

REPORT ON IN-CAMERA PROCEEDINGS BEFORE

**SELECT COMMITTEE ON OFF-PROTOCOL PRESCRIBING
OF CHEMOTHERAPY IN NSW**

OFF-PROTOCOL PRESCRIBING OF CHEMOTHERAPY IN NSW

**PUBLISHED BY RESOLUTION OF THE COMMITTEE ON
10 FEBRUARY 2017**

At Jubilee Room, Parliament House, Sydney on Tuesday, 29 November 2016

The Committee met in camera at 5:05 pm

PRESENT

The Hon. Paul Green (Chair)
Mr J. Buckingham
The Hon. F. Farlow
The Hon. C. Houssos
The Hon. N. Maclaren-Jones
The Hon. G. Pearce
The Hon. W. Secord
The Hon. B. Taylor (Deputy Chair)

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Evidence in camera by **BRETT PATRICK GARDINER**, sworn

The CHAIR: The hearing will now proceed in camera. Please note that this is an in-camera hearing and you are bound by the confidentiality of today's proceedings. Please be aware that the Committee has the power to publish today's evidence if it chooses. The Committee's decision will take into account the confidentiality and the sensitivity of the matters discussed. Should the Committee desire to publish some or all of the transcript, the secretariat will consult with you about what is to be published. However, the decision as to what is published will rest with the Committee. Dr Gardiner, I want to ensure that you are comfortable with answering the questions. Feel free to use your legal counsel if you need to.

Mr JEREMY BUCKINGHAM: I will pursue the line of questioning regarding how and by whom you felt bullied. If you could expand on that part of your previous evidence?

Dr GARDINER: I have just had a talk to counsel. It was my perception at the time that I was bullied by a particular individual. I was feeling very, very stressed at this particular period of time. This was in April, before I went off on leave, and I know people were trying to get to the bottom of all of this—as everybody wants to do. My feeling was that I felt bullied with this. It has got big connotations, the bullying side of things, but you asked me how I felt and that is how I did feel.

The CHAIR: Do you think you were made the scapegoat?

Dr GARDINER: Some people have said that to me. I do accept a lot of responsibility for this. There were a lot of us here and I do not know all the ins and outs of this. It concerns me that it has all come out in the media that there is a cover-up and all those sorts of things. From my point of view, I never believed there was any sort of cover-up. There was an unacceptable delay in terms of getting this through, in terms of getting the external consultant—there was a process with that.

The CHAIR: Do you think that delay was to provide protection for St Vincent's Hospital's reputation or different doctors' reputations?

Dr GARDINER: The delay was caused by a number of reasons. One was that I believe I had not prioritised the matter as well as I could. There were people away where I wanted the information from the cancer services manager. In October where I had had a meeting and said we need to get an external person, what I had done then was I had asked the Director of Cancer Services, who knew the various people around who could potentially do an external review, to actually find somebody because he knew the various people. I followed him up on a number of occasions to get that external reviewer and it was not until mid November, before I went on leave, that we were putting the stuff together. And then the person that was identified at the end of November had pulled out of doing that review—that is what I am told had happened—and then they sourced another person, who ended up doing the report, and that report was finalised and had got to St Vincent's, I understand, on 10 February. So there were a lot of delays.

The Hon. BRONNIE TAYLOR: The position of Director of Clinical Governance placed you in the seat with the responsibility for this happening.

Dr GARDINER: Yes.

The Hon. BRONNIE TAYLOR: I imagine that was a very difficult place to be. If you were on leave for various medical reasons that would mean you were coming and going during this time?

Dr GARDINER: That is the case. I do not want to—with this, it was all quite difficult but I believe that I should have been more proactive with this. I had given some people some other jobs to do and there were delays in that. Regrettably, this took a long, long period of time.

The CHAIR: Were they deliberate delays?

Dr GARDINER: I really do not believe so. I do not believe they were deliberate delays at all.

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The Hon. COURTNEY HOUSSOS: When you were on leave during this period was someone else acting in your role?

Dr GARDINER: Yes.

