

## Confidential

**By email:** [lcoogan@parliament.wa.gov.au](mailto:lcoogan@parliament.wa.gov.au),  
[barry.house@mp.wa.gov.au](mailto:barry.house@mp.wa.gov.au)

## By delivery:

Honourable Barry House  
President of the Legislative Council  
Parliament House  
PERTH WA 6000



30 November 2012

Our ref 60072/14467/80130183

Dear Honourable President

### **Report 37 Standing Committee on Estimates and Financial Operations - Report in relation to a possible contempt regarding summonses to produce documents issued pursuant to section 5 of the *Parliamentary Privileges Act 1891* (WA) [the Report]**

We act for Health Solutions (WA) Pty Ltd (**Company**), the operator of Peel Health Campus (**PHC**).

We refer to the Report.

## Submission

The Company respectfully submits that, having regard to the lack of substantive disobedience disclosed by the particulars that are claimed to constitute a contempt of the Committee, that you as President have grounds to be satisfied that there is no substance to the matters raised in the Report and that you may decide to decline to refer this matter to the Procedure and Privileges Committee under Standing Order 92(5) of the Standing Orders of the Legislative Council of Western Australia.

A summary of the matters that the Company relies upon in support of the above submission is as follows:

- (a) By making the Report without first seeking to engage with the Company as to its efforts at compliance with relevant Summonses, the Committee has failed to afford the Company due process in terms of the principles of natural justice.
- (b) The Company has, in fact, made every reasonable effort to comply with the substantive requirements of each Summons according to its legal obligations and subject to its legal entitlements. It has also attempted to keep the Committee fully informed of its progress and of any practical obstacles to compliance with the timeframes that were set by the Committee.
- (c) Since the first Summons was received by the Company on the afternoon of 25 October 2012, a large number of lever arch files of documents have been delivered by the Company to the Committee.

- (d) The time periods set by the Committee by which the Company was required to respond to each Summons were unrealistic and in a practical sense virtually impossible to comply with given the volume of documents that were within the scope of each Summons, the manner in which the Summons were delivered to the Company, and having regard to the searches of Company records that were required to be undertaken.
- (e) In its correspondence with the Committee, the Company invited the Committee to discuss an appropriate methodology for searching the Company records (for example, see the letter from Clayton Utz dated 29 October 2012 - refer to the third paragraph) but the Committee did not respond to this invitation.
- (f) Notwithstanding the provisions of Standing Order 181(d) the Committee did not, in any of the Summonses that were issued, inform the Company of its right of objection to the production of documents as provided by section 7 of the Parliamentary Privileges Act 1891.
  - (i) In *Aboriginal Legal Service of Western Australia Incorporated v State of Western Australia*, Rowland J emphasised that, with respect to Parliamentary procedure in Western Australia "a person who is summoned to produce documents must be told by the House the procedure by which he is entitled to object to production of the documents to the House, and the manner in which his objection will be heard, before he is obliged to hand them to the House or any officer of the House".
  - (ii) The failure to inform the company of its entitlement to object to the production of documents raises a threshold question as the validity of each of the Summonses that were issued by the Committee Chair under the hand of the Clerk under Standing Order 192.
- (g) The Company cannot be taken to be in contempt of a Committee Summons to produce documents because it exercised its legal right to object to the production of the documents on the basis that section 7 of the Parliamentary Privileges Act applied. It seems that any obligation to produce does not arise until the company is informed of the manner in which its objection will be heard and the House has ruled on the merits of the objection.

The Company now turns to make a more detailed response to the specific allegations and assertions made in the Report. Matters in bold are extracts from the Committee's Report.

## **First Summons**

**[2.1] On 22 October 2012 the Committee resolved to issue [the First Summons] to [the Company], the operator of PHC. The First Summons was issued on 24 October 2012 to be complied with by 3pm on 26 October 2012 ...**

1. Although the First Summons was issued on 24 October 2012, it was not delivered until the following afternoon.



2. The First Summons (along with 2 Summonses to attend to appear as a witness) were delivered by a woman who identified herself as "Julia Laurenson" at 110 Lakes Road, Mandurah at approximately 2.20pm on 25 October 2012 (Thursday). The Summons was returnable at 3pm on 26 October 2012 (Friday). Putting aside the location and manner of service, this meant that the Committee allowed less than 25 hours to respond to the First Summons.
3. In respect of the service of the First Summons, the Company highlights that:
  - a. The First Summons was addressed to the Company at its registered office (138 Stirling Highway, North Fremantle) but was served at the PHC at 110 Lakes Road, Mandurah;
  - b. The First Summons was handed to a practice manager at the front reception desk without a covering letter or envelope;
  - c. Two summonses to appear as a witnesses were also served at this time at 110 Lakes Road, Mandurah despite being addressed to: Aled Williams of 17 Admiralty Crescent, Halls Head and John Fogarty of 110 Lakes Road, Mandurah (at the time ASIC records clearly showed Mr Fogarty's address as 238 Orchard Boulevard in Singapore);
  - d. Mandurah is an approximately 1.5 hour drive from Parliament House.

**[2.2] On 25 October 2012 the Company (through its legal advisors, Clayton Utz) requested an extension of time to comply with the First Summons to midday on 29 October 2012.**

4. We **attach** a copy of the letter from Clayton Utz to Mr Peacock which was sent at 8.21pm on 25 October 2012 (ie. approximately 6 hours after delivery of the First Summons) (refer tab 1).
5. In that letter Clayton Utz indicated that documents would be provided on 26 October (Friday) and 29 October (Monday). Clayton Utz also pointed out that the categories of documents needed refinement. The letter states:

*"We would also like to discuss with you the possible further refinement of the stated categories of documents. For example, the reference to "any correspondence, email, memorandum or other documents relating to..." in category 2 is very broad. We believe this description might be able to be narrowed so that it is limited at first instance, to certain named employees or search terms."*

**[2.3] [The Clerk], acting under instruction from the Committee granted an extension of time in the following terms ...**

6. We **attach** a copy of the letter from Mr Peacock dated 25 October 2012, but received at 11.33am on 26 October 2012 (Friday) (refer tab 2). We note that this letter also amended the First Summons, particularly paragraph 2.

**[2.4] On 26 October 2012 the Company delivered various documents to the Clerk in partial compliance with the First Summons and stated it would ...**

7. We **attach** a copy of the letter from Clayton Utz to Mr Peacock dated 26 October 2012 (refer tab 3).

8. At approximately 3.00 pm on 26 October 2012 (Friday) the Company delivered 5 lever arch files of documents to the Clerk in compliance with the First Summons. This was within 25 hours of the First Summons delivery. The Company submits that this is evidence of the significant effort being made by the Company to achieve substantial compliance with the First Summons in the time frame that had been allowed and as a means of providing all material that could reasonably be gathered in the time required by the Clerk in the letter received on 26 October 2012.

**[2.5] On 29 October 2012, the Company delivered further documents to the Clerk in partial compliance with the First Summons.**

9. At approximately 12 noon on 29 October 2012 (Monday) the Company delivered a further 6 lever arch files to the Committee as required by the Clerk in his letter dated 25 October 2012.

10. We **attach** a letter from Clayton Utz sent to Mr Peacock at 3.38pm on 29 October 2012 (Monday) ("first letter of 29 October 2012") (refer tab 4), which states:

*"We have also delivered to you a second bundle of Health Solutions WA documents, as noted in our earlier letter of today's date, we will provide the Committee with any further documents as soon as they are located by our client."*

11. We **attach** a letter from Clayton Utz sent to Mr Peacock at 3.44pm on 29 October 2012 (Monday) ("second letter of 29 October 2012") (refer tab 5). It relevantly provided:

*"Whilst HSWA believes that the majority of the documents falling within the scope of the Summons have now been produced, for the reasons discussed below, HSWA would like to discuss with you a proposed methodology for further searches and to continue to provide the Committee with the documents it locates."*

...

