

ROYAL COMMISSION INTO AGED CARE QUALITY AND SAFETY
HOBART HEARING
SOUTHERN CROSS CARE (TAS) INC CASE STUDY
SUBMISSIONS OF SOUTHERN CROSS CARE (TAS) INC

A. INTRODUCTION

1. These submissions are made on behalf of Southern Cross (Tas) Inc (**SCC**) in response to the written submissions of counsel assisting, dated 2 December 2019.¹ The Submissions invite the Royal Commission to make certain findings in relation to the governance arrangements at SCC.
2. In summary, SCC responds as follows:
 - (a) the proposed finding in relation to QPS benchmarking² ought not be made because the proposed finding:
 - (i) is based on the incorrect premise that QPS audit reports were not provided to facility level management; and
 - (ii) invites criticism of the *'feedback and direction'* provided by executive level management in relation to QPS audit reports in circumstances where the relevant executive level manager with the most direct knowledge and responsibility was inexplicably not requested to provide a witness statement or called to give evidence;³
 - (b) the proposed findings in relation to the policies and procedures of SCC during the relevant period⁴ are open on the evidence;
 - (c) SCC accepts that its complaints handling procedure did not operate effectively at Yaraandoo and Glenara Lakes during the relevant period. However, the proposed finding⁵ to the effect that the complaints handling process was *'not well understood'* at Glenara Lakes is not supported by the evidence and would be, in any event, a nebulous and unhelpful finding to the Commission, begging the question by whom it was not *'well understood'* and where responsibility for any lack of understanding may lie;

¹ RCD.0012.0042.0001 (the **Submissions**).

² See paragraph 4(a) of the Submissions, RCD.0012.0042.0001.

³ See paragraph 7 of the Submissions, RCD.0012.0042.0001 at 0005.

⁴ See paragraph 4(b)(i)-(ii) of the Submissions, RCD.0012.0042.0001 at 0002.

⁵ The proposed findings in relation to complaints handling are referred to at paragraph 4(b)(iii)-(vi) of the Submissions, RCD.0012.0042.0001 at 0002.

- (d) the proposed findings in relation to staffing changes at Yaraandoo⁶ ought not be made because:
- (i) the decision to approve the relevant staffing changes made at Yaraandoo involved consideration of a number of factors relevant to clinical risk; and
 - (ii) SCC had established processes for the measurement of clinical risk associated with any staffing cuts related to the implementation of the '*Pathway to Break Even*' strategy.
3. As a preliminary matter, we note that Part 4 of the Submissions purports to contain a summary of '*relevant facts*' concerning the SCC case study,⁷ yet, it is submitted, omits reference to evidence that is favourable to SCC.
4. In relation to Yaraandoo, paragraphs 8 to 16 of the Submissions refer to the results of audits conducted at Yaraandoo in November 2018 and June 2019. However, the Submissions make no reference to the fact that Yaraandoo was found to be compliant, in each of the assessed areas, following an accreditation audit conducted in August 2018.⁸
5. Further, the Submissions make no reference to the results of a more recent audit conducted at Yaraandoo on 3 October 2019. Following that audit, the Aged Care Quality and Safety Commission issued an '*Assessment Contact Advice*' which concluded that Yaraandoo now met all '*expected outcomes*' under the applicable accreditation standards.⁹
6. At paragraph 5 of the Submissions, counsel assisting purport to list the documents tendered in the SCC case study and to identify each witness who gave oral evidence. It is noted that the Submissions make no reference to the evidence of Patricia Job, a current resident at a SCC residential aged care facility. Ms Job provided a signed witness statement (exhibit 13-19)¹⁰ and gave oral evidence to the Commission on 13 November 2019.¹¹ The evidence given by Ms Job in relation to the care provided to her by SCC was overwhelmingly positive. Ms Job described

⁶ See paragraph 4(c) of the Submissions, RCD.0012.0042.0001 at 0002.

⁷ See paragraphs 8-21 of the Submissions, RCD.0012.0042.0001 at 0005 to 0008.

