



## FINDING OF INQUEST

*An Inquest taken on behalf of our Sovereign Lady the Queen at Adelaide in the State of South Australia, on the 12<sup>th</sup> day of July 2010 and the 2<sup>nd</sup> day of December 2011, by the Coroner's Court of the said State, constituted of Anthony Ernest Schapel, Deputy State Coroner, into the death of Joyce Binch.*

*The said Court finds that Joyce Binch aged 82 years, late of 1 Linden Road, Highbury, South Australia died at the Modbury Hospital, Smart Road, Modbury, South Australia on the 17<sup>th</sup> day of January 2009 as a result of acute pyelonephritis complicating base of bladder malignancy. The said Court finds that the circumstances of her death were as follows:*

### **1. Introduction and reason for Inquest**

- 1.1. Mrs Joyce Binch was 82 years of age when she died of natural causes on 17 January 2009 at the Modbury Hospital. At the time of her death Mrs Binch was detained pursuant to section 12(5) of the Mental Health Act 1993<sup>1</sup> (the Act). The Act<sup>2</sup> allowed for the detention within an approved treatment centre of persons who had a mental illness, in the interest of the person's health and safety.
- 1.2. Mrs Binch's death was therefore a death in custody within the meaning of section 21(1)(a) of the Coroners Act 2003. Accordingly, an Inquest into the cause and circumstances of this death was mandatory.

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<sup>1</sup> Exhibit C13

Form 1 Section 12(1) issued by Dr Mukesh Kumar at 2:20pm on 5 January 2009

Form 2 Section 12(4) issued by Dr Rajan Singh at 1:30pm on 6 January 2009 confirming a further 3 day detention

Form 3 Section 12(5) issued by Dr Maria Naso at 11:30am on 8 January 2009 confirming a further 21 day detention

<sup>2</sup> Since repealed and replaced by the Mental Health Act 2009

## **2. Cause of death**

- 2.1. Following Mrs Binch's death, a post-mortem examination was conducted by Professor Roger Byard, a senior specialist forensic pathologist at Forensic Science South Australia. In his post-mortem report dated 1 June 2009<sup>3</sup>, Professor Byard expresses the cause of death as 'acute pyelonephritis complicating base of bladder malignancy'. Professor Byard's anatomical findings included that Mrs Binch was cachexic with a body weight of 29 kilograms. His examination of the renal system revealed that Mrs Binch's bladder was infiltrated posteriorly at the base by a tumour measuring 80x50x15mm. Professor Byard comments as follows:

'Death was due to acute pyelonephritis arising from obstruction of the ureters by a spindle cell malignancy of the base of the bladder. There was also evidence of acute bronchitis with early acute bronchopneumonia. No other underlying organic diseases were present which could have caused or contributed to death although the weight of the deceased indicated significant cachexia. Although this may be associated with cardiac arrhythmias due to prolongation of the QT interval, this cannot be confirmed or refuted pathologically.'

I accept Professor Byard's analysis.

- 2.2. I find the cause of Mrs Binch's death to have been acute pyelonephritis complicating base of bladder malignancy.

## **3. Background**

- 3.1. Throughout her adult life Ms Binch had suffered from mental illness, predominantly schizophrenia. Her mental health had fluctuated over the years. Mrs Binch had been managed predominantly by her family undertaking her day to day care, and by her general practitioner monitoring her medications and physical health. Ms Binch had had previous admissions to the Hillcrest Hospital.
- 3.2. For some time prior to her death Ms Binch had lived with her son and his partner at their home and had been cared for by her son. Her daughter visited often and assisted in caring for their mother.
- 3.3. Mrs Binch had recently experienced a urinary tract infection in respect of which she had been prescribed a course of antibiotics. She was said to have been unwell for a number of weeks.

