

**STANDING COMMITTEE ON
ESTIMATES AND FINANCIAL OPERATIONS**

INQUIRY INTO PEEL HEALTH CAMPUS PAYMENTS

**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
TUESDAY, 30 OCTOBER 2012**

SESSION ONE

Members

**Hon Giz Watson (Chair)
Hon Philip Gardiner (Deputy Chair)
Hon Liz Behjat
Hon Ken Travers
Hon Ljiljanna Ravlich**

Hearing commenced at 9.56 am**FOLEY, MRS MICHELLE ASHTON****Former Chief Operating Officer, Peel Health Campus, sworn and examined:**

The CHAIR: We might commence the hearing this morning. Firstly, on behalf of the committee, I welcome you to the meeting this morning. Before we commence, I am required to ask you to take an oath or affirmation. If you prefer to take the oath, avail yourself of the Bible on the table in front of you.

[Witness took the oath.]

The CHAIR: Please state the capacity in which you appear before the committee.

Mrs Foley: My capacity is as the former chief operating officer, Peel Health Campus.

The CHAIR: Thank you very much. You will have signed a document entitled “Information for Witnesses”. Have you read and understood this document?

Mrs Foley: Yes, I have.

The CHAIR: Thank you. Proceedings this morning are being reported by Hansard and a transcript of your evidence will be provided to you. I remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during this morning’s proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public or media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. This prohibition does not, however, prevent you from discussing your evidence in public generally once the hearing has ended.

I would initially remind you the terms of reference for the specific inquiry so that we are all clear about that. This committee has decided to inquire into the circumstances surrounding the overpayment by the Department of Health of approximately \$1.8 million and subsequent recovery from the Peel Health Campus or Health Solutions WA Pty Ltd; secondly, whether the arrangements for fees, bonuses, remuneration or other payments for services made to doctors of the Peel Health Campus or Health Solutions WA Pty Ltd included a payment for each admission of a patient from the emergency department of the hospital; and, thirdly, any other relevant matter. I will just check with you, Mrs Foley, that you understand those terms of reference?

Mrs Foley: I do.

The CHAIR: You have been summonsed this morning to assist the committee with this inquiry. Thank you for your attendance. I will start with some questions but other members may indicate that they have further questions?

Mrs Foley: I have a statement I would like to read if possible.

The CHAIR: Yes; just before I take you to that I am kindly reminded that the committee would like to be introduced to you so you know who you are speaking to. Hon Phil Gardiner, member of the National Party, representing the Agriculture Region; Hon Liz Behjat, member of the Liberal Party, representing North Metropolitan; myself as Chair, Giz Watson, member for North Metropolitan and the Greens; Hon Ljiljanna Ravlich, member of the Labor Party representing East Metropolitan; and Hon Ken Travers, Labor Party member, representing North Metropolitan. If you would you like to make a statement, you are welcome to.

Mrs Foley: It is quite lengthy but I feel that it is important to explain the series of events I encountered during my employment at Peel Health Campus.

Hon LIZ BEHJAT: Is this the statement we have been handed a copy of?

The CHAIR: Is that the information you provided before we commenced the hearing?

Mrs Foley: Yes, I believe so.

Hon LIZ BEHJAT: There are a number of paragraphs in this statement that go outside our terms of reference. I will have to request that those parts not be read out.

The CHAIR: I suggest, Ms Foley, that you proceed with that; that is fine, but I might have to indicate if we are moving into territory that is beyond the reach of the inquiry. Please proceed.

Mrs Foley: In mid March 2012, I applied for a chief financial officer role that was advertised on the Seek website with the employer listed, as Merchant Holdings Limited. It was a vague advertisement that stated “CFO of a 500-plus employee private, profitable organisation reporting to the CEO and Board”.

On 20 March 2012 I received an email from HSWA board member Mark Stowell acknowledging my application. In April I received a message from Jon Fogarty advising me that he was the chairman of Peel Health Campus and was calling in regard to my application. At that time I did not realise that I had even applied to Peel Health Campus but after speaking to Jon Fogarty realised that the Merchant Holdings advertisement had in fact been for PHC. During my conversation with Jon Fogarty he stated that I had an interesting professional background and that while they were already quite progressed in their search for a chief financial officer, the PHC’s CEO had recently resigned and that there were several senior management opportunities available given that PHC had been “light in the executive” for a while.

The next subject I will go into is the Peel Health Campus and the state of chaos that I endured—culture, bullying, disintegrating IT systems and infection control risk.

I commenced on 11 April 2012 and was immediately tasked with resolving significant problems such as wage issues. PHC’s staff were underpaid and were threatening to resign. There were bullying and harassment cases that had resulted in stress-related workers’ compensation claims. There were IT problems regarding ageing servers and storage units that were threatening business and required replacement. The IT issues were so significant that the IT manager, Andrew McKenzie, advised me that if one employee mistakenly uploaded the music from their iPod, the whole server would crash as it had less than five gigabytes of free memory space. I asked how the systems had been allowed to deteriorate and was advised that Health Solutions would not allow anyone to spend the money necessary to replace or to repair those systems.

I was also approached by numerous staff at PHC regarding the state of the floor coverings in the hospital. I was told that the carpets had not been replaced since the hospital opened in 1997 and that bubbling and tears in the vinyl in the operating theatres were an OH&S risk. One colleague provided me with a PowerPoint presentation that included dozens of pages of photos of threadbare and stained carpeting in the patient wards and staff rooms, which included commentary about how the bloodstains and body fluid stains were an infection control risk. Again I was told that the floor coverings were the way they were because Health Solutions had refused to replace the floor coverings when requested in the past.

Jon Fogarty advised me that the former CEO of Peel Health Campus, Justin Walter, had become “toxic and disruptive” and needed to go. The majority of staff seemed very disappointed to see Justin go. Morale was extremely poor at the time. During my first few days at Peel Health Campus I was told by the director of clinical services, Aled Williams, and Jon Fogarty that the director of nursing, Catherine McKinley, was also toxic to morale and that her actions had resulted in the

departure of several staff members. I was told that because of her inability to manage staff most of her core responsibilities had been taken from her.

I was told that the hiring of the two nurse directors had been an attempt to encourage Catherine McKinley to resign, but that she had chosen not to do so. I was provided with a copy of a human resources audit report that was conducted by Eric Baines that identified Catherine as an issue and that her modified role was not representative of what a true Director of Nursing was.

The CHAIR: Ms Foley, just before you proceed, as I am privy to a copy, I suggest that the next part under that subheading has no bearing on this inquiry.

Mrs Foley: What transpired in that regard to that particular area is part of the culture of the hospital.

Hon LIZ BEHJAT: We are not inquiring into the culture of the hospital. We have got terms of reference that are really clear.

Hon PHILIP GARDINER: Let the chairman rule.

The CHAIR: I am just reading the words ahead of you, actually, reading them out, Ms Foley, and I will make a —

Hon KEN TRAVERS: Unless there is anything in addition to what is written—we have got the written copy, so we can take those and we can make a decision about those later as a committee.

The CHAIR: Sure. I think that is good advice. The committee will receive that information, but at this stage we do not wish it to be on the public record. We will make a decision as a committee if we do at a later date. So, if you would not mind just proceeding to the next subheading, that would be appropriate.

Mrs Foley: My appointment as chief operating officer and the termination of Catherine McKinley: in late April 2012 I was appointed chief operating officer—COO. On 1 May 2012 Mark Stowell—a Director of Health Solutions—visited Peel Health Campus and discussed the management of PHC with Aled Williams and myself.

We agreed that as chief operating officer I would have oversight of all of the commercial and operational areas of the hospital, including finance. The new chief financial officer Keith Muller would report to me. A letter was sent to Nicole Feely and Shaun Strachan at the South Metropolitan Health Service advising that I had been appointed chief operating officer and that I was the designated contract manager for Health Solutions in the state. On 3 May 2012, Aled Williams and I were advised by Mark Stowell to instruct the director of nursing, Catherine McKinley, to leave PHC. Later that afternoon, Aled Williams and I met with Catherine McKinley and advised her that she was to pack up her office and leave. Catherine McKinley was dumbfounded by why she was being asked to leave and repeatedly stated that she had been there for more than a decade and had helped PHC avert many crises.

Catherine McKinley asked whether she was being fired. Aled Williams told her that Health Solutions would be deciding on Monday and that in the meantime she would be on paid leave. Catherine emailed me the following day to express her dismay and to state her case. On the following Monday, when Aled Williams returned from the board get together I asked him what had been decided about Catherine. Aled Williams said that the subject had not even been addressed and that the meeting had been all about the redevelopment plans.

I was unsure what to do. Catherine McKinley was left in limbo. I suggested to Mark Stowell that as Peel Health Campus now had two new nurse directors overseeing the nurses, that Peel Health Campus make the role redundant and pay the appropriate entitlements to do so. Catherine McKinley was paid her full entitlements and 17 weeks redundancy.

The South Metropolitan Health Service—SMHS—and Peel Health Campus's clinical decisions unit and dodgy accounting practices: I attended a meeting with SMHS in May of 2012. The group manager for SMHS Shaun Strachan was present. The purpose of the meeting was to review the findings from the admissions and financial audits that had been commissioned by the state government. During that meeting I learned about PHC's clinical decisions unit—CDU. During the operation of the clinical decisions unit—a period between late 2010 and mid-2011—there had been a significant spike in the number of patients admitted to the hospital from the emergency department. In relation to the admissions compliance audit—PricewaterhouseCoopers—advised that their audit discovered that for a specific period 186 of the 500 cases were invalid admissions.

In relation to the financial and sinking fund audit, PricewaterhouseCoopers stated that because PHC did not maintain a centralised waitlist and had poor governance over the surgeons' individual waitlists, that they had not been able to reconcile the \$1.5 million provided to PHC for additional elective survey work from other hospitals. PricewaterhouseCoopers raised significant concerns about how PHC's sinking fund was administered, poor accounting practices, financial improprieties, missing invoices and PHC's failure to accurately maintain the asset register as required in the master contract with the state.

At the end of the meeting, Shaun Strachan advised that PHC would receive a letter regarding the findings. PHC did receive that letter a few weeks later from SMHS. After the meeting I asked Aled Williams what had transpired with the clinical decisions unit—CDU. Aled Williams told me that the CDU had been created to deal with the four-hour rule and that the doctors involved had been overzealous in their admissions. Aled Williams told me that PHC had identified a spike in admissions around the same time as SMHS had, that Catherine McKinley had audited the files. As a result of McKinley's audit, \$1.3 million had been refunded to the State government. Aled Williams and I discussed the 186 new cases of invalid admissions that PWC had raised and agreed that he would audit those files once we received a list of the cases involved.

[10.10 am]

Request by SMHS to investigate Peel Health Campus's admissions: in May of 2012 Shaun Strachan suggested that I needed to investigate the CDU matter in detail. Also in May 2012 Shaun Strachan asked me if I knew of the approach by Phil Hatt, former COO, to the Minister for Health requesting additional MPA funds. I told Shaun that I did not know. He then explained that around the same time that the CDU invalid admissions were occurring that Phil Hatt had approach Kim Hames for an increase in the MPA, and that the approach had not been well received in light of the CDU debacle.

Shaun Strachan said that SMHS and the Minister for Health were in the process of deciding whether or not to expand the audit, and I should send a letter to him outlining the CDU workings. I spoke to Aled Williams about what Shaun Strachan had told me. I also telephoned Mark Stowell about Shaun Strachan's request. Mark Stowell told me to let Aled draft the response because he had gotten us into this mess and for me to send it to him, Mark Stowell, to review before providing it to SMHS.

In PHC's reply to SMHS it was conceded that 169 cases were invalid admissions. Later the auditors discovered that 170 of the 500 admissions were invalid. Shaun Strachan was critical of the response to the SMHS's queries regarding the CDU. Shaun Strachan noted that the amount owed to the state was in the ballpark of \$393 000, which was in addition to that that had already been refunded. Strachan asked when Peel Health Campus intended to refund the money to the state. Both Aled Williams and myself agreed to do so once the final amount was known.

