



## FINDING OF INQUEST

*An Inquest taken on behalf of our Sovereign Lady the Queen at Adelaide in the State of South Australia, on the 23<sup>rd</sup>, 24<sup>th</sup> and 25<sup>th</sup> days of November 2016, the 8<sup>th</sup> day of December 2016, the 2<sup>nd</sup> day of February 2017, the 14<sup>th</sup> day of November 2017, the 26<sup>th</sup> day of February 2018 and the 17<sup>th</sup> day of May 2018, by the Coroner's Court of the said State, constituted of Mark Frederick Johns, State Coroner, into the death of Dorothy Mavis Baum.*

*The said Court finds that Dorothy Mavis Baum aged 93 years, late of St Basil's Aegean Village, 10 Morton Road, Christie Downs, South Australia died at Flinders Medical Centre, Flinders Drive, Bedford Park, South Australia on the 31<sup>st</sup> day of May 2012 as a result of blunt trauma with head injury on a background of ischaemic heart disease. The said Court finds that the circumstances of her death were as follows:*

### **1. Introduction and cause of death**

1.1. Dorothy Mavis Baum was 93 years of age at the date of her death on 31 May 2012. She was a resident at the St Basil's Aegean Village Nursing Home (St Basil's) which was owned and operated by St Basil's Home for the Aged in South Australia (Vasilias) Incorporated. An autopsy was conducted by Dr Neil Langlois, forensic pathologist, of Forensic Science SA who gave the cause of death as blunt trauma with head injury on a background of ischaemic heart disease, and I so find<sup>1</sup>.

### **2. Background**

2.1. The blunt force injuries referred to above were sustained within St Basil's. For reasons that appear hereafter, I find that they were inflicted by Rozalia Setalo who was also a resident of St Basil's and who was 85 years old. Both Mrs Baum and Ms Setalo

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<sup>1</sup> Exhibit C2a

suffered from dementia. Mrs Baum was at the time of her death bedridden. Ms Setalo however was mobile. Ms Setalo inflicted injuries to Mrs Baum using a plastic chain with magnets at either end which she apparently obtained from within the nursing home, such chains being used to discourage persons from entering rooms by placing the chain between the sides of the doorframe, thus avoiding the need to shut the door to the room altogether. The Deputy Director of Public Prosecutions decided that it would not be in the public interest to prosecute Ms Setalo for any offence arising out of this event due to her mental state. Ms Setalo has herself since died.

### **3. The nature of the injuries**

3.1. Dr Langlois documented the injuries carefully in his post-mortem report. In summary he found that there were blunt injuries (bruises and lacerations) of the face, left side of the chest, left upper limb, right upper arm and right hand. He found that the extensive injuries of the left upper limb would be in keeping with the arm having been used in a 'defensive' (protective) manner. The right arm was comparatively less injured which Dr Langlois noted was in keeping with a level of paralysis sustained to Mrs Baum's right arm as a result of a previous stroke. The following aspects of the post-mortem report are noted.

- 1) Mrs Baum weighed (clothed on admission) 36 kilograms. She was small and thin of build but adequately nourished, consistent with the stated age. Her skin appeared in good condition with no pressure ulcers (it is clear from the report that one might add that the skin was in good condition apart from where it was damaged as a result of the blunt force trauma).
- 2) On the left side of the forehead there was an area of bruising 2 x 1.5cm within which there was a 0.5cm superficial laceration at its superior/medial edge. Reflection of the skin of the scalp revealed subcutaneous haemorrhage 3 x 5cm. Histology (K) revealed an acute inflammatory infiltrate; there was no stainable iron.
- 3) Overlying the right eyebrow there was an area of bruising 3.5 x 1. cm within which there was a 3cm near horizontal laceration. Histology (L) revealed an acute inflammatory infiltrate; there was no stainable iron. There was deep subcutaneous bruising.

- 4) There was periorbital bruising on the right with a coarse subconjunctival haemorrhage. At the inferolateral margin of the eye socket there was a 2cm full thickness laceration. Histology (M) revealed an acute inflammatory infiltrate; there was no stainable iron.
- 5) Bruising extended over the right side of the face anterior to the ear, over the left cheek to the angle of the jaw, and onto the left side of the neck. Histology (N) revealed an acute inflammatory infiltrate; there was no stainable iron. Within this area there was a 1cm abrasion anterior to the ear and lacerations 0.5cm across separated by 1.5cm over the right angle of the jaw. Reflection of the skin revealed subcutaneous haemorrhage, but no fractures.
- 6) There was bruising and crusted abrasion of the lips on the right side.
- 7) There was a possible bruise 1.5cm in diameter lateral to the left eye.
- 8) There was ill-defined diffuse bruising over the left superior pectoral region with an abrasion superomedially just lateral to the sternoclavicular notch). Histology (B) revealed an acute inflammatory infiltrate; there was no stainable iron. There was minimal subcutaneous haemorrhage, but a focal area of bruising 1cm in diameter was noted over the 4th rib to the right of the sternum. Histology (A) was not contributory.
- 9) There was generalised bruising involving the distal two-thirds of the anterior surface of the left upper arm, within which there was a laceration of the skin 3 x 6cm that exposed fat around the mid-height of the upper arm.
- 10) There was bruising over the dorsum of the left forearm, from the elbow to the hand, within which there were areas of laceration 4 x 7cm just distal to the elbow, 1 x 2cm around the mid-height of the forearm and 3 x 7cm over the dorsum of the left wrist. Histology (E) revealed an acute inflammatory infiltrate; there was no stainable iron. There also appeared to be a haemangiomatic lesion in the skin. The more proximal lacerations exposed fat, but the laceration over the wrist exposed tendon. Further lacerations were noted over the proximal aspects of the middle and ring fingers of the left hand. Histology (F) revealed an acute inflammatory infiltrate; there was no stainable iron.
- 11) There was ill-defined generalised bruising over the distal half of the anterior surface of the right upper limb.

- 12) There was bruising over the dorsum of the right hand with a laceration on the dorsum of the hand near the base of the index finger. Histology (D) revealed an acute inflammatory infiltrate; there was no stainable iron.
- 13) Bruises were distributed around the right knee including over the region of the tibial tuberosity. The bruises of the knee had no apparent subcutaneous haemorrhage, but subcutaneous haemorrhage was present over the distal bruise. There was also a superficial laceration at the inferolateral margin of the left knee. Histology (C) revealed focal acute inflammation; there was no stainable iron.
- 14) There was speckled abrasion over the anterior surface of the right knee.
- 15) Purpuric-type bruising was noted over the mid-section of the right shin.

Dr Langlois noted that a urinary catheter was present and it was attached to a bag. This is further indication of Mrs Baum's inability to mobilise.

- 3.2. Mrs Baum was taken to the Flinders Medical Centre when she was found in this condition. The medical notes<sup>2</sup> record that Mrs Baum was brought in by ambulance with multiple lacerations and haematomas. The medical staff were informed that she was actively bleeding from the face and right arm when discovered. On examination she was noted to have obvious right periorbital haematoma and with a 2cm long laceration above the right eyebrow. Haemostasis was achieved. There was a U-shaped laceration on the right cheek with steristrips insitu on presentation. When these were removed the periosteum was visualised when the flap was mobilised. A small abrasion was found on the right lower lip. On the chest a small haematoma was evident above the left breast and there was an erythematous area on the left breast. On the hips and legs there was a haematoma over left iliac fossa plus left hip. There was bruising on both lower legs, abrasions over both knees, pressure ulcers on both heels weeping serious discharge. The right arm and hand revealed a laceration exposing superficial tendons on the second carpometacarpal, extensive bruising over fingers and knuckles. On admission changes evident in digits and wrist. The left arm and hand was examined to reveal a 6 x 4cm wound on the upper arm with significant skin defect, subcutaneous fat was exposed. There were multiple extensive skin tears on the left forearm and hand and there was exposed tendon on the fourth digit.

