Coroners Act, 1996
[Section 26(1)]

Western ***Australia***

RECORD OF INVESTIGATION INTO DEATH

Ref No: 15/2014

I, Rosalinda Vincenza Clorinda FOGLIANI, State Coroner, having investigated the death of ***Tamar Jemima Sabbath STITT****, with an Inquest held at Perth Coroners Court, Court 51, CLC Building, 501 Hay Street Perth on 5 to 9 May 2014 and on 15 May 2014, find that the identity of the deceased person was* ***Tamar Jemima Sabbath STITT*** *and that death occurred on 12 November 2009 at Hospital de Ninos Benjamin Bloom in San Salvador, El Salvador as a result of septic shock and multiple organ failure as complications of advanced metastatic hepatoblastoma in the following circumstances -*

Counsel Appearing :

Ms K Ellson assisting the State Coroner
Mr G Bourhill of Tottle Partners (instructed by MDA) on behalf of Dr Nuttall
Ms C Thatcher (with Ms C Conley of State Solicitors Office) on behalf of Princess Margaret Hospital
Mr S Freitag and Mr P Urquhart (instructed by Legal Aid) on behalf of Mrs Stitt

SUPPRESSION ORDER

The evidence given in Court of Mr Trevor Stitt and Mrs Arely Stitt concerning the departure to El Salvador in September 2009 of any family members.

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INTRODUCTION

Tamar Jemima Sabbath Stitt (Tamar) was born in Perth Western Australia on 8 May 1999 to Trevor and Arely Stitt. Tamar died in a hospital in El Salvador on 12 November 2009 as a result of septic shock and multiple organ failure as complications of advanced metastatic hepatoblastoma, which is a cancer.

Tamar's suspected death was brought to the attention of the State Coroner by a letter dated 12 May 2010 from the Executive Director of Medical Health Services at Princess Margaret Hospital (PMH) reporting her unconfirmed death in El Salvador in November 2009. Subsequent investigations resulted in Tamar's father confirming, in September 2010, that Tamar died in El Salvador on 12 November 2009.

Tamar's death was a "*Western Australian death*" within the meaning of section 3 of the *Coroners Act 1996* (the Coroners

Act) because Tamar was a person who was ordinarily residing in Western Australia at the time of death. Her death was a "*reportable death*" under the same provision because it appeared to have been unexpected or to have resulted, directly or indirectly, from injury within the meaning of sub paragraph (c) of that definition. Further, there did not appear to be a certification of Tamar's cause of death in the form and manner required under sub paragraph (j) of that definition.

Under section 19(1) of the Coroners Act I have jurisdiction to investigate Tamar's death and under section 22(2) of the Coroners Act I held an inquest to investigate her death at the Perth Coroners Court on dates between 5 and 15 May 2014.

The issues considered at the inquest were the ascertainment of the cause and manner of Tamar's death, the role of her parents in refusing to allow her to be treated with chemotherapy by PMH, the role of the medical practitioners and the alternative health practitioner, and whether Tamar's death from her cancer could have been prevented had she had the chemotherapy and the surgical treatment as recommended by PMH.

The documentary evidence adduced at the inquest comprised the brief of evidence in two volumes[1], eight discs relating to footage taken by Channel Seven and labelled "Sunday Night, Seven Network"[2], the PMH and KEMH Clinical Ethics Service Terms of Reference[3], further statements, information and correspondence[4], a DVD entitled "Healing Cancer", also referred to as TMS4 in Mr Stitt's statement[5] and the Australian Medical Council Limited's Good Medical Practice: Code of Conduct for Doctors in Australia.[6]

A number of witnesses gave oral evidence at the inquest and they comprised Sergeant Powell previously of the coronial investigation unit, Dr Alastair Nuttall of The Burgess Street Clinic, Ms Rhani Sadler reporter with the Channel Seven Sunday Night program and previously US correspondent for the Seven Network, Professor Stewart Kellie clinical professor at the University of Sydney and paediatric oncologist and neuro-oncologist of the Department of Oncology at The Children's Hospital at Westmead in Sydney, Mr Nick Dale naturopath and iridologist, Dr Angela Alessandri consultant paediatric and adolescent clinical haematologist and oncologist at the Department of Haematology and Oncology at PMH and treating oncologist,

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[1] Exhibit 1 Brief of Evidence Volume 1, Exhibit 2 Brief of Evidence Volume 2
[2] Exhibits 3 to 10
[3] Exhibit 11
[4] Exhibits 12-15
[5] Exhibit 16
[6] Exhibit 17

Dr Jodi White forensic pathologist, Dr Cesar Sofocado of the Wishing Well Clinic Dalyelup and treating doctor, Mr Trevor Stitt and Mrs Arely Stitt, Tamar's parents.

Following the inquest written submissions were submitted to me by senior counsel assisting, by the State Solicitor for Western Australia on behalf of PMH, by Mr Bourhill on behalf of Dr Nuttall, by Mr Urquhart of counsel on behalf of Mrs Stitt and by Mr Stitt, on dates between 6 and 23 June 2014.

1. EARLY INDICATIONS OF TAMAR'S ILLNESS

In about June of 2009 when Tamar was 10 years old she began to experience right shoulder tip pain.[7] Initially Tamar's parents, Mr and Mrs Stitt, took her to a doctor who told them she might have done some exercises at school that had hurt her shoulder. It was thought it might be a sporting injury. This doctor ordered an ultrasound test but, as Tamar's pain subsequently subsided, her parents did not pursue that medical testing.

2. ROLE OF MR NICK DALE, NATUROPATH AND IRIDOLOGIST

On 19 June 2009 Mr and Mrs Stitt took Tamar to see Mr Nick Dale, a naturopath and iridologist. They had

[7] t331 and t 15 May 2014

known him for about five or six years, as a result of previous consultations.[8]

At the consultation on 19 June 2009 Mr and Mrs Stitt wanted an opinion from Mr Dale regarding Tamar's right sided neck and upper chest/lung pain. Tamar was experiencing pain particularly on raising her right arm up.[9]

During that consultation, Mr Dale performed iridology on Tamar, a process of looking in a person's eyes to identify certain conditions. Mr Dale recommended homeopathic remedies to help with Tamar's pain and discomfort. Mr Dale did not discuss the possible sources of Tamar's pain with her parents. From discussion with Mr and Mrs Stitt, Mr Dale had understood that they were going to see a doctor or a specialist in order to get the source of the Tamar's pain diagnosed. It is not clear who the doctor or specialist was that they were referring to at that time.[10]

Mr and Mrs Stitt had no further contact with Mr Dale until a later unspecified date, after Tamar's cancer diagnosis, when Mr Dale received a call from Mr Stitt and the family came around to see him immediately, bringing Tamar. A visibly distressed Mr Stitt came in first to tell Mr Dale that Tamar had been diagnosed with liver cancer. Mr Dale did not carry out a consultation on Tamar on this second

[8] t166
[9] t167 and Thursday 15 May 2014 t8 and Exhibit 1 Tab 11
[10] t167 to t168 and Exhibit 1 Tab 11

occasion. He recommended a herbal remedy, but not for the purpose of treating her illness.

In discussions with Mr Stitt concerning Tamar's illness after her cancer diagnosis, Mr Dale told him it is illegal for naturopaths to treat cancer patients and recommended that he work with Tamar's doctor. Mr Dale indicated to him that there were supportive natural therapies that could be used to assist Tamar, but not to treat her cancer. He did not carry out any further consultations on Tamar.

On the subject of his advice after Tamar's cancer diagnosis, Mr Dale told Mr Stitt that if chemotherapy was to be administered, they should concentrate on that and not try to mix it with natural therapies. At one point Mr Stitt informed Mr Dale that a book had been written about someone in El Salvador using a treatment method with clay that could get rid of cancer, and that they were considering this avenue for the treatment of Tamar's cancer. Mr Dale had never heard of such a book and he gave no advice to Mr Stitt about this proposed course.[11]

Later, on about 19 August 2009, Tamar's treating oncologist, Dr Alessandri, contacted Mr Dale to ascertain what remedies he had given Tamar, to endeavour to understand their purpose and/or effect. Mr Dale described the various remedies to her. From his perspective their

[11] t168-t171 and t330 and Exhibit 1 Tab 11

purpose was to help with Tamar's immune system prior to any further treatment such as chemotherapy.[12]

Dr Alessandri's subsequent investigations of the remedies that Mr Dale recommended suggested that whilst all of those preparations had claims of benefit for a vast range of conditions from minor to major ones, there was no evidence in the medical literature that they would have any bearing on the outcome of childhood cancers as a whole nor in relation to hepatoblastoma. However, from her own investigations, she did not consider them to be particularly toxic.[13]

I am satisfied that Mr Dale's initial consultation with Tamar on 19 June 2009 was undertaken in the context of him being advised that Mr and Mrs Stitt were going to have the source of her pain diagnosed by a doctor. Pain in children, particularly when ongoing can be a manifestation of a serious condition. In this case the complexities of Tamar's condition required medical testing for diagnosis, a matter I shall come to later in this Finding.

For the purposes of Mr Dale's role, I am satisfied that he did not purport to provide a diagnosis in connection with Tamar's illness nor did he give Mr and Mrs Stitt advice about whether or not to allow Tamar to be commenced on

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[12] t173
[13] t204-t205

chemotherapy, save that he recommended, properly, that they work with Tamar's doctor. The homeopathic or herbal remedies he gave or recommended were not expressed by him to be for the purposes of treating Tamar's underlying illness or, once it was diagnosed, her cancer.

I am also satisfied that Mr Dale neither encouraged nor supported Mr and Mrs Stitt in their plans to have Tamar's cancer treated by natural remedies, be it red clay or otherwise.

3. THE ROLE OF DR SOFOCADO, TREATING DOCTOR

On 30 July 2009, nearly six weeks after the first visit to Mr Dale, Mrs Stitt took Tamar to the Wishing Well Clinic in Dalyellup and she was seen by Dr Cesar Sofocado. Mr Stitt was not present at this consultation.

At this stage Tamar was complaining of several weeks of right shoulder pain with no history of trauma or injury. She also complained of right abdominal pain. Mrs Stitt had noticed that Tamar did not want to eat her food.[14]

Upon examination Dr Sofocado noted that there was tenderness on the right upper quadrant of Tamar's abdomen, in the region of her liver. Dr Sofocado ordered medical tests for Tamar including blood tests for liver

[14] Thursday 15 May 2014 t8

function. He also advised Mrs Stitt to take Tamar directly to hospital if the pain worsened; otherwise she was to return for review.[15]

Dr Sofocado reviewed Tamar on 3 August 2009, when the blood test results were available. The blood tests showed abnormal liver function and Dr Sofocado ordered an urgent abdominal ultrasound and further blood tests to exclude liver infection. Mr Stitt, having been aware that that Dr Sofocado had ordered blood tests, was present at the consultation on 3 August 2009 for the result. [16]

Dr Sofocado reviewed Tamar again on 5 August 2009 when the results of the ultrasound were available. By this stage Tamar was complaining of chronic right shoulder pain. Mrs Stitt was present. The ultrasound of Tamar's abdomen revealed a large heterogenous solid mass in the right lobe of the liver.[17]

Dr Sofocado prepared an immediate referral for Tamar to PMH and spoke to the ED Consultant. Mrs Stitt proceeded to take Tamar to PMH Emergency Department, arriving there on that same day, stating in her evidence "Well, if you know that your daughter is sick, you will do, you know, anything".[18]

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[15] Exhibit 1 Tab 7
[16] t333 and Exhibit 1 Tab 15
[17] Exhibit 1 Tab 15 and Tab 16 p1, ultrasound report dated 4 August 2009
[18] Thursday 15 May 2014 t9 and Exhibit 2 Tab 2

Mr Stitt received a call from his wife when he was working an evening shift in St John of God Hospital in Murdoch informing him that Dr Sofocado wanted her to take Tamar straight through to PMH, and he immediately went to meet them there. In that phone call, Mr and Mrs Stitt spoke about Tamar having a mass on her liver.[19]

4. THE ROLE OF PRINCESS MARGARET HOSPITAL

4 (a) First presentation in PMH Emergency Department on 5 August 2009

On 5 August 2009, the same day that Dr Sofocado referred her, Tamar was seen by Dr Alessandri when she presented to PMH Emergency Department[20].

