

Annexure B

Particulars

A. Mr Tareq Altaranesi

The following complaint is made about the behaviour of the Judicial Officer, Magistrate Brian Vincent Maloney, while acting in the course of his duties at Burwood Local Court on 9 January 2009.

1. Ridicule

The Judicial Officer ridiculed Mr Altaranesi, an unrepresented litigant in the court.

Particulars

- (a) His Honour ridiculed the name of Mr Altaranesi by announcing it in an exaggerated accented fashion at the commencement of proceedings.

HIS HONOUR: Mr Tareq Altaranesi. p 1.1

- (b) His Honour incited laughter at Mr Altaranesi by making public comments such as:

HIS HONOUR: You don't believe the police — then take somebody from the audience. p 4.44

HIS HONOUR: Please do. In Arabic words like "and" and "but" so he understands. p 5.20

HIS HONOUR: You can lead a horse to water can't you. p 5.38

HIS HONOUR: Phew, Cheerio, I'll put that down for four hours. That'll go forever and ever. p 7.7

- (c) His Honour embarrassed Mr Altaranesi by asking him a procedural question which demanded a response in a manner which may have been demeaning to Mr Altaranesi.

HIS HONOUR: Do you know what can happen if we have a hearing? p 2.8

ALTARANESI: Yes I know sir. p 2.11

HIS HONOUR: What happens — you tell me? p 2.13

2. Bullying

The Judicial Officer bullied and belittled Mr Altaranesi in an attempt to pressure him to give an undertaking rather than have a hearing in his matter.

Particulars

- (a) His Honour publicly speculated about the personal adverse consequences at Mr Altaranesi's work to frighten or deter him from having a hearing.

The passage commencing: HIS HONOUR: All right. People talk don't they ... But in the workplace, particularly a hospital - chatter, chatter, chatter, chatter, p 2.26 continuing through to ... tongues start to wag at work "Guess what happened to Tareq? You wouldn't believe it", by the time it gets to the tenth person it's changed. p 3.

- (b) His Honour publicly speculated about the personal adverse experiences and outcome of a hearing to frighten or deter him from having a hearing.

HIS HONOUR: When you get in the witness box it's like open heart surgery. They cut you open — pull you open like some Portuguese chicken and mess with your bits. p 3

HIS HONOUR: ... the last thing you want is an order from the court to help your employer give you the sack. p 5.1

- (c) His Honour repeatedly frustrated Mr Altaranesi's desire for a hearing date to pressure him to give an undertaking.

HIS HONOUR: You don't need to tell me anything — all you need to tell me as a gentleman — that you're going to let this lady live her life. All right. Order dismissed. p 3.25

HIS HONOUR: But you've got an undertaking — you're giving me an undertaking aren't you? p 3.41

ALTARANESI: Yes but — p 3.41

HIS HONOUR: You've given me your word. Thank you. That's all I need. p 3.43

INTERPRETER: I insist on a hearing. p 4.21

HIS HONOUR: No you're not getting one.

ALTARANESI: Yes sir.

HIS HONOUR: No, no, no it's a silly thing to do. Just give me your word that you'll leave Gisela alone. That's all I want — just your word. Before God you say "Look I promise". That's all I want.

ALTARANESI: OK. Give me a chance to listen to hear from me.

HIS HONOUR: I don't need to have a hearing — I've got all these people waiting. p 4.33

ALTARANESI: But I not withdraw my hearing ...I ...my appeal my appeal .. I not withdraw myself. p 5.12

HIS HONOUR: Your reputation is now intact. You've saved your own personal dignity. p 5.15

(d) His Honour continually spoke over Mr Altaranesi or did not allow him to speak.

ALTARANESI: It looks the other way ... p 2.19

HIS HONOUR: Wait a minute ... p 2.20

ALTARANESI: Can I have some commencement I tell you, sir. Can I say something? p 3.22

HIS HONOUR: You don't need to tell me anything. p 3.25

HIS HONOUR: But you've got an undertaking — you're given me an undertaking aren't you? p 3.38

ALRATANESI: Yes but — p 3.41

HIS HONOUR: You've given me your word. Thank you. That's all I need. p 3.43

ALTARANESI: OK. Give me a chance to listen to hear from me. p 4.31

HIS HONOUR: I don't need to have a hearing — I've got all these people waiting. p 4.35

ALTARANESI: No just two minutes please ... p 4.36

HIS HONOUR: No not even that. p 4.38

ALTARANESI: Your Honour can I say something — look sir I'm just a victim here ... p 6.1

HIS HONOUR: I don't know if she did. p 6.4

- (e) His Honour used ridicule to embarrass Mr Altaranesi and pressure him to accept an undertaking.

