Transcript of Proceedings

MR A J MORRIS QC, Commissioner

SIR LLEW EDWARDS, Deputy Commissioner

MS MARGARET VIDER, 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

BRISBANE

..DATE 01/06/2005

..DAY 7

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THE COMMISSION RESUMED AT 10.33 A.M.

JAMES PATRICK O'DEMPSEY, CONTINUING EXAMINATION-IN-CHIEF:

COMMISSIONER: Mr Devlin, have you finished evidence-in-chief?

MR DEVLIN: Yes, I have, Commissioner. He has a little bit more information to offer on a particular aspect.

COMMISSIONER: Perhaps if you lead him through that before we start the cross-examination.

MR DEVLIN: Thank you. Mr O'Dempsey, in relation to the Victorian system, have you managed to overnight obtain some more information?-- I took the opportunity to contact my colleague, the CEO of the Medical Board, this morning. He indicated for-----

Could you try and keep your voice up?-- He indicated for area of need GPs going into private practice, a semi-government authority, called the Rural Doctors Group, actually conducts an exam which is funded by the Victorian Government for testing those individuals before they are placed into GP practices in area of needs. In terms of area of needs in the public system, he has indicated that their system is no different from what was in place for the Queensland Medical Board up until three or four weeks ago. So, they don't do an examination then, but for those going to the public system, I asked or inquired why and he indicated that it became a - it was seen as a barrier to recruitment, but they were negotiating with their government and with the Federal Government for funding to transfer the examination process used for area of need GPs to all Area of Need positions. The interesting part of it for me was this Rural Doctors Group which is funded to do the clinical examination actually makes a recommendation to the Board as to whether they are eligible for registration. It is not a matter that the examination is conducted by the Board. It is done by this group.

Thank you. That's all I have, Commissioner.

COMMISSIONER: Thank you. Is there any consensus around the Bar table as to the order of cross-examination?

MR BODDICE: Again, we are happy to go first, but we have no questions.

D COMMISSIONER VIDER: Could I ask Mr O'Dempsey a qualifying question? So, that being the case, I'd just like to make sure I understand what you are saying in that last point. That means that there is discrimination regarding particular applicants going to work?-- That would appear to be the case.

And that would then mean that given we have read a statement

that anybody with a medical degree from any medical school in the world is deemed to be a medical graduate, that means that person would be eligible for consideration for an area of need position within the public-----?-- Within Victoria.

Within Victoria?-- Mmm. Those that have undertaken medical examination in universities recognised by the World Health Organisation, there are a number that aren't-----

COMMISSIONER: Do you know whether it is the practice in Victoria, as we have heard it is in Queensland, to register overseas trained doctors without specialist registration for positions like senior medical officers and then have those overseas trained doctors performing work which would traditionally be performed by a specialist?-- I didn't make inquiries to that depth, Commissioner. I couldn't comment on that.

I have to say this is one of the things that has come up during the Inquiry that's obviously of some concern to us. Do you have any knowledge of the practice in other parts of Australia?-- I can only make an inference from one of my attachments and I think it is around attachment JPO19 which the AMC has provided for us, and there are some figures that were - I'm sorry, it's not JPO19, it is a little earlier than that. It is JPO18. There were figures on page - sorry, I can't put my finger on it. In paragraph 36 on page 7, and I'll quote: "Commonwealth recruitment data for strengthening Medicare initiatives indicates 25 per cent of doctors recruited under the scheme of specialist, if this applied to the total number of resident doctors granted temporary visas in 2004, it would suggest there are some 796 overseas trained specialists who entered Australia as TRDs in 2004; however, the total number of area of need specialist applications processed in 2004 by AMC was 157."

I suppose when looking at those figures we have got to be a little bit careful because I understand from something I read somewhere - and I can't put my finger on it myself for the moment - that in some parts of Australia - and I don't know whether this extends to Queensland - there is a tradition of UK medical graduates coming to Australia almost as backpackers or for recreational purposes and spending some time in regional hospitals; those figures would probably include those type of graduates rather than-----?-- They are very rough figures, I agree. That's the only information that I have of any definitive nature.

Thank you. One other thing that has come across my desk, as it were, I understand that at one time there was a committee of the Federal Health Insurance Commission which also was involved in scrutinising the credentials of overseas specialists coming to Australia. Do you know anything about that or whether that exists?-- Colloquially known as SRACS, they were groups established under the Federal legislation for the HIC which reviewed specialists from overseas countries for assigning a Medicare number and allowing them to charge at the specialist rate. In Queensland, SRACS were not as active

because we have a specialist register and it was taken under the HIC processes that if they were a specialist on our register or a deemed specialist, they could get the relevant Medicare provider number. For those states where they don't have a specialist register, they still - they were using SRACS, but now the AMC - the Australian Medical Council - has taken over that role in some way.

I've seen correspondence and we may be coming to this at a later stage in the Inquiry where the college representatives on that Health Insurance Commission committee or subcommittee were critical of it because often they would recommend that an overseas trained specialist be given a provider number subject to certain conditions - for example, supervision or undertaking further training - and then nothing was done to enforce or police those conditions?-- Because they weren't making those recommendations, I believe, to a regulatory authority; they were making them to HIC, which had no power to do that.

