

Statement of Elsy Brammesan

Name: Elsy Brammesan

Address: 260 Elizabeth Street, Surry Hills NSW 2010

Occupation: Director, Compliance Centre East, Compliance Branch,
Commonwealth Department of Health

Date: 4 October 2019

- 1 This statement made by me accurately sets out the evidence I am prepared to give to the Royal Commission into Aged Care Quality and Safety (**Royal Commission**).
 - 2 This statement is true and correct to the best of my knowledge and belief.
 - 3 I make this statement on behalf of the Commonwealth Department of Health (**Department**), and I am authorised to do so.
 - 4 I am the Director, Compliance Centre East of the Compliance Branch of the Department.
 - 5 I provide this statement in response to a Notice to Give a Statement from the Royal Commission.
 - 6 I make this statement based on matters within my own knowledge, books and records of the Department that I have reviewed and having made enquiries of officers and employees of the Department.
 - 7 This statement has been prepared with the assistance of lawyers in response to and in compliance with a notice to provide a statement. It is produced to the Royal Commission into Aged Care Quality and Safety on the basis that it will be tendered and received in evidence by the Royal Commission pursuant to that notice and on the basis that the statement will be treated as evidence which is subject to section 6DD of the *Royal Commissioners Act 1902* (Cth).
 - 8 I have previously provided a statement to the Royal Commission dated 22 July 2019 [**WIT.0306.0001.0001; Exhibit 8-22**] (**First Statement**) in response to a Notice to Give Information or a Statement in Writing number NTG-0306. My First Statement set out my professional background and experience.
 - 9 In my current role I have responsibility for operational compliance activities under the National Aged Care Compliance Program for New South Wales and the Australian Capital Territory.
- 4) Provide an explanation as to whether the Department of Health considered that the secondment of Fiona van den Berg to the role of Adviser, for the purpose of complying with Sanction 2 of the Sanctions Notice, was appropriate.
- 10 On 15 February 2019, I made a decision to impose sanctions on the approved provider Menarock Aged Care Services (Victoria) Pty Ltd (**Menarock**) for a period of nine months on the basis that there was an immediate and severe risk to the safety, health or well-being of the care recipients at the

Greenway Gardens facility. The sanctions were imposed following the receipt of an early release of information by the Aged Care Quality Safety Commission (**ACQSC**) after a review audit conducted by the ACQSC identified that Greenway Gardens did not meet 21 out of 44 expected outcomes of the Accreditation Standards. A copy of the Notice of Decision to Impose Sanctions is at **Exhibit EB2-1 [CTH.1029.1000.0070]**.

- 11 On 15 February 2019, I contacted Fiona Van den Berg, the Group Operations Manager of Quality and Compliance, and informed her of the decision to impose sanctions on Menarock due to concerns about the Greenway Gardens facility. Amongst other things, I advised Ms Van den Berg that the sanctions would require the appointment of a clinical adviser and that the adviser would need to be independent in exercising the functions of their role. A copy of the file note of this call is at **Exhibit EB2-2 [CTH.1029.1000.0381]**.
- 12 Subsequent to this call, between 15 February 2019 and 22 February 2019, I received a phone call from Mr Brendan Coulter, the Chief Group Operations Manager to discuss the appointment of the adviser, and the sanctions process more broadly. I explained to Mr Coulter that the adviser needed to be suitably qualified and have a level of independence for the role. During this phone call, Mr Coulter relevantly advised me that:
- (a) Menarock intended to appoint Ms Van den Berg as the adviser for Greenway Gardens;
 - (b) Ms Van den Berg had extensive experience in Aged Care, having twenty-five years in senior management and leadership positions;
 - (c) Ms Van den Berg was a Registered Nurse with post-graduate qualifications in Advanced Nursing-Gerontology;
 - (d) During her appointment as adviser, Ms Van den Berg would be solely focused on this role with her regular work responsibilities allocated to others; and
 - (e) Ms Van den Berg would have a dedicated office, email address and phone number specific to the role of adviser set up. This would include business cards that referred to these contact details and which would be distributed to residents of the facility.