See Transcript references at A1(b) above.

3. Denial of Natural Justice

The Judicial Officer attempted to deny natural justice to the unrepresented litigant, Mr Altaranesi.

Particulars

- (a) His Honour refused or ignored a number of requests by Mr Altaranesi for a hearing.

See transcript references at A2(c) above

- (b) His Honour continually talked over Mr Altaranesi.

See transcript references at A2(d) above.

- (c) His Honour purported to provide disinterested legal advice to an unrepresented litigant which was contrary to the expressed wishes of Mr Altaranesi.

The passage commencing: HIS HONOUR: All right. People talk don't they ... But in the workplace, particularly a hospital — chatter, chatter, chatter, chatter, chatter, p 2 continuing through to, There's a way of resolving this. See let's just say the worst case scenario for you — you lose ... tongues start to wag at work "Guess what happened to Tareq you wouldn't believe it" ... by the time it gets to the tenth person it's changed. p 3.

HIS HONOUR: When you get in the witness box it's like open heart surgery. They cut you open — pull you open like some Portuguese chicken and mess with your bits. p 3

INTERPRETER: I insist on a hearing.

HIS HONOUR: No you're not getting one.

ALTARANESI: Yes sir ...

HIS HONOUR: No no, no it's a silly thing to do. Just give me your word that you'll leave Gisela alone. That's all I want — just your word. Before God you say "Look I promise;. That's all I want." p 4.5

HIS HONOUR: The last thing you want is an order from the court to help your employer give you the sack. p 5.1.

B. Mr Oliver Banovec

The following complaint is made about the behaviour of the Judicial Officer while acting in the course of his duties at the Downing Centre Local Court on 17 September 2008.

1. Denial of Natural Justice

The Judicial Officer attempted to deny natural justice to the unrepresented litigant, Mr Banovec.

Particulars

- (a) His Honour refused an adjournment application without properly hearing from Mr Banovec.

Passage commencing HIS HONOUR: Why do you want an adjournment? p 5.28 continuing until p 7.25.

Passage commencing DEFENDANT BANOVEC: But your Honour I would need to be able to be given a proper opportunity to respond to Mr Hodge's affidavit. p 11.06 continuing

DEFENDANT BANOVEC: Your Honour without — I must tell you again that I have not been given the opportunity to properly respond ... I have not been able to prepare any submissions. p 12.25 continuing

DEFENDANT BANOVEC: Your Honour I'm not in a position to make any submissions if your Honour is minded to proceed today. p 13.01 continuing

DEFENDANT BANOVEC: That is entirely correct your Honour but I should still be given . p 13.31 continuing

DEFENDANT BANOVEC: Your Honour all these things you mentioned are valid points. p 15.39

HIS HONOUR: Thank you. p 15.42

DEFENDANT BANOVEC: But your Honour therefore you should allow me the opportunity to prepare proper submissions which I have not had. p 15.44

HIS HONOUR: I can't see, at all, no matter who you brought along, who appeared for you, even if it was Chester Porter himself

out of retirement, could get you over the hurdles that you've got. There aren't hurdles. This is like pole vaulting from a standing start. You will not get over this. No way. p 15.47

DEFENDANT BANOVEC: Your Honour I have nothing further to say except ...

HIS HONOUR: Well I've said what I've said ... Both the subpoenas [sic] are set aside. p 15.39–16.15

(b) His Honour continually talked over Mr Banovec.