Peel Health Campus unnecessary patient admissions to hospital: at the same time, I spoke to my colleague, Sarah Ward, who had been the four-hour rule lead during the CDU period. Sarah Ward advised that there was much more to the story than I had been told. Sarah Ward said that the doctors had been paid a bonus to admit additional patients and that a few of them had figured out that it was

a money-making opportunity and had admitted patients that should not have been. Sarah Ward also told me she identified the spike in admissions several months before it was identified at the SMHS contract meeting, that she and Catherine McKinley had approached Aled Williams with proof that patients were being unnecessarily admitted and that the doctors involved were altering the timestamps of the records.

Sarah Ward said that Aled Williams told Catherine McKinley and her not to worry about it and said that, “my guys wouldn’t do that.”

Peel Health Campus—conflict of interest by engaging LocumForce: Sarah Ward told me that there was controversy regarding a company called LocumForce as some of the clinical decisions unit doctors were employed by LocumForce. Aled Williams was a director of LocumForce. Following my conversation with Sarah Ward I asked Aled Williams about the incentives. Aled Williams told me that it was compensation for the CDU doctors for the extra work involved in looking after the patients who were admitted. In the emails that Aled Williams had previously forwarded to me, one of them was a draft memo reminding staff not to alter timestamps.

I investigate CDU and LocumForce and the \$9.5 million paid to LocumForce: realising that there was more to the CDU than I was being told, I began investigating the clinical decisions unit and LocumForce. Aled Williams advised me Paul Bailey, former head of the emergency department at PHC and himself had created LocumForce several years prior. I asked our CFO to look into LocumForce. My investigations disclosed that \$9.5 million had been made to them over the past few years. On 30 or 31 May 2012 I wrote to LocumForce to advise Peel Health Campus was terminating the relationship between Peel Health Campus, HSWA and LocumForce. I did not receive a reply. In May of 2012, a media release was sent out by Peel Health Campus advising that Jon Fogarty had retired from the Health Solutions board of directors and was no longer the chairman and that Mark Stowell had been appointed as chairman.

The CHAIR: Ms Foley, I am going to just stop you there again because the next subheading we —

Hon KEN TRAVERS: I think it is relevant, Chair.

The CHAIR: You think it is relevant?

Hon LJILJANNA RAVLICH: And I think that other one is relevant, too.

The CHAIR: You think it is relevant?

Hon LJILJANNA RAVLICH: Yes.

Hon KEN TRAVERS: I mean, this one I think is clearly relevant.

Hon LJILJANNA RAVLICH: Absolutely; it is already on the public record anyway.

Hon LIZ BEHJAT: I do not think it is relevant.

Hon PHILIP GARDINER: I think parts of it are.

The CHAIR: In which case —

Mrs Foley: It leads itself to how they were actually getting money from the government and how they were trying to position themselves to do it.

Hon LJILJANNA RAVLICH: Yes, exactly right.

The CHAIR: Sure, okay. So, I think the appropriate thing to do at this stage is just to take a pause in the hearings. The committee will consider whether to take this evidence in public, so I would just ask that the room be cleared while we go into private session, thank you.

Mrs Foley: Madam Chair, I just wish to emphasise again that this is how they were getting money from the state and that it was part of that overall culture and issue.

The CHAIR: Thank you; no worries.

Proceedings suspended from 10.15 to 10.37 am

The CHAIR: All right; we will recommence. I just indicate that the committee has deliberated and decided that there is a small amount of the statement that you provided that we are happy to hear from you in public, and the remainder will be taken as private evidence and the committee will consider that at a future date. So, I might ask you, Ms Foley, if you would like to recommence.

Mrs Foley: The appointment of Tony Solin; Peel Health Campus to influence the government and Premier Barnett: in early to mid-June 2012, I was advised by Jon Fogarty advising that he had appointed a new director of public relations for Peel Health Campus, Tony Solin. Jon Fogarty advised me that there was a greater agenda behind Tony Solin's appointment. Tony Solin was brought in on a salary of \$200 000 plus superannuation per annum, which was significantly higher than most of the other executives at Peel Health Campus, including the CFO, and is nearly twice the industry benchmark for that role. In late June 2012, HSWA launched the PHC community fund during an event emceed by Tony Solin and at which Kim Hames presented. After the July 2012 contract meeting, Shaun Strachan asked to meet with Aled Williams and myself apart from the other attendees.

The CHAIR: Thank you very much. I might now turn to some questions. I wonder if you could elaborate a little bit on your involvement in the financial management at Peel Health Campus.

Mrs Foley: As chief operating officer, I had direct oversight of the finance area, including oversight of the chief financial officer who had been newly appointed—a gentleman named Keith Muller. So, ultimately I was responsible for all of the management accounts and for all financial reporting to the state in terms of the master agreement with the state.

The CHAIR: Thank you. I just check with members: at any point you want follow-on questions, just indicate, and we will go there.

Thank you for your statement. I wonder if you could be more specific as to whether you are aware of any financial mismanagement of public funds at Peel Health Campus.

Mrs Foley: Yes. Shortly after I commenced, I became aware of the clinical decisions unit—CDU—issue and became aware of the fact that the physicians involved in the emergency department, in the CDU in particular, had been incentivised and provided a \$200 bonus to admit patients. I also came across an email to my predecessor, Justin Walter, that was sent from Jon Fogarty and was an email chain between Jon Fogarty, Pang Ong the former CFO, and Justin Walter, as well as Dr Paul Bailey, that indicated that there was potential criminality and that that \$200 bonus was to be paid for only those admissions that were above and beyond the existing admissions. So, in essence, he was only going to pay the \$200 for additional work being created by the CDU. Because of the \$200 incentive, the doctors were overzealous in their admissions. They violated the admissions criteria that was established by the state and they admitted patients unnecessarily who should not have been admitted; they should have been discharged from the emergency department and sent home. As a result, they were unnecessarily treated while they stayed at the campus in the admission, some of which would have gone through testing that was unnecessary as well as potential radiology and other pathology works as well. I mean, they also blocked beds that would have potentially been available to other patients.

Hon LIZ BEHJAT: Whose opinion was it that these patients were unnecessarily treated, because do you have any medical qualifications yourself?

Mrs Foley: I do not.

Hon LIZ BEHJAT: And so on what basis do you make these claims that the patients were unnecessarily treated?

Mrs Foley: It was indicated in a series of email and I was also told that by Catherine McKinley, the former director of nursing, who does have medical qualifications.

Hon LIZ BEHJAT: Do you have those emails that you can substantiate —

Mrs Foley: I can make them available.

Hon LIZ BEHJAT: You do not have them with you today?

Mrs Foley: I do not; they were seized from my home.

Hon KEN TRAVERS: So they should be available from Peel Health Campus, if we were to request them or summons them from them?

Mrs Foley: Absolutely.

Hon LJILJANNA RAVLICH: Can I just ask: how many physicians were involved in this?

Mrs Foley: I believe that there was more than eight. At one time it was up to 12, but there were four in particular that were considered to be the greatest offenders of over-admitting. One doctor, Arthur Stephenson, accrued tens of thousands of dollars in the \$200 bonus payments for unnecessary admissions.

Hon LJILJANNA RAVLICH: Were there any other staff at the hospital who received incentive payments for any other purpose?

Mrs Foley: Not that I am aware of.

Hon LJILJANNA RAVLICH: Not that you are aware of; so it was strictly limited to that. Do you know if the “incentivisation” of admissions extends beyond Peel Health Campus?

Mrs Foley: I am not aware of it occurring in any other hospital.

Hon LJILJANNA RAVLICH: I also ask: at any time during your time there, had you been made aware or heard that the minister’s office was at all interested in this issue or that it had come to his attention?

Mrs Foley: Yes, I was actually advised by Shaun Strachan during a telephone conversation that the minister had concerns that that is why he had instructed south metro health service to engage PricewaterhouseCoopers to conduct the admissions compliance audit.

Hon LJILJANNA RAVLICH: And when did that occur?

Mrs Foley: The telephone call?

Hon LJILJANNA RAVLICH: Yes.

Mrs Foley: It would have been around, I would say, mid to late May.

The CHAIR: So this year?

Mrs Foley: Of this year, yes. All of this would relate to this year, as my employment was all during 2012.

Hon LJILJANNA RAVLICH: Okay, so that report would have been complete. Are you aware of the minister intervening at any time in relation to this issue based on the findings of that report?

Mrs Foley: I am not, no.

Hon LIZ BEHJAT: Intervening in what way, member?

Hon LJILJANNA RAVLICH: Do not question me; you are here to question —

The CHAIR: Perhaps all questions can go via me and that will help things no end.

Hon PHILIP GARDINER: I just want to come back to what you said, the answer you gave, about the doctors who made the authorisations of whether people were sick enough to go into different units.

Mrs Foley: Yes, the decision to admit.

Hon PHILIP GARDINER: Now, that leads us into a prudential area, does it not, because was there only one doctor's signature on the authority that they were of a sufficient health condition?

[10.45 am]

Mrs Foley: I believe so, but in some cases patients were admitted without ever having even seen a doctor.

Hon PHILIP GARDINER: So, what authority —

Mrs Foley: To get the bonus.

Hon PHILIP GARDINER: So whenever a doctor approves something like that, what they are doing is actually approving a check.

Mrs Foley: Yes.

Hon PHILIP GARDINER: And in many organisations above a certain level, then those checks need to be approved by a second person. Was there any complementary approval process?

Mrs Foley: Not that I am aware of, no.

Hon PHILIP GARDINER: So, really, at the end of the day, if government money was involved somewhere along the trail here, you have not got a prudential process in this campus which gives any veracity to a single person's view; is that fair to say?

Mrs Foley: I would agree, yes.

Hon PHILIP GARDINER: Is that the conclusion that we can reach?

Mrs Foley: Yes, it is.

The CHAIR: I will just go to Hon Ken Travers—I have got a speaking list—then Hon Liz Behjat.

Hon KEN TRAVERS: I have a series of questions that run off what has been said, so I am happy for other members to finish their questions and then for me to ask mine, if people have got matters still arising.

Hon LIZ BEHJAT: You made the claim then that the patients had been admitted to the CDU without ever having seen a doctor; is that right?

Mrs Foley: Yes, that is correct.

Hon LIZ BEHJAT: So, they were not seen by a doctor in ED prior to admission to CDU?

Mrs Foley: No, one of my colleagues Sarah Ward and also Catherine McKinley identified that in one case, or in several cases, the doctors were actually altering the timestamps of the time that the patients were admitted to make it look like they had stayed in the emergency department for longer than they actually had under—I guess, believing that it would appear obvious of what they were doing, if it became obvious that the patient might have only been there for 15 or 20 minutes. In other cases —

Hon LIZ BEHJAT: Sorry, a patient may have been in ED for 20 minutes and then transferred to CDU?

Mrs Foley: Admitted to CDU, yes. In other cases, patients were triaged by the nurse triage. The doctors would simply take a look at the nurse's assessment and the chart and then make the decision to admit without actually having seen the patient.

Hon LJILJANNA RAVLICH: I just want to ask: in relation to the nine to 12 doctors who were involved in this particular practice, how many of them were directly subcontracted to the hospital through the LocumForce?

Mrs Foley: At least two that I am aware of. I completed some research through the CFO to try and track down the invoices for that regard and I was only able to locate two that were specifically paid through invoices from LocumForce. However, several of them were fee-based doctors.

Hon LJILJANNA RAVLICH: In terms of the hospital practice, I mean, one of the key breaches was the fact that the admissions procedures were not followed or the criteria for admissions. Is there a requirement to actually record in a hospital that a patient would meet certain requirements before they are in fact admitted?

Mrs Foley: There should be, but in the case of Peel Health Campus, I believe that is simply at the discretion of the admitting physician.

Hon LJILJANNA RAVLICH: Okay. There is a requirement, obviously, for the government to be able to audit, or WA Health to be able to audit, Peel Health Campus. During your time there or, from what you had heard, prior to your coming there, do you have a recollection of any audit ever having occurred?

Mrs Foley: I am not aware of any audits prior to those that had just occurred when I arrived, and those are the PricewaterhouseCoopers' audits that I mentioned regarding the admissions compliance and also the sinking fund financial audit. Those audits included a three-year-10-month period. I believe there is a stipulation in the contract that allows them to conduct audits for at least two years, or for a longer period if agreed by both parties.