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<sup>2</sup> Exhibit C19

#### **4. Photographs**

- 4.1. A series of photographs were taken by the staff at the Flinders Medical Centre to document the injuries because of their nature. The photographs were not distributed during the hearing of this matter because of their nature, but they were available for parties granted leave to appear in this Inquest to view. By an oversight they were not admitted into evidence. I have viewed them and decided that it is appropriate that they be admitted and I admit them as Exhibit C15f, but direct that they not be made available for public inspection. The photographs are graphic and distressing and they demonstrate in a way that words cannot, how traumatic the injuries sustained to this frail, elderly, defenceless lady must have been. It is particularly distressing to see wounds exposed to reveal fat and subcutaneous tissue, bone and tendons.

#### **5. The scene**

- 5.1. There was a forensic examination of Mrs Baum's bedroom and her bed where she was found by staff at 5 o'clock on the morning of the day preceding her death. The police crime scene examiners did not examine the scene in the state that it was when Mrs Baum was discovered. Obviously it was necessary to remove Mrs Baum so that she could be transported to hospital and her wounds could be treated, so some disturbance of the scene was to be expected. However, the extent of interference was much greater than this. In fact, the bedding was removed from the bed together with the extensive pooling of blood that it contained and, although the crime scene examiners when eventually alerted searched St Basil's laundry, the sheets were not found. The room was cleaned up to some extent although fortunately the crime scene examiners were able to obtain the following information - 'cast-off' blood splatter was identified on the walls and curtains in the bedroom of the deceased. Police formed the view that this splatter was caused by Mrs Baum being struck with the plastic chain referred to above. Police examined the plastic chain and noted that it had blood on it. The chain was found to be approximately 1.2 metres long and the magnets attached to each end were secured by metal 'Tek' screws. The chain was seized and lodged for analysis and the subsequent DNA analysis identified that the blood upon the chain was that of Mrs Baum.

## **6. Police not called to the scene by St Basil's**

- 6.1. For reasons which will be more thoroughly developed hereafter, the police were not alerted to Mrs Baum's injuries in a timely manner. In fact, the police were not notified by St Basil's staff at all. The police were notified by staff at the Flinders Medical Centre (FMC) and there was a delay in that occurring because the staff at FMC had assumed that police had already been notified. When staff at FMC realised that there was no police presence as the day progressed, a check was made with SAPOL and as a result investigations were not commenced until 4:30pm which was a little less than 12 hours after St Basil's staff discovered Mrs Baum in her bed covered in blood. The reason for the failure to notify the police up to that point is a matter that I need to consider in this finding. The explanation proffered by the staff at St Basil's was that they thought that Mrs Baum's injuries were self-inflicted.

## **7. The evidence of Dr Hamilton**

- 7.1. Dr Hamilton is a medical practitioner. She was a resident medical officer at the Flinders Medical Centre Acute Medical Unit on 30 May 2012. She became involved in Mrs Baum's care at approximately 1pm that day when the case was handed over to her by the Emergency Department intern. Dr Hamilton conducted an examination of Mrs Baum and said that she thought it was very likely that her wounds had not been self-inflicted and that it was very likely they had been inflicted by another person<sup>3</sup>. She said that she had been informed by the Emergency Department doctor that the nursing home had considered that the injuries could be self-inflicted. She said that she remembered thinking that the Emergency Department doctor felt that was unlikely and she also felt it was unlikely but '*it's impossible to completely discount it but it's very, very unlikely*'. Dr Hamilton said that as the day progressed she was interested to note that there had not been any contact from the police. She asked the social worker to check that the police had actually been made aware of Mrs Baum's situation<sup>4</sup>. Dr Hamilton noted that it is very unusual for a patient to attend the hospital in Mrs Baum's condition without police already being involved<sup>5</sup>. Dr Hamilton said that:

'When somebody is assaulted to the level or sustains injuries to the level that Mrs Baum had sustained injuries that would put increased demand on her heart which would make it have to work faster and harder requiring an increased oxygen supply. So the heart already was not in a position to necessary - it didn't have much reserve so there was not a position

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<sup>3</sup> Transcript, page 56

<sup>4</sup> Transcript, page 60

<sup>5</sup> Transcript, page 68

to allow the increased heart rate and the contractions and also with the airways disease the increased oxygen supply that would have been required would have been difficult for her to obtain. So that would have meant that the heart would have failed further and acutely in this situation causing the build-up of fluid in her lungs making the oxygen accessibility more difficult.'<sup>6</sup>

In summary, Dr Hamilton explained that Mrs Baum was treated palliatively and made as comfortable as possible until her death the following day.

## **8. The events at St Basil's overnight on 29/30 May 2012**

8.1. The evidence on this topic comes from three sources. They are Harit Kamal who was a carer who worked for an agency that supplied staff and who happened to be working at St Basil's that night. It was his first and only shift at St Basil's. Ute Latz was a registered nurse employed by St Basil's and Lisa Irvine is a personal care worker who is also employed at St Basil's. Mr Kamal was unable to be found and could not be called as a witness. Ms Latz and Ms Irvine were both called.

### **8.2. The layout of St Basil's**

The home consists of two, 30 bed wards with high dependency patients. The wards are St Stylianos ward and St Iakovos ward, each of which consists of 30 beds. Then there are four low dependency wards consisting of 10 beds each. The events of the night centred around the St Stylianos ward in which Mrs Baum and Ms Setalo were each residents. That also happened to be the ward in which registered nurse Ute Latz was stationed, although she had duties in each of the other wards of the nursing home. Those duties would include the administration of certain medications which could only be administered by a registered nurse. She was the only registered nurse on site during the night shift. In total for the 100 residents across the whole facility there were six staff including RN Latz. RN Latz and Mr Kamal were on duty in St Stylianos ward. Ms Irvine and other female carer from an agency were on duty in St Iakovos ward. Gail Reynolds, another permanent carer from St Basil's, was the sole carer on duty in St John ward and a male carer from an agency was the sole carer in St Luke ward. I note that the only qualified nursing staff was RN Latz who was a registered nurse. There was no enrolled nurse, the other staff were all carers of a variable level of experience. Only three of the persons present were permanent staff of St Basil's, the other three were from agencies. The staffing ratio was therefore approximately one staff member to 17 residents. The evidence demonstrated that for a number of tasks the registered nurse

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<sup>6</sup> Transcript, pages 68-69

was required to be present. Other tasks required two staff members to perform, for example, lifting or moving patients, although in these instances the registered nurse did not need to be involved. Bearing in mind the layout of St Basil's consisting as it did of two high care 30 bed wards which were located adjacent to each other and then four separate 10 bed low care units which were separate and apart from each other and from the other two wards, I consider that the geography did not make the task of the staff easier than it might have been, and in fact the contrary was the case. In my opinion the evidence in this case demonstrates that there were an insufficient number of staff on duty on the night in question.