Before Mrs Stitt arrived with Tamar at PMH she thought Tamar might have cancer and she noted it was in the letter that Dr Sofocado gave her to take to PMH. Whilst English is not her native language, Mrs Stitt confirmed that she understood what Dr Alessandri was telling her in the Emergency Department at PMH.[21]

Dr Alessandri is an experienced paediatric oncologist. She has been working in the area of paediatrics since 1990 and has been a consultant paediatric oncologist since 2001.

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[19] t334-t335
[20] Exhibit 2 Tab 2
[21] Thursday 15 May 2014 t10

She is also a clinical senior lecturer in paediatric oncology at the University of Western Australia.

The medical practitioners in the paediatric oncology clinic at PMH, including Dr Alessandri, work as a team. Within that framework there is capacity to refer cases to specific members within the team who have particular experience, whilst the referring medical practitioner maintains his or her role as the primary contact person for the family.[22]

Dr Alessandri treats children from 0 until at least 16 years. About a third of Dr Alessandri's patients are in the age range of about 10 years, that is, mainly the upper primary school age range.

There is no particular medical practitioner in the paediatric oncology clinic at PMH that specialises in the treatment of hepatoblastoma, due to it being a less common cancer. However, in the area of liver tumours specifically, hepatoblastoma is the most common of the tumours that Dr Alessandri has treated.

Over the years Dr Alessandri has been involved in the care of approximately 20 patients with hepatoblastoma. Of the approximately 100 new patients a year presenting at PMH

[22] t182

with cancer the paediatric oncology clinic would see between one and two new cases a year of hepatoblastoma.[23]

Dr Alessandri had a clear memory of meeting Tamar and Mr and Mrs Stitt in the PMH Emergency Department on 5 August 2009. She took a comprehensive medical history which included an overview of the results of the tests ordered by Dr Sofocado.

Before the onset of Tamar's symptoms of shoulder tip pain and abdominal pain Tamar had been well for many years. Tamar was not on any regular medications, she did not have any allergies and she had been fully immunised. Tamar appeared well grown and when Dr Alessandri plotted her weight on a growth chart she was on the 97th percentile for height, suggesting she was a thriving ten year old. Tamar's blood pressure was slightly high but the rest of her systemic examination in terms of her heart and lungs was normal.[24]

Upon examination Dr Alessandri noted that Tamar had an enlarged liver that she could palpate. Mr and Mrs Stitt were advised that Tamar had a lump in her liver, and that explained her pain, lack of appetite and her feeling of generally being unwell. They were advised that the doctors needed to do more investigations to find out what this lump

[23] t183
[24] t188, Exhibit 2 Tab 2 and Exhibit 13

was before they could make any further plans. Tamar was discharged into the care of her parents with medications to control her pain and arrangements were made for her presentation the next day for a CT scan of her chest and abdomen and further blood tests.[25]

4(b) Dr Alessandri's initial management plan following Tamar's first presentation to PMH Emergency Department

Dr Alessandri arranged for Tamar to have a CT scan of her chest and abdomen to assist in defining how large the suspected tumour was, which would have implications for further therapy. She wanted to assess Tamar's lungs in particular, because she knew many liver tumours spread to the lungs and can be in the lungs at diagnosis.

The next day, on 6 August 2009 a CT scan and further blood tests were performed on Tamar as ordered by Dr Alessandri. The CT scan and blood test results ordered by Dr Alessandri were markedly abnormal.[26]

The CT scan showed that Tamar had a massive heterogeneous mass on the right lobe of her liver and three discrete pulmonary nodules in her lungs that were very

[25] t185; t190; Exhibit 1 Tab 14 Document 5
[26] t190 and Exhibit 1 Tab 14 Document 5

highly suspicious for metastases, indicating that the tumour had spread to the lungs.[27]

The blood test showed that Tamar had a very high level of alpha fetoprotein.[28] The high end of the normal range is less than 11kU/L and Tamar's was 842,000k/UL.[29]

At that point Dr Alessandri considered that the likely pathology was either hepatocellular carcinoma or hepatoblastoma. She considered there was very high likelihood that Tamar's disease had spread from her liver to her lungs. She knew it was a common site of spread for hepatocellular carcinoma or hepatoblastoma. Dr Alessandri understood that she was dealing with a metastatic or stage 4 disease.[30]

4(c) Dr Alessandri's meeting with Mr and Mrs Stitt on 7 August 2009

Dr Alessandri met again with Mr and Mrs Stitt on 7 August 2009 for the purpose of conveying the results of the CT scan and discussing what needed to be done to confirm Tamar's diagnosis.[31]

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[27] Exhibit 1 Volume 1 Tab 14 Document 5, p12; and Exhibit 2 Volume 2 pp 181-182

[28] Alpha fetoprotein is a protein found in the blood of all unborn babies that switches off after birth, and after that is only found in the blood of persons with liver disease or a cancer that produces that particular protein (t122)

[29] Exhibit 1 Volume 1 Tab 14 Document 5, pp13-14

[30] t194

[31] t198 and Exhibit 2 Volume 2 pp42-44

At this meeting Dr Alessandri advised Mr and Mrs Stitt that Tamar had a malignant tumour and that it was a cancer. She explained that there was a tumour in Tamar's liver and the lesions in her lungs suggested there had been a spread of that tumour. Dr Alessandri told Mr and Mrs Stitt that surgery alone was not going to be able to cure Tamar's cancer. She told them that there would need to be some other form of therapy in order to cure Tamar's cancer, and that would be chemotherapy.[32]

Dr Alessandri explained to them that as a standard procedure the doctors would administer two cycles of chemotherapy and then reassess the tumour. That involves inquiry by imaging and blood tests (looking specifically at the alpha fetoprotein levels) to ensure that the tumour sensitive to the chemotherapy. If the tumour is not sensitive to the chemotherapy a change in strategy would be indicated. If the tumour is sensitive to chemotherapy, they would continue, with the aim of arriving at the point where they could do surgery on the tumour. Then there would be follow up chemotherapy.

Dr Alessandri's impression was that whilst English was not Mrs Stitt's native language, she asked very appropriate questions and appeared to her to understand what was being discussed. She was aware that Mr Stitt was English

[32] t198

speaking and had a medical background in terms of being an anaesthetic technician.

At this meeting, Dr Alessandri also had a long conversation with Mr and Mrs Stitt about the place of natural therapies in childhood cancer, which is addressed later in this Finding. Dr Alessandri sought to explain her concerns about unproven natural therapies whilst reassuring them of her willingness to work with them to determine the best treatment for Tamar.[33]

Mr and Mrs Stitt asked her what would happen if they refused chemotherapy. Dr Alessandri told them that she would consult with colleagues, that they could involve the clinical ethics service and that if disagreement persisted, there were legal avenues (though this was not elaborated on at that stage).[34]

By this point whilst an absolute diagnosis had not been made, Mr and Mrs Stitt knew Tamar had cancer and they knew that Dr Alessandri considered that Tamar's only chance of survival would be by treatment which included chemotherapy.[35] Mrs Stitt wanted a period of time for natural therapies to work on Tamar's cancer before starting chemotherapy. Having regard to Tamar's condition,

[33] Exhibit 2 Volume 2 Tab 2 p43
[34] t201-t202; Exhibit 2 Volume 2 Tab 2 p43
[35] Thursday 15 May 2014 t11-t12

Dr Alessandri was prepared to consider delaying the commencement of treatment for a period of two weeks.

Mr and Mrs Stitt agreed for Tamar to have the biopsy so that there could be an absolute diagnosis.[36]

4(d) Presentation to PMH for biopsy on 13 August 2009

On 13 August 2009 as planned Tamar presented to PMH and was admitted for the biopsy of her liver tumour on that day. She was monitored overnight and provided with pain medications when she was discharged into her parents' care on 14 August 2009.

When Tamar was admitted for the biopsy Mr and Mrs Stitt made Dr Alessandri aware of the fact Tamar was receiving natural therapies, some of them from Mr Dale. Dr Alessandri subsequently followed up on this information by making inquiries with Mr Dale.

4(e) Meeting between Dr Alessandri and Mr Stitt to discuss biopsy result on 19 August 2009

Dr Alessandri made arrangements to see the family at the oncology clinic on 19 August 2009 to discuss the biopsy results, but on that date only Mr Stitt attended.[37]

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[36] t199; t202

[37] Exhibit 1 Tab 14 Document 5

Dr Alessandri told Mr Stitt that Tamar had a hepatoblastoma, which was a cancer and that without chemotherapy in combination with other conventional therapies such as surgery, Tamar would die. She told Mr Stitt that with the chemotherapy Tamar had a 30% chance[38] of surviving in the long term.[39]

At the meeting on 19 August 2009, Mr Stitt asked for a further CT scan to see what effect the natural therapies were having on Tamar's cancer but Dr Alessandri did not agree as she did not want to expose Tamar to any more radiation than she had to as part of her treatment. Dr Alessandri did however agree to arrange for an ultrasound for this purpose, there being no radiation risks involved.[40]

At this point, whilst Mr Stitt had concerns about the proposed chemotherapy, he indicated to Dr Alessandri that he would support it. However, he also indicated that he did not believe that Mrs Stitt would agree to chemotherapy, which placed him in a very difficult position.

Whilst understanding his difficulty, Dr Alessandri nonetheless told Mr Stitt she was unable to support natural

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[38] This was based on data available to Dr Alessandri due to PMH being the part of the International Children's Oncology Group, based in North America; this group provides immediate data access regarding results of the most recent trials.
[39] t209 and Exhibit 2 Volume 2 Tab 2 p49, more specifically referred to as a 30% long term survival rate.
[40] t210

therapies as a sole treatment for Tamar's cancer when she had conventional scientifically tested therapies with reasonable outcomes available.

At this meeting Dr Alessandri advised Mr Stitt that a delay to the start of chemotherapy beyond a couple of weeks would be detrimental to Tamar's medical condition, and she conveyed a degree of urgency about commencing treatment. However, she also indicated that she would try to work with him and his wife, acknowledging that they required further time to understand the diagnosis and the situation.[41]

They again discussed the process for resolving conflict, such as recourse to the clinical ethics service and ultimately legal avenues.[42] Mr Stitt undertook to discuss Tamar's treatment with his wife and get back to Dr Alessandri.

By this point the inherent complications in reaching agreement over Tamar's treatment had emerged and this is the last occasion upon which Mr Stitt expressed any support for chemotherapy to Dr Alessandri.

Mr Stitt did not ring Dr Alessandri back the next day, as arranged. When they next spoke two days later, it is clear he had changed his mind and withdrawn his support for chemotherapy treatment.

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[41] t210 and t211
[42] Exhibit 1 Volume 1 Tab 14 Document 5

4(f) Phone calls between Dr Alessandri and Mr Stitt on 21 August 2009

On 21 August 2009, Dr Alessandri had two critical telephone conversations with Mr Stitt. Despite her best efforts in seeking to explain the importance of commencing chemotherapy treatment, by the end of those conversations it is clear that Mr Stitt did not accept, or disregarded, her advice.

Dr Alessandri instigated the first telephone conversation. Having not heard from him as arranged, Dr Alessandri rang him to ask about the outcome of his discussions with his wife regarding Tamar's treatment.

