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Transcript of Proceedings

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SIR LLEW EDWARDS, Deputy Commissioner

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IN THE MATTER OF THE COMMISSIONS OF INQUIRY ACT 1950

BUNDABERG HOSPITAL COMMISSION OF INQUIRY

COMMISSIONS OF INQUIRY (No. 1) 2005

BUNDABERG

..DATE 14/07/2005

..DAY 25

4th Floor, The Law Courts, George Street, Brisbane, Q. 4000 Telephone: (07) 3247 4360 Fax: (07) 3247 5532

THE COMMISSION RESUMED AT 10.35 A.M.

COMMISSIONER: Just before we resume the evidence I want to put on record this morning the two Deputy Commissioners and I accompanied Mr Andrews and were given a tour of the Bundaberg Base Hospital. We want particularly to thank Mr Boddice for arranging that and also the Acting District Manager and the Acting Director of Nursing for the trouble they went to to organise the tour and making their time available to show us around. We appreciate it very much. Mr Morzone.

MR MORZONE: Yes, if it please the Commissioners. Commissioners, today you'll hear evidence from the first of a number of witnesses who will be called in relation to the death of Mr Bramich who was previously P11. Mr Bramich is referred to in the review at pages 51 and 52 as a patient whose death in the opinion of Dr Woodruff was contributed to by Dr Patel's unacceptable level of care.

The witnesses that are proposed to be called today are the wife of Mr Bramich and hopefully three nurses who are involved in the care of Mr Bramich being nurses Cree, Tapiolas - T-A-P-I-O-L-A-S - Fox and you will also hear from the pathologist who performed the post-mortem.

Mr Bramich was a 56 year old married man who was admitted to the Bundaberg Base Hospital through the Emergency Department on the 25th of July 2004 at approximately 7.45 p.m. He sustained a crush injury to the right side of his chest when a caravan which he was working under fell off a jack onto him. There are a number of issues which have arisen concerning the treatment and management of Mr Bramich. They involve Dr Patel, but also other practitioners. There will be a number of witnesses who will be called to give evidence.

Briefly, before I outline the issues that will be relevant for the consideration of the Commission while these witnesses are giving evidence, I can tell you a short outline of what occurred with Mr Bramich. X-rays revealed fractured ribs on the right side and initial treatment included the insertion of an intercostal catheter to drain fluid that was accumulating around the lung and to reinflate the lung. At that time he was considered sufficiently stable to be transferred out of - I beg your pardon, he was admitted into the ICU and stayed there overnight until approximately 2 p.m. the following day when he was considered sufficiently stable to be transferred out of the ICU to the surgical ward and he remained in the surgical ward there in an apparently stable condition.

Perhaps, most relevantly, whilst he was at the surgical ward he underwent physiotherapy which involved walking exercises. That was on the morning of the 27th. Thereafter he had lunch at approximately 2.30 p.m., some 42 or more hours after he was admitted to the hospital, and he collapsed in an acute respiratory distress with severe pain and he was transferred back to the ICU.

A provisional diagnosis at that time was made of internal bleeding and either upon the transfer to the ICU or perhaps earlier in the surgical ward it was noted that the intercostal drain that had been inserted to drain fluid was non-functional. A second catheter was, therefore, inserted and this immediately resulted in the drainage of a significant amount of blood.

Fluid resuscitation thereafter continued from approximately 2.30 onwards and investigations undertaken in an attempt to determine the source of the apparent bleed. There is some conflicting evidence as to when and to what extent a decision was made to transfer Mr Bramich to a tertiary hospital where there would have been capacity to provide both thoracic surgery and long-term ventilation support. In any event, it's clear that the flight coordinator of the Royal Flying Doctors Service was contacted at approximately 4.20 p.m. that afternoon and it was at or shortly before that time that Dr Patel first became involved in the treatment. Until that time Mr Bramich was primarily under the care of Dr Gaffield.

Mr Bramich's condition continued to worsen and it was decided in consultation with Dr Carter that a CT scan would be undertaken. That CT scan demonstrated a marked change from earlier radiology reports which included the right haemothorax being full of blood with a mass displacement effectively of the sternum. There was no evidence in that CT scan of pericardinal fluid, however, after that CT scan Dr Patel reviewed the patient. He decided to do a pericardiocentesis despite the evidence of a CT scan showing the absence of pericardinal fluid, and the Commissioners will recall some evidence having been given of that procedure by particularly Nurse Hoffman and the stabbing motions which she had relayed to her. There is conflicting evidence about that. There are witnesses who say the stabbing motions were as many as 10 times. The autopsy report and the pathologist who will give evidence will give evidence of there being evidence of two marks consistent with the procedure and so the extent of the evidence will have to be explored to some extent in the Commission.

The reasons for the initial decision to transfer Mr Bramich being delayed until approximately 11 p.m. when the retrieval team arrived vary according to witnesses. There is some evidence that a bed may not have been available in Brisbane. There is some evidence that Dr Patel retracted the decision that had been made to transfer Mr Bramich to Brisbane and there is other evidence, perhaps most notably, from Dr Gaffield who says that Mr Bramich was too unstable to be transferred. Ultimately, by the time the retrieval flight did arrive the condition of Mr Bramich had deteriorated to such an extent that he was definitely too unstable to transfer him and he died shortly after midnight on that day. The autopsy found him to have approximately three litres of clotted blood in his right chest and to have died from internal haemorrhaging.

The issues that will be matters of concern to the inquiry

which we have investigated are primarily these: first, whether the initial treatment of Mr Bramich was adequate. The nature of the accident involving the heavy crushing could mean that it was difficult to estimate the degree of internal damage and external signs and symptoms which were exhibited which could have misstated or minimised the serious nature of the damage; secondly, whether the intercostal catheter which was inserted and which was found later to be non-functional was inserted properly and during the course of two days noted to have been operating properly; thirdly, why the transfer of Mr Bramich to a tertiary hospital immediately upon his stabilisation soon after his admission on the 25th or even the 26th of July 2004 did not occur; why it took more than eight hours after the collapse of Mr Bramich for the retrieval team to arrive by which time it was no longer possible to transfer Mr Bramich to Brisbane; and, finally, of course, whether the pericardiocentesis procedure performed by Dr Patel was necessary and, if so, in what manner was it performed.

The first witness that is proposed to be called this morning is Mrs Bramich. A statement has been prepared by her and I ask Mrs Bramich to go to the stand.

TESSIE MITIAM BRAMICH, ON AFFIRMATION, EXAMINED:

COMMISSIONER: Mrs Bramich, please make yourself as comfortable as you possibly can. If at any stage you feel like a break just don't hesitate to say so. Can I ask whether you have any objection to your evidence being filmed or photographed?-- No, Commissioner.

Thank you.

MR MORZONE: For the benefit of my learned friends, Mr Commissioner, can I indicate that the third sentence in paragraph 24 has been deleted as has the fourth sentence in paragraph 25.

COMMISSIONER: 24, that's the sentence commencing, "It was common knowledge".

MR MORZONE: "It was common knowledge"; that's correct.

COMMISSIONER: That sentence goes out.

MR MORZONE: And the sentence "he said" which is a reference to the coroner making a statement and which, pretty obviously, best be heard from the coroner, if necessary.

COMMISSIONER: Yes.

MR MORZONE: I'll hand up to the Commission three copies of the amended statement. Is your full name Tessie Mitiam - M-I-T-I-A-M - Bramich?-- That's right. That's correct.

You'll have to speak up unfortunately?-- That's correct.

You reside in Bundaberg; is that correct?-- I was born in 1770.

You were married to your husband, Desmond Bramich?-- That's right.

You were married in 1994; is that correct?-- That's right.

You have a daughter 10 years of age-----?-- That's right.

-----to the marriage and you also care for Mr Bramich's son who's 11 - sorry, I beg your pardon, 14 years of age?-- 14.

Is that correct?-- That's right.

You've prepared a statement in this matter which has been signed by you?-- That's right.

Are the facts contained in the statement true and correct to the best of your knowledge and belief?-- That's right.

Now, do you set out in your statement initially the events

which occurred on Sunday, the 25th of July and you refer to the incident having occurred at 4.30 p.m. and arriving then at the hospital at approximately 7.30 p.m.; is that correct?-- That's right.

At that time he was admitted to the trauma room, you say?-- Yep. That's right.

And he had some tests done to assess the extent of his injuries?-- Yes.

Do you recall which doctor you saw at that time?-- No. There's a lot of people like nurses and doctors come and going and all the faces are so blurry to me.

Mr Bramich had some treatment there, did he?-- Yes.

And he's then-----?-- Yes, the little hose that they put on him from - from Agnes Water they change it to the bigger hose to make him breathe more properly.

And at about 11 p.m. he was transferred to the Intensive Care Unit?-- That's right.

Did you stay with him until approximately 1 a.m.?-- That's right.

Are you able to tell us what his condition was like at that time?-- Well, he told us himself that he got to have some rest and I feel that he was good already. He - he made a - he made a terrible accident and was comfortable that night already, but then I just - doesn't know the people in that hospital know that they haven't got the facility for such injury like a chest injury, why they didn't fly him to the Brisbane hospital that night - that first night?

When you came back the next morning you said that you found him a lot better?-- That's right.

And during the day he was transferred out of ICU to the surgical ward; is that right?-- That's right.

Was anything said to you about the transferring out of ICU to the surgical ward in his condition?-- Nobody told me that they going to transport him from the ICU to the - why they did. I just found him in the ward. Went to the ICU and he was not there and been talking to Toni Hoffman - sorry, Miss Toni Hoffman and she told me that he was in the Ward 18 and I felt it's wrong because that night they told me that his breathing and his heart rate have to be monitored in that screen, that's why the complication - that the hurry of the complication won't arise - well, sort of you will - that you would know it on the monitor - monitor if it's high or low, you know.

Were you concerned that the transfer out of ICU would mean that he could not be properly monitored-----?-- That's right.

-----with his heart rate and breathing as he had been in ICU?-- It a - if he was in ICU we would know if he is breathing properly and his heart rate and everything like that because they checking him every time in there, so I thought that so soon to transport him out of there, but that night, that is so critical, and take him out straight away next day. That's some times early - approximately early lunchtime like that.

You refer in paragraph 10 and 11 to your husband having received visitors and him talking and smiling and in a good mood with everyone; is that correct?-- Yes. He was even joking that there's no way he would die. He got a life like a cat, you know.

And he asked if he could have a cup of tea?-- And I asked the nurse if he could - if he could have some and I gave him some. I put down he really appreciate that.

You say in paragraph 12 that you were told his condition was improving. Do you remember who told you that?-- I can't.

Casting your mind back to that day rather than looking at it with hindsight do you remember how you felt about his condition at that time? Did you think he was improving?-- Yes, he was - he was improving. He was improving, but, as I said, I don't know that the - that such an injury like that, the complications so high, and if I just known that I'll do it myself to take him to the Brisbane hospital where the proper facility that they got there and more specialist that I don't know that here.

On the 26th of July, which is the day after the accident, and after he was transferred to the surgical ward, did you remain with him until late that night?-- Could you repeat that question, please?

Yes. Did you remain in the surgical ward with Desmond until later that night on the second day?-- That's right.

Can you tell the Commissioners what the condition of Desmond was like during that day?-- Yeah. We been watching TV that night and I came out late as I can - came out late as I can from the hospital to be with him and, no problems, he was talking. He was good. That's why the family can't believe that he's dead.

