAMINATION-IN-CHIEF BY MR GRAY**

MR GRAY: What is your full name?

MS KANNAN: Jayanthi Kannan.

5 MR GRAY: And are you a registered nurse?

MS KANNAN: Yes, I am.

10 MR GRAY: Have you made a witness statement in this Royal Commission?

MS KANNAN: Yes, I have.

15 MR GRAY: I will ask that you be shown – it's appeared – WIT.0139.0001.0001, if you just have reference to your screen, do you see a copy of a document on that screen?

MS KANNAN: Yes.

20 MR GRAY: Do you recognise that as the statement you made dated 26 April 2019 in this Royal Commission?

MS KANNAN: That's correct.

25 MR GRAY: Do you wish to make any amendments to the statement?

MS KANNAN: No.

30 MR GRAY: To the best of your knowledge and belief are the contents of the statement true and correct?

MS KANNAN: True and correct.

MR GRAY: I tender the statement.

35 COMMISSIONER TRACEY: Yes. The statement of Jayanthi Kannan dated 26 April 2019 will be exhibit 3-12.

40 **EXHIBIT #3-12 STATEMENT OF JAYANTHI KANNAN DATED 26/04/2019 (WIT.0139.0001.0001)**

45 MR GRAY: Operator, please bring up tab 65. I'm sorry, 64. Thank you. Ms Kannan, the document you see before you appears to be a set of progress notes from the file of Mr Terance Reeves.

MS KANNAN: That's correct.

MR GRAY: How are the documents relating to a resident in Garden View kept during the time the resident is there at Garden View? Are they all grouped together in a folder for that resident?

5 MS KANNAN: Yes, correct.

MR GRAY: And was that the case in 2018 as well?

MS KANNAN: Yes, correct.

10

MR GRAY: And one of the sets of documents that one finds within the resident's folder is the progress notes?

MS KANNAN: Correct.

15

MR GRAY: And these are important notes that record noteworthy events concerning the resident's care on a, perhaps even a daily or even hourly basis; is that right?

20 MS KANNAN: Yes, correct.

MR GRAY: Sometimes there isn't an entry for a day because nothing particularly noteworthy occurred; is that right?

25 MS KANNAN: That's right.

MR GRAY: Now, whose responsibility is it to complete the entries into the progress notes? Is that the responsibility of the RN on duty?

30 MS KANNAN: Yes. Right.

MR GRAY: And how are the duties organised at Garden View? Are there three shifts?

35 MS KANNAN: Yes, there are three shifts.

MR GRAY: And you were typically on the afternoon shift, 2.30 to 11 pm.

MS KANNAN: Yes. Correct.

40

MR GRAY: Were you ever on one of the other two shifts, the morning or night shift during the period 1 May to 7 July 2018, to the best of your recollection?

MS KANNAN: No, not on that period.

45

MR GRAY: All right. I want you to please focus on some words on the first page.

MS KANNAN: Yes.

MR GRAY: Adjacent to the figures in the left hand column, 2200.

5 MS KANNAN: Yes.

MR GRAY: Do you see some words:

*Resident remains awake and wandering.*

10

Then there are some more lines. Down at the bottom it looks like you've put your name there, J. Kannan, RN, is that your handwriting?

MS KANNAN: Yes, that's my handwriting.

15

MR GRAY: Did you make that entry at about 10 pm, 2200?

MS KANNAN: That's correct.

20 MR GRAY: It might have referred to events that happened before 2200; is that right?

MS KANNAN: Yes, the phone call that I assess, yes.

25 MR GRAY: The phone call came in before 2200.

MS KANNAN: Yes.

30 MR GRAY: Now, the phone call that you've just referred to is recorded as follows:

*Received phone call from wife and daughter. Wife informed the above.*

And there are some various other things that are above there that I hadn't read out.

35 MS KANNAN: Okay.

MR GRAY: Is it possible that you mistook the person you were speaking with and the person you were speaking with wasn't Ms – Mr Reeves' wife but was, in fact, one of Mr Reeves' daughters?

40

MS KANNAN: No.

MR GRAY: Why do you say that?

45 MS KANNAN: Like, maybe I introduce myself to that person and I ask who I'm talking to.

MR GRAY: All right.

MS KANNAN: Yes.

5 MR GRAY: But you don't have a clear recollection of it?

MS KANNAN: No.

10 MR GRAY: Right. Now, then you refer to some information you've recorded from the person you were speaking with. And it says:

*Wife informed the above. Wife said at home when he is –*

15 Is that "really restless"; is that what that says?

MS KANNAN: Yes.

MR GRAY:

20 *When he is really restless she gives risperidone –*

It looks like 5mg but is it .5mg?

25 MS KANNAN: It is .5.

MR GRAY: .5.

MS KANNAN: Yes.

30 MR GRAY: Half tab, so in other words .25mg.

MS KANNAN: Correct.

35 MR GRAY:

*.5mg. Half tab TDS.*

What does TDS mean?

40 MS KANNAN: Three times a day.

MR GRAY: Do you say somebody told you TDS?

45 MS KANNAN: If that's what she told me, that I put it TDS.

MR GRAY: But you don't have a clear recollection?

MS KANNAN: No, I don't.

MR GRAY:

5           *Written in LMO's book.*

What is LMO?

MS KANNAN: That is local medical officer.

10           MR GRAY: To – and then - - -

MS KANNAN: Review.

15           MR GRAY: RV, review?

MS KANNAN: Yes.

MR GRAY: Thank you. And then some more words:

20           *Staff brought him to the nurses' station as resident doesn't like to stay in his  
              room.*

25           And then you've put your name there. So I suggest to you that the conversation you  
              had was with Michelle McCulla.

MS KANNAN: I do not know that, the name of the daughter that time.

30           MR GRAY: All right. If we go, please, to the next page of this document. Perhaps  
              before we go there, I will just ask you to comment on another document. If we can  
              save that, operator, I will be coming back to that in just a minute. Can you please  
              open tab 88 at page 0286. Is that page 0286? Thank you. Ms Kannan, if you just  
              look at the middle of that page, you see there's quite a lot of writing. There's five  
35           rows. There's some crossing out and there's also a diagonal line striking through the  
              entire entry. This is an extract from something called a doctor's communication  
              book; is that right?

MS KANNAN: Correct.

40           MR GRAY: Yes. And have you seen this document before or this excerpt from a  
              document before?

MS KANNAN: I don't understand.

45           MR GRAY: Have you seen it before?

MS KANNAN: Yes, like in the doctor's book, yes.

MR GRAY: In fact, is the handwriting underneath the lines and the diagonal line, is that all your handwriting?

MS KANNAN: Yes, my handwriting.

5

MR GRAY: Now, the usual practice, I suggest to you, with the doctor's communication book, which you also refer to as the LMO book - - -

MS KANNAN: Yes.

10

MR GRAY: - - - is that a task might be entered into it and once that task has been seen to it will be struck through; is that right?

MS KANNAN: Correct.

15

MR GRAY: Now, this is an entry that appears to have been made by you on 1 May 2018; correct?

MS KANNAN: Correct.

20

MR GRAY: It says:

*Terance Reeves unsettled, wandering ++ -*

25 Does that mean a lot of wandering?

MS KANNAN: Correct.

MR GRAY:

30

*Wife said she gave him risperidone -*

and that says 5mg. Then it says -

35

*... half tab PRN.*

But that's crossed out and then it says:

*Wife given consent to chart reg risperidone half tab not take plus-*

40

And that's struck out; that's got a line through it rather a horizontal line through it.

MS KANNAN: Yes.

45

MR GRAY: Did you originally write those words, and then think you had made a mistake and put a line through them?

MS KANNAN: I do not recall.

MR GRAY: All right. And then it says:

5           *Half tab TDS PRN.*

What does PRN mean?

MS KANNAN: When required, when it's needed.

10

MR GRAY: When it's needed?

MS KANNAN: Yes.

15 MR GRAY: Now – and you did cross out those last words, you didn't cross those out to begin with but later on they're encompassed by the diagonal line that's struck through. So did you say – I withdraw that. What's this last line? Is that please, PLS – sign, and then what's NIM?

20 MS KANNAN: That's nurse initiated medication.

MR GRAY: Nurse initiated medication?

MS KANNAN: Yes.

25

MR GRAY: And what's the process for nurse initiated medication to occur?

MS KANNAN: That is a set of medications that nurse can prescribe – not prescribe, give, and the doctor have to authorise that if you are allowed to give it.

30

MR GRAY: Thank you. Can we go back now please, operator, to tab 64, to the saved page, page 0279. Ms Kannan, at the entry at the bottom for 4 May, is that your handwriting?

35 MS KANNAN: Yes.

MR GRAY: And you say that:

40           *The resident was confused and walking around ++, closely monitored by staff and walked into lounge. Offered colouring in books and magazine, but resident couldn't stay still or concentrated, refused dinner time med and spat it out.*

What med was that at that point, do you know?

45 MS KANNAN: Sorry?

MR GRAY: What med was that at that point that he was taking? Was that galantamine?

MS KANNAN: Yes, that's correct.

5

MR GRAY: Yes.

*Assisted by staff times one with care.*

10 Does that mean one-to-one care?

MS KANNAN: Yes.

15 MR GRAY: And is that a form of care when you have a resident who's having difficulty settling in, and a staff member is assigned to look after that person all the time?

MS KANNAN: Yes, yes, but not all the time, when they are really restless, yes.

20 MR GRAY: When they're really restless - - -

MS KANNAN: Yes.

MR GRAY: - - - to look after them when they're really restless.

25

MS KANNAN: Yes.

MR GRAY: Yes. To be with them, to make sure, what, they don't enter people's rooms or anything like that?

30

MS KANNAN: Yes.

MR GRAY: To make sure they don't fall over?

35 MS KANNAN: Yes.

MR GRAY: Yes. For how long, according to your experience, based on the policies and procedures and the work practices at Garden View, is Garden View willing to provide one-to-one care for a resident who's having difficulty settling in?  
40 For how long? How many days?

MS KANNAN: No, there is no policy or practice but given the shift time, if somebody is really restless, then we see that if they need extra help, that we do offer extra help and assign somebody to stay with them to make sure they are okay.

45

MR GRAY: Okay. On this same day, 4 May, a monitoring chart recalled a red alert monitoring chart - - -

MS KANNAN: Yes.

MR GRAY: - - - was commenced.

5 MS KANNAN: Yes.

MR GRAY: Could we go, please, to tab 67 at page 0870. What's the purpose of this red alert monitoring chart and why – why is it called red alert?

10 MS KANNAN: Because this resident is wandering, wandering a lot. So that we wanted to make sure that where he is during the course of the day, so we just commence that red alert monitoring chart.

MR GRAY: Thank you. Now, I want to just ask you about pages – if we go to page 15 872 of this document, you were on the afternoon shift on 8 May.

MS KANNAN: Correct.

MR GRAY: And if we look at page 872, in the right-hand column, going down the 20 column date, we get 6<sup>th</sup>, 7<sup>th</sup> and at the very bottom 7 May, and the time entered is 1500. If we go to the next page, 873, in the left-hand column we then have some entries beginning about halfway down for 8 May beginning at 2400, so that's midnight, that's the beginning of 8 May, I suggest.

25 MS KANNAN: Yes.

MR GRAY: And looking further into the afternoon shift on 8 May, at about – at a certain point in the 8 May, beginning at about 0800 in the morning but certainly extending then past 1400, 1500 after which the afternoon shift has commenced and 30 then all the way through to 2300 where it says:

*In his room.*

35 There's just no entry. It seems that he's stopped wandering. I suggest to you he was restrained during that period.

MS KANNAN: No, like, the nurses, they are the one, they make the entry on the red alert wandering.

40 MR GRAY: All right. You were on the shift for the afternoon of 8 May and you – there's an entry in tab 64, if we go there, please, operator, page 0281. And you've administered risperidone, PRN, because there's a yellow sticky note.

MS KANNAN: Yes.  
45

MR GRAY: That affix into the progress notes when you administer a PRN medicine.

MS KANNAN: Correct.

MR GRAY: And it has had no effect, you've recorded there; is that right?

5 MS KANNAN: Correct.

MR GRAY: I suggest to you that you know that Mr Reeves was restrained on 8 May and – I withdraw that. I suggest to you that Mr Reeves was restrained on 8 May and that's why there's no entries made in the red alert monitoring chart, and it's  
10 partly because the risperidone had no effect. What do you say to that?

MS KANNAN: No, I'm not sure they haven't filled out the red alert monitoring chart. I did not know that. I'm just – I want to fill in my progress notes.

15 MR GRAY: Do you know that Ms Michelle McCulla has given evidence that she found Mr Reeves restrained on 8 May?

MS KANNAN: Yes.

20 MR GRAY: What do you say to that?

MS KANNAN: Reading through my notes, and also I recall some of that events that happened on that day, he was so restless, he was wandering into other residents' room, and he urinated on the floor and we were worried that he might slip on his  
25 urine and also it's a risk for other resident as well, and also he walked into one resident room and he sat in his bed. And when he asked him to leave that room, he wasn't very happy and he was aggressive and he put his fist in the air. So we walked him back to his room, and daughter visited him at that time, at dinnertime. So he was very restless and wandering a lot and also he removed his clothes many times  
30 that day.

MR GRAY: Just stopping you there as you're reading through, I will let you continue on in a minute, but I suggest to you that at that point, after staff walked him back to his room and before the visit by the daughter, the – there was a restraint on –  
35 on Mr Reeves in the nature of a lap sash.

MS KANNAN: Yes, no, there was no restraint. So I went back to my work, start doing my medication, and then the nurse, she came and she called me and come and talk to the daughter. And then that's the time that I realised that they restrain him  
40 and I spoke to her, and I told her that he was very restless and wandering and I did not know the nurses had restrained him, so I inform that to the management.

MR GRAY: Okay. So you are accepting that he had been restrained in his room?

45 MS KANNAN: Yes.

MR GRAY: You're just not accepting that he was restrained all the time during the period of the red alert?

MS KANNAN: No.

5

MR GRAY: Red alert monitoring chart that I took you to.

MS KANNAN: Yes.

10 MR GRAY: And you're saying that the staff had restrained him without your direction; is that right?

MS KANNAN: Correct.

15 MR GRAY: Okay. I want to ask you about a discussion on 13 May with Mrs Lillian Reeves, Mr Terance Reeves' wife. Operator, could you please bring up exhibit 3-8, WIT.0141.0001.0001. If we go to page 2, please, paragraph 16, if we call out paragraph 16. In this paragraph, Ms Reeves is referring to a head RN and it will be my submission that she is referring to you, Ms Kannan, at this point:

20

*The head RN came to talk to me and we sat down at a table together.*

Do you remember sitting down at a table together with Mrs Reeves?

25 MS KANNAN: I do not recall anything like that.

MR GRAY:

30 *She asked me to sign a restraint authorisation form to give consent for Terry to be physically restrained.*

Do you remember asking Mrs Reeves to sign a restraint form?