In that telephone conversation, Mr Stitt told her he wanted to delay Tamar's ultrasound as the natural therapies needed more time to work. He also wanted time to talk to "oncologists" that practice natural therapies. Dr Alessandri told him there are no such oncologists and again conveyed the urgency of the need to commence treatment. On the question of a second opinion, Dr Alessandri advised Mr Stitt that at the oncology department's weekly planning meeting the day before they discussed Tamar's case and everybody agreed that the she required chemotherapy.[43]

[43] t231;Exhibit 2 Volume 2 Tab 2 pp 51-52

Dr Alessandri had some positive news for Mr Stitt, in that she had identified a more successful treatment pathway for Tamar. She told Mr Stitt that she had done further investigations about treatment options for Tamar resulting in her becoming aware of a European hepatoblastoma study known as the SIOPEL 3 study.

In the context of Dr Alessandri's communications with Mr Stitt, she informed him that the data from the SIOPEL 3 study showed that the prognosis for Tamar under this treatment option was significantly better than the 30% chance she had discussed with him two days earlier.[44]

Dr Alessandri advised Mr Stitt that with the chemotherapy treatment under the SIOPEL 3 study Tamar would have a better than 50% chance of surviving in the long term. She advised Mr Stitt of the particular features of Tamar's illness that made the 50% long-term survival rate applicable to her.[45]

They discussed the side effects of chemotherapy, which were a matter of concern for Mr Stitt. Dr Alessandri acknowledged that all chemotherapies bring with them side effects, some of which are difficult, but advised him that most were very manageable in the medium to longer term

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[44] t214; After PMH Oncology Department's planning meeting on Thursday 20 August 2009 it was suggested they look at the European treatments and Dr Alessandri identified the SIOPEL 3 chemotherapy protocol. It was unpublished at that time, but she was granted informal access to the data via professional networks.
[45] Exhibit 1 Volume 1 Tab 14 Document 5

with good supportive care. She indicated that she wanted to start treatment within two weeks of the biopsy and overall, did not want to delay treatment more than a month from the time that Tamar had first presented. On that timeframe, Tamar's chemotherapy would start around the beginning of September 2009 at the very latest.[46]

Dr Alessandri again advised Mr Stitt that there was no scientifically valid evidence that alternative therapies could cure cancer in children and that she could not support natural therapies in the place of conventional therapies when she had known outcomes with the latter.

By this stage, the tenor of their discussions caused Dr Alessandri to become concerned that Mr and Mrs Stitt would continue to delay the start of conventional treatment and that this was not in Tamar's best interests. She was also concerned the family would flee to El Salvador if chemotherapy became inevitable. She commenced her engagement with legal services.

Mr Stitt on the other hand had lost confidence in her advice and did not accept the validity of the improved prognosis that she communicated to him.

Whilst the first conversation between Dr Alessandri and Mr Stitt on 21 August 2009 ended with Mr Stitt agreeing to

[46] t216

call her back shortly after discussing the new prognosis with Mrs Stitt, he did not ring her back.

Instead, Dr Alessandri rang Mr Stitt later that same day after she was advised by her clerical staff that Mr Stitt had in the interim contacted them to change the appointments for the upcoming medical tests to assess Tamar for fitness to start chemotherapy.[47]

At one point Mr Stitt had told Dr Alessandri that if the ultrasound showed no change in the tumour, they would "probably" go with chemotherapy.[48] By this stage Mr Stitt was persuaded that the natural therapies were working for Tamar and he did not want any other tests performed before the liver ultrasound, in the hope or expectation that it would show that the natural therapies were working.

In an effort to negotiate with Mr Stitt, Dr Alessandri rescheduled the timing of all of Tamar's medical tests and procedures. Under this new plan, Tamar's liver ultrasound sought by Mr Stitt was now booked on 2 September 2009. This new timing would allow for PMH to commence Tamar on chemotherapy at the latest on 4 or 5 September 2009.[49]

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[47] t220; Exhibit 2 Volume 2 p54
[48] t221
[49] t221

Dr Alessandri considered that this may give Mr and Mrs Stitt enough time to achieve what they sought to achieve in terms of natural therapies.

Dr Alessandri reassured Mr Stitt that the staff at PMH were interested in what was best for Tamar and that they were not trying to impose their will or override his or Mrs Stitt's role as parents. However, she said PMH staff had a professional and ethical obligation to make sure Tamar received the best possible medical care.[50]

Mr Stitt told Dr Alessandri that he was seeking his own legal opinion from an acquaintance in the interim as to what his rights as a parent were.[51] Dr Alessandri remained concerned about the need to have a firm strategy in place for Tamar's treatment and to that end she continued to engage with legal services.

However, with the intention of achieving a resolution, Dr Alessandri also undertook a series of contacts with other health practitioners known to Mr and Mrs Stitt. Her aim was to reach a mutual understanding with Mr and Mrs Stitt through the intercession of medical practitioners that they felt comfortable with. She was also concerned that a significant period of time had passed since Tamar's biopsy without an opportunity to review her.

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[50] t222; Exhibit 2 Volume 2 p54
[51] t359; Exhibit 2 Volume 2 p55

4(g) Dr Alessandri's attempts to engage with Mr and Mrs Stitt

4(g) (i) Dr Alessandri's contact with Dr Atkinson on 19 and 25 August 2009

When Dr Alessandri met with Mr Stitt on 19 August 2009, he had told her that Dr Jocelyn Atkinson had previously been their family GP and that she had a close relationship with the family. Also, Dr Atkinson spoke Spanish which was Mrs Stitt's native language. This was at a point when Mr Stitt was still amenable to considering the chemotherapy treatment. At that point, Mr Stitt suggested to Dr Alessandri that it might be helpful to contact Dr Atkinson to see whether they could engage her in speaking with Mrs Stitt about the treatment plans.[52]

On 19 and 25 August 2009 Dr Alessandri spoke to Dr Atkinson for the purpose of engaging her support for the proposed chemotherapy treatment for Tamar, and she emailed her the SIOPEL 3 abstract.

Dr Atkinson's previous experience with the Stitt family in relation to the treatment of illnesses was to the effect that Mr Stitt would tolerate the natural therapies proposed by his wife and mother-in-law as long as they did no harm, but that he would intervene swiftly if concerned. However on

[52] t212

this occasion when Dr Atkinson proceeded to contact Mr Stitt at Dr Alessandri's request, it became apparent to her that Mr Stitt himself was now refusing conventional treatment for Tamar. Dr Atkinson discussed and later emailed the SIOPEL 3 abstract to Mr Stitt. She referred to a 50% or 60% chance of a cure but was unable to persuade Mr Stitt to allow Tamar to be treated with the chemotherapy and she advised Dr Alessandri of this.[53]

On or about 25 August 2009 when Mr Stitt received the SIOPEL 3 abstract from Dr Atkinson, he glanced at it but he did not look at it in great depth because he felt the family had already committed to giving Tamar the natural therapies.[54]

4(g) (ii) Dr Alessandri's contact with Dr Sofocado on 25 and 26 August 2009

Towards the latter part of August 2009 Dr Alessandri became concerned that since Tamar's biopsy on 13 August 2009, she had not been able to see her for an oncology review, which was unusual. Normally a young child with a large liver tumour would be coming into PMH's oncology clinic and doctors would be assessing her on a regular basis, conducting tests as needed.[55]

[53] Exhibit 1 Volume 1 Tab 8
[54] t347
[55] t223

Dr Alessandri's disquiet caused her to ring Dr Sofocado on 25 August 2009 to ask him to review Tamar as soon as possible, for the purpose of assessing her clinically, reviewing her pain levels and providing her with his assessment.

As a consequence, at Dr Sofocado's request Mrs Stitt took Tamar back to him and in light of the information he now had, he advised her to allow the chemotherapy treatment. Dr Sofocado tried to convince Mrs Stitt to try all possible treatments, but she was adamant that she wanted just "natural" therapies.[56] Also present were Tamar's grandmother and aunt, but not Mr Stitt, who himself had no recollection of being informed that Dr Sofocado had supported the proposed chemotherapy.[57]

On 26 August 2009, Dr Sofocado responded to Dr Alessandri's phone call and reported that on his review of Tamar, she looked slightly pale but he did not consider her to be clinically anaemic. He advised that Tamar did not report any pain. He told Dr Alessandri that he did not believe at that time that the family would accept chemotherapy. He also told her that Tamar's family were seeking further review by a doctor in Midland who apparently practiced naturopathy.[58]

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[56] Thursday 15 May 2014 t22-t23
[57] Friday 9 May 2014 t12
[58] t224-t226, Dr Alessandri was not provided with the name of the Midland medical practitioner.

4(g) (iii) Dr Alessandri's letter of 25 August 2009

In an effort to persuade Mr and Mrs Stitt to accept chemotherapy, on 25 August 2009 Dr Alessandri sent a detailed letter to them referring to their previous communications and outlining Tamar's proposed chemotherapy treatment. The letter also served to document their previous communications and her advice, which in the circumstances was a prudent course. She copied the letter to Drs Atkinson and Sofocado in the anticipation that they might all complement each other in terms of their advice to Mr and Mrs Stitt.[59]

In her letter Dr Alessandri provided reasons to support her opinion that the proposed chemotherapy treatment would give Tamar a 50% long-term survival rate and she made it clear that without it, Tamar would die. She explained that she did not support the use of any alternative therapies to cure Tamar's cancer.

The stark reality that Tamar faced was communicated to Mr and Mrs Stitt honestly and uncompromisingly by Dr Alessandri, and properly so given the dire consequences of non-compliance with the medical advice. I quote from her letter:

> "I understand that this type of therapy is extremely daunting for parents and their children. We would never embark on such therapy without good cause. It is, however, the only known

[59] Exhibit 1 Vol 1 at Tab 14 Document 5 p34;t225

> therapy that would provide Tamar with any chance of long-term survival. Without it, in my opinion, and those of my colleagues at PMH, she will die. I understand that you may not agree with this statement, but it is supported by extensive medical literature. While I would never aim to usurp your place as parents in the care of your daughter, once she presented to PMH I became ethically, professionally and legally obliged to seek the best medical care for Tamar. This is my sole motivation in writing this letter and outlining the plan for Tamar's treatment."[60]

Regrettably, whilst both Mr and Mrs Stitt had some recollection of receiving or seeing the letter at the material time, neither parent paid much attention to its contents given their commitment to the natural therapies.[61]

For the same reason and equally regrettably, neither parent took up Dr Alessandri's offer, referred to in that letter, to meet with them and Mrs Stitt's parents at PMH, with the provision of a Spanish interpreter, on the morning of 2 September 2009 to discuss Tamar's proposed treatment before her scheduled ultrasound. [62]

4(g) (iv) <u>Dr Alessandri's phone call with Mr Stitt 26 August 2009</u>

In a telephone call on 26 August 2009 Mr Stitt advised Dr Alessandri that Tamar had an appointment to see a medical doctor specialising in naturopathy the following week, but he did not provide Dr Alessandri with his name. He told Dr Alessandri that they were prepared to be

[60] Exhibit 1 Volume 1 at Tab 14; Document 5 p34. Friday 9 May 2014 t6
[61] Friday 9 May 2014 t5 and Thursday 15 May 2014 t41
[62] Friday 9 May 2014 t8

managed by this doctor instead of PMH. He told her he had legal advice to the effect that that the court system could not enforce chemotherapy for Tamar if she was being managed by a medical doctor.[63] Essentially, he was proposing to terminate Dr Alessandri's doctor/patient relationship for Tamar.

In that telephone conversation Mr Stitt advised Dr Alessandri that Tamar was eating well and not in any pain. He informed her that a large portion of the maternal side of the family were in Perth administering intensive natural therapies and that they were treating the tumour.[64]

Dr Alessandri informed Mr Stitt that PMH had determined that its duty of care to Tamar would necessitate having a court adjudicate what was in her best medical interests. She did not suggest that Tamar would be removed from Mr and Mrs Stitt's care or made a ward of the State.[65] However, this was precisely what Mr Stitt had begun to fear and he was distressed during this telephone conversation.