The audits that I have just referenced, the PricewaterhouseCoopers audits, in addition to the CDU admissions which had already been reversed, identified an additional 170 of the 500 cases that were audited that were invalid admissions to the total of \$390 000. As of the date that I resigned, 24 September, that \$390 000 had not been paid back to the state. Jon Fogarty was refusing to refund that money, claiming that there must be some agreed error rate, and still had not agreed to refund that money despite the fact that myself and the CFO had provisioned it in the accounts.

The CHAIR: Just before I go on to Hon Ken Travers, could you indicate, when you became aware of these concerns, what action did you take? Did you report this to somebody? What was the chain of reporting of concerns?

Mrs Foley: When I first became apprised of CDU, I spoke to Aled Williams, who was directly involved in it at the time, and he made me believe that it was an innocent situation, that the doctors had just been carried away with their admissions. He did not tell me anything about the bonus and also did not tell me anything about the alterations to the time stamps. As time went on, from speaking to colleagues, and also as Shaun Strachan's inquiries into the CDU matter persisted, I started to gather more information. I also was given access to my predecessor, Justin Walter's, inbox—his Outlook inbox. The last couple of weeks I was there, I discovered a number of emails in that inbox which led me to believe that it had, in fact, been a criminal matter; it pointed directly to the \$200 incentive. There was another email from Jon Fogarty that stated that that \$200 incentive was only to be paid to drive in additional admissions and not for existing work, and led me to believe that there were significant issues. At the time that I resigned, I knew that I needed to do something about it and I did reach out to Shaun Strachan, but we had a brief conversation, and while I was actually having coffee with him in Mt Lawley, Neale Fong walked up, which was a bit of a terrifying matter, because I could not figure out how Neale Fong even knew that I was with Shaun Strachan that day, and then matters have unfolded from there. Shaun Strachan is the group manager for south metro health services. He directly reports to Nicole Feely, their chief executive. He was also the designated contract manager for the state that attended all the contract meetings and had responsibility for the management of Peel Health Campus's contract with the state. He also was very much against Peel Health Campus, in the sense that he was aware of improprieties. From my understanding, a number of my predecessors had confided in him about some of the financial improprieties and other scenarios that had transpired there, and the board believed that Shaun Strachan was a threat to the redevelopment campaign and at one point had instructed me that I

needed to make a gender intimidation of sexual harassment claim against Mr Strachan, which I refused to do, and that was a few weeks prior to my resignation.

Hon LIZ BEHJAT: Who suggested that to you?

Mrs Foley: Jon Fogarty.

Hon LIZ BEHJAT: So you are alleging that Jon Fogarty directly said to you, “You have to make an allegation of sexual harassment against Shaun Strachan”?

Mrs Foley: Sexual harassment —

Hon LIZ BEHJAT: Why did you not take that to the police when that was done?

Mrs Foley: I spoke to the board of directors at that time and they told me that Jon was just in a panic because of the redevelopment campaign; that he believed that Shaun Strachan was the only one that would prohibit it from going forward. They assured me that the letter that ultimately would go to south metro health services or to Nicole Feely would not include that information and, to my understanding, it did not, although it did reference something about gender intimidation; that sexual harassment was not included. There was a series of emails between myself, the other board members and Jon Fogarty; there was also an email where I wrote to Jon Fogarty on a Sunday morning, advising him that I was not comfortable with it, that I felt that it was inappropriate, that while Shaun Strachan had the tendency to be combative and adversarial, that I did not find it to be gender biased or sexual harassment. I went as far as to mention that, in a few meetings, Shaun Strachan had referred to my colleague, the CFO, who is quite young, as being a “boy” and that, if anything, his hostility or his attitude was directed at both genders.

Hon LIZ BEHJAT: And these are part of the emails that have been seized under the Anton Piller order, is that right?

Mrs Foley: They are. The next email that I received following that was from Mr Fogarty, telling me that if I retracted the allegations—which I had never made—that my job would be in peril.

Hon LIZ BEHJAT: Your job would be?

Mrs Foley: In peril.

Hon KEN TRAVERS: So those documents should be able to be obtained from Peel Health Campus—the email from Mr Fogarty and—who else would be involved in the email chain?

Mrs Foley: Some of them, between Mr Fogarty, Mark Stowell was involved in most, as was Aled Williams, as he is also a director of Health Solutions, as well as Neale Fong.

Hon KEN TRAVERS: Okay.

The CHAIR: Can I just also be clear about the \$200—where is that coming from? Where is that being drawn from?

Mrs Foley: The \$200 is directly paid by Health Solutions; the doctors, as most of them were fee-based and paid by invoice, as I mentioned earlier, they were asked to set up a separate account, to get their own ABN numbers, and to invoice the campus separately for those payments. And as I mentioned before, for one particular doctor, the payments that he accrued during the period of CDU equated to tens of thousands of dollars, and that is for one doctor alone.

Hon LJILJANNA RAVLICH: Can I just ask: does this mean that the doctors were encouraged to set up their own company structure as a part of this process?

Mrs Foley: They were, yes. They were, in particular, told to get their own ABNs, and it is my understanding that one of them, Arthur Stephenson, actually approached our accounts office to find out how to do that, because he was unfamiliar with how to go about obtaining an ABN.

Hon KEN TRAVERS: So, to be clear, he was a salaried staff member?

Mrs Foley: I believe he was. Actually, no, I am sorry: Arthur Stephenson was invoiced at one time and salaried at another time; I am not sure at that time what his status was.

Hon KEN TRAVERS: But then they were suggesting that the salaried officers should set up a separate account to receive a separate payment for admission.

Mrs Foley: Yes. Some of them were salaried; the majority of them were invoiced, either through LocumForce or through other agencies.

Hon PHILIP GARDINER: The \$200 bonus which was just raised, was that payable under any particular contract?

Mrs Foley: Not that I am aware of, no. It was just an arrangement that was made by the campus, by the CDU program that was established by Aled Williams and Paul Bailey, who was the former head of the emergency department.

Hon PHILIP GARDINER: There were no letters or communication between HSU and the individual doctors concerning that bonus?

Mrs Foley: There were various emails and memos to that effect that state the \$200 incentive.

Hon PHILIP GARDINER: Yes, I think I have some of that in the material. But there is no obligation that the company put down in writing about the \$200 to each other; it is just really in broad memorandums, is it?

Mrs Foley: Yes, just those written memorandums. There were no contracts or binding contracts that I am aware of that outlined that.

Hon PHILIP GARDINER: Was the \$200 that we have just kind of opened up a bit now, was that included in any contractual writing with the government, with the health department of WA?

Mrs Foley: No, not that I am aware of, and Shaun Strachan gave me every indication to believe that that was not the case.

Hon PHILIP GARDINER: So was Health Solutions expecting the Western Australian government, through the health department, to pay that \$200 to them?

Mrs Foley: Indirectly. It would have been paid by Health Solutions, as Health Solutions was then benefiting from the weighted separations attached to those admissions.

Hon PHILIP GARDINER: Yes, but at the end of the day, the government paid that money.

Mrs Foley: Indirectly, yes.

Hon PHILIP GARDINER: But under what provision of the agreement, of the contract, was that payable, do you know?

Mrs Foley: I do not know, to be honest. I do not believe there is anything specific about that incentive. The way that the structure works in the emergency department is there is a flat fee which right now, for this year, is about \$650 per patient that presents to the emergency department. Then, if a patient is admitted, based on their diagnosis, a DRG or weighted separation value is assigned to it, and that is dependent again on their condition. So my understanding is that one weighted separation right now is about \$3 900. So where the company would have been benefiting from those invalid admissions is that they would acquire that DRG payment that they would not have had the patient have been discharged from the hospital, such that it was quite easy for them to offset that \$200 incentive, as they were gaining that weighted separation DRG payment.

Hon PHILIP GARDINER: So long as it fell under the maximum payment amount?

Mrs Foley: Yes, although my predecessor Phil Hatt, at that point, had been quite aggressive with theatre activity and was concerned based on where we were tracking for the year—around, I believe December 2011—that we would not be able to stay within the MPA assigned for that calendar year and made an approach to Kim Hames, requesting that we receive a top up to the MPA. That was

something that Shaun Strachan referenced to me when he inquired about CDU; he asked me if I was aware of that approach, which at the time I was not, and told me that the minister had concerns about that, given the fact that they had basically, as he put it, tried to extort money from the state for additional services to be provided to the community at the same time that we were creating invalid admissions that were totalling millions of dollars or, at least, \$1.38 million was what they were aware of at that time.

Hon LIZ BEHJAT: So from your knowledge, at no time did Health Solutions or Peel Health Campus engage with either the Health Department or the minister's office to say, "We're setting up this clinical decisions unit, we're going to be paying bonuses to our doctors, this is an arrangement we're putting in place"?

Mrs Foley: To my knowledge, they did not make the health department or south metro health service aware of the pilot program.

Hon LIZ BEHJAT: Thanks.

Hon KEN TRAVERS: If I could just ask that that document be provided to Ms Foley, please?

Mrs Foley: I can also mention, on a separate issue, that when I reported concerns, including an IT consulting report that I had commissioned, giving concerns about the systems and poor processes in the hospital, I sent that report to the board, having received it only the night before the next board meeting, because of the significant concerns that were outlined in the report regarding patient care and safety, I felt that it was imperative that it be added to the agenda the following day. After sending the report and the email regarding it, I was chastised by Neale Fong for putting it on the record. He then called the consultants involved and asked them to change the final report and to delete all of the concerning or disconcerting items.

[11.00 am]

The CHAIR: Hon Ken Travers will refer to a document that I will call A1, and you have a copy of that.

Hon KEN TRAVERS: That is the Gmail item headed "To do list prior to June 30."

The CHAIR: We will just pause for one second. I think there might be an issue with the photocopier that the copies are only done single sided—a technical hitch. We just need to pause for a minute while we get that document.

Hon KEN TRAVERS: I am happy to start on the front page of it if Ms Foley has the front page, because it initially is the front page I am referring to. Have you got it?

Mrs Foley: I do not have that one.

The CHAIR: Just pause for a minute and everybody will have a copy and we will all have the document in front of us.

Hon KEN TRAVERS: The heading is "To do list prior to June 30" and it is dated 4 May 2010. It is an email from Mr Fogarty to a number of people at the hospital. You made reference earlier—at one point, I cannot remember exactly where you said you had come across it—that you had come across an email that made reference to the fact that it would only be for additional admissions.

Mrs Foley: Yes, this is that email.

Hon KEN TRAVERS: That is my main question: is this the email?

Mrs Foley: It is.

Hon KEN TRAVERS: So, that was the email you were referring to.

Mrs Foley: Yes.

Hon KEN TRAVERS: Do you also have the attachments that go through to—I think we are going to be okay—it will be on the third page that has the address of the Peel Health Campus at the top and then it starts “Hi Pang”. You only have the one page at the moment.

Mrs Foley: I only have the one page at this point.

Hon KEN TRAVERS: It is page 5 of seven.

The CHAIR: I think we might be about to get a double-sided copy; apologies.

Hon KEN TRAVERS: I might just go back to page 1, but I will let Ms Foley read page 5. It was page 5 of seven that I was going to ask you about.

Mrs Foley: All right.

Hon KEN TRAVERS: Just go back to page 1, it says there that —

I have made it absolutely and beyond clear to Paul Bailey,

That “the existing levels of admissions would not receive the \$200 per patient”.

So, that is the bit you were relying on when you made your earlier statements to us on page 1?

Mrs Foley: That, yes, and then the subsequent paragraph that begins —

Peel has an established cost base ...

He goes on to reference the incentive and that is for —

... additional work, not existing work.

Hon KEN TRAVERS: That is good. If we turn to page 5 of seven, have you seen that previously? Was that a part of the email —

Mrs Foley: That was part of the email chain, I believe.

Hon KEN TRAVERS: Where it makes reference to the fact —

... Where we are with the MPA After 9 months to March 2010, we are underspent by between \$1.8m and \$2.0m on our MPA.

Was it ever discussed that the purpose of the additional admissions was to get the health campus up to hitting their MPA for the year and not coming in below budget and therefore missing out on money from the state? When you discussed this with people like Mr Williams or Mr Fogarty, was that ever explained to you as being one of the reasons for the payment being made and the additional admissions being sought?

Mrs Foley: Not that I recall, no.