MS KANNAN: No, I do not recall.

35

MR GRAY:

40 *She told me that during shift changes all the staff were busy doing the changes and walking around with other nurses so they needed to restrain Terry for his own safety.*

Do you recall telling Ms Reeves that?

MS KANNAN: I do not recall anything.

45

MR GRAY: I suggest to you that you did have a conversation at the table as she describes, that you did ask her to sign a restraint authorisation form to give consent

for Mr Reeves to be physically restrained, and that you did tell Mrs Reeves that during shift changes all the staff were busy doing the changes and walking around with the other nurses so they needed to restrain Terry for his own safety. What do you say to that?

5

MS KANNAN: I do not believe that I would say anything like that.

MR GRAY: I also suggest, as Ms Reeves goes on to say, that you said to her that it might also be required, that is, that the restraint might also be required during meal times. Did you say that?

10

MS KANNAN: No.

MR GRAY: And I also suggest that you told her it would only be for a period of 30 minutes at a time and at most twice a day. Did you say that?

15

MS KANNAN: I do not believe, no.

MR GRAY: I beg your pardon?

20

MS KANNAN: I do not believe I said anything like that.

MR GRAY: And I will now ask you to have a look at the restraint form itself. Could we please bring up tab 21. Have you seen this document before?

25

MS KANNAN: Yes, I have.

MR GRAY: And is that your name appearing in the very bottom line, J. Kannan?

30

MS KANNAN: Yes.

MR GRAY: And is – are the words “wife” and that’s just in the line above, and in the lowest line, alongside date, 13.5.18; are they in your handwriting?

35

MS KANNAN: Yes.

MR GRAY: And is that all the writing that you did on this form or did you also do the ticks, danger to self and others, and belt lap restraint?

40

MS KANNAN: No, I do not believe I did the ticks.

MR GRAY: You didn’t do the ticks. You say you didn’t do the ticks; I suggest you did.

45

MS KANNAN: I do not believe I did the ticks.

MR GRAY: Okay. Now, I suggest to you that Mrs Reeves signed the form to you, the form in your presence in the following way. She mistakenly signed and dated in the middle of the page and then you told her that that wasn't the correct place to sign, and she crossed out the signature there.

5

MS HOGAN-DORAN: I object to this question, given it might be fairer to the witness to take it in two parts.

MR GRAY: Okay. I suggest that Mrs Reeves signed and dated in the middle of the form.

10

MS KANNAN: Sorry?

MR GRAY: In your presence?

15

MS KANNAN: I do not remember whether she signed in front of me or she signed, I'm pretty sure she signed before.

MR GRAY: You're pretty sure and you don't remember; is that what you're saying.

20

MS KANNAN: Yes, that's correct.

MR GRAY: Okay. So it's really a case of you not remembering this particular event; is that right?

25

MS KANNAN: Right.

MR GRAY: All right. I don't have any further questions then on that form. Do you – I had just better ask you this: do you remember pointing out that Mrs Reeves hadn't written in what her relationship to the resident was and asking her, could you write "wife" and then writing "wife" after she agreed?

30

MS KANNAN: Correct. Yes, I would ask her if she signed in front of me, I would ask her to fill out the form.

35

MR GRAY: All right. Please bring up tab 66 at 0835. Do you know anything about that yellow sticker on page 0835, Ms Kannan; is that your handwriting?

MS KANNAN: No, not my handwriting.

40

MR GRAY: Do you know anything about the sticker, its origin?

MS KANNAN: No.

45

MR GRAY: No. Please bring up tab 61. The – this is a restraint chart and it is one of a series of sheets. Would this have been kept with Mr Reeves' folder as well?

MS KANNAN: No, this form kept in the nurses' folder.

MR GRAY: Right.

5 MS KANNAN: The nurses have a folder and they fill in every day.

MR GRAY: Thank you. Now, there's a suggestion that there's been – or there's a suggestion that there are not available any sheets before 28 May 2018. Do you know anything about why there aren't any sheets available before 28 May 2018?

10

MS KANNAN: I do not know.

MR GRAY: With respect to the filling out of this restraint chart, you say that's in the nurses' station, is it?

15

MS KANNAN: It's in the nurses' folder, yes, in the nurses' station, but the nurses are the one fill out this form.

MR GRAY: The nurses. And do you have any reason to doubt the accuracy of the way they fill out the restraint chart?

20

MS KANNAN: Sometimes they just very busy so they just fill out the restraint form end of the day, like after they finished their work at 9 o'clock. Yes, they don't just do it like update it every half an hour.

25

MR GRAY: And if they do it at the end of the day or the end of the shift, do you have any reason to doubt that they would be doing it on the basis of their best recollection at the time?

30 MS KANNAN: That's correct.

MR GRAY: They would be doing it on the basis of their best recollection.

MS KANNAN: Their best recollection, yes.

35

MR GRAY: You've been part-time at Garden View since about 2011; correct?

MS KANNAN: Correct.

40 MR GRAY: And full time since 2016.

MS KANNAN: Correct.

MR GRAY: It's been your only nursing job; is that right?

45

MS KANNAN: Yes. Correct.

MR GRAY: Garden View is the only facility you've worked at.

MS KANNAN: Yes.

5 MR GRAY: In all the time you've worked there has physical restraint been used on residents with challenging behaviours at Garden View?

MS KANNAN: Yes, there one or two resident, they were on physical restraint but not all the time.

10

MR GRAY: All right. In fact, it's been a commonplace or the way Garden View has operated since 2011; is that right? It's has been a common feature of the way Garden View as operated, to use physical restraints on residents?

15 MS KANNAN: Because I do not remember all those years what has happened so  
- - -

MR GRAY: Please bring up tab 2. If we just look down the page, do you see your name appears towards the right hand end of a block of black, so it looks like this  
20 email was received by you and it's dated 1 March 2017.

MS KANNAN: Yes.

MR GRAY: And do you have any reason to doubt that this is an email that you  
25 received on or about 1 March 2017?

MS KANNAN: Sorry, I don't understand that question.

MR GRAY: Well, we will go down a little bit and we will see, if we go down to the  
30 bottom of the page, you will see that it's from the nurse educator. If we go over to the next page, perhaps – clinical nurse educator.

MS KANNAN: Yes.

35 MR GRAY: Now, I won't ask you who that is, but we just go back to the previous page. At item 1, the clinical nurse educator has said – this is under the heading or under the introductory words:

40 *Here are a few updates, please read carefully. 1. For residents in the central lounge if need to be restrained please sitting them near the glass door side. It doesn't look nice when visitors walk in and see resident being restrained.*

I suggest that this was an email sent to you, to the DON, to the deputy DON and probably to many other staff on 1 March 2017; what do you say to that?

45

MS KANNAN: I do not remember seeing this email, yet, if my name says, I'm pretty sure I received it as well.

MR GRAY: And was this a bit of an issue at the time in March 2017, that up to that point, residents in the central lounge had been left in restraints, and it didn't look nice for visitors?

5 MS KANNAN: I do not recall this email so I don't know. I can't comment on it?

MR GRAY: No further questions.

10 MR CROSSLAND: Commissioners, as you know, I appear for the family members of Mr Reeves, I seek leave to ask some questions about two matters. They've both been covered by counsel assisting, but I wish to ask further questions.

15 COMMISSIONER TRACEY: Have you advised counsel assisting consistently with the guidelines of the questions you propose to ask?

MR CROSSLAND: No, no, Commissioners, it wasn't apparent to me until Mr Gray finished that there might be further questions to ask.

20 COMMISSIONER TRACEY: All right. Well, we have come up to an adjournment time. I'm going to adjourn for 15 minutes. In that time, would you take the matter up with senior counsel - - - .

MR CROSSLAND: I will.

25 COMMISSIONER TRACEY: - - - and we will deal with it upon our resumption.

MR CROSSLAND: Certainly.

30 COMMISSIONER TRACEY: The Commission will adjourn for 15 minutes.

**ADJOURNED** [12.13 pm]

35 **RESUMED** [12.36 pm]

COMMISSIONER TRACEY: Yes, Mr Gray.

40 MR GRAY: Thank you, Commissioner. We may have a solution. I'm going to ask questions on two topics, and then we will hear what the other parties wish to say after I've done so.

45 COMMISSIONER TRACEY: Very well.

MR GRAY: So with your leave I will ask some additional questions - - -

COMMISSIONER TRACEY: Yes.

MR GRAY: - - - even though I've already breached my estimate of how long this cross-examination will take. Thank you for your indulgence.

5

Ms Kannan, on 1 May you had a conversation with someone from the family. I put it to you that that was a conversation with Ms Michelle McCulla on the evening of 1 May. And I want to put it to you that Ms McCulla, during the course of that conversation, has given evidence about the gist of the conversation, and I need to obtain your evidence in response to that evidence. Ms McCulla has given evidence that you, Ms Kannan, asked her if there was something that Mr Reeves had previously been given to settle his nerves, and Ms McCulla said that she was aware that her mother had given her father a half tablet of risperidone previously, but it did not sit well with her father. And I suggest to you that that's the correct account of the conversation that you had with the family member. What do you say that to?

10  
15

MS KANNAN: I do not recall anything like that in – a conversation, I do not recall.

MR GRAY: All right. The second matter I need to ask you about relates to the events on 13 May, and I've asked you a lot of questions about 13 May already and I've put to you the account of Mrs Lillian Reeves concerning, as she puts it, your witnessing of her signing the authorisation restraint form. Now, your evidence is not in agreement with hers. It seems to be – is this fair, it seems to be that you don't have a clear recollection of matters on that day with respect to Mrs Reeves. Is that a fair summary?

20  
25

MS KANNAN: Yes. I'm referring to my notes; if I have spoken to her, I would have document something in my notes that I've spoken to her.

MR GRAY: All right. But you're basing that remark on a supposition that you would have put things in your notes, but otherwise you don't have any independent recollection; is that right?

30

MS KANNAN: Yes, I do not have any recollection.

35

MR GRAY: All right. Now, do you – do you give evidence to the Commissioners, though, that you did at least take away a form that was signed by Mrs Reeves?

MS KANNAN: Yes. Correct. I documented that.

40

MR GRAY: Did you come away from whatever interaction you had with Mrs Reeves with a form that had been signed by her; is that right?

MS KANNAN: Sorry, can you explain that to me?

45

MR GRAY: Yes. At the end of the conversation, did you have a form that was signed by her?

MS KANNAN: Yes, I received the form, yes.

MR GRAY: Yes. Now, what was your understanding of the circumstances and durations for which the restraints authorised by that form would be applied? Do you  
5 understand the question?

MS KANNAN: No, I don't.

MR GRAY: What was your understanding at the time - - -  
10

MS KANNAN: Yes.

MR GRAY: - - - of the circumstances in which the restraints that were authorised  
15 by that form would be applied, and for how long would they be applied?

MS KANNAN: Yes, our policy is restraints only applied when it's a last resort and  
everything has been tried and when it's applied, it's checked hourly and recorded and  
then every two hourly it's released, and the resident should be stood up and walked,  
walked to the toilet or, yes, every two hourly, they should be released.  
20

MR GRAY: So you talk about every two hourly, but then after a walk to the toilet  
or whatever else occurs during that two hourly break, can they then be restrained  
again straight after that?

MS KANNAN: Not – not – doesn't have to be because it's only applied as a last  
25 resort and it's only when it's needed.

MR GRAY: So are you saying that Garden View's policy might have allowed  
further periods of restraint after the break in restraint, or it might not, depending on  
30 circumstances. Is that the evidence you're giving?

MS KANNAN: That's correct.

MR GRAY: And that's what you thought - - -  
35

MS KANNAN: Yes.

MR GRAY: - - - the form was authorising?

MS KANNAN: Yes.  
40

MR GRAY: Would it authorise restraints of 13, 14 hours a day, according to your  
understanding?

MS KANNAN: Yes, it's only used as a last resort unless it's – everything has been  
45 tried and if they need to use the restraint.

MR GRAY: So my question is, under any circumstances would it authorise restraint in total across a day for 13 or 14 hours?

MS KANNAN: I still don't understand that question, sorry.

5

MR GRAY: Your understanding of what the form was authorising - - -

MS KANNAN: Yes.

10 MR GRAY: I'm asking you about that. Could it ever authorise a resident to be restrained across a day – at various times across a day that all together add up to 13 or 14 hours?

15 MS KANNAN: It doesn't really say the time it's – it's been used; it doesn't really say.

MR GRAY: No further questions, Commissioners.

20 MR CROSSLAND: Commissioners, I don't seek to press the leave that I sought to raise before.

COMMISSIONER TRACEY: Very well. Thank you. Thank you for your evidence, Ms Kannan. You're excused from further attendance.

25 MS KANNAN: Thank you, Commissioner.

**<THE WITNESS WITHDREW**

**[12.42 pm]**

30

COMMISSIONER TRACEY: Yes, Mr Gray.

MR GRAY: Thank you, Commissioner. I call Dr Miles Burkitt. Would it be convenient to rise early, Commissioners, and return early?

35

COMMISSIONER TRACEY: Yes. Quarter to 2?

MR GRAY: Thank you.

40 COMMISSIONER TRACEY: Yes. Very well. The Commission will adjourn until 1.45.

**ADJOURNED**

**[12.43 pm]**

45

**RESUMED**

**[1.52 pm]**

COMMISSIONER TRACEY: Yes, Mr Gray.

MR GRAY: Thank you, Commissioner. I call Dr Miles Burkitt, B-u-r-k-i-t-t.

5 COMMISSIONER TRACEY: Thank you.

MR GRAY: I beg your pardon, B-i-r-k-i-t-t.

10 <MILES BURKITT, AFFIRMED [1.53 pm]

<EXAMINATION-IN-CHIEF BY MR GRAY

15 MR GRAY: What is your full name?

DR BURKITT: Miles Burkitt. I was previously known as John Miles Burkitt and in recent years I've been known just as Miles Burkitt.

20 MR GRAY: Thank you Dr Burkitt. Do I spell your surname B-u-r-k-i-t-t?

DR BURKITT: That's correct.

25 MR GRAY: Thank you. You've made a statement for this Royal Commission dated 29 April 2019; is that correct?

DR BURKITT: Yes.

30 MR GRAY: I will ask that that be brought up on the screen in front of you, WIT.0146.0001.0001. Do you recognise the document on the screen bearing that code to be a copy of your statement?

DR BURKITT: Yes, it is.

35 MR GRAY: Do you wish to make any amendments to your statement?

DR BURKITT: No.

40 MR GRAY: To the best of your knowledge and belief, are the contents of your statement true and correct?

DR BURKITT: Yes, they are.

45 MR GRAY: Thank you. Dr Burkitt, in your statement, you mention that you've been the local medical officer attending patients that have been allocated to you by

the management of Garden View Nursing Home. For how long have you been acting as the local medical officer in that capacity?