Dr Alessandri reiterated her offer to meet with the extended family along with an interpreter but it is clear that by this stage the relationship had broken down completely.[66]

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[63] t227
[64] t226
[65] t228
[66] t227-t229; Exhibit 2 Volume 2 pp 59-60

Mr Stitt ended up by agreeing to present Tamar for the scheduled ultrasound on Wednesday 2 September 2009 but it is equally clear by this stage that he had no intention of doing so.

Dr Alessandri formed the view, correctly as it transpired, that the parents would arrange to take Tamar to El Salvador to avoid chemotherapy treatment.

4(g) (v) Dr Alessandri's phone call with Mr Stitt on 31 August 2009

On 31 August 2009 Mr Stitt contacted Dr Alessandri to request the original ultrasound films from Tamar's first presentation at PMH. Dr Alessandri searched for them but was unable to locate them and advised Mr Stitt of this.[67]

Mr Stitt's purpose in requesting the ultrasound films was to take them to Dr Nuttall for an opinion as to whether Tamar's tumour was improving as a result of the natural therapies. His reference to the medical doctor specialising in naturopathy during his telephone conversation with Dr Alessandri on 26 August 2009 was a reference to Dr Nuttall.

[67] t232

5. THE ROLE OF DR NUTTALL

5(a) Dr Nuttall's practice

Dr Nuttall is a doctor of medicine and a general practitioner, having first become qualified in 1986. At the material time he had been practicing in Midland for about 7 to 8 years.

As part of his practice Dr Nuttall carries out consultations on adults and children with oncological issues and they comprise approximately 15 to 20% of his patients. Prior to meeting Tamar however, he had not carried out a consultation upon, or given any treatment to, a child with hepatoblastoma.[68]

Mr and Mrs Stitt had received information from a friend that caused them to believe Dr Nuttall would be amenable to considering natural therapies in the context of a cancer diagnosis. In his evidence Dr Nuttall agreed he has a reputation for working with cancer patients using alternate remedies.

5(b) Consultation with Dr Nuttall on 1 September 2009

On 1 September 2009 Dr Nuttall carried out a consultation on Tamar for the first and only time. He had been told that she had a hepatoblastoma. He examined her and the consultation lasted about 45 minutes.[69]

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[68] t30-t31
[69] t63

An issue of significance that arose during the course of the inquest concerned the purpose for Tamar's consultation.

I am satisfied that there were two purposes for the consultation. First, in response to Mr and Mrs Stitt's inquiry, he carried out an assessment to ascertain whether Tamar was fit to fly to El Salvador. Secondly he provided medical advice as to whether that course was in Tamar's best interests.[70] These are addressed below.

5(c) The purpose of the medical tests conducted by Dr Nuttall

Prior to the consultation on 1 September 2009, arrangements had already been made for Tamar to have a second abdominal ultrasound, for Dr Nuttall to review. Mr and Mrs Stitt wanted Dr Nuttall to assess any changes with respect to the size of Tamar's tumour. They hoped this second ultrasound would show that the natural therapies were working and that her tumour had decreased in size or that she was not getting any worse. However, they did not have the ultrasound films from the first ultrasound carried out by PMH. For the purposes of the comparison they provided Dr Nuttall with the CT scans carried out by PMH.[71]

[70] t44
[71] t37, Friday 9 May 2014 t15; t31; Thursday 15 May 2004 t20; Exhibit 1 Volume 1 Tab 9

Dr Nuttall also arranged for blood tests including full blood count, renal function, liver function and alpha fetoprotein levels. He considered they would have been of use, as well as the ultrasound, to anybody treating Tamar in the future.[72]

5(d) Dr Nuttall's advice to Mr and Mrs Stitt on the change in size to Tamar's tumour

Dr Nuttall compared the liver tumour size from the second ultrasound[73] on 1 September 2009 to the results of the CT scan[74] conducted by PMH approximately one month previously.

Inexplicably, at the consultation for Tamar on 1 September 2009 Dr Nuttall advised Mr and Mrs Stitt that the second abdominal ultrasound scan showed Tamar's liver tumour to be smaller than it was on the CT scan from PMH a month ago.[75]

Dr Nuttall's advice to Mr and Mrs Stitt to the effect that Tamar's tumour was smaller by comparing the results on her prior CT scan with those on her subsequent ultrasound was unsupported by the material before him. The comparison of results on the CT scan with those on the

[72] t44
[73] Exhibit 1 Volume 1 Tab 9 Dr Nuttall's ultrasound scan dated 1 September 2009
[74] Exhibit 1 Volume 1 Tab 14 Document 5 p12 PMH CT scan dated 6 August 2009
[75] Exhibit 1 Volume 1 Tab 9

ultrasound scan did not provide a sound basis for this advice.

Detailed evidence was given in court by the oncologists who explained that the two modalities are not amenable to comparison. Even Dr Nuttall accepted this.

An ultrasound is based on a sonar system and it does not give as accurate a measurement as a CT scan that produces pictures, allowing the doctor to see the tumour and put markers on it. An ultrasound cannot accurately access the lungs for metastases, whilst a CT scan can do that. If the liver tumour was stable but the metastases in the lungs were progressing, an ultrasound would not disclose that. [76]

Dr Nuttall's own medical notes record the fact that the difference in the size of Tamar's liver tumour may reflect the different modality used to assess the anatomy of Tamar's cancer,[77] which calls into question his advice to Mr and Mrs Stitt that Tamar's liver tumour was smaller.

Dr Nuttall conceded that it may well be that he did not clearly anticipate or project that there was also a plus/minus factor because a different modality of assessing the tumour size had been used.[78]

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[76] t133; t191; t197
[77] t36; Exhibit 1 Vol 1 Tab 9
[78] t52

He conceded that he may not have conveyed that caution as well as he should have done. He was apparently excited that the subsequent ultrasound had not shown the tumour to be bigger, but he acknowledged he did not necessarily express the significance of the different ways of looking at the tumour and that it might not necessarily mean, in reality, that it was smaller.[79]

It is unfortunate that Dr Nuttall did not explain the difference in modality nor sufficiently qualify his advice to properly account for that difference.

Mr and Mrs Stitt were encouraged by Dr Nuttall's advice to the effect that Tamar's liver tumour was smaller. Regrettably, it lent unwarranted support to their reliance on natural therapies to cure Tamar's cancer.[80]

Dr Nuttall conceded that he might well have been encouraging of Mr and Mrs Stitt's choice to pursue alternative therapies and that he represented to them that he could understand their decision-making process.[81]

The matter was further exacerbated by the fact that Mr and Mrs Stitt were at an extremely vulnerable point, beset with fear and confusion about their daughter's illness and her future. It is likely that they would have adhered to almost

[79] t80; Friday 9 May 2014; t14; Thursday 15 May 2014 t34
[80] Friday 9 May 2014 t33; Thursday 15 May 2014 t21
[81] t51; and t79

any advice from a doctor that offered support for their natural therapies.

This made it all the more important for them to have received objective, clear and independent advice.

5(e) Dr Nuttall's advice to Mr and Mrs Stitt on Tamar's blood tests

At the time of the 1 September 2009 consultation, Dr Nuttall was still awaiting the results of the blood tests he had ordered. He received and discussed them with Mr Stitt by telephone later that day or the next day.

Dr Nuttall compared Tamar's alpha fetoprotein levels from her PMH blood tests as at 6 August 2009 (842,000 kU/L, ref. >11kU/L) with the second reading from blood tests he ordered on 1 September 2009 (874,380 kU/L, ref. 0 – 6 kU/L). [82]

Dr Nuttall indicated to Mr Stitt over the telephone that his comparison suggested there may be a slowdown in the rate of change of alpha fetoprotein and that it was an encouraging sign in connection with the growth of Tamar's tumour. Even taking into account that the two sets of blood tests were done by different companies, Dr Nuttall's evidence was that there seemed to be a relative plateauing

[82] T39; Exhibit 1 Volume 1 Tab 9, test requested and collected on 1 September 2009 and Exhibit 1 Volume 1 Tab 9 p2

between the two levels. He gave this advice to Mr Stitt because in his view Tamar's alpha fetoprotein level was not going up as rapidly as he would expect had there been tumour progression.[83]

In Dr Alessandri's opinion, having two test results that are not dramatically different three and a half weeks apart at two different laboratories using their own dilution techniques does not allow for any determination about how quickly or slowly a tumour is progressing. At best these results would suggest that nothing had changed in Tamar's tumour or that there had been a slight progression.[84]

Professor Kellie reviewed the relevant medical records and gave opinion evidence at the inquest. In Professor Kellie's opinion, the assessment of Tamar's tumour by reference to the comparison of the two blood test measurements places it into the category of stable disease.[85]

I am satisfied that the comparison of the two blood test results affords no evidence that there was any slowdown in the growth of Tamar's tumour, nor was there a basis for treating the second result as an encouraging sign.

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[83] t44-t46 and Exhibit 1 Volume 1 Tab 9
[84] t196
[85] t136

5(f) Dr Nuttall's role in relation to PMH

At the consultation for Tamar on 1 September 2009 Dr Nuttall did not give specific advice to Mr and Mrs Stitt about PMH's medical advice. On his evidence, given that the chances of success of a cure were between 30% and 50%, Dr Nuttall did not consider it was either appropriate or necessary to advise the parents to accept the treatment proposed by PMH.[86]

He did not seek permission from Mr and Mrs Stitt to discuss Tamar's case with the doctors at PMH because he formed the view that they were not going to have any further engagement with those doctors.[87] Essentially, he formed the view that the professional doctor/patient relationship between Dr Alessandri and Tamar had ended.

To his credit Dr Nuttall conceded that if this situation arose again he would take this experience into greater account and he would seek to gain parental permission to approach PMH. If he had the additional information which reflects on the better outcomes for the chemotherapy now known, Dr Nuttall believes he would have advocated more the role of the oncologist. Further, that on the basis of Tamar's alpha fetoprotein levels alone Dr Nuttall would have referred her to an oncologist at PMH.[88]

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[86] t71-t72; Exhibit 1 Volume 1 Tab 9
[87] t47-t48; t55
[88] t60-t77

5(g) Dr Nuttall's assessment on 1 September 2009 of Tamar's fitness to fly and her best interests

A component of the consultation for Tamar comprised Dr Nuttall's assessment of her fitness to fly. From his perspective this meant an assessment of whether Tamar could walk on and off an aircraft and travel safely to El Salvador. Mr and Mrs Stitt sought a fitness to fly certificate.[89]

Dr Nuttall's examinations on this issue were aimed at ascertaining that Tamar could equalise on the plane, that she was not in any respiratory distress and that her neurological status was intact. He sought to exclude renal failure and breakdown of liver function.[90]

Whilst Dr Nuttall did not recall discussing Tamar's pain levels he would have been concerned if she had required opiates in order to travel. The fact that he made no notes regarding her weight indicates to him that at the relevant time that Tamar did not appear to him to be malnourished.[91]

Dr Nuttall completed a medical certificate on 1 September 2009 stating that Tamar "was examined by me today and I have found her fit to travel abroad by plane". Dr Nuttall's

[89] t81; t123; t125, Friday 9 May 2014 t14; t34-t35;Thursday 15 May 2014 t22
[90] t33-t38; t44
[91] t35

evidence was that his decision was vindicated by the fact that Tamar arrived in El Salvador safely.[92] Dr Nuttall conceded that he knew that if Tamar was taken to El Salvador, certain pending court proceedings would be "bypassed".[93]

It is clear that Dr Nuttall provided the fitness to fly certificate in the context of his own understanding of the distress being experienced by Mr and Mrs Stitt and his notes reflect this:

