ROYAL COMMISSION INTO THE HOME INSULATION PROGRAM

SUBMISSIONS ON BEHALF OF PETER GARRETT

1. These submissions are made in response to those lodged with the Commission up to and including 6 June 2014. None of those submitters invites the Commission to make, in terms, any adverse finding against Mr Garrett. Nonetheless, there are statements in their submissions that require a response from Mr Garrett.

The Sweeney Family

2. Counsel for the Sweeney Family is very critical of Mr Garrett. He submits that the failure to ban the use of reflective laminate insulation led to the death of Mitchell Sweeney. Counsel focusses his submissions on events in October 2009 following the death of Matthew Fuller. This appears to be a case theory hinted at in the commentary he provided during his questioning of Mr Garrett on 14 May 2014.
3. The theory is developed in counsel's submissions that deal specifically with five departmental briefs and two meetings in that month. He further submits (para 135) that Mr Garrett was "out of touch with reality" at the time because Mr Garrett did not accept that DEWHA was dysfunctional in terms of giving accurate advice.
4. The first brief (B09/2827) related to a meeting with Malcolm Richards, the chief executive officer of Master Electricians Australia, to be held on 20 October 2009. This meeting had been arranged because the organization Mr Richards represented had called, following Matthew Fuller's death, for immediate withdrawal of the "rebate for metal insulation products". Counsel subjects the departmental brief for this meeting to criticism in the context of suggesting a lack of technical competence on the part of Mr Garrett's ministerial advisers (para 157). Yet counsel also relies on the notes of one of those very advisers to suggest that what Mr Garrett said to Mr Richards in their meeting on 20 October 2009 revealed "someone who does not have the ability or confidence to engage with and probe a source of advice to gauge for themselves the dimensions of the problem" (para 150).
5. Following Mr Garrett's meeting with Mr Richards, DEWHA prepared two briefs for the Minister – B09/2891 and B09/2892. In his evidence, Mr Garrett made it clear that he dealt with brief B09/2892 first, on 22 October 2009, and with brief B09/2891 later, on 24 October 2009. Notwithstanding this evidence, the submissions of counsel for the Sweeney Family address these briefs in the same sequence as the numbers they bear.
6. Again, counsel subjects each of these briefs to criticism. After referring to information obtained by a Ms McCann (paras 170-185) which it is common ground was never passed on to Mr Garrett, counsel submits that, nonetheless, Mr Garrett should have been "alerted" by the contents of brief B09/2891 so as to require his ministerial staff "to interrogate the source consultation documents" (para 204). Counsel blames Mr Garrett for not "spen[ding] the time required to obtain a proper understanding of the issues" (para 206), and counsel goes on to assert (paras 208-209) that Mr Garrett failed to exert his authority and to control "the subsequent processes to ensure that he obtained the best and most thoroughly considered advice". (Counsel appears not to have comprehended the evidence about the order in which Mr Garrett dealt with these two briefs.)
7. Brief B09/2892 is also castigated by counsel for deficiencies in what it "needed to say" (para 217) and "the appropriate response" to a question posed by the Minister (para 224), all of which leads counsel to submit that the policy position underlying the departmental recommendation "contradicts every repeated statement by Mr Garrett that safety was paramount for him" (para 235). This brings counsel to the extraordinary and sinister-

sounding submission that, since Mr Garrett did not approve the recommendation not to ban foil products under the HIP, "factors other than safety were driving those who controlled the content of the briefs" (para 243). That submission is not developed, but Mr Garrett is once more lambasted for not having "taken steps to control the processes by which advice was coming to him"(para 244).

8. As foreshadowed in brief B09/2892, DEWHA convened a meeting with training organizations, industry and regulatory agencies in Canberra on 27 October 2009. The meeting (which was the subject of brief B09/2924) was fixed to run from 4.20pm to 7.00pm with Mr Garrett attending for 15 minutes at 5.30pm. Counsel for the Sweeney Family chastises Mr Garrett for not attending the whole of the meeting (para 249). Counsel also engages in wild speculation about what may have been said or should have been said at that meeting in order to ground submissions about what "closer questioning might have revealed" (para 278) and the suggestion that the meeting was a "pre-ordained" process resulting in a ban on RFLs being "off the table" (paras 293, 295).
9. Brief B09/2827 (which was prepared for the meeting with Mr Richards) had mentioned that DEWHA was discussing with New Zealand bureaucrats their experience with foil insulation and safety issues. Evidently information from New Zealand concerning the safety aspects of installing foil insulation was received on the computer of a junior officer in DEWHA on the night of 27 October 2009. There is no evidence Mr Garrett knew anything about this fact or the nature of the information furnished. Yet the bizarre submission is made by counsel for the Sweeney Family that it "is an indictment of Mr Garrett and his staff that this type of information was not demanded" (para 263).
10. Brief B09/2973 dealt with consultations with the Queensland Electrical Safety Office on 28 October 2009 and recommended changes in the guidelines that were approved by Mr Garrett. In his submissions, counsel for the Sweeney Family hints at dissatisfaction on the part of Mr Richards with the outcome of those discussions (para 300). However, Mr Richards's letter of 3 November 2009 commends Mr Garrett and otherwise speaks for itself.
11. The extravagant language employed in the submissions singled out above requires conclusions that are simply not open on the evidence before the Commission. Indeed, such submissions should never have been made in such offensive terms, and they must all be rejected. A fair reading of the whole of the evidence before the Commission compels the finding that Mr Garrett was an active and engaged Minister who was astute to detect and resolve any problems with the HIP, particularly those relating to safety.
12. Moreover, the submissions of counsel are posited on a fundamental misunderstanding of how the public service works with the Government. The role of the Australian Public Service is to serve the Government of the day: to provide the same high standard of policy advice, implementation and professional support, irrespective of which political party is in power. The public service strives to provide advice that is unbiased, evidence-based and objective. The policy advisory process is an iterative one, which may involve frequent feedback between a Department and the Minister and his office. It is perfectly normal for a Minister and ministerial staff to deal directly with senior officers in his Department, not just with the Secretary.
13. The communication between Ministers and public servants often takes place through ministerial staff. However, it must be understood that ministerial staff are employed under the *Members of Parliament (Staff)) Act 1984* and at the relevant time here were also governed by the *Code of Conduct for Ministerial Staff* introduced in 2008. The Code made it clear that Ministerial staff do not have the power to direct public servants in their own right.