5 DR BURKITT: In Garden View Nursing Home in particular?

MR GRAY: Yes.

10 DR BURKITT: Look, I can't remember exactly. Probably eight years. It's – it's a bit of a guess.

MR GRAY: Yes. Thank you.

DR BURKITT: Yes.

15 MR GRAY: It's an estimate.

DR BURKITT: Yes.

20 MR GRAY: And during that time, have you noticed that some of the residents in Garden View have from time to time been restrained by devices such as lap belts?

DR BURKITT: Yes.

25 MR GRAY: About how often do you visit Garden View?

DR BURKITT: Probably about once a week. Sometimes it might be twice, and on other occasions when I'm busy it may be one of my locum doctors.

30 MR GRAY: In respect of the period in 2018 up to July 2018, doing the best you can as an estimate, about how many residents of Garden View would you estimate had restraints in the nature of lap belts on - - -

35 DR BURKITT: I think – I think that's a difficult question for me to answer because under my care, I look after about maybe a quarter of the residents there. Yes, when I'm doing my rounds I tend to focus my attention on my residents, and you've also got to bear in mind that restraints are intermittently used so how can I answer that question accurately?

40 MR GRAY: Yes. Have you formed any impression in respect of that period in the first half of 2018 as to, on an intermittent basis, how many residents seemed to have belts on them from time to time when you visited?

DR BURKITT: There are a few, yes, and - - -

45 MR GRAY: I won't press you further, Doctor. I understand.

DR BURKITT: It's sort of hard to answer but I have seen people in restraints there, yes.

5 MR GRAY: I understand. Thank you. Now, I want to ask you about the prescription order of 7 May to which you've had your attention drawn by a notice given by the Royal Commissioners, and perhaps it's best if I just bring that document up on the screen and then ask you questions about it. Tab 69. Can we please go to page 1262.

10 DR BURKITT: 1262, yes.

MR GRAY: Now, looking at page 1262, this document bears – it's slightly cut off but it bears a title in the top right-hand corner, Prescriber Order Sheet, in your statement you've made a point about there being some sort of distinction between a script, an actual script and a prescriber order sheet. Is there a difference?

15 DR BURKITT: It's a bit of a mix because the whole industry is undergoing a change where the medication charts in certain nursing homes are – serve as prescriptions and others that don't. And I – I suppose sometimes for me it's a bit confusing because I go from one facility to another, and it may not be obvious to me that what I'm writing actually is a script as well as an instruction.

MR GRAY: Very well. Putting aside that potential difference and just treating this as, in effect, authorisation by medical practitioners in the nature of a prescription for PBS pharmaceuticals, I just want to direct your attention to the left-hand side of the document, the second box which you've referred to in your statement, in particular at paragraph 7 and then again at paragraph 17. I just want to ask you about the markings in that box and the circumstances in which the markings came to be made. And just tell me if any of this is wrong. In that box, that is the left-hand side middle box, all the handwriting that appears is your handwriting; is that right?

DR BURKITT: The middle part on the left?

MR GRAY: Yes, the middle left.

DR BURKITT: Yes, it's mine, all of it.

MR GRAY: You've written going from the top:

40 *Risperidone 0.5 milligrams half TDS.*

And what that is intended to convey is that you're ordering .5 milligrams – .5 milligram capsules of risperidone - - -

45 DR BURKITT: Tablets.

MR GRAY: Tablets, thank you, tablets, but only half of each tablet to be used; PRN, which means as needed up; up to TDS, three times a day; is that correct?

DR BURKITT: That's correct.

5

MR GRAY: Thank you. Then there are perhaps in the middle, fourth – in a way it's the fourth line inside the box, I beg your pardon third line inside the box, it says:

*Behaviour/unsettled.*

10

Is that the reason why you've prescribed the risperidone?

DR BURKITT: Yes.

15 MR GRAY: And then in the next line there is a circular form signature and then there's a more angular form signature immediately to the right. Are they both your signatures?

20 DR BURKITT: Yes, the one on the left – sorry, the middle left in that box is when I prescribed it, and then the one right at the bottom of that particular box in the centre section is when I charted it off on 28.5.2018. And you might notice I've scrubbed out something there, and that was actually me, when I first prescribed it, I accidentally wrote the date in the wrong box.

25 MR GRAY: Thank you. And I think there's just one or two minor extra things I need to ask you about. The circular form signature appears twice. Is it correct to say that where it appears in the bottom part of the box, that's when you've charted it off and you've also struck through the entire box diagonally with two lines?

30 DR BURKITT: Yes, I usually like to strike it out as well, because it makes it very clear that this medication was ceased on this particular day.

35 MR GRAY: Yes. And in the more middle part of the box, probably about the fourth line of writing, on what occasion did you make the more circular form of your signature towards the left-hand side of the middle of the box?

DR BURKITT: Sorry, I'm not quite understanding that question. Are you talking about the left hand signature?

40 MR GRAY: Yes.

DR BURKITT: In the centre of that centre box?

MR GRAY: Yes.

45

DR BURKITT: That was when it was prescribed.

MR GRAY: Right. Why did you sign it twice when it was prescribed?

MR BECKETT: I object.

5 DR BURKITT: No, I didn't sign.

MR BECKETT: I object.

10 DR BURKITT: Sorry?

MR BECKETT: Sorry, that was not – I object. That was not the evidence that was given.

15 COMMISSIONER TRACEY: No, that was not the evidence.

MR GRAY: I beg your pardon, Dr Burkitt, just – I wish I had a pointer, but in the middle of the box starting at the left, there's a circular series of markings over the words "prescriber sig", "prescriber name", and partly over "date of prescribing." Do you see that circular form of signature there?

20 DR BURKITT: Yes.

MR GRAY: Is that your signature in circular form?

25 DR BURKITT: Yes, so that was - - -

MR GRAY: When did you make that marking?

30 DR BURKITT: On the 7<sup>th</sup> of the 5<sup>th</sup>.

MR GRAY: Right, and then just to the right of that there's a more angular form of signature, isn't there?

35 DR BURKITT: Yes, my signature varies all the time but that's my signature as well when I charted it off. I think in my - - -

MR GRAY: Just to the right there's a more angular over the words "streamlining authority" or is that just you printing your name; is that what that is?

40 DR BURKITT: Streamline authority?

MR GRAY: Just over "streamlining authority", partly - - -

45 DR BURKITT: That's my name printed the way doctors normally print.

MR GRAY: Thank you. And that was made on 7 May when you charted it on as well, was it, that marking?

DR BURKITT: Yes, that's right.

MR GRAY: Thank you very much. Now, in respect of the circumstances in which this was charted on, do the words NIM mean anything to you in general? NIM.

5

DR BURKITT: Yes, nurse and – nurse initiated medication.

MR GRAY: What does that mean?

10 DR BURKITT: Nurse initiated medication, it pretty means that this – it's usually a chart and it's the medications that are listed on that chart, the nurses can make their own decision to administer to the patient when they feel it's necessary.

MR GRAY: And is that analogous to PRN?

15

DR BURKITT: Well, because it's not a regular medication, it would be technically a PRN medication, but the decision to administer it to the – to the resident would be a nurse initiated medication. So the nurse decides.

20 MR GRAY: Thank you.

DR BURKITT: Yes.

25 MR GRAY: In your statement, you refer to the circumstances in which you made this order, I'll call it the order in that box, at paragraph 11 and then again at paragraph 17. We will call up your statement again, please, operator, and we will call out paragraph 11.

DR BURKITT: Yes.

30

MR GRAY: Just refresh your memory about that. I want to ask you about the second sentence:

35 *I was advised at the time by the duty RN that the resident had already been prescribed this by the resident's doctor prior to arriving at the Garden View nursing Home. However, I was aware that this particular medication did not accompany him when he arrived at the facility. The circumstances surrounding the prescribing of this medication was that the duty RN advised me that the resident was extremely agitated, confused and wandering extensively. As I was*  
40 *advised that he was on risperidone on a PRN basis at home I determined that medication was relevant to the prevailing situation and so I charted it.*

45 And then again at paragraph 17, you refer in more general terms to both an occasion on 7 May and then you say on 29 May – do you mean on 30 May – I beg your pardon, on 28 May? You say in paragraph 17:

*I did have conversations with the duty RNs with regard to the prescribing of risperidone which would have been from my first attendance on 7 May 2018 and to 29 May, at which time I decided to cease the regular PRN risperidone.*

5 Did you intend to say 28 May in that paragraph, Dr Burkitt?

DR BURKITT: I don't know. I mean, I haven't got – I'm not remembering all the timeframe that well but I think I'm referring to the – I think that might be the window in which I had anything particular like to do with the resident, like attending  
10 and so on. I think that's the window – look, I'm not sure but I haven't got access to that at the moment.

MR GRAY: Dr Burkitt, you don't mention getting consent from any authorised representative of the resident, Mr Terance Reeves, in your statement. Did you turn  
15 your mind to whether you should be getting informed consent from an authorised representative for medical treatment?

DR BURKITT: Well, going on the – the doctor's message book, I interpreted the – what I saw there as a consent.  
20

MR GRAY: Could we go to tab 88, please, operator at page 0286. Thank you. Is this the reference in the doctor's community book to which you're referring?

DR BURKITT: Yes. It says:  
25

*Mr Terance Reeves was unsettled and wandering.*

And then it says:

30 *Wife said she gave or gives him risperidone –*

It looks like five milligrams there, but – okay, half. That dose is wrong anyway, but half a tablet three times a day PRN:

35 *Wife given consent to chart.*

MR GRAY: Is that the entry to which you're referring when you say you looked in the message book?

40 DR BURKITT: Yes.

MR GRAY: There's a line drawn through:

45 *Wife given consent to chart.*

Do you see that? It's not the diagonal line, it's the horizontal line.

DR BURKITT: Well, that's probably a – reflects on rather a bad process, perhaps, that is there's a tradition in the nursing home that we cross out stuff as we – as we acknowledge it, and I – you know, I have in my memory that we had a conversation with the nurse and that I had consent to chart it.

5

MR GRAY: Okay. I just need to ask you one other thing about this. If you - - -

DR BURKITT: I would just like to add, if you're going to cross it out like that, it should be notated as to who crossed it out and why.

10

MR GRAY: Yes, and the other obvious thing is there's also a diagonal line, so it is difficult. It's going to be my submission, based on some evidence that has been heard that, in fact, the horizontal line was made by the RN who had entered that information because she realised that was a mistake and she just wished to leave the reference to:

15

*Wife said she gave him risperidone 5 mg half tab TDS PRN.*

Without the text that has the horizontal line through it. Now, do you have any independent recollection of what this entry was when you referenced it on 7 May?

20

DR BURKITT: Well, I can't remember whether it was crossed out at the time or not.

25

MR GRAY: No.

DR BURKITT: But - - -

MR GRAY: Can I just suggest this to you, doctor.

30

DR BURKITT: Yes.

MR GRAY: If the words that are now subject at least to a horizontal line had been present, those words, in fact, the words you read out:

35

*Wife given consent to chart reg risperidone half tab nocte –*

as well as the other words that are there:

40

*Plus half tab TDS PRN.*

They suggest that if those words had been there, your charting on 7 May would have been different because it would have included a regular nocte half tab of risperidone in addition to the PRN prescription.

45

DR BURKITT: Well, quite frankly I wouldn't have done it.

MR GRAY: Okay. And why is that?

DR BURKITT: Well, because these sorts of medications are really last resort  
5 medications, and you don't go flying into it straightaway. Half a tablet, which is .25  
milligrams which is not quite what that message says there, but that's what it  
obviously meant, is to be given at the last resort. And to try and settle the resident  
down, it's important to take him for a walk, take him out to the garden, reassure him,  
10 toilet him, give some interaction with the local nursing home community, get the –  
the recreational officer to participate in having some activities done which would  
tend to even – even with quite severely demented people, sometimes it can settle  
them down.

MR GRAY: And another reason is that these antipsychotic drugs such as  
15 risperidone have side effects; that's right, isn't it?

DR BURKITT: Mmm.

MR GRAY: What do they include?

DR BURKITT: Well, there's quite a lot listed but I think in the context of where we  
20 are with this drowsiness and propensity to fall is very important, but there are other –  
there's quite a big list of side effects. I can't go into all of them here.

MR GRAY: No.  
25

DR BURKITT: But there are a lot and some of them include involuntary  
movements and involuntary posture and things like that which is a problem.

MR GRAY: And is it generally well known in the body of general practitioners that  
30 there is drowsiness and falls from risperidone?

DR BURKITT: It is. It is, yes.

MR GRAY: Now, I just ask you to just give your view again, I'm not sure whether  
35 I gave you a chance to answer it: did you regard this entry in the form you saw it as  
being consent by the authorised representative for you to chart risperidone?

DR BURKITT: Well, I probably did. You've got to remember this patient came  
40 into the nursing home with no medical history provided, virtually came in, to the best  
of my knowledge, with a bag of medication, and very little supporting information,  
and we have to get on with the job and try and look after him.

MR GRAY: And informed consent would be a very important thing to obtain  
45 before charting risperidone; is that right?

DR BURKITT: Yes.

MR GRAY: Tab 65, please, operator. Are these your notes in a series of records held at Garden View called medical notes – I beg your pardon, that’s not the page I wish to go to. I beg your pardon, Doctor. Can we go to 0649, please. Thank you. Can we go to the top of the page, please, Dr Burkitt, adjacent to 7 May 2018, are they your notes in response to - - -

DR BURKITT: Yes, that entry is mine.

MR GRAY: Yes. Thank you, now, can we just go down, please, operator, to 15 May. These are not your notes at 15 May, are they, Dr Burkitt?

DR BURKITT: No, that’s Dr Wong, my locum.

MR GRAY: Yes. Did he communicate with you about any of the information recorded alongside his notes of 15 May or in his notes of 15 May 2018 on or about 15 May 2018?

DR BURKITT: Did he inform me?

MR GRAY: Yes.

DR BURKITT: Is that what you say?

MR GRAY: Yes.

DR BURKITT: No, well, I can’t remember.

MR GRAY: Can we go to page 0649, the bottom, 28 May 2018. They’re your notes adjacent to 28 May 2018, aren’t they, Dr Burkitt?

DR BURKITT: Yes, that’s right, 28 May.

MR GRAY: And you said:

*Post fall 21 May 2018 found sitting on floor in toilet, cease risperidone.*

And then signed it.

DR BURKITT: Yes, that was a week later; that’s right.

MR GRAY: And you’ve deemed it appropriate, as you explained in your statement, in light of the fall, the previous falls, to cease risperidone altogether on 28 May; is that - - -

DR BURKITT: Absolutely. Yes.

MR GRAY: Could I just ask you about this matter of a signature you put on a physical restraint authorisation. Can we please bring up tab 21. Now, you've very properly dated it the correct date.