> "Apparently the hospital wishes to make Tamar a ward of State so she can be forcibly given chemotherapy. Parents truly believe this will kill their daughter and thus wish to remove her from the jurisdiction of the Australian legal system. NB: Tamar is not yet a ward of the State nor will she necessarily be after court tomorrow."[94]

Dr Nuttall formed the view that Mr and Mrs Stitt were being given no options other than conventional therapies by PMH and they had become frightened. He saw the issue as being one of enforced chemotherapy and therefore saw no point to mediation with the staff at PMH. From his perspective he considered Mr and Mrs Stitt wished to move away from the State sanctioned removal of Tamar into a process of treatment. He only discussed this with Mr and Mrs Stitt, he did not take steps to seek permission to confirm it with any other person (including anyone at PMH) and he did not turn his mind to consider whether there may be a reason why

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[92] Exhibit 1 Volume 1 Tab 9; t35; t61
[93] t56
[94] t36; Exhibit 1 Vol 1 Tab 9; t59-t60

the health authorities might be concerned about the parents' course.[95]

Dr Nuttall compartmentalised his role to a fitness to fly assessment and decided Mr and Mrs Stitt's proposed actions were in Tamar's best interests. With respect to the provision of the fitness to fly certificate he considered his options to be limited having regard to the fact that Tamar was due to fly the following morning.[96]

Dr Nuttall decided that the provision of the fitness to fly certificate and his general encouragement to Mr and Mrs Stitt were in Tamar's best interests, by taking into account a range of factors. They included his perceptions that Mr and Mrs Stitt had lost some faith in the conventional health care system, that they were being asked to make decisions rapidly, that they might lose their child to "the system", that they wanted to make decisions in an arena where they would have more time, that they wanted more options and that the chances of a cure were between 30% to 50%. He formed the view that Mr and Mrs Stitt were not completely opposed to chemotherapy, rather they did not want chemotherapy forced upon Tamar. His observations of the family led him to believe there was a close loving and caring relationship between the parents and their child.[97]

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[95] t58
[96] t56; t63; t65; t76
[97] t57

Dr Nuttall did not provide a letter to a potential treating centre in El Salvador to outline Tamar's condition or any medications she was on.[98]

5(e). Tamar's Travel to El Salvador

In light of the acute need for commencement of Tamar's chemotherapy, on information provided by PMH, the Minister for Health made an urgent application to the Supreme Court of Western Australia under its *parens patriae* jurisdiction, naming Tamar's parents as the respondents. The Minister for Health sought orders to the effect that Tamar's parents be directed to present her to the oncology ward at PMH for the purposes of receiving chemotherapy treatment for hepatoblastoma with metastatic disease and for all associated treatments and supportive care. A hearing time was set for 2 September 2009.

The matter did not proceed because on 1 September 2009, Tamar, accompanied by Mrs Stitt, left Australia from Brisbane airport, bound for Mrs Stitt's native El Salvador, having been provided with a medical certificate that she was fit to fly by Dr Nuttall.

It is axiomatic that Court proceedings must be complied with. It is not necessary, for the purposes of this inquest, for me to make any findings concerning the circumstances

[98] t66

of Tamar's travel to El Salvador, save that it would clearly have been in Tamar's best interests for her to have remained in Australia and to have commenced the medical treatment recommended by PMH, including the chemotherapy.

The remaining issues in connection with Tamar's travel to El Salvador lie not in the fact of her travel, but that once she was there, Mr and Mrs Stitt persisted in administering the natural therapies when there was clearly a need for her to receive medical assistance. There were opportunities in El Salvador for her to receive that medical assistance, including chemotherapy treatment consistent with the SIOPEL 3 study.

6. RELEVANT MEDICAL ADVICE TO MR AND MRS STITT IN EL SALVADOR

Ms Sadler was the US correspondent for the Seven Network in 2009. She met Mr Stitt on or about 21 September 2009 in Los Angeles as part of her assignment to carry out a news story in El Salvador about Tamar's travel there to seek natural therapies. She travelled to El Salvador with Mr Stitt on 21 September 2009. [99]

On 23 September 2009, Mr and Mrs Stitt attended a medical appointment at a private clinic in El Salvador with

[99] T85

Ms Sadler. The reason they went together is twofold. First, to present Tamar's medical records and to obtain advice from the doctor in El Salvador as to what course of action should be taken. Secondly, as part of a proposed Channel 7 news story. Tamar did not attend that meeting.

Mr and Mrs Stitt both accepted that at this meeting the doctor in El Salvador recommended chemotherapy for Tamar and that he told them that she would die without it. At that stage Mrs Stitt still hoped Tamar's condition could improve with natural therapies and Mr Stitt was of the opinion that the doctor did not understand natural therapies and therefore discounted his advice.[100]

The medical appointment is recorded on film and the disc was before me in evidence.[101] A person who interpreted was visible in the footage. The doctor in El Salvador had before him some relevant medical records and appeared to speak in his native tongue, followed by the interpreter who spoke in English. The evidence is not sufficiently comprehensive for me to make any conclusions as to what records the doctor had before him nor as to the qualifications of the interpreter.

However, I note that the interpretation is consistent with the other evidence before me to the extent that Mr and Mrs Stitt

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[100] Thursday 15 May 2014 t27; t48; Friday 9 May 2014 t19
[101] Exhibit 10

received medical advice in El Salvador to the effect that Tamar required chemotherapy to treat her illness and that without it she would die. I am satisfied that Mr and Mrs Stitt received that medical advice on 23 September 2009.

7. TAMAR'S DETERIORATON AND SUBSEQUENT HOSPITALISATION IN EL SALVADOR

After Mrs Stitt and Tamar arrived in El Salvador in early September 2009, Mrs Stitt and her family resumed the clay treatment on Tamar. Mrs Stitt became concerned that Tamar was not interested in eating her food and that she started to lose weight.[102]

Tamar's health suffered a serious setback when she developed chronic diarrhoea resulting in Mrs Stitt taking her to a private clinic for a consultation with a doctor. The doctor there told Mrs Stitt the diarrhoea might be caused by the liver cancer and that Tamar should be taken to the children's hospital for chemotherapy. It was at this point that Mrs Stitt accepted that her natural therapies would not work to cure Tamar.[103]

By the time Tamar was taken to hospital, she had been in El Salvador for about a month and a half.

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[102] Thursday 15 May 2014 T25 to T26
[103] Thursday 15 May 2014 T27 to 28 and T50

The translated medical records of Tamar's treatment provide some indication of the extent of the deterioration in Tamar's condition prior to her presentation to hospital.[104]

Dr Alessandri reviewed the available records and her opinions on what they represented regarding Tamar's health were before me in evidence. At presentation to Hospital de Ninos Benjamin Bloom on 21 October 2009 Tamar appeared malnourished, though her weight is not stated on the available record.[105] At presentation to PMH in August 2009 records indicated that her weight was at the 97th percentile.[106] The partial autopsy report indicates that Tamar's weight had dropped to the 50% percentile.[107] They are imprecise measurements, however taken together with the other evidence before me it is clear that Tamar did suffer a significant loss of weight in El Salvador prior to her presentation at Hospital de Ninos Benjamin Bloom and that this represented a critical deterioration in her health.

The same hospital record states that Tamar was paraplegic upon presentation. Dr Alessandri noted that paraplegia is an unusual complication of hepatoblastoma. One possibility is that her tumour had spread to an uncommon site because of the advanced stage of her disease. It is not possible for me to conclude what the reference to the

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[104] The translation before the court is NAATI Accredited
[105] Exhibit 1 Volume 1 Tab 10
[106] t235; Exhibit 1 Volume 1 Tab 6
[107] Exhibit 1 Volume 1 Tab 3

paraplegia means in connection with Tamar's tumour, save that the reference adds weight to the other evidence of the deterioration in her health.

The same hospital record also records a chest x-ray that reveals right pleural effusion. There are a number of possible reasons for this, and according to Dr Alessandri an effusion would not be unexpected in a patient with a large liver tumour. Also from the same record, an abdominal ultrasound confirmed the presence of a mass in the right lobe of Tamar's liver though its size (while apparently larger) cannot accurately be compared with the CT scan from PMH.[108]

The blood test results revealing that Tamar's alpha fetoprotein levels were over 1,000,000 ng/ml as at 20 October 2009 provide evidence of the progression of Tamar's tumour.[109]

Professor Kellie's opinion was that Tamar's tumour was clearly progressing by the middle of October 2009 and as tumours get larger, there is weight loss, anorexia, and as pulmonary metastatic tumours increase in size, there is an increased risk of pneumonia, airways obstruction, fluid accumulating in the thoracic cavity and ultimately respiratory failure as the disease advances. Once a patient

[108] Exhibit 1 Volume 1 Tab 6; Tab 10
[109] t146; Exhibit 1 Volume 1 Tab 17Q

gets to a point where the total burden of tumour inside their body is so great, then symptoms will escalate quite quickly.[110]

I accept the evidence of Dr Alessandri and Professor Kellie and find that Tamar's tumour was progressing prior to her presentation to Hospital de Ninos Benjamin Bloom. I am satisfied that the natural therapies being administered to Tamar were of no therapeutic effect in relation to her cancer.

By reference to the available records Dr Alessandri and Professor Kellie confirmed that the chemotherapy treatment that Tamar received in El Salvador reflected the therapy proposed by PMH and that she received that treatment on 22 and 23 October 2009. [111] I accept their evidence.

By the time Tamar was admitted to Hospital de Ninos Benjamin Bloom, Mr Stitt had departed El Salvador to return to Australia. The circumstances of Mr Stitt's departure to Australia whilst Mrs Stitt and Tamar remained in El Salvador are not relevant to the inquest and it is unnecessary for me to make any finding in respect of them.

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[110] t146
[111] t139; Exhibit 1 Volume 1 Tab 6; Tab 10

8. TAMAR'S BEST INTERESTS

In order to consider Tamar's best interests it is necessary to address the issue of the likelihood of a cure, the views on natural therapies, some ethical considerations and the role of Tamar's parents.

8(a) The meaning of a "cure"

(8)(a)(i) The SIOPEL 3 protocol

At their meeting on 19 August 2009 Dr Alessandri talked to Mr Stitt about Tamar's hepatoblastoma diagnosis and advised him that on her preliminary research there was a 30% chance (approximately) of a long-term survival rate with conventional therapy.[112]

After this meeting Dr Alessandri undertook further investigations to identify what other treatments were being used by international cooperative clinical trial groups for children with hepatoblastoma. She discovered the SIOPEL 3 study (also referred to as the SIOPEL 3 protocol).[113] It sets out a chemotherapy treatment for children with hepatoblastoma and provides clinical outcomes data.

At that time the SIOPEL 3 clinical trial had recently closed and only informal and non-peer reviewed data had been released. It was formally published in May 2010. It

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[112] t207-t208

[113] S I O P E L is Société Internationale d'Oncologie Pédiatrique – Epithelial Liver Tumor Study Group, a European oncology group that conducts clinical trials, t207; t208.

reported event-free survival or progression free survival at three years from diagnosis for approximately 50% of patients with hepatoblastoma with pulmonary metastases.[114] Dr Alessandri communicated this improvement in Tamar's prospect of a cure to Mr Stitt a few days later in a phone call on 21 August 2009.

Dr Alessandri explained that clinical outcomes data indicates that if a child with hepatoblastoma is treated and has not relapsed by three years, the child is not going to relapse with that disease.[115] Given that the percentages are addressing a long-term survival rate, in this context, that is considered to be a cure.

The SIOPEL 3 protocol chemotherapy drugs are very old drugs that have been available for decades, which has enabled the development of a good understanding of their potential side effects. The individual side effects are determined by the combination of therapies and the way in which each person metabolises them.[116]

Professor Kellie gave evidence about the SIOPEL 3 protocol at the inquest. He is an experienced paediatric oncologist and neuro-oncologist. For his entire career he has treated children with cancer, having been involved in its diagnosis,

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[114] t208; Exhibit 1 Volume 1 Tab 18
[115] t199
[116] t229-230

treatment and follow-up. He has also had a lengthy career in clinical research, clinical trials and drug research.