Paragraph commencing DEFENDANT BANOVEC: "your Honour may I just ..." p 10.25

Passage commencing DEFENDANT BANOVEC: "But your Honour I would need to be given a ..." p 11.06

Passage commencing DEFENDANT BANOVEC: "No your Honour it hasn't ..." p 11.24

Passage commencing DEFENDANT BANOVEC: Your Honour if I may ... p 11.29

Passage commencing DEFENDANT BANOVEC: Your Honour without ... p 12.23

Passage commencing DEFENDANT BANOVEC: Your Honour I'm not in a position. p 13.01 — continuing to

HIS HONOUR: But have you ... p 13.20

DEFENDANT BANOVEC: That is entirely correct your Honour but I should still be given ... p 13.31 continuing

DEFENDANT BANOVEC: You see your Honour all these ... p 14.46

DEFENDANT BANOVEC: I agree with your Honour that ... p 15.5

DEFENDANT BANOVEC: Hear your Honour but ... p 15.21

DEFENDANT BANOVEC: Your Honour ...I. p 15.34

- (c) His Honour dispensed with the rules relating to the service of a notice of motion to set aside a subpoena without properly hearing from Mr Banovec (Clause 47 *Local Court (Criminal and Applications Procedure) Rules 2003*)

HIS HONOUR: I haven't got it, I haven't got the motion. p 5.19

DAWSON: The intention was that we'd file that in court and file the affidavit in court once we got here. p 5.21

HIS HONOUR: Give me your motion. p 8.17

DAWSON: I'll file in court with your Honour's leave a notice of motion ... p 8.19

Passage commencing DEFENDANT BANOVEC: But your Honour I would need to be able to given a proper opportunity to respond to Mr Hodge's affidavit ... p 11.06

See also passages at p 7.30, p 8.05–8.15.

- (d) His Honour set aside subpoenae issued by Mr Banovec without hearing from Mr Banovec on the conclusions which the Judicial Officer adopted concerning the subpoenae, namely:

- they were issued for a collateral purpose

Passage commencing at p 13.35–p 14.11

Passage commencing p 16.5

- they had a paucity of particulars

Passage commencing p 15.5

- they were a fishing expedition

Passage commencing p 16.5

- they had no legitimate forensic purpose and were an abuse of process

Passage commencing p 13.45

Passage commencing p 15.25

Passage commencing p 16.5

- (e) His Honour granted a significant costs order against Mr Banovec without hearing from Mr Banovec.

Passage commencing: DAWSON: As your Honour pleases ...
p 16.17 continuing to HIS HONOUR: While I sit here for the whole day yeah all right \$7,500 plus GST. p 17.25

- (f) His Honour made a significant costs order without inquiring as to how quantum was arrived at.

Passage commencing: DAWSON: As your Honour pleases ...
p 16.17 continuing to HIS HONOUR: While I sit here for the whole day yeah all right 7,500 plus GST. p 17.25.

2. Inappropriate conduct

The Judicial Officer refused the adjournment application of Mr Banovec in an inappropriately humorous and loquacious manner, not befitting of legal proceedings.

Particulars

Passage commencing HIS HONOUR: The Stadium's been booked, the pies, sausage rolls, fizzy drinks ... p 7.05 continuing HIS HONOUR: They're on the plane yesterday at 4 o'clock. They're having breakfast ... through to p 7.25.

C. Wallace/Kiloh Centre particulars

The following complaints are made about the behaviour of the Judicial Officer, Brian Vincent Maloney in the course of his duties whilst conducting

Mental Health Inquiries at the Kiloh Centre, Prince of Wales Hospital on 23 December 2009.

1. Inadequate attention to judicial function

1A. The magistrate failed to give adequate attention to the substance of his function in the mental health inquiry in relation to the patient RI.

Particulars:

- i. The magistrate failed to comply with the provisions of the *Mental Health Act*
- ii. The magistrate did not ask the patient at the beginning of the inquiry if she had been given a written statement of her legal rights and other entitlements, s 34 and Sch 2, s 2 of the *Mental Health Act 2007*
- iii. The magistrate did not ask if the patient had been informed of the duty imposed under s 76 on the authorised medical officer relating to the giving notice of the inquiry to her and her primary carer, s 76 and Sch 2, s 2 of the *Mental Health Act 2007*
- iv. The magistrate did not inquire as to the administration of any medication to the patient or assess the effect of the administration of the medication on the assessable person's ability to communicate, s 35(2)(a)(c) of the *Mental Health Act 2007*
- v. The magistrate did not give proper consideration to the reports and recommendations of the authorised medical officer and other medical practitioners who examined the patient under s 27 after the person's detention, s 35(2)(a) of the *Mental Health Act 2007*
- vi. The magistrate discharged the patient without:
 1. making a determination as to whether the patient was or was not a mentally ill or a mentally disordered person, s 35(1);