5 DR BURKITT: Yes.

MR GRAY: I'm not suggesting anything to the contrary. But I just want to ask you about the circumstances in which you dated that, signed and dated that. In about the middle, or about two-thirds down that page, do you see there's a fair few markings.  
10 Underneath where it's printed LMO signature, that's your signature, the circular form signature.

DR BURKITT: Yes, that's my signature.

15 MR GRAY: And then you've written your name in, in the other form, the more angular form.

DR BURKITT: Yes, that's my capital letters.

20 MR GRAY: And then you've dated it 25 June 2018 because that's when you made those markings.

DR BURKITT: Yes, that should line up with my entry notes on that day.

25 MR GRAY: And why did you sign it even though it's clearly a form that had other markings on it on 13 May 2018; what were the circumstances in which you signed it?

DR BURKITT: Well, I think the person signing that was probably Mrs Reeves, the  
30 resident's wife, I would imagine, and she has signed it in the wrong place, and it's been crossed out by somebody, possibly herself, maybe.

MR GRAY: And you mention in your statement being asked to sign this at  
35 paragraph 14.

DR BURKITT: I can't remember it really clearly but I'm sure I did it.

MR GRAY: All right. I have no further questions.

40 COMMISSIONER TRACEY: Doctor, at any time - - -

MR GRAY: Sorry, I beg your pardon, Commissioner. I've just omitted to tender the statement.

45 COMMISSIONER TRACEY: What was its date?

MR GRAY: It's 29 April 2019, WIT.0146.0001.0001.

COMMISSIONER TRACEY: Yes. The statement of Dr Miles Burkitt dated 29 April 2019 will be exhibit 3-13.

5 **EXHIBIT #3-13 STATEMENT OF DR MILES BURKITT DATED 29/04/2019 (WIT.0146.0001.0001)**

10 COMMISSIONER TRACEY: Doctor, at any time in the month of May last year did you have occasion to examine Mr Reeves?

15 DR BURKITT: Well, I can't really remember. Mr Reeves was a respite patient. I suppose I admit many respite patients for care. I know retrospectively there were issues, but I – I can't really remember well.

COMMISSIONER TRACEY: And the evidence is that towards the end of May, you determined to cease the prescription that you had earlier made for his medication. What led you to do that?

20 DR BURKITT: Well, any psychotic – antipsychotic medication such as risperidone need to be reviewed on an ongoing basis, and so the dose is tailored to fit the patient and I mean, if there were no falls and no drowsiness, it could have been still appropriate. But under the circumstances, I made the determination that it was no longer appropriate.

25 COMMISSIONER TRACEY: Because of the report you had received from the nursing staff?

30 DR BURKITT: Yes. Well, yes, that's right. The dose was still quite low on my – on my prescribing, but elderly people can be very sensitive, and medication such as tranquillisers and such can have a profound effect on some people, and maybe a minimal effect on others. And so the doctor, initially, of course, you don't know. So one has to be very careful with the ongoing prescribing.

35 COMMISSIONER TRACEY: Anything arising out of that?

MR GRAY: There is one question. It's not – it's indirectly arising out of - - -

40 COMMISSIONER TRACEY: Yes.

MR GRAY: - - - what has been said.

45 Dr Burkitt, if you can't recall having actually observed Mr Reeves at the time of the prescriptions in respect of risperidone, it does raise the question whether you had seen Mr Reeves at the time you signed the physical restraint form, the consent - - -

MR BECKETT: I object.

MR GRAY: - - - to restraint.

MR BECKETT: I object to the question.

5 COMMISSIONER TRACEY: On what basis?

MR BECKETT: The word used by senior counsel assisting was “observed”. Your Honour asked a question as to whether he had examined Mr Reeves, and the answer, from my recollection, was he could not recall. The question was then put on the basis that he had not observed him. I don’t think that has been established on the evidence.

COMMISSIONER TRACEY: Yes, well, I’m sure the question can be reframed.

15 MR GRAY: That’s perfectly fair. So Doctor, I will ask the question again. Given that you can’t recall whether you examined Mr Reeves at the time of the charting of the risperidone, it leads me to ask a question whether you had examined Mr Reeves by the time of your signing of the authorisation for restraint form which is on 25 June 2018. Had you examined Mr Reeves by then?

20

DR BURKITT: Well, I can’t recall examining him but I don’t believe I would have prescribed risperidone and had a restraint order provision signed without even knowing who I’m doing it for. I’m sure I would have seen him.

25 MR GRAY: All right. If you’re sure you would have seen him – I’m going to ask you about your recollections, but given that you don’t have a recollection of examining him it’s difficult, but do you have any – do you have a recollection of forming a view that restraint authorisation was clinically indicated for Mr Reeves when you signed that form on 25 June 2018?

30

DR BURKITT: I suppose it comes into the semantics of what you recollect and what you recollect recollecting, but it’s hard for me. I’ve had all this shoved in my face in recent days. You know, I can’t remember standing over him looking at him. But I must have. I’m sure I did.

35

MR GRAY: And on your – on the basis of your usual practice, would it only be – well, I withdraw that. I will leave it there, Commissioners.

COMMISSIONER TRACEY: Very well.

40

MR GRAY: No further questions.

COMMISSIONER TRACEY: Thank you.

45 MR BECKETT: Nothing arising.

COMMISSIONER TRACEY: Thank you. Thank you, Doctor, very much, you're excused from further attendance.

5 DR BURKITT: Thank you.

**<THE WITNESS WITHDREW [2.25 pm]**

10 MR GRAY: I call Dr Kenneth Wong.

**<KENNETH WONG, AFFIRMED [2.26 pm]**

15 **<EXAMINATION-IN-CHIEF BY MR GRAY**

MR GRAY: What is your full name?

20 DR WONG: Kenneth Wong.

MR GRAY: Operator, please bring up WIT.0145.0001.0001. Dr Wong, have you made a statement for the Royal Commission dated 2 May 2019?

25 DR WONG: I did.

MR GRAY: And if you just please look at the document that's been brought up on the screen bearing that code number, do you recognise that as a copy of your statement? Perhaps operator, if we go to where we can see Dr Wong's signature.

30

DR WONG: Yes, I do.

MR GRAY: Do you wish to make an amendments to that statement?

35 DR WONG: No.

MR GRAY: To the best of your knowledge and belief are the contents of the statement true and correct?

40 DR WONG: They are.

MR GRAY: I tender that statement, Commissioners.

45 COMMISSIONER TRACEY: Yes. The statement of Dr Kenneth Wong dated 1 May 2019 will be exhibit 3-14.

**EXHIBIT #3-14 STATEMENT OF DR KENNETH WONG DATED 01/05/2019  
(WIT.0145.0001.0001)**

5 MR GRAY: Operator, please bring up tab 65 at page 0648. Thank you. Dr Wong,  
is that your handwriting appearing on that page of the Garden View Aged Care  
medical notes?

DR WONG: Yes, it is.

10

MR GRAY: Did you conduct the admission, that is, the medical admission process  
for Mr Reeves?

DR WONG: I did.

15

MR GRAY: And are these the notes you made during that admission?

DR WONG: Yes.

20 MR GRAY: And did you note that, under Problems, Mr Reeves has Alzheimer's  
dementia severe, and this was on 1 May 2018 I should say, yes.

DR WONG: Yes.

25 MR GRAY: You noted at that time:

*Problems one, Alzheimer dementia severe.*

Then you mentioned two other things: depression and hypercholesterolemia, is it?

30

DR WONG: That's correct.

MR GRAY: Yes. And you've actually bracketed that and said "nil".

35 DR WONG: That's right.

MR GRAY: What does that mean?

40 DR WONG: That means he's not receiving any current medication for those two  
condition.

MR GRAY: Okay. And you didn't change that?

DR WONG: No.

45

MR GRAY: So his regular medication was Galantamine?

DR WONG: Correct.

MR GRAY: And was it 25 milligrams?

5 DR WONG: 24.

MR GRAY: 24 milligrams nocte.

10 DR WONG: That's correct.

MR GRAY: And in your examination of him you noted that he was walking without assistance.

15 DR WONG: That's correct.

MR GRAY: His mobility was good, wasn't it?

DR WONG: Was good. Yes, that's true.

20 MR GRAY: Yes. And under "directions", if I can put it that way, in the last three lines was for:

*Medication was charted, normal diet, normal nursing care.*

25 DR WONG: That's correct.

MR GRAY: Now, on 15 May, you charted regular risperidone .5 milligrams nocte. Do you recall that?

30 DR WONG: Yes, I do.

35 MR GRAY: I will get the chart, that is the prescriber order sheet brought up. That's tab 69, please, operator. Page 1262. And in the bottom left-hand corner there's a box on that page, page 1262. Now, I want you to ignore the diagonal lines and signature in two places at the bottom of that box, one either side of the date 28 May 2018. Apart from those markings, are the markings in that box your own handwriting?

40 DR WONG: Yes, it is.

MR GRAY: Yes. And you've charted the .5 milligrams nocte and you've signed, and was that on 15 May?

45 DR WONG: That's correct.

MR GRAY: Right.

DR WONG: It's not dated there but my note says on the 15<sup>th</sup>.

MR GRAY: All right. And then later, to the best of your knowledge and belief, did Dr Burkitt chart it off? Is that what these markings mean?

5

DR WONG: That's what the markings suggest.

MR GRAY: The other markings, the diagonal markings.

10 DR WONG: Yes.

MR GRAY: Now, with respect to the circumstances in which you charted the risperidone .5 milligrams nocte as a regular medicine, you've referred in your statement at paragraphs L, M, N and O to the circumstances of that charting, and you've had conversations with senior nursing staff. Who was that?

15

DR WONG: I can't remember.

MR GRAY: All right. And they told you that they were informed – I beg your pardon, they informed you that they were concerned about the continuing wellbeing of Mr Reeves. Is that what you recall?

20

DR WONG: That's correct.

MR GRAY: You can't recall what rank the person was, were they a registered nurse?

25

DR WONG: No, sorry, I tried but I can't remember.

MR GRAY: All right. At N, you referred to some clinical notes that Dr Burkitt had reviewed Mr Reeves on 7 May 2018. I will take you to what I believe might be those notes in a minute. But then you've said the nursing staff informed you that:

30

*The low dose risperidone was not effectively managing Mr Reeves' distress, his wandering or his behaviour, and the wandering was creating a risk of falling.*

35

Now, I just want to ask you about that because you'd noted at his admission that he was very mobile. They weren't the exact words you used but in your evidence - - -

DR WONG: That's correct.

40

MR GRAY: - - - to me you agreed he was mobile, so you didn't believe he was a risk of falling on his admission?

DR WONG: That's correct.

45

MR GRAY: Do you understand risperidone to be associated with falls risks?

DR WONG: Yes, I do.

MR GRAY: So at this point in time on 15 May, 14 days after admission, a person who, only 14 days before was mobile, is now said by the nursing staff to be at some  
5 sort of falls risk; is that right?

DR WONG: That's correct.

MR GRAY: Wouldn't that raise an alarm bell in your mind that it might be the  
10 risperidone that's causing the falls risk?

DR WONG: Yes, it did, and on questioning the nursing staff they said it was not effective, not.

MR GRAY: But the response on the day is that you've actually charted more  
15 risperidone, haven't you, as a regular medicine?

DR WONG: That's correct.

MR GRAY: Isn't that illogical; if risperidone was a falls risk and if somebody who  
20 was mobile only two weeks before is now by 15 May said to be at risk of falls isn't it illogical to prescribe him more risperidone?

DR WONG: In that sense, yes, but when – sorry, my thinking at that time was that  
25 this gentleman who was – when I saw him in the corridor, he was acutely distressed, he was confused, he was wandering down and obviously suffering from agitation and delirium probably, and according to nursing staff, half a risperidone, a quarter risperidone was not effective in modifying his behaviour and he persist to have sleep disturbance and walking around wandering at night, and the corridor is busy place,  
30 people walking up down, the staff is – and there's more, possibly tripping over, running over. And my decision was just not to add an increased risperidone during the daytime PRN, I just increase at night-time and hopefully he will get some sleep at night and reverse his sleeping pattern. At present moment he was more awake at night-time and sleeping in daytime.

MR GRAY: Dr Wong, I will take you to the document that I think you might have  
35 in mind when you refer to – when you refer to the notes you mentioned, clinical notes you called them, that Dr Burkitt had made. Now, please bring up tab 65, operator, on page 0649. Is that the note that you have in mind when you made that  
40 reference to clinical notes that Dr Burkitt had made? At the top of the page, 7 May 2018

*Resident wandering a great deal, generally unsettled.*

DR WONG: Yes, I do, yes.  
45

MR GRAY: And then in the next entry on that page an entry you made?

DR WONG: That's correct.

MR GRAY: And you made that on 15 May.

5 DR WONG: That's correct.

MR GRAY: And you've noted:

10 *Confusion is increased –*  
what does that say?

DR WONG: Agitation.

15 MR GRAY:

*Agitation is increased in the evening.*

20 Is that what you've said?

DR WONG: That's correct.

MR GRAY: Then you've said:

25 *For (1) belt restraint.*

DR WONG: Yes, correct.

30 MR GRAY: And:

*(2) regular risperidone 0.5 milligrams nocte.*

DR WONG: That's correct.

35 MR GRAY: Right. And you haven't – and that's in effect the record of what you charted or the reasons why you charted .5 milligrams nocte on 15 May; is that right?

DR WONG: Yes, that's what I've said.

40 MR GRAY: In addition you've said for belt restraint. What were the clinical indications in your mind for belt restraint?

45 DR WONG: Back to the wandering, the increased risk of fall, okay, when I saw him, he was walking normally, just normal, loss of balance, he was walking well and that's one of the problem, him walking up and down the hallway. And one – the normal matter of trying and controlling him was one is first non-pharmaceutical, we will try behaviour modification, try to talk to him, calm him down. According to the

nursing staff, that's not working. Two, pharmacological restraint risperidone, order tablet three times a day. According to nursing staff, it's not working. So we're left down to physical restraint and I've order physical restraint lap band on the chair as the most lowest of them.

5

MR GRAY: And did you indicate for how many – did you indicate orally in any conversation for how long during any particular day that would be appropriate, at a maximum?

10 DR WONG: From memory, I didn't actually state that but I was assume that this is the normal protocol, not to – only to invoke when there's no other alternative, when there's danger to him. Number two, I also got assumption that lap restraint is done when, in a safe situation, he would be supervised, not left alone. And also I was left to understand lap restrain possibly means he will be entertained, not just sit there in a  
15 corner, he will be entertained – not entertained, sorry, stimulated with people walking around, trying to get him to do things. And that's - - -

MR GRAY: In your statement at P you say:

20 *I advised the nursing staff –*

This is in respect of the question:

25 *Did you have any communication with or provide advice to staff regarding the use of physical restraints on Mr Reeves.*

You say at P:

30 *I advised the nursing staff that considering Mr Reeves was at risk of falling if he continued to wander around the nursing home they could use a belt restraint if they were unable to moderate that behaviour by other means.*

DR WONG: That's correct.