Professor Kellie described the SIOPEL 3 protocol drugs as the three drugs with the best track record for curing children with hepatoblastoma and stated that SIOPEL influences treatment choices throughout Western Europe, Australia and New Zealand. Through his work he had an involvement in the introduction of these drugs to treat cancer in children in the late 1980's.[117]

Dr Alessandri had proposed seven cycles of chemotherapy for Tamar using the SIOPEL 3 protocol drugs. Dr Alessandri planned to assess the effect of the chemotherapy treatment on Tamar after approximately two cycles. If the tumour was shrinking appropriately, and the alpha fetoprotein levels were dropping appropriately, then they would continue with a total of seven cycles of chemotherapy prior to surgery and following surgery, another three cycles of chemotherapy.[118]

At the material time, Dr Alessandri formed the view that there were two factors in Tamar's favour that placed her into the 50% long-term survival group:

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[117] t124
[118] t231; This would have taken six to eight months.

- Her liver tumour was, although very large, quite confined to a particular area which was more amenable to resection;
- Her alpha fetoprotein level was very high.[119]

There was detailed evidence given at the inquest regarding the percentage chance of a cure and whether it represented long-term survival. There was reference to a 50% chance, a better than 50% chance and a 50% to 60% chance. It is unnecessary to be guided by precise percentages.

I am satisfied that it was likely that the SIOPEL 3 treatment proposed by Dr Alessandri, including the chemotherapy would have cured Tamar's hepatoblastoma. Whilst it cannot be known for certain, it is likely that Tamar's death could have been prevented with the conventional treatment planned by PMH, including the administration of the SIOPEL 3 chemotherapy drugs.

8(a) (ii) <u>The urgency of the chemotherapy treatment</u>

Dr Alessandri's opinion is that all childrens' cancers require urgent intervention. A biologically active disease is more likely to continue to spread. Dr Alessandri wanted to commence chemotherapy treatment on Tamar as soon as possible and in any event by 3 or 4 September 2009. She had scheduled and then at Mr and Mrs Stitt's request re-

[119] t195; Dr Alessandri's evidence is that the alpha fetoproteins are a good marker of disease activity over time.

scheduled, a series of medical appointments for Tamar that were designed to prepare her for her treatment. Mr and Mrs Stitt were aware of that.[120]

Professor Kellie's opinion however, on a review of Tamar's case, was that time was very much on her side and it was not a situation where a child was going to die quickly from a progressive tumour. He noted that there were no symptoms of pulmonary compromise, severe jaundice and/or severe ascites when Tamar first presented to PMH and that she came through the anaesthetic for the biopsy well. It led him to form a picture of a patient who was relatively well and stable and able to withstand the workup without requiring urgent chemotherapy or ICU treatment.[121]

In terms of when Tamar's case reached a point where it was time critical for her to require SIOPEL 3 treatment, Professor Kellie's evidence was that that time was reached probably in the second half of the time she was overseas, approximately towards the end of September 2009.[122]

Tamar was due to commence her SIOPEL 3 chemotherapy treatment in Australia on 3 or 4 September 2009 and instead, that treatment was commenced on her in El Salvador on 22 and 23 October 2009.

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[120] t194; t361
[121] t150
[122] t138-t139

The volume of tumour present in Tamar's body in early September 2009 was less than it would have been towards the end of October 2009.[123]

In all of the circumstances, whilst there was some possibility of extending the time for commencing Tamar on chemotherapy without necessarily compromising her prospects of recovery, it is clear that commencing Tamar on chemotherapy at PMH as planned on 3 or 4 September 2009 would have been in her best interests.

8(b) The Views or Opinions on Natural Therapies

8(b) (i) Mr and Mrs Stitt's views on natural therapies in connection with the treatment of cancer

Mrs Stitt's family was introduced to natural remedies through her grandfather who travelled through Central America and acquired two books, one described by her as being basic remedies in clay, water, sun and air and the other one concerning herbs, diet and exercise. She stated that they both combined so as to be able to treat any illness.

Both Mr and Mrs Stitt emphasised that the regime is very strict and all of the remedies need to be combined in order for it to work.[124]

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[123] t140
[124] Thursday 15 May 2014 t3; t5

Mrs Stitt referred to testimonials in one of the books from people that have been cured of cancer by the use of natural therapies and her evidence was that she believed the accuracy of those testimonies. According to Mrs Stitt one of the books stipulates that natural therapies do not work with chemotherapy. [125]

Mrs Stitt sought to treat Tamar's cancer with a number of natural therapies from the books, one of which comprised red clay mixed with water into a paste, applied on a large towel and wrapped around Tamar's abdominal area. Tamar was made to sit with that around her for three hours at a time, twice a day and Mrs Stitt believed it would draw out the toxins.[126]

Mrs Stitt conceded that up until the time Tamar was diagnosed with her cancer she did not specifically know of anyone in her family that had used the red clay to treat cancer.[127]

Whilst Mr Stitt explained how red clay from the hills near his home in Western Australia had worked for him by reference to using it for a chest infection and a sliced thumb, he conceded he has never known anyone to be cured of hepatoblastoma using red clay.[128]

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[125] Thursday 15 May 2014 t64; t65
[126] t96
[127] Thursday 15 May 2014 t8
[128] t323

The books were not in evidence before me. It is not known whether they were authored by a doctor. Mr and Mrs Stitt made concessions to the effect that the natural therapies referred to in those books are unsupported by scientific evidence and unevaluated from a scientific perspective.

8(b) (ii) Mr Dale's views on natural therapies in connection with the treatment of cancer

In the rare instance where someone with cancer comes to him, Mr Dale, as a naturopath and iridologist, has a practice of recommending that they follow their doctor's advice.

On occasion, he may suggest natural therapies to boost a person's immune system prior to chemotherapy. However, he tends to employ natural therapies after chemotherapy has been done, and a patient has been given the all-clear by their doctor. He recommends them as an aid to recuperation.[129]

8(b) (iii) Dr Alessandri's opinion on natural therapies in connection with the treatment of cancer

In Dr Alessandri's opinion there are some instances where natural therapies may in fact bring additional toxicity to a patient who is receiving chemotherapy.

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[129] t169

In Dr Alessandri's experience most families who bring their children for conventional chemotherapy are also exploring alternative and often natural therapies. In her experience, the extent to which a family will declare to a doctor that natural therapies are being employed is variable. She described this as a large problem. If the doctors are not told in advance or at all, they will be unable to assess the interactions of some of these natural therapies with the chemotherapy. She is aware of some instances where alternative therapies have increased the toxicity of chemotherapies that have been used for children.[130]

8(b) (iv) Professor Kellie's opinion on natural therapies in connection with the treatment of cancer

Professor Kellie referred to data and studies in his report that indicate approximately 40% to 50% of cancer patients will engage in some type of complementary therapy in addition to their chemotherapy.[131] He said he asked families to take great care in offering alternative or complementary therapies because many of them have activity that may contribute to enhanced toxicity.

In Professor Kellie's experience, the use of alternative or complementary therapies is not always disclosed to the

[130] t205
[131] Exhibit 1 Volume 1 Tab 18

doctors in these circumstances, but he is aware that there is a high rate of use.[132]

Professor Kellie considers vitamins and minerals to be compatible with chemotherapy under certain circumstances. However, he has recommended that patients not use particular herbs until after they have finished chemotherapy.[133]

8(b) (v) Dr Nuttall's views on natural therapies in connection with the treatment of cancer

It is Dr Nuttall's practice to consider the integration of natural therapies into the treatment of his patients. He is not antithetical towards radiotherapy or chemotherapy and on occasion has advised strongly that a patient have surgery or go to a specialist.

However, in some instances he has had cause for concern if it appears to have been represented to a patient that radiotherapy or chemotherapy is the only form of treatment.[134]

8(c) Ethical Considerations

In addition to her clinical practice Dr Alessandri also lectures in ethical issues including the matter of conflicts

[132] t130
[133] t130
[134] T31-32

between health care professionals and people seeking medical care. Dr Alessandri categorised Tamar's case as one which involved ethical issues and explained that PMH has a clinical ethics service. She was one of the two clinicians who set up the clinical ethics service in 2007 and is often the first point of contact for this service.

The PMH and KEMH Clinical Ethics Service Terms of Reference was in evidence before me.[135] The clinical ethics service is an advisory service set up to enable individuals involved in an ethical conflict to view the situation from many standpoints. The aim of the service is to support decision-making by clinicians and patients and their families within an ethical framework. A non-PMH/KEMH employee chairs it.

It is a purely voluntary service and can be consulted by anybody involved in the care of a patient at PMH or KEMH. Its membership includes persons of medical and non-medical background, persons with a spiritual or legal background, persons with experience in cultural matters and community members.

Dr Alessandri offered the use of the clinical ethics service to the Stitt family as a possible avenue for discussing Tamar's case. Her intention was that it would offer a forum for both the medical team and the Stitt family to come together to

[135] Exhibit 11

talk about the issues in a non-confronting and objective setting.[136]

Regrettably the clinical ethics service was not utilised.

8(d) The Role of Tamar's Parents

8(d) (i) The role of Mrs Stitt

Mrs Stitt stated that at an early stage she saw Tamar begin to improve with the application of natural therapies and she formed the view that the PMH doctors only wanted to treat her with chemotherapy. She wanted more time to prove that her natural therapies were starting to work.[137]

Mrs Stitt confirmed that at some point someone told her that there was a 50% chance of a cure for Tamar but by this stage she had started the natural therapies for Tamar and from her own observations she thought they were starting to work.[138]

I am satisfied that these observations by Mrs Stitt about the progression of Tamar's cancer were by no means an adequate measure of the true situation. The natural remedies were not curing Tamar's cancer and her condition was not improving. Only proper medical tests such as those being conducted by PMH could have given a true indication of the state of Tamar's disease.

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[136] t181
[137] Thursday 15 May 2014 t11
[138] Thursday 15 May 2014 t16

Based upon a combination of faith and hope Mrs Stitt believed that the natural therapies had a 100% chance of success.[139] She stated that if she saw that her natural therapies were not having any impact on Tamar's disease, she would have agreed to the chemotherapy.[140]

On numerous occasions throughout her evidence, Mrs Stitt postulated that everything has to work together in order for the natural therapies to have the desired effect. To explain, she stated that because Tamar was unable to get the nutrients she needed from her food in El Salvador, the efficacy of the other components of the natural therapies, such as the red clay, were compromised, stating "you can't just do one bit of natural remedies. It is everything."[141]

Mrs Stitt did agree that it was not after all, in Tamar's best interests for her to be taken to El Salvador because she was in a different environment. She herself had been away from El Salvador for about 18 years and they had to settle down again and find the remedies.[142] This was a concession made in hindsight.

Clearly Mrs Stitt desperately wanted her only daughter to recover but it is unfortunate that she persisted with her natural therapies in the face of all of the contrary indicators

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[139] Thursday 15 May 2014 t12; t39
[140] Thursday 15 May 2014 t11; t17
[141] Thursday 15 May 2014 t33; t52
[142] Thursday 15 May 2014 t32; t33

including Dr Alessandri's advice, Dr Sofocado's advice, the advice of the doctor in El Salvador and the severe deterioration in Tamar's health.[143] Unfortunately Mrs Stitt was encouraged in her persistence with her natural therapies by the advice provided by Dr Nuttall on 1 September 2009 but that needed to be balanced against all of the other contrary indicators, particularly Dr Alessandri's advice.