⁸ T6818.14-16 (Pauline Robson); T6829.44-47 (Richard Sadek).

⁹ Statement of Jo-Anne Cressey Hardy dated 4 November 2019 at [61] (Exhibit 13-5), WIT.0496.0001.0001 at 0015.

¹⁰ Statement of Patricia Mary Job dated 31 October 2019 (Exhibit 13-19), WIT.0601.0001.0001.

¹¹ T6885-6890 (Patricia Job).

the facility as ‘*excellent*’.¹² She gave evidence that ‘*the staff are all friendly*’¹³ and expressed the opinion that facility management deserves ‘*full marks*’.¹⁴

B. QPS BENCHMARKING

7. At paragraph 4(a) of the Submissions, counsel assisting invite the Commission to make the following finding:

SCC did not have sufficiently robust systems or processes for ensuring that facility level management received QPS audit reports along with feedback and direction from the executive management level on improving deficiencies identified in those audits.

8. Before responding to the proposed finding, it is necessary to expand on the nature of QPS benchmarking and its use within SCC. As noted at paragraph 27 of the Submissions, QPS audit reports provide an assessment of a residential aged care facility’s performance, in particular areas, against national benchmarks.¹⁵ QPS audit reports are based on data collected at each residential aged care facility, under the supervision of the relevant facility manager.¹⁶
9. During the relevant period, it was the responsibility of facility managers to take corrective action in response to issues of concern raised by QPS benchmarking reports, with oversight and support provided by the Director of Clinical Services.¹⁷ The Director of Clinical Services was the ‘*executive level manager*’ at SCC with primary responsibility for clinical governance,¹⁸ and was regarded by the CEO of SCC as the ‘*chief nurse*’ of the organisation.¹⁹ It was the responsibility of the Director of Clinical Services to provide support to facility managers in relation to ‘*clinical management issues*’,²⁰ to monitor compliance,²¹ and to raise any issues of ongoing clinical concern.²² The Director of Clinical Services also reported to the Audit and Risk Committee on key outcomes, issues and matters of concern arising from QPS audit reports.²³

¹² T6889.31 (Patricia Job).

¹³

¹⁴ T6888.5 (Patricia Job).

¹⁵ T6750.36-42 (Helen Marshall). An example of a QPS audit report is located at tab 107 of the SCC Tender bundle (Exhibit 13-2), SCT.5014.0001.0068.

¹⁶ Statement of Tammy Louise Marshall dated 30 October 2019 (**Tammy Marshall Statement**) at [23]-[24] (Exhibit 13-4), WIT.0581.0001.0001 at 0006; T6740.4-23 (Peter Williams); T6750.7-21 (Helen Marshall).

¹⁷ Statement of Richard Anthony Sadek dated 25 October 2019 (**Sadek Statement**) at [84], [106] (Exhibit 13-16), WIT.0492.0001.0001 at 0022, 0026.

¹⁸ Sadek Statement at [25] (Exhibit 13-16), WIT.0492.0001.0001 at 0006-0007.

¹⁹ Sadek Statement at [79] (Exhibit 13-16), WIT.0492.0001.0001 at 0020.

²⁰ T6812.11-12 (Pauline Robson).

²¹ Helen Marshall Statement at [10.3] (Exhibit 13-12), WIT.0603.0001.0001 at 0005.

²² T6814.13-14 (Pauline Robson).

²³ T6831.38-46 (Richard Sadek).