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<sup>3</sup> Exhibit C2a

- 3.4. On 22 December 2008 Ms Binch was admitted to Modbury Hospital following a conscious collapse at home. She was diagnosed with urinary tract infection with acute renal failure, anaemia and an exacerbation of her schizophrenia. In hospital she was treated with antibiotics. I have not located within Mrs Binch's Modbury casenotes a record of her weight on admission, but a nutritional assessment conducted on 23 December 2008, the day following Mrs Binch's admission, reveals that Mrs Binch was said to have lost 'more than 3 kilograms in one month'. It does not reveal how much weight in excess of that figure she was said to have lost. The nutritional assessment of that day also reveals that Mrs Binch 'leaves most of food'. A 'Pressure Area Risk Assessment' of 23 December 2008 reveals that Mrs Binch's nutrition was said to be 'Probably inadequate' and by 27 December 2008 'Very poor'. It thereafter remained of that description. Mrs Binch's initial assessment information, said to have been provided by her family, was that Mrs Binch had been generally unwell for a number of weeks and had experienced decreasing appetite and fluid intake over the last two weeks with weight loss.
- 3.5. In conjunction with Mrs Binch's family, it was agreed that no active resuscitation would be carried out on Ms Binch if her physical health declined and she was for palliative care only in that respect.
- 3.6. Mrs Binch would remain within the Modbury Hospital until her death on 17 January 2009.

#### **4. Mrs Binch's detention at the Modbury Hospital**

- 4.1. Mrs Binch was in fact detained pursuant to the Mental Health Act for two discrete periods during her overall hospital admission at the Modbury. She was initially detained on 29 December 2008 for a period of 3 days. This expired on 1 January 2009. She remained at the Modbury as a voluntary patient until she was again detained on 5 January 2009 for an initial period of 3 days. This detention was confirmed on 6 January 2009 and was extended by a period of 21 days by virtue of an order made on 8 January 2009. If not revoked sooner, this second period of detention would have lapsed on 29 January 2009 but for Mrs Binch's death on 17 January, and if appropriate it could have been renewed by medical practitioners for a further period of 21 days from 29 January 2009 had she not died. Thereafter any continuance of Mrs Binch's detention would have been a matter for the Guardianship Board. The

fact that Mrs Binch was detained pursuant to the Mental Health Act was a matter that was opposed by the members of her family, in particular by her daughter Ms Jennifer Binch and her son Mr Robert Binch. I will later refer to the circumstances of the imposition of the two periods of detention and the reasons for them. In the event, Mr Robert Binch instituted an appeal to the Guardianship Board against the imposition of the second period of detention. The notice of appeal was dated 12 January 2009 and was forwarded by fax to the Board through Mr Binch's solicitors on 14 January 2009. The hearing of the appeal was set down for 20 January 2009, but unfortunately Mrs Binch died before the appeal could be heard. The Board would have had power to affirm, vary or quash the order for detention if, in its view, the circumstances warranted it<sup>4</sup>. It is to be noted that the Public Advocate, acting on his own initiative or at the request and on behalf of the patient, also had power to institute an appeal to the Guardianship Board. The Office of the Public Advocate had been made aware of the matter by the Modbury on 5 January 2009.

- 4.2. In preparing these findings I have read and re-read the voluminous file of casenotes from the Modbury Hospital and in particular the large amount of extremely detailed clinical progress notes made between 22 December 2008 and the date of Mrs Binch's death, 17 January 2009. I have also read and re-read the witness statements herein including those initially taken from Mr Binch and Ms Binch as well as the detailed statements supplied by them to the Court at the time of this Inquest.
- 4.3. On 29 December 2008 it is noted that Mrs Binch was refusing to eat, drink or mobilise. That evening, it is further noted that the patient's family reported Ms Binch as being suicidal insofar as it was said that she had decided that she wanted to starve herself so that she could die. The plan at that time was for her to be reviewed by a psychiatrist. On the same day, a further report was made that Mrs Binch had decided that she wanted to starve herself and that suicidal behaviour was being exhibited. Although Mrs Binch had refused her dinner, she was still happy to have her medication with some fluid. The family at that point requested a psychiatric review to be arranged as soon as possible. A medical practitioner saw her later during the evening of 29 December 2008 and assessed Mrs Binch as having suicidal ideation. There is a further notation that Mrs Binch had said that she wanted to end her life, was refusing to eat and was intent on starving herself to death, but I am not certain as to whether this signifies that Mrs Binch herself had said that or that this was another