It is submitted to me by Mr Urquhart on behalf of Mrs Stitt that she was aware of evidence that the entire treatment using natural therapies she provided to her daughter had cured others. In all of the circumstances, whilst Mrs Stitt may have considered that information to constitute evidence, it did not.

Throughout her evidence, Mrs Stitt remained of the view that undertaken properly, that is with all of them used together in accordance with her books, her natural therapies would have worked to cure Tamar of her cancer. There is no justification for this premise.

Mrs Stitt's decision not to allow Tamar to be commenced on the chemotherapy treatment recommended by PMH was not in Tamar's best interests.

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[143] Thursday 15 May 2014 t68

8(d) (ii) The role of Mr Stitt

Mr Stitt has a background in health care in that he has worked as an anaesthetic technician. In the course of his work he has seen five or six people treated for cancer.[144]

Like Mrs Stitt he believed that the red clay treatment only works with the natural therapies undertaken all together including nutrition, a complete change of diet and herbal preparations in accordance with the "Spanish book". He emphasised the importance of adequate rest.

Also like Mrs Stitt, he was relying on a combination of faith and natural therapies to cure Tamar and he was mistakenly encouraged when a short period after the start of the natural therapies he saw Tamar was able to fall asleep soundly without complaining of pain as she did before.[145] Here I reiterate that given the complexity of Tamar's condition, his observations about the progression of her cancer were by no means an adequate measure of the true situation.

Mr Stitt's role however was different to that of Mrs Stitt. He accepted that he was the parent who had the most input into the discussions with Dr Alessandri regarding the

[144] t314-t318
[145] t326; t352; t362; Friday 9 May 2014 t25

approach to the treatment of the deceased.[146] He also had some specific concerns of his own.

Mr Stitt repeatedly expressed his concern that at the material time he felt threatened that Tamar would be taken away from his care and treated with chemotherapy regardless of his wishes.[147]

Mr Stitt also maintained on numerous occasions that if the medical advice from PMH for Tamar to have chemotherapy had been communicated to him in a style and manner similar to that exhibited by Professor Kellie when he was giving his evidence, he may have been more amenable to listening to it:

> "I have to reiterate that the way Professor Kellie put it across may have been more in my interests to listen to at the time if it was from Professor Kellie. Not because it was Professor Kellie, but it was put across in that manner, and we were educated in that manner without fear of a threat. I feel I may be more amenable to listen. I cannot speak for my wife or her family in that respect."[148]

I do not accept that Dr Alessandri or PMH staff in any way threatened Mr Stitt in the manner that he has suggested. Dr Alessandri took all possible steps to explain the diagnosis and the prognosis, explain the proposed treatment, offer the services of the clinical ethics committee, offer to meet with the extended family and provide an interpreter and engaged with the naturopath and the

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[146] t342
[147] t343
[148] Friday 9 May 2014 t26; t345-t346

doctors known to the Stitt family to assist with the communications.

Dr Alessandri indicated to Mr Stitt, truthfully, in response to his queries, that if they could not resolve their differences PMH would need to consider legal avenues. That is a statement of fact on her part and it is unfortunate that Mr Stitt took it as a threat and reacted the way he did. There was always ample and continuing opportunity for Mr Stitt to keep talking with Dr Alessandri and/or any other staff of PMH to ask further questions and to obtain further explanations regarding his concerns about the chemotherapy.

It is clear that by 21 August 2009 Mr Stitt had decided not to accept Dr Alessandri's reasoned explanations. When Dr Alessandri contacted him raising the chance of a cure for Tamar from 30% to 50%, Mr Stitt viewed it as being almost like an overnight change of mind and he was not convinced by her telling him she had done the research. When Dr Alessandri offered to arrange another ultrasound by PMH at Mr Stitt's request, he wanted an "independent" one done, either as well or instead of that one.[149] I find no rational explanation for this loss of confidence on Mr Stitt's part.

Mr Stitt was concerned about the likely side effects of chemotherapy treatment on Tamar, which he believed would

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[149] t355

be horrific and he outlined some of those. He was particularly concerned about hair loss, hearing loss and toxicity.

Dr Alessandri advised him on 21 August 2009 that the side effects were manageable with good supportive care and whilst Mr Stitt could not specifically recall being told this on the evidence before me I am persuaded that he was so advised.[150]

Professor Kellie gave evidence about the common side effects of chemotherapy in the short and longer term, particularly for children. Professor Kellie's opinion was to the effect that the range of supportive care measures for the treatment of children with chemotherapy to eliminate nausea and provide comfort and relief are of a very high standard.[151]

In Professor Kellie's experience the quality of life which follows for most children with hepatoblastoma is excellent. He said it is one of those conditions that is remarkably sensitive to treatment with a good prospect of a long-term outcome, particularly due to the regenerative qualities of a child's liver.[152]

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[150] t358; Exhibit 1 Volume 1 Tab 14 Document 5
[151] t126-t128; t147
[152] t128; t149

At a late stage in the investigation of Tamar's death, Mr Stitt disclosed that he was in fact ambivalent about the reliance on natural therapies but that he found himself in a position where he felt he had to comply with the views of his wife and extended family. Mr Stitt repeated this on a number of occasions and it is unnecessary for me to outline them in any detail.[153]

Suffice to say that Mr Stitt had his own obligation to Tamar as a parent to look after her, and that clearly included an obligation on his part not to allow himself to be overborne by others where her best interests were concerned, if that is what happened and I make no conclusion in that regard. Whatever his personal attitude may have been over that period and whether or not it changed, it is clear that in his discussions with Dr Alessandri, Dr Nuttall and with doctors in El Salvador, he was demonstrating support for the natural therapies and that demonstrated support had a critical effect on the course of events.

As with Mrs Stitt, Mr Stitt desperately wanted his only daughter to recover and his persistence with the natural therapies in the face of all of the contrary indicators known to him was equally unfortunate.

As with Mrs Stitt, any encouragement that Mr Stitt received from Dr Nuttall's advice on 1 September 2009 needed to be

[153] t363; Friday 9 May 2014 t20-t28; t60-t79

balanced against all of those other contrary indicators, particularly Dr Alessandri's advice.

Mr Stitt's decision not to allow Tamar to be commenced on the chemotherapy treatment recommended by PMH was not in Tamar's best interests.

9. CAUSE AND MANNER OF DEATH

Pursuant to section 25(1)(c) of the *Coroners Act 1996* I am required to find, if possible, the cause of Tamar's death.

I find Tamar died in El Salvador at Hospital de Ninos Benjamin Bloom, San Salvador, on 12 November 2009. There are a number of documents pertaining to the cause of Tamar's death in evidence before me. Some are translated from Spanish. Not all of the fields on these translated documents have entries. It was submitted to me that there might have been an error in the translation of the description of Tamar's liver cancer on some of those documents. Another issue concerned the factors resulting in Tamar's death as her condition deteriorated markedly in early November 2009. These are matters relevant to the cause of Tamar's death and I heard evidence in relation to them.

On a translated document entitled "Family Status Registry" one of the fields records Tamar's cause of death as "septic

shock, disseminated intravascular coagulation, hepatocellular carcinoma". It appears to be dated 13 November 2009. One of the signatures on this document was identified by Mrs Stitt as being hers.[154]

On a translated document entitled "Extract Translation of Death Record" the same cause of death is recorded for Tamar and it is also dated 13 November 2009. Mrs Stitt recognised this document and indicated that its purpose was to register the death.[155]

On a document entitled "Anatomopathological Findings Partial Autopsy Study" a clinical diagnosis of death is recorded for Tamar as "metastatic hepatocarcinoma, septic shock". It is dated 23 December 2009 and appears on its face to bear the signature of a pathologist. It reflects a partial post mortem examination of Tamar (the partial post mortem). There is no indication of whether or how it has been translated.[156]

On a letter from Hospital de Ninos Benjamin Bloom issued 1 December 2009 the direct cause of death is recorded as "septic shock (no strain isolated) and the contributor causes were secondary immunodeficiency and the hepatoblastoma".

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[154] Exhibit 1 Volume 1 Tab 17X
[155] Thursday 15 May 2014 t28; Exhibit 1 Volume 1 Tab 17Y
[156] Exhibit 1 Volume 1 Tab 3

There is no indication of whether or how it has been translated.[157]

It was submitted to me that I should accept that Tamar's cancer was a hepatoblastoma and not a hepatocellular carcinoma.

Dr Alessandri explained that the main tumour cells that overproduce alpha fetoprotein are hepatoblastoma and gene cell tumours. She said Tamar's markedly elevated alpha fetoprotein levels would be consistent with her liver tumour being a hepatoblastoma and not a hepatocellular carcinoma.[158]

Dr Alessandri spoke to the results of Tamar's biopsy undertaken on 13 August 2009. From the histopathology report the biopsy confirmed that Tamar's liver lesion was a hepatoblastoma of predominately fetal type. The histopathology results were reviewed by various pathologists at PMH.[159]

Dr Alessandri had at that point only been involved in treating one case of hepatocellular carcinoma. From her knowledge she said that they tend to be in a much older age group, mainly late teens and adults and they tend to occur in people who have underlying liver problems. She said

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[157] Exhibit 1 Volume 1 Tab 10
[158] t193
[159] t206; Exhibit 1 Volume 1 Tab 14 Document 5 p15 and Exhibit 2 Volume 2 p68

Tamar was a little bit older for hepatoblastoma but not within the age range that you could expect for hepatocellular carcinoma.

Whilst noting that worldwide, hepatocellular carcinoma is vastly more common than hepatoblastoma, Professor Kellie considered it likely that Tamar had a hepatoblastoma. Even taking into account that the median age of diagnosis of hepatoblastoma is below the age of two and that Tamar was approximately ten years of age at diagnosis, he referred to a range of factors that point very strongly to it being a hepatoblastoma, including absence of previous illnesses that might be susceptibility factors for hepatocellular carcinoma, the information on the histopathology report, the extreme elevation of her alpha fetoprotein levels and the absence of inborn errors of metabolism or structural abnormalities which can result in conditions that might be the background on which hepatocellular carcinoma develops.[160]

Taking into account that two senior paediatric pathologists conclude, on the basis of the biopsy on 13 August 2009, that Tamar's liver lesion was a hepatoblastoma, together with the evidence of Dr Alessandri and Professor Kellie, I conclude that Tamar had a hepatoblastoma.

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[160] t121

There was a range of opinion evidence given at the inquest in relation to the factors resulting in Tamar's death. Those opinions were of necessity based upon a review of the available medical records.

Tamar presented to Hospital de Ninos Benjamin Bloom on 21 October 2009 in a poor clinical condition with advanced and untreated hepatoblastoma. She received chemotherapy on 22 and 23 October 2009 but by 2 November 2009 she exhibited signs of liver failure and she developed a high fever. She then developed septic shock and Dr Alessandri stated this can result from an infection, which a patient is more prone to because of chemotherapy treatment. Dr Alessandri also said Tamar's cancer placed her body in a position where it was more susceptible to an infection from any source.[161] Approximately three weeks after her chemotherapy treatment Tamar died.