### 8.3. Harit Kamal

Mr Kamal stated<sup>7</sup> that the day after the event he made a dot point statement while the events were still fresh in his mind. His further statement was made to police in November 2016. Mr Kamal said that he commenced his shift at 11pm on 29 May 2012. He was given a basic induction by RN Latz and his first task was to do a check of all of the residents in the company of another care worker. He said this ward check took approximately one hour. After this he was instructed to clean and mop the dining room and this took him approximately one hour also. After this he went back to the nurses' station. At approximately 1:30am he heard a noise and footsteps and the sound of a walking frame in the corridor. He saw a lady resident with the walking frame who he subsequently came to know to be Ms Setalo. He went to see if she wanted or needed anything and as he approached her he noted that she looked angry. She spoke in a very angry voice and said to him 'what are you doing here?' and 'I will kill you'. She then tried to hit him with the walking frame, then to punch him and then to hit him again with the walking frame. At the time he was in the ward on his own because RN Latz was required elsewhere. He moved away from Ms Setalo and she began following him. At that point he decided to lock himself in the office or nurses' station. Ms Setalo started hitting the door with her walking frame and yelling threats. Ms Setalo went to the supper trolley which was not far away and picked up crockery from the trolley. She started throwing the crockery over the glass surrounding the office desk. Mr Kamal could see what she was doing because the nurses' station is surrounded by glass walls. He noted that Ms Setalo was also holding a white plastic chain which she was swinging around and hitting the glass on the nurses' station<sup>8</sup>.

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<sup>7</sup> Exhibit C31

<sup>8</sup> Ms Rebecca Balmforth, Clinical Nurse Manager at St Basil's, recorded in her report that there was a chip in the glass of the nurses' station from where Ms Setalo had swung the chain in that vicinity - Exhibit C20, page 374

8.4. He tried to call RN Latz on her phone but could not get through. Ms Setalo left the nurses' station and continued to yell out. At that point RN Latz came back to the ward. Mr Kamal placed the time at approximately 1:50am. He told RN Latz about the situation. While they were talking they heard another resident calling for help. They went to see what the situation was. The resident was a lady<sup>9</sup> who said that she had been hit and had a bruise on her leg. Mr Kamal took her to the nurses' station for safety and RN Latz went to talk to Ms Setalo to calm her down but was in turn attacked with the walking frame and punched. Mr Kamal said that he called RN Latz to come to the office for her own safety and from there RN Latz called the police and the ambulance. Ms Setalo went into another resident's room who was heard to scream loudly. Mr Kamal said that RN Latz and he then came out of the office and at that point a carer from another part of the facility came into the ward<sup>10</sup>. Ms Setalo then tried to attack Ms Irvine and RN Latz was able to grab her from the back while Ms Irvine grabbed her from the front. At this point the doorbell rang and the police and ambulance personnel arrived. Mr Kamal said that Ms Setalo was still holding the plastic chain but that it was removed from her by someone. He noted that there was blood on the chain and on Ms Setalo's hands. Ms Setalo was taken from St Basil's by the ambulance with the assistance of the police. Mr Kamal said that after this he discussed the incident with RN Latz and RN Latz had to fill out incident reports and then it was time to do the morning round which he and RN Latz commenced at approximately 5am. When they got to the fifth or sixth check it was the room of Mrs Baum and they were going to change her incontinence pad. They turned the light on and saw that there was blood everywhere. Mr Kamal noted that there was blood around the bed and on the wall behind the bed. He said in the statement:

'It appeared that she had scratched herself all over the arms and had dug a big hole in her cheek. I saw that her nails and fingers were all covered in blood. I asked Mrs Baum "why did you do this" and she replied "I don't know".'<sup>11</sup>

Mr Kamal said that at that time he did not even consider that the events involving Ms Setalo were linked to the injuries on Mrs Baum. He helped RN Latz clean and dress Mrs Baum's wounds and was aware that an ambulance was called for. He said that because of the amount of blood they did a complete change of bedding and cleaned the

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<sup>9</sup> From the evidence it is apparent that this resident was Ms Otis. See the evidence of RN Latz.

<sup>10</sup> From other evidence it is clear that this carer was Lisa Irvine

<sup>11</sup> Exhibit C31, page 6

walls and surrounding area. Mrs Baum was taken to hospital and he completed his shift at about 7am. He said that was the last time he worked at St Basil's.

#### 8.5. The evidence of RN Ute Latz

RN Latz also decided to make her own note of the events of that night the following day. She also made a statement to police<sup>12</sup> and gave evidence at the Inquest. She confirmed that she and Mr Kamal were on duty at St Stylianos ward. She said that Ms Irvine and a female agency carer were on duty in St Iakovos ward (the other 30 bed high care ward). She noted that Gail Reynolds, another permanent carer from St Basil's, was on duty in St John Ward and a male carer from an agency was the sole carer in the St Luke ward. Presumably there was no-one assigned to either of the other two remaining low care wards. At approximately 11:30pm RN Latz was asked by Ms Irvine to administer Endone to a patient in St Iakovos ward. They obtained the drug from the cupboard in St Stylianos ward and returned to St Iakovos ward to administer the medication. RN Latz remained in that ward with Ms Irvine for quite a while after that tending to patients. She returned to St Stylianos ward at about 2am and noted that Mr Kamal was seated in the nurses' station. She did not go to the nurses' station but commenced a check of the residents' rooms. She saw Ms Setalo pushing her walking aid and she was in the company of another resident, Ms Otis. She intercepted them and tried to usher Ms Otis to her own room. As she was doing so Ms Setalo punched her in her eye without any reason. She threw several punches and then started ramming her walking frame into Ms Otis' legs. She started yelling and RN Latz removed Ms Otis from the situation by ushering her into the nurses' station and locking the door behind them. Thus at that point she and Mr Kamal and Ms Otis were locked in the nurses' station. Mr Kamal then told her that Ms Setalo had earlier rammed her walker into him and started throwing dishes from the tea trolley. He was cleaning up the broken dishes when he told her this. RN Latz then telephoned the clinical nurse supervisor who was not on duty but at home, and informed her that she was going to contact the ambulance and police to deal with Ms Setalo. She then dialled triple zero and requested the attendance of an ambulance and police. She said that by then it was approximately 2:30am and she started to attend to some injuries that Ms Otis had sustained to her legs from Ms Setalo's assault. She said that she could not see or hear Ms Setalo while this was happening. Shortly afterwards Ms Setalo came into view

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<sup>12</sup> Exhibit C30

again and was ramming her walking frame into the walls in the vicinity of nurses' station. She was clearly angry and was swinging a white plastic chain into the glass windows of the nurses' station. Ms Setalo then moved away from the nurses' station still holding the chain and entered the room of another resident, Ms Schminke. RN Latz said that she herself then raced after Ms Setalo and could hear Ms Schminke screaming. She went into the room of Ms Schminke and saw Ms Setalo standing next to her bed, but Ms Setalo then exited the room. She was then joined by Ms Irvine who had come from St Iakovos ward having heard the screaming. RN Latz then left Ms Schminke in the care of Ms Irvine and went back towards the nurses' station, but then Ms Setalo went back into Ms Schminke's room and stood in the doorway swinging the plastic chain at Ms Irvine. Her walking frame was parked outside of the room. RN Latz then went behind Ms Setalo and put her in a bear hug and then manoeuvred her towards the nurses' station. She believed that Ms Setalo dropped the chain at that point. She said that Mr Kamal and Ms Irvine then assisted her to restrain Ms Setalo and approximately five minutes later the ambulance and the police arrived. She believed that they arrived at approximately 3am and removed Ms Setalo from the facility. RN Latz then obtained a stack of incident reports and explained to Mr Kamal that he needed to fill one in for what had happened to him. Shortly after this she had to attend to a resident in one of the hostels, a task that took her half an hour. She then had to attend to a patient back in the St Stylianos ward and then she commenced doing full room checks. She estimated that this would have started at about 4:30am. She said that they reached Mrs Baum's room at about 5:15am and discovered that she was covered in blood. RN Latz in her statement said:

'She looked like she'd been in a war.'<sup>13</sup>

She said that there were blood splatters on the wall behind the headboard, more to the right than the left. She immediately left the room to telephone for an ambulance and then obtained wound dressings and returned to assess Mrs Baum's injuries. She had sent Mr Kamal to obtain Ms Irvine's assistance and Ms Irvine arrived at that point. She attended to Mrs Baum's injuries with dressings and said that Ms Irvine and Mr Kamal started removing the bloody bedding from the bed to place it in a yellow biohazard bag. She said that she told them to put the biohazard into the sluice room. She said there was a lot of blood on the sheets but it appeared to be diluted with either urine or water.