Hon KEN TRAVERS: I also take you now to this document—can we provide Ms Foley a copy of the document—which is a letter to Mr Strachan with an attachment that was written by Ms Foley.

The CHAIR: Document A2.

Hon KEN TRAVERS: Can you tell us what the circumstances were for you putting that letter together and sending it to Mr Strachan?

Mrs Foley: Yes; in May at the contract meeting Shaun Strachan referenced the CDU matter vaguely. We had also recently attended the PricewaterhouseCoopers audit meetings and CDU had been mentioned. Shortly thereafter I received a telephone call—if I recall, it was a Friday late in the day—from Shaun Strachan advising me that he understood that I was new in the role, asking me how much I knew about the clinical decisions unit matter and advising me that I needed to investigate the matter. He instructed me that I should speak to Aled Williams and that he would wait for me to get that information that I needed and would telephone me the following week. He instructed that he was doing this because he had pressure from Nicole Feely and from the Minister for Health as to whether or not to expand the already-conducted PricewaterhouseCoopers audit, and

that it would look favourable for Health Solutions if we were to put together a letter explaining what had gone wrong with the CDU and how it was innocent. So, I spoke to my colleague Aled Williams and he was quite concerned about the request. I also spoke to Mark Stowell from the board. Mark was also concerned with the request and where there are the comments in my statements “Let Aled write the response; he has got us into this mess”, this is the letter that it is in regard to.

Hon KEN TRAVERS: Was this prepared by you or Aled Williams?

Mrs Foley: Only the cover page. The actual summary, the clinical decisions unit summary, was prepared by Aled Williams. That is why I actually presented it in a way that I did, because given the fact that I had not been employed at Health Solutions or Peel Health Campus when CDU went on, I thought the best way to remove myself from it was to simply put it as an attachment, which is what I have done.

Hon KEN TRAVERS: There are questions I have relating to some of the comments. It talks about the fact that the CDU became a “virtual ward”, are you able to provide us with any information regarding that or would we be better off asking Mr Williams those questions?

Mrs Foley: You would be better off asking Mr Williams in that regard, as all that relates to a period prior to my employment. I can tell you that after I sent it, Shaun Strachan acknowledged receipt of it, but did not raise the issue again until the July contract meeting. After that contract meeting, which was in Mt Lawley, he requested to meet with Aled Williams and myself separately. He asked who had actually written a summary. Aled acknowledged that it was himself and he went on to state that Aled Williams’ comments in the summary about similar practices occurring at—I believe it was Armadale and Fremantle hospitals—were incorrect, as the physicians there were salaried and not fee based. He then left it alone at that point and went on to discuss the outcome of the PricewaterhouseCoopers audit, and that is when he mentioned he believed the figure was around \$393 000 that was due for the additional invalid admissions and asked when we would be repaying the state for that.

Hon KEN TRAVERS: My next question relating to that document—I guess you obviously have not had a chance to reread it. I assume that the information you have uncovered is subsequent to this letter being sent?

Mrs Foley: Yes.

Hon KEN TRAVERS: Do you now think that that is fair and accurate reflection of what the CDU was and how it operated —

Mrs Foley: I do not.

Hon KEN TRAVERS: — based on the information you have been able to obtain?

Mrs Foley: no, I do not. At that time this is the same information Aled Williams was telling me to make it appear that it was innocent. He did not apprise me of the specifics regarding the altered time stamps or the extent of the incentives that were being paid, nor did he acknowledge that patients were being admitted inappropriately. I later discovered that from various conversations with colleagues and also from those email chains I have referenced.

Hon KEN TRAVERS: I have noticed from a number of other emails we have received that Mr Williams had forwarded you some emails relating to the CDU?

Mrs Foley: He did, and that was in response to that telephone call from Shaun Strachan asking me to collect information, so he forwarded me some emails that, I guess, he believed —

Hon KEN TRAVERS: Were relevant?

Mrs Foley: — were relevant, yes. In one of them it did acknowledge that \$200 bonus, although he presented it to me, when I queried it, that it was just an additional fee. He told me that that fee was

being paid because the doctors were asked to look out after the patients after they were admitted to CDU and it required extra effort. He later contradicted himself by telling me that one doctor in particular, Suzanne Gray, had complained because Arthur Stephenson, another doctor had been admitting dozens of patients during his shift, but when his shift finished, he would leave and she would be responsible for caring for them, but he was receiving the incentive.

The CHAIR: I have read that email!

Hon KEN TRAVERS: I was about to say, maybe this is the appropriate time to provide Ms Foley a copy of the email from Suzanne Gray of 9 July 2010.

The CHAIR: Document A4. I will just give you a minute to familiarise yourself with that.

Hon KEN TRAVERS: I can tell you, as you are reading it, my first question will be whether this was ever one of the emails that was forwarded to you.

Mrs Foley: It does not look familiar to me, no.

Hon KEN TRAVERS: Because that, again, has a number of concerns raised by Ms Gray about the operations of the CDU and the impacts. You made comments earlier about it having an impact on patient outcomes.

Mrs Foley: Yes.

Hon KEN TRAVERS: Obviously, this document is still a private document of the committee, but it does make comments like —

This is really unsafe practice. At times I have stumbled across CDU patients on the ward, who I thought were still in ED.

I probably will not go through all of them.

Mrs Foley: I do not believe I have seen this email before; however, I guess one thing I should note is that this email is dated 9 July 2010 and my understanding is that the practice continued for some time after that, but also that Catherine McKinley and Sarah Ward approached Aled Williams about similar concerns, about the time stamps being altered and about patients being admitted without having even seen a doctor or having only been triaged by a nurse, so this does not surprise me.

Hon KEN TRAVERS: Do you believe that those concerns of Ms Ward and Mr McKinley were ever put in writing?

Mrs Foley: I would not know, honestly. They told me that they approached Aled Williams, that he told them that his guys would not do that, that the CDU admissions continued to spike for the next several months and that nothing was done about until such time as it was identified at this month's contract meeting.

Hon KEN TRAVERS: So if we can now go to the documents from Janice Vickery of Friday, 11 June 2010.

The CHAIR: That is document A3. It is coming across.

[11.15 am]

Hon KEN TRAVERS: Again, my first question to you will be whether or not that was ever one of the documents that was forwarded to you by Mr Williams regarding the establishment and operation of the—well, the trial of the clinical decisions unit?

Mrs Foley: Again, it does not look familiar to me. All up, Aled Williams sent, if I remember, somewhere between six and eight emails, and they seemed to be somewhat handpicked. Some of them did include email chains, where others had been involved, but they seemed to be the information he wanted me to see. I do not recall either of these two as having been one of them.

Hon KEN TRAVERS: Because, again, I think if you look at this document you might find that it actually gives a clearer representation than the earlier document he provided to you to send to the health department about how the actual CDU was established. So things like, under the “Admission Process” heading, that admissions will be made from ED under an ED consultant; and incentive payments to admitting medical officers will be linked to the CDU admissions to encourage a proactive approach to the appropriate and timely utilisation of the service.

Mrs Foley: Yes. It is very different from my understanding of it.

Hon KEN TRAVERS: Again, you may not be able to help me, but it later on lists three options, and option 3 talks about utilising the available underutilised beds in general wards throughout the hospital; option 1 and 2 talk about specific wards. In light of the comment earlier about a virtual ward, do you know whether—it certainly suggests that option 3 would not be particularly good for traceability of CDU patients. Do you know whether dedicated wards were set up?

Mrs Foley: My understanding is that the clinical decisions unit initially was considered—or the Rivers unit; the Rivers unit at Peel Health Campus is currently not utilised. It was intended to be a high-dependency unit, because of that there is, I believe, six or eight beds in that ward that are unoccupied. I received, in the emails from Aled Williams, an email advising me that they had originally considered using Rivers for CDU; however, they had decided to have the CDU as part of the emergency department. So there is a curtained area in the emergency department, which is across from fast-track, which I believe there are four or six beds in that were used for CDU to my knowledge. As far as any other areas being considered, I am not aware of that.

Hon KEN TRAVERS: So you do not know whether patients were being put out into underutilised beds across the broader hospital, so they were not in a specific location?

Mrs Foley: Not that I am aware of. They were admitted to the CDU ward within the emergency department, and then if they subsequently were moved to a ward it would have been after the fact.

Hon KEN TRAVERS: The other question I had was that in one of the documents—I cannot quite find it—I think it talked about the rules being that people under 16 were not allowed to go into the CDU; are you aware of those issues?

Mrs Foley: Not specifically in regard to the CDU; however, my understanding is that there are specific rules around where paediatric patients, or those under 16 years of age, can be cared for in the hospital. So even, for example, in the emergency department there are designated paediatric beds. At Peel Health Campus, because there is the Sarich Ward, which is a designated paediatric ward, if the Sarich Ward was open, which in the past it has not always been open, the patients were to only go to the Sarich Ward; and, if not, they would then be sent to designated paediatric beds in other wards.

Hon KEN TRAVERS: Sorry? There is a paediatric ward?

Mrs Foley: Yes.

Hon KEN TRAVERS: But it is not always open?

Mrs Foley: That is correct. The Sarich Ward, if I understand correctly, was opened about two years ago. It was built by money that was raised, or fundraised, by the Peel Health Foundation, and a fair bit of that was donated by Mr Sarich, hence the naming. It was a designated paediatric ward for patients under the age of 16 years; however, Health Solutions, until recently—I believe it was opened permanently as of August—had elected to keep it closed more than 50 per cent of the year because they claimed that the necessary patients to make it financially feasible to keep it open were not coming through the doors on a regular basis. So, in essence, if there were only one or two paediatric patients, they would not justify having the required three nurses to staff the ward and would then put those paediatric patients in beds in the other wards. So it was only until the

redevelopment campaign was launched, and it was recognised as being a public relations problem, that the decision was made to keep Sarich open around the clock.

Hon KEN TRAVERS: I am confused, because you were saying earlier that you need to have a specific bed, so how do you have a paediatric bed in a general ward?

Mrs Foley: Prior to the Sarich Ward being built, there were designated paediatric beds in, I believe, the Barker Ward; what they would do when Sarich was closed was utilise those beds. There were a number of concerns raised about that, because it meant putting these paediatric patients in wards where there might have been patients who were suffering from dementia or where there were security issues—where there were an array of other issues—and in most cases there were not paediatric-dedicated staff or paediatric trained staff available on those wards. So there were number of issues, some of which I believe have been raised here and in Parliament, because I know I responded to a few of the parliamentary questions in that regard around why the Sarich Ward was not open, but it was purely financial.

Hon KEN TRAVERS: So when you responded, what was the response you provided; that it was not open, or?

Mrs Foley: It was, yes. I believe the queries, if I recall correctly, were back in June. They were a conversation that had been initiated in *Hansard* between Kim Hames and David Templeman. The questions related to young man—Ryan Murnane, if I recall, was his name. Ryan had been admitted to the Sarich Ward once previously; however, when he returned to the hospital he was put on one of the other wards and his mother was quite up in arms about that. The questions queried why the Sarich Ward was not open and how often it had been opened, and if I remember correctly the number was less than 50 per cent of the year. They had also queried the staff required to keep the Sarich Ward open, and the minimum number of patients to make it feasible.

Hon KEN TRAVERS: Do you know what the final answer provided to the Parliament was?

Mrs Foley: If I remember, as I said before I believe it was open for less than 50 per cent of the calendar year; if I remember, it was a minimum of three staff. It had less to do with the number of patients, but more about the acuity of those patients. So it could be that just one or two patients requiring a significant level of care would justify keeping the ward open, or it could be that there were three or four patients requiring minimal care that would require it. At the same time it also was dependent on whether boarders stayed; so a child who is not assisted by a parent or does not have a parent there obviously requires more nurse attention than a child who has a parent accompanying them. So those were the responses I believe I provided.

Hon LJILJANNA RAVLICH: Ms Foley, I wonder whether you might provide us some insight into a meeting held in West Perth on 3 August 2012, which was attended by Aled Williams, Mr Neale Fong and yourself; it was a meeting with the minister.

Mrs Foley: Yes.

Hon LJILJANNA RAVLICH: Can you just enlighten us who called that meeting and what was the purpose of the meeting?