And do you recall how he looked?-- Well, just from the second day his face is little bit swelling, just little bit, and next day that's gone, so he's really - he's improving all right, very - improving remarkably.

You refer in paragraph 13 to one stage during the afternoon him sitting in a chair next to the bed; is that right?-- That's right.

How did that come about? Who assisted him to do that? Do you remember?-- The nurse assist him to sit down - well, he

wanted to sit down on the bed and the nurse assist him to sit on the bed. We don't know - we don't - he doesn't know that himself, that the movement is so fatal for him with his injury.

There has been some reference in some of the material to him having had a shower that night, is that correct, to your knowledge?-- I gave him a - no, he hadn't a shower. I just gave him a quick wipe.

Okay. The following day after you left - you left that night and the following day you returned to his bedside and you state in paragraph 14 that he told you he had a terrible night?-- Yes. He-----

What did he say? Do you remember?-- He told me, "Darl, I really didn't have a good sleep last night because I was in pain all night.", you know, and I told him, "That couldn't be right, darl, because that - that morphine that you are blinking every time when - when you are in pain, that will - that will help you not to feel the pain.", I said to him, and, "Well, I was in pain.", he said, you know, and when - when he dropped his arm I seen this - I've seen the morphine dripping from his arm so I assume that's the morphine, so I think that's where they put it in stages, so that's where they put it, so I call the nurse quickly and I told her that, "Could you just please fix that properly, please?", because they told me that night that he needs to have that morphine all the time, that's why he can't feel the pain so he can breathe properly and that high rate of complication won't arise.

You refer to him having a device that he flicked the morphine on and off with. Was it - was there a drip there that he could control and turn off and on when he felt pain?-- That's right.

Did he have that from the time he left the ICU?-- That's right, and that's what he is doing every time he feel that he can feel a little bit of pain coming on, or he can't - he can't bear the pain anymore, he just flicked it on. So for that one day, I knew that he is doing that and that's why that night - that morning when he told me that he was in pain, I just - I just - I can't believe it, you know. So that's when I told him that can't be right, you know.

After the drip was fixed, the line was fixed, did that solve the pain, do you remember?-- Yes. That solved the pain.

Then later on that morning, a physiotherapist came to visit, is that right?-- Uh-huh. The newspaper - News Mail arrived for us to interview him and asked him what's happened, everything like that.

Who was that, sorry?-- News Mail newspaper.

Oh, newspaper, yes?-- Local newspaper here in Bundaberg.

Yes?-- After interviewing him, and that's when the physiotherapy came and let him walk up and down the hallway. About 30 metres, approximately 30 metres walk. And when he came back he was very tired. I assume that he is in pain as well.

Are you able to remember how it was that he was taken to his feet when he did those walking exercises? Can you remember now, or not?-- Yes.

Yes?-- I couldn't forget that. Two physiotherapy came and assist him, let him down - they let him down gently from the bed and let him - assist him to walk.

How did they assist him, do you remember? Were they holding him?-- He walk on his own but sort of - they just sort of holding him side by side, you know, in case he fall down, you know. No, sorry, one - one is holding the machine and one is the one holding him in the arm.

Did he have any walking aid; a walking stick or a frame that he was using to assist him walk, do you remember?-- As far as I can remember nothing.

And can you remember now how he walked? Was he walking quickly, or slowly?-- Very slowly because he is in pain.

Do you know who it was that had ordered that physiotherapy exercise as being undertaken, or do you not know?-- That's one of my question, why they done that, I don't know what is the purpose of that, you know. Somebody told us that first

year university nurse knows that if you get a broken ribs or sternum, the fatal movement is so dangerous you don't move them, but whoever told that nurse to do that, he doesn't know what he is doing, shouldn't be there.

Well, hopefully we will hear more about that, Mrs Bramich. After the exercises, do you remember how Mr Bramich felt? Was he his normal mood after that occurred? He had some more visitors, is that right, or phone calls?-- Yes, he had a phone call from his sister and from his mother and they were so eager to talk to him. But he can't make the long phone call, so the two people are so upset but - well, they can't do nothing about it because he can't speak to them for long. He was that in pain, and I feel after that physiotherapy he is just really going downhill.

He had some lunch brought to him, some solid lunch, is that right?-- Yes, yes.

You assisted him to have some lunch for a little while and then you left, is that right?-- That's right. Normally I don't do this for him, to cut the meat on his plate, but that time he let me to do that, and I thought that he must be really in pain, you know, to let me do that because I don't usually do that, and he said to me that, "I am not hungry, darl." "You should be because so many days you are not eating", you know, and I believe it is just because of that walking that he done.

When you returned from lunch, he was no longer in the ward, is that right?-- That's right.

Well, did someone tell you what had occurred?-- They reckon he had a - he went into the cardiac arrest and took him back to the ICU.

So did you return to the ICU?-- Yes. Went there straight away and asked them what's happening, and nurses and doctors. There is a lot of them there. Some of them on the telephone, I don't know if they are doctors or nurses, but they just sat there and talk on the telephone. Time seems nothing to them.

Do you recall what time that was that you went back to the ICU? Was it soon after you came back to the hospital or 2.30 or 3?-- I believe it is about 2.30 to 3 o'clock, 3 in the afternoon. That's roughly.

Did any doctors or nurses come to tell you then at that stage what was happening to Desmond, or what treatment he was to be given, do you remember?-- No, I can't remember. It is just, too, a lot of people saying that - or just like talking - doctor, nurses talking to the telephone from Brisbane, asking some sort of assistance, what they could do to fix him and-----

Were you present when that conversation occurred?-- Well, yes, but I just don't know what they are talking about and - and.

Do you remember about what time that was that you heard someone talking to Brisbane?-- I am not certain.

And do you remember who it was that was talking to Brisbane, or don't you know?-- I don't know. If I could see his face I would know. If I will see him now here, I will know, but I don't know his name.

You say in paragraph 20 of your statement that nothing appeared to happen to you until around 10.30 p.m. that night, is that right?-- That's right. That's why that night I felt no confidence in what they are doing because they are taking all the-----

Sorry, he was - they were taking what, Mrs Bramich?-- Scans or X-rays.

Scans or X-rays?-- Yes.

I see?-- And one - I am sure he would be a doctor and he had a look at it and he said three rib bones broken, then - but 10 minutes later saying four, five, you know. So, what he's doing? You know, he doesn't - he probably doesn't know what he is doing by saying like that, that - that - he is not even sure how many.

Before 10 p.m. that night did anyone speak to you about transferring Mr Bramich to Brisbane?-- What time?

At any time before 10 p.m. that night or 10.30, did anyone come and ask you or suggest to you that they were going to transfer him to Brisbane or did no-one speak to you?-- Nobody told me but I heard it.

Okay?-- I don't know if they actually told me. It is just so blurry, you know, but I knew I heard it in my ear that he had to be transferred to Brisbane.

COMMISSIONER: Mr Morzone, Mrs Bramich's story comes across very clearly from her statement. I don't - if Mrs Bramich wants to go on with her story, I don't want to stop you, but we can read it in your statement, and I don't want to put you through the trauma of having to relive this experience unless you wish to do so?-- That's all right. That's all right, Commissioner.

You would like to keep going?-- Yes, as long as you can understand me.

I can understand you perfectly.

MR MORZONE: You were saying that you had heard about the transfer to Brisbane. Do you remember whether you heard back then or subsequently about the transfer to Brisbane? Do you remember, or don't you remember?-- No.

You say in paragraph 20 that Dr Patel came to see you at about

10.30 p.m. and he advised you then that you needed to pray for a miracle, is that right?-- He went in there in the waiting room and brother-in-law called talking - told my family that you got to pray. I don't know what sort of person what we're talking to telling us like that, that it just no warm in there, sort of like a dead person talking to us, like a - "you have got to pray now because he won't make it. This sort of - 80 per cent that sort of injury doesn't make it", you know, and I ask him - I said to him, "Why you didn't transfer him in Brisbane?", I said, "Not nasty, gently, just asked him gently. I haven't got that nastiness in me that time, because I am so buggered. But he yelled at me saying, "What? What? What?" You know, when he yelled at me like that, I just give it a miss and walk away and went to the church. And I remember or heard that before I left the place my - his brother-in-law ask him, "Why you remove him in the ICU so soon?" That's when I have heard that they were talking a bit louder to each other, and Mark as well ask him questions but I - when that's happening I left and went to the church. I just can't - I just can't believe why they let a doctor like that to be a director surgeon that haven't got a heart, you know. I assume - I thought if it is somebody got relatives like that dying, like that doctor came from Brisbane, you know, he said - she said to me, "I will try three sorts of attempts to make Mr Bramich to - that we could take him to Brisbane." She asked me before she do it - before she had done it, and when she came back, "I couldn't do nothing about it anymore, it is too late. If we got him one hour earlier, we could open him up and we could see what's not working", and while she is saying that, while she is saying that, she is crying to us.

You are referring here to the doctor who arrived from Brisbane?-- That's right.

With the retrieval flight?-- That's right.

And you refer to that in paragraph 21, is that right? Can I ask you - you set out in paragraph 21 and 22 what happened next - and I don't want to take you to that unnecessarily, unless you want to speak about it, but after your husband passed away, you say in paragraph 23 you received an autopsy report and you were unhappy with it, is that right?-- Yes, at the time my husband died we all know, as five of us adults there, that he didn't have a fair treatment. So I asked the two policemen, "Could you make sure, please, that my husband get a proper autopsy before he leave this place", and they told me yes, they were going to. But as far as I am concerned, that autopsy is not right because how come when Dr Patel stab him so many times - how many times with the long needle that I have seen, it is not in the autopsy report.

Mrs Bramich, did you see that incident occur, or is it-----?-- I didn't see that but I have seen him went in inside that curtain, like that length of the needle, and it is - it is a big needle.

Okay. Well, other people will tell us what happened there?-- Yes.

Seeing you weren't there. But you say you wrote a letter with the assistance of your family?-- That's right.

And did that letter set out all the concerns that you had? And you say that you forwarded that letter?-- To Mr Lavering, our local coroner, asking him an inquest.

Can I ask you to look at this letter? Is that the letter you sent?-- That's right.

Does that set out matters of concern that you would like the Commissioners to read in due course, is that right? Yes?-- That's right.

That's right, okay. Did you receive a response to that letter?-- Yes. He told - he wrote to me last - 23rd of September last year. He said that he is going to do a further investigation, and from 23rd of September I never heard from him until he called me, rung me and told me that he was not going to do his further investigation anymore because of the pending Royal Commission and CMC Inquiry. So I asked him, "I never knew that you are doing it because you didn't even ring me or even made a little note of letter to me that you are doing your investigation", I said. So he answered me, "I guess I should have rung you that I am doing it", and his excuses is the hospital-----

Don't-----?-- -----not sort of cooperate with this investigation.

Okay?-- Sorry.

That's okay. That's okay. We'll - we should hear that from the Coroner, if we are going to hear of it, and that's why that part of the statement was taken out. But that's okay?-- I really would love to hear what-----

Yes?-- I really would love to hear what he done, what he done for that amount of months that he told me he is going to do it, you know.

You don't know what he did, but you are angry because he didn't communicate with you what he was doing, is that right?-- That's right.

Okay?-- For that amount of time I assumed that he done nothing about it, you know.

I have nothing further, thank you.