*"Once you have had the opportunity to consider the above, we would be grateful if you would contact us to discuss how we may continue to provide further materials to assist the Committee."*

12. The Company submits that the provision of a further large volume of material in very short time, involving Company personnel being required to work over the course of a weekend to meet the demanding timelines, together with a covering letter offering to discuss how the Company might structure further searches to identify how it could best meet the further requirements of the Committee, demonstrates a willingness by the Company to provide every assistance to the Committee. The Company submits that this conduct cannot, by any measure, be seen as in any way approaching a blatant disobedience of the commands of the Committee so as to constitute a contempt.



**[2.7] The Company subsequently supplied, on 30 October 2012 and 9 November 2012, additional documents to the Committee described in paragraph 2, 6 and 7 of the First Summons, in further breach of the deadline for the return of the First Summons. (fn4 - it was not previously apparent to the Committee that the Company had not produced all documents within the category described in paragraph 2 of the First Summons)**

13. The letters sent by Clayton Utz on 29 October 2012 (Monday) fully and frankly disclosed that the methodology that the Company had used to locate documents may have resulted in not every document falling within the scope of the First Summons having been located. The letters demonstrated the Company's serious and meticulous efforts at doing all that it could reasonably do in order to comply in a timely way. The second letter of 29 October 2012 also asked the Committee to contact Clayton Utz so that there could be discussions as to how Clayton Utz may continue to provide materials to assist the Committee.
14. The Committee does not refer to either of the letters of 29 October 2012 in its Report.
15. The Committee did not respond to the request in the second letter of 29 October 2012. Instead it now alleges a contempt of its inquiry.
16. At approximately 1.30 pm on 30 October 2012 the Company delivered a further lever arch file to the Committee.
17. We **attach** a letter from Clayton Utz dated 30 October 2012, which is not referred to in the Report (refer tab 6).
18. There are no Board minutes or papers which relate to the CDU directly.
19. The letter of 30 October 2012 states that:

*"We have not seen any further documents likely to meet the descriptions in the Summons. In the time permitted, we cannot of course state this conclusively. Instead, we propose, subject to the Committee's view, to offer to make the information referred to above available for inspection by the Committee's research assistants. Perhaps the Committee might consider this offer and, should it decide this to be a reasonable way forward, for one of the Committee's research assistants to make contact with us to arrange a time for inspection of these records. If, however, the Committee would prefer a different approach, please let us know."*
20. The Committee did not respond to the Company's offer or provide further guidance to the Company as to how the Company might best satisfy its requirements.

### **Second Summons**

**[2.9] The Second Summons was issued on 31 October 2012 to be complied with by midday on 2 November 2012 ...**

21. The Second Summons was delivered to 110 Lakes Road Mandurah in the afternoon of 31 October 2012 (Wednesday) despite Clayton Utz having corresponded by email with the Committee and this not being the Company's registered office. The Committee must have been conscious by this stage that the return time for the Second Summons was an onerous one. Yet the Committee made no

effort to expedite the effective service of the Second Summons in order to afford the Company some extra precious time, given the lines of communication that had been established with the Clerk and the Chair.

**[2.11] The Company failed to fully comply with the Second Summons by not providing, by midday on 2 November 2012, the balance of all documentation specified in the Second Summons, namely, documentation described under the heading 'Documents Not Produced; and documentation described in paragraphs 1 to 7 under the heading 'Additional Documents To Be Produced'. No request for an extension was received by the Committee prior to the deadline.**

22. With respect, it is factually misleading to assert that "No request for an extension of time was received by the Committee prior to the deadline." We **attach** an email dated 2 November 2012, which Clayton Utz sent to the Clerk at 11.37 am requesting an extension to 3.00pm on that day (refer tab 7). We also refer to the subsequent email sent by Mr Malcolm Peacock at 12.20 pm which stated that the Chair of the Committee had granted the extension. Whether or not the Committee was provided with the request prior to 12 noon, the Company is unable to say. All it can say is that the Company had done all that it could by making a request to the Clerk for an extension of time prior to the deadline and it is abundantly clear that the Chair had considered and indeed granted that request by 12.20pm. Yet the Report alleges that this conduct constitutes a contempt.

The Company submits that this allegation raises no issue of substance that would warrant a referral to the Procedure and Privileges Committee for inquiry and report.

23. Turning to the level of compliance with the Second Summons, at approximately 3.00pm on 2 November 2012 (Friday) the Company delivered 6 lever arch files to the Committee.
24. We **attach** a letter from Clayton Utz delivered to the Committee together with the lever arch files on 2 November 2012 (refer tab 8).

**[2.12] Three hours after the deadline a request was received for an extension of time to comply with the Second Summons with respect to the production of documentation described in paragraph 7 under the heading 'Additional Documents To Be Produced' to midday on 5 November 2012.**

25. Footnote 5 refers to a letter from Cameron Belyea dated 9 November 2012 which has only 2 pages.
26. We **attach** a 2 page letter from Clayton Utz delivered to the Committee on 9 November 2012 (Friday) (refer tab 9).
27. It is unfair of the Report to imply that the request for a further extension of time to produce the *Category 7* documents, that was made at page 3 of the Clayton Utz letter dated 2 November and delivered at about 3.00pm, was a request made "three hours after the deadline". This is because the deadline referred to had in fact been extended from midday to 3.00pm by the Clerk with approval from the Chair at 12.20pm.
28. To the extent that this timing and the request for an extension is said to constitute a contempt of the Committee, the Company submits that this allegation raises no issue of substance that would warrant a referral to the Procedure and Privileges Committee for inquiry and report.



**[2.13] The Committee received from the Company, on 12 November 2012, additional documents described under the heading 'Documents Not Produced' ...**

29. At approximately 5.00pm on 9 November 2012 (Friday) the Company delivered 3 lever arch files to the Committee.

**[2.14-2.20] Minutes of Board meetings and board documents - 1/3/2010 to 30/06/2011**

30. We refer to the letters from Clayton Utz dated 29 October 2012 and 2 November 2012 (refer to tabs 4, 5 and 8).
31. The Company has undertaken searches of its board minutes and we are instructed that there are no documents fitting the description of or being within the scope of the above description which was originally set out in paragraph 3 of the First Summons.

**[2.21-2.24] Minutes of Board or Board sub-committee meetings - 1/1/2009 to present**

32. We refer to the Clayton Utz letter to Mr Peacock dated 2 November 2012, which was delivered to Parliament House at approximately 3.00pm (refer tab 8).
33. The Company is of the view that the documents referred to in paragraphs 1 and 2 of the Second Summons appear to be outside of the Terms of Reference.
34. Section 7 of the *Parliamentary Privileges Act 1891* (WA) states that a person may object to the production of any document on the ground that it is of a private nature and does not affect the subject of inquiry. The Terms of Reference contain the relevant information available to the Company to allow it to assess the scope and subject of inquiry.
35. We respectfully submit that to suggest that it is a contempt of the Committee to fail to produce documents to which an objection to production has been taken under section 7 of the Parliamentary Privileges Act, is to misunderstand the nature of the right to object. If a summons has been issued to the Company commanding it to produce a broad range of documents which appear to the Company to be of no relevance to the inquiry and the Company objected to production under section 7, but must produce the documents notwithstanding its objection, the right of the Company to object pursuant to the section is abrogated and has no practical utility.
36. In reality what is required by section 7 of the Parliamentary Privileges Act is that the objection should be referred to the House. In *Aboriginal Legal Service of Western Australia Incorporated v State of Western Australia* (1993) 113 ALR 87 Rowland J at 111 indicated that:

*In my opinion, the Parliamentary Privileges Act, on its proper construction, demands that any order to attend to either answer questions or to produce documents must give a return date at a time when the House, or the Committee as the case may be, is sitting so that the questions to be asked may be objected to on the ground set out in s 7, or the production of the documents can be objected to on that stated ground.*

*If that be wrong, and the Act is silent as to the procedure to be adopted, then I accept that the House has power to regulate its own procedures, uninhibited by any control by this court, to enable a person to object and have his objection dealt with by an order for production made in the case of documents after his objection has been resolved by the House by ordering its production, if that be*

*the order made under s 7, or otherwise he is excused from producing the documents, being the only other order which can be made.*

*In that event, a person who is summoned to produce documents must be told by the House the procedure by which he is entitled to object to production of the documents to the House, and the manner in which his objection will be heard, before he is obliged to hand them to the House or any officer of the House.* (bolding is our emphasis).