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<sup>13</sup> Exhibit C30

Fresh sheets were placed on the bed but Mrs Baum's wounds continued to leak through the dressings. RN Latz gave Mrs Baum one 5mg Endone tablet for pain relief and Ms Irvine and Mr Kamal continued to clean the blood from the room. The ambulance arrived sometime later and in her statement RN Latz said:

'At this point in time I didn't think of calling the police as I didn't think that these injuries had been inflicted by anybody else, as we hadn't seen anybody go near Mavis's room.'

She said that she left work at 10am having completed all of the necessary paperwork except for an injury report for Mrs Baum which she said slipped her mind. She said that later that day while at home she compiled notes of what had occurred the previous night.

- 8.6. In the witness box RN Latz was a poor witness. I noted that she paused for a very long time after questions were asked. She also spoke very quietly and had to be directed on multiple occasions to speak more clearly and more loudly. I found her to be evasive.
- 8.7. RN Latz was asked why she directed Ms Irvine and Mr Kamal to clean the room and responded that she did not know why and that '*I was in shock, I was confused*'<sup>14</sup>. RN Latz gave evidence that she completed an incident report form<sup>15</sup> in relation to Mrs Baum. Under the description of what happened she wrote:

'Found in bed with multiple ? skin breaks ? self-inflicted due to agitation.'

She was asked in the course of her evidence if she had ever in her career seen a resident with such injuries having been self-inflicted and she replied that she had not<sup>16</sup>.

- 8.8. When being cross-examined by counsel for St Basil's about her knowledge of relevant policies and procedures and her training, she responded to many questions by saying that she could not recall or could not remember<sup>17</sup>. It was suggested to her that when she first encountered Ms Setalo being violent towards her RN Latz should have taken steps to confine Ms Setalo and she responded that there was nowhere she could have confined her safely<sup>18</sup>. However she then conceded that she could have confined Ms Setalo to the nurses' station<sup>19</sup>. It was suggested to her that she had made an error in clinical judgment in not conducting an immediate check of all residents after Ms Setalo was taken away

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<sup>14</sup> Transcript, page 157

<sup>15</sup> Exhibit C25, page 13

<sup>16</sup> Transcript, page 158

<sup>17</sup> For example refer transcript, page 161-162

<sup>18</sup> Transcript, page 167

<sup>19</sup> Transcript, page 168

by the police and the ambulance and she responded that she did not know<sup>20</sup>. She conceded that she knew now at the time of giving evidence that she should have conducted such a check<sup>21</sup>.

8.9. The following passage of evidence concerned a performance appraisal that was apparently conducted by St Basil's with RN Latz in the aftermath of this incident. I set it out in full:

'Q. After these events occurred, do you recall that you had a performance appraisal within the nursing home?

A. Have a what?

Q. Do you recall having a performance appraisal conducted of yourself by the nursing home?

A. I don't recall, sorry.

Q. I want to suggest to you that after this incident in 2012, you had your yearly performance appraisal.

A. I can't recall.

Q. And I want to suggest to you that you were counselled in relation to what was deemed to be an unsatisfactory performance in relation to using your initiative and proactive follow-up in nursing processes. Do you recall that?

A. No. '

Needless to say this passage of evidence is very disturbing. On the one hand one would expect that RN Latz would remember having been counselled for an unsatisfactory performance in connection with an event such as this, even after the passage of some years since the event. It is concerning to think that she may have been reluctant to acknowledge that she was counselled at all. On the other hand, it may be that the performance appraisal process was not conducted in a manner that left any impression on RN Latz and she genuinely could not remember it. That in itself would be a cause of concern for different reasons.

8.10. RN Latz was asked why she went into the nurses' station leaving Ms Setalo to her own devices and she responded that she did not know why and that she was '*shaking*'<sup>22</sup>. However she denied that she was scared of Ms Setalo. She could offer no reason why she did not leave the nurses' station to at least keep observations on what Ms Setalo was doing<sup>23</sup>.

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<sup>20</sup> Transcript, page 170

<sup>21</sup> Transcript, page 171

<sup>22</sup> Transcript, page 181

<sup>23</sup> Transcript, page 181

- 8.11. RN Latz was asked if it was her position as at the time of giving evidence that at no time after discovering Mrs Baum did she link Ms Setalo's rampage earlier in the morning with the injuries Mrs Baum had sustained, and responded:

'No I was in shock I had never seen anything like it.'<sup>24</sup>

She also said that she did not know what to think. However she conceded that the thought that there might have been a connection between the two events did occur to her later and when asked how much later, she said '*after I send Mrs Baum off to hospital*'<sup>25</sup>. She acknowledged therefore that as early as the morning of 30 May 2012 she had that thought. She was asked if she shared those thoughts with anyone and she replied that she did not. She did not share them with the police nor with her supervisor or the Director of Nursing<sup>26</sup>. She was asked why not and she responded '*because it would have all been speculation*'<sup>27</sup>. She was asked about her suggestion that Mrs Baum had inflicted these injuries upon herself and responded:

'That was just initially because of remarks that was (sic) made and ...'<sup>28</sup>

She went on to explain that Ms Irvine had made a remark when she first came into Mrs Baum's room after having been called for help and Ms Irvine said, according to RN Latz, words to the effect '*My God Mavis, what did you do to yourself?*'.

8.12. The evidence of Lisa Irvine

Ms Irvine made a statement<sup>29</sup>. Her version of the events was that at about 2:30am on 30 May 2012 she left St Iakovos ward with the agency carer who was accompanying her on that shift to show the carer where the staff room was. The staff room was between the St Stylianos ward and the St Iakovos ward. As they entered the area between the two wards Ms Irvine could hear screaming coming from the St Stylianos ward and she recognised the voice as that of Ms Schminke. She decided to investigate and told the agency carer to go back to the St Iakovos ward while she went to investigate. She said that when she walked into the St Stylianos ward she saw Ms Setalo standing in the doorway of Ms Schminke's room holding a white plastic chain. Ms Schminke was screaming at Ms Setalo to get out and Ms Setalo was yelling

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<sup>24</sup> Transcript, page 182

<sup>25</sup> Transcript, page 182

<sup>26</sup> Transcript, pages 182-183

<sup>27</sup> Transcript, page 183

<sup>28</sup> Transcript, page 183

<sup>29</sup> Exhibit C29

also. Ms Irvine said that Ms Setalo looked very aggressive and she also saw that RN Latz, Mr Kamal and Ms Otis were in the nurses' station at the time. Ms Irvine said it was obvious that Ms Setalo was going into Ms Schminke's room while holding the chain and she could not allow that to happen so she approached Ms Setalo and took hold of her left hand. As she did that Ms Setalo pulled the other arm away and swung the chain at Ms Irvine, hitting her in the shoulder. As that happened, according to Ms Irvine, RN Latz then ran towards Ms Setalo and grabbed her from behind, pinning both of her arms to the side of her body. Mr Kamal also came and pulled the chain from Ms Setalo to prevent further injuries. Ms Irvine said that she had already been informed by RN Latz before she heard the commotion and entered the St Stylianos ward that Ms Setalo had been violent towards Ms Schminke earlier and had been '*on the warpath*' and had given Ms Schminke a black eye. She was aware that the police and ambulance had been called to deal with Ms Setalo even before she entered the St Stylianos ward to deal with the screaming. She remained until the police and the ambulance arrived and then returned to her ward to continue her duties.