35 MR GRAY: That's correct, is it?

DR WONG: Yes.

MR GRAY: That's what you said?

40

DR WONG: That's what I told her. So the first choice is to try to calm him down by walking around, talk to him, reassure him.

45 MR GRAY: Well, I suggest that if you said something to that effect, that doesn't put any time limitation on - - -

DR WONG: No.

MR GRAY: That doesn't put any time limitation on the use of belt restraint.

DR WONG: No. I depend on the nurses' judgment.

5 MR GRAY: And it's not really, I suggest, an indication that the belt should be used as a last resort. It's simply, it can be used if they can't moderate the behaviour by other means. What do you say to that?

10 DR WONG: I was – my assumption is always as last resort.

MR GRAY: Well, what does that really mean? I will ask you a proper question. Why couldn't the nursing home provide one-to-one care for Mr Reeves, and if they did that to make sure he didn't fall over, then that would not justify the use of a restraint because there's something else that they could do to stop him falling over, ie, delegate a person for one-to-one care.

15 DR WONG: You're correct; I agree.

MR GRAY: So it's not provided the nursing home could provide one-to-one care, it couldn't be justifiable as a last resort to use physical restraint. What do you say to that?

20 DR WONG: I agree with that.

25 MR GRAY: I want to return to the point I asked you about a little earlier with respect to your increase of the dose of risperidone to regular nocte. The justification that has been mentioned to you by the staff of Garden View when they seemed to have raised the topic – did they raise the topic of physical restraint or did you just think of it?

30 DR WONG: No, they did.

MR GRAY: They did.

35 DR WONG: As part of the discussion management plan what we can do for him.

MR GRAY: Okay. So do you remember the terms in which they mentioned it? Did they say "Dr Wong, could we please put a belt restraint on him?"

40 DR WONG: Probably something like that, authorise for lap restraint, yes.

MR GRAY: All right. And what was the reason they advanced for that, or what's the justification they advanced to persuade you to authorise restraint?

45 DR WONG: Okay, for - - -

MS HOGAN-DORAN: Objection. There's a faulty premise in that question. There wasn't any suggestion that there was evidence, from his evidence, that there had been attempts at persuasion.

5 MR GRAY: Okay. I will rephrase the question. Were there any reasons advanced in support of their request that you authorise restraint?

DR WONG: No matter, when I can see him walking around, confused and agitated.

10 MR GRAY: All right. Was there any reference to a risk of falling or was that something you formed your own view about?

DR WONG: That's something that I formed my view.

15 MR GRAY: In respect of that you've already said that you know risperidone is associated with increased risks of falling, and on the very same day I suggest to you that you're acting inconsistently by raising the dose of risperidone that Mr Reeves is going to experience over the course of a 24 hour period, at the same time as using the risk of falling to justify the application of physical restraint.

20

DR WONG: Yes. That is my dilemma, yes.

MR GRAY: Well, it's not just a dilemma; it's illogical, isn't it, Dr Wong?

25 DR WONG: No, sorry, my justification for giving it at night-time, I didn't increase during the daytime, I increase at night-time in the hope that he may get some sleep and reverse the sleep pattern, so that he will be back to sleeping at night-time and awake during daytime.

30 MR GRAY: You didn't alter the PRN prescription for half tablet TDS, did you.

DR WONG: Yes, I did not.

35 MR GRAY: And half tablet TDS means that Mr Reeves might, theoretically have received as much as .75 milligrams of risperidone during the daytime PRN, correct?

DR WONG: That's correct, but I dependent is written as PRN, therefore dependent on nursing staff to use judgment when it's necessary, and from my conversation with the nursing staff was told the PRN dose was not given that many times.

40

MR GRAY: Did you turn your mind to the question of obtaining informed consent from any authorised representative of Mr Reeves before prescribing .5 milligrams regular risperidone nocte.

45 DR WONG: Could you repeat that question?

MR GRAY: Yes, on 15 May, or at any time before 15 May, did you turn your mind to the obtaining of informed consent from an authorised representative of Mr Reeves for prescribing him .5 milligrams risperidone nocte on a regular basis.

5 DR WONG: The simple answer is no, I did not, but I made a couple of assumptions. One, it was previously prescribed already by Dr Burkitt and, second, the nursing – nursing staff inform me that the patient was already on it before he came to nursing home.

10 MR GRAY: But you were informed that Mr Reeves was only on half a tablet of .5 milligrams - - -

DR WONG: That's correct.

15 MR GRAY: - - - PRN which means .25 milligrams risperidone PRN, and it's a different matter, I suggest to you, to prescribe risperidone on a regular basis, be it in the daytime or nocte, it's a different matter requiring informed consent for that matter. What do you say to that?

20 DR WONG: That is your opinion and I got different opinion from that. I say – I already explain my answer. I gave it at night-time in the hope that he may get some sleep and hopefully he may reverse his sleeping pattern, and I hoped that would happen.

25 MR GRAY: I'm sorry.

DR WONG: I say I hoped that would happen.

MR GRAY: No further questions.

30 COMMISSIONER TRACEY: Thank you, Doctor, for your evidence, you're excused from further attendance.

DR WONG: Thank you.

35

**<THE WITNESS WITHDREW** **[2.45 pm]**

40 MR GRAY: Next, I call Kee Ling Lau, Ms Kee Ling Lau.

**<KEE LING LAU, SWORN** **[2.47 pm]**

45

**<EXAMINATION-IN-CHIEF BY MR GRAY**

MR GRAY: What is your full name?

MS LAU: Kee Ling Lau.

5 MR GRAY: Do I spell your surname L-a-u?

MS LAU: Correct.

10 MR GRAY: Are you a registered nurse?

MS LAU: No, I'm the director of nursing.

MR GRAY: Are you also a registered nurse?

15 MS LAU: I'm also a registered nurse.

MR GRAY: You're the director of nursing of Garden View Aged Care Merrylands.

20 MS LAU: Correct.

MR GRAY: Operator, please bring up WIT.0137..0001.0001. Have you made a statement dated 2 May 2019 for the Royal Commission?

25 MS LAU: Yes, I did.

MR GRAY: Is this a copy of that statement?

MS LAU: That is correct.

30 MR GRAY: Do you rush to make any amendments to the statement?

MS LAU: There could be one mistake in the day of discharge on the last page, where it said on the 8<sup>th</sup> where he was discharged on 7 July.

35 MR GRAY: And if we go to paragraph 121, please, operator, on page 21, the last line of paragraph 21, at the end of the line refers to 8 July, it should refer to 7 July; is that right, Ms Lau?

40 MS LAU: Correct.

MR GRAY: With that amendment made, to the best of your knowledge and belief are the contents of your statement true and correct?

45 MS LAU: True and correct.

MR GRAY: I tender the statement.

COMMISSIONER TRACEY: Subject to the correction at the end of paragraph 121, the statement of Kee Ling Lau dated 2 May 2019 will be exhibit 3-15.

5 **EXHIBIT #3-15 STATEMENT OF KEE LING LAU DATED 02/05/2019**  
**(WIT.0137..0001.0001)**

10 MR GRAY: Ms Lau, you've been the director of nursing of Garden View Merrylands since 1995; is that right?

MS LAU: Correct.

15 MR GRAY: Over all that time until July 2018 has it been the case that at Garden View there have been residents that are subject to physical restraint from time to time?

MS LAU: No.

20 MR GRAY: No.

MS LAU: I don't believe that's the case. In the beginning, there were very little restraints. For some reason in 2017 it seemed that the number of residents with the challenging behaviour escalated, and I recollect that was the peak of the number of restraints we had.

30 MR GRAY: And so at that time at that peak, how many residents did you have from time to time under restraint, if I could put it that way? How many residents were there who would be subjected to restraint from time to time?

MS LAU: I can't recollect. From time to time was seven to nine.

MR GRAY: Seven to nine, and that's out of 70 residents?

35 MS LAU: 72. No, our total capacity is 72.

MR GRAY: 72. And Garden View provides a high level of care; is that how you regard Garden View?

40 MS LAU: Yes, I can confirm that.

MR GRAY: Yes. And do you know why Garden View in this period you're referring to, determined to use restraints on seven to nine residents or thereabouts?

45 MS LAU: It's the number of – it's the clientele mix that Garden View is getting. A lot of residents come into aged care home suffer dementia, plus when some of the residents that we admitted earlier, they are – their dementia has progressed. So it just

seemed that during that period, moving forward, we have high number of residents exhibiting challenging behaviour. That is the reason why we have extra.

5 MR GRAY: Well, that's part of the reason but was there any other reason?

MS LAU: No.

10 MR GRAY: So why weren't there more staff available to look after those people with, as you say, challenging behaviour, say on a more one-on-one basis?

MS LAU: Garden View always have higher ratio of staffing, but unfortunately it never can afford in any aged care home one to one. There are occasion, many occasions where they need one to one. One-to-one staff is given. One-to-one care is given. A lot of the case, or they are – they are – the residents are taken to where the staff are so that they can closely monitor it. So unfortunately it can't afford one to one for all 72 residents or high number of residents with challenging behaviour.

15 MR GRAY: Operator, please bring up tab 2. Did you receive the email that begins about halfway down the page which was sent on 1 March 2017. It comes from the clinical nurse educator?

20 MS LAU: I can't – I can't remember that email.

MR GRAY: Do you remember the issues raised at point one:

25 *That the residents in central lounge if need to be restrained, please sitting them near the glass door side; it doesn't look nice when visitors walk in seeing residents being restrained.*

30 Do you remember that being an issue?

MS LAU: No. If I had seen that email I would have corrected the situation, because it seemed concerning that that's the case because what – what Garden View always have proposed to do is that when the residents are under restraint, they need to be supervised. They need to be in clear vision, not put in the – near the window side, the glass – glass door side. So if I have known that, if I seen that email I would have corrected it.

35 MR GRAY: So you're saying that if – you're saying that you didn't receive this email?

MS LAU: I can't recollect receiving the email.

45 MR GRAY: Well, if you look further up the page you will see that it has actually been forwarded by you, so you must have received it; isn't that the case?

MS LAU: I took – I saw it outside. I was shown this email. This piece of paper, and I cannot at the moment explain why this is so. Because from the first original email it seemed as though I have sent the email to the – to the complaint department regarding the case on diabetes and the attachment, any attachment that I give to them  
5 will be scanned attachments of education sessions attended by the staff. So I cannot recollect why there will be the second part of the email which is not from me included in this email.

MR GRAY: On 21 March 2017 you've forwarded, albeit for another purpose,  
10 related to diabetes, you've forwarded this document onto somebody else, but it clearly refers to an issue about residents in the central lounge being restrained in view of visitors, and you're saying that you, what, you didn't notice that in the email?

15 MS LAU: No, I didn't notice that in the email.

MR GRAY: How about in real life, did you notice that there were residents restrained in the central lounge, near the glass door in view of the visitors?

20 MS LAU: I – normally what I see in the – in the – in the – that is in the activity room. That was previously I believe – I forgot now when we changed that central – it was central activities room, and then we changed to dining room.

MR GRAY: Well, I suggest to you that you would have been fully aware that there  
25 were residents in the central lounge in view of visitors when they walk in. What do you say to that?

MS LAU: The central lounge is at that time – is the central lounge, now is a dining  
30 room. The – the residents normally, they're in the tub chair or in the – in the chair, they sit along the – the other – the opposite side of the window because what I can usually – what they do, normally do is that they have the activities conducted near the window side, and they have got table and chair near the window side for those attending the activities, social activities. And those that are watching or – or are in there for – for other purposes, they sit along the side, on the opposite side to the glass  
35 window.

MR GRAY: And were you aware, I suggest you were, that there were residents under restraint in the central lounge?

40 MS LAU: Yes.

MR GRAY: In about March 2017?

MS LAU: Yes.  
45

MR GRAY: How many?

MS LAU: I can't exactly establish how many.

MR GRAY: You were asked – sorry.

5 MS LAU: It would be minimal, one or two.

MR GRAY: Yes. Now, at the bottom of the email it says:

*Should you require any further information do not hesitate to contact Kim.*

10

And then there's some other people. Are you Kim, or is there some other Kim?

MS LAU: Yes, I am.

15 MR GRAY: Yes.

MS LAU: Because that's an email from my clinical nurse educator.

MR GRAY: Isn't it likely that the clinical nurse educator, before saying to  
20 everybody on the addressee list, should you require any further information please do  
not hesitate to contact Kim or others, isn't it likely that she raised with you the point  
in point one?

MS LAU: It is – it is normal practice because when I generate a memo, I usually  
25 show it to my deputy or the clinical nurse educator or anyone. It's for proofreading  
of my grammar or to see the content is correct before I attach it to send to the staff.  
But in this case I cannot recollect seeing that because it is a email directly sent to the  
staff, and not attachment of – of a memo as such. The other thing is that from – from  
30 memory, Nicole has often do that on her own accord but she always – she always put  
down there:

*Please contact Kim Lau or me if you have any question.*

MR GRAY: As a director of nursing how often are you there at Garden View; are  
35 you there during the day shift every day?

MS LAU: Yes, in the morning I'm usually there before 6.45, and then finish at  
either 4.30 or 5 o'clock.

40 MR GRAY: And do you walk around the premises - - -

MS LAU: Yes, I do.

MR GRAY: - - - on a regular basis.

45

MS LAU: I do.

MR GRAY: What, many times a day?

MS LAU: It all depends, some days I do more rounds and some days I check on different times, two, three times a day is pretty normal.

5

MR GRAY: You said in about March was the peak of Garden View using restraints on residents. That – this is an email from March. I suggest to you that you knew that there were residents in the central lounge being restrained in view of the glass door side where visitors could see them, and you were supportive of the direction to everyone, greeting everyone, it says, to move those residents away so visitors couldn't see them.

10

MS LAU: No, I don't believe I would agree with that.

MR GRAY: All right. And I suggest further that that was because you didn't want to give the impression that there were too many people under restraint in Garden View?

15

MS LAU: No, that wouldn't be the case because I want them only monitored. Resident's safety is the other – first priority for me. All my principles belief is for resident care, residents are – wellbeing is of my main concern there.

20

MR GRAY: When did Garden View start using the East Wing as a close monitoring unit for people with advanced dementia?

25

MS LAU: I think with the renovation it started in around year 2000.

MR GRAY: Year 2000. So all the time since the year 2000 - - -

MS LAU: Hang on.

30

MR GRAY: - - - have the most advanced cases been in the East Wing, the most advanced cases of people living with dementia have been in the East Wing, is that right?

35

MS LAU: Yes.

MR GRAY: And how many residents have there typically been in the East Wing?

MS LAU: At the one time only maximum number is 12.