*This may be technical and it may be inconvenient, but, on any view of the Act, a person is not obliged to produce books or documents to the House, or to any responsible officer of the House, if that person objects to its production on the ground stated, unless and until the House rules under s7 that such production is excused, or an order is made after dealing with the objection for the production of the documents.*

37. The Company is entitled to have its objection heard and determined before it even becomes possible to discern whether the Company might be in contempt for non-production.
38. The Company respectfully submits that to the extent that it is being alleged that the conduct of the Company in not producing documents in accordance with a Summons, on the ground that the Company has an un-adjudicated section 7 objection to the production of those documents, that this does not disclose a contempt of the Committee. The allegation raises no issue of substance that would warrant a referral to the Procedure and Privileges Committee for inquiry and report.

#### **[2.25-2.27] Redacted copies of minutes of executive meetings**

39. We refer to our letter dated 9 October 2012, which was delivered to Parliament House on or about 5.00pm that same day (refer tab 9).
40. We repeat our comments in paragraphs 37 and 38 of this letter in relation to the Company's objection to production of the full document.
41. The Company further submits that if the Company had provided the document in full to the Committee, there would be no operation for or utility in making an objection, as it has done, under section 7 of the Parliamentary Privileges Act.

#### **Third Summons**

**[2.31] At 3.20pm on 23 November 2012 the Company's legal advisors stated:**

*Our client is considering its position with regards to section 7 of the Parliamentary Privileges Act 1981 (WA) given our client's view that the summons seeks documents:*

*(a) of a private nature; and*

*(b) do not concern the subject of the inquiry.*

42. We **attach** a 2 page letter from Clayton Utz to Mr Peacock dated 23 November 2012 (refer tab 10), which was sent by email to the Clerk at 3.20 pm and by courier to Parliament House before 2.00 pm on the same day. The letter attempts to foreshadow an objection under section 7 of the Parliamentary Privileges Act.



43. The Committee had not informed the Company of its right of objection as required by Standing Order 181(d) and had not provided the Company with an outline, or any other indication of the procedures that the Committee preferred be adopted for the purposes of making formal objection under section 7 of the Parliamentary Privileges Act. Specifically the Company had not been advised by the Committee of any particular language that it preferred be used when making an objection to the production of documents under section 7 of the Parliamentary Privileges Act 1891.
44. The Company submits that the failure to inform the Company of its entitlement to object to the production of documents raises a threshold question as the validity of all of the Summonses that have been issued with the authority of the Committee Chair under the hand of the Clerk under Standing Order 192.
45. In any event, the Company further submits that the allegation that the Company is in contempt because it has exercised its right to object and that objection has not yet been dealt with, raises no issue of substance that would warrant a referral to the Procedure and Privileges Committee for inquiry and report.

### Committee Comment

#### **[2.34] Observations of the Committee:**

**The Committee was substantially obstructed by the Company in the performance of its functions by:**

- (a) **Failing to produce documentation in the time period required by the First Summons, Second Summons and Third Summons; and**
  - (b) **Failing to provide all documentation summonsed by the Committee.**
46. In relation to (a), the Company submits that the time periods allowed by the Committee were unrealistically short, for instance:
- (a) the First Summons was served at 2.30pm on 25 October 2012, amended at 11.30 am on 26 October 2012 (refer tab 2), and returnable at 3.00pm on 26 October 2012 - giving the Company less than 25 hours to comply with the First Summons and less than 4 hours to comply with the amendment to the First Summons; and
  - (b) the Second Summons was served during the afternoon of 31 October 2012 and returnable by 12.00 noon on 2 November 2012 - giving the company less than 48 hours to comply with the Second Summons.
47. Given the volume of the documents requested, i.e. First Summons requested 7 categories of documents (and additional sub-categories) and the Second Summons requested a further 12 categories of documents (and additional sub-categories), and the diversion of resources needed to identify the material, collect and collate it, it was simply not reasonable to expect that the Company might achieve any greater degree of compliance than the Company in fact achieved. In any event, the Company kept the Committee fully informed of its ongoing efforts and sought, but did not receive at any stage, the Committee's guidance and assistance.

Honourable Barry House

30 November 2012

48. There was also the logistical difficulties of retrieving documents which were often stored at PHC which is located over one hour from Perth.
49. In relation to (b), the Company submits that it has endeavoured in good faith to comply. However it has exercised its rights under section 7 of the Parliamentary Privileges Act when it has appeared to the Company that those rights were available to it. This is not a contempt of the Committee but a legitimate exercise of its statutory entitlement.
50. Further, as noted above, the failure to inform the Company of its entitlement to object to the production of documents raises a threshold question as the validity of each of the Summonses that were issued by the Committee Chair under the hand of the Clerk under Standing Order 192
51. By letters of 1 and 27 November 2012 (refer to tabs 11 and 12) (the latter sent to the Clerk at 12.45pm), the Company has requested the Committee provide it with procedural fairness/natural justice in respect of any adverse allegation, information/material the Committee relies upon and the source of this information/material. The latter letter was acknowledged on behalf of the Committee (on 29 November 2012) (refer tab 13).
52. The Company did not receive notice of the Report the subject of this letter before being contacted by the media to comment on statements made to the House at or about 5.50pm on 27 November 2012.
53. The Company respectfully submits that it would have been in a position to assist the Committee by outlining the above matters had it been provided an opportunity to see the statements within the Report prior to the Report being tabled in the House.

We look forward to receiving notice of your decision in this matter.



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**Kathleen McNally, Senior Associate**  
+61 8 9426 8243  
kmcnally@claytonutz.com



<b>Index of Annexures for submissions to Hon Barry House dated 30 November 2012</b>		
<b>No.</b>	<b>Description of document</b>	<b>Date</b>
1.	Letter from Clayton Utz to Mr Malcolm Peacock	25 October 2012
2.	Letter from Mr Malcolm Peacock to Clayton Utz	26 October 2012
3.	Letter from Clayton Utz to Mr Malcolm Peacock	26 October 2012
4.	Letter from Clayton Utz to Mr Malcolm Peacock (first letter)	29 October 2012
5.	Letter from Clayton Utz to Mr Malcolm Peacock (second letter)	29 October 2012
6.	Letter from Clayton Utz to Mr Malcolm Peacock	30 October 2012
7.	Email correspondence between Clayton Utz and Mr Malcolm Peacock	2 November 2012
8.	Letter from Clayton Utz to Mr Malcolm Peacock	2 November 2012
9.	Letter from Clayton Utz to Mr Malcolm Peacock	9 November 2012
10.	Letter from Clayton Utz to Mr Malcolm Peacock	23 November 2012
11.	Letter from Clayton Utz to Mr Malcolm Peacock	1 November 2012
12.	Letter from Clayton Utz to Mr Malcolm Peacock	27 November 2012
13.	Letter from Hon Giz Watson to Neale Fong	29 November 2012

**Confidential****BY EMAIL -**  
**mpeacock@parliament.wa.gov.au**

25 October 2012

Mr Malcolm Peacock  
Clerk of the Legislative Council  
Parliament House  
PERTH WA 6000

Our ref 60072/14467/80130183

Dear Sir

**Summons to attend to produce documents issued and authorised 24 October 2012 - Health Solutions (WA) Pty Ltd (HSWA) [Summons]**

As the Committee is aware, we act for HSWA.