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<sup>4</sup> Section 26(3)(b) of the Mental Health Act 1993

report by her family members to that effect. In any event what seems clear is that at that point Mrs Binch's refusal to eat, drink or mobilise might be reasonably seen as the product of a desire on her part to end her own life. The plan at that stage was to detain Mrs Binch pursuant to the Mental Health Act and to arrange an urgent psychiatric review the following morning. A Form 1 was issued by Dr Hida Bhapudin at 6:15pm on 29 December 2008. Dr Bhapudin noted in the progress notes that Mrs Binch was exhibiting suicidal ideation on a background of schizophrenia and was currently asserting that she wants to end her life by starving to death. Dr Bhapudin noted on the Form 1 that Mrs Binch needed an urgent psychiatric review. The effect of this order was to impose a period of detention of 3 days. Such an order by law required review by a psychiatrist within 24 hours and either revocation or confirmation by that psychiatrist.

- 4.4. A medical review by Dr Clark took place at 9:50am on 30 December 2008. No suicidal thoughts were reported at that time. Dr Clark noted the family's concerns about Mrs Binch's poor oral intake and food refusal and to the existence of a Guardianship order in respect of their mother. In the event, there was no evidence that any such order existed at that time. At this time it was queried whether Mrs Binch was actually able to make appropriate decisions regarding refusal of food. Dr Clark has recorded that consideration might need to be given as to whether a nasendotracheal tube (NET) or a PEG feeding system (a percutaneous endoscopic gastrostomy), in other words an invasive enforced system of feeding, might be appropriate and that a family meeting might be required to discuss this. In the meantime the plan was to encourage oral intake.
- 4.5. On the same day Dr Jemmy Lao, who would see Ms Binch numerous times during her admission at Modbury, discussed Mrs Binch's prognosis with her son and daughter. Following this discussion, Dr Lao has recorded that in the case of a cardiopulmonary arrest Mrs Binch was not to be for cardiopulmonary resuscitation. He also specifically recorded that she was not to be 'for IV/SC fluid' (which is a reference to intravenous or subcutaneous fluid) and 'not for NET/PEG'<sup>5</sup>. This note appears to be a distillation of what was agreed at Dr Lao's meeting with Mrs Binch's son and daughter.
- 4.6. The required psychiatric review took place at approximately 10:30am on 30 December 2008 by Dr Singh, a consultant psychiatrist. On examination Dr Singh found Mrs Binch not to be fully cooperative and not spontaneous. Dr Singh felt that

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<sup>5</sup> Clinical record entry timed at 1pm on 30 December 2008

Mrs Binch was delusional, expressing to him that she believed that she was in a 'murder house'. She also asserted that people 'do bad things to her'. She would not answer any questions from Dr Singh that related to oral intake and simply requested that she be left in peace. Dr Singh considered her affect to be depressed. Although Mrs Binch was alert and oriented to time, person and place, Dr Singh considered her insight to be poor, her judgment to be impaired and her rapport to be very tenuous. His assessment of Mrs Binch at that time was that she suffered from schizophrenia, that there was a comorbid depression and that:

'She does not have the capacity to make rational decisions, given her current mental state.'<sup>6</sup>

- 4.7. Dr Singh's plan was to commence Mrs Binch on the drug mirtazapine, which is an antidepressant with a sedative effect that would also increase her appetite. In addition he decided to increase her current dose of risperidone. Following his assessment Dr Singh issued a Form 2 confirming the original Form 1 detention made the previous day. The effect of this order was to continue Mrs Binch's detention to 1 January 2009.
- 4.8. At 11:45am on 31 December 2008 a nursing note indicated that Mrs Binch was refusing all care.
- 4.9. On 1 January 2009 Mrs Binch was assessed by a psychiatrist, Dr Nagesh. Dr Nagesh noted that Mrs Binch's presentation involved a very complex situation that was fraught with multiple ethical dilemmas. Dr Nagesh noted that Mrs Binch would not engage with him. Mrs Binch's daughter was present during the interview and Dr Nagesh has recorded that she expressed the 'very strong viewpoint' that both she and her brother were in agreement that treatment, be it physical or psychiatric, should not be forced. He also recorded that they did believe that their mother had made a conscious, considered decision to not eat and to not drink and in the process die through inanition. Ms Binch is recorded as having indicated that they were both supportive of Mrs Binch's decision in this regard. The dilemma that Dr Nagesh refers to is encapsulated in the note that he made that same day. He stated:

'As an unwritten rule one would not use the Mental Health Act provisions by going against family's wishes yet at one level is this a decision worth considering assuming that Mrs Binch has got a potentially treatable condition of depression and schizophrenia influencing her decision making process/judgment/executive functions.'

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<sup>6</sup> Exhibit C13

- 4.10. To my mind it is obvious from further psychiatric reviews that would take place over the ensuing days that the dilemma that Mrs Binch's situation posed was recognised by other practitioners involved in Mrs Binch's psychiatric management and that decisions that were taken in respect of the imposition of the Mental Health Act were not taken lightly. In the event, on this occasion Dr Nagesh decided to allow the Form 2 detention to lapse at midnight. He noted that the matter might need to be considered by the Guardianship Board as well as the hospital risk management team before a final decision was taken as to whether to treat or not treat Mrs Binch.
- 4.11. At 1pm on 2 January 2009 Dr Jemmy Lao made a note in the clinical record that Mrs Binch's daughter had stated that she did not want her mother to be fed, or for people to try and feed her if she did not want to eat or drink. He recorded that it would be acceptable for staff to ask if Mrs Binch was thirsty or hungry and whether she wanted to eat or drink or to be fed.
- 4.12. On 2 January 2009, a psychiatric registrar recorded that Mrs Binch denied that she had made a decision not to eat or drink. Dr Mukesh Kumar, the psychiatric registrar, noted in this context that the family had expressed the opposing notion that Mrs Binch had decided not to eat or drink and that they were supporting that decision, but that this was contradicted by Mrs Binch herself. Dr Kumar formulated a plan to organise a family meeting with the aim of clarifying the issue of her current presentation, collateral history and to come up with a management plan.
- 4.13. Nursing notations on 2, 3 and 4 January 2009 are to the effect that Mrs Binch was refusing to eat food. There are a number of entries that Mrs Binch was now experiencing blood stained urine.
- 4.14. On 4 January 2009 a medical entry suggests that Mrs Binch was at that point in time considered for 'comfort care'<sup>7</sup>. At 4pm on 4 January 2009 it is noted that the patient was understood to be not for any investigation or intervention including PEG feeding and was not for resuscitation.
- 4.15. On 5 January 2009 Dr Maria Naso, a psychiatrist, assessed Mrs Binch and concluded that she was displaying psychotic symptoms. Dr Naso deemed that Mrs Binch was therefore unable to give proper consent regarding 'not for resuscitation' orders. A

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<sup>7</sup> Exhibit C13, Note at 2pm on 4 January 2009

family meeting was held at which one of the issues discussed was the possibility of moving Mrs Binch to Howard House<sup>8</sup> once her physical health improved. Mrs Binch's family were not in agreement with this suggestion and wanted Mrs Binch returned home. Later that same day Dr Naso reattended to assess Mrs Binch in the presence of her daughter. Dr Naso noted that Mrs Binch was frail and obviously quite significantly depressed, that she wanted to die and that she could see no hope in living. Mrs Binch had been medically cleared at this time. At this point Mrs Binch abruptly ceased the interview. Dr Naso made the decision that Mrs Binch was, as a minimum, significantly depressed, although not delirious, but in any event was unable to make a clear decision about her future care.