COMMISSIONER: Mr Morzone, we'll mark Mrs Bramich's statement as exhibit 192.

ADMITTED AND MARKED "EXHIBIT 192"

COMMISSIONER: And the letter to the Coroner dated the 30th of August 2004 as exhibit 193.

ADMITTED AND MARKED "EXHIBIT 193"

COMMISSIONER: Does anyone at all at the Bar table have any questions of Mrs Bramich?

MS FEENEY: No, Commissioner.

COMMISSIONER: Mr Fitzpatrick?

MR FITZPATRICK: Just one thing I wanted to clear up.

COMMISSIONER: Of course.

CROSS-EXAMINATION:

MR FITZPATRICK: Mrs Bramich, I am Chris Fitzpatrick and I act for the Health Department. Mrs Bramich, we were concerned to read in your statement that you say that you were seeking to have some counselling. I understand - though I am not sure - that where you live is some distance from Bundaberg, is that so?-- That's right.

We were concerned to think that because of that you might not have had access to the counselling that you need. Is that the case?-- Well, they have been so helpful. I told them the situation and they came - they came a little while, came to Agnes Waters to do the counselling for me.

Oh, very good. So you are happy with - you have had the support through counselling that you have been seeking?-- Yes. They rung me - they rung me when - before the Royal Commission Inquiry, they rung me, but sort of I don't believe in counselling, but when the stage that I try everything, I try anything to stay here.

Good. Thank you, Mrs Bramich?-- Thank you.

COMMISSIONER: Thank you, Mr Fitzpatrick.

MR HARPER: I just have one.

COMMISSIONER: I am sorry, Mr Harper.

EXAMINATION-IN-CHIEF:

MR HARPER: Mrs Bramich, after Mr Bramich's death, did anyone from the hospital contact you to inform you that there was an investigation going on at the hospital?-- Nobody.

No-one mentioned to you that a form called a Sentinel Event Form had been filled out?-- Nobody.

Thank you, Commissioner.

COMMISSIONER: Thank you, Mr Harper. Mrs Bramich, I am not sure if you were here yesterday when Mr Connelly said some very nice things to me. I was very embarrassed when he said that because I am not the hero here, people like you are. And there are many others in the audience here who have been through awful ordeals. To come in front of an audience like this and speak so clearly and confidently about such dreadful things is an inspiration to all of us. Thank you for that courage. Thank you for coming along and telling us your story. Please feel free to leave the witness-box now and you go with our very warmest appreciation, and our most profound sympathy for the loss of your husband?-- Thank you, Commissioner. Could I say something, Commissioner?

Yes?-- Deputy Commissioners Sir Llew, Ms Vider, Commissioner Morris, this past couple of weeks sitting and listening here in this room, what I have seen from three of you, you are true people that have a conscience. Your kindness and openmindedness made my mind to fully trust you to fix the health system with the Queensland Government. And when you finish, you can tell yourself that you have done your duty to your fellow men. For the people who have to answer any allegations against them, I felt for your family, but the old saying says, "Where there is light, there is hope." The only comfort for me to let my husband and soulmate go, is to think the health system will be fixed and hopefully shake the rest of the people working in the Health Department around the world. I thank you on behalf of our children, and all the rest of Desmond's family. We are grateful to Mr Rob Messenger for having the courage and decency to listen to us; Ms Toni Hoffman for being the whistleblower. Deputy Commissioners Sir Llew and Ms Vider, Commissioner Morris, you are very fortunate people that God picked you to do this job. God bless you.

I might take a 10 minute break.

THE COMMISSION ADJOURNED AT 11.25 A.M.

THE COMMISSION RESUMED AT 12.02 P.M.

COMMISSIONER: Mr Morzone.

MR MORZONE: Yes, if it please the Commission, I call Rosemary Rogerson Ashby.

ROSEMARY ROGERSON ASHBY, SWORN AND EXAMINED:

COMMISSIONER: Please make yourself comfortable. Do you have any objection to your evidence being filmed or photographed?-- No.

Thank you.

MR MORZONE: Your full name is Rosemary Rogerson, R-O-G-E-R-S-O-N, Ashby, A-S-H-B-Y; is that correct?-- Yes.

You are a registered medical practitioner in the specialty of pathologist; is that correct?-- Yes.

Can you quickly outline your background and experience?-- I qualified in 1956, I took post graduate examinations in medicine in 1958. I was out of medicine for quite some considerable time and I eventually went back into it in the branch of pathology and I took my pathology exam in 1982 and was subsequently granted fellowship automatically 12 years later. These are English qualifications. When I - before I went back and qualified in pathology, I did work in Jamaica at a government hospital in Montego Bay for two years. This involved general hospital pathology or anatomic pathology examining operation specimens and so forth. It also involved doing work for the Coroner and forensic work. I then left Jamaica and eventually back in the UK I enrolled as Registrar in Pathology, this was called a Married Womens Retraining Scheme, and during that period, I worked at the Gloucester Royal Hospital in general anatomic pathology, that is, operation specimens and hospital autopsies and we also did autopsies for the Coroner that were not of a suspicious nature or murders.

And you refer to gaining membership to Fellowships in the United Kingdom?-- Yes.

Those were in 1958 a Member of the Royal College of Physicians, was it?-- Yes.

And in 1992 a Member of the Royal College of Pathology?-- 1982 was member of the Royal College of Pathologists, this was by examination and then 12 years later if everything has gone well, you are granted Fellowship and that was 1994 and then I continued on. I went to Papua New Guinea and worked at the

hospital in Port Moresby as pathologist for two years. We came to Australia in 1985. I applied for a job at the Forensic Medical Centre in Adelaide from Port Moresby and was very surprised to be appointed and I worked there for three years. My husband was then offered a job in Queensland and we moved up to Queensland and I obtained a job at the then Institute of Forensic Pathology in Brisbane and I worked there for three years as a pathologist in the department. I retired at the end of 1991 for reasons that my husband had a job offer in the Bundaberg region which did not eventuate. At that period, in 1992, I was not doing any pathology but subsequently in 1993, I was asked to do a number of cases here that were perhaps slightly suspicious or questionable, but I was not in routine pathology. I realised in 2000 that it should be possible for me to continue doing the work that I was interested in, the pathology, and I found that I could apply to become a part-time government medical officer and thereby be enable to do routine Coroner's autopsies.

COMMISSIONER: Dr Ashby, your reputation precedes you. I've heard you described as Bundaberg's answer to Sir Bernard Spilsbury; you do regularly give evidence in Coroner's Courts?-- Yes, I do, but I always have the nasty feeling I'm just keeping one step - trying to keep one step ahead.

MR MORZONE: At the end of July 2004, you performed an autopsy on Mr Bramich?-- Yes.

And as a result of that autopsy, you prepared a Form 8 under the Queensland Coroner's Act, being the autopsy report?-- Yes.

And in that report, you have made a number of handwritten notes and you also typed up notes to accompany that report; is that correct?-- Yes.

Can I ask you to look at this document? Does that document contain the Form 8 autopsy report which you wrote in hand and then also the typewritten document which you refer to, and on the last page a letter which you wrote earlier this year to the Coroner; is that correct?-- Yes.

You've also prepared a statement for the Coroner, and can I ask - perhaps I'll tender that. I will tender the statement as one exhibit, Mr Commissioner.

COMMISSIONER: Yes. I think it best to mark as one exhibit which will be Exhibit 194, the Form 8, together with Dr Ashby's statement and the typed version of the post-mortem notes.

ADMITTED AND MARKED "EXHIBIT 194"

WITNESS: Yes.

MR MORZONE: You're looking at a statement, a further statement which you prepared; is that correct?-- This is the further statement which is dated the 4th of March 2005.

COMMISSIONER: Yes.

MR MORZONE: And can you recall the purpose of that statement?-- This was requested of me by Coroner Lavering.

Now, are the facts contained in the autopsy report true and in your further statement true and correct to the best of your knowledge and belief?-- Yes.

And the opinions which are contained in both in the autopsy report and in this further statement opinions that you truly hold?-- Yes.

I'll tender the further statement please, Mr Commissioner.

COMMISSIONER: Yes. Well, that will form part of the same exhibit.

MR MORZONE: Dr Ashby, in your autopsy report, you found as the cause of death internal haemorrhaging as a result of the chest injury; is that correct?-- Yes.

And in that regard, you referred in some detail to your findings, particularly of the thorax area internally?-- Yes.

Can you briefly explain the basis for your conclusions that you found that internal haemorrhaging had occurred?-- Yes. When I examined the thorax, the most striking feature was the presence of a large red mass in the right pleural sac or that is the sac around the right lung, this was a mass of coagulated blood, a cast of the entire right cavity, and this clotted blood cast weighed 3,000 grams. The entire lining of the chest wall on the right side and to a lesser extent on the left was very haemorrhagic, bruised, swollen, and I think I described it as boggy and a lot of bruising and haemorrhage in the chest wall structures. The pleural sac, which normally in life and health one is not aware of unless it's distended by fluid of some description was occupied by this large amount of clotted blood. The pleural sac has two layers, one which encases the lungs and is on the surface of the lungs and the other layer lines the inside of the chest wall. Now, the pleural membrane lining the inside of the chest wall was badly torn on the right side, particularly in the vicinity of fractured ribs C-6 - I beg your pardon, thoracic 6 and 7 in the posterior lateral, that is, this aspect of the chest. These ribs were fractured and they had torn this lining pleural membrane. There was obviously a fracture in there and this had caused haemorrhage in that vicinity. In addition to that, there was a severe fracture, a complete through and through fracture of the upper part of the sternum or breastbone, and this, although I couldn't identify the vessels positively, this had very likely caused damage to branchs of the intercostal arteries which run down on either side of this

breastbone. There would have been haemorrhage from vessels torn in that region. I considered that with the degree of bruising and damage of a crushing nature, that this was of a very severe degree lining the cavity of the right chest and there would have been significant damage to blood vessels and smaller capillary vessels within the tissue.

We've heard-----?-- I beg your pardon, I should mention that because of this collection of blood clot, the right lung had been collapsed or pressed down, what we call atelectatic, and it was not expanded up, it was compressed to a tiny shrunken object by this mass of clotted blood. The lung on the left side was normally expanded but it showed some bruising but predominantly it contained a lot of what we call oedema fluid which would be likely due to a failing heart.

There is evidence that will be given and which has been mentioned briefly of an intercostal catheter having been inserted soon after Mr Bramich was admitted into hospital-----?-- Yes.

-----on the 25th of July 2004?-- I did find two chest tubes or intercostal catheters, there were two upon the right side and one upon the left side.

Are you able to offer any opinion having regard to the dark clotted nature of the blood that you saw, whether or not the blood is likely to have drained as a result of either of those catheters?-- I think this blood was slowly accumulating since the time of the accident and over the period in hospital, and it's possible that it could have blocked egress to the intercostal catheter at some stage. I found only a moderate, a small to moderate amount of liquid blood remaining in the right pleural sac along with this mass of clotted blood, but I think a lot had been drained away, and certainly when I first saw the body in the body bag and when I moved the body, a considerable quantity of blood issued from the intercostal site at that point, so I think that probably there had been originally a slow seepage and accumulation of blood and then that later speeded up, particularly on the last day of life.