10. The finding proposed by counsel assisting seeks to impugn the ‘*systems or processes*’ of SCC in relation to QPS benchmarking, based on the premise that facility level management did not receive QPS audit reports, or feedback and direction in relation to deficiencies identified in those reports. This is an unsound premise.
11. In relation to the alleged non-receipt of QPS audit reports, counsel assisting rely solely on the evidence of Helen Marshall, who gave evidence that she does ‘*not recall*’ having seen QPS reports in her role as facility manager at Glenara Lakes from 15 January 2018 to 26 October 2018.²⁴ It must be said that of the witnesses called before the Commission who are current or were former employees of SCC, Ms Marshall presented as the least willing to accept responsibility for any shortcomings and the most willing to see it cast onto others (especially in her oral evidence).²⁵ In any case, to the extent that the evidence of Ms Marshall supports the proposed finding (noting that it relates to her ‘*recollection*’ only), it is inconsistent with the evidence given by other facility managers and current and former members of the SCC executive, which should be preferred.
12. Kylie Bennett, the facility manager at Yaraandoo from 12 February 2019 to 8 July 2019, gave evidence that she received QPS Reports on a quarterly basis.²⁶ Patrick Anderson, facility manager at Yaraandoo from October 2017 to February 2019,²⁷ and Peter Williams, facility manager at Glenara Lakes from February 2019 to April 2019,²⁸ both gave evidence that they were aware of the results of audits during their time as facility managers.²⁹ Mr Anderson went further and, unlike Ms Marshall, accepted responsibility, specifically in his case for not sharing the results of audits with staff at Yaraandoo.³⁰ Pauline Robson, the former Director of Residential Business Services (a former employee who left SCC under sensitive circumstances³¹ and had no motive to defend SCC), gave evidence that she emailed QPS audit reports to all facility managers.³² This evidence was not challenged at the hearing. The evidence of Ms Robson is consistent with that of the Clinical Care Coordinator at Yaraandoo (Tammy Marshall) and the CEO of SCC (Richard

²⁴ See paragraphs 39-42 of the Submissions, RCD.012.0042.0001 at 0013.

²⁵ This was despite her having been facility manager at Glenara Lakes until 28 October 2018, shortly before its compliance issues emerged from late 2018: see the summary in the Submissions at paragraphs 18 and 19.

²⁶ T6650.1-14 (Kylie Bennett).

²⁷ Statement of Patrick John Anderson dated 26 October 2019 (**Anderson Statement**) at p 2 (Exhibit 13-7), WIT.0578.0001.0001 at 0002.

²⁸ Statement of Peter Graham Williams dated 31 October 2019 (**Williams Statement**) at [6] (Exhibit 13-11), WIT.0609.0001.0001 at 0002.

²⁹ See Transcript at T6674.42-43 (Patrick Anderson) and T6740.22-24 (Peter Williams).

³⁰ T6674.42-43 (Patrick Anderson).

³¹ Statement of Pauline Robson dated 28 October 2019 at [5] (Exhibit 13-15), WIT.0560.0001.0001 at 0002.

³² T6817.33-36 (Pauline Robson).

Sadek), both of whom gave evidence of their understanding that QPS audit reports were distributed to facility managers.³³

13. Having regard to the unchallenged evidence of Kylie Bennett, Patrick Anderson, Peter Williams, Pauline Robson, Tammy Marshall and Richard Sadek, the Commission ought not accept the unsound premise that facility level management were not provided with QPS audit reports. It should be rejected.
14. In relation to the alleged failure to provide feedback and direction in relation to deficiencies identified in QPS audit reports, it is remarkable that the very person responsible for giving such feedback and direction, being the former Director of Clinical Services, Carolyn Wallace,³⁴ was not requested to prepare a witness statement or called to give oral evidence. Given the belated focus of the case study on clinical shortcomings on the part of SCC, Ms Wallace would have been best placed to fill the inevitable gaps which left the witness evidence in the state that allows the Submissions to invite such a finding. In the circumstances, the Commission is not in a position to properly assess whether the feedback and direction provided to facility level management in relation to QPS audit results was, in fact, deficient.
15. Having regard to the unchallenged evidence concerning the distribution of QPS audit reports to facility level management, referred to above, the self-serving and limited evidence of Helen Marshall and the absence of evidence from the former Director of Clinical Services, Carolyn Wallace, the Commission ought not make the finding proposed by counsel assisting in relation to the systems and processes of SCC concerning QPS benchmarking.