- 8.13. Her next involvement was when she received a phone call from RN Latz who was '*really upset*' because something had happened to Mrs Baum and she was requesting that Ms Irvine come over to assist. Ms Irvine said that she then went to the St Stylianos ward and Mrs Baum's room to find RN Latz and Mr Kamal in the room with Mrs Baum. She said that as soon as she walked into the room she thought to herself '*Oh My God Mavis what has happened here*'. She said there was blood splattered all over the walls, on her cupboard, on the bed, '*there was just a lot of blood and it was everywhere*'. She said that RN Latz was trying to attend to the wounds and was aware that RN Latz had called for an ambulance. She said:

'I remember looking at her arms and seeing that they looked like they had been shredded and the flesh peeled off.'

She noted a big cut across the eyebrow which looked like it could have been caused by fingernails. Ms Irvine said she thought that Mrs Baum may have caused the injuries by '*scratching herself which is a common behaviour for people suffering dementia*'.

- 8.14. Thus to summarise Ms Irvine's position in relation to her involvement with the restraint of Ms Setalo: Ms Irvine said that she was aware from what she had been told previously by RN Latz that Ms Setalo was being violent and as a result RN Latz had contacted police and ambulance. Subsequent to this, Ms Irvine was taking her carer assistant to

show her where the staff room was when she heard a lot of noise coming from the St Stylianos ward. She told the carer to return to St Iakovos ward and went in to see what was going on in St Stylianos ward. She there encountered Ms Setalo in the doorway of Ms Schminke's room and noted that RN Latz, Mr Kamal and Ms Otis were in the nurses' station. At that point Ms Irvine took the initiative to restrain Ms Setalo and after that she was assisted by RN Latz and Mr Kamal who left the nurses' station to come and assist her.

- 8.15. Ms Irvine made a written note on 1 June 2012 of her recollection of the shift. The following is her recollection of when she first saw Mrs Baum in her severely injured state:

I went into her room and was shocked I said to Mavis 'what have you done'. Mavis said she didn't know, it was him. I said 'Mavis why have you done this are you in pain' and she stated 'yes'.<sup>30</sup>

That passage is notable for the reference attributed to Mrs Baum '*it was him*'. This appears to be a suggestion that her wounds were inflicted by another person and not by her.

- 8.16. Ms Irvine was asked about RN Latz's version of the events concerning the restraint of Ms Setalo. It will be recalled that RN Latz's version was that she was already in the room of Ms Schminke dealing with the situation when Ms Irvine entered the ward. This is at odds with Ms Irvine's recollection which was that when she entered the ward RN Latz, Mr Kamal and Ms Otis were all inside the nurses' station. Ms Irvine was asked about RN Latz's version of the events and she responded '*I honestly don't know what to say to that*'<sup>31</sup>. However, Ms Irvine was absolutely consistent in her version of the sequence of events<sup>32</sup>. It will be recalled that Mr Kamal's version was that he and RN Latz arrived at about the same time as Ms Irvine entered the picture. In my opinion the most reliable witness was Ms Irvine. I accept her evidence and find that she was the first to arrive at the scene of Ms Schminke's room and on her arrival RN Latz, Mr Kamal and Ms Otis were sheltering in the nurses' station. On seeing Ms Irvine

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<sup>30</sup> Exhibit C20, page 371

<sup>31</sup> Transcript, page 94

<sup>32</sup> For example, when challenged by counsel for RN Latz on her recollection of the sequence of events she gave the following response at Transcript, page 116:

A: When I entered that hallway Ute, Denise and the male carer were all in the nurses' station. I grabbed I grabbed Roza's hands, Ute came running up the hallway and grabbed her from behind wrapping her arms around her. The agency pulled the chain out of her hands and we shuffled her up to the lounge area near the nurses' station.

Q. I suggest to you that your memory of exactly of who was where is, and was by the time you wrote this statement, an unclear memory.

A. I even remember doing it now, that incident with Roza, so that's not unclear when I wrote it then, three days later.'

taking control of the situation RN Latz and Mr Kamal then went to assist her in restraining Ms Setalo. Ms Irvine stated that she had never seen a resident scratch themselves to the degree of injury she saw in Mrs Baum<sup>33</sup>. Ms Irvine also gave evidence that it was her expectation following the incident involving Ms Setalo that a check of the residents in St Stylianos ward would definitely have been conducted<sup>34</sup>. Ms Irvine gave evidence that the level of aggression she observed by Ms Setalo towards another resident was the most extreme she had seen<sup>35</sup>.

8.17. Conclusion in relation to the events involving Ms Setalo and the nursing home staff

There are differences in the accounts of the various witnesses about the timing of events and that is not surprising. As I have stated above, my inclination is to accept the version of Ms Irvine as the most reliable. Both Mr Kamal and RN Latz would have had an interest in offering a version of events that reflected better on them than Ms Irvine's version because it is clear from Ms Irvine's evidence that it was only her intervention that finally induced RN Latz and Mr Kamal to emerge from the safety of the nurses' station to apprehend Ms Setalo before she did further harm to Ms Schminke. From all of the witness accounts however, it is quite plain that Ms Setalo was acting violently and aggressively; her aggression towards another resident was greater than anything Ms Irvine had ever observed in her experience; Ms Setalo was brandishing a plastic chain and hitting people and objects with it; the chain had an ability to create a chip in the glass in the nurses' station; Ms Setalo was out of sight of RN Latz and Mr Kamal for significant amounts of time while they were in the nurses' station and before the arrival of Ms Irvine; no checks were done by RN Latz or Mr Kamal in the aftermath of Ms Setalo's rampage to ensure the safety of other residents, many of whom were helpless and bed bound.

8.18. The evidence of Dr Searcy

Dr Searcy gave evidence at the Inquest. He was the treating general practitioner of both Ms Setalo and Mrs Baum, but his evidence was mainly relevant to the fact that Ms Setalo was found after the incident to have been suffering from a urinary tract infection which may have had a connection with her extraordinary behaviour on the night of 29/30 May 2012.