In your statement, you refer to the opinion that, "The nature of the accident could mean that it could be difficult to estimate the degree of internal damage and that external signs and symptoms could minimise the seriousness of the situation." Can you expand on that?-- Yes. In general, when one hears about fractured ribs, it probably isn't considered to be a potentially fatal event and readily treatable, but if you have a serious heavy crushing damage to the chest, it's very difficult to estimate exteriorly how serious the damage is internally, but with such an event as described, this heavy caravan and so forth, one I feel should consider that there is a likelihood of very severe soft tissue internal damage, and the finding of fracturing of the ribs does not necessarily give you an accurate estimate of the seriousness of the situation. Now, in addition, although Mr Bramich, you couldn't call him an old person by any degree, but he was ageing, and in ageing adults and certainly in older people,

they - sometimes their response to bleeding and trauma may not be so marked and evident as in a young, fit, healthy person, so certainly in geriatric medicine, masks of bleeding and infection is very common, so that his signs may have been misleading, they may not have been so serious as one would expect normally. What I'm trying to say is that although he was continuing to bleed internally, this was not necessarily very obvious in his external signs such as the pulse rate, breathing, fall in blood pressure, although the hospital charts did in fact give evidence that for a man of his build and having evidence of a mild degree of hypertension, the blood pressure was tending to run along at a lower rate than one might expect the pulse rate remained slightly raised. So I think the signs were there but they were minimal.

COMMISSIONER: Dr Ashby, you mention that the sternum was broken through and through?-- Yes.

Are you able to say whether that was apparent from X-rays taken whilst Mr Bramich was still alive?-- I didn't see the X-rays but I would have expected that it would have been apparent because it was completely through.

Is the fact that the sternum was broken through and through another indicator that would suggest the problem was more serious than merely broken ribs, for example?-- Yes, because of the vicinity to the internal mammary arteries.

MR MORZONE: And you state in that further statement which you provided to the Coroner an opinion that in the context, you thought it might have been appropriate that an early transfer have occurred; is that correct?-- Yes.

By early, how early are you referring to?-- That would depend on the condition of the patient. You have to allow for an initial period of stabilisation and assessment, but in this case, possibly the end of the first day, but I would have thought certainly should be seriously considered on the 26th, the beginning of the 26th of July.

We've heard evidence that during the 26th of July, Mr Bramich was given walking exercises; do you know about that fact?-- I did read in the hospital notes that physiotherapy had been ordered for that morning. It didn't specify what had been done in the notes that I saw, but in my statement, I did question whether early mobilisation should have been carried out at that point, whether the mobilisation had been a little too swift. I would have considered that at that stage, what should be allowed is gentle coughing movements to encourage the dislodgement of any phlegm in the air passages. I don't think that heavy breathing exercises or walking would be advisable so early.

COMMISSIONER: Dr Ashby, the fact that the patient was considered to be well enough to have that physiotherapy, to be discharged from ICU and, as we've heard in evidence, to be seated in an armchair beside his bed rather than in bed, would that all indicate that at least those treating him thought he

was stable enough that he could also have been transferred to Brisbane?-- Yes.

MR MORZONE: You, in stating the opinion that the physiotherapy may have been a little too vigorous, what risk in particular are you referring to could result from physiotherapy?-- Well, the rib fractures were starting to come together, too much movement might disturb them, there also could be re-opening of small blood vessels which were starting to seal over possibly.

You referred earlier in your evidence to the risk of - or to the evidence that you saw of the fractured ribs having ruptured the membrane?-- Yes.

Is that also a risk with the physiotherapy?-- With jaggered ends of fractured ribs, if the physiotherapy is too vigorous, there's a risk of doing further damage, yes.

COMMISSIONER: You can't, of course, say whether the rupture of the membrane occurred during the physiotherapy or at an earlier stage?-- Oh, no, I - my feeling would be that this occurred during the early stage, at the time of the accident.

The initial impact?-- Yes.

Yes?-- It requires a substantial degree of force to do that, I don't think the physiotherapy would have done that.

Thank you.

MR MORZONE: There's another matter that you can help us with and that relates to there being some evidence of a procedure having been performed on the 27th of July 2004 which, if I can find the name of I'll be able to pronounce quickly, but involved injection into the pericardium?-- Pericardiocentesis.

Pericardiocentesis?-- Yes.

Thank you very much. And did you - I see in your autopsy report at the bottom of the first page of the Form 8 you've made some reference to that; is that correct?-- Yes, I did see some puncture marks, what appeared to be needle puncture marks in the epigastric region, this is the triangular area in the upper abdomen between the lower rib cage each side which is right in here, and this is the site that you choose if you want to put a needle into the sac around the heart, the pericardial sac, the so-called pericardiocentesis, this is the area from which you approach to enter the sac.

And this procedure is usually done, most usually, to withdraw either blood or excess pericardial fluid or both from the sac so as to allow the heart to function normally. If there's a lot of fluid in there pressing on the heart, it can't pump normally. So a needle is introduced into the pericardial sac and if there's a lot of fluid in there, it should be possible to withdraw this excess fluid without damaging the heart in any way with the needle. Once you've entered the sac, some people may try to introduce a very thin walled small tube for continuing drainage of fluid into the sac. So these - these marks that I saw in the epigastric region attributed to an attempt to do a pericardiocentesis and my recollection - I didn't count these marks and I realise that in the report the number is not itemised. My recollection is there were approximately three to four of these marks.

COMMISSIONER: Was the diameter of the puncture marks consistent with your conclusion as to the cause of the marks?-- Yes. Yes.

What size of needle are we talking about?-- It would be a fairly substantial needle, a long - I don't know the actual size but those that you would use for such a procedure. I understand that there is some suggestion that many, many more of these insertions were made. Well, it is of course possible if you're doing this procedure, and I have done it on occasion, you feel your way in and you may change direction slightly and you make repeated testing movements and withdraw on a syringe to see where you are, and when you finally get through the pericardial membrane, you feel a slight give but you're constantly testing to feel where you are. So, that might be some of the movement seen. This is only a suggestion.

Yes.

MR MORZONE: If those movements occur, would you expect the puncture marks that you referred to to still be confined to one single mark like you saw?-- The needle still could be within that tract as it were, within that puncture mark, yes.

Did you also find some other evidence which also confirmed in your mind that that procedure had been undertaken?-- Yes. There was some marks or a little scrape, abrasion marks on the back of the heart, the right ventricle. That's the pump chamber. The smaller one or thinner walled one pumps blood through the lungs. This was on the back of the heart. And the marks there suggested that this needle had come into contact, had punctured the pericardial sac at the back and come into contact with the back of the heart on its surface. It hadn't actually perforated the wall of the heart and entered the heart cavity but it had touched the back wall of the heart.

And was there evidence of some bleeding having occurred as a result of that?-- Yes, the - the pericardial fluid, which is normally present and was there in a slightly increased amount but not excessive, this was tinged with blood staining.

Was there any evidence on your examination which obviously, with retrospect, justified the procedure being undertaken? In other words, was there fluid in the pericardial sac that-----?-- It can be very hard to diagnose a pericardial effusion but I understand that some X-ray or similar type of tests had been done and there was no suggestion of such an accumulation.

Was there any evidence that you saw on examination which took that further, in terms of whether or not there was fluid in that region?-- I didn't find anything to suggest that there had been a large pericardial haemorrhage. There was - I should add to that, there was no traumatic damage to the heart as a result of a crashing injury.

I have nothing further, Mr Commissioner.

COMMISSIONER: Doctor, have you been either provided with a copy of or informed about a report prepared by a team from Queensland Health including Dr Woodruff, a vascular surgeon?-- No.

Dr Woodruff expresses the conclusion in relation to the late Mr Bramich that he is of the opinion that Dr Patel contributed to an adverse outcome in Mr Bramich's case. What is your opinion as to that conclusion by the Woodruff committee?-- Well, I - when I read the hospital notes, it wasn't at all clear to me who was - who was actually in charge of the case and who was forming the opinion as to how the patient should be treated, so that I wasn't exactly aware just how much Dr Patel was involved. But from my findings and reading the notes, I would have - as I said in my statement to the Coroner, I would feel that serious - very serious consideration should have been given to transferring the patient to either the Prince Charles or a similar institution either later on the first day, providing he was sufficiently stabilised, or early on the 26th. It was not clear from the hospital notes as to how much - I think a certain proportion of the clinicians felt that this should occur but there was some resistance to this by Dr Patel. I don't know if that's the basis of Professor Woodruff's conclusion. But in that respect, I would say, yes, if he actively opposed the transfer, I would say, yes, he did contribute.

All right. You can-----?-- If he's referring to the pericardial procedures and the alleged stabbing, I would say, no, he did not contribute in that respect.

That did the patient no good but no particular harm either?-- No particular - it certainly didn't help him but it did him no particular harm. The damage had already been done.

All right. You can't, of course, say with any certainty that Mr Bramich's life would have been saved had he been transferred to Brisbane more promptly?-- No, I did make that point at the end of my statement to the Coroner, that this was what I felt should have happened, but it was possible that

even had he been transferred, it was more probable than not that the outcome could have been disappointing.

But, certainly, the decision not to transfer him to Brisbane, whoever made that decision, deprived Mr Bramich of at least a chance of survival?-- I think it deprived him of fighting - a good fighting chance, yes.

Yes. May I ask you some questions. In the material we've got from you is your letter to the Coroner of the 27th of February, a handwritten letter. Do you have that amongst the papers you have there?-- 27th of February 2005.

Yes?-- Yes, this is a handwritten letter by myself.

Dr Ashby, I note that it's expressed to be unofficial and off the cuff so I don't want to embarrass you by holding you to views that you may have since re-considered, but I see in the second paragraph leading up to the exclamation mark, you make some comments about your attempts to access the notes of the Bundaberg Base Hospital. Do I infer from the exclamation mark that you would been encountering some difficulty in accessing those notes?-- Yes, yes, but I can't blame the medical records. The problem is often I think that they are taken away by - by various clinicians and then it's difficult to retrieve them and, certainly, in one other - not this instance, in another instance the notes were never able to be found.

Yes?-- Someone had either taken them home or - this type of activity does occur. Or sometimes they're taken out by the clinicians to complete their reports and finalise the notes and they're kept for an inordinate length of time sometimes. So that - that's why I say there might be a delay in my getting to them.

On the second page of that letter you make reference to what you refer to as a "lot of rumours floating about plus exotic" - I think it's "impracticable", is it?-- "Impracticable diagnoses". Yes, there was some suggestions that Mr Bramich might have had a complication of the blood which had led to this massive right-sided haemorrhage diffuse intravascular coagulation defect and I did have some discussion with the laboratory on that matter and they told me that there was no evidence of that-----

Yes?-- -----in the blood tests. Also in his - Mr Bramich's notes, when I - and that - I wouldn't term this impractical but as a point of interest, in the past it had been suggested that Mr Bramich suffered from haemochromatosis, which is a disturbance of iron metabolism, you absorb too much iron into the system and this can damage certain of the organs, particularly the liver and the renal glands, but I think that had been very extensively investigated in the past and no convincing evidence was found of that and I found nothing to suggest that condition in my autopsy.

Thank you, Doctor. Also, at the end of that letter as a

postscript you make comments about the use of a stethoscope as an item of jewellery rather than an aid to diagnosis and too much reliance being placed upon electromagnetic aids. Were those comments made generally or was there some particular concern on your part in this case?-- No, they were made generally but I think it is not a criticism against the clinicians concerned here but I think there is a tendency to move away with just - just standing and looking at the patient for a while, the old-fashioned inspection, palpation and percussion. I mean, it's amazing what you can learn by just a simple observation and just taking a little time with it. If you fly straight to the X-rays and so forth, you may miss out something subtle.