We understand that the Summons was served on a practice manager at the Peel Health Campus at 110 Lakes Street, Mandurah at approximately 2.20pm this afternoon. The Summons seeks production of documents and the creation of summaries of information, which fall within 7 categories, by 3pm tomorrow.

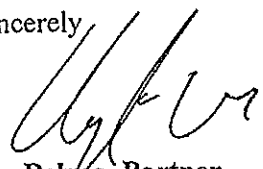
A number of HSWA staff will work on compiling the requested documents tonight and tomorrow morning to ensure that as many documents as possible are provided to the Committee by 3pm tomorrow. The documents will need to be copied and then driven from Mandurah to Perth, a drive which takes over one hour.

Further, Mark Stowell, the chairman of HSWA, is overseas. Neale Fong, the managing director of HSWA, is interstate. We understand that both return to Perth late tomorrow.

Subject to the next paragraph, HSWA anticipates that it will be in a position to provide the Committee with the outstanding documents by midday on Monday, 29 October 2012.

We would also like to discuss with you the possible further refinement of the stated categories of documents. For example, the reference to "any correspondence, email, memorandum or other documents relating to...." in category 2 is very broad. We believe this description might be able to be narrowed so that it is limited at first instance, to certain named employees or search terms.

Yours sincerely

  
**Cameron Belyea, Partner**  
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+61 8 9426 8243  
kmcnally@claytonutz.com



## McNally, Kate

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**From:** Belyea, Cameron  
**Sent:** Thursday, 25 October 2012 8:21 PM  
**To:** 'mpeacock@parliament.wa.gov.au'  
**Cc:** Dunphy, Barry; McNally, Kate  
**Subject:** FW: HSWA

Malcolm,

Please refer our attached letter.

Kind regards

**Cameron Belyea, Partner**  
**Clayton Utz**

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Letter to M  
Peacock 25 Oct...



25 October 2012

Mr Cameron Belyea  
Clayton Utz  
GPO Box 1214  
PERTH WA 6844

Dear Mr Belyea

**AMENDMENT TO SUMMONS TO PROVIDE DOCUMENTS - HEALTH SOLUTIONS (WA) PTY LTD**

I refer to our telephone conversation yesterday and your letter dated 25 October 2012.

The Standing Committee on Estimates and Financial Operations has confirmed that it will grant an extension of time in accordance with my advice to you. That is, Health Solutions (WA) Pty Ltd must provide all material that they could reasonably gather by 3 pm Friday, 26 October 2012 with the remainder due by 12:00 mid-day Monday, 29 October 2012.

Following our conversation, the Committee has agreed to amend the summons for documents issued to Health Solutions (WA) Pty Ltd with respect to para 2 as follows:

- a. any former doctor or staff who left the employment of Peel Health Campus in the last 12 months and any current doctor or staff where there has been any variation in their terms of employment. A copy must be provided of the standard awards, contracts of service or contracts of employment within the terms of the summons;
- d. any non-standard payments, bonus or remuneration of doctors. A copy must be provided of any standard payment, bonus or remuneration not covered by paragraph 2a above.

Please contact me if you have any queries with respect to the summons.

Yours sincerely

A handwritten signature in black ink, appearing to read "M Peacock", is written over the typed name.

**Malcolm Peacock**  
Clerk of the Legislative Council



**From:** Briant, Corinne [<mailto:cbriant@parliament.wa.gov.au>]

**Sent:** Friday, 26 October 2012 11:33 AM

**To:** Belyea, Cameron

**Subject:** Amendment to Summons

Dear Mr Belyea

Please find attached correspondence from Mr Malcolm Peacock, Clerk of the Legislative Council. Original will follow in the mail.

Regards

Corinne

## Corinne Briant

Executive Assistant to the Clerk  
of the Legislative Council

Parliament House

PERTH WA 6000

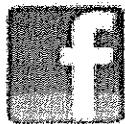
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## CLAYTON UTZ

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**Confidential****DELIVERY**

26 October 2012

Mr Malcolm Peacock  
Clerk of the Legislative Council  
Parliament House  
PERTH WA 6000

Our ref 60072/14467/80130183

Dear Sir

**Summons to attend to produce documents issued and authorised 24 October 2012 - Health Solutions (WA) Pty Ltd (HSWA) [Summons]**

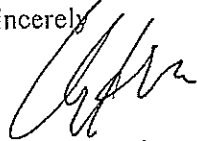
We refer to the Summons received by our client yesterday afternoon and your letter this morning.

Our client has devoted considerable resources to responding to the Summons and is seeking to cooperate within the available timeframe. Our client has been able to locate documents relating to categories 1, 2, 5, 6 and 7, which appear in the attached 5 files. Our client will continue its efforts to find additional documents and will provide further materials in response to the Summons on Monday.

We expect that following return of our client's chairman to the jurisdiction, our client will be in a position to produce its corporate records relating to categories 3 and 4.

We will write separately today with some suggestions regarding further production of documents and oral testimony.

Yours sincerely



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**Kathleen McNally, Senior Associate**  
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**Confidential**

**BY EMAIL -**  
**mpeacock@parliament.wa.gov.au**

29 October 2012

Mr Malcolm Peacock  
Clerk of the Legislative Council  
Parliament House  
PERTH WA 6000

Our ref 60072/14467/80130183

Dear Sir

**Summons to attend to produce documents issued and Summons to appear as a witness**

We refer to our previous correspondence and confirm that we act for both Health Solutions WA and Dr Aled Williams.

Our purpose in writing to you is to seek to deal with a number of procedural matters prior to the hearing tomorrow of the Statutory Committee on Estimates and Financial Operations (**Committee**).

**Counsel**

In relation to Dr Williams (who has been summoned pursuant to sections 4 and 5 of the *Parliamentary Privileges Act*, 1891), we wish to inform the Committee that Dr Williams has decided to exercise his right under Standing Order 181(g) to be accompanied by Counsel. The appointed Counsel is Ms Gail Archer SC. Ms Archer is, of course, aware of the limited role of Counsel in committee hearings.

**Documents**

We also note that under Standing Order 181(a), Dr Williams is entitled to access relevant documents held by the Committee before and during his examination. We would ask that the Committee make available to Dr Williams copies of any relevant documents that are currently held by the Committee (other than Health Solutions WA documents which we have provided). We would be grateful if that documentation could be made available to him today so that he will have sufficient time to review the material prior to his examination.

We have also today delivered to you a second bundle of Health Solutions WA documents. As noted in our earlier letter of today's date, we will provide the Committee with any further documents as soon as they are located by our client.

**Dr Neale Fong**

To assist the Committee, we enquire as to whether the Committee would be assisted by Dr Neale Fong giving oral evidence. Dr Fong is currently the most senior executive officer of Health Solutions (WA) Pty Ltd, being the managing director of Health Solutions WA and the CEO of the Peel Health Campus. He has reviewed the issues raised before the Committee on 4 October 2012 at the Annual Report Hearing held with the Department of Health and the internal documents of Health Solutions WA. Dr Fong has the necessary



medical and clinical experience to respond to questions relating to the admission and billing practices of Peel Health Campus during the period 1 March 2010 to 30 June 2011. Dr Fong is uniquely placed to assist the Committee and would welcome the opportunity to do so.

Dr Fong is also in a position to provide supplementary evidence to the Committee in accordance with Standing Order 181(g).

## Status of Documents

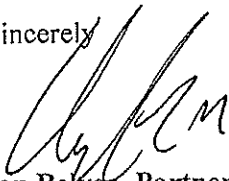
We would also note that the Health Solutions WA documents which have been produced over recent days to the Committee amount to "private evidence" under Standing Order 175(3). That documentation includes material which is confidential and which contains commercial in confidence information. In particular, our client strongly believes that the following documents should not be publically disclosed or published by the Committee because of their clear, commercial nature being:

- (a) Peel Heath Campus Health Services Agreement;
- (b) Supplemented Deed - Peel Health Services Agreement; and
- (c) Sub-lease - Lease H627570.