40

MR GRAY: 12. And there's evidence before the Royal Commission that virtually all of the people, with the exception of a resident in – with the exception of one resident in the East Wing in the period May to July 2018 all of the other people in the East Wing were restrained - - -

45

MS LAU: That is not the case.

MR GRAY: - - - in the period to July 2018?

MS LAU: That is not the case because I have asked staff to check back on the records around that time. I think at that time it seemed – it seemed to best of my  
5 recollection, I was told that Mr Reeves was the only one.

MR GRAY: Now, to the best of your recollection; that doesn't appear in your statement, does it, that Mr Reeves was the only person under restraint in East Wing?

10 MS LAU: No, in East Wing.

MR GRAY: Is that what you're saying. In the East Wing?

MS LAU: In East Wing.  
15

MR GRAY: Now, I want to ask you about the time before this peak where you refer to a peak in restraints being used on residents, and you estimate seven to nine residents might have been under restraint from time to time. Do you say that before  
20 2017 Garden View was using restraints but not as often; what do you say?

MS LAU: That's absolutely correct. We have got more residents who are not at risk of falling or intruding.

MR GRAY: So in 2016 there were restraints being applied to residents; is that  
25 right?

MS LAU: Possibly 2016 to '17, yes.

MR GRAY: Now, I want to ask you about your statement. If we bring your  
30 statement up, and go to page 19, paragraph 110. In paragraph 110 you say in your view:

*We met the standard and quality of care for Mr Reeves.*

35 But you also say:

*However I can't be sure of every instance of care and every experience of Mr Reeves due to a lack of documentation and the fact my staff can't now recall key issues.*

40 Now, if we go to the next page, paragraph 114, you say you haven't been able to satisfy yourself that there being compliance with the policy in relation to restraints. And then you say a whole lot of things that you believe. But I want to ask you about that policy. Are you conceding in this paragraph that there might have been a breach  
45 of the policy at Garden View in respect of the care of Mr Reeves?

MS LAU: There is no breach of the policy. The policy says that he can be restrained under emergency basis, but then it is very hard to demonstrate what is emergency basis.

5 MR GRAY: Well, you've said in the first line:

*I haven't been able to satisfy myself that there being compliance with the policy.*

10 MS LAU: That is why I said that line. I cannot be 100 per cent certain.

MR GRAY: So you're saying there might have been a breach of the restraint policy.

MS LAU: Possibly, I cannot be 100 per cent certain.

15

MR GRAY: All right. And I want to ask you to look at the policy. That's tab 5, please, operator. Now, if we go to page 1230, please. At the bottom of page 1230 there's a heading Wandering Residents:

20 *The philosophy of our policy to give optimal level of care to all our residents –*

And then over the page:

*with an objective to safeguard them while maintaining their independence.*

25

There are a few other things said. Then down below under a heading Restraint, it says:

*Physical restraint is deliberately restricting a person's movement or behaviour. It can be the use of equipment designed to limit or stop someone from moving, take away mobility aids or by using physical force and locking of doors. If restraint is required for residents in this facility, the staffs will try all kinds of softer restraint to reduce the use of high risk restraints like the use of bed rails or extreme risk restraints like the belts or vests.*

35

So the policy regards a belt as an extreme risk restraint; is that correct Ms Lau?

MS LAU: Yes.

40 MR GRAY: And is that because of the risk to the resident, for example, of pressure injury to them or strangulation if they slip down, things of that kind?

MS LAU: Because that is what it is stated in the guidelines, that using of belts and restraint is classified as extreme risk. That's the way I – extreme risk from.

45

MR GRAY: So because it's an extreme risk restraint, you would accept, wouldn't you, that the circumstances have to be extreme before a belt would be used even for a short time?

5 MS LAU: True.

MR GRAY: And what is the daily limit in total under your policy or your direction to staff if you don't have a written policy?

10 MS LAU: That would be no set up limit because every individual case is different.

MR GRAY: What, so it could be for 13 or 14 hours a day?

15 MS LAU: Well, I – under best practice it wouldn't be – it wouldn't be good to have a resident restrained for that long. Unfortunately in the case of Mr Reeves, he hasn't – there and that reversal, so it is basically 24 hours where he is at risk or putting other people at risk, so therefore, the length of time seem longer. And the other – on the other note is that the restraint chart has demonstrated in many parts to be incorrect.

20 MR GRAY: We will come to that in a minute. But I'm just asking you whether it would ever be justified to apply a belt - - -

MS LAU: No, it wouldn't be - - -

25 MR GRAY: - - - even in a single day for 13, 14 hours?

MS LAU: It wouldn't be justified.

MR GRAY: It would not be, would it?

30

MS LAU: No.

MR GRAY: No. And what about day after day for continuous days for long periods of hours, six, nine, 13 hours? That could never be remotely justified. That would be mistreatment, wouldn't it?

35

MS LAU: It all depends on circumstances again.

MR GRAY: Well, there's always something - - -

40

MS LAU: Because – because if – if not, if it is a resident who is just not wandering sometime then it will seem like extreme, but when the resident is nonstop wandering, then it is – it is hard for one to one all the time.

45 MR GRAY: But rather than apply physical extreme risk restraints to a resident for many, many hours on consecutive days, anything should be done to avoid that because it could only be at the extreme last resort. Do you agree with that?

MS LAU: I would agree with that, yes.

MR GRAY: And that would include one-to-one care, even if it's costly for the rostering and staffing costs of the nursing home.

5

MS LAU: It was – it was demonstrated that a lot of one-to-one care has been provided but it's – it's – can't be 24 hours one-to-one care at all times because it's – the funding does not afford that kind of level.

10 MR GRAY: Well, what if it were 20 hours?

MS LAU: 20 hours? Sorry, I didn't - - -

MR GRAY: What's the limit? How much one-to-one care can be provided?

15

MS LAU: 20 hours a day, no.

MR GRAY: 12 hours.

20 MS LAU: I can't put a figure, it's just that when somebody is available, not busy doing – attending to other residents, then that person can be utilised for one to one.

MR GRAY: Please bring up tab 74. This is a letter from your employer's solicitors responding to a notice from the Royal Commission. Have you seen this letter before? It's a letter from Sparke Helmore dated 11 April 2019.

25

MS LAU: Can I expand that because I've got difficulty seeing.

MR GRAY: Sure. Of course.

30

MS LAU: Thanks.

MR GRAY: Operator, could you please expand.

35 MS LAU: Thank you.

MR GRAY: Is that big enough, Ms Lau?

MS LAU: Okay, thank you.

40

MR GRAY: Have you seen this letter before?

MS LAU: Yes, I – that is the beginning of the Royal Commission that letter was – I seen this letter, yes.

45

MR GRAY: All right. Now, I'm not going to ask you about any conversations you had with lawyers but I'm just going to ask you about certain contents of the letter. If

we go to the next page, please, operator, question 4. If you would expand the central section of the page. Thank you. So Ms Lau, question 4 was:

5            *As at 30 June 2018 describe the method or process by which Garden View assessed and determined the number of staff in direct care categories rostered for each shift.*

Just stopping there, there are three shifts?

10    MS LAU: Correct.

MR GRAY: Morning, afternoon and night.

MS LAU: Correct.

15

MR GRAY: During the night there's less staff; is that right?

MS LAU: Correct.

20    MR GRAY: And there's one person in East Wing; is that right?

MS LAU: Yes, 24 hours.

MR GRAY: East Wing has only got one person for the entire 24 hours.

25

MS LAU: No, no, no, 24 hours there's always one person there; at any one time there will be one person in East Wing.

MR GRAY: All right. Are you saying there's only one person assigned to - - -

30

MS LAU: More than – I mean, at least one.

MR GRAY: At least one. Now, I will keep reading:

35            *As at 30 June 2018 describe the method or process by which Garden View assessed and determined the number of staff in direct care categories rostered for each shift, including by identifying –*

And then there's:

40

*(a) the person or persons.*

I'm not going to be asking you about that, and (b), I'm going to be asking you about this:

45

*The considerations involved when making rostering decisions.*

Now, these are decisions that you make; is that right?

MS LAU: Yes, correct.

5 MR GRAY: And you say that:

*Garden View has developed –*

Or do you say this:

10

*Garden View has developed a base roster for direct care staff, registered nurses and other clinical support staff that covers a fully occupied facility of high care needs residents.*

15 Is that something that you say?

MS LAU: Yes. Yes, correct.

MR GRAY: And:

20

*Garden View then considers and increases the rostered direct care staff when it is alerted and requested by the existing direct care staff. Staff are directed, requested and encouraged to alert the DON or DDON.*

25 Is that deputy DON?

MS LAU: Yes.

MR GRAY:

30

*...to any identified problem or issue when they find a certain area of time of day when more staff are needed to manage an increased workload or increased time is needed to care for residents with challenging behaviours or specific needs. Upon any notification of an area of need, the roster is added to from Garden View's existing pool of permanent part-time or casual staff.*

35

Is that all correct?

MS LAU: Yes, correct.

40

MR GRAY: And then there's a reference to the considerations taken into account when making rostering decisions, and these are typically decisions by you or in your absence the deputy DON; is that right?

45 MS LAU: Yes, correct.

MR GRAY: Now, what I suggest to you is that there was a process just described by reference to the need to care for residents with challenging behaviours or specific needs by which you could increase the roster to care for a person with challenging needs, and it was in your discretion to do so for Mr Reeves.

5

MS LAU: I think there – there would be care increase in that general room, it is not for one person alone. It is for – for covering of all the residents. We cannot increase staffing level to the extent that he has one-to-one 24 hours.

10 MR GRAY: Why not?

MS LAU: The funding will not – does not – enough to fund for that kind of level, unfortunately.

15 MR GRAY: When you say “the funding”, what funding?

MS LAU: Well, based on the ACFI funding - - -

20 MR GRAY: So you’re restricting the care that you provide to a particular dollar amount you receive under ACFI?

MS LAU: We have a baseline and we can increase a little bit but not to the extent of 24 hours, one extra staff.

25 MR GRAY: Well, this is what I asked you before. To what extent can you extend - - -

30 MS LAU: No, we can’t extend to that much. But what we can do is increase maybe four and a half hours or something like that, or increase the shift so that if the particular resident is very restless, so if somebody who is going home early that day, could ask her, can you stay on, or if there is a staff member that is not too busy, or even the ..... staff we can say can you go and help. Those kind of things we do to manage care for residents.

35 MR GRAY: During the period 1 May to 7 July 2018, did you try those things to help Mr Reeves?

40 MS LAU: We have because a lot of time he’s put with the recreational activity officer and if he has – if – if she has time she will spend one to one with him.

MR GRAY: How many times did that happen?

45 MS LAU: I can’t recollect because a lot of time and also the physio aid, when they have finished their work, when they have got extra time, she also has spent time with him and the nursing staff, they are not busy all the time because once they’re finished or the – the work and if they have any time, they usually – they have – I have seen

them spending time with residents who wander, a resident who need extra care, who needs one to one.

5 MR GRAY: There weren't any regular scheduled activities in the afternoon shift between May and July 2018; is that right?

MS LAU: There's no, sorry?

10 MR GRAY: There were no scheduled regular activities in the afternoon shift between May and July 2018; is that right?

MS LAU: There is – the activities is up to 4.30 or 5 o'clock only.

15 MR GRAY: All right. I think you said a minute ago that the funding would extend to allowing about four and a half hours per day of one-to-one care; is that right?

MS LAU: I – I don't calculate the funding. I just make estimates as to whether it is affordable.

20 MR GRAY: And it isn't affordable to provide one to one care for more than four and a half hours in a day: is that what you're saying?

MS LAU: I would say that, yes.

25 MR GRAY: Yes. Did you seek expert advice from DBMAS in respect of the management of Mr Reeves? You don't refer to anything of the kind in your statement.

30 MS LAU: Not for him. Not for him. Not – I cannot recollect him being referred to DBMAS.

MR GRAY: Did you ever seek the intervention of the Severe Behaviour Response Team?

35 MS LAU: Yes, we have. The DBMAS was involved - - -

MR GRAY: For Mr Reeves?

40 MS LAU: - - - with other – other case but not for Mr Reeves, no.

MR GRAY: Did you ever seek a Severe Behaviour Response Team intervention for Mr Reeves?

45 MS LAU: I believe there wasn't a referral to them.

MR GRAY: Okay.

MS LAU: But he was referred to geriatrician.

MR GRAY: That's right at the end of his stay, though. It's very close to the end of his stay, isn't it?

5

MS LAU: Mmm.

MR GRAY: Now, it follows, that Garden View did not do everything that it could have done to investigate other options for managing his, that is, Mr Reeves' behaviours, before imposing physical restraints on him? You didn't seek advice from DBMAS and you didn't seek the intervention of the Severe Behaviour Response Teams?

10

MS LAU: It's true to say that.

15

MR GRAY: Was it reported to you that on 8 May, Mr Reeves had been subjected to restraints by staff, that is, in the nature of a lap belt?

MS LAU: It may have happened but if the documentation did not reflect that, it could have happened but not reflected by the – by the documentation.

20

MR GRAY: Did registered nurse Jayanthi Kannan report to you that contrary – well, not supported by any direction by her, staff had placed Mr Reeves in a restraint on that day, 8 May?

25

MS LAU: I did not hear it before, only – only – only today, earlier here.

MR GRAY: Listening to Ms Kannan's evidence?

MS LAU: Yes.

30

MR GRAY: On 11 May the evidence suggests that Mr Reeves was in restraints for at least part of that day. What do you say to that?

MS LAU: I cannot remember exactly that he was restrained part of the day or – or cannot remember.

35

MR GRAY: Now, both of those dates were before any form was signed which in any sense could be an authority to restrain Mr Reeves. Do you accept that? Because the form in question was dated 13 May.

40

MS LAU: It's – it's correct.

MR GRAY: So - - -

45

MS LAU: It could have happened.

MR GRAY: Well, assuming it did happen, on any view, the restraint applied to Mr Reeves on those days was without authorisation, wasn't it.

5 MS LAU: Yes, with the authorisation but I hope that the staff will have assess him and it will be in our – it was assessed as need – requiring and they will have their own assessment based on that assessment they – they would have applied it.

10 MR GRAY: So are you saying that direct care staff, not even a nurse, can just make up their own mind and apply a restraint without authorisation?

MS LAU: It is not the normal policy and procedure.

15 MR GRAY: Well, not normal, is it contrary to Garden View's policy, would you say?

MS LAU: Exactly. Contrary to our - - -

20 MR GRAY: Yes. So assuming that happened, say, on 8 May that was a breach of Garden View's own policy, wasn't it?

MS LAU: It would be.

MR GRAY: What about on 11 May?