Thank you for that. In the details of your autopsy report there are a lot of references which I admit to you immediately are quite meaningless to me; for example, about the colouration of organs and so on. I noticed, for example, the kidneys were described as being pale?-- Yes, that would be in keeping with the blood loss, the haemorrhage.

All right. May I simply ask you: is there anything in those details that you feel you need to bring to our attention as being important or have you identified everything that you think is important?-- I think so. But certainly the paler - I should say of course that Mr Bramich externally appeared very, very pale indeed.

Yes?-- And the kidneys - the paleness of the kidneys would fit in with that. And his internal packing tissues, they were pale and they were oeditimis, which is in keeping with shock and haemorrhage.

Doctor, a more general question. You have referred to your experience in the English hospital system and I'm aware that you do some work with the coronial system in Australia or in Queensland in any event. One of the matters that we have been asked to review is the appropriateness of the present coronial system to deal with cases of this nature involving medical problems rather than the traditional homicide or manslaughter?-- Yes.

One thing that I'd ask your opinions about is that, as I understand, it either was in the past or still is the practice in the United Kingdom for Coroner's Courts to include a medical practitioner whereas in Queensland, Coroners are always Magistrates. Do you have a view about the appropriateness of the English rather than Australian system?-- Well, my - my experience is that when I was there, and that's quite a long time ago, that there weren't routinely doubly qualified Coroners. There were - the ones I came into contact with were predominantly Magistrates.

Yes?-- But there are a certain number of - probably more in the past, like Bentley Purchess at Kings Cross, St Pancreas, he was doubly qualified, medical and law.

Yes?-- So, you know, my impression when I was in the UK doing

my training in pathology, the Coroners that I came into contact with there in Gloucester and the Cotswold regions, these were Magistrates and they were not medically qualified in fact.

From your experience in Queensland, do you see any merit in having Coroners sitting with advisers who are medical practitioners?-- Yes, I think it would be extremely advisable because in a recent instance when I was giving phone evidence, I was asked, "Well, why don't you just say he asphyxiated due to inhalation of vomit? That will cover it all and clear it up", but, yes, it's like saying someone's got amenia. You've got to say, "Why did this person vomit? What was the cause of it?" It was a complicated case, it was multifactorial. There were any number of possibilities. And, certainly, it's difficult to get a thing like that across, particularly over the phone, and I think if you had a medical adviser, it certainly would help.

Are there any other comments that you can offer us regarding the current Coronial system in Queensland that we might take into account in suggesting improvements?-- Well, not - my opinions, I'm afraid, run completely contrary to the present - the new Coroner's Act because I feel that if you are going to have a post-mortem examination, that should be a complete post-mortem examination, except in very, very exceptional circumstances. I don't agree with external examinations only and I certainly do not agree with these partial internal examinations where they say, "Oh, well, but if you want to" - "If you don't find anything there, you can always move on and do a little bit more." But, of course, that - to do a neat, complete and effective autopsy, you can't just sample here and there. You have to remove the organs in what I'd call a stately and complete way, and to do these partial autopsies can be extremely misleading. For example, in the past, people have done these quick Coronial autopsies. Open up the chest; in an oldish person they'll see these tortuous coronary arteries and they might cut into one and it's all crackly and all arteriosclerosis. Fine, it's got coronary - the man has collapsed; he's had a coronary insufficiency, a heart attack. So it's easy. So it's just written off as that. Whereas if they'd opened the head, they might have had found he had a massive intracerebral haemorrhage. I think it's a bad practice, these partial internal autopsies. It's potentially unsafe and in - in the future, it could lead to possible damaging civil investigations and damage claims and so forth. I mean, if you - if you've just opened the chest and you see a heart in a bad condition or maybe some emphysema and so forth, chronic bronchitis, that's fine; you know that's - there's your cause of death. Whereas if you'd done the proper autopsy and opened up the stomach and there you see a whole lot of crap that remains or something, that's what-----

We've heard some comments already in evidence about differing practices in the past and at the present time with autopsies arising from surgical treatment. At one time I understand the rule was that if a patient died within 24 hours after surgery,

there was an automatic requirement for a report to the Coroner?-- Yes.

Do you have any views about those issues?-- This time, certainly if they die on the table, I don't think there's any - on the operating table, there is no argument that it should be investigated, but it seems very variable this time after operation as to when it should become a Coroner's case and when it should be not. Certainly, my feeling is that it should always be discussed with the Coroner and after discussion, it may be decided - well, certainly, in a case where the person is expected in all probability to die anyway, like a ruptured abdominal aortic aneurism, that could probably be written up, signed off without an autopsy if the symptoms and everything were clear and the findings. But with these other cases, it's a very grey area and I think at least the matter should be discussed with the Coroner.

Doctor, I have one final question and that relates to the signing of death certificates. We've heard about a practice that where a particular surgeon performs surgery on a patient and the patient dies, rather than the surgeon signing the death certificate that duty is passed down to the most junior member of the medical team present at the time. Do you have any views as to the appropriateness of that practice?-- I think that's disgraceful. The surgeon who performs the procedure should sign the death certificate.

D COMMISSIONER EDWARDS: Doctor, could I ask: is it usual for hospital notes not to be available to you when you are conducting an autopsy?-- They - they are - no, it's not. They usually - if you've got a got dresser helping you, they usually are available, and if I know ahead of time that it's a hospital case, I always request for the notes to be there. Usually they are but occasionally they can't be found immediately and in that event then I will - if necessary, I will go back later, as I did with one case who came to autopsy from - he'd died at home but he allegedly told a neighbour that he'd never been right since Dr Patel botched up his operation six months ago. Now, I didn't find anything in the autopsy reference - with reference to that but I did, obviously, go and search out the old hospital notes to see if, in effect, this was the case, and in this case, well, he had had - he had had an operation but it wasn't six months ago, it was in 2002, and the surgeons had been completely different. So, you certainly - if there is a relationship or an allegation of wrongdoing, you should certainly try and get the notes and I have always managed - where the notes are difficult to get and - or virtually impossible are those cases that come from the private hospitals. They're very, very reluctant to give up their notes and when I request them, the police officer will be given perhaps some sheets of a copy, alleged copy, of the notes. So I - I mean, that's probably perfectly all right but you can't be absolutely certain.

But would there be value in considering - for this Commission considering that it be absolutely essential for when an autopsy is being done, that clinical notes are made available

to prior to the commencement of an autopsy?-- They should be, yes.

Secondly, can you recall if any X-rays were made available to you in - prior to the autopsy or at the beginning of the autopsy?-- With Mr Bramich, no. When I examined the hospital notes, I did read the X-ray reports, which are probably far more accurate than anything that I would see, but, no, I didn't see the actual-----

And, again-----?-- I could - I'm sure I could have asked for those.

COMMISSIONER: Now, Mr Harper.

MR HARPER: Yes, thank you, Commissioner.

CROSS-EXAMINATION:

MR HARPER: I'm Justin Harper. I appear on behalf of the Bundaberg patients generally and Mrs Bramich in particular. I just have one area of questions for you. You mention in paragraph 3 of your statement - you make mention specifically in paragraph 3 of your statement to the coroner of the 4th of March 2005 that you are not a specialist thoracic physician of surgery?-- Yes

In paragraph 9 of your statement, indeed, you mention the importance - and you've given evidence here today of the importance of injuries of this type being referred to a specialist centre for assessment and treatment. Am I right in concluding then, or is it fair for me to conclude then, that your conclusion in the last sentence of that letter is one which we might seek better evidence from a thoracic surgeon or physician on?-- You might well, yes.

Thank you, that's all I have.

COMMISSIONER: Thank you, Mr Harper. Mr Allen?

MR ALLEN: Thank you, Commissioner.

CROSS-EXAMINATION:

MR ALLEN: Doctor, John Allen for the Queensland Nurses Union. If I could just ask you about one topic and that is the findings consistent with procedure at peri - sorry, pericardiocentesis?-- Yes.

If I could just give - you've explained the fact that there were three or four puncture marks. Does not mean that there were only three or four attempts to insert the drain into the pericardial sac?-- It means that once - once the needle had been passed through the skin it was one of these puncture marks he might have tried in different directions.

Okay. Could I just quickly read to you a description of some events or of that procedure from a witness Karen Fox. She states: "Dr Patel was most forceful in attempts to insert the drain and he had to repeat his attempt to do so on an astonishing number of occasions. By this I mean he took at least 10 attempts and it was likely to have been more than that, although I did not count the number of occasions that he attempted to insert the drain." That description would be consistent with your findings?-- Well, the term drain suggests that he - he was attempting to thread - thread in this small fragment of tubing which I'm afraid I - I forgot to put in the report, but in - in this area there was just this small piece of very narrow tubing lying completely free in the

tissue. This may have been the - the drain or small tube that he was attempting to push in.

Assuming the witness was actually referring to the needle that was being used in the pericardiocentesis would that description be consistent with the findings that you made?-- It could be, yes.

Okay. Thank you.

COMMISSIONER: Thank you, Mr Allen. Who do we have next?

MR DIEHM: I don't have any questions, Commissioner.

COMMISSIONER: Thank you, Mr Diehm.

MS FEENEY: No, thank you, Commissioner.

COMMISSIONER: Ms McMillan?

MS McMILLAN: Yes, I do.

CROSS-EXAMINATION:

MS McMILLAN: Dr Ashby, my name is Ms McMillan. I appear on behalf of the Medical Board. I just want to explore a couple of issues with you. If you understand I am interested in teasing out some issues from your evidence. Doctor, I note in the file - which, of course, you indicate you've read the chart subsequently - there is writing there that indicates - and the author isn't clear. There's no notation. Indeed, it suggests maybe it was a later writing of someone perhaps reviewing the file, but it - part of the writing indicates that "(The autopsy reveals that the drainage and resuscitation was not adequate. No sign of massive major vascular injury was observed at autopsy.)" That's all in parenthesis. Now, is that consistent with your view of what you found at the autopsy?-- What? Could you repeat the first part?

It reveals this: "The drainage/resuscitation was not adequate."?-- I wouldn't say that I hadn't - I wouldn't agree with that from what I'd found.

All right. Now, I'll come back to the drainage issue just in a minute. Now, as I understand your evidence it was in your view appropriate, if you like, maybe for Mr Bramich to have stayed there at least for a day, that is 24 hours, to ascertain his stability in order to look at a transfer. Is that a correct understanding of your evidence?-- I would say they've probably not specified a number of hours, but until you are reasonably satisfied that he could withstand the transfer-----

Right?-- -----he is reasonably stable and that would probably

get to the end of the first day.

Right. Okay. Now, doctor, do I take it from your experience that you have some familiarity with what I might call provincial hospitals such as Bundaberg base hospitals in terms of what they're able to deal with, that is, handle in terms of emergencies, for instance?-- Well, here I couldn't say. I'm not - I've not actually worked as a medical officer in Bundaberg Hospital and the only other provincial hospitals I've worked in clinically have been in England and then at Port Moresby in the clinical field.

And, doctor, I'll ask you these questions and please feel free if you don't feel able to answer them will you please indicate. Would it be fair to say that at Bundaberg, would they have had in the area which they did, given the size of the hospital, the expertise, so to speak, to make a decision whether it was appropriate to continue to keep Mr Bramich there?-- I would have considered that some of the clinicians involved should have had the expertise to make that decision.