We would be grateful for the opportunity to provide further submissions on this issue if the Committee takes a different view.

We would also, of course, welcome the opportunity to discuss any of these matters with the Committee.

Yours sincerely

  
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cbelyea@claytonutz.com

**Kathleen McNally, Senior Associate**  
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kmcnally@claytonutz.com

## Savory, Jody

---

**From:** Savory, Jody on behalf of Belyea, Cameron  
**Sent:** Monday, 29 October 2012 3:38 PM  
**To:** 'mpeacock@parliament.wa.gov.au'  
**Cc:** McNally, Kate  
**Subject:** Summons to attend to produce documents issued and Summons to appear as a witness  
**Attachments:** SCN\_20121029163434\_001.pdf

Dear Sir

Please see **attached** our correspondence.

Kind regards

**Cameron Belyea, Partner**  
**Clayton Utz**

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2-5(ii)

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**BY EMAIL -**

**mpeacock@parliament.wa.gov.au**

29 October 2012

Mr Malcolm Peacock  
Clerk of the Legislative Council  
Parliament House  
PERTH WA 6000

Our ref 60072/14467/80130183

Dear Sir

**Summons to attend to produce documents issued and authorised 24 October 2012, as amended 25 October 2012 - Health Solutions (WA) Pty Ltd (HSWA) [Summons]**

We refer to the Summons and the documents provided on 26 October 2012.

As foreshadowed, at noon today we **enclosed** files containing further documents.

Whilst HSWA believes that the majority of the documents falling within the scope of the Summons have now been produced, for the reasons discussed below, HSWA would like to discuss with you a proposed methodology for further searches and to continue to provide the Committee with the documents it locates.

### **Confidentiality**

As we have already noted, some of the documents provided are confidential in nature, such as the Health Services Agreement and copies of the documents falling within category 5 (which include patient names and medical problems). We would be grateful if you would foreshadow to the Committee that HSWA will be seeking that these documents and the information therein to be kept private.

### **Category 1**

Documents provided on 26 October 2012.

### **Category 2**

On 26 October 2012 HSWA provided documents including a preliminary briefing note from Catherine McKinley dated 23 April 2010, memoranda circulated regarding CDU and a document entitled "CDU - FAQ" dated August 2010.

We **enclosed** further documents including emails (primarily to/from Dr Aled Williams) which refer to CDU and copies of the employment contracts for the 14 doctors involved in the CDU.

HSWA has endeavoured to produce as many of its documents as possible in the 2 business days permitted under the Summons. To this end, it has interrogated the email and gmail accounts of Dr Aled Williams, as Director of Medical Services and Sam Lamour, Practice Manager, to find documents referring to "CDU".



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29 October 2012

HSWA has also instructed its IT department to:

1. interrogate the email accounts of Catherine McKinley (former director of nursing), Paul Bailey (former head of the emergency department) and Bill Shields (former CEO) also regarding "CDU". Excepting duplications, the results, if any, of these searches will be provided to the Committee when received;
2. interrogate the network for the word "CDU".

These individuals were chosen as they were the principal senior team responsible for the CDU. Please let us know if there are other particular email accounts the Committee would like to be interrogated.

Having identified the methodology, it is important for HSWA to explain that:

1. emails can stay in a mail box indefinitely but users have the right to delete emails at any point in time and these can only be recovered up until (approximately) 20 days. After that they cannot be recovered;
2. employees do generally not print and keep hard copies of documents;
3. when an employee leaves, their email account gets disabled and their email box deleted. After that IT cannot recover emails. If the employee is manager level or above, a PST file is usually created of their email box before it is disabled;
4. documents (not emails) should be saved on the network which does get backed up;
5. IT are locating whether a PST file has been created for the following former employees: Catherine McKinley, Paul Bailey and Bill Shields. If a PST file is located, a search of the PST file for the word "CDU" will be conducted;
6. IT will conduct a search of current employee Dr Aled Williams email account for the word "CDU";
7. some employees use their personal email addresses - some of the produced documents include those from the gmail accounts of Dr Aled Williams and Ms Sam Lamour. HSWA will need to obtain the permission of any other person the Committee would like gmail accounts from, these being personal to the employee concerned, so will need to be the subject of a specific request from HSWA.

## Category 3 and 4

These documents are kept in Fremantle under the supervision of Diane Prince, who only works on Wednesday and Thursday each week. HSWA has tried to obtain the keys to the Fremantle premises but has not yet received a response from Ms Prince. It will continue to try and obtain these documents. HSWA's best estimate is that these documents will be made available to it later today or tomorrow.

## Category 5

On 26 October 2012 some information was provided.

HSWA does not have a schedule of the information sought. However, HSWA enclosed a copy of the tax invoices regarding the CDU payments, which will show (b) amount of payment and (c) the name of the relevant doctor or any relevant entity.

We have been unable to find documents showing (a) date of payment. However, HSWA says it would have been shortly (say 1-30 days) after the date of the invoice.

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Clerk of the Legislative Council

29 October 2012

## Category 6

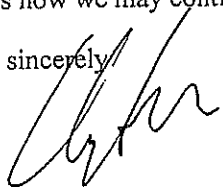
On 26 October 2012 some information was provided. We enclosed the requested schedule.

## Category 7

On 26 October 2012 some information was provided. We enclosed further documents.

Once you have had the opportunity to consider the above, we would be grateful if you would contact us to discuss how we may continue to provide further materials to assist the Committee.

Yours sincerely



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**Kathleen McNally, Senior Associate**  
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## Savory, Jody

---

**From:** Savory, Jody on behalf of Belyea, Cameron  
**Sent:** Monday, 29 October 2012 3:44 PM  
**To:** mpeacock@parliament.wa.gov.au  
**Cc:** McNally, Kate  
**Subject:** Summons to attend to produce documents issued and authorised 24 October 2012, as amended 25 October 2012 - Health Solutions (WA) Pty Ltd (HSWA) [Summons]  
**Attachments:** SCN\_20121029163440\_001.pdf

Dear Sir

Please see our **attached** correspondence.

Kind regards

**Cameron Belyea, Partner**  
**Clayton Utz**

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30 October 2012

Mr Malcolm Peacock  
Clerk of the Legislative Council  
Parliament House  
PERTH WA 6000

Our ref 60072/14467/80130183

Dear Sir

**Summons to attend to produce documents issued and authorised 24 October 2012 - Health Solutions (WA) Pty Ltd (HSWA) [Summons]**

We refer to the Summons and our letters dated 26 October 2012 and 29 October 2012.

**Categories 4 and 5**

We are informed that the Clinical Decisions Unit (CDU) matter was handled at management level, however the board of HSWA (Board) was informed by management immediately when irregularities were identified, and the Board were advised when management had immediately ceased the CDU and were in the process of quantifying irregularities for immediate repayment to the Department of Health. The Board was also advised that the doctors concerned were disciplined by management.

The Board requested follow-up reports from management which were received and confirmed that the above had taken place.

**Further documents**

Last night we received some further files from our client, which we have reviewed. We now enclose the following documents for inclusion in the folders for the Committee.

Within the files we have reviewed are a number of records which appear to contain patient information - date of admission, presentation, outcomes. This data seems to include the material already provided to the Committee in the form of the large spreadsheet of patient information the subject of the audit. We have not had the time to determine whether the material is the same or different from the information in the spreadsheet. It is presented in a number of different ways - monthly, and by summary, with apparent duplications.

We have also received material relating to payments made to doctors in relation to the CDU. These payment records most likely contain a tertiary record of the information within the primary documents provided to the Committee in the form of doctor billing records.