2. inquiring if the discharge was in the best interests of the patient or if the discharge order should have been deferred [to provide the patient with assistance and treatment] for a period not exceeding 14 days, s 35(4);
3. inquiring as to whether available "gazetted" or "declared" mental health facilities could be used for any further detention of the patient;
4. inquiring about the possible consequences of the discharge to the patient's own protection from serious harm;
5. considering the impact of the discharge on any likely deterioration of the patient's condition, and the likely effects of any such deterioration;
6. inquiring as to the possible consequences of the release of the patient on the protection of others, in particular her son, from serious harm;
7. inquiring if care of a less restrictive kind than detention was appropriate and reasonably available for the patient, such as discharging the patient into the care of her primary carer or making a Community Treatment Order, and considering the necessity or desirability of such care for the treatment of the patient, s 35(5).

1B. In relation to the patient RI, the magistrate failed to observe the suggested procedure for conducting a Mental Health Inquiry as described in the Judicial Commission *Local Court Bench Book* without justification.

Particulars

- i. The Bench Book suggests the following format for conducting an inquiry.
 1. Introduce yourself as a magistrate, and advise those present of the purpose of the inquiry.
 2. Ask the legal aid lawyer if he or she has had the opportunity to speak to the assessable person.
 3. At the beginning of the inquiry, ascertain what order is sought (usually an adjournment for two weeks, an order that the person remain as a

temporary assessable person for a number of weeks, or a community treatment order) and ask the solicitor if the assessable person consents to that order. Often there is consent at this late stage, and the evidence is required to be called and be abbreviated.

4. If the suggested order or adjournment is opposed, announce the procedure to be adopted in the inquiry.

(a) the presenting doctor is asked to give his or her evidence as to a diagnosis, the assessable person's current and future treatment, and the doctor's assessment of the least restrictive treatment regime available and appropriate [word missing]?

(b) the solicitor will be invited to ask the doctor questions

(c) the primary carer can ask questions or make statements

(d) other witnesses (such as a social worker), may be called and examined

(e) the assessable person may wish to personally ask the doctor questions, or address the inquiry, and it is important to offer an opportunity for the assessable person to make a contribution — this can often be a telling factor in the final decision, and

(f) after all the evidence, the solicitor is given an opportunity to make submissions and if appropriate, the doctor may be given the opportunity to make a final comment.

1C. The magistrate failed to ensure that the proceedings on 23 December 2009 were recorded as required by s 8 of Schedule 2 of the *Mental Health Act 2007* and as noted in the Bench Book.

Particulars

The magistrate conducted hearings on 23 December 2009 without using any audio recording equipment or recording device.

2. Inappropriate and loquacious questions and comments

The magistrate engaged in inappropriate and loquacious questions and comments during the course of the Mental Health Inquiries.

Particulars

2A. During the Mental Health Inquiry for the patient KB, the magistrate made the following remarks to expert witness Dr Alison Bautovich:

- i. The magistrate asked questions about her pregnancy using words to the effect of “how pregnant are you?” and “how many weeks have you got to go” and “when are you due” and “is this your first?”
- ii. The magistrate used words to the effect of “my second wife is pregnant”
- iii. The magistrate used words to the effect of “would you stand up and show us that you’re pregnant”
- iv. The magistrate repeated the request using words to the effect of “stand up and show us you’re pregnant: or “stand up and show everyone”
- v. The magistrate again repeated the request using words to the effect of “go on” or “go on, stand up”.
- vi. After Dr Bautovich stood up, the magistrate used words to the effect of “stand side-on so we can see how pregnant you are”.
- vii. After Dr Bautovich stood up, the magistrate commented on the appearance of Dr Bautovich using words to the effect of “my wife is bigger than you” or “you are bigger than my wife”.
- viii. The magistrate spoke about his wife’s pregnancy using words to the effect of “its my second wife” and
- ix. The magistrate asked Dr Bautovich words to the effect of “are you going to antenatal classes?”