The Hon. COURTNEY HOUSSOS: Who was that person?

Dr GARDINER: That person was—I am just trying to remember her name—Margaret Lazar.

The Hon. COURTNEY HOUSSOS: When you were on leave was she fully across these issues? Did you have the opportunity to brief her on these issues?

Dr GARDINER: I had a brief conversation with her on these issues; I cannot remember the extent of that. When I did come back from leave I asked her—because I was chasing up the report—did any matters come up in regards to this matter and she said no.

The Hon. COURTNEY HOUSSOS: It is pretty clear that there were a number of people at St Vincent's who could have been following up on this. Obviously you take on a lot of the blame in seeing yourself as not driving it but there were a number of people at St Vincent's who should have observed the warning signs, as you did, that were outlined in the email of 5 August. I appreciate that you said you no longer have access to your documents or diary any longer but is the Committee able to get a copy of that email?

Dr GARDINER: The hospital would have to provide that.

The Hon. COURTNEY HOUSSOS: We might ask for a copy of that. For us that was clearly a very early warning sign of the course of action that needed to be taken very early on.

The Hon. WALT SECORD: You made reference earlier that one of the action points in that email was to refer to NSW Health. What was St Vincent's response to wanting to contact NSW Health about this?

Dr GARDINER: I do not believe I said it was to contact NSW Health. I said that we would need to prepare a brief regarding this matter.

The Hon. COURTNEY HOUSSOS: Which in effect would contact—

Dr GARDINER: One of the things with St Vincent's is that there was basically St Vincent's Health Australia and NSW Health where we had a number of responsibilities. So there were two lots of reporting lines or notification lines.

Mr JEREMY BUCKINGHAM: That was a reportable incident brief. What was your knowledge of the fact that it never occurred?

Dr GARDINER: To answer that question, a reportable incident brief had been prepared for the 7 August meeting but we did not send it through.

Mr JEREMY BUCKINGHAM: Why?

Dr GARDINER: There was a discussion amongst the various people there at the time. There was a view formed that the radiotherapy, the chemotherapy was a radiosensitising agent and it probably did not have any impact on patients. That was certainly the take-out on that meeting and certainly we needed other information. There were not people in that room like an external person—

Mr JEREMY BUCKINGHAM: It was not a governance issue; it was a clinical issue about whether or not in the collective opinions there had been adverse outcomes? It was not whether or not because something was outside of a protocol that it should be reported in due course?

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Dr GARDINER: There are various things about what is a guideline and what is a protocol and so forth. There are various things where there are hundreds of different guidelines. The question is: Okay, when are those guidelines followed by people? From a management point of view you always want protocols to be followed and that is part of this—these guidelines. I suppose the thing is, and this is the thing, where the eviQ sat in terms of this.

Mr JEREMY BUCKINGHAM: Just to be clear for the Hansard and the secretariat, when was that meeting you are referring to?

Dr GARDINER: That was 7 August 2015.

The Hon. COURTNEY HOUSSOS: Excuse my ignorance, what was your area of expertise before becoming the Director of Clinical Services? What was your area of training?

Dr GARDINER: My position was Director of Clinical Governance and Chief Medical Officer. I am a trained rehabilitation specialist of the College of Physicians and also a specialist of the College of Medical Administrators so I have two specialties and many years of experience in terms of being—I was the acting Chief Executive for a period of time at St Vincent's back in 2013. I have been a director of medical administration across a large area health service. I have been a medical physician—

The CHAIR: You look too young for all that. There are no further questions. Do you wish to make a final comment?

Dr GARDINER: I do not think so.

The CHAIR: You have 21 days to respond to any questions taken on notice and there may be some further questions in light of your evidence today. As I said before, you will be given the opportunity to comment on the in-camera transcript. Thank you for your assistance today, which we know has taken a lot. The Committee appreciates that things do go wrong but it is good when people own up to the part they played so it can be fixed so others do not go down that track.

Dr GARDINER: Thank you.

(The witness withdrew)

(Conclusion of evidence in camera)

The Committee adjourned at 17:19.