14. The suggestions that Minister should send for junior public servants and spend hours second-guessing every piece of information put before them are quite antic. The important notion of Ministerial responsibility is not degraded by proper process. It is enhanced. There is not a scrap of opinion evidence before the Commission from anybody with expertise in public administration which could support a view that Mr Garrett failed to utilize the resources of DEWHA properly so as to keep himself abreast of issues affecting the HIP.
15. Counsel for the Sweeney Family obviously conceived his theory of the case by devising a series of hypotheses based on the documents he had available prior to seeing or hearing a word of evidence from Mr Garrett. His inflexible model has been revealed as hopelessly flawed in the light of all the evidence before the Commission. None of his submissions critical of Mr Garrett are made out.

Jessica Wilson

16. The submissions on behalf of Ms Wilson deal with changes to the competency requirements for installers in section 9, where reference is made to an approval by Mr Garrett "in troubling circumstances" (p. 8). It will be useful here to bear in mind that Mr Garrett's evidence on this point in his statement (paras 76-84) must be read with the clarification he made in his oral evidence (transcript pp. 4754-4756).

The Fullers and the Barnes Family

17. It may be remarked that, in section 6 of their submissions dealing with what they describe as Failure 2, the lawyers for these families acknowledge (para 6.90) that warnings of New Zealand experience were not passed on to Mr Garrett. This accords with the evidence, and their very proper position may be favourably contrasted with the illogical inferences counsel for the Sweeney Family invites the Commission to draw from Mr Garrett's evidence in his submissions (paras 138-140) on this point.
18. Later, in the same section dealing with what is labelled Failure 3, the lawyers refer (para 6.136) to the announcement by Mr Garrett of new mandatory training requirements. When the Commission considers the timing for these changes, it will be important to have regard to Mr Garrett's evidence of all the actions he took on this subject. (See especially paras 169-171, 176-177, 180, 183, 190, 192 and 198.)
19. Finally, again in the same section but dealing this time with the alleged Failure 4, the lawyers refer to Mr Garrett's answers to questions about the suggestion that certain safety information in installer advices might be included in the guidelines (para 6.170). This evidence must be read bearing in mind that, as Mr Garrett pointed out in his statement (para 95), he regarded the installer advices as an efficient and expeditious way of drawing attention to such safety information.

Pre-Existing Insulation Businesses

20. In Part C of their submissions under the sub-heading *Failure to monitor the workplace safety of the installers*, counsel refer to what Mr Garrett allegedly "did not consider" at the time of his meeting with stakeholders on 27 October 2009 (para 65). If the submission is meant to suggest that at that time Mr Garrett was not giving anxious consideration to the question of the use of foil products in insulation, then it is plainly against the evidence.

Kevin Rudd

21. The submissions state (para 4.2) that, on each occasion between August 2009 and February 2010 that Mr Garrett recommended changes to the HIP, Mr Rudd accepted his recommendations. That is not quite right. Mr Rudd did not approve the two-quote proposal made by Mr Garrett in his letter to Mr Rudd of 27 August 2009. Mr Rudd accepted this fact when it was put to him in re-examination by senior counsel assisting the Commission (transcript pp. 4916-4917).
22. The other matter that should be made clear is that, notwithstanding what the submissions say in Section 10 about the recommendations of the Central Agency Taskforce, Mr Garrett decided, quite independently of that Taskforce, to suspend indefinitely the HIP. (See especially para 215 of Mr Garrett's statement.)
23. Otherwise, the submissions made on behalf of Mr Rudd contain a very useful exposition of the place of the HIP in the larger policy settings of the Government at the time. In particular, I would also respectfully adopt the submissions made in Section 11, linked as they are with what is said in paragraph 12.7.

Late Lodgement

24. Practice Guideline 5 requires submissions in response to be lodged by 11 June 2014. However, paragraph 4 envisaged the submissions to which a person may respond being lodged by 4 June 2014. In fact, as explained at the outset, some submissions were not lodged until 6 June 2014. In those circumstances, although these submissions are two days late, they are made within the same timeframe as contemplated by the Practice Guideline. If leave is necessary to lodge these submissions out of time, then such leave is respectfully sought.

(A.P. Whitlam)

13 June 2014