- x. The magistrate made comments using words to the effect of “ante natal classes are a waste of time”.
 - xi. The magistrate addressed remarks about the pain of childbirth to Dr Bautovich.
- 2B. During the Mental Health Inquiry for the patient, EM, the magistrate made the following remarks to the patient:
- i. The magistrate said words to the effect of “If I was an inpatient here I would get depressed too”
 - ii. The magistrate said words to the effect of “where do you live?”
 - iii. After being informed where the patient lived the magistrate said words to the effect of “why do you live there?”
 - iv. After being informed the patient lived where her husband had lived the magistrate said words to the effect of “did your husband get you to move across the bridge?”
 - v. The magistrate said words to the effect of “What school do your daughters go to?”
 - vi. The magistrate said words to the effect of “How many daughters do you have?”
 - vii. The magistrate said words to the effect of “How do you manage to afford that school?”
 - viii. The magistrate said words to the effect of “How old is your husband?”
 - ix. After discovering the patient had been employed as an antique restorer, the magistrate said words to the effect of “You could restore your husband”.
 - x. The magistrate asked the patient questions about her previous relationships with men.

2C. During the Mental Health Inquiry for the patient, ZZ the magistrate made the following remarks to the patient:

- i. The magistrate said words to the effect of "My wife is pregnant".
- ii. The magistrate said words to the effect of "You'll be let out in 7 days".

2D. In the course of Mental Health Inquiries, and in the presence of patients, the magistrate made the following remarks:

- i. The magistrate said words to the effect of "my wife is having a baby any day now".
- ii. The magistrate said words to the effect of "the hospital can't even afford good sandwiches".
- iii. The magistrate said to HASS officers Nick Condos and Lennox Miller words to the effect of "You two are big boys".
- iv. The magistrate said to HASS officers Nick Condos and Lennox Miller words to the effect of "You would need special uniforms to fit you".

3. Abuse of judicial power

3A. The magistrate abused his judicial power by requesting an expert witness, Dr Alison Bautovich, to stand up during a Mental Health Inquiry.

Particulars

- i. The magistrate used words to the effect of "would you stand up and show us that you're pregnant".
- ii. The magistrate repeated the request using words to the effect of "stand up and show us you're pregnant" or "stand up and show everyone"
- iii. The magistrate again repeated the request using words to the effect of "go on" or "go on, stand up:

- 3B. The magistrate abused his judicial power by requesting that Dr Bautovich move whilst she was standing so as to display herself and her pregnancy to the magistrate during a Mental Health Inquiry,

Particulars

The magistrate used words to the effect of "stand side-on so we can see how pregnant you are".

- 3C. The magistrate abused his judicial power by making comments about the appearance of Dr Bautovich after he had requested her to stand during a Mental Health Inquiry on 23 December 2009.

Particulars

The magistrate used words to the effect of "my wife is bigger than you".

- 3D. The magistrate abused his judicial power by making an inappropriate and sexualised gesture to Dr Bautovich.

Particulars

In the context of discussion about the pain of childbirth and the efficacy of antenatal classes, the magistrate raised both hands to his mouth with each of his index fingers extended but hooked. He put one finger on each of the inside corners of his mouth.

- 3E. The magistrate abused his judicial power by making comments, gestures and requests of Dr Bautovich, in relation to her pregnancy, which may have been demeaning to her.

Particulars

See all of the Particulars for (3) above.

- 3F. The magistrate abused his judicial power by making comments suggesting the HASS officers were overweight and ridiculing the officers about their weight.

Particulars

- i. The magistrate said to HASS officers Nick Condos and Lennox Miller words to the effect of "You two are big boys".
- ii. The magistrate said to HASS officers Nick Condos and Lennox Miller words to the effect of "You would need special uniforms to fit you".

4. Failure to behave judicially

The magistrate failed to conduct the Mental Health hearings at the Kiloh Centre on 23 December 2009 in a manner consistent with his obligations as a judicial officer allocated to that task and with the interests of the patients brought before him.

Particulars

See all of the Particulars above.