Is it a fair assumption that obviously with a patient such as Mr Bramich there are obviously two prospects, one, is he could improve, apparently, or that, of course, he may worsen after that time that you talk about when you look at the possibility or the probability of a transfer?-- Yes.

Now, in terms of your experience in the - and you may not be able to answer this - would it have been, on what you read in the charts, have called for in his observations within the time you're talking about of looking at whether he should have been transferred or not, this initial period I'm talking about, the stabilisation one, should it have been a matter for an automatic transfer or not? Can you comment on that?-- I can't comment on that. I can only give my - my impression of what should have happened.

All right. And do you say you've already done that in terms of your evidence here this morning?-- Yes.

Right. Okay. Now, from what your evidence earlier was - and correct me again if I am wrong - you say that during the 26th, prior to obviously the 27th when he became quite ill, on his observations in terms of his temperature, blood pressure and other observations he seemed to be doing well, so to speak?-- He was - he was doing reasonably well, but the pulse was still slightly raised and probably some of the blood pressure readings were rather lower than I would have expected-----

I think you said for a man of his age - sorry?-- Also his blood count, the haemoglobin, remained low.

COMMISSIONER: Ms McMillan, I do have some difficulty in understanding how any of these questions relate to issues that have been raised against the Medical Board.

MS McMILLAN: Well, no, but part of the issue is obviously to tease out to try to understand in terms of one of the Terms of

Reference being any disciplinary action in relation to any individuals and trying to gain an understanding of - one of the issues I wanted to ask is the drainage of-----

COMMISSIONER: You are here to represent the Medical Board.

MS McMILLAN: I understand that and one of the issues obviously is the Terms of Reference, whether there should be a disciplinary action.

COMMISSIONER: That is not a question against the Medical Board.

MS McMILLAN: No, with respect, it is not in terms of any matter, but obviously one of the issues is obviously to elicit evidence in relation to whether there may be any disciplinary matters that individuals might need to face.

COMMISSIONER: I'd be disappointed in you if are trying to use these proceedings as a stalking horse to get evidence to use somewhere else.

MS McMILLAN: With respect, I wouldn't see it as a stalking horse. One of the matters, as I say, that clearly calls for a Term of Reference is about a disciplinary action.

COMMISSIONER: I have given leave for the Medical Board to be represented to protect interests.

MS McMILLAN: I understand that.

COMMISSIONER: Do you have any questions relevant to matters affecting the Medical Board?

MS McMILLAN: Well, the only other questions I have will relate along the line I was asking in relation to some questions about drainage of Mr Bramich, but if you've made that ruling then there's nothing further I would say.

COMMISSIONER: What do you say about this, Mr Andrews?

MR ANDREWS: It's a matter for your discretion, Commissioner. When giving leave to the Medical Board you did not confine the leave to the express purpose of protecting the Medical Board's interests. It is conceivable that parties might because of the Terms of Reference explore issues that are not solely related to the protection of their own interests because there has been no condition imposed upon the leave that was granted. It's within your discretion to allow any party, for instance, to explore issues relating to any of the Terms of Reference, indeed, even the Terms of Reference as to whether there might be disciplinary proceedings brought against medical practitioners. Because, however, you are tightly constrained by the Terms of Reference to finish your report by the 30th of September it is, in my submission, within your discretion to consider whether to limit the exploration of issues that are at the periphery of the Terms of Reference.

COMMISSIONER: Thank you, Mr Andrews. I'll accept that guidance. Ms McMillan, I'll let you continue to ask questions, but for the future I would ask you to bear in mind that counsel are assisting in the function of exploring all of the issues raised in the Terms of Reference. So far as I'm concerned parties who are represented here have been permitted to be represented for the purpose of protecting their client's respective interests and not to duplicate the role of counsel assisting.

MS McMILLAN: Thank you, Mr Commissioner. Could I consider my position further in view of your remarks and I only had probably two or more questions to ask.

COMMISSIONER: Finish your questions now, but I am just saying for the future I'd ask you to bear that in mind.

MS McMILLAN: Yes.

COMMISSIONER: You might care to discuss it with Mr Devlin if you want to canvass it at another stage.

MS McMILLAN: Well, I will and it may be that we wish to canvass it further, but rather than holding up the doctor - I only had a couple more questions.

COMMISSIONER: Finish it now.

MS McMILLAN: I didn't think it was of no assistance even to perhaps, Mr Morzone. Dr Ashby, I wanted to ask you this: one of the matters that you've addressed was that - a concern about the physiotherapy undertaken by Mr Bramich?-- Yes.

And I notice from the notes that that occurred at about 11.20 a.m. and then about 13:00, about 1 p.m., 1.30 it seems that he deteriorated. Is that consistent with your understanding of the note?-- Yes.

Is it fair to say that if, indeed, the physiotherapy was perhaps - this is my word - inappropriate for that stage he was at, would you have expected more of a free flowing, that is, immediate bleed at that stage?-- Sorry, I would-----

If you expected, like, an immediate bleed it would have been quite inappropriate to be mobilised to that degree at that time?-- No, not necessarily.

COMMISSIONER: Do you wish to add to that, Dr Ashby?-- No.

Thank you.

MS McMILLAN: I didn't mean to cut you off at all, doctor?-- That's all right.

Just one further thing, I see from the notes - and correct me again if you understand I am wrong - when he went back to ICU about later that afternoon - I think the note is, say, 4 or 5 p.m. - it showed that there was about 700 mls of blood

drained from Mr Bramich's chest. Did you understand that?-- Yes.

So that would indicate, would it not, that it wasn't draining properly, his chest, when he went back both times when he went back to ICU. Would that be a fair assumption?-- No, I don't think you could make that assumption. There might have been a fresh bleed.

All right. So you're concluding that obviously there had been coagulated blood. Are you really saying that is by the time obviously you conducted your autopsy that it had reached that stage?-- Yes.

All right, thank you. They are all the questions I had of Dr Ashby.

COMMISSIONER: Yes, Ms McMillan. Mr Boddice?

MR BODDICE: No.

COMMISSIONER: Any re-examination?

MR MORZONE: Just briefly.

RE-EXAMINATION:

MR MORZONE: You made a number of comments about the appropriateness of the transfer and you referred in particular to the period 25th and 26th of July. I'm not sure this is - it's possible for you to proffer any opinion about this, but is there any opinion you do proffer about when, in your opinion, it became too late to transfer Mr Bramich or is that something you defer to other people?-- No, I couldn't comment on that. I think you'd need to be there seeing the patient alive.

Thank you, Dr Ashby. No further questions.

COMMISSIONER: Thank you, Mr Morzone. Doctor, would you permit me to say that one of the things that has delighted us about coming to Bundaberg and thoroughly impressed us is the talents - the pool of medical talent here, both amongst medical practitioners and amongst the nursing staff. It is wonderful to see that in a provincial city like Bundaberg a pathologist of your expertise is available for the benefit of the local community. We are extremely grateful to have the benefit of your evidence in these difficult matters and may I say that if, on reflection, you have any further thoughts that you would like to offer us regarding the coronial system in Queensland or, indeed, anything else relevant to the general parts of our Terms of Reference you are more than welcome to forward us a note setting out your thoughts?-- I was only saying - oh, thank you very much. I'm very appreciative of

your comments. I don't think a lot of my thoughts might be too popular on the coronial system, but-----

Well, that's probably why we want to hear them?-- But I would like to say that - as regards to the Bundaberg Base Hospital I - I haven't had a huge amount of connection with the nurses, but those with whom I have had contact and in - certainly in general addresses with the nurse it is one of the most friendly hospitals that I have ever worked in and certainly their kindness to me when I go there, the nurses, the dressers and the other members of the Bundaberg Base Hospital, I am eternally grateful for the help that they give me.

Thank you again, doctor?-- And that also includes the medical records because they try very hard to find these notes for me.

Thank you, doctor. You are excused from further attendance.

WITNESS EXCUSED

COMMISSIONER: We'll now adjourn. I see it is 20 past 1. Shall we say 2.30? Will that give us sufficient time to finish off this afternoon?

MR MORZONE: Yes, certainly, Mr Commissioner.

COMMISSIONER: We'll adjourn till 2.30.

THE COMMISSION ADJOURNED AT 1.17 P.M. TILL 2.30 P.M.

THE COMMISSION RESUMED AT 2.43 P.M.

COMMISSIONER: Mr Morzone?

MR MORZONE: If it please the Commissioners, we're in the unfortunate position where the nurses which we intended to call for the balance of the afternoon are unavailable. One nurse was here this morning during the course of the evidence and has been required to go back to the hospital to care for patients. Another nurse has some commitments with children this afternoon that makes it difficult for her to come in. And the third is on leave. In those circumstances, we would be unable to call those witnesses here today.

There is some housekeeping matters that my learned friends Mr Andrews and Mr Atkinson need to deal with.

COMMISSIONER: Yes.

MR MORZONE: And that would seem to be the end of the testimonial evidence today.

COMMISSIONER: Thank you. Mr Andrews?

MR ANDREWS: Commissioner, there was evidence given from a Robyn Pollock some days ago as to unsanitary practices by Dr Patel when he visited the renal unit on one occasion. All of that evidence was information that nurse Pollock obtained from others. Statements from the three nurses who supplied the information to nurse Pollock have been obtained and I propose to tender those statements. Unless some of the counsel in the inquiry require those nurses to give evidence, I was not proposing to call them.

COMMISSIONER: Has everyone seen these statements? And does anyone have desire or wish to take the opportunity to cross-examine these witnesses?

MR DIEHM: No, Commissioner.

MR ANDREWS: In the circumstances, I tender the statements of Carolyn Gloria Waters; dated the 21st of June 2005; Lynette Joy Yeoman, dated the 21st of June 2005; and of Joanne Margaret Turner, dated the 20th of June 2005.

COMMISSIONER: Mr Andrews, can I trouble you to outline to us what these statements cover?

MR ANDREWS: No trouble at all, Commissioner. Perhaps the most comprehensive is that of Joanne Margaret Turner, who is a Level 1 registered nurse employed in the renal unit. Ms Turner recalls that in late 2003 two patients in that unit had recently had PermCath inserted for haemodialysis. A PermCath is a silastic tube which is inserted into the superior venacava, or right atrium of the heart under a strict aseptic technique.

There are strict infection control protocols to follow when caring for a patient with a PermCath because these catheters pose a high risk for serious infection, such as septicaemia.

Ms Turner was required to commence haemodialysis on the two patients and was unable to withdraw blood from the PermCath. They were blocked. She notified the renal registrar at the time who advised her to call Dr Patel. It seems there is a usual process for unblocking a PermCath and the first stage in that process is to remove a heparin lock. And once that's removed, it is then safe to flush the catheter with normal saline. If the catheter is not able to be flushed, there are other techniques.

Dr Patel arrived. He was told of the difficulty with the two PermCath and suggested that they be flushed with saline, and gestured wildly saying, "Flush it, sister. Just get in there and flush it." Ms Turner was reluctant to do so because she hadn't been able to withdraw the heparin lock and told Dr Patel that. He said the catheters needed to be flushed with streptokinase.

As it was an unusual request, Ms Turner obtained the hospital protocol regarding its use, showed it to Dr Patel and then he discarded this idea and said, "Just use the saline flush."