We have previously indicated the confidential nature of documents relating to doctors and patients, and again ask that the Committee consider whether these documents can remain private to the Committee.

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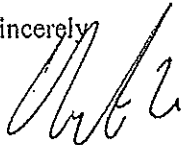
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Clerk of the Legislative Council

30 October 2012

We have not seen any further documents likely to meet the descriptions in the Summons. In the time permitted, we cannot of course state this conclusively. Instead, we propose, subject to the Committee's views, to offer to make the information referred to above available for inspection by the Committee's research assistants. Perhaps the Committee might consider this offer and, should it decide this to be a reasonable way forward, for one of the Committee's research assistants to make contact with us to arrange a time for inspection of these records. If, however, the Committee would prefer a different approach, please let us know.

Yours sincerely



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**Kathleen McNally, Senior Associate**  
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kmcnally@claytonutz.com

From: Peacock, Malcolm [mailto:mpeacock@parliament.wa.gov.au]  
 Sent: Friday, 2 November 2012 12:20 PM  
 To: Belyea, Cameron  
 Subject: Re: Standing Committee on Estimates and Financial Operations

Cameron

The Chair has granted on behalf of the committee the extension to 3pm today.

Malcolm Peacock  
 Clerk of the Legislative Council and Clerk of the Parliament

On 02/11/2012, at 11:37 AM, "Belyea, Cameron" <CBelyea@claytonutz.com> wrote:

Malcolm,

We are well progressed on delivery of further documents in answer to the further Summons served late Wednesday afternoon.

I understand that we should have all documents together within the next three hours.

I was wondering whether you could request of the Committee a short indulgence to 3pm today to respond to the Summons.

Please feel free to call.

Kind regards

Cameron Belyea, Partner  
 Clayton Utz

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**BY EMAIL -**  
**mpeacock@parliament.wa.gov.au**

2 November 2012

Mr Malcolm Peacock  
Clerk of the Legislative Council  
Parliament House  
PERTH WA 6000

Our ref 60072/14467/80130183

Dear Sir

**Summons to attend to produce documents issued and authorised 31 October 2012- Health Solutions (WA) Pty Ltd (HSWA) [Further Summons]**

We refer to a second Summons received by our client late Wednesday afternoon returnable today. It would appear the Summons (**Further Summons**) seeks production of a wide range of additional documents.

**Terms of Reference**

At the commencement of the hearing on 30 October 2012, the Honourable Chair expressed the terms of the reference. We would appreciate your informing us if these remain the terms of reference.

**Summons**

May we respectfully draw to your attention our letter of 30 October 2012, a further copy of which is attached, in which we set out our instructions that our client does not have any documents within categories 3 and 4 of the Summons, that is:

"Minutes of any Board Meeting and any Board documents relating to any payment, bonus or remuneration in any manner to doctor(s) or any related entity between 1 March 2010 and 30 June 2011.

Minutes of any Board Meeting and any Board documents relating to the contract between the State of Western Australia and Health Solutions (WA) Pty Ltd and its related companies between 1 March 2010 and 30 June 2011".

We are instructed that there are no documents relating to any of these matters.

May we also draw to the Committee's attention that on Friday 26 October and Monday 29 October 2012, our client has provided documentary evidence in the form of a schedule of all payments made between 1 March 2010 and 30 June 2011 to doctor(s) or any related entity of the CDU or the Emergency Department of the Peel Health Campus representing any payment, bonus or remuneration including the name of the relevant doctor or any related entity.

In this production, our client also provides the Committee with further details of payments (category 3).

May we also draw to the Committee's attention that on Friday 26 and Monday 29 October 2012, our client provided evidence of its audit report into Emergency Department admissions and a breakdown of payments repaid to the Department of Health including the amount and date of repayment.

Our client includes within this production further documents it has identified as coming within this category.

## **Methodology**

In our letter of 29 October 2012, we provided some background information to the Committee on the methodology being adopted by our client to identify and produce documents meeting the various categories in the Summons. We attach a further copy of this letter.

Our client has completed its interrogation of its electronic files for all information recording or referencing the expression "CDU" from its mainframe database. It has also during the course of this week undertaken a search of user accounts maintained by relevant staff at the Campus and accessed the personal gmail account of Dr Williams.

Since service of the further summons late Wednesday afternoon, our client has also accessed a number of executive group and other hard copy files. This is a time consuming process and is taking up a considerable amount of time by the executive team responsible for managing the Peel Health Campus. The hard form documents will be couriered to our office over the weekend.

Our client believes it has now accessed electronic and physical files most likely to contain the evidence sought by the Committee. It is in respect of these searches that our client makes the further production of documents the subject of this letter.

## **Further Summons - Categories**

### *Confidentiality*

As we have previously noted in relation to documents provided under the previous summons, some of the documents provided are confidential in nature. These include all Board and executive meeting documents (categories 1, 7) and various email correspondence (category 8). Further, all patient information is confidential and is produced to the Committee under compulsion of law.

### *Category 1*

We refer to our above instructions. We note that the Further Summons appears to seek the production of documents that would appear to be outside the Terms of Reference. For example, it is the function of a board to receive its accounts and determine strategies unrelated to the Peel Health Campus. These are not matters relevant to the Services Contract with the Department.

We respectfully suggest to the Committee that such matters are not relevant to the Terms of Reference, which we understand to concern overpayments of the Department of Health of approximately \$1.8 million and subsequent recovery or fees, bonuses and other payments made to doctors for admission of patients to the Emergency Department.

We respectfully draw the attention of the Committee to Standing Order 184(1) which allows the President to make a procedural ruling to the Committee.

Clerk of the Legislative Council

2 November 2012

*Category 2- 6, 10*

Our client provides evidence concerning these matters in a single file.

*Category 7*

We are instructed our client continues to compile documents within this category and sincerely apologises for not being in a position to produce these documents today. The process of production involves a manual process and delivery of documents from Peel Health Campus to ourselves.

We respectfully request the Committee allow our client until Monday midday to deliver documents in relation to this category.

*Category 8*

Our client has undertaken searches across its electronic databases (as described above) and provides these further additional documents.

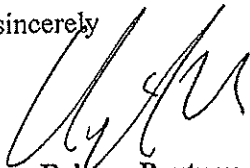
*Category 9*

Our client produces documents relevant to the Summons.

*Category 11, 12*

Our client produces documents relevant to this category. Our client has also produced what appears to be a complete set of record of letters and audit reports between our client and the Department. We also refer to the further documents provided today in relation to the audit reports.

Yours sincerely



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**Kathleen McNally, Senior Associate**  
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Confidential

BY EMAIL -  
mpeacock@parliament.wa.gov.au

9 November 2012

Mr Malcolm Peacock  
Clerk of the Legislative Council  
Parliament House  
PERTH WA 6000

Our ref 60072/14467/80130183

Dear Sir

**Summons to attend to produce documents issued and authorised 25 October 2012 and 31 October 2012 - Health Solutions (WA) Pty Ltd (HSWA) (Summons)**

We refer to the Summons and the documents provided on 26 October, 29 October and 30 October and 5 November 2012.

As foreshadowed, HSWA has continued to search for documents falling within the scope of the Summons and provide them to the Committee.

1. **Original Summons dated 25 October 2012**

**Category 2**

We enclose a file of additional documents, which satisfy the description contained in the Summons and are in relation to the Committee's Terms of Reference.

2. **Subsequent Summons dated 31 October 2012**

2.1 **"Documents not produced"**

In relation to the documents described under the heading "Documents not produced" in the Summons, we enclose a file containing:

- (category 3) an email chain sent on 15 September 2012 from Samantha Larmour to Ashton Foley regarding the termination of Locumforce Pty Ltd's services; and
- (category 4) additional emails concerning audit reports into Emergency Department admissions and correspondence in regards to the establishment of the audit.



Clerk of the Legislative Council

9 November 2012

## 2.2 "Additional documents"

### Category 5

We enclose an updated list of senior managers of HSWA.