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<sup>33</sup> Transcript, page 120

<sup>34</sup> Transcript, page 124

<sup>35</sup> Transcript, page 129

- 8.19. Dr Searcy gave a statement<sup>36</sup> that he was not advised by St Basil's of the need to sedate Ms Setalo on 24/25 May 2012, nor of her agitation on 20 May 2012, both of which events are evident as having occurred from St Basil's notes. Dr Searcy said that he was surprised that he was not advised of these things and that he would have expected to be asked to review her in those circumstances. He said that had he been contacted on 25 May 2012 and advised of the history of events on 20 and 24 May 2012 he is confident that he would have asked for a dipstick urine examination and urine test to be performed on her and commenced antibiotics. He would expect her to have had a very quick response to those antibiotics and the aggressive behaviour of 29 and 30 May 2012 may not then have occurred<sup>37</sup>. Dr Searcy made these observations because on 30 May 2012 a urine sample was obtained from Ms Setalo and sent for analysis. The pathology came back and indicated that she had a urinary tract infection. I accept that if urine samples had been obtained from Ms Setalo after the incidents on 24 and 25 May 2012 that are recorded in her notes, the subsequent pathology results would have indicated that she was probably suffering a urinary tract infection at that time. Undoubtedly she would have then been treated with the appropriate antibiotic which would have addressed her urinary tract infection.
- 8.20. I agree with the submission of counsel for Dr Searcy that there is a well-recognised association between the presence of urinary tract infections in persons suffering the disabilities which afflicted Ms Setalo and adverse changes in their behaviour. If the potential of the urinary tract infection issue had been appreciated and drawn to Dr Searcy's attention around 24/25 May 2012, it is likely that the events of 30 May 2012 would not have occurred. However, it is necessary to acknowledge that Dr Searcy accepted that his conclusions have been reached with the benefit of hindsight looking back on the notes and he agreed that it is not easy in a clinical setting of patients suffering from dementia for nursing home staff to identify that there may be a urinary tract infection<sup>38</sup>.
- 8.21. The evidence of Leander Rudolph  
Ms Rudolph was the Clinical Nurse Manager at St Basil's at the time of the incident. She gave evidence that she had arrived at the nursing home on the morning of 30 May 2012 to discover that RN Latz was still at work when she would have expected her to have left by then. RN Latz told her about the events of the night and at that point

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<sup>36</sup> Exhibit C27a

<sup>37</sup> Exhibit C27a

<sup>38</sup> Transcript, page 36

Ms Rudolph was told by RN Latz that there was a lot of blood on Mrs Baum's sheet and the explanation proffered by RN Latz was '*she could only think of was skin tears and I said 'Okay'*'<sup>39</sup>. Ms Rudolph said that she did not at that point draw any link between the events surrounding Mrs Baum and those surrounding Ms Setalo, which had also been reported to her<sup>40</sup>. She said that she started to draw that link later when phone calls started to come through from the Flinders Medical Centre about Mrs Baum. She said that for the staff at the FMC to call and say that these were life-threatening injuries did not tie-up with the description that she had been provided by RN Latz<sup>41</sup>.

8.22. Rebecca Balmforth was the Clinical Nurse Manager at St Basil's at the relevant time. She made a statement<sup>42</sup>. From her statement it is clear that she also had some involvement in unravelling the events of the previous night when she arrived at work at or about the same time as Ms Rudolph. Between the two of them they appear to have concluded that there was indeed a link between the events concerning Ms Setalo and Mrs Baum's injuries.

**9. How is it possible that RN Latz, Ms Irvine and Mr Kamal all thought that Mrs Baum had harmed herself?**

9.1. Between the time when Mrs Baum was taken to hospital following her discovery shortly after 5am and the arrival of the managerial staff, Ms Rudolph and Ms Balmforth later in the morning, there was ample opportunity for the three staff members to discuss the events of the previous night. Their assertions that they concluded that Mrs Baum's injuries were self-inflicted require careful consideration. They require careful consideration because the nature of the injuries is completely inconsistent with the notion that Mrs Baum inflicted them upon herself. I will not repeat the injuries as documented by Dr Langlois. It is sufficient to say that they were quite devastating. A significant amount of force was required to inflict a number of them. Mrs Baum herself was not strong. There were blood splatters up the wall. The investigating officer in this matter was Detective Sergeant Gordge. In his investigating officer's report<sup>43</sup> he said that it was of significant concern to SAPOL investigators that the initial position of the nursing home staff was that the injuries were self-inflicted. He said:

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<sup>39</sup> Transcript, page 212

<sup>40</sup> Transcript, page 212

<sup>41</sup> Transcript, page 214

<sup>42</sup> Exhibit C17

<sup>43</sup> Exhibit C15a

'Given the condition of the deceased, and the blood 'cast off' and 'spatter' that spread to a distance of 2 metres or more throughout her room, it is difficult to understand how nurse LATZ formed the opinion the deceased's injuries had been self-inflicted as opposed to being caused by another party. The statements of LATZ and staff member Lisa IRVINE ("IRVINE") describe the spread of the blood through the room. The suggestion that such 'cast off' could be as a result of someone causing their own injuries, especially a person as frail and immobile as the deceased; is difficult to rationalise. It appears that LATZ has viewed the deceased's injuries in isolation instead of considering it relative to earlier incidents involving the accused and other patients and staff<sup>44</sup>.

Concerns regarding this issue were supported by the views of medical staff at FMC along with Doctor SEARCY who was shown photos of the deceased's injuries. From an investigative perspective and having regard to the evidence and the views of medical personnel, it appeared highly unlikely there could be any suggestion of self-inflicted injuries.' <sup>45</sup>

- 9.2. I completely agree with those observations of Detective Gordge.
- 9.3. The fact of the matter is that the three staff members involved all had an opportunity to compare their stories. RN Latz and Mr Kamal had an obvious motive for diverting attention from the possibility of a connection between Mrs Baum's injuries and Ms Setalo's earlier rampaging. The motivation was to avoid criticism of their admitted failure to conduct an immediate check upon the status of all of the residents within the ward following the violent outburst they had observed and particularly given their knowledge of the fact that Ms Setalo was unsupervised and able to access bed bound residents while out of sight and while they were taking refuge in the nurses' station. Ms Irvine's part in the matter is less easy to explain, but it may be that she wished to assist RN Latz for whom she had a considerable regard as was plain from her evidence.
- 9.4. I am left with two possibilities. One is that the three nursing home witnesses agreed to suggest that the injuries were self-inflicted in the hope that nobody from the Flinders Medical Centre would make any inquiries that would disturb that theory. There was at least some chance that a busy Emergency Department may have simply treated the wounds and returned Mrs Baum to the nursing home, at least in the minds of the three nursing home staff. If the staff at the Flinders Medical Centre had accepted at face value the claims that the injuries were self-inflicted, which may have been a possibility in a busy Emergency Department in a major public hospital, particularly when police were not alerted, there was a chance that that narrative would come to be accepted.

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<sup>44</sup> The reference to the accused in this document is a reference to Ms Setalo

<sup>45</sup> Exhibit C15a, pages 9-10

9.5. On the other hand, I could reach the conclusion that a registered nurse who had limited experience as a nurse but considerable previous experience as a carer and another experienced carer in Ms Irvine and a third carer in Mr Kamal could all have observed the extremely serious injuries that I have enumerated above and that all three of them could have reached the extremely improbable conclusion that the wounds were self-inflicted. In my opinion that contention is too improbable to be accepted. I find that RN Latz, Mr Kamal and Ms Irvine deliberately represented that Mrs Baum's injuries were self-inflicted in order to avoid the consequences of the failure to conduct a bed check much earlier with the possibility that Mrs Baum's dreadful injuries might have been discovered soon after they were inflicted by Ms Setalo sometime prior to shortly after 3am when Ms Setalo was removed from the nursing home and taken to hospital by the ambulance service. I find that Mrs Baum's injuries were inflicted at some time well before 3 o'clock in the morning of 30 May 2012. She was left untreated and undiscovered for a minimum of 2¼ hours before the alert was raised at around 5:15am. Needless to say that is a deplorable state of affairs.