Nurse Turner had already set up two separate sterile trays for each patient. The patients were situated side by side. He then picked up the sterile syringe without washing his hands, without applying sterile gloves, and flushed the line on one patient.

Ms Turner observed him moving toward the other patient with the same syringe and at that point called to him and said, "But this is the other patient's set up", to alert him to the fact that there were two sterile set-ups. She didn't want to appear rude to Dr Patel by stating the obvious, which was not to cross contaminate the equipment. He put the syringe back on the first patient's set-up. She asked him to put on sterile gloves and his response was, "Sister, I don't have germs", and the look on his face demonstrated to her that he wasn't joking and that he was annoyed with her.

He did not put on sterile gloves when attending to either patient and did not wash his hands. Ms Turner left him and reported the incident to her clinical nurse consultant, Robyn Pollack.

The statements of the other two witnesses are to a similar effect, although there are some slight discrepancies explicable by the passage of time and the usual differences between witnesses. Lynette Joy Yeoman is a Level 1 registered nurse and she recalls that Dr Patel, without washing his hands or putting on the sterile gloves, proceeded to take bungs off, the end of the PermCath on one of the patients, attached a syringe to the end of it and tried to withdraw blood from the line unsuccessfully. He moved straight to the other patient

without washing his hands and tried also to withdraw blood from that patient's line and kept moving from one to the other trying to get the PermCaths to work.

She says she was dumbfounded by what was unfolding before her eyes. She says that they are trained to be extremely careful when handling PermCaths because of the risk of infection to the patients, and says that, for example, before accessing a PermCath, it is usual practice to soak the lines in an antiseptic solution of Betadine for 10 minutes before handling and using a sterile technique, and Dr Patel, by not washing his hands nor using sterile gloves, nor maintaining a sterile field, demonstrated that he didn't appreciate the serious risk he was posing, and at some point she recalls the comment was made that he wasn't using gloves and he - she recalls him to reach above the sink in the cubicle and, as he was placing on a pair of unsterile gloves, he was heard to use the words "doctors don't have germs".

The third of the witnesses, Carolyn Gloria Waters, recalls the same incident and saw that Dr Patel didn't wash his hands. She remembers that one of the other nurses, Joanne Turner, was upset and all three spoke to their Nurse Unit Manager, Robyn Pollack, who suggested that an incident form be filled out.

The next piece of homework has to do with evidence that was given by Gail Aylmer. Since the completion of that evidence, an email that Ms Aylmer didn't have has come to light through the efforts of the CMC who are able to reconstruct documents from computers, and it affects the effect of the evidence given by Ms Aylmer at about paragraph 12 of her statement.

At about paragraph 12 Ms Aylmer had recalled that on the 7th of July 2003, she had attended a meeting with nursing staff and collected further data in relation to wound dehiscence, and after the meeting she correlated the data and produced an initial wound dehiscence report, and she, by her statement, recalled that she'd listed 13 episodes of abdominal wound dehiscence in respect of 12 patients and said that she hand delivered that initial report to the Director of Medical Services, Dr Keating.

Shortly after that, she said she discussed these matters with Dr Patel and agreed to decrease the number of wound dehiscences in the report from 13 to five.

It seems from an email dated the 8th of July 2003 from Gail Aylmer to Dr Keating, that it is inconsistent with some portions of that version of the facts, for it shows that on the 8th of July she wrote to Dr Keating that she was able to exclude six of the 13 charts that were reported to her and, among other things, she wrote:

> "Dr Patel's very busy this afternoon and I have been unable to catch him to give him a copy of this report myself. However, I have left a copy and a short explanatory note for him in the theatre. Hopefully I will see Dr Patel to discuss this with him before the

ASPIC meeting tomorrow lunchtime."

And the difference - the importance of the difference is it does suggest that Ms Aylmer may have reduced the number of wound dehiscences from 13 to a lesser number of her own volition, perhaps without the - at least in respect of some of them, without the influence of Dr Patel - and that she may have reported to Dr Keating that she - she certainly has by that email apparently reported to Dr Keating that without the influence of Dr Patel, she had herself determined to reduce the number of instances of wound dehiscence.

COMMISSIONER: If I can ask you to pause there, Mr Andrews: this is one of these e-mails which is ambiguous regarding the date. It could be it is 8/07/2003, so it could be either the 8th of July or the 7th of August. Do you happen to be in a position to give us any guidance on that?

MR ANDREWS: No, it was an inference I chose to draw because I knew that the topic had been so significant on the 7th and 8th of July.

COMMISSIONER: All right. So we will assume it is the 8th of July. Now, I should ask Mr Diehm, that has some potential relevance to your client's position. Do you have any need to recall Ms Aylmer to deal with that, or is it sufficient that we take this into account, as, in effect, superseding anything Ms Aylmer may have said to the contrary?

MR DIEHM: Commissioner, it would be my submission that what this email establishes - it is a little more than what Mr Andrews referred to. Not only does it show that Ms Aylmer reduced six of the cases - removed six of the cases herself, but the fact that she did that contradicts her evidence that she felt that she was not an appropriate person to be considering those matters.

COMMISSIONER: Yes.

MR DIEHM: The other thing it demonstrates, her evidence, you may recall, Commissioners, was that Dr Patel suddenly came to her office without her knowing that he was even going to be giving the report. She assumes Dr Keating gave it to him and, unbeknownst to her, asked Dr Patel to come and see her. What this email shows is that in fact Ms Aylmer sought out Dr Patel-----

COMMISSIONER: Yes.

MR DIEHM: -----or intended to seek him out. So that's the further thing that it shows. Commissioners, it is certainly not my instructions to pursue Ms Aylmer to discredit her or anything of that kind.

COMMISSIONER: No.

MR DIEHM: And if it be accepted by Mr Allen on her behalf that that is the proper inference to draw - those are the

proper inferences to draw from the email, then there is no need, in my submission, for her to be recalled. It will only be if there is to be some contention to the contrary that she should be cross-examined.

COMMISSIONER: If I may say so, I thank you for that helpful and very positive submission. Mr Allen, do you have a position on this subject?

MR ALLEN: There is only one problem with the proposition, if I could, and that is that Ms Aylmer still feels she wasn't an appropriate person to be able to properly consider the significance of wound dehiscence and feels that she shouldn't have been put in that position.

COMMISSIONER: Well - and she has in effect given evidence along those lines and that evidence is on the transcript. I think the significant point for the present purpose is that Mr Diehm is right in saying that this is a document which, if it had been available to him at the time, he could have used it to put to Ms Aylmer in cross-examination to make that point. You would agree in those circumstances that Mr Diehm is, at the very least, entitled to make the submission that we should not accept that aspect of Ms Aylmer's evidence to the extent it is contradicted by her own email?

MR ALLEN: What I would suggest is that at some point in the near future a statement from Ms Aylmer, in light of this email, be tendered to the Commission, and my learned friend consider whether it is necessary for her to give evidence.

COMMISSIONER: Well, if you think that's necessary, Mr Allen. For the moment, I don't. I mean, we have heard Ms Aylmer, we now see an email, which on no view of it makes her out to be a liar or an untruthful witness. It is not that sort of situation. It simply puts a different complexion on a part of her evidence and I should have thought that it makes perfect sense that Mr Diehm is in a position now to urge upon us with considerable force that we should give effect to Ms Aylmer's position as expressed in her contemporaneous email, rather than the view that she may have - I don't mean dishonestly formed in the meantime, but we all know that people's memories change over a period of months and years and what they thought was significant may have been at one point in time, takes on a different significance at a later point in time, and that Mr Diehm should have the benefit of being able to make that submission based on this document. That makes sense, doesn't it?

MR ALLEN: Could I just have one minute?

COMMISSIONER: Yes.

MR DIEHM: Just while Mr Allen's taking better instructions, Commissioner, the other thing I ought point out - and I think this would be known to counsel assisting, though Mr Andrews may not personally be aware of it - but the CMC's investigation that uncovered this email, what it actually

discovered is that the email was in fact recalled before it was opened by Dr Keating.

COMMISSIONER: I see.

MR DIEHM: So - there is nothing sinister about that.

COMMISSIONER: No.

MR DIEHM: You will see, in fact, there are three recipients of the email because it is a courtesy copy to Ms Kennedy and Ms Goodman. As I understand it the CMC's investigations found that Ms Kennedy had opened the email but Dr Keating and Ms Goodman hadn't and it was recalled before they did, and what seems likely to be the explanation is that there is another email that is in evidence from Ms Aylmer of that afternoon, an hour or so later, that apparently comes after she has met with Dr Patel and reduced it to four.

COMMISSIONER: Yes.

MR DIEHM: The likely situation is that once she has got the updated information, she has retracted, as it were, the original email and replaced it with the more up-to-date information. So that was why I wasn't able to cross-examine her about it.

COMMISSIONER: Yes. Mr Diehm, I think I can state the position, as I see it, very clearly: we don't require further evidence from Ms Aylmer. There is some inconsistency here but not the sort of inconsistency that anyone would say reflects on her credit or makes her out to be an untruthful witness. The only matter of concern to me is that your client feels he has had every opportunity to pursue this matter that he considers necessary.

My view is that you can make the submissions you have made and they will carry very considerable force, given that they are based on comparisons between contemporaneous record as compared with someone's memory almost two years after the event.

MR DIEHM: Yes.

COMMISSIONER: Are you comfortable with that approach?

MR DIEHM: Yes, Commissioner.

COMMISSIONER: Thank you.

MR ALLEN: I can indicate I am, too, thank you, Commissioner.

COMMISSIONER: Thank you, Mr Allen. Just so the record is kept straight, the statement of Carolyn Gloria Waters, dated the 21st of June 2005, will be exhibit 195.

ADMITTED AND MARKED "EXHIBIT 195"

COMMISSIONER: The statement of Lynette Joy Yeoman, dated the 21st of June 2005, will be exhibit 196.

ADMITTED AND MARKED "EXHIBIT 196"

COMMISSIONER: The statement of Joanne Margaret Turner, dated the 20th of June 2005 will be exhibit 197.

ADMITTED AND MARKED "EXHIBIT 197"

COMMISSIONER: And the email - I suppose I should describe it almost as a draft email. That would be more accurate, wouldn't it - or proposed email.

MR DIEHM: It was received by one person at least, Commissioner.

COMMISSIONER: For the moment I will just call it the email from Gail Aylmer to Darren Keating with copies to Glennis Goodman and Carolyn Kennedy, dated the 8th of July 2003, will be exhibit 198.

ADMITTED AND MARKED "EXHIBIT 198"

MR ANDREWS: It has an attachment as well.

COMMISSIONER: All right. And is that different from a document we've already got?

MR ANDREWS: Yes, Commissioner, it is.

COMMISSIONER: All right. Well, that attachment will form part of the same exhibit.

MR ANDREWS: Thank you, Commissioner.

COMMISSIONER: Thank you Mr Andrews. Mr Atkinson, you have some matters too?

MR ATKINSON: I do, Commissioner. I have just some short housekeeping matters. You will recall that on Tuesday and again on Wednesday, the Commission heard evidence from Geoffrey Smith.

COMMISSIONER: Yes.

MR ATKINSON: And you directed that I revise his records or review them at least so that we only had reference to those parts of the medical records that were necessary and to corroborate or to explore his evidence.

COMMISSIONER: Yes.