C. POLICIES AND PROCEDURES

16. At paragraph 4(b) of the Submissions, counsel assisting invite the Commission to make the following findings in relation to SCC's policies and procedures:
 - (i) *the policies and procedures established by SCC to guide the provision of clinical care at Glenara Lakes and Yaraandoo were inadequate in that they were not comprehensive and were not kept up-to-date;*
 - (ii) *SCC did not have an effective process for ensuring that comprehensive and current policies and procedures were available to care staff at residential aged care facilities.*
17. SCC accepts that it is open to the Commission to make the proposed findings in relation to the policies and procedures in place at SCC during the relevant period. SCC notes that current

³³ Tammy Marshall Statement at [24] (Exhibit 13-4), WIT.0581.0001.0001 at .0006; T6831.38-40 (Richard Sadek)

³⁴ Helen Marshall Statement at [10.3] (Exhibit 13-12), WIT.0603.0001.0001 at 0005.

employees of SCC demonstrated admirable candour in relation to this issue, both in oral evidence and in their written statements.³⁵

18. As explained in the written statement of SCC's current chair, Stephen Shirley, a consultant has recently been engaged to review the existing policies and procedures of SCC, with a particular emphasis on clinical care governance.³⁶ The review is intended to result in a modern set of policies and procedures to guide and assist staff to deliver consistent high quality care to residents.³⁷

D. COMPLAINTS HANDLING

19. At paragraph 4(b) of the Submissions, counsel assisting invite the Commission to make the following findings in relation to complaints handling:

- (iii) *the standard complaints handling process that was intended to operate at all SCC facilities was not well understood at Glenara Lakes;*
- (iv) *the process for responding to complaints and feedback at Yaraandoo was poorly established;*
- (v) *there were no effective systems in place at either Glenara Lakes or Yaraandoo to ensure systematic collection and analysis of complaints information; and*
- (vi) *information about complaints from Yaraandoo and Glenara Lakes was escalated to executive management on an ad hoc basis.*

20. SCC accepts that its complaint handling process did not operate effectively at Yaraandoo and Glenara Lakes throughout the relevant period.³⁸ SCC has recently made improvements to its complaints handling process by introducing a 'coding system' and by amending the procedure for tracking and recording complaints.³⁹

21. However, although SCC accepts that its complaint handling process did not operate effectively at Yaraandoo and Glenara Lakes throughout the relevant period, the proposed finding to the effect that the complaints handling process was '*not well understood*' (a finding, in its terms, unacceptably vague and lacking content) at Glenara Lakes is not supported by the evidence.

³⁵ For example, see: T6622.27-29; Tammy Marshall statement at [36(b)] (Exhibit 13-4), WIT.0581.0001.0001 at 0010; Statement of Kylie Maree Bennett dated 11 October 2019 (**Bennett Statement**) at [50(c)] (Exhibit 13-6), WIT.0500.0001.0001 at 0012.

³⁶ Statement of Stephen Shirley dated 30 October 2019 (**Shirley Statement**) at [11(c)] (Exhibit 13-17), WIT.0549.0001.0001 at 0003; Bennett Statement at [52(h)] (Exhibit 13-6), WIT.0500.0001.0001 at 0014-0015.

³⁷ Shirley Statement at [85], (Exhibit 13-17), WIT.0549.0001.0001 at 0019.

³⁸ See: Sadek Statement at [136(j)] (Exhibit 13-16), WIT.0492.0001.0001 at 0034; T6830.11-14 (Sadek).

³⁹ Sadek Statement at [142(d)] (Exhibit 13-16), WIT.0492.0001.0001 at 0036.

Relevantly in relation to Glenara Lakes, counsel assisting refer to the evidence of Judith King⁴⁰ and Helen Marshall.⁴¹

22. Ms King gave evidence of making complaints in relation to her husband's care at Glenara Lakes, and of her dissatisfaction with the response of facility management and the SCC executive to those complaints.⁴² Ms King's evidence does not demonstrate ignorance of the standard complaints handling process, which involved the use of a '*compliments and complaints form*', but rather a preference for raising matters directly by email or letter.⁴³
23. Ms Marshall gave oral evidence to the effect that she was unaware of a standard complaints handling procedure at Glenara Lakes or more broadly at SCC.⁴⁴ However, that evidence is to be understood in the context of Ms Marshall's signed statement, which includes a detailed description of the applicable complaints handling process at Glenara Lakes:

I over saw [sic] the management of the complaints system and these were included in the report to the Director of Clinical Services who had responsibility for managing Clinical Complaints. The process for management of complaints was:

- a) *Complaints could be verbally presented or presented in written format*
- b) *I would meet with the resident representative/s and the resident if they desired. Alternatively, if it was a staff complaint, I would meet with the staff member to discuss the issue.*
- c) *The issues were documented and a resolution sought.*
- d) *The Director Residential Business Services would also attend the meetings, where required to assist with resolution of any complex complaints.*
- e) *Complaints were documented in a register and outcomes also recorded.*
- f) *Where the complaints were from an external agency these were reported to the Director of Clinical Services (if it was a clinical matter) who would then advise on the matter. The Director Residential Business Services was often more available and responsive to request for assistance in managing complex complaints and would assist the resolution. All complaints received thorough the Aged Care Complaints Commission were resolved during my time as Facility Manager.⁴⁵*

24. Having regard to Ms Marshall's statement, it is clear that she understood, and was able to describe in detail, the standard complaints handling procedure in place at Glenara Lakes.

⁴⁰ See paragraph 67 of the Submissions, RCD.0012.0042.0001 at 0019-0020.

⁴¹ Referred to at 69 of the Submissions, RCD.0012.0042.0001 at 0020-0021.

⁴² E.g. T6718-9 (Judith King).

⁴³ T6719.42-47 (Judith King).

⁴⁴ T6764.19 (Helen Marshall).

⁴⁵ Helen Marshall Statement at page 3 (Exhibit 13-12), WIT.0603.0001.0001 at 0003.

25. Properly analysed, the evidence of Judith King and Helen Marshall does not support a finding that the complaints handling process at Glenara Lakes was not ‘*well understood*’ (to the extent a finding in such terms would even be meaningful). Accordingly, the proposed finding referred to at paragraph 4(b)(iii) of the Submissions ought not be made.

E. STAFFING CHANGES AND THE PATHWAY TO BREAK EVEN

26. The criticisms of the ‘*Pathway to Break Even*’ are misplaced and unfair. They should be rejected.
27. At paragraph 4(c) of the Submissions, counsel assisting invite the Royal Commission to make the following finding:

*The decision to approve staffing changes at Yaraandoo in late June 2018 as part of the implementation of the Pathway to Break Even Strategy (the **Strategy**) was focused on financial considerations without an equivalent or sufficient assessment of clinical risks associated with the decision. The processes for measuring and assessing the clinical risk associated with the decision were inadequate, having regard to...*

28. The staffing changes at Yaraandoo were approved by the CEO of SCC, Richard Sadek, on the recommendation of his executive management team.⁴⁶ The finding proposed by counsel assisting invites scrutiny of the consideration by Mr Sadek of clinical risk, and the adequacy of the ‘*processes*’ established for the measurement and assessment of clinical risk.
29. The processes in place for measuring and assessing clinical risk in the context of the ‘*Pathway to Break Even*’ relied, to a significant extent, on individual facility managers supported by the Director of Residential Business Services and other members of the SCC executive.⁴⁷
30. Andrew Crane, the former Director of Finance at SCC, gave evidence that the ‘*Pathway to Break Even*’ strategy was deliberately designed to ensure that facility managers had a large say in the implementation of facility-specific plans.⁴⁸ Individual facility managers were intended to be the strongest advocate and strongest control.⁴⁹
31. The CEO of SCC, Richard Sadek, gave evidence that it was for the facility manager, in conjunction with the Director of Residential Business Services and others, to assess the effect of the proposed staffing cuts on the delivery of care.⁵⁰ In recognition of the fact that the facility manager at Yaraandoo was relatively inexperienced, the Director of Residential Business

⁴⁶ T6826-T6828 (Richard Sadek).

⁴⁷ T6827.13-16 (Richard Sadek).