## 10. **The Commonwealth Aged Care Framework**

- 10.1. The legislative framework for the funding and regulation of the provision of aged care is governed by Commonwealth legislation and administered by Commonwealth agencies.
- 10.2. I decided to request submissions from the Commonwealth Government after I had heard, particularly, the evidence of RN Latz. At that stage of the Inquest I had formed a tentative view that RN Latz had failed to properly manage the situation with Ms Setalo on the night in question, had failed to properly contain Ms Setalo (a task that should not have been beyond a registered nurse accompanied by a male carer) and then had failed to carry out an obvious step, namely to see what other damage and harm had been wrought by Ms Setalo given her behaviour as witnessed by RN Latz from the nurses' station. I was also of the view that RN Latz's failure to draw a connection between Mrs Baum's condition and the earlier events of the night were a matter of the greatest concern and suggestive of a desire on her part to avoid accountability for what had occurred. Finally I was concerned that the performance management session that had evidently been carried out by St Basil's Nursing Home management with RN Latz had not had any notable impact on RN Latz who had given evidence that she had no recollection of it having even taken place. In summary, it was my tentative view that I

could not be confident that RN Latz, if faced with exactly the same situation again, would behave any differently from the way she behaved on the night in question and that as a result it seemed to me that whatever action had been taken by those responsible for regulating nursing homes in this instance had not been sufficiently effective.

- 10.3. As a result the Australian Government Solicitor appeared on behalf of the Department of Health (Commonwealth) and provided the court with a helpful summary of the legislative scheme both as it applied in 2012 and subsequently. The Department also made arrangements for Mr Peter Edson to give relevant evidence on behalf of the Department of Health. Mr Edson was the Assistant Director in the Aged Care Complaints Scheme between May and September 2012<sup>46</sup>. Mr Edson provided a witness statement in the form of an affidavit with a number of annexures detailing the Commonwealth's involvement in the aftermath of Mrs Baum's death in relation to St Basil's Nursing Home. The statutory framework was usefully summarised in a document provided by the Australian Government Solicitor entitled '*Submissions by the Commonwealth on the Aged Care Framework*'. The document was not evidentiary in nature and was not tendered in the Inquest, however it was made available to all persons having an interest in the subject matter of this Inquest and for convenience I have decided to receive it as an exhibit so that it will be publically accessible to persons having an interest in the outcome of this Inquest. I do not intend in this finding to set out in detail the legislative framework and the admission of this document will serve as a record for those interested who may wish to access it subsequently. I have therefore admitted it as Exhibit C32a for the Court's records.
- 10.4. The relevant legislative framework in place in 2012 was the Aged Care Act 1997 (Commonwealth) including principles made by the Minister under that Act. In 2012 investigatory and resolution powers relating to complaints about the provision of aged care were reposed in the Secretary of the Department of Health which was then known as the Department of Health and Ageing. I will hereafter refer to it as the 'Department'. The Secretary of the Department had statutory powers relating to compliance measures.
- 10.5. A person approved as a provider of aged care for an aged care service ('an approved provider') was eligible to receive Commonwealth subsidy in respect of approved care recipients at the service as long as the service was accredited under the Act. Approved

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<sup>46</sup> Exhibit C32, page 2

providers had certain responsibilities including in relation to the quality of care they provided, user rights for the people to whom care was provided and accountability for the care that was provided and the basic suitability of their key personnel. Failure to meet those responsibilities could lead to the imposition of sanctions affecting the providers' approval and the amount of subsidy payable to the approved provider. Clearly enough, St Basil's was the approved provider for Mrs Baum in 2012.

10.6. As I have said, in 2012 powers to investigate complaints were reposed in the Secretary of the Department. They were delegated to officers of the Aged Care Complaints Scheme (the Complaints Scheme). In 2012 there was also an accreditation system providing for quality of care principles and responsibility for granting or revoking an approved provider's accreditation proposed in the Aged Care Standards and Accreditation Agency Limited, which was a Commonwealth company ('the Accreditation body'). In 2012 the legislation included regulatory powers dealing with non-compliance and the imposition of sanctions. Sanctions could be imposed on approved providers by the Secretary where there was an immediate and severe risk to the health, safety or wellbeing of a care recipient or an approved provider had failed to rectify non-compliance following a notice of non-compliance.

10.7. Exhibit C32a helpfully sets out the changes to the Commonwealth legislation from 2012 until 2017. Significantly, the statutory processes for handling and resolving complaints have remained similar under each version of the arrangements from 2011 until 2017 except that the powers for dealing with compliance were transferred from the Secretary to an entity called the Complaints Commissioner in 2016. All versions of the complaints process enabled the Secretary of the Department or the Complaints Commissioner as the case may be to deal with issues about approved providers on their own initiative.

10.8. The evidence of Mr Edson

Mr Edson was, as at 2012, an Assistant Director in the Aged Care Complaints Scheme and worked in the Adelaide office of the Department of Health<sup>47</sup>. Mr Edson managed the intake team<sup>48</sup>. According to an email sent by Mr Edson to the Director of the Quality and Case Review branch in Canberra on 31 May 2012<sup>49</sup>, it appears that Mr Edson's

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<sup>47</sup> Transcript, page 289

<sup>48</sup> Transcript, page 291

<sup>49</sup> Transcript, page 293 and Exhibit C32, page 235

office had received a telephone call from a social worker at the Flinders Medical Centre at about 5pm on 30 May 2012 lodging a complaint regarding Mrs Baum and the complaint related to St Basil's. The email provided a comprehensive summary of the information then known to Mr Edson to his Canberra office. He explained that he would not normally raise the receipt of a complaint with someone in Canberra, but this was a case of significance involving a very serious assault. He said it was a matter which the Minister should be briefed about and it needed to be escalated to the national office level<sup>50</sup>. It is clear from Mr Edson's email that a site visit had been carried out by his office the previous night. The email set out key findings from the site visit:

1. There was an altercation on 30 May 2012 between the hours of 0200-0300 hours at the Service where Ms Rozalia Setalo (a resident at the Service) and staff which required the attendance of the police and ambulance service. The resident was swinging a plastic coated door barrier chain towards the staff which chipped the window at the nurses station. Police attended and transferred the resident to Noarlunga Hospital for appropriate assessment and treatment.
2. A nursing round at 0500 hours revealed injuries to another resident at the service, a Ms Dorothy Baum. Ms Baum is palliative at the Service. No apparent connection was made by the staff between the earlier incident and the injured resident. Wounds were observed to the resident's arms and face, later described as gouges to the resident's arms and face which were later described as more than a skin tear. The information from the DON was vague. Inquiries also disclosed that the resident/alleged victim, who is palliative, had been sighted during the night at the following times: 2200 hours, 2315 hours, 0100 hours, and again at 0500 hours when the injuries were discovered. Scheme Officers were concerned that no rounds were conducted by the Service after the initial incident between 0200-0300 hours to ensure resident safety.
3. The DON advised that she believed there was a discretion not to report under the Act, as the suspected alleged offender of the assault is under a Section 32 of the Guardianship Act and has an assessed mental incapacity.
4. Next of Kin were informed of the alleged victim's injuries and staff attended to her injuries before transferring her to the Flinders Medical Centre for treatment. Latest information indicates that whilst the injuries per se are not life threatening, the trauma of the incident in light of her palliative status may result in her death.
5. Police were still in attendance at the Service at the time the Scheme officers attended (two CIB officers, a crime scene officer and a forensic officer) and a team of officers were also in attendance at the hospital. Police advised that they had interviewed the DON and were informed that the bedding had been removed and cleaned, and some cleaning of the room in general had occurred since the assault. Some blood was observed on the bed head and in the room.