MR ATKINSON: I have complied with that direction and I have spoken to my learned friends about that and Exhibit 174, and all I seek to do is place on the record that it has been amended accordingly, Exhibit 174, and I now re-tender it.

COMMISSIONER: Thank you, if that can be provided to the secretary.

MR ATKINSON: Commissioner, on a similar note, on Tuesday you heard from a witness called Vicki Lester. I tendered with her statement her entire records. She's concerned that the records go well back from her history so far as it concerns her evidence and she would be very grateful if the entirety of her records weren't available on the internet.

COMMISSIONER: Yes.

MR ATKINSON: And I've spoken to all of my learned friends, all of them are happy for the records to be revised so that they only include that period relevant to her evidence, except for this: to be fair to my learned friend Mr Diehm, he says I don't need it posted on the internet, of course, but I will seek to make reference in my submissions to the size of the medical record, and for that reason what I would like to do is say a revised Exhibit 176 so that it only refers to the records well into her evidence, but with the balance of her records, I've put them in a sealed envelope, I haven't sealed it but I have them in an envelope and I ask that they would go into evidence but they not be available on the internet.

COMMISSIONER: Well, what I'll do is Exhibit 176 will be replaced with the reduced version of Miss Lester's statement and her medical record, and I will ask the secretary to mark as Exhibit 176A, the sealed envelope of other medical information relating to that witness, and I'll direct that that exhibit remain a confidential exhibit which is to say it can only be accessed with the authority of either the Commission or counsel assisting.

ADMITTED AND MARKED "EXHIBIT 176A"

MR ATKINSON: Thank you, Commissioner. There's one last matter of housekeeping and it's this: that with each of the patients you addressed the issue of whether or not the suppression order would be lifted, I didn't direct your attention to that issue in relation to either Mr Smith or Miss Lester, they are both happy for the suppression order to be lifted and perhaps in the interest of completeness, I'd ask that Commissioner, you make that order.

COMMISSIONER: Well, let's just get that straight. Which numbers are they on the list? Vicki Lester is P108, so her name will be released from the previous suppression order. I can't see Mr Smith. Was he 130?

MR ATKINSON: No, I think that's somebody else, Commissioner.

COMMISSIONER: Can you remind me who 130 was because I should write it in here.

MR ATKINSON: Mrs Hillier.

COMMISSIONER: Oh yes. No, Mr Atkinson, we don't think that Mr Smith's name was ever on the lists.

MR ATKINSON: No, that might be right.

COMMISSIONER: All right. Look, just I realise it's probably quite difficult for journalists to keep up with what names they can use and what names they can't. What I propose to do is run through according to my notes the names that are open for public mention and we can then if I've overlooked any or if there are any extra ones, we can deal with them now. P11, Desmond Bramich; P20, Trevor Halter.

MR ATKINSON: Yes, that's right.

COMMISSIONER: P21, Gerard Kemps.

MR ATKINSON: That's right.

COMMISSIONER: P30, Eric Mable.

MR ATKINSON: I think that's right.

COMMISSIONER: P34, James Phillips.

MR ATKINSON: Yes.

COMMISSIONER: P41, Nancy Swanson.

MR ATKINSON: Yes.

COMMISSIONER: P52, Marilyn Daisy.

MR ATKINSON: Yes.

COMMISSIONER: P99, Linda Parsons.

MR ATKINSON: That's correct.

COMMISSIONER: P108, Vicki Lester.

MR ATKINSON: That's correct.

COMMISSIONER: P126 is Ian Fleming.

MR ATKINSON: That's right.

COMMISSIONER: And P130 is Mrs Hillier.

MR ATKINSON: That's correct.

COMMISSIONER: Now, if there are any others, you might let me know because I don't want to put the present media into the awkward position of not being sure whether they can mention a particular name or not, and it did strike me also as I was looking through the list, I assume that Mrs Beryl Crosby doesn't mind if her name becomes public, she's currently listed as P96.

MR ATKINSON: Ms Crosby doesn't mind and she is a very public figure already. They all the matters I have, Commissioner.

COMMISSIONER: Thank you.

MS FEENEY: Excuse me, Commissioner.

COMMISSIONER: Yes.

MS FEENEY: There was one matter, I was awaiting a complaints file in relation to Mrs Hillier to determine whether I needed to cross-examine.

COMMISSIONER: Yes.

MS FEENEY: That hasn't yet arrived.

COMMISSIONER: All right.

MS FEENEY: I don't know whether it's of great input this

afternoon, it might be that I can see that at some other time, and if we desperately need to cross-examine, make alternative arrangements in Brisbane.

COMMISSIONER: All I'd ask is that you let counsel assisting know before the evidence resumes the week after next so that there's no confusion and that she can be scheduled if necessary.

MS FEENEY: Certainly, and if it's necessary, I think it's unlikely, but if it is necessary, we'll probably be able to do it by telephone.

COMMISSIONER: Yes.

MS FEENEY: Thank you.

COMMISSIONER: Thank you. Any other matters that anyone at the Bar table wishes to raise?

Before we close, it's in a sense a bit of a pity the afternoon has turned out to be a damp squib because the last three witnesses we had planned to hear from are not available, but it has been an extraordinary four weeks here in Bundaberg. According to my notes, we've seen a total of 36 witnesses including 12 nurses, 11 patients, six medical practitioners and a number of other people, including witnesses who began their evidence in Brisbane and completed their evidence here, being Miss Hoffman, Dr Miach and Mr Messenger.

I think it's important for the public here in Bundaberg to know that this has been a hugely valuable experience for the three of us here on the bench. We could have stayed in Brisbane and had witnesses travel down at considerable inconvenience to themselves, but coming here being able to see the hospital and being able to see patients in their own hometown environment has, I think, assisted us in understanding the problems that have gone on in Bundaberg, and I'm sure none of us regrets for a moment the fact that we've done so.

For this to be possible has involved a huge amount of effort on the part not only of the team associated directly with the Commission of Inquiry, but also the various legal teams representing the parties here, and I want to pay particular tribute to all of the counsel and solicitors, for all of the parties involved in these proceedings for allowing the Bundaberg sittings to proceed as swiftly and efficiently as it has done.

People outside the legal profession don't often realise that what goes on in a courtroom is generally the tip of the iceberg in terms of the work done by the lawyers. For every hour spent in a Courtroom, there's usually three or four hours of preparation, reading statements, reading reports, preparing cross-examination and so on. The fact that we've got through 36 witnesses in 16 days, some of them extremely important and difficult witnesses, is a huge tribute to the

conscientiousness of all of the barristers and solicitors involved here.

I have no doubt in my mind at all that it has involved many long nights of preparation and a long time away from their families and loved ones to ensure that they were in a position to do this so efficiently, and so I simply want to pay that tribute to the lawyers involved in these proceedings.

Everyone will have noticed that we occasionally have scuffles with one another, that's part of the job, and that's how it happens, but we do, I believe, respect one another's abilities and talents and hard work and I am very grateful to everyone at the Bar table for their support and cooperation in getting through this exercise in the time available.

I also want to say thank you to some other people. That yesterday morning, the three of us paid a call on the manager of this institution, the Bundaberg TAFE, just to pass on our personal thanks for their allowing us to use these facilities, and I hope everyone agrees that the facilities have been perfect for this sort of exercise allowing the public to come and go with lots of car parking and plenty of room for people to sit in. We appreciate those facilities.

I want to pay tribute also to the Inquiry staff. Not only the counsel assisting who are the public face of the inquiry, Mr Andrews, Mr Morzone and Mr Atkinson, but also those who do all of the work behind the scenes, David Groth, our secretary, our legal team, Tony, Jarrod, Clair and Angus, support staff, Antoni and Amanda, if she's here, and also our investigators who are elsewhere in Queensland at the moment, but Wayne and Brian who've made again this exercise possible, that we could see so many witnesses in a reasonably short period of time.

And those who have a sense of history might care to remember that the resources of an inquiry like the Fitzgerald Inquiry were something like four or five times the number of people available to this inquiry, and yet I don't recall any stage during the Fitzgerald Inquiry where they were in a position to sit the sort of extended hours we've been sitting here from 9.30 in the morning most mornings to often 5 o'clock or later in the afternoon to hear so much evidence in such a brief space of time.

My thanks also to Ian, our attendant, for the last two weeks and my thanks also to the journalists who have covered these proceedings, who have reported the proceedings, if I'm permitted to say so, with commendable accuracy and clarity. That is not to say that they always report things the way we would like to see them reported, not that we have a view about those matters, but I don't think there could be any complaint that what has appeared in the reports written by journalists present here or representatives of the electronic media present here has been anything other than an accurate representation of what's gone on.

I might mention in that context that last night there was a

bit of a dinner involving Commission of Inquiry staff, not ourselves, but the staff and the journalists, and I think that that's an important expression of the staff that we as people who have embarked on a legal exercise, recognise the fact that a Commission of Inquiry like this one ultimately has the same interests as the press and media, which is to get to the facts, and we're not enemies, we're working towards the same objectives, even if in slightly different ways.

Finally, I do want to pay particular tribute to the Patient Support Group and particularly their leader, Beryl Crosby. I've mentioned a number of times how harrowing the stories have been that we've heard here. I can only imagine that some of the people that have been through this situation could only have lasted through it if they had the support of people of the warmth and kindness of Beryl and the other members of her team.

Regardless of the outcome of this Commission of Inquiry, I think Beryl will long be remembered in Bundaberg for the work that she's done for the people who have been through this unfortunate situation, and I pay particular tribute to her for doing that. Ladies and gentlemen at the Bar table, unless there is anything? Yes, Harper?

MR HARPER: Miss Crosby may wish to say something on behalf of the patients to you and the rest of the staff here.

COMMISSIONER: Well, if no-one has any objection, I'm happy for the-----

MISS CROSBY: I won't embarrass you, Commissioner. We're very thankful that you came to Bundaberg and that all of the patients were spared from having to go to Brisbane, it was very good of you and the team to come here. We've appreciated all of your support, we think you're doing a wonderful job and we will fight every stage of the way to make sure that this inquiry continues to the end, and we hope that we have a better Queensland Health because of you people and everything that you've done. Thank you.

COMMISSIONER: There is, in addition, one group of people that perhaps deserve thanks more than anyone else, and that's the teams from the State Reporting Bureau who have taken down every word said during the last four weeks. I've been doing the job as a barrister for 25 years and it never fails to amaze me how these people are able to do what they do. It is fantastic and we appreciate their efforts so much.

Ladies and gentlemen, unless there is anything else that needs to be canvassed, we will resume in Brisbane at 10 a.m. on Monday week. I don't even know what the date is, Mr Andrews. The 25th of July - 10 a.m. Monday, the 25th of July.

I'd also ask the lawyers here present to bear in mind that we are considering going to other parts of the State, particularly North Queensland. That should not involve you, Mr Diehm, or those who instruct you and I doubt that it will

involve Mr Leck's representatives or Mrs Mulligan's representatives.

In any event, counsel assisting will be assessing with the representatives of the other parties to try and make arrangements that suit everyone's convenience for that northern trip. Townsville looks as if it's definitely on the agenda. Where else we go is yet to be decided but in all likelihood it will include Cairns, possibly Charters Towers and possibly Rockhampton. We will now adjourn until Monday the 25th at 10 a.m.

THE COMMISSION ADJOURNED AT 3.25 P.M. TO MONDAY, 25 JULY 2005 AT 10.00 A.M.