- 4.16. On the same day a social worker recorded that Mrs Binch's son and daughter did not want their mother to go to Howard House or to Hillcrest. It is recorded that they said that they realise that their mother has had a long history of schizophrenia, but felt that she had made the decision to die by not eating and that they wanted their mother to 'go with dignity' and would take her home if necessary.
- 4.17. Dr Kumar also undertook two assessments of Mrs Binch on 5 January 2009, one in the presence of Dr Naso. In the first interview, Mrs Binch denied to him that she had taken a decision not to eat or drink. Yet in the second interview Mrs Binch said that she wanted to die and that she was 'sick of it'. Dr Kumar met with Mrs Binch's family wherein they told him that they were of the opinion that Mrs Binch was dying and that she had taken the decision to die with dignity. They opposed the idea that their mother had a diagnosable Axis 1 psychiatric condition that was contributing to her decision to refuse meals. They expressed a number of other opinions and it is evident from notes of the meeting that it ended acrimoniously. Dr Kumar consulted a psychiatrist at Howard House who expressed to him the view that Mrs Binch did in fact have an Axis 1 condition that required treatment. It is evident here that Dr Kumar also called the Guardianship Board in relation to the matter. It was suggested to Dr Kumar that he discuss the matter with the Public Advocate. This he did. He also discussed the matter with Dr Naso and a conclusion was reached that Mrs Binch was unable to take a rational decision because of her mental illness. Further, as she was frail and malnourished, her decision making was further affected as her executive functions deteriorated. Dr Kumar concluded that Mrs Binch required ongoing psychiatric and medical input and that once she was medically fit in terms of

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<sup>8</sup> Howard House is a mental health facility for older people

malnutrition, she would be suitable for Howard House. A decision was reached that Mrs Binch would remain in a medical ward for the treatment of her malnutrition. Dr Kumar detained Mrs Binch on a Form 1 at 2:20pm on 5 January 2009. He recorded on the Form 1 that the patient was not eating nor drinking secondary to depression and psychosis. From that point onwards Mrs Binch would remain under detention pursuant to the Mental Health Act. In the event, this period of detention would be confirmed the following day, thereby continuing the detention until 8 January 2009. On 8 January 2009 a further period of detention of 21 days would be imposed.

- 4.18. On 6 January 2009 a senior dietician, Ms Serafini, reviewed Mrs Binch. The plan was to commence Mrs Binch on a high energy diet including supplements, and that food charts would be maintained. Should her oral intake remain poor, temporary nasogastric feeding to improve her nutrition would be considered. Mrs Binch weighed approximately 24 kilograms at this point.
- 4.19. As required by law Mrs Binch was reviewed by the psychiatrist Dr Singh on 6 January 2009. Mrs Binch stated that one part of her said that she should live but the other part wanted to die. Although Dr Singh believed her psychotic symptoms had improved, her depressive symptoms were still present. Dr Singh believed that Mrs Binch was suffering depressed mood, had suicidal thoughts, was ambivalent with regard to treatment and had impaired judgment. Dr Singh confirmed Mrs Binch's detention under a Form 2 at 1:30pm. The form sets out Dr Singh's opinions as stated above.
- 4.20. On 6 January 2009 Mrs Binch received the first of three blood transfusions in an attempt to improve her medical status.
- 4.21. On 7 January 2009 a gynaecological registrar reviewed Mrs Binch in an effort to investigate her urinary tract infection and the blood in her urine. Dr Liu ordered a renal and pelvic ultrasound. The note relating to this review contains the notation that the patient's daughter was on site and did not want any further investigation at this stage. The result of the ultrasound was:

'Severe left hydronephrosis and mild to moderate right hydronephrosis. Large amount of mobile echogenic debris left renal collecting system and within the dependant portion of the bladder, ?blood products, ?cells. Does the patient have haematuria?'<sup>9</sup>

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<sup>9</sup> Exhibit C13

4.22. On 8 January 2009 a CT scan was undertaken Mrs Binch's abdomen and pelvis. The report concluded as follows:

'The findings suggest long standing obstruction to the terminal left ureter with somewhat less pronounced and probably less long standing obstruction to the distal right ureter. The cause of this is not identified. Further cystoscopic evaluation of the bladder may need consideration.'<sup>10</sup>

4.23. Dr Naso again reviewed Mrs Binch on 8 January 2009 whereby she was detained under a Form 3 at 11:30am for a further period of detention up to 21 days. As this was the final detention order, and the order that was in force at the time of Mrs Binch's death, it is worthwhile setting out Dr Naso's note in full:

'Very complex case with ethical and moral dilemmas compounding the issues.