25 MS LAU: I have not recollection that it happened on 11 May.

MR GRAY: Right. Now, I will ask for document tab 64 to be brought up, please. Adjacent to the letters, or the numbers 2200 on the left column, do you see the words in the progress notes:

30 *Resident remains awake and wandering. Received phone call from wife and daughter. Wife informed the above. Wife said at home when he is really restless she gives risperidone 5mg –*

35 but it's .5mg "half tab TDS written in LMO's book to review". In accordance with the usual practices of Garden View would a reference like that be regarded as informed consent by an authorised representative, to the prescribing of an antipsychotic such as risperidone?

40 MS LAU: But it would seem like it's given consent because it says wife give consent of - - -

MR GRAY: Where does it say that?

45 MS LAU: No, no, no, sorry. No, it will not seem like it is a consent given.

MR GRAY: All right. Now, if that's all that was said, I'm not actually saying that is accurate account of the conversation but if that was what was said, you wouldn't regard that as informed consent?

5 MS LAU: No. It wouldn't be a consent. It would say that it has been used at home, that she would agree that that could be used, too.

MR GRAY: It would need to say, and she agrees that it could be used by the home, by the nursing home?

10

MS LAU: Yes.

MR GRAY: I should say the aged care facility.

15 MS LAU: That's correct.

MR GRAY: Because it's a different thing, isn't it, for a family to be prescribed risperidone half tab to be used by them in the home in the particular family relationship context, compared with a residential aged care facility being authorised to administer risperidone half tab. Do you accept that?

20

MS LAU: Can you – can you clarify that again. Sorry, I didn't get it.

MR GRAY: Yes. I'm just asking you about why you're saying it wouldn't be informed consent, and I'm suggesting that the reason is that it's a very different thing for the family of a person living with dementia to be authorised by a clinician to administer half a tablet of risperidone when they see fit, compared with a residential aged care facility being authorised to do it. They're two different things. It might be the same drug but they're two different things, and fresh consent would be required to enable the nursing home to be authorised to do that. Do you agree with that?

25

30

MS LAU: Well, to me it seem as though that if the resident has – has been given this, and she say that this is what we – I usually give when he's restless, that she is agreeing that you could use it, too.

35

MR GRAY: Well, I suggest that's contrary to what you just said a minute ago when you said that this reference doesn't amount to informed consent.

MS LAU: I know but it is, what we – we hope at that time was that – or normally what Garden View do is that even if the – even if the doctor comes and say that a resident is very restless and intruding and all that, and then if they recommend risperidone to be written out for this resident, the staff member would ring up the family and let them know and then make them aware that he's going to be prescribed this. And then if the family object, then we – we have always follow what the recommendation are, as through the progress notes, yes, he has demonstrated that when the family has asked for something, we have always followed.

40

45

MR GRAY: I want to ask you about an entry in the progress notes, this same document at page 0284, if we could go to that page, please, operator, alongside the entries for 16 May, 0284. Right. 16 May is in the top half of the page, Ms Lau. Do you see there's – where it says 16 – about a third of the way down the page 16.5.18, 2100.

MS LAU: Yes.

MR GRAY:

*Resident restless, was restrained in chair to prevent falls incident.*

Now, you've reviewed the records of Garden View recently in preparation for this hearing; is that right?

MS LAU: That's correct.

MR GRAY: There hadn't been a falls incident recorded in any documentation for Mr Reeves as at 16 May 2018 yet, had there?

MS LAU: Correct.

MR GRAY: The first recorded falls incident is 21 May.

MS LAU: Correct.

MR GRAY: What I suggest to you is that Mr Reeves was becoming deconditioned by being restrained and that was creating the risk of falls. Do you know what I mean by "deconditioned"?

MS LAU: Yes, I fully understand what is deconditioning.

MR GRAY: Yes. So what I'm suggesting to you is that it was illogical and inappropriate for him to be restrained to prevent falls incidents because the restraint itself was exacerbating the risks of falls. What do you say to that?

MS LAU: I don't think he – he was – he – the – I don't think when he fell, it was because of restraint. It was demonstrated that he has day and night reversal and in – in the daytime he's very lethargic and he still wants to walk around. So under those circumstances, there is very high risk of falling and that, when he was – when he fell on 21 May, he was not restrained.

MR GRAY: He was not restrained at that point but he had become unsteady on his feet by then, and that's probably why he fell on 21 May. Would you agree with that?

MS LAU: He had become unsteady on his – he may become unsteady on his feet but the – the progress notes throughout says he’s restless, very restless, very restless, agitated, wandering, so it showed that he wasn’t deconditioned as – as the words say.

5 MR GRAY: I suggest to you that already by 16 May he is becoming unsteady on his feet and it’s most likely because of being restrained.

MS LAU: By 16 May, it didn’t say he was - - -

10 MR GRAY: Well, if he wasn’t unsteady, what is the justification for restraining him in a chair to prevent falls?

MS LAU: It could be to prevent falls and also to prevent him from intruding, and also other behaviour as well.

15

MR GRAY: Well, there’s no evidence, I suggest, that he was a risk to anybody else. What do you say to that?

MS LAU: Documentation states that he was wandering to – wandering to other residents and sometimes urinating in their room, or wanting to go into other residents’ bed. So documentation has suggested that he’s constantly going to – going with – with this kind of behaviour. So that’s the reason why for restraint.

20  
25 MR GRAY: Well, I suggest to you that that should have been addressed by better staff monitoring, and that it was for the convenience of the rostering process and to avoid incurring cost that Garden View decided to restrain him? What do you say to that?

30 MS LAU: I think at that time they make the best judgement and that was the – the outcome of the – I think they did. But even if we have extra staff, I don’t think it will stop this – him being reducing from restraint.

MR GRAY: Sorry.

35 MS LAU: And it’s hard to justify, how many increase in staff because we have other residents who are – who are also restless and wandering. So I don’t agree with you that – with the increase of staff.

40 MR GRAY: Please bring up the behaviour chart, 62. Now, a behaviour and monitoring chart was commenced for Mr Reeves on 20 May. Are you aware of any other behaviour monitoring chart being commenced for Mr Reeves before 20 May?

MS LAU: It may have but I don’t – we don’t have any records in there, in the file.

45 MR GRAY: Well, I suggest the obvious inference is that behaviour monitoring didn’t commence until 20 May, and if that’s the case, for that reason also, Garden

View hadn't done everything to avoid using physical restraint as a last resort. What do you say?

5 MS LAU: Can you – can you ask the question again, please?

MR GRAY: Yes. Garden View didn't commence a behaviour chart until 20 – a behaviour monitoring chart until 20 May 2018. That's the submission that I will be making about this case. There is no behaviour monitoring chart before 20 May so the inference must be that it was only commenced on 20 May. What do you say to that?  
10

MS LAU: I thought there were different kind of charts that there was commence before.

15 MR GRAY: What I'm suggesting is that a behaviour monitoring chart is an important tool to try to understand what sort of behaviour the person is showing and, therefore, what interventions or strategies might be used to help avoid those behaviours or mitigate them. Do you agree with that?

20 MS LAU: No. The progress notes has – has indicated throughout his behaviour and we refer – we – we make more reference to the progress notes. When – when we need to contact the doctor or – or we need to refer to anyone it's based on the progress notes.

25 MR GRAY: Were you - - -

MS LAU: This behaviour monitoring chart, it's an extra documentation done by the assistant in nursing.

30 MR GRAY: And the purpose of it, I suggest, is to try to come up with strategies to mitigate the relevant behaviours; isn't that right?

MS LAU: It – it is one of the purpose is to find out his behaviour and what we can do to – to prevent those, or to look after him better.  
35

MR GRAY: And it's important to do that in a systemic way, rather than just picking up odd references in the progress notes, otherwise you might not be able to come up with the optimal strategy to mitigate behaviours. Do you agree with that?

40 MS LAU: I don't understand – I don't know why it was only commenced 20 May. I cannot – I don't know if any – any was done before that.

MR GRAY: It should have been commenced well before it was considered justifiable to apply physical restraint, shouldn't it?  
45

MS LAU: Yes, I say yes, it should be.

MR GRAY: Now, I want to ask about 21 May. The documentation records that there was an unwitnessed fall and Mr Reeves was found on the floor of his bathroom; is that right?

5 MS LAU: That is correct.

MR GRAY: Right. Was that reported to you at the time?

MS LAU: Yes.

10

MR GRAY: And what did you do about it?

MS LAU: Normally what I do is just check that the – the – do the follow-up, see if there's any injuries and then make sure that the family are informed. Make sure that they have followed the procedure and policy regarding falls properly.

15

MR GRAY: Well, the family weren't informed on 21 May. What do you say to that? They were not informed.

20 MS LAU: The progress notes did say they were informed, I thought.

MR GRAY: I will ask you about 23 May. The progress notes, tab 64 at page 0285, refer to Mr Reeves again being found on the floor.

25 MS LAU: Twenty - - -

MR GRAY: 0285, this is tab 64, 0285, on 23 May at – adjacent to the 0515 time stamp, at 0230:

30 *Walking down to check on resident and found him crawling around on the floor in room 12. Able to stand and walk, had wet his pants but not his pad. Had toileted self, brought down to nurses' station, but remained restless and then later 0700 noted resident has been guarding his arm all night.*

35 Looks like – is it left arm? Not certain.

*Guarding his arm all night. When asks, doesn't –*

40 and then it says C/O pain. That suggests there might well have been a fall on the 23<sup>rd</sup>; was that reported to the family?

MS LAU: No. That resident, I don't think he was – there was a fall. I don't think it was reported as a fall. He was crawling on the floor.

45 MR GRAY: All right. So he was found on the floor on the 21<sup>st</sup> but it was reported as a fall. He's found again on the 23<sup>rd</sup> on the floor and he's cradling his arm shortly afterwards but it's not reported as a fall; is that right?

MS LAU: I don't – I don't think they say that he – they say that that was a fall, because they – when they found him he was crawling. It wasn't falling.

5 MR GRAY: Well, it might not say – it might not use the word “fall” but isn't that all of the evidence that there probably had been a fall?

10 MS LAU: It could possibly indicate that he may have a fall, but on the other note it says the resident has been guarding his right arm and ask – he doesn't complain of any pain and then “please observe”. So the next day he was visited by the family.

MR GRAY: Thank you. And you're right about the progress notes referring to information being given to Mrs Reeves about 21 May. You mentioned that a minute ago.

15 MS LAU: Yes.

MR GRAY: I withdraw that suggestion to the contrary, but in respect of 23 May there seems to have been no notification to the family. Do you agree with that?

20 MS LAU: Agree with that.

MR GRAY: Okay. Now, I want to ask you about the restraint chart. The restraint chart is at tab 61. Now, you've made a point in paragraph 114 of your statement that this shouldn't be taken to be reliable; is that right?

25 MS LAU: That's correct.

MR GRAY: So you're saying that the records of Garden View itself are very important record, isn't it, a restraint chart, are not reliable.

30 MS LAU: Unfortunately, the restraint chart, it's done from – for after talking to the staff, normally at the end of their shift, when they sit down, when they say, I have to do my paperwork. So it rely on – on memory, and the other thing is AIN, they are not highly educated, they are not qualified staff. So when they do the restraint chart, I – I – I do not know whether where did they get the time – the time from and it seem like the – the first – first one to enter, the second – the second day they will copy what was entered. It seem – it seem that way.

40 MR GRAY: Right.

MS LAU: And it will be restrained on the hour and taken off on the hour. So from – from those records, we – we can – we can – and also from comparing with the progress notes we have found that there is inconsistency in that.

45 MR GRAY: Well, let's take that a step at a time. Firstly, you say the AINs are not educated. They are nurses in instruction, aren't they?

MS LAU: They are nurses; they have about four months training or something like that. I'm not sure.

5 MR GRAY: And there's no reason to think that they will do anything other than use their best recollection when filling out this chart at the end of a shift if they do so.

MS LAU: I hope they will do to the best of their recollection but we have got different AINs with different level of education and also attitude to – to documentation.

10 MR GRAY: All right. Now, I suggest to you that there's absolutely no basis beyond the mere fact that it may well be the case that sometimes the entries are made at the end of a shift, absolutely no basis for thinking that an AIN would exaggerate the time that Mr Reeves was under restraint in this restraint chart. What do you say to that?

MS LAU: I don't think you could use the word "exaggerate". What – what I'm trying to say is that the AINs do not understand what they're documenting half the time. They – they want at the end of the day to do their paperwork, so as long as there's some documentation there, she doesn't – they have satisfied their role, that the paperwork is done.

MS LAU: I don't think you could use the word "exaggerate". What – what I'm trying to say is that the AINs do not understand what they're documenting half the time. They – they want at the end of the day to do their paperwork, so as long as there's some documentation there, she doesn't – they have satisfied their role, that the paperwork is done.

20 MR GRAY: The only particular reason you've given in your statement at paragraph 114 for suggesting that the information in the restraint chart is it to be doubted is that you've said in the progress notes there are references to Mr Reeves being asleep in the East Wing on a couch at times when the restraint chart states that he's under restraint; correct?

MS LAU: Correct.

30 MR GRAY: And that's really the only particular you're giving that suggests that there's any doubt about the accuracy of the restraint chart, isn't it?

MS LAU: If you could please refer to my supplementary statement.

35 MR GRAY: I haven't received that. The Royal Commission might have but I haven't. So I will need to have a look at that and ask you about it shortly.

MS HOGAN-DORAN: Would it assist you to confer with me just briefly, and show it to you.

40 MR GRAY: I haven't had a chance to read that, Commissioners. I will just proceed with this and then I will ask you about that in a minute. Now, on the lounge – I want to ask you about this point relating to Mr Reeves lying on a couch. Is that – is that referred to in the progress notes as lying on – being asleep on a lounge?

MS LAU: Yes.

MR GRAY: Yes. Now, I've found two references, possibly three but I'm going to ask you about all of them, which are references to Mr Reeves being asleep on a lounge in East Wing at the same time he's recorded as being under restraint. I want to take you to each of them. Firstly, if we can bring up the restraint chart at page – I  
5 beg your pardon, the progress notes at page – could we stand the matter down briefly. Apparently this supplementary statement is critical to at these issues so it's probably best if I read it.

10 COMMISSIONER TRACEY: Yes. There will be a short adjournment. If you would let our associate know when you're ready to resume.

MR GRAY: Thank you, Commissioners.

15 **ADJOURNED** [3.48 pm]

**RESUMED** [3.55 pm]

20 COMMISSIONER TRACEY: Yes, Mr Gray.

MR GRAY: Thank you, Commissioners, for that indulgence and can I make it very clear that the lawyers for Garden View Aged Care Proprietary Limited did email to the Royal Commission by about 6 pm last night that supplementary statement of Ms  
25 Lau's. I had better get her to verify it, and indeed the Royal Commission staff did their best to get it to me, but I was deluged with emails and must have missed it. The statement is available on the system, RCD.0011.0024.0001. Ms Lau, is that a copy of the statement you made yesterday in relation to a particular letter, to which I will  
30 take you in just a minute, and it's a statement you've made for this Royal Commission? Do you see that statement on the screen? Is that a copy of a statement you've made for the Royal Commission?