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<sup>50</sup> Transcript, page 293

6. No one had been observed entering Ms Baum's room during the night. Police will continue to interview staff and undertake forensic examination of the crime scene, including the alleged offender.
  7. Scheme officers discussed strategies to ensure on-going care of other residents with the DON as part of their initial investigation: officers were informed that they had removed all chains from across the doors, they had contacted the Southern Mental Health Team to assess the alleged offender within 12-24 hours, as well as making a referral to DBMAS. The suspected alleged offender had been returned from the Noarlunga Hospital to the Service at the time of the Scheme Officer's visit. The DON further advised that she had contacted the alleged offender's GP who had attended and reviewed the alleged offender post-return.
  8. Scheme Officers also reviewed supervision of the alleged offender and were advised that an RN and care worker would monitor closely overnight - in the event of any resistive or other behaviour problems, they would refer her back to the Noarlunga Hospital. Scheme Officers will follow this aspect of resident safety up at a second site visit on 31 May 2012.
  9. Scheme officers contacted the Assistant State Manager to discuss concerns about the supervision arrangements for the alleged offender: the ASM advised that he would contact the Service to direct that they provide one-on-one supervision of the resident overnight, which we understand has happened. We will also follow this aspect of the Service's response at the second site visit.
  10. There has been no media in attendance at the Service and no media coverage has occurred to date.<sup>51</sup>
- 10.9. Mr Edson said that a further site visit was conducted by his officers on 31 May 2012. By that stage the Complaints Scheme had identified that SAPOL were treating the matter as a murder investigation because Mrs Baum had died and that Ms Setalo was considered to be the main suspect in the matter. They had also identified that the registered nurse on duty on the night of the incident was RN Latz and that RN Latz had acknowledged that there may have been gaps in the rounds undertaken that night although she claimed that she did not have any concern for the welfare of care recipients that would have caused her to check sooner<sup>52</sup>.
- 10.10. Mr Edson said that a further unannounced site visit took place on 1 June 2012. The Complaints Scheme was understandably concerned about the arrangements made for the supervision of Ms Setalo and for her care and the need for her to be 'specialled' with one-to-one nursing.

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<sup>51</sup> Exhibit C32, pages 235-236

<sup>52</sup> Exhibit C32, page 241

- 10.11. It is apparent that by letter dated 27 August 2012<sup>53</sup> Mr Edson had sent a notice of intention to issue directions to St Basil's<sup>54</sup>. That is a document of some 12 pages setting out in detail the Department's preliminary findings. The document was of course sent to St Basil's for its response. The document indicates an appreciation by the Aged Care Complaints Scheme of the failure to isolate Ms Setalo and/or minimise the potential for further harm to be caused to other staff and residents over a period of almost 35 minutes<sup>55</sup>. The document also sets out the Department's concern that following Ms Setalo's transfer to hospital the staff did not undertake a timely nursing round to ensure that all care recipients were safe and unharmed<sup>56</sup>.
- 10.12. It is clear from Exhibit C32 and Mr Edson's evidence that he approached his job conscientiously and took the situation seriously. I have no criticism whatsoever of Mr Edson. He dealt with this matter in accordance with his legislative powers and obligations and in accordance with the Commonwealth Aged Care Framework. It was acknowledged by counsel for the Commonwealth that the Department was interested in dealing with this matter from the point of view of St Basil's rather than from the point of view of RN Latz. Counsel said that this did not mean that the Department did not identify the conduct of RN Latz as an issue, but that in resolving the complaints they were looking at the care facility itself to resolve the complaints rather than looking at it from what counsel referred to as the point of view of RN Latz. It was suggested that the appropriate agency to deal with RN Latz is the Australian Health Practitioner Regulation Agency.
- 10.13. I accept that the Department and Mr Edson complied with the Commonwealth Legislative Framework for Aged Care. My concern is not so much about the manner of the handling of the complaint by Mr Edson and by the agency, but whether the framework itself enabled the Department and Mr Edson to produce an outcome that adequately matched the seriousness of the breaches of care that had clearly taken place in this instance. Again, without implying any criticism of Mr Edson or the Department, it is my view that the Commonwealth Aged Care Framework did not produce an outcome commensurate with the seriousness of the events that had occurred. To my mind that is evident from the fact that when giving her evidence before this Court,

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<sup>53</sup> Exhibit C32, page 297

<sup>54</sup> Exhibit C32, page 285

<sup>55</sup> Exhibit C32, page 290

<sup>56</sup> Exhibit C32, page 291

RN Latz had no recollection of the 'performance appraisal' in which she had been told that her conduct on the night in question was unsatisfactory. Furthermore, when one looks at the outcome of the matter from the point of view of St Basil's, there was no major disruption to its activities or its business and that may be appropriate in the sense that the other residents of St Basil's, who had no involvement in this matter, should not have their continuity of care and their needs disrupted because of some disruption to St Basil's business brought about as a result of its handling of this matter. But it seems to me that the end result, which essentially produced some administrative changes at St Basil's which are intended to prevent a recurrence of the event, were an inadequate acknowledgement of the seriousness of the event.

## **11. Conclusion**

- 11.1. There had been a gross dereliction of proper management on the night in question. Ms Setalo should have been isolated immediately. It was unacceptable for RN Latz, an able-bodied woman, and Mr Kamal, a young and able-bodied man, to barricade themselves in the nurses' station and not immediately deal with Ms Setalo, even if that meant some risk to themselves. They were duty bound to expose themselves to that risk because failure to do so might expose far more vulnerable people to the risk of injury from Ms Setalo. That risk was not merely theoretical because Ms Setalo clearly attacked and grievously injured Mrs Baum while the latter was helpless in her bed and unable to escape. She was able to put up her left arm principally as the defensive wounds identified by Dr Langlois demonstrate, but she was utterly helpless while being lashed by the plastic chain with the metal magnets attached to its ends. It would have been those metallic and weighted ends that caused the most of the damage to Mrs Baum. Mrs Baum no doubt would have been terrified during this attack. The situation is made even worse by the fact that for at least two hours and probably longer, Mrs Baum was left bleeding. She was lying in her bed in her own blood. When she was finally discovered, she was not despatched to hospital as urgently as the situation required. Her right to a proper investigation of the circumstances of her death was then compromised by the failure of RN Latz, Ms Irvine and Mr Kamal to step up and frankly acknowledge the likely cause of her death. Instead they made things much worse by suggesting that Mrs Baum had inflicted the injuries upon herself. Mrs Baum was in no position to deny that suggestion because of her dementia and furthermore because of the sequelae of the injuries she had sustained in the attack. It was safe for RN Latz.

Ms Irvine and Mr Kamal to assume that no different version of events from the one they adopted would be forthcoming from Mrs Baum to challenge their version.

- 11.2. When I look at the matter in the way I have set out above, it seems to me to be an entirely inadequate response that those managing the nursing home at the highest level should escape any sanction, particularly when RN Latz remained employed at the nursing home for years after the events of 2012, with no guarantee that her performance on any subsequent night would be any better than it was on the night that Ms Setalo attacked Mrs Baum.
- 11.3. I am aware that in the latter part of 2017 a report was prepared on behalf of the Commonwealth Government which is known as the Carnell Report. The Report has led to further changes which have been the subject of announcements by the Commonwealth Government in the early part of 2018.
- 11.4. I can only express the hope that these changes will ensure a greater level of accountability in the senior management and the governing boards of nursing homes such as St Basil's than occurred in this case. I do not propose to recommend any particular change to the Scheme but I do intend to refer this finding to the Commonwealth Minister for Aged Care and the South Australian Minister for Health and Wellbeing to note my concern that the senior management and the governing bodies of aged care providers should be subjected to a system of personal accountability when standards of care are not met. Only by adopting a scheme in which there is some personal risk to those involved in the management of aged care providers at the highest level could the public be confident that an event such as the appalling treatment of Mrs Baum in life and then in death could not happen again.

*Key Words: Aged Care; Dementia; Assault*

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

*Seal the 17<sup>th</sup> day of May, 2018.*

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*State Coroner*