I note: # anaemia → req 3 units transfusion

# → bilat hydronephrosis ? cancer & abnormal kidney function

# malnutrition with significant weight loss

# not eating or drinking adequate amts

Past history of schizophrenia + depression

Reason for extreme deterioration in her physical state is being investigated

? major depression with psychosis

? underlying malignancy

or more than likely both

Certainly she has severe depression which can contribute to anorexia & self neglect & extreme wt loss.

It is apparent that she is unable to give informed consent about her Rx (treatment) issues and as such is detainable under the Mental Health Act.

Her family remain angry at the medical and psychiatry teams and are seeking GSB orders which I have encouraged.

If a medical reason/cancer is determined then assistance from the palliative care team can be sought whilst continuing to Rx her major depressive disorder.

(P) Form 3 ✓ 21/7 order

We will review daily'

It is clear that Dr Naso believed that Mrs Binch was unable to make medical decisions for herself. Dr Naso also recognised the dilemma that had been identified all along and it is therefore not surprising that Dr Naso welcomed the possible involvement of the Guardianship Board as foreshadowed by Mrs Binch's family.

4.24. Dr Kumar continued to review Mrs Binch on a daily basis.

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<sup>10</sup> Exhibit C13

- 4.25. On 9 January 2009 following the scan results, Dr Alexander Jay who is a urologist, assessed Mrs Binch. He noted that Mrs Binch was grossly malnourished. He also noted the ultrasound and CT results. He queried whether Mrs Binch may have had a neurogenic bladder or an obstructing lesion at the bladder outlet. Dr Jay concluded that it would be beneficial for Mrs Binch to undergo a trial of catheter and, failing the effectiveness of that, to undergo a cystoscopy. He noted his concern, however, that 'due to her poor condition this would not be well tolerated'. An indwelling catheter was inserted that day.
- 4.26. The psychiatric review of 9 January 2009 conducted by Dr Kumar reveals that there existed fundamental disagreements between medical staff and Mrs Binch's son and daughter on a number of levels concerning both the medical and psychiatric management of their mother. Dr Kumar noted that Ms Binch indicated that she wanted to take her mother home and have her depression treated as an outpatient as going to Howard House would kill her. In the event, Dr Kumar noted that the family was advised to pursue further with the Guardianship Board in accordance with their legal rights.
- 4.27. A psychiatric review was undertaken on 12 January 2009. On this occasion Mrs Binch indicated affirmatively to the question as to whether she had decided to not eat or drink, saying that 'I have had enough'. The plan was to continue to encourage physiotherapy and occupational therapy and to encourage and actively intervene to prompt Mrs Binch to eat and drink as regularly as possible. Mrs Binch's prescription of mirtazapine, an antidepressant, was increased.
- 4.28. On 13 January 2009 an effort was made to mobilise Mrs Binch. Mrs Binch was also specialised by a nurse. There are notations to the effect that Mrs Binch demonstrated some improvement in her well being and alertness on this day and that her mood had lifted. There is also a note that Mrs Binch's weight was now around 30 kilograms, an apparent increase of some 4 to 5 kilograms. I note however, that Ms Binch in her statement disputes that there was any such meaningful improvement and that the apparent weight gain has to be viewed against the fact that on 15 January 2009 her mother was 25.6 kilograms and was noted to have lost weight. I do note, however, that Mrs Binch was 29 kilograms at autopsy.

- 4.29. Dr Kumar reviewed Mrs Binch on 13 January 2009 and noted that her mental state had significantly improved. Mrs Binch herself reported that her mood was 'good' and:

'She acknowledged that she had said she wanted to die and didn't want to eat, but now she said that she has had food and doesn't want to die.'<sup>11</sup>

There is also a social work note of this date that states that Mrs Binch said that she 'did not want to die'.