Mrs Foley: Yes. The meeting was requested by Health Solutions following the submission of a letter from director Neale Fong to the Minister for Health, requesting the meeting to discuss the proposal for the Peel Health Campus expansion and redevelopment plans. The letter, if I recall, that preceded the meeting was sent out some time in the second or third week of July, and the meeting was scheduled for 3 August at, I believe 4 o'clock. I did in fact attend that meeting; it was myself, Aled Williams and Neale Fong from Peel Health Campus, the Minister for Health, Kim Hames, I believe his chief of staff—a female; I cannot recall the name—and his policy adviser, Christian; there was Paul Mark from SMHS, and Shaun Strachan from SMHS. The context of that meeting: Neale Fong presented a, I believe, 38-page presentation on the redevelopment and the expansion

plans for Peel Health Campus, including an 86-bed private hospital. The proposal asserted that the expansion would be fully funded by Health Solutions; it was a \$75 million expansion.

Hon LJILJANNA RAVLICH: As I understand, Mr Fong inquired as to whether or not it was acceptable to the minister that Peel Health publicly announce the plans for the expansion, and that at that time the minister advised that it was the case.

Mrs Foley: That is correct. If I remember, the response was in jest, and he even said, “I can’t stop you; say whatever you’d like out there.” He encouraged Neale Fong and Health Solutions to put the information out to the media. Immediately after the meeting we put together a media release, which I believe went out about a week and a half later. The only delay in why it did not go out sooner was that we were waiting for an aerial image to come in from the architects of the proposed new private hospital.

Hon LJILJANNA RAVLICH: I also understand that at that meeting Mr Hames inquired about Mr Fogarty’s involvement in the Peel Health Campus. Can you shed some light on why that may have been so?

Mrs Foley: Yes, he did inquire about Jon Fogarty; he did so in a somewhat derogatory tone, I would say. Neale Fong replied that Jon Fogarty had retired from the board of Health Solutions and was no longer involved, but however was still the primary shareholder and that Mark Stowell was now the chairman, and that his role was limited.

Hon LJILJANNA RAVLICH: At that meeting was anything said about the issue of incentivising admissions?

Mrs Foley: Not at all, no. The only matters discussed were around redevelopment, and Shaun Strachan did raise the issue of the sinking fund during that meeting.

Hon LIZ BEHJAT: Following on about that same meeting: if you had these huge concerns about the incentivisation and what was going on at the CDU and you were sitting there with minister, would you not have perhaps thought it appropriate to have brought that up at that meeting?

Mrs Foley: It was my understanding that PricewaterhouseCoopers had been commissioned to undertake that audit because the minister was aware, and at that time—as of 3 August—I did not have any proof to substantiate that there was fraud actually occurring at that point. I only knew what Aled Williams had told me. I had my suspicions, I had done my own research; however, it was not until I was able to explore Justin Walter’s inbox and have those subsequent conversations with my colleagues that I was fully convinced of it.

Hon PHILIP GARDINER: You mentioned earlier that during the operation of the CDU—the period between late 2010 and mid-2011—there had been a significant spike in the number of patients admitted to the hospital from the emergency department. That was during the time, as I understand it, when there was \$200 being paid as an incentive to the doctors?

Mrs Foley: That is correct.

Hon PHILIP GARDINER: Do you have any evidence to suggest that the \$200 that was being paid then was being paid prior to that time of the spike?

Mrs Foley: The spike, from what I understand, occurred about two to three months into the CDU period. My understanding is that—at least the way it was expressed to me by Sarah Ward—the doctors had figured out that it was a moneymaking opportunity and had started to inappropriately admit; prior to the creation of CDU, my understanding is that there had never been any such incentive.

Hon PHILIP GARDINER: Okay.

Hon LIZ BEHJAT: At one point you said that Nicole Feely and the minister were asking questions as to whether the PricewaterhouseCoopers audit should be expanded. How were those things addressed with the minister and Nicole Feely?

Mrs Foley: During that telephone conversation from Shaun Strachan asking for the additional information regarding CDU that resulted in the letter that was tabled, he mentioned to me that Peel Health Campus producing such a letter or a summary of what had transpired in CDU would be favourable because his reasoning was that Nicole Feely and the Minister for Health were querying what had transpired and were considering extending that audit. To my knowledge, there was no extension of that audit; as far as I know, as of the last day I was at Peel Health Campus that audit was never expanded.

Hon LIZ BEHJAT: So, in your opinion there were concerns by Nicole Feely and the minister that something was not quite right? I mean, that would be why they were asking for an extension of the audit. Did you not then think perhaps that might have been an invitation for you to have contacted Nicole Feely privately, or even the minister's office, to share with them your concerns once you did become aware?

Mrs Foley: To be honest, no; at that time I was very new in the role and I was just learning what was going on with the CDU. I only had met Shaun Strachan; I had never met Nicole Feely, and I have not ever met Nicole Feely; nor had I met the Minister for Health at that point. I did not meet the Minister for Health until about—I believe the first time I ever saw him was at the community fund launch, which was in June, and the first —

Hon LIZ BEHJAT: Did you not say you were in the meeting with him in August —

Mrs Foley: That is correct.

Hon LIZ BEHJAT: — where you were not sure of the information, so later on you had that information. So you had met the minister and you had met an adviser named Christian —

Mrs Foley: Yes.

Hon LIZ BEHJAT: — so you had had some contact with that office?

Mrs Foley: I had had some contact with that office, but considering the Tony Solin issue and the concerns I had around him being positioned along with Kim Hames in that region, I was not sure that Kim Hames was the appropriate person to go to —

Hon LIZ BEHJAT: Be careful what you are saying about things here, I think. When you made the statement that time stamps are altered —

Hon LJILJANNA RAVLICH: Excuse me; excuse me!

Mrs Foley: I will stand by that; I will stand by that, that Tony Solin was positioned for the reason that he was.

Hon LIZ BEHJAT: There are matters we are not discussing at the moment.

Hon KEN TRAVERS: But if you raise issues, you cannot then get upset that the person answers them.

[11.30 am]

Hon LIZ BEHJAT: I am moving on to another area. You have made suggestions at times —

Hon LJILJANNA RAVLICH: You do not want her to answer dishonestly. She is responding directly.

Hon LIZ BEHJAT: Excuse me, member!

Mrs Foley: I would like to respond to the question.

The CHAIR: Hang on! Can we just take a deep breath? I think Mrs Foley is correct, that she does have an opportunity to respond.

Mrs Foley: At the point that I met Kim Hames for the first time, which was on 3 August, formally met him in that meeting, I had concerns about the positioning of Tony Solin. I had been specifically told by Jon Fogarty that Tony Solin was being positioned as the Liberal candidate for Mandurah for a trifecta. The intent was for Kim Hames —

The CHAIR: Okay.

Hon LIZ BEHJAT: We are going into areas, Chair, that we had agreed not to at this stage.

The CHAIR: All right.

Hon KEN TRAVERS: But your question was why she did not raise it with the minister, and she is telling you why she did not raise it.

Hon LJILJANNA RAVLICH: For goodness sake!

Hon KEN TRAVERS: If you ask those questions, you have got to expect those answers.

Hon LIZ BEHJAT: I have moved on. I am asking a different question. I am satisfied with the answer I have received.

Hon KEN TRAVERS: But you cannot stop the witness answering it.

Hon LJILJANNA RAVLICH: This is a committee of the Parliament.

The CHAIR: Order, order, order, order, members! Members, we need to just step through the process carefully.

Hon LIZ BEHJAT: Don't shake your head!

Hon LJILJANNA RAVLICH: Ha, ha!

Mrs Foley: I am shaking my head.

Hon LIZ BEHJAT: Sorry, Chair, I am not addressing yours.

The CHAIR: Okay. Right. Everybody can stop shaking their heads now and we will proceed to the next question.

Hon LIZ BEHJAT: You made a statement earlier —

Mrs Foley: Do you want me to answer that question?

Hon LIZ BEHJAT: You made a statement earlier that time stamps were altered from patients that were in ED to then move them on to CDU. That is physically a stamp, like from a stamp pad.

Mrs Foley: Yes.

Hon LIZ BEHJAT: And that gets altered. So, what I want to know is that if somebody picked up the piece of paper, it would be obvious that there was an alteration to the time stamp or not so obvious.

Mrs Foley: Not so obvious. It was identified by the four-hour rule lead, who was very carefully examining those admissions or those cases in order to ensure that they had complied with the four-hour rule. So what it means in most cases is that the patient presents to the emergency department at a specific time. So we can use an example that it is nine o'clock in the evening. They are triaged, let us say, at 9.45 that evening. And the time that they are triaged then is based on the category of their expected presentation. So, obviously, someone who is coming in with a coronary is seen by triage nurses faster than someone who might just be coming in with a cold. So it is stamped and computerised—it is not recorded in the computer when the patient presented to the emergency department—when they are triaged, when the doctor sees them. Because the doctors were admitting patients without actually seeing them, some of the records indicated the patients were being

admitted only 20 or 30 minutes after they actually presented to the hospital. So the doctors realised that, well, that is going to look a bit sketchy, so they decided that they were going to change the admission times, but they were not particularly careful in what they did. And it became obvious in some cases where, if the patient had actually been to the emergency department for as long as the doctors were claiming in the notes, they would have actually had to have arrived before they presented to the emergency department. The doctors had no access to the information that the clerks had access to, which is when a patient presents and they go to the front desk, it is recorded in the computer. But what they handwrite in the notes is what they were putting, the erroneous information that they were putting, in essence.

Hon LIZ BEHJAT: And there is quite a large number of examples of those discrepancies?

Mrs Foley: Yes, there is. And in a particular email that Aled Williams sent out to you, the CDU doctors, after all of the CDU, I guess, issues had been raised, he even made note of the fact that time stamps were not to be altered. I mean, that is because it was happening and happening on a very regular basis.

Hon LIZ BEHJAT: Thanks.

Mrs Foley: You are welcome.

Hon LJILJANNA RAVLICH: Just in relation to the clinical decision unit, are you aware of other hospitals having short-stay units?

Mrs Foley: I am, yes.

Hon LJILJANNA RAVLICH: Do you understand what the function, what the difference between a short-stay unit and a clinical decision unit might be?

Mrs Foley: To my knowledge—and again this would be very basic, given that I am not a clinician—my knowledge is that a short-stay unit is for those patients who they know are going to be discharged expeditiously. So maybe someone who has come in with the flu or something like that, that they need to hydrate them or they need to keep them under observation for a few hours. As to where the clinical decisions unit was for those cases that were ambiguous as to whether or not the patient would require admission.

Hon LJILJANNA RAVLICH: Okay. In this I am referring here to the “Activity Based Funding/Management: Performance Management Report”. It is from the health department WA and it is the “Performance Indicator Definitions Manual 2012–2013”. And it clearly states here that the SSU, which is the short-stay unit, is also known as clinical decision unit—so, one and the same thing. And under the definition it basically identifies a number of criteria that must be met.

Hon LIZ BEHJAT: Chair, is the member referring to a document that none of us have access to?

The CHAIR: It is a public document, but I was just going to hear what the question was, but we probably need to have a copy of that to deal with it.

Hon LJILJANNA RAVLICH: Yes. The question is: are you aware if hospitals are using the short-stay unit as a way of dealing with the four-hour rule pressures?

Mrs Foley: Yes, I am aware of that. The term CDU is used internationally, not necessarily for the four-hour rule. It is not necessarily an international-type initiative, but for the same purpose. What is different about the CDU at Peel Health Campus is that the doctors are incentivised and that they were admitting patients unnecessarily. I am very much aware of the fact that in other SMHS hospitals, or even those in the north metropolitan area, that short-stay units are commonplace and they are practical for the purposes that they are intended.

Hon LJILJANNA RAVLICH: Okay, but basically they are a way in which to move somebody from the emergency department within the four-hour time frame, locate them somewhere else

within an SSU and keep them there for up to 24 or 48 hours as required, but it makes the statistics look good.

Mrs Foley: It does, yes, and I can say my only experiences with the short-stay unit were actually personal when my daughter at the royal children's hospital was admitted into a short-stay unit for exactly that purpose.

Hon LJILJANNA RAVLICH: Okay. Thanks, Madam Chair.

The CHAIR: That just reminds me of an aspect too. So, was it your understanding that part of this process was to meet the four-hour requirements?