⁴⁸ T6794.23-25 (Andrew Crane).

⁴⁹ T6796.18-22 (Andrew Crane).

⁵⁰ T6827.13-16 (Richard Sadek).

Services arranged for additional support to be provided by way of coaching from two experienced and high performing facility managers.⁵¹

32. The operation of the processes implemented by SCC for the measurement and assessment of clinical risk in relation to proposed staffing changes at Yaraandoo is demonstrated by the response of the SCC executive to an initial proposal by the facility manager at Yaraandoo to substantially reduce rostered hours. According to the former Director of Finance, Mr Crane, the executive of SCC withdrew support for a proposal by Patrick Anderson, then facility manager at Yaraandoo, to remove 23 hours from the roster because the executive formed the view that the proposal was *'too difficult to pursue'*.⁵² Richard Sadek gave evidence that the initial proposal involved the reduction of three extended care assistant positions,⁵³ and was rejected because it would have compromised the quality of care at Yaraandoo and caused industrial chaos.⁵⁴
33. Mr Anderson subsequently submitted a revised proposal, involving more modest reductions to rostered staff hours, which was approved by Mr Sadek.⁵⁵ In approving those staffing reductions, Mr Sadek gave evidence that he had regard to the following matters:
- (a) the absence of any adverse findings in relation to Yaraandoo in accreditation reports;⁵⁶
 - (b) the fact that Yaraandoo was found to be compliant in each of the assessed areas following an accreditation audit conducted in August 2018;⁵⁷
 - (c) the absence of any clinical concerns expressed in relation to Yaraandoo at executive management team meetings or audit and risk committee meetings;⁵⁸
 - (d) the absence of any complaints in relation to resident care at Yaraandoo that had been brought to his attention;⁵⁹
 - (e) the fact that relevant unions had been consulted;⁶⁰

⁵¹ T6811.30-32 (Pauline Robson).

⁵² T6797.41-44 (Andrew Crane). See also: Crane Statement (Exhibit 13-14), WIT.0559.0001.0001 at 0007.

⁵³ T6826.40-47 (Richard Sadek).

⁵⁴ T6827.3-7 (Richard Sadek).

⁵⁵ T6827.24-29 (Richard Sadek).

⁵⁶ T6827.35-37 (Richard Sadek).

⁵⁷ T6829.44-46 (Richard Sadek).

⁵⁸ T6830.1-3 (Richard Sadek).

⁵⁹ T6827.35-37 (Richard Sadek).

⁶⁰ T6827.22 (Richard Sadek).

- (f) the fact that the proposal had been reviewed by Jenny Thomas, an experienced human resources practitioner;⁶¹ and
- (g) the fact that the Director of Residential Business Services had advised him that the proposed staffing cuts would not compromise the quality of care at Yaraandoo.⁶²
34. SCC submits that, to the extent that there was a failure to adequately assess the clinical risk associated with staffing reductions at Yaraandoo, responsibility for that failure lies with the facility manager and not with the CEO or any other member of the executive management team. As noted above, the ‘*Pathway to Break Even*’ strategy was designed with the facility manager as the ‘*strongest control*’.⁶³ In oral evidence, Patrick Anderson admitted that there was no analysis carried out as to the effect of the proposed staffing cuts on resident care at Yaraandoo⁶⁴ and accepted that the failure to conduct any such analysis was an oversight on his behalf.⁶⁵ Far from being ‘*pressured*’, Mr Anderson needed to be reined in.
35. The Submissions made against SCC in respect of the existence of pressure require further response.
36. Counsel assisting submit that:
- the facility manager felt under considerable pressure to implement staff reductions as part of the Strategy, which was presented to him, in particular by the Director of Residential Business Services, as a necessity; ...*⁶⁶
37. The Submissions proceed at paragraph 83 to quote from an email from Mr Crane to Ms Robson, as if it is a telling insight into the state of affairs as at March 2017 (some five months before any implementation was undertaken at Yaraandoo), yet neither of those individuals was so much as asked about it in their oral evidence. What Mr Crane may have said to place it in context or explain its intent will never be known: this is most unsatisfactory.
38. The Submissions also quote a passage from Mr Anderson’s oral evidence to the effect that ‘*the cuts were presented to me as something that was a necessity*’.⁶⁷ This was starkly at odds with the evidence of Mr Crane and Ms Robson, and neither of them was challenged about the consultative and collaborative process they described, with facility managers such as Mr Anderson (a

⁶¹ T6827.19-20 (Richard Sadek).