35 MS LAU: Yes.

MR GRAY: And you made that yesterday, 6 May 2019.

MS LAU: Yes, correct.

40 MR GRAY: It's – do you wish to make any amendments to the statement?

MS LAU: No.

45 MR GRAY: To the best of your knowledge and belief, are the contents of the statement true and correct?

MS LAU: True and correct.

MR GRAY: I tender the statement.

COMMISSIONER TRACEY: Yes. The supplementary statement of Kee Ling Lau dated 6 May 2019 will be exhibit 3-16.

5

**EXHIBIT #3-16 SUPPLEMENTARY STATEMENT OF KEE LING LAU  
DATED 6 MAY 2019 (RCD.0011.0024.0001)**

10

MR GRAY: And I confirm that statement was received by Royal Commission staff at 6.55 pm last night. It is a statement, Ms Lau, that you made in response to a letter from the Royal Commission, the Office of the Royal Commission dated 2 May 2019, isn't it? Is that right?

15

MS LAU: I believe to be so. I did receive a kind of times for restraint.

MR GRAY: Yes, I will bring it up on the screen so you can see it.

20

MS LAU: Okay.

MR GRAY: Operator please bring up RCD.9999.0041.0001. Is that a letter you've seen before? Can I – perhaps it's best if I take you to the annexure. If we go to the third page, please, operator. Go up to the top.

25

MS LAU: Yes.

MR GRAY: Have you seen it?

30

MS LAU: That's – that's the piece I receive.

MR GRAY: Right. And if we just go over the page to the fourth page, were you responding to that - - -

35

MS LAU: To that - - -

MR GRAY: - - - information in that table on those two pages?

MS LAU: That's correct.

40

MR GRAY: RCD.9999.0041.0003 and 4.

MS LAU: That's correct.

45

MR GRAY: So your statement is your response to the information in – on those pages.

MS LAU: On that.

MR GRAY: And in those two pages, there was a calculation of the aggregate per day, that is the total per day of the hours of restraint recorded in the restraint chart.  
5 It's subject to some uncertainties because of handwriting and sometimes the time removed column in the chart is not completed; correct?

MS LAU: That's correct.

10 MR GRAY: I will just ask you to indicate an example of that. If we go back to tab 61, please, operator. At the foot of the very first page of tab 61, page 6767, do you see, if we – sorry, if we go up to the top of the rows, you can see the headings. Do you see in about the middle of the table there's a time removed column. Do you see that, Ms Lau?

15

MS LAU: Yes.

MR GRAY: And in the very last row which is a row adjacent to the date 2.6.18, in the time applied column it says 0600, there's an initial. Perhaps – is that two initials  
20 or one initial and a position?

MS LAU: That's two initials.

MR GRAY: Two initials, so there's two people verifying that entry; is that right?  
25

MS LAU: Yes, but - - -

MS HOGAN-DORAN: I think she was saying something then.

30 MR GRAY: Sorry.

MS LAU: Yes, unfortunately a lot of times the initials, there are two staff working there. The entry is made by one staff and they put the two staff initial there for whoever staff is there.

35

MR GRAY: Thank you. Then there's an entry for time checked and in that row it's 6.50, and then there's a row entitled Time Removed but on that – I beg your pardon there's a column entitled Time Removed but on that row there's no entry, so you don't know, I suggest, reading this table, in the ordinary fashion, you don't know  
40 when the restraint was removed. You know that it was applied, you know it was checked and the approximate times that occurred but you don't know when it was removed.

MS LAU: That's correct.  
45

MR GRAY: All right. Now, you have been through the progress notes and you've found when there are references to Mr Reeves being asleep on a couch, which in the

progress notes is called a lounge, at times that coincide with times which the restraint chart says he was under restraint; correct?

MS LAU: Correct.

5

MR GRAY: And you've made the point in paragraph 114 that you, in your opinion, he can't be restrained, he couldn't have been restrained on that couch?

MS LAU: That's correct.

10

MR GRAY: How do you know that for sure?

MS LAU: Because that's a two-seater couch. It's very long. Normally he – at night-time they let him sleep on that.

15

MR GRAY: How do you know that there wasn't some way of wrapping some sort of band around him to stop him rolling off the couch?

MS LAU: And besides, there's always one staff in that room with him. And also the progress notes says that he will sleep better if he knows that someone is around.

20

MR GRAY: Well, even if there was someone around, does that necessarily mean he wasn't also restrained?

MS LAU: I – the staff has confirmed that it's impossible. If they don't restrain him on that chair, it's impossible. It's a two-seater couch. It's very long.

25

MR GRAY: Okay. And you've found three instances where there's a reference in the progress notes that he's asleep on the couch or the lounge, at a time which coincides with the time he's recorded as being under restraint in the restraint chart.

30

MS LAU: That's correct.

MR GRAY: Over that more than two month period – or beg your pardon, since the chart begins on 28 May, all the way through to 7 July, there's only three times at which there's a - - -

35

MS LAU: There is three times.

MR GRAY: Yes.

40

MS LAU: Three times where I can establish but I did call the night staff, the night RN and she say that every night when she's on, which is four nights a week, she – if it – if she take him to the East Wing she says that is normal the practice. The – they lie him on the couch or sit him on the couch and when they – when he's drinking tea and coffee, they sit him up and after that they encourage him to lie down so hopefully – hopefully he will catch an hour or two of sleep.

45

MR GRAY: All right. And he didn't sleep for very long, did he, on those occasions?

5 MS LAU: No, it's recorded that even – even on the couch he wouldn't sleep very long.

MR GRAY: Yes. So the general pattern here is that he's sleepy during the day so he's typically restrained for long periods during the day, with breaks but in aggregate for long periods during the day. Do you agree with that?

10 MS LAU: Unfortunately that's the case.

MR GRAY: And at night he's awake.

15 MS LAU: As well as some nights.

MR GRAY: He's awake, sometimes he can sleep - - -

MS LAU: On the couch.

20 MR GRAY: - - - on the lounge or the couch.

MS LAU: Sometimes he just refused to sleep and just continued to walk, and then next ..... at times night-time he may be restrained.

25 MR GRAY: Okay. So he might be restrained at both night-time and daytime for those reasons?

MS LAU: Possibly.

30 MR GRAY: Well, that's what the information you've been able to obtain suggests, isn't it?

MS LAU: Yes, but I just want to draw attention to – that the restraint chart is inconsistent. I only wanted to establish a few evidence where the progress notes is entered on time basis, that he wasn't restrained and that's why it's only a few occasions. Just want to establish the consistency.

MR GRAY: Well, there were three such occasions you're able to find. I want to ask you about the one on 5 June, just to test your methodology. If we go to the progress notes for 5 June, they're at tab 64 at page 0289, please, operator. Is the reference you're referring to down the page where it's 0289. Yes, thank you, down the page, Ms Lau, where it says 6618, 0620 hours:

45 *Resident slept from 2330 hours until 0130 hours on the lounge in the East Wing.*

Is that the reference you've relied upon?

MS LAU: Is that on 6 June or 5 June?

5 MR GRAY: Well, it's probably beginning on 5 June.

MS LAU: 5 June.

10 MR GRAY: Is that right? 2300 hours on 5 June.

MS LAU: May I have the – the beginning of that documentation, please, because I – I don't – yes.

15 MR GRAY: I'm sorry, I withdraw that. Can I ask you about – it's a little higher on the page, is it, Ms Lau?

MS LAU: Yes.

20 MR GRAY: At twenty – I beg your pardon, this is adjacent to, it's just above where it says 5.6.18, 1330 in the left column:

*At 0230 lay down on the lounge and slept half hour.*

25 Is that it?

MS LAU: Yes.

30 MR GRAY: All right. And that's on 5 June. It must be a reference to 2.30 am for half an hour on 5 June; is that right?

MS HOGAN-DORAN: Just three lines above, Peter.

35 MS LAU: Lay down on the lounge, slept for half an hour. Yes. On the – on which date again?

MR GRAY: On 5 June; is that right?

MS LAU: Yes, that's correct.

40 MR GRAY: And it says that he was asleep on the lounge from 2.30 for half an hour. It also says above is that:

*Taken to East Wing lounge.*

45 But the East Wing was sometimes called the lounge as well, wasn't it?

MS LAU: That's correct.

MR GRAY: So there's a lounge in the East Wing lounge; is that right?

MS LAU: That's correct.

5 MR GRAY: Now, there's a half an hour to 2.30 am to, say, 3 am on 5 June. If we  
look at the restraint chart. That's tab 61. If we please go to page 6768. Now, it's a  
little hard to read but about half – about a third of the way down the table there's a  
faint marking 04 point – no, it's probably a 6.18. It's a bit higher operator, bit  
higher. Yes. 04.something point 18. It comes after 03.6.18 so I suggest that it's 4  
10 June, that entry there. Do you agree with that?

MS LAU: Sorry, I can't find that.

MR GRAY: On the left-hand column, well, can you see it's written quite clearly in  
15 the left – thank you, terrific.

MS LAU: That's 4 June.

MR GRAY: Yes. Thank you. So there's then a series of entries for 4 June,  
20 beginning 2400 and then 0215 and so forth, down to 1930 and they all appear to be  
entries for 4 June.

MS LAU: Yes.

25 MR GRAY: Then there's a series of entries for what seems to be another day,  
beginning again 2400, 2.15, 3.45, 3.30, etcetera, that all looks as if it's a reference to  
one day, doesn't it? If we go down, please, operator. Do you see there's – it begins  
at 2400 and it goes all the way down to 2030, and adjacent to that, in about the  
middle of that set of rows of entries is the figure – are the figures 6.6.15. That I  
30 suggest to you on a natural reading of document suggests that all those entries are not  
for the 5<sup>th</sup> but they're for 6 June. There is a reference to 5 June but it's just up at the  
top of the column as if 5 June hasn't really had any entries and the reference to 2400  
is at the end of 5 June. So what I'm suggesting to you is the entries in the bottom of  
the page all relate to 6 June, not 5 June. What do you say to that?

35

MS LAU: Well, on 5 June I can see only three entries. That is from 24 – that is  
midnight to 2 o'clock.

MR GRAY: All right. So you say 6 June begins at 3.30?  
40

MS LAU: No. 6 June beginning at 3.30.

MR GRAY: Yes. I see. Thank you, Ms Lau, for clarifying that. Commissioners, I  
just need to check my notes and if you just give me an indulgence for a moment.  
45 Commissioners, I need to tender the letter to which Ms Lau's second statement  
responds. I will read out the code for that letter again. It is RCD.9999.041.0001.

Letter from the Royal Commission to Sparke Helmore Lawyers dated 2 May 2019. I tender that document.

5 COMMISSIONER TRACEY: Yes. The letter from Commission solicitors to Sparke Helmore Lawyers dated 2 May 2019 will be exhibit 3-17.

10 **EXHIBIT #3-17 LETTER FROM COMMISSION SOLICITORS TO SPARKE HELMORE LAWYERS DATED 02/05/2019 (RCD.9999.041.0001)**

MR GRAY: Commissioners, with your indulgence, in addition I would seek to tender a document that doesn't yet have a code but I'm told that it's ready to be imaged and it could be marked as an exhibit if you see fit.

15 COMMISSIONER TRACEY: Yes.

MR GRAY: It is a letter from Sparke Helmore Lawyers dated 6 May 2019 to one of the co-solicitors assisting the Royal Commission. It's currently on the screen.

20 COMMISSIONER TRACEY: Well, it does appear to have a code, I think, on the  
- - -

MR GRAY: That's specific. That must have just happened in the very recent past. It's code RCD.9999.0042.0001. Can I tender that document and then I will explain what it's about?

30 COMMISSIONER TRACEY: Yes. The letter from Sparke Helmore to the co-solicitor assisting the Royal Commission dated 6 May 2019 will be exhibit 3-18.

35 **EXHIBIT #3-18 LETTER FROM SPARKE HELMORE TO CO-SOLICITOR ASSISTING THE ROYAL COMMISSION DATED 06/05/2019 (RCD.9999.0042.0001)**

MR GRAY: Thank you. The relevance of the document is that it relates to a response to a notice to give information that was served on Garden View. The substantive response was on 11 April, and I've taken the Commissioners to – I've taken the witness to part of that document. There was also a clarification which is in the Garden View case study tender bundle on 12 April and this is a further clarification on 6 May.

45 COMMISSIONER TRACEY: Yes. Thank you.

MR GRAY: Those are the questions I have for Ms Lau.

COMMISSIONER TRACEY: All right. You don't require Mrs Lau anymore?

MR GRAY: No, I have nothing further for Ms Lau.

5 COMMISSIONER TRACEY: Yes, very well. Mrs Lau, thank you very much for your attendance, you are excused from further attendance.

MS LAU: Thank you.

10

<THE WITNESS WITHDREW

[4.14 pm]

MS HOGAN-DORAN: Commissioner, might we be excused?

15

COMMISSIONER TRACEY: I'm sorry, Ms Hogan-Doran?

MS HOGAN-DORAN: Might we be excused. I understand that's the end of the Garden View case study.

20

COMMISSIONER TRACEY: Yes. Certainly. The only caution I place is that I think counsel assisting is going to make a short final address relating to the evidence we've just heard which may be of interest to you.

25 MS HOGAN-DORAN: I understood he wasn't doing that.

MR GRAY: Yes, Commissioner, I - - -

30 COMMISSIONER TRACEY: Well, it's on my running sheet. If it's no longer there - - -

MR GRAY: It's appropriate that I just close off the case study in its evidentiary stage and say that that is the evidence in relation to the case study. It has now all been received into evidence in either documentary or oral form. It's not going to be possible for me to attempt to sum up the evidence at this point. It would be unwise. So I will seek your leave to approach the matter by preparing a proposed findings in writing with a view to them being prepared very soon after this hearing in Sydney comes to an end. We will aim to have that done in the week following this hearing, and I will seek some directions at the end of this hearing. But I can tell those present that the directions will be in the nature of seeking a timetable for counsel assisting the Royal Commission to have that document, including proposed findings, done within seven days, and for parties that have been granted leave to appear in respect of the case study to have a right to respond in writing within a further seven days.

45 COMMISSIONER TRACEY: Yes.

MR GRAY: I think that's meeting with approval, at least tacit approval from those to my left. So I foreshadow that I will be seeking those directions at the end of the Sydney hearing.

5 COMMISSIONER TRACEY: Very well. Thank you for that indication. Now, Ms Hogan-Doran and fellow counsel who have been involved in this case study, you can take it that you are excused.

MS HOGAN-DORAN: Thank you, Commissioners.

10

COMMISSIONER TRACEY: The Commission will adjourn until 9.30 tomorrow morning.

15 **MATTER ADJOURNED at 4.16 pm UNTIL WEDNESDAY, 8 MAY 2019**

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