Mrs Foley: I believe that when the CDU unit was first created that that was the intent. However, it transformed itself into a money-making opportunity, and Jon Fogarty realised that there was an opportunity for additional admissions to be driven out of it and to show revenue for Health Solutions, and it turned into the debacle that it is now, or that it was at the time when the admission spike was identified.

Hon LIZ BEHJAT: Is it relevant with this document you just quoted from, member, that it says here "excludes Peel Health Campus"?

Hon LJILJANNA RAVLICH: No, I am just making a general observation.

Hon LIZ BEHJAT: Okay. I just wanted to note that.

Hon LJILJANNA RAVLICH: In any event, I do not answer to you!

The CHAIR: Must be getting close to lunchtime!

Hon KEN TRAVERS: Can I just follow-up?

Hon LJILJANNA RAVLICH: For goodness sake!

Hon KEN TRAVERS: Can I just ask a question on what you have just raised?

The CHAIR: Yes, certainly. We will go to Ken first.

Mrs Foley: Can I just elaborate on one of the additional questions? One other thing that I can say that has not come up yet is that while that \$1.38 million or \$1.39 million was identified and reverts to the state, Catherine McKinley, when she cleaned up the CDU admissions, also identified another month and a half's worth of admissions which went on for another million dollars. The only reason the state was not aware of that was because that money had not been billed to the state yet. But not only was it out of hand during the months that the state identified, but it had even blossomed into something far more over the next month and a half period. And I can only imagine, had it not been identified, what it would have transformed itself into within a matter of a few more months.

Hon KEN TRAVERS: Can I just ask you a question about the four-hour unit, because you were just saying that your understanding is it was created to deal with the four-hour rule.

Mrs Foley: It was, yes.

Hon KEN TRAVERS: Who advised you of that? The reason I ask is because I have looked at, and I will not go through them digging them out, a number of documents that make it very clear that it has nothing to do with the four-hour rule.

Hon PHILIP GARDINER: Yes, that is right.

Hon KEN TRAVERS: So I am just trying to work out, and in fact that it is completely separate to the four-hour rule.

Hon PHILIP GARDINER: Yes.

Hon KEN TRAVERS: So I am trying to work out who it would have been who advised you that it was related to the four-hour rule.

Mrs Foley: It was Aled Williams. He explained to me because of the increase in activity at Peel Health Campus, which has increased significantly over the past few years. I believe presentations for the last financial year were at 45 000, which was an eight per cent growth over the previous year. He explained that having only four observation beds limited their ability to see those patients and to comply with the four-hour rule or with the follow-on to the four-hour rule, which is the national emergency access targets, and stated that that was the reasoning behind or the rationale behind why he and Paul Bailey created the CDU. I do believe he refers to it in that letter, that summary, that he wrote as well. I have not seen it in a while but if I recall, he does make reference to the four-hour rule in that.

Hon KEN TRAVERS: No, no. I have raised it because it is unclear. There are other documents which we have received which make it very clear. They make statements like, “This is not connected to the four-hour rule and people have misunderstood it.”

Mrs Foley: Not having seen those documents, I cannot tell you. I can tell you that I did see a series of emails after that where they were trying to come up with any reason under the sun as to why what was happening was; why the over-zealous admissions were occurring; why the time stamps were being changed; why, you know, patients were being admitted that did not require admission; and so forth.

Hon KEN TRAVERS: So there was a series of emails where they were seeking to come up with justifications of what had happened?

Mrs Foley: Exactly.

Hon KEN TRAVERS: And those emails make that clear that that is what they are doing, trying to find justifications?

Mrs Foley: Pretty much. I guess it is a matter of interpretation, but my understanding was that they were looking to explain why this had occurred, and to come up with justifications for it; so, yes.

The CHAIR: Can you indicate to the committee—I am not asking exactly—but when those emails were and who they were between?

Mrs Foley: Most of the emails that I received from Aled Williams—which as I mentioned there were six to eight of them, something along those lines—were between himself and Paul Bailey. Some of them included correspondence or communication with Catherine McKinley and with Jon Fogarty. After that, I also saw a number of emails that were between Pang Ong, the former CFO, Justin Walter, the former CEO, Paul Bailey and Aled Williams, as well as Catherine McKinley. The justifications were significant. And if you were to look at the memos that were sent out after the spike was identified, they were very much to placate the doctors, not to alienate the doctors who were involved; I guess to avoid them resigning or leaving Peel Health Campus. And they are very friendly, is the best way to put it, despite the fact that this was going on. I can tell you that had I been the chief operating officer at the time, they most certainly would have been chastised for what had transpired, if not proceeded in other avenues. However, there is a concern at Peel Health Campus that—let us put it this way—there is a culture at Peel Health Campus that everyone defers to the doctors there, that they run the show in that sense; Aled Williams in particular. And so there is a mentality there that you do not want to alienate the physicians at Peel Health Campus. And those memos and emails were surprisingly friendly, given what had transpired. It refers to the fact that, you know, they appreciated the patients of the doctors involved; the delay in processing their bonus payments; that the methodology had been employed that they had discovered that the admissions criteria was not being adhered to; that deductions would be made from their future payments recovering the bonuses that were paid erroneously; and so forth. There was no slap on the wrist. There was no action taken, as there should have been.

Hon KEN TRAVERS: Can I just ask a question about the emails?

The CHAIR: Yes.

Hon KEN TRAVERS: I noticed that a number of the emails that I have seen to Mr Williams and to Mr Bailey in particular are to Gmail accounts; whereas there appears to also be a Peel Health Campus account. Can you explain to us why? I mean, do they have Peel Health Campus accounts? Why would their emails be going to a Gmail account?

Mrs Foley: They do. The reason that I was told by Aled Williams why he has the Gmail account is because, before I started, Jon Fogarty would not authorise anyone to have remote access or to be able to access their Peel Health Campus email by iPhones or by other smart devices. However, shortly after I started, I actually brought in a series of iPhones that were provided to the executive members and I created an Exchange account whereby employees could access their Peel Health Campus emails from their iPhones. I have, while I was there, always used my Peel Health Campus email address, with the exception of maybe if I was at home. However, Aled Williams refused to do that. He told me that it was easier just to continue to use his Gmail account. And while he does have a Peel Health Campus email and some people send to it, all of his replies always come from Gmail, and I suspect, and this is again just an assumption, but I suspect because it makes it more difficult to track any chain.

Hon KEN TRAVERS: My question was going to be—you may not know the answer to this question—is Peel Health Campus covered by the State Records Act, and are they required to keep records of key documents, as a government department is required to do?

Mrs Foley: I do believe in the master health services agreement with the state that there is something to that effect. I am not sure of what the time period is. For financial records, if I remember, it was five years or seven years. I am not sure how it relates otherwise.

Hon KEN TRAVERS: I just thought if you knew, it would save us, but it is something that we might need to do.

Hon LJILJANNA RAVLICH: That would be covered by the State Records Act, surely.

Hon KEN TRAVERS: That is something we might have to check.

Mrs Foley: There is something in the contract about it. I just could not tell you what the specifics are on it.

Hon PHILIP GARDINER: I do have a document which I think I would like to refer to. It is towards the end of our first file.

The CHAIR: Okay. Can you just provide that to the clerk.

Hon PHILIP GARDINER: It has a little bit of writing on it.

The CHAIR: It has your handwriting on it, though.

Hon PHILIP GARDINER: That is all right, I do not mind it.

The CHAIR: We will just make a copy. That might just take a minute to get photocopied, so are there other questions that members want to go to?

Hon KEN TRAVERS: Going back to your statement, in your statement on page 2 you go through some of the chaos and the issues there. I have a number of them. You make the statement, “PHC’s staff were underpaid and were threatening to resign.”

Mrs Foley: Yes.

Hon KEN TRAVERS: I am sure I have seen a media report somewhere with the claims by the Peel Health Campus that their staff are paid the same as the public sector. So, which statement is correct?

[11.45 am]

Mrs Foley: The physicians and the doctors involved are actually paid above the wages that they would be paid if they were in the public sector. However, the majority of the other staff—

commercial and operational staff as well as nurses—are not paid as well as their counterparts in the health department. There was a human resources audit conducted by a gentleman named Eric Baines that I was copied on shortly after I started that identified significant disparities between the wages of your cleaners, your orderlies, admin, finance staff and even the nurses, PCAs and others, and made recommendations for how during the next enterprise bargaining agreement that could be resolved. However, that has not happened as yet. I did make some changes in terms of salary structures. The team that I referred to there that was threatening to resign was the finance team. The finance team was shockingly underpaid. Some of them had not received a wage increase in several years of service. Some of them that should have been on what would be considered a level 4 were down in the level 2s, and they were quite concerned. At the time as well, the young lady that represented, or led, that department was leaving and there was a concern by Jon Fogarty that all of them would leave, which would be quite catastrophic to the organisation. So I was able to right that area as well as a number of areas while I was there. However, the wages still are not on par with that of the health department.

During the time I was there, all the salary increases I made were on the commercial and operational side of the business; they were, in essence, in my domain. It would have been up to Aled Williams as the director of clinical services to have made increases on his side, with the exception of a select few—so two of the nurse directors and a couple of others; he did not make any changes on that side whatever, so those particular nurses and the other staff members are quite underpaid in comparison and, again, the doctors are paid far more.

Hon KEN TRAVERS: So there is a report that outlines that discrepancy between the different wages?

Mrs Foley: There is, yes. It was commissioned in early 2012 by Justin Walter, my predecessor, and the audit was conducted by a gentleman named Eric Baines, who is affiliated with Curtin University.

Hon KEN TRAVERS: Going further down there, you make some comments regarding both carpets and bubbling and tears in the vinyl in the operating theatres. I have not been able to find it, but my recollection is that carpets are specifically mentioned in the contract and that they must be maintained in a good state, but you are suggesting there that they are not.

Mrs Foley: They are referenced in the contract but they are entirely the responsibility of Health Solutions—that the state is not responsible for the replacement or maintenance of them. It does make reference to the fact that they need to be cared for and maintained appropriately, as does all of the other machines and equipment for the campus. However, shortly after I started, a number of staff members—Martin Feckie, who was the nurse director of perioperative services; Debra Lynch, who is the theatre manager; Russell Cockburn, the nurse director of clinical services and a couple of other staff members—approached me about the concerns that they had. Martin Feckie presented me with a multiple page PowerPoint presentation that he had compiled that depicted dozens of photos of the wards and of the patient areas and staff areas where the carpet was threadbare, where it was stained by blood and amniotic fluid. The presentation included comments from the staff. One particular comment, I will not forget this one, said if you could only—if I remember how it was put—if the smell could only speak; something to that effect. It also made mention to the fact that in the private ward, because the stains and the soiling was so poor, the nurses were ashamed to actually house private patients.

Hon KEN TRAVERS: Is this still going on down there?

Mrs Foley: I was able to have the carpet changed at the executive area and the front entrance. I had put in requisitions and had quotes to have the carpets in the wards changed to vinyl as that is a bit more hygienic. However—this is another factor as to why I decided to resign—when Jon Fogarty re-emerged on the scene towards the end of August, the beginning of September, he cancelled all of that. He told me that the whole reason that they had allowed me to do what I did over the few

months that I was there—to make the positive changes that I had—was because they felt it was necessary to get the redevelopment plan over the line. The other area —

The CHAIR: If I could just jump in on that one, it would seem to me that some of these issues to do with hygiene have a potential impact in terms of patient outcomes. Are you aware of any concerns having been raised, and do you have any concerns regarding these issues at the hospital having implications for the patients' health?

Mrs Foley: I do, and I raised those in numerous board reports. The staff presented to me their concerns around the carpet that they were an infection control risk. I believe that that is the case. In addition to the carpet, also the campus has the blinds—the venetian blinds—that were installed back in 1987, which may have been popular at the time but because of the way they collect dust and because the cleaning staff involvement on the wards is so limited, the dust in itself presents an infection control risk. So I started a campaign to actually start—as they were falling apart or malfunctioning, I started to replace them with holland blinds, which are a bit better. That is another thing that Jon Fogarty cancelled. The bubbling and tears that are mentioned for the operating theatres—in the operating theatres there is a vinyl surfacing down, and the email in particular that was sent to me by Deb Lynch raised the fact that it was an OHS issue for the staff because the bubbling had actually started to raise and to lift and they were concerned that the staff would fall on it. So I was able to change the vinyl in some of those theatres, again, because it had become public knowledge in the *Mandurah Mail* and other media were asking about it, but that all discontinued towards the end of August, beginning of September, when Jon Fogarty resurfaced.