I requested that Mr Coulter provide these details in writing.

- 13 On 22 February 2019, the Department received a letter from Mr Coulter, confirming the appointment of Ms Van den Berg as the adviser to Greenway Gardens. The letter confirmed in writing the information that had been discussed during our earlier phone call. A copy of the letter is at **Exhibit EB2-3 [CTH.1029.1000.0133]**.

Consideration of Appointment

- 14 In accordance with the requirements of the *Aged Care Act 1997* (Cth) (**Aged Care Act**), the appointment of Ms Van den Berg as adviser to Greenway Gardens was a decision to be made by

Menarock.¹ I did not approve the decision to appoint Ms Van den Berg, nor was I required to do so. Notwithstanding this, I did consider at the time whether it would be appropriate to have Ms Van den Berg in this position as an adviser. It was my view that whilst there might be issues of potential lack of independence, that was tempered by the fact that Ms Van den Berg was employed as the 'Group Operations Manager of Quality and Compliance' for Menarock Life and did not have any direct operational role at Greenway Gardens prior to this appointment, and that a person who was involved in an organisation on an ongoing basis may be well placed to effect change on a continuing basis.

- 15 I was also aware that a guidance document issued by the Department at that time stated that an adviser must not be a key personnel or staff of the approved provider. I had not identified any restriction on the appointment of key personnel or staff as the adviser in the legislation and therefore did not consider that her appointment would raise any issue of compliance with legislative requirements. Whether the legislation contained any restriction on the appointment of key personal or staff as adviser was a matter which I had raised with the Aged Care Compliance Branch in the Central Office. In October 2019, the Aged Care Compliance Branch issued a new guidance document which did not include any statement to the effect that a key personnel or staff of the provider cannot perform the role of adviser. A copy of this guidance document is at **Exhibit EB2-4 [CTH.0001.1001.3935]**.
- 16 Ms Van den Berg ultimately remained adviser to Greenway Gardens for the duration of the sanctions process, which ran from February to July 2019. During this period, Ms Van den Berg provided regular updates to the Department on the facility's progress in returning to compliance.
- 17 In June 2019, the ACQSC conducted an announced assessment contact at Greenway Gardens, in which it determined that the facility now met all expected outcomes under the Accreditation Standards that were assessed on that assessment contact. A copy of the contact report is at **Exhibit EB2-5 [CTH.1029.1000.0326]**.

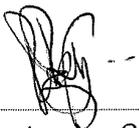
5) Are there any other occasions of which the Department of Health is aware where an approved provider has appointed an existing employee to the role of Adviser for the purpose of complying with a specification of the Secretary under s 66-2(1)(a)(iii) of the Aged Care Act 1997 (Cth)? If so, identify the number of occasions.

- 18 On 17 September 2016, the current legislative provisions governing the appointment of advisers under the Aged Care Act came into effect. Since this date, the Department has imposed sanctions on approved providers on 95 occasions. The Department is aware of five instances (out of these 95 occasions) where an approved provider has appointed an existing employee to the role of adviser or administrator.² On an additional two occasions, an employee of the approved provider under sanction was appointed as an adviser for a short period of time.

¹ I understand that the Commonwealth has previously provided information to the Royal Commission about the current arrangements under which a provider may appoint an administrator or adviser of their choice in its submissions on Hearing 2: Aged Care In the Home [RCD.0012.0003.0012].

² This includes two instances (including the appointment of Ms Van den Berg) where the adviser was an employee of an associated entity of the approved provider.

Royal Commission into Aged Care Quality and Safety
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Signature 
Name ELSY BRAMMESAN
Date 4 October 2019

Witness 
Name Ahmed Rizki
Date 4 October 2019