5. The magistrate inappropriately introduced matters personal to the magistrate into the Mental Health Inquiries

Particulars

5A During the Mental Health Inquiry for the patient KB:

- i. The magistrate used words to the effect of "my second wife is pregnant: and its my second wife: and "I have kids from a second marriage" and "now this wife wants to go to antenatal classes".
- ii. The magistrate asked Dr Bautovich words to the effect of "are you going to antenatal classes?"
- iii. The magistrate made comments to Dr Bautovich using words to the effect of "antenatal classes are a waste of time".
- iv. The magistrate addressed remarks about the pain of childbirth to Dr Bautovich.

- v. During the Mental Health Inquiry for the patient, EM, the magistrate said words to the effect of “If I was an inpatient here I would get depressed too”.
 - vi. During the Mental Health Inquiry for the patient, ZZ, the magistrate said words to the effect of “My wife is pregnant”.
6. The magistrate engaged in inappropriate comments and conduct with respect to the two Health and Security Systems Officers (“HASS officers”) at the Kiloh Centre who were present at the Mental Health Inquiries.

Particulars

- i. The magistrate made comments suggesting the HASS officers were overweight including words to the effect of “You two are big boys”.
 - ii. The magistrate made comments of ridicule concerning the large amount of material that would have been required to make uniforms for the HASS officers using words to the effect of “You would need special uniforms to fit you”.
 - iii. The magistrate patted, rubbed or touched the stomach of HASS officer Nick Condos at the conclusion of the Mental Health Inquiries at the Kiloh Centre.
7. Breach of undertaking — see [207].

D. Extension of the Dr Wallace/Kiloh Centre complaint

Pursuant to s 31(1) of the *Judicial Officers Act*, the Dr Wallace complaint is extended to incorporate the following matters

- 1. On or around 25 February 2002, in the course of attending a seminar held at the Judicial Commission offices at George St, Sydney, the magistrate drew to the attention of Ms Ruth Windeler, the Education

Officer of the Judicial Commission an image on his laptop computer of a naked woman on a beach.

Particulars

- A. The magistrate used words to the effect of "Hey Ruth what do you think of the Canadian on my screen saver".
 - B. Ruth Windeler was known to the magistrate to have a Canadian background.
 - C. The image was on the screen of a laptop computer which had been allocated to the magistrate by (the then) Attorney-General's Department.
 - D. The image filled the screen of the laptop computer.
 - E. The dominant image in the picture was a naked woman on the beach. The depicted woman had her back towards the camera and the length of the back part of her body was clearly displayed. The woman had no apparent clothing. The naked buttocks of the woman were clearly visible. The woman was of Caucasian appearance with light hair. There was sand and sea in the picture.
2. On or around 25 February 2002, in the course of participating in a training seminar held at the Judicial Commission offices at George St, Sydney, the magistrate drew to the attention of Ms Joy Blunt, the Senior Systems Officer of the Judicial Commission, an image on his laptop computer of a naked woman on a beach.
- A. The magistrate used words to the effect of "what do you think of my wallpaper?"
 - B. The image was on the screen of a laptop computer which had been allocated to the magistrate by (the then) Attorney-General's Department.
 - C. The image filled the screen of the laptop computer.
 - D. The image consisted of a picture of a woman lying down on her left side on sand at a beach. The photograph was taken from behind the woman and depicted the entire back length of her body. The photograph was

taken at the same height as the woman and from approximately two metres away. The woman's knees were slightly bent and she was looking over her shoulder so that it was possible to see part of her face. She had long blond hair. The woman appeared to be completely naked and her bare bottom was clearly visible. The front part of the woman, apart from her face, was not visible.

3. At the request of the Judicial Commission, the matters set out in paragraphs (1) and (2) were brought to the attention of the magistrate by the then Chief Magistrate of the Local Court, now the Honourable Justice Derek Price, on 28 October 2003. Justice Price advised the magistrate that the Judicial Commission regarded the matters as serious and that regard would be had to the matters if there was any future complaint of similar behaviour.
4. On 23 December 2009 the magistrate engaged in similar behaviour when he made requests of, gestures towards, and comments to Dr Alison Bauotovich, an expert witness, in the course of a Mental Health Inquiry at the Kiloh Centre, Prince of Wales Hospital as particularised in paragraphs 2A and 3A to 3E of the Dr Wallace complaint.