Hon KEN TRAVERS: So some of the operating theatres still have tears and bubbling in them?

Mrs Foley: I believe so, yes.

Hon KEN TRAVERS: They still had them in when you left the employ?

Mrs Foley: I believe so, yes. I had changed two of the four.

Hon KEN TRAVERS: Two of the four. Is there any record that we would be able to get in terms of emails? Should there be any record about concerns being raised? I am particularly interested in clinicians that might have been able to put in—I think you made the claims that there were; I cannot think of the terms that you used—but basically that they were a health risk —

Mrs Foley: Infection control.

Hon KEN TRAVERS: —infection control. Would there be a documented record of that within the health campus?

Mrs Foley: Yes. There were several email chains between Kevin Williams, who is the building and security manager, and Debra Lynch, the theatre manager. That is where the bubbling and tears and the OHS risk were identified. There were also emails between Deb, Martin Feckie, who is the nurse director of perioperative services, and other emails between myself and Russell Cockburn regarding the holland blinds and the flooring as well. The issues had been raised at the state contract meetings, from what I understand, for quite some time, and each time Shaun Strachan advises that they are outside the scope of the contract and they are the responsibility of Health Solutions. The excuse that my predecessors were told to give the staff as to why these things were not happening is because the state would not pay for it, despite the fact that the state is not responsible for it.

The CHAIR: We will return to Hon Phil Gardiner's question. There is a document—A5—which will be provided to Ms Foley.

Hon PHILIP GARDINER: I was concerned about your remarks that there were no slaps on wrists. If I go through the doctors, which I will not name, I understand the top four are wage earners and the bottom four are contractors—not that that is relevant to my question. Based on the claims that these doctors made and those that did not meet the criteria—this is for the CDU, the clinical decisions unit—one of those doctors, as I tote up, between January and June, to me, seemed to have

taken from either Health Solutions or Peel Health Campus and then government, \$35 400—the highest one. Another one, I think, took about \$15 000. The first thing is, if that was a deliberate mistruth of what was being recorded, is that your understanding of what that column means—“total that didn’t meet criteria”? What could other explanations be for those claims not meeting the criteria as laid down?

Mrs Foley: I have not seen this spread sheet before. However, the four doctors with the largest number that did not meet the criteria are the four that I was aware of that were considered to be the greatest offenders within the CDU program. I can come up with no other explanation other than “total that didn’t meet criteria” refers to invalid admissions.

Hon PHILIP GARDINER: Can you describe what “invalid admissions” means, just for the categories?

Mrs Foley: There are specific admissions criteria that are established by the health department. That has been in play for many, many years; there have only been minor changes to it over the course of those years. It is well known to all physicians. It is very well known to all emergency physicians. I am not a clinician so I could not go into the specifics of that, but it has specific terms of what justifies an admission of a patient. It is not enough just that you need to observe the patient; it is that the patient requires fluids or they require an intravenous line or they require constant care or monitoring. There are specific criteria. It is very well known to physicians. It is the same criteria employed all the way across the state. Many of these doctors, especially those four, work shifts at other hospitals, so they are very well versed on what that criteria is.

Hon PHILIP GARDINER: I think you have addressed some of the clinical issues but I suspect that this refers more to procedural issues; in other words, the prudential way that people record things, maybe. Would I be correct in suggesting that the compliance of being correct could not be done historically if it was a clinical decision? The compliance of being correct can be discovered if there is either a change to the documentation or something like that. My question really is: is this more of a clinical issue or is it a procedural issue which the doctors are causing a problem with?

Mrs Foley: I see it as a money-making issue?

Hon PHILIP GARDINER: Sure; I can see that possibility, too, but I want to know what it is that rendered those claims not meeting the criteria. I doubt that it can be clinical, because I suspect that these claims, which were not allowed—which were said do not meet the criteria, as in this column here—must have been done historically and therefore it could not have been a clinical thing; it would have to be procedural thing.

Mrs Foley: I cannot comment on that specifically. My understanding of the inappropriate admissions that were made is that the admissions criteria were disregarded and that, again, patients were admitted that did not meet those criteria. In terms of it being a clinical matter, the criteria are very clear. I do not believe there is any ambiguity in that regard. The only exceptions to that that I can think of would be that of mental health patients, which Peel Health Campus does not have any mental health beds and therefore those patients have to be transferred out, but in no cases are they ever admitted to the campus, or should they be. Also, there are some issues with elderly patients where they might have been kept for observation or issues along those lines, but they are rare—they are few and far between—or it could be an issue with an elderly patient where you are waiting for an aged-care facility to come and collect them. But, again, they are few and far between—certainly not to the extent of what these numbers total to.

Hon PHILIP GARDINER: My final question then is: could it be that there is the date alteration that is picked up, or dates, which I think you referred to earlier in your evidence, to the entry into the hospital and then the date they were moving to the CDU just would not have allowed the four hours, or something like that, I think you implied earlier? Is that where this could have been picked up?

Mrs Foley: I am not following.

Hon PHILIP GARDINER: Is there a recording way that this could have been picked up, because I cannot see how it could be a clinical issue?

Mrs Foley: It was picked up. Sarah Ward and Catherine McKinley identified it as part of the four-hour rule research. They approached Aled Williams, identified the concerns, identified the alterations to the time stamps, and they were ignored. So it was picked up. Also, in the monthly strategic contract meetings with the state, the Peel Health Campus has a private meeting prior to that meeting where they review these issues, and it was a gradual spike over a series of months and it was not until it obviously had reached a climax that it was identified by SMAHS.

Hon PHILIP GARDINER: Finally, I was going to ask in relation to the incentives and behaviour which occurs, in your view, as the chief operating officer, do you see that the activity-based budgeting and funding, which I am a proponent of, has caused a problem in this case?

Mrs Foley: I do not believe so in the sense that activity-based funding has basically been the model employed by Peel Health Campus over the past 15 year, as it would be for any private operator. I do know that there were issues around the implementation of the new national health reform and activity-based funding requirements that I raised concerns about. There were modifications that needed to be made to the ED module that Aled Williams had ignored and that ultimately my team ended up resolving. They needed to go into effect as of 1 July; however, he still had not done anything as at the beginning of June and my team, IT, ended up liaising with Bing Rivera from the national health reform, I believe, and also with Michelle—I cannot recall her last name—from the Department of Health, to resolve those issues. I do not believe that this is an issue of a misinterpretation or a lack of understanding of activity-based funding; I just believe this is fraud—fraud and corruption.

[12 noon]

Hon PHILIP GARDINER: Okay. That was my question. So if this \$34 400 applied for one doctor but then was disallowed, that suggests that there is fraud; and, if that is the case, that suggests a culture that may be causing difficulty.

Mrs Foley: There is a culture. There is a lack of transparency from a financial perspective at Peel Health Campus. For me myself as the chief operating officer, having the chief financial officer as a direct report, was not allowed access to the financial management accounts. It was not until the last couple of months that I was there that I was even allowed to see the billing to the state. That culture existed before I started; it was the same complaint that my predecessor, Justin Walter, had, and that Phil had before him and that the others before them had. There is also a lack of accountability for the clinical team at that hospital, because of the fear—there was a time several years back when they almost had to look to outsource the emergency department because they were having such difficulty staffing it. Aled Williams came in and he saved the day with LocumForce, and there is a dependence on him and a lack of accountability. So in essence his threat against Jon Fogarty is that he will not be held accountable for any of these sins, if you will, for fear that he will take the doctors away, and that if Aled leaves, all the doctors will follow him. I do not believe that that is true. If anything, I had a number of doctors during my six months there come to me to resolve issues, because Aled Williams is one of those people who sits on both sides of the fence—he never takes a stand on anything—and there are times in a hospital setting when someone needs to make a decision. That was the frustration that I encountered in my last couple of months there particularly. Once he realised that I was sceptical about what he was telling me about the CDU program, and that I also firmly believe that the LocumForce involvement was a conflict of interest, and that I had seen his clinical failings, if you will, the relationship between he and I deteriorated.

I highlighted a significant number of concerns in a board report on 15 July. As he is a board member, I copied that board report to him as well, and the relationship just soured at that point. The

concerns that I raised were about the lack of action regarding the activity-based funding, and irregularities in the NEAT and the NEST requirements, so the national emergency access targets and the national elective surgery targets. On the NEST side of it for the elective surgery, the state currently believes—or at least as of the time that I left—that Peel Health campus is still outperforming all other hospitals. That is incorrect. Peel Health Campus on paper appears to be outperforming other hospitals. Peel Health Campus does not follow the criteria for the NEST procedure. They do not maintain a centralised waitlist. Therefore, it is not fair to assess their productivity against that of another hospital that actually is conforming. It is the same thing on the NEAT side of it. There were significant issues that resulted in poor management on the clinical side. So where the doctors needed to track patients in terms of when they were going to be discharged, to actually get them in and get them out quickly in terms of the quality of care and the need for them to stay and to open up beds to other patients, the doctors were not following the journey boards. They were not doing their rounds in the proper order. There were significant issues, which to me all went back to the director of clinical services, Aled Williams, who was, for lack of a better word, incompetent. He was a poor manager. I do not know what his clinical abilities were like in terms of his ability to care for patients. I have never seen him care for a patient. He spends very little time on the actual floor delivering medicine at this point. However, from a management perspective he was rash. He entered into risky propositions without actually researching them and exercising the appropriate due diligence.

I can use a couple of examples that I did in that board report on 15 July. Aled was gung-ho about bringing electronic discharge summaries in. His whole aim in doing that was to create a situation where the doctors could see the patient at the bedside and be able to pull up their pathology and radiology and their patient notes from a laptop computer at the bedside; which, fine, that should be efficient. However, he had not done his research. So he had not thought about the security and what does that mean having it on an open network—what happens if someone else can extract that information? Also, he not thought about the fact that our radiology group and our pathology group are private providers and therefore it would require a link into their networks to be able to do that. He was also aiming for bringing wi-fi into the campus, for two reasons—again, to enable that bedside monitoring, but also to provide it as a value-add proposition to private patients. What he did not think about, and the IT manager approached me about this, is if you do not put any security around it and you do not create a log-in for each patient to be able to be identified for whatever their web traffic is, what happens the first time someone downloads child pornography or something like that happens? He just is the type of person who gets an idea and then he just runs with it without giving it any thought, and that is what happened with CDU. The doctors got wind of the fact that they could make money of it, and so they exploited the scenario.

The CHAIR: I am mindful of the time, and we do need to close this session shortly because it has been going for a while. I just want to ask a question. You were talking about the culture. Do you have anything you want to say about your concerns about bullying or other aspects to do with this issue that have arisen?

Mrs Foley: Yes. When I commenced at Peel Health Campus, there was a culture of bullying and harassment. There were a significant number of workers' compensation claims that were stress-related claims for acts of bullying that had occurred on the campus. There was a mentality there that if you did not like one of their colleagues or they were questioning your actions or something along those lines, the way to deal with it was to bully them and make them quit. That is exactly what happened to Cathy McKinley. However, she did not take the bait and ultimately they terminated her and made her redundant. For myself, once Aled Williams became aware of the fact that I had concerns about his performance as management and about the CDU issues, the relationship deteriorated and he made my life very difficult. To be honest, because he was a board member, he would go around me and try to create waves in that regard. But more disconcerting was what happened at the last board meeting that I attended, which was on 7 September. At that board

meeting, a conversation that I had had with Shaun Strachan on the telephone regarding assumptions for the redevelopment proposal had been raised, and it was discussed that a letter would be drafted from Mark Stowell, the chairman of the board, to Nicole Feely, Shaun's superior, advising her that his behaviour was unprofessional. The main reason behind doing this was because they knew Shaun Strachan was not in favour of the redevelopment proposal, and also because my understanding was that Kim Hames had left a fair bit of the decision making up to the Department of Health and to SMHS in particular as to whether or not the redevelopment plan would be progressed.