### Category 7

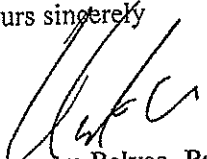
Due to the private nature of an non-relevance to the matters subject of the terms of reference of items discussed in the executive meeting and the minutes and agendas thereof, we provide you with redacted copies of these minutes which include only items relevant to the Emergency Department or the Clinical Decisions Unit (CDU). We refer you to section 7 of the *Parliamentary Privileges Act 1891* (WA) which allows for objection to the production of documents to any Committee of either House on the ground that the same is of a private nature and does not affect the subject matter of the inquiry.

We confirm our instructions that the redacted parts, are private to HSWA and irrelevant to the terms of reference.

### Category 11

We enclose two additional audit reports that fall within the scope of this category. We also enclose annexures to item 4 contained in the file relating to this category.

Yours sincerely

  
Cameron Belyea, Partner  
+61 8 9426 8510  
cbelyea@claytonutz.com

Kathleen McNally, Senior Associate  
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**Confidential**

23 November 2012

BY EMAIL -  
mpeacock@parliament.wa.gov.au

Mr Malcolm Peacock  
Clerk of the Legislative Council  
Parliament House  
PERTH WA 6000

Our ref 60072/14467/80130183

Dear Mr Peacock

**Submissions - Health Solutions (WA) Pty Ltd summons dated 21 November 2012**

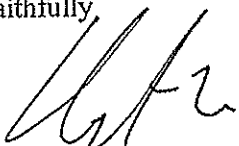
We act for Health Solutions (WA) Pty Ltd (HSWA), the operator of Peel Health Campus (PHC).

We refer to the summons to attend to produce documents addressed to HSWA from the Standing Committee on Estimates and Financial Operations (the **Committee**) dated 21 November 2012 (the **Summons**) as part of the 2011/2012 Annual Reports Inquiry (the **Inquiry**).

Our client is considering its position with regards to section 7 of the *Parliamentary Privileges Act* 1891 (WA) given our client's view that the summons seeks documents:

- (a) of a private nature; and
- (b) do not concern the subject of the terms of reference of the Inquiry.

Yours faithfully

  
**Cameron Belyea, Partner**  
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cbelyea@claytonutz.com

**Kathleen McNally, Senior Associate**  
+61 8 9426 8243  
kmcnally@claytonutz.com

## Magee, Rebecca

---

**From:** Magee, Rebecca  
**Sent:** Friday, 23 November 2012 3:20 PM  
**To:** 'mpeacock@parliament.wa.gov.au'  
**Cc:** Belyea, Cameron; McNally, Kate  
**Subject:** HSWA - Summons to produce  
**Attachments:** Letter to M Peacock 23 November 2012.PDF

Dear Mr Peacock


Please see attached letter. An original was couriered to Parliament House before 2 pm.

Kind regards,

**Rebecca Magee, Lawyer**

**Clayton Utz**

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# CLAYTON UTZ

Sydney Melbourne Brisbane Perth Canberra Darwin Hong Kong

BY EMAIL - [mpeacock@parliament.wa.gov.au](mailto:mpeacock@parliament.wa.gov.au)

1 November 2012

Mr Malcolm Peacock  
Clerk of the Legislative Council  
Parliament House  
PERTH WA 6000

Our ref 60072/14467/80130183

Dear Mr Peacock

## Standing Committee on Estimates and Financial Operations (Committee)

We would appreciate you providing this letter to the Committee.

We refer to our letter of 29 October 2012 requesting that Dr Neale Fong be permitted to provide evidence to the Committee and to the subsequent telephone call from the Honourable Giz Watson, as Chair of the Committee on the same date confirming that Dr Fong would be permitted to give verbal testimony to the Committee. At the conclusion of the Committee hearings on 30 October 2012, the Honourable Chair was informed that Dr Fong had relevant evidence to provide to the Committee. Dr Fong was not permitted to provide this evidence on 30 October 2012. Instead, Dr Fong was informed that he was entitled to seek the leave of the Committee to provide evidence.

The purpose of this letter is to confirm our client's application for Dr Fong, as a senior representative of Health Solutions WA Pty Ltd, be allowed to speak to the Committee and be questioned on the matters raised before the Committee. Furthermore, it is respectfully submitted there are several considerations which would support a decision of the Committee to grant this further request. We have set these reasons out below.

The Committee will appreciate that a number of very serious allegations have now been made to the Committee against Health Solutions, relating to the operation of the clinical decisions unit at Peel Health Campus, cultural issues and the quality of the health care facilities, some from ex-employees who were not employed at the Hospital at the time related to the allegations.

Dr Fong is the managing director of Health Solutions and is also the CEO of the Peel Health Campus. It is respectfully suggested to the Committee that Dr Fong is the best person to provide authoritative evidence on behalf of Health Solutions on these matters. He is able to speak first hand of his knowledge about some of these matters and can also speak about his review of the contemporary systems and procedures at the Hospital.

We would highlight this point by reference to the following matters set out below.

# CLAYTON UTZ

Sydney Melbourne Brisbane Perth Canberra Darwin Hong Kong

Mr Malcolm Peacock

1 November 2012

It is respectfully submitted that the allegations put before the Committee against our client are assertions which are unsupported by a proper factual foundation. Our client well understands that having heard these allegations the Committee will wish to discover whether there is any factual basis to the allegations. For example, in considering allegations of bullying and harassment and more broadly the culture of the Peel Health Campus, Dr Fong can speak to the procedures that have been taken to deal with complaints of bullying or harassment by or against existing or former employees at the Campus. Specifically, and by way of example, the Committee heard from Mrs Foley in relation to a situation concerning another person. Dr Fong can provide first hand evidence about what was said to him by Mrs Foley and the steps taken to deal with those matters and can speak to allegations of bullying made against Mrs Foley during her period as Chief Operating Officer (which she denied).

A number of assertions were made to the Committee about the state of facilities at the Peel Health Campus, both within the operating theatres and adjacent areas. The Committee has not yet heard evidence of the formal process of accreditation and the outstanding achievements through this independent and nationally recognised process. The fact is that for 15 years, the hospital has been accredited by the Australian Council on Health Care Standards and in 2011 received 15 extensive achievements, which is extremely difficult to achieve. Dr Fong would like to provide evidence about these matters and also address the capital investment program that has been underway for some time (commencing well before Mrs Foley's employment at the Hospital) and the executive team members responsible for developing and implementing that program.

Dr Fong would also provide evidence of existing governance practices within the Hospital concerning admission and billing practices. He also would like to point out inaccuracies that have been reported in the media and which were the subject of confusion in the evidence provided by Mrs Foley about the invoicing issues relevant to the clinical decisions unit (\$1.3m) and other invoicing disputes with the South Metropolitan Health Service (a claim for \$330,000 from and \$220,000 due to the Hospital).

If the Committee are contemplating expanding the terms of reference, which seems to be reasonably likely given the ambit of the Summons received by our client late yesterday (which will be the subject of a separate letter), Dr Fong is also in a position to explain the training and learning facilities that are provided to doctors, nurses and other staff regarding admission and billing practices, when these were instituted and how these are applied. It is respectfully suggested to the Committee that the fact doctors admit patients for sound clinical reasons, as they do at all tertiary and other hospitals in Western Australia is a completely separate matter from whether all of these admissions meet the Health Department business guidelines (and hence may be the subject of a DRG payment claim). The first is an issue for doctors making clinical decisions, the second is a matter of billing practices within the Hospital. Dr Fong would speak to these practices and detail the changes that have been made to the audit process to ensure that only admissions properly meeting Health Department guidelines are made the subject of a DRG payment claim.