Dr Jodi White, forensic pathologist, gave evidence in relation to the cause of Tamar's death, based upon her review of the records. Her interpretation is that Tamar's secondary immunodeficiency rendered her more vulnerable to a fulminant infection progressing into septic shock. Dr White considered that the chemotherapy might have been the possible cause of the secondary immunodeficiency. She said as a consequence of her immunodeficiency, Tamar developed an overwhelming infection and profound sepsis

[161] t238

and multiple organ failure. Dr White considered Tamar's cause of death likely to be complications of metastatic hepatoblastoma and its treatment.[162]

In Professor Kellie's opinion the likely cause of Tamar's septic shock was the increased susceptibility of infection as a consequence of the chemotherapy.[163] He said the primary cause of Tamar's death was septic shock. That septic shock was as a result of an infection, likely to be bacterial and that has likely arisen because of the effect of chemotherapy on the blood counts and the bone marrow. He described it as "a cascade of causes".[164]

Professor Kellie's attention was drawn to the references to disseminated intravascular coagulation on some of the translated documents recording Tamar's cause of death.[165] In Professor Kellie's opinion, irrespective of whether there is disseminated intravascular coagulation, septic shock can lead to death quickly. He considered disseminated intravascular coagulation may be a contributing factor, but the primary cause of death was septic shock.[166]

On the evidence before me, I cannot be satisfied of the factors that caused Tamar's susceptibility to infection, leading ultimately to septic shock to the requisite

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[162] t278-t281
[163] t144
[164] t144
[165] Exhibit 1 Volume 1 Tab 17X; 17Y
[166] t144

standard.[167] There are a range of possible explanations for Tamar's susceptibility to infection and her state of health was already severely compromised on presentation to Hospital de Ninos Benjamin Bloom.

I find that the cause of Tamar's death was septic shock and multiple organ failure as complications of advanced metastatic hepatoblastoma.

The manner of death is natural causes.

10. CONCLUSION

Prior to the onset of her cancer, Tamar had been a healthy and contented child. She was attending her local primary school in Bunbury and doing well and taking part in sporting activities. She had learnt piano and she liked to draw and paint. She enjoyed the company of her friends and generally speaking, her life comprised of the usual activities one might expect of a 10 year-old child. Up to this time, Tamar had been well looked after in a loving family environment and her previous medical needs had been met. She was fully immunised. She was well grown and in fact the plotting of her height on a growth chart gave cause to predict that if she had grown up, she would have been taller than most women. She was a sensible and stoic child.

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[167] *Briginshaw v Briginshaw (1938) 60 CLR 336,* for applying the standard of proof.

In June 2009 when Tamar was 10 years old she began to experience intermittent right shoulder tip pain that became increasingly uncomfortable. The location of Tamar's tumour meant it was irritating her diaphragm, and the nerves which supply the diaphragm also supply the tip of the shoulder. In this case it would have been a mistake to diagnose her pain by any means other than medical ones.

Tamar developed abdominal pain and her shoulder pain worsened. In August 2009 after a number of medical investigations that culminated in a biopsy, Tamar was diagnosed with a malignant tumour in her liver. It was a cancer. The immunohistopathology was of a hepatoblastoma. It is the most common primary liver tumour in children. There was evidence of metastases.

Tamar's mother and father knew that it was the view of her treating oncologist at PMH that Tamar required chemotherapy to treat her cancer and that without chemotherapy, Tamar would die. This view was supported by all of the members of the oncology team at PMH's oncology clinic.

Tamar's treating oncologist outlined a treatment plan and stressed the importance of commencing the chemotherapy component of that plan as soon as possible.

Tamar's treating oncologist conducted research that initially indicated that Tamar had a 30% chance of a long-term cure with this conventional therapy. Further research supported a sound basis for indicating that there was an improved prognosis, namely a 50% - 60% long-term survival rate, (which was generally communicated in terms of a 50% or a 50% or better rate).

Tamar's parents were aware of this improvement in prognosis with the conventional therapy, however they decided that Tamar's cancer ought to be treated by natural therapies instead. A disagreement developed between Tamar's parents and PMH doctors regarding her proposed treatment which was not resolved, despite the best of efforts on the part of Tamar's treating oncologist and PMH staff.

Tamar's treating oncologist was aware that Mr Stitt was concerned about the side effects of chemotherapy and that Mrs Stitt's family had a long tradition of reliance on natural therapies to cure illnesses.

Tamar's treating oncologist recognised that her relationship with the family was vital to Tamar's health and the outcome of her treatment. She was cognisant of the severe distress caused to families by a cancer diagnosis and she sought to engage in discussions with Mr and Mrs Stitt with the aim of addressing and hopefully allaying their concerns.

Mr and Mrs Stitt did not avail themselves of the treating oncologist's offer of the clinical ethics service and her offer of a meeting with the extended family for the purpose of resolving their differences. They did not heed the treating oncologist's sound advice. They did not read or pay regard to her detailed letter outlining Tamar's treatment plan and prognosis and they did not heed the recommendations of their family doctors and the doctor in El Salvador, that were consistent with those of the treating oncologist regarding the need for chemotherapy.

There is nothing more that the treating oncologist could have done to try and productively communicate with Mr and Mrs Stitt. Her medical advice was excellent and her commitment to securing the best possible treatment for her patient, Tamar, is of the highest order.

Instead Mr and Mrs Stitt treated Tamar with natural therapies based on information available to them which was not scientifically proven or evaluated. Unfortunately they believed it would cure Tamar.

They sought out a doctor who they believed was amenable to the inclusion of natural therapies in the treatment of cancer, in the hope that their stance would be proven to be correct. By this stage they were fearful and vulnerable.

Regrettably, this doctor provided medical advice to the effect that Tamar's tumour appeared to be smaller. That medical advice was not supported by the material before him. That advice had the effect of encouraging Mr and Mrs Stitt to pursue their natural therapies in preference to the administration of chemotherapy.

Meanwhile it was apparent to the administrators at PMH that Mr and Mrs Stitt were avoiding critical steps that were the necessary precursors to commencing Tamar on chemotherapy and court proceedings were initiated for the purposes of seeking orders for Tamar's treatment. In the circumstances, given Tamar's travel to El Salvador, that matter did not proceed.

Given the state of her health and the availability of the treatment at PMH, Tamar's travel to El Salvador was not in her best interests.

In El Salvador Mrs Stitt endeavoured to continue to treat Tamar's cancer with natural therapies, a course that was certain to fail. Those natural therapies had no therapeutic effect on Tamar's cancer and the red clay treatment, as described in the inquest, would have been grossly uncomfortable for her.

In El Salvador Tamar became severely unwell. Her tumour had progressed and by the time her mother presented her to

Hospital de Ninos Benjamin Bloom in San Salvador on 21 October 2009, her condition had deteriorated significantly.

Tamar received treatment in Hospital de Ninos Benjamin Bloom Benjamin, which included chemotherapy. The chemotherapy treatment that Tamar received in El Salvador reflected the therapy that had been proposed by PMH. The aim was to improve her condition so that she could come back to Australia later to continue the treatment.

Tragically, Tamar's health upon presentation to Hospital de Ninos Benjamin Bloom was so compromised that despite all treatment, she died at the Hospital on 12 November 2009 from septic shock and multiple organ failure as complications of advanced metastatic hepatoblastoma.

It is clear from the evidence before me at the inquest that Tamar's parents at all times loved her, wanted her to be cured of her cancer and did what they believed was in her best interests by endeavouring to treat her with natural therapies. Tragically they were misguided, and they compounded their error by refusing to listen to reason from Tamar's treating oncologist and the doctors at PMH. Any encouragement they received from the doctor who, on one consultation, advised them that Tamar's tumour was smaller, had to be balanced against the detailed and

knowledgeable advice provided by the treating oncologist and supported by other doctors at PMH.

Mr and Mrs Stitt's decision to persist with the administration of natural therapies to cure Tamar's cancer was not in Tamar's best interests.

It would have been in Tamar's best interests to commence the SIOPEL 3 chemotherapy treatment recommended by the treating oncologist at PMH in early September 2009. The efficacy of that treatment and the impact of the side effects could have been reviewed by her treating oncologist after the first two cycles of chemotherapy and appropriately informed medical decisions could have been made after that.

Mr and Mrs Stitt's decision not to allow Tamar to be commenced on chemotherapy as recommended by her treating oncologist was not in Tamar's best interests.

If Tamar had been treated using the SIOPEL 3 chemotherapy drugs in accordance with the treatment plan proposed by her treating oncologist at PMH, it is likely that her cancer would have been cured. I have said previously it is not a question of adhering to precise percentages when assessing her prospects of a cure. The percentages provide a guide. In Tamar's case there was a real and not remote possibility of a cure.

Accordingly, whilst it cannot be known whether the SIOPEL 3 treatment would have cured Tamar, it is likely that her death was preventable with the administration of this treatment in early September 2009.

11. COMMENTS ON PUBLIC HEALTH AND SAFETY ISSUES

Under section 25(2) of the Coroners Act, a coroner may comment on any matter connected with the death including public health or safety or the administration of justice.

The incorporation of natural therapies into the treatment of cancer

The inquest did not comprehensively look at this issue nor was it intended to do that. I make no comment about the employment of natural therapies in the treatment of cancer, save for one aspect as follows. Two very experienced oncologists gave evidence at the inquest to the effect that it is known or suspected that some parents of children receiving conventional treatment for cancer do not disclose fully the range of natural therapies being employed by them or others concurrently, in the child's treatment. They outlined the risks involved with this.

Whilst this failure to disclose may be understandable in the context of the tension that is perceived to exist between the fields of conventional and alternative medicine, that tension may be more imagined than real. In this case, both

oncologists were receptive to hearing about and considering natural therapies. Dr Alessandri was prepared to allow a period of time for Mrs Stitt to employ natural therapies before commencement of chemotherapy.

It is important that a treating oncologist be provided with all relevant information so that the best decision can be made concerning the treatment of a child and that includes details of any natural therapies being employed. This provides the doctor with the opportunity to assess and if necessary research a particular remedy with the aim of seeking to ensure that the child is not, inadvertently, administered a natural therapy that may increase the toxicity of the conventional treatment.

12. REFERRAL AND REPORTING

The Coroners Act provides a mechanism for a coroner to refer evidence to a disciplinary body under section 50, or to report a matter to the Director of Public Prosecutions or the Commissioner of Police if the coroner believes that an indictable offence, or a simple offence, respectively, has been committed in connection with a death, under section 27(5).

12(a) Referral to disciplinary body

Dr Nuttall's advice to Mr and Mrs Stitt to the effect that Tamar's tumour appeared smaller on the second ultrasound

scan was unsupported by the material before him. Unfortunately, this advice encouraged Mr and Mrs Stitt in their persistence with the employment of natural therapies to treat Tamar's cancer. The degree of that encouragement cannot be known given their pre-existing attitude to the natural therapies.

Dr Nuttall took a range of considerations into account that led him to express encouragement and understanding in respect of the steps Mr and Mrs Stitt were taking. To his credit, Dr Nuttall concedes he would now deal differently with a case such as this.

It has been submitted to me by Mr Bourhill on behalf of Dr Nuttall that his advice was effectively of no real consequence, because Mr and Mrs Stitt were nonetheless already committed to administering natural therapies in preference to chemotherapy, and also because Tamar was scheduled to travel to El Salvador the next day in any event.

However, the fact that Dr Nuttall apprehended that Mr and Mrs Stitt had strong views on these matters only serves to underscore the need to for them to have received clear, independent and objective advice.

Whilst it is clear that Tamar's overseas travel was probably inevitable at that point, had Mr and Mrs Stitt not been advised by Dr Nuttall that Tamar's tumour appeared

smaller, it might have led them to seek medical advice at an earlier stage in El Salvador.

It has been submitted to me by senior counsel assisting that consideration ought to be given to referring Dr Nuttall's conduct to the Australian Health Practitioners Regulation Authority (AHPRA). I do not find that Dr Nuttall's conduct contributed to Tamar's death, but having regard to the broad range of circumstances pursuant to which a referral may be made under section 50 of the Coroners Act, I propose to refer the evidence in this matter to AHPRA.

12(b) Reporting to the Director of Public Prosecutions or Commissioner of Police

It has been submitted to me by senior counsel assisting that consideration ought to be given to reporting this matter to the Director of Public Prosecutions or the Commissioner of Police as the case may be, under section 27(5).

Tamar's death was tragic and it is likely that it could have been prevented. However, in all of the circumstances, I do not propose to report this matter to the Director of Public Prosecutions or the Commissioner of Police.

RVC FOGLIANI
STATE CORONER
9 October 2014