- 4.30. On 14 January 2009 there are further notations that Mrs Binch was more alert on this day, had been more accepting of meals and at one point was sitting in a chair having her hair combed by staff. Dr Kumar undertook an assessment of Mrs Binch in conjunction with Dr Naso. He noted that although Mrs Binch appeared tired and had herself reported to the effect that she was tired, she was suffering from 'major depression (in remission) with schizophrenia'. He also stated that 'there is an improvement in her mental state as well as her physical state'<sup>12</sup>.
- 4.31. On 15 January 2009 there was an extensive occupational therapy assessment with a view to providing a range of stimulating activities for Mrs Binch in order to provide incentive for her future health. There is also a notation to the effect that Mrs Binch would undergo another urology review. It is noted that Mrs Binch was disinterested in taking food on this day.
- 4.32. Dr Kumar reviewed Mrs Binch on 15 January 2009. She was on this day noted to be less communicative and said that she was 'upset'. Dr Kumar by this time was aware of the imminent Guardianship Board hearing scheduled for 20 January 2009 and noted that he had asked for a family meeting to be arranged for the following day in order to discuss ongoing management.
- 4.33. 16 January 2009 was the last full day of Mrs Binch's life. At 9:45am it was noted that Mrs Binch was sitting in a chair awake and was responding to questions, but was flat. A moist cough was noticed. She was drinking with encouragement. There were occasional bibasal crackles noted in her lungs. The fact that Mrs Binch was very flat that day was noted on a number of occasions. The fact that she was also 'chesty' was noted. A chest X-ray would later be performed during the day. It is recorded at

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<sup>11</sup> Exhibit C10a, page 4

<sup>12</sup> Exhibit C13

midday that the patient was able to stand up and take a few steps from the bed to the weighing scale chair, which recorded a weight of 28.7 kilograms.

- 4.34. In the late afternoon a nursing note reports that Mrs Binch was repositioned in an air comfort chair for her evening meal, at which time she was very sleepy. She was asked whether she would like some tea and her response consisted of a very quiet, inaudible answer. When the question was repeated she did not answer at all. Mrs Binch was offered a drink to which there was no response and she remained with her eyes closed. She sounded congested. Ms Binch and Mr Binch were present at that time. The nurse spoke to Mrs Binch and said that she would save her meal and try again later when she was more awake. Thereafter Mrs Binch was returned to bed as is noted at 6:20pm. A nursing note of 8:05pm records that Mrs Binch was refusing all offers of fluids orally. Later that evening Mrs Binch took her medication which was crushed and mixed with vitamised fruit. Mrs Binch took a small sip of orange juice and then turned her head away, refusing further offers of drink. At approximately midnight Mrs Binch was found to be awake and she was administered with her mirtazapine medication.
- 4.35. There is a long notation concerning a 'family meeting' conducted during the course of the afternoon of 16 January 2009. Ms Binch and Mr Binch's partner were present. A number of medical practitioners and nursing staff were also present. The note timed at 1645 hours asserts that various medical staff advised Mrs Binch's family of her current condition that included major depression, with some improvement with medication. The mentioned the observations that the patient had been smiling and mobilising three days ago. It was also pointed out that the patient's most recently observed flat affect was not uncommon with major depression. There is a record that the family was invited to discuss their wishes with the medical team but indicated that they were unwilling to comment until the Guardianship Board hearing on the following Tuesday, 20 January 2009.
- 4.36. The notations after midnight on the night of 16/17 January 2009 record that during the night Mrs Binch was found to be 'gurgly' and an attempt was made to suction her mouth with nil return. She was repositioned according to a note at 12:30am. The notes record that regular checks were conducted overnight and that Mrs Binch's breathing continued to be noisy. At 4:45am nursing staff are recorded as having gone

to Mrs Binch to turn her but had found that she was taking her last breath. In the event, she was certified deceased at 5:30am.

## **5. Commentary**

- 5.1. It is obvious from the clinical notes and from the statements of Ms Jenny Binch and Mr Robert Binch that disagreement existed between them and medical practitioners in relation to Mrs Binch's medical and psychiatric care. One of the fundamental differences related to the question of detention and whether it had been necessary and appropriate. In addition, it is clear from the statement of Ms Jenny Binch in particular, that she was dissatisfied with progress that was being in any event made in respect of any medical issues that her mother was experiencing.
  