I left that meeting. I went back to the office that afternoon, and I received a plethora of phone calls from Jon Fogarty. During one of those phone calls, he acknowledged that he was aware of what had been discussed at the earlier meeting about the letter that Mark Stowell would be writing, and asked me what had happened. I explained it to him, and during another phone call that afternoon, he went on to say that it was sexual harassment and gender intimidation. I said, "No, Jon, that is not what happened", and, again, this is where we discussed the combative and the adversarial. That night I returned home and I received an email. It was an email from Jon Fogarty to Mark Stowell as chairman, that I was copied in on. It included an attachment of a proposed draft letter written by Jon Fogarty that he wanted Mark Stowell to send to Nicole Feely. In that letter, Jon Fogarty said that they were sending the letter from HSWA to prevent legal action being taken by me—which had never been discussed—and that Shaun Strachan had gender-intimidated me. I read the letter and I was appalled, and again I could not sleep that night. The other thing that was discussed was the fact that SMHS was bringing lawyers to the contract meetings. Jon Fogarty wanted that meeting—we had a contract meeting scheduled on the following Monday—to be cancelled. So the following morning I received an email from Mark Stowell confirming what had been discussed at the earlier board meeting—or the Friday board meeting—and advising me that I was to write to Shaun Strachan and cancel the upcoming contract meeting on Monday. Then there was a follow-up email from Jon Fogarty to Mark Stowell that I was copied in on, saying no, that I should not do that, because I was the alleged victim. Then there was another email from Mark Stowell to Jon Fogarty that I was copied in on, telling me that it was a board direction that I was to cancel the meeting. In the earlier email, Jon Fogarty had said that I should not do it but that Aled Williams should. So when Mark Stowell replied, he stated that it was a board direction that I should do it; that Aled had enough clinical concerns to worry about.

At that point, I did not know what to think. I did not exactly know what was going on. I sent an email to Mark Stowell telling him to let me know who was doing what, basically, and I asked him to call me and said that I wanted to discuss all that had transpired since the board meeting, meaning the conversations with Jon Fogarty. He replied that evening around nine o'clock that he would call me the next day, which he did. The next morning is when I sent the letter to Jon Fogarty that I referenced earlier, saying that I was not comfortable making those claims. I referenced the fact that it would be career suicide for me, that I did not agree with it, and that he was adversarial and combative and so forth, and then spoke to Aled Williams, spoke to Neale Fong on the telephone, who both tried to calm me down. Then there was that chain of emails that I referenced earlier, where Jon Fogarty threatened me—threatened my role, let us put it that way.

The culture at that campus is bullying, it is intimidation, and it is prevalent from the cleaners and the orderlies all the way up to senior management. If you do not do what Jon Fogarty wants, you are in peril, whether it be professionally or it be in terms of your personal reputation, and that is what I have encountered here. There were also incidents of staff, again, where there were attempts to force them out—the stress situations that were created. It is not a happy environment. It is not a productive environment in that sense. It was very disconcerting to walk into an environment like that.

The one thing I can say is the people who work at that campus, at least the majority of them, are absolutely fabulous—people who hold that campus together, despite the inadequate resourcing, the lack of investment, the preference of revenue over patient care. To see some of the things that were

going on there was disgraceful. I truly believed that I would be able to better things, and I had over a period of months. But once Jon Fogarty came back into the picture in August, things started to sour, and it was very clear to me that all of the good deeds that I had been allowed to perform had been allowed simply to get the redevelopment plans over the line.

Hon KEN TRAVERS: Has that bullying and harassment continued since you have left the hospital?

Mrs Foley: Again, I am not there, but I was told there is a young lady —

Hon KEN TRAVERS: No; towards you, I guess I am after.

Mrs Foley: It has. When I resigned on the Monday, on the following Tuesday there was an article in the *Coastal Times*, one of the local newspapers, that stated that I had started off as an executive assistant and then was promoted to chief operating officer, which is false. I believe that that was intentionally meant to disparage me. There have been threatening phone calls. There have been times when I have been followed. There have been sticky notes that say “Burn, burn, burn” put on my door. I fully believe that the search that was initiated at my home last week was an attempt at intimidation. Granted, I did have documents on my computers. But the items that they rifled through were those items that would be most intrusive and most invasive. They never went outside. They never went into the backyard. If I had wanted to hide things, I certainly could have that out on the top veranda or the dog house or anywhere in the backyard. They went through things like the packed Christmas tree in my garage, and all my children’s toy boxes. They opened birthday gifts that belonged to my children that had not been opened yet and that I just was giving to them gradually because there were so many. They went into the children’s room, and I had a memory box for my daughter who passed away in 2010 and that had not been opened since her funeral. They opened that, and the attorney actually even wanted to open the Ziploc bag that was inside it, that included the clothes that she had passed away in. It was very clear that it was an intent to intimidate and to make me feel violated and I suppose to stop me from speaking to you today or from speaking to the media again; but, honestly, it did not work.

Hon LIZ BEHJAT: You talked about Jon Fogarty. From my understanding, he is no longer on the board; he is just the major shareholder of the thing. So, under what authority was he then contacting you post the board meeting to find out what went on? He just thinks that he owns the joint; is that it?

Mrs Foley: Pretty much. It was made very clear to all of us that the reason Mark Stowell was appointed as chairman and Jon Fogarty supposedly retired was because it was known that the redevelopment would never be approved by the state if Jon Fogarty was still involved, because of bad blood between—because of negative, I guess, history in terms of the relationship with the state. Jon Fogarty is an insane lunatic. I say that and I believe it wholeheartedly. I have never met anyone like that man in my life. It was very clear that Mark Stowell was being put up as a figurehead chairman but that Jon Fogarty was still running the show. I will say there was a time in July when he was overseas that I heard from him very infrequently. However, in August he resurfaced, and he sent numerous emails and made multiple telephone calls. When he started to really pick up and things became so difficult was after Tony Solin’s lunch in Mandurah, which was the beginning of September, and he probably will not want me to say this, but Jon Fogarty said to me that he had spoken to Colin Barnett, and Colin Barnett had told him that it was a no-brainer for the redevelopment to be approved, and that he had told him that he liked him and did not have any problems with him being on the board. So Jon Fogarty sent me numerous emails, I believe there are two that I recall —

Hon LIZ BEHJAT: So Jon Fogarty said to you that Colin Barnett had said that. But you have not had that conversation directly with the Premier, have you?

Mrs Foley: No, I have never spoken to the Premier. So this is what Jon Fogarty told me. After that time, he seemed to gain a bit of confidence and to believe that the only person who could stop the redevelopment from moving ahead would be Shaun Strachan from SMHS, and that is why suddenly Shaun Strachan was targeted. Also at that time it gave Jon a bit of confidence that he could become more involved in the campus. He sent me an email basically implying that Mark Stowell was a figurehead, and that the only thing he had the right to do as chairman was to chair board meetings, and that anything that we did from an executive perspective or management perspective needed to be run by him going forward.

Hon Ken Travers: Is that in an email?

[12.15 pm]

Hon LIZ BEHJAT: Who did you answer to directly?

Mrs Foley: It should have been Mark Stowell. I can honestly say, despite how things have turned out, I liked Mark Stowell. He was not as hands-on as I would have liked in terms of getting an answer, but I should have been reporting to Mark Stowell. However, any time that Mark Stowell would make a decision and Jon Fogarty was not in agreement, he would override Mark Stowell.

Hon LIZ BEHJAT: Did you ever go to Mark Stowell to say, “Jon Fogarty is contacting me and ordering me to do things and I don’t think that is appropriate?”

Mrs Foley: I did, yes; numerous times.

Hon LIZ BEHJAT: His response to that was?

Mrs Foley: “Jon is Jon.” For example, there were two letters that we were writing in response to south metro health services in September. One of them was a response to a sinking fund and the other one was a response to case mix. I wrote the letter, Mark Stowell proofed it and agreed to what we were going to send. He then forwarded it to Neale Fong, Jon Fogarty and Aled Williams. Jon Fogarty rewrote it, Neale Fong then rewrote it, then Jon Fogarty rewrote it again, and ultimately Jon Fogarty sent it out but it was Mark Stowell’s signature. That happened on multiple occasions. Any time that I would feel that I was making some headway with the concerns that I had about Aled Williams, Mark Stowell would generally be on my side. For example, in terms of the NEAT and NESS projects, when I raised those concerns, Mark Stowell decided that the best way to address that was to have the executive sponsor sit from my side of their team, so a commercial and operational person, and the shop floor to be run by a clinical person, which makes sense. Jon Fogarty went around to him, just cancelled what he had said at the board meeting and then decided that Aled Williams had full rein of it.

Hon LIZ BEHJAT: You said there was a claim made that you started as an executive assistant and then went on to become the CFO or the CEO.

Mrs Foley: COO.

Hon LIZ BEHJAT: My understanding from information you have provided to us was that it was a CFO role that you applied for but you were actually substantively appointed to the COO role.

Mrs Foley: That is correct.

Hon LIZ BEHJAT: Do you have those qualifications necessary to fulfil —

Mrs Foley: Absolutely.

Hon LIZ BEHJAT: Just run through what your qualifications are.

Mrs Foley: Sure. My previous role was director of strategy at Open Universities. As part of that, I was senior business and strategic analyst at Phosphagenics Limited, which is a biotechnology company in Melbourne. Part of that, in the United States, I was a research analyst and deal coordinator with Merrill Lynch. I also was a licensing and development analyst at Pfizer

pharmaceuticals. I also spent some time with a professional sports team as a business manager. I have a Bachelor of Science, a Master of Business Administration, and a doctorate degree from New York University.

Hon LIZ BEHJAT: But this is the first hospital!

Hon LJILJANNA RAVLICH: A very good question!

Hon LIZ BEHJAT: I think it is really important that that does go on the record. If people are making the claim that you were something that you were not, it is very important that we put that on the record.

Mrs Foley: In addition to stating that I started off as an executive assistant who they, out of, I guess, the graciousness of their heart, promoted to a chief operating officer, it also states that I was only responsible for the kitchen, cleaners and orderlies. However, as the COO I had oversight over the entire hospital. Because Aled Williams was the director of clinical services and was also a board member, obviously he had control over the clinical side because he is a clinician. However, finance, licensing and development, human resources, reporting, health information services—which is coding, which is essential to the business—IT, ICT, engineering, everything else, other than clinical, sat under me. All of those directors reported to me directly. Aled Williams was responsible for reporting to me directly, so when I sent out my board reports, Aled Williams sent me his summary which I included in mine.

The CHAIR: Members, I think we need to stop because it is unreasonable to go indefinitely. We have to be mindful of that. What we will do now is just ask that the room be cleared for a short time while we deliberate. I will not keep people much longer. Can I ask the witness and Mr Hammond to go with Mr Hales, and if the gallery could be cleared. Thank you.

Proceedings suspended from 12.19 to 12.24 pm

The CHAIR: Thank you. I recommence the hearing and indicate that the committee has decided to conclude this hearing here. I have some closing comments to make. The committee will forward any additional questions it has to you in writing in the next couple of days, if there are additional questions, together with a transcript of the evidence that you have given this morning. Responses will be appreciated within 10 working days of receipt of the questions. Should you for some reason be unable to meet that due date, if you could indicate to the committee in writing as soon as possible before that due date. The advice is to include any reasons you might have as to why you cannot meet the due date.

I remind you that parliamentary privilege applies to your evidence at this hearing. It means that what you have said in evidence to a committee cannot be used against you in a subsequent court proceeding or tribunal. The immunity afforded by parliamentary privilege does not apply if, after the hearing, you repeat statements made in evidence publicly. The committee wishes to advise that under Legislative Council standing orders, it is a contempt of the Council and possible breach of the Criminal Code for any person to interfere with a witness or molest a witness before a parliamentary committee. If any situation arises in which you believe that this has occurred, please bring this to the attention of the committee as soon as possible.

Finally, on behalf of the committee, we will release you from the summons, which has brought you here, for today, but reserve the right to recall you on that summons if we have further questions. Do you understand that?

Mrs Foley: That is fine.

The CHAIR: I understand the documents that were presented during the course of the hearing have been returned to committee staff. Obviously those documents are still private to the committee's operation and the state. I will close the hearing now and indicate that the public hearing has concluded. I ask Mr Hammond to stay with us for a couple of minutes while we will clear the room.

Hearing concluded at 12.26 pm