Having regard to the fact that the allegations concern not simply our client Health Solutions, but also the personal reputations of doctors providing critical medical services within the Peel area, we respectfully ask that the Committee allow Dr Fong an opportunity to speak to the Committee, to be questioned and to provide the facts that are necessary to allow the Committee to understand the truth of the allegations that have been presented to it.

It is also submitted that the proposal that Dr Fong be permitted to give evidence is consistent with the principles that clearly underpin Standing Order 181 of the Legislative Council Standing Orders. Health



# CLAYTON UTZ

Sydney Melbourne Brisbane Perth Canberra Darwin Hong Kong

Mr Malcolm Peacock

1 November 2012

Solutions should, in these circumstances be afforded as a matter of fairness the opportunity to provide supplementary or new evidence to the Committee to address the adverse claims that have been made to the Committee.

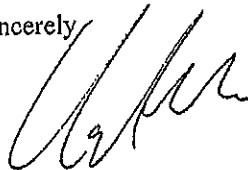
Finally, we note that the Committee has now taken on an investigatory role and we presume is contemplating publishing a Report detailing its findings. In this regard we would note that the High Court in *Ainsworth v Criminal Justice Commission* (1991-1992) 175 CLR 564 found that under the general law of Australia administrative decision makers ought to comply with the rules of procedural fairness/natural justice. That case was concerned with an administrative report that had been tabled in the Queensland Parliament. Importantly the High Court found that reputation, whether personal, business or commercial was an interest that attracted the rules of procedural fairness/natural justice.

Now, we acknowledge that some commentators have suggested that Parliamentary Committees because they are protected by parliamentary privilege cannot be made the subject of a legal action in the Courts seeking redress for reputational damage. It has also been suggested that Parliamentary Committees are not making administrative decisions. Even if those propositions are correct our client Health Solutions strongly submits as a matter of fairness that:

- The Committee should have close regard to the rules of procedural fairness/natural justice when working out the procedures that it will apply in respect of this investigation. This is especially so given the potential reputational damage to Health Solutions and to current and former employees or contactors that have been engaged by the Company; and
- That Standing Order 181 shows that the Legislative Council intended that witnesses (and we note that Dr Williams is a current employee of Health Solutions) should have the right to answer allegations of criminal, improper or unethical conduct and to provide supplementary or new evidence. It is submitted that the Committee should as a matter of fairness also afford those right to Health Solutions as the key contactor and employer.

We await your reply.

Yours sincerely



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cbelyea@claytonutz.com

Kathleen McNally, Senior Associate  
+61 8 9426 8243  
kmcnally@claytonutz.com

## McNally, Kate

---

**From:** Savory, Jody on behalf of Belyea, Cameron  
**Sent:** Thursday, 1 November 2012 5:30 PM  
**To:** mpeacock@parliament.wa.gov.au  
**Cc:** McNally, Kate; Magee, Rebecca  
**Subject:** Standing Committee on Estimates and Financial Operations  
**Attachments:** Letter to M Peacock 01.11.2012.PDF

Dear Mr Peacock

I refer you to the **attached**.

Regards

**Cameron Belyea, Partner  
Clayton Utz**

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# CLAYTON UTZ

Sydney Melbourne Brisbane Perth Canberra Darwin Hong Kong

BY EMAIL - [mpeacock@parliament.wa.gov.au](mailto:mpeacock@parliament.wa.gov.au)

27 November 2012

Mr Malcolm Peacock  
Clerk of the Legislative Council  
Parliament House  
PERTH WA 6000

Our ref 60072/14467/80130183

Dear Mr Peacock

## Standing Committee on Estimates and Financial Operations (Committee)

We would appreciate you providing this letter to the Committee.

We refer to our letter dated 1 November 2012, a copy of which we now **enclose**. As set out in that letter, if the Committee intends to publish a report based on its investigations, our client requests that it be afforded procedural fairness/natural justice.

Please confirm whether the Committee intends to afford our client procedural fairness/natural justice.

If it does, we believe that the context requires the Committee to provide our client with the following information and a reasonable opportunity to respond:

1. any adverse allegation;
2. what information/material the Committee relies upon;
3. the source of this information/material.

We look forward to hearing further from you.

Yours sincerely

  
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[cbelyea@claytonutz.com](mailto:cbelyea@claytonutz.com)

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Enc

# CLAYTON UTZ

Sydney Melbourne Brisbane Perth Canberra Darwin Hong Kong

BY EMAIL - mpeacock@parliament.wa.gov.au

1 November 2012

Mr Malcolm Peacock  
Clerk of the Legislative Council  
Parliament House  
PERTH WA 6000

Our ref 60072/14467/80130183

Dear Mr Peacock

## Standing Committee on Estimates and Financial Operations (Committee)

We would appreciate you providing this letter to the Committee.

We refer to our letter of 29 October 2012 requesting that Dr Neale Fong be permitted to provide evidence to the Committee and to the subsequent telephone call from the Honourable Giz Watson, as Chair of the Committee on the same date confirming that Dr Fong would be permitted to give verbal testimony to the Committee. At the conclusion of the Committee hearings on 30 October 2012, the Honourable Chair was informed that Dr Fong had relevant evidence to provide to the Committee. Dr Fong was not permitted to provide this evidence on 30 October 2012. Instead, Dr Fong was informed that he was entitled to seek the leave of the Committee to provide evidence.

The purpose of this letter is to confirm our client's application for Dr Fong, as a senior representative of Health Solutions WA Pty Ltd, be allowed to speak to the Committee and be questioned on the matters raised before the Committee. Furthermore, it is respectfully submitted there are several considerations which would support a decision of the Committee to grant this further request. We have set these reasons out below.

The Committee will appreciate that a number of very serious allegations have now been made to the Committee against Health Solutions, relating to the operation of the clinical decisions unit at Peel Health Campus, cultural issues and the quality of the health care facilities, some from ex-employees who were not employed at the Hospital at the time related to the allegations.

Dr Fong is the managing director of Health Solutions and is also the CEO of the Peel Health Campus. It is respectfully suggested to the Committee that Dr Fong is the best person to provide authoritative evidence on behalf of Health Solutions on these matters. He is able to speak first hand of his knowledge about some of these matters and can also speak about his review of the contemporary systems and procedures at the Hospital.

We would highlight this point by reference to the following matters set out below.

# CLAYTON UTZ

Sydney Melbourne Brisbane Perth Canberra Darwin Hong Kong

Mr Malcolm Peacock

1 November 2012

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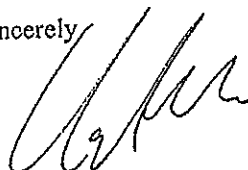
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We await your reply.

Yours sincerely



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Dear Mr Peacock

I refer you to the **attached**.

Regards

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**Clayton Utz**

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**From:** McNally, Kate  
**Sent:** Tuesday, 27 November 2012 12:45 PM  
**To:** 'mpeacock@parliament.wa.gov.au'  
**Cc:** Belyea, Cameron; Magee, Rebecca  
**Subject:** Health Solutions

Dear Malcolm

Letter attached.

Kind regards,

**Kathleen McNally, Senior Associate  
Clayton Utz**

 V.1, 250 St Georges Terrace, Perth WA 6000 Australia | D +61 8 9426 8243 | F+ 61 8 9481 3095 | [kmcnally@claytonutz.com](mailto:kmcnally@claytonutz.com)

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29 NOV 2012



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## STANDING COMMITTEE ON ESTIMATES AND FINANCIAL OPERATIONS

Clayton Utz's Ref: 60072/14467/80130183

Dr Neale Fong  
Managing Director  
Health Solutions (WA) Pty Ltd  
110 Lakes Rd  
MANDURAH WA 6210

27 November 2012

Dear Dr Fong

### **Inquiry into Peel Health Campus Payments**

I refer your counsel's letter dated 27 November 2012.

The Committee notes your counsel's letter.

Yours sincerely

A handwritten signature in cursive script that reads "G. Watson".

**Hon Giz Watson**  
Chair