⁶² T6828.7-10 (Richard Sadek).

⁶³ T6796.18-22 (Andrew Crane).

⁶⁴ T6670.23-36 (Patrick Anderson).

⁶⁵ T6670.45-46 (Patrick Anderson).

⁶⁶ Submissions, paragraph 4(c)(ii).

⁶⁷ Submissions, paragraph 93.

registered nurse⁶⁸) with the ultimate say. That same passage of evidence contained the following evocative purported quote:

It was, we would be shutting down at some point in the future if we did not make these cuts, and there was a sense of urgency that was conveyed to me, in particular by Pauline Robson, every time we met about it saying that the board is ... I believe one time her exact words were, 'The board is hopping mad. They're jumping up and down about this. They're demanding that, you know, action be taken about this.'

39. Remarkably, the uttering of such striking words was never put to Ms Robson, notwithstanding that she gave oral evidence well *after* Mr Anderson and was ideally placed to deny or comment upon this accusation. This is also highly unsatisfactory and unfair.
40. When an organisation continues to lose money such that its very viability is threatened, there will inevitably be pressure. It is quite another thing to suggest that any of the persons responsible for the implementation of the '*Pathway to Break Even*' was prepared to place financial considerations above quality resident care. No cogent evidence supports such a characterisation. Indeed, the unchallenged evidence of Mr Crane was that the framework was not implemented at Yaraandoo, in full or even substantially: '*only a relatively small adjustment to Rosters was made*' and '*no adjustments were made to Clinical Team staffing*'.⁶⁹ Indeed, this entire subject should be seen in the light of Mr Crane's unchallenged evidence that '*only a small part of the plan was actually implemented at Yaraandoo and similarly at Glenara Lakes*'.⁷⁰ An allegation in those terms was not put to Mr Crane, Ms Robson, Mr Sadek or Mr Anderson. Any such suggestion should be rejected.
41. As noted above, the finding proposed by counsel assisting is concerned with the consideration by Mr Sadek of clinical risk in approving the staffing changes, and the adequacy of the '*processes*' in place for measuring and assessing clinical risk. The evidence, summarised at paragraph 33, demonstrates that Mr Sadek had regard to a number of matters relevant to an assessment of the clinical risk associated with the staffing changes at Yaraandoo.
42. It does not follow from the fact that the facility manager failed to properly assess the effect of the proposed staffing changes at Yaraandoo that Mr Sadek's decision to approve the staffing cuts was attended by insufficient consideration of clinical risk. SCC submits that it was reasonable for Mr Sadek, when considering whether or not to approve the proposed staffing cuts, to assume

⁶⁸ Anderson Statement at p 1 (Exhibit 13-7), WIT.0578.0001.0001 at 0001.

⁶⁹ Crane Statement (Exhibit 13-14), WIT.0559.0001.0001 at 0007.

⁷⁰ Crane Statement (Exhibit 13-14), WIT.0559.0001.0001 at 0007.

that the facility manager (a registered nurse⁷¹) had fulfilled his obligation to assess the effect of the proposed staffing cuts on the delivery of care.

43. In those circumstances, SCC submits that the evidence before the Commission does not support the finding proposed by counsel assisting in relation to the staffing cuts at Yaraandoo, referred to at paragraph 4(c) of the Submissions and it should not be made.

18 DECEMBER 2019

HAMISH AUSTIN QC

JAMES CLARIDGE

DOBSON MITCHELL ALLPORT

⁷¹ Anderson Statement at p 1 (Exhibit 13-7), WIT.0578.0001.0001 at 0001.