- 5.2. As already recorded in these findings it is evident that the psychiatric staff at the Modbury Hospital regarded the question of detention as an extremely difficult one that required careful deliberation and documentation. In the normal course of events a person's desire to refuse sustenance or to refuse medical treatment in general might not be questioned. Indeed, save and except for the complication of mental illness, if Mrs Binch had chosen to leave the Modbury Hospital, this might, in the circumstances that prevailed here, have been regarded as a matter for her and her family. The difficulty in this case was occasioned by the fact that there was a strong belief on the part of the psychiatric medical practitioners that refusal on the part of Mrs Binch either to take sustenance or to undergo medical treatment was the product of a mental illness that possibly could be treated. That being the case, there was no lawful impediment to their detaining Mrs Binch. Indeed, the impression derived is that the medical practitioners considered that they were under a legal and moral obligation to do so. As indicated above, the reasons for Mrs Binch's ongoing detention were well documented at the time various decisions were made. I am particularly impressed with the reasoning of Dr Naso, who made the 21 day order on 8 January 2009 which is set out in full above. To my mind none of these decisions were taken lightly or capriciously and were taken having regard to all of the known facts, including Mrs Binch's presentation at any particular point in time. There can be no real suggestion that these decisions were taken other than in the utmost good faith. It is the Court's view that no further comment needs to be made about the decisions to detain Mrs Binch and to maintain her detention until the time of her death. Lawful decisions taken in good faith and based on all of the relevant available material would

not routinely be the subject of coronial commentary, especially having regard to the fact that orders for detention under the Mental Health Act 1993, as well as the maintaining of ongoing detention pursuant to such orders, could at any time properly be made the subject of an appeal to the Guardianship Board, a measure which in this case was documented by clinicians as being a highly desirable and welcome intervention in respect of the state of contention that had developed.

- 5.3. There is also the issue of Mrs Binch's family's dissatisfaction with her ongoing treatment whilst under detention. The point needs to be firmly borne in mind that from the point of view of Mrs Binch's welfare, the alternatives to detention would not have been wholly attractive. There is no guarantee that Mrs Binch's refusal of sustenance would have been in any way ameliorated outside of a hospital setting. The clinical notes reveal ongoing and persistent attempts by hospital staff to maintain a level of nutrition in respect of Mrs Binch. Reasonable views as to whether Mrs Binch should have been subjected to enforced feeding by way of nasoendotracheal tube or a PEG could well have differed in the circumstances of this case. In this regard I note that very early in the piece it was recorded that these were measures that quite understandably would have been opposed by members of Mrs Binch's family and indeed would have required extremely careful consideration having regard to the fact that they involve invasive administration.
- 5.4. The fact that the ultimate cause of Mrs Binch's death was related to a significant malignancy involving her bladder also needs to be taken into consideration. There is no evidence to suggest that Mrs Binch's hospitalisation, detention, medical treatment or lack of it contributed to the cause of her death. For instance, there is no reason to suppose that Mrs Binch's death would have been prevented or delayed in a setting outside the Modbury Hospital. I have seen no evidence to suggest that measures that would have reversed the effects of her malignancy were realistically available. While Mrs Binch's admission to and detention within the Modbury Hospital provide the setting in which her death ultimately occurred on 17 January 2009, it is not easy to see how anything that happened or did not happen there materially contributed to its cause.

5.5. It was unfortunate that in this case the disagreement that existed between the medical practitioners looking after Mrs Binch and her family members took on the level of significance that it did. It is precisely for these kinds of scenarios that appeal procedures in relation to orders for mental health detention have been brought into existence. I note that the new Mental Health Act 2009 maintains such appellate procedures.

**6. Recommendations**

6.1. I have no recommendations to make in this matter.

*Key Words: Death in Custody; Psychiatric/Mental Health Issues*

*In witness whereof the said Coroner has hereunto set and subscribed his hand and*

*Seal the 2<sup>nd</sup> day of December, 2011.*

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*Deputy State Coroner*