I see. And has that problem now been addressed by the matter being taken over by the Australian Medical Council?-- It has been taken over by the Australian Medical Council in terms of they are now the delegate of the authority - of the Commonwealth to accredit specialist colleges.

D COMMISSIONER VIDER: Yesterday afternoon we asked Dr Cohn about membership on the Medical Board and am I correct in saying that Dr Cohn's response indicated that they are really ministerial appointments?-- All members of the Board are ministerial nominees to Governor-in-Council and Governor-in-Council is the appointing body. I could differentiate the process of recruitment and selection of Board members from past experience and from my experience with the office, if that would help?

COMMISSIONER: I think that would.

D COMMISSIONER VIDER: Yes?-- In establishing the Queensland Nursing Council, I negotiated with the Minister of the day and the Health Department that the Council itself would do the recruitment, consistent with government policy, in terms of going to the relevant registers of people that had expressed interest. We set up three key selection criteria for membership and criteria for selection in terms of practice, employment settings, experience, geographic location, gender balance, and so forth. We then invited expressions of interest through public advertisement in The Courier-Mail and through the Queensland Nursing Council's magazine called the Queensland Nursing Forum. We also wrote out to all professional associations seeking nominees, but when they nominated someone, we went and sought an expression of interest from them - a written expression of interest addressing the selection criteria. A panel that was made up of myself as the executive officer and two retiring members of Council then reviewed the expressions of interest and put together a submission to the Minister recommending certain individuals for constituting the Council based on those

criteria which I previously outlined. For the Boards that my office provides services to, the recruitment is done through a branch in Queensland Health that merely generates the names and puts those to the Minister's office. So, we set it up with the Queensland Nursing Council consistent with our independent nature as a statutory authority responsible to the Minister to actually do a recruitment and selection process to try and get that balance and commitment. I have seen some flaws in the recruitment process for the office. One of my jobs is when the members are appointed, or gazetted, I ring them and congratulate them, and I have, on a number of occasions, been surprised by the response - "I didn't want to be on that Board." Because of Governor-in-Council confidentiality, there is no interaction with them and that's problematic.

Would you contemplate that system may change?-- I have had discussions with the Minister's office on it over the last six to eight months. There was some support for it; however, for my office to take that on, it is extremely work intensive for 13 or 14 Boards which could be constituted at all times. I would have to employ a full-time staff member just to look after that.

COMMISSIONER: I suppose it is not only a matter of getting people who are independent and of the right calibre and so on, but there's also a matter of perception that under the present system there is at least the perception that membership of the Boards is driven by Queensland Health. Would that be a fair comment?-- That's why I negotiated the process for the Queensland Nursing Council because, as an independent authority, it was driving its only constitution.

My knowledge of other professional Boards I mentioned already - that I was, for many years, on the Barristers Board, but also other professionals - the Architects Board and the Engineers Board - is that there is usually a number of members who are elected from within the profession; for example - the Barristers Board, I think, was abolished last year - there were four members elected by the practising barristers and the Architects Board has an election every, I think, two years or three years for members of the profession to serve on that Board. What would your views be as to the desirability of having elected representatives of the profession?-- I personally have always been against an election process, and it is, one, for a reason of principle; the other is a pragmatic reason. The reason of principle is that where I've seen elections in regulatory authorities, it has created a professional and public perception that the individual so elected represent the body and are there to do the acts of the body who have elected them, rather than bring an independent mind and responsibility in administering their role with the authority. So, that's the principle-based issue. The pragmatic one is that wherever I have seen it done, it has been a funding - the funding for it had to be provided by the authority itself, and it was an extremely expensive process, and I'm talking nursing authorities where there's 50,000 odd in Queensland - 50,000 registered and enrolled nurses that

would be eligible to vote.

I certainly take the force of your first point about the philosophical side of it. I guess the contrary argument would be that if Queensland Health, as a major player in the health sector in Queensland, has its nominees on the Board, then it is only appropriate that another major player, namely the profession, should also have its nominees?-- Under the legislation there are categories of nominees and the Minister must go to representative professional associations and seek nominees, and I believe that, in all cases, the nominees from those professional associations have been appointed. So, there is that fail-safe. For example, in 10 years with the Queensland Nursing Council, the President and Vice President of the Queensland Nurses Union have also been members of the Queensland Nursing Council, because they were the nominees put up by the Queensland Nurses Union.

So, if there is, as I suggested, a possible problem of perception, that's more a result of a lack of transparency in the process. If it were publicly known that the members of the Board were nominated by the responsible professional bodies, it would be seen to be a more transparent process?-- Very much so.

Right. Mr Boddice, was there anything arising out of that?

MR BODDICE: Just one thing.

COMMISSIONER: Of course.

EXAMINATION-IN-CHIEF:

MR BODDICE: On that last point, Mr O'Dempsey, you said the requirement of the act is that there has to be certain categories. Can you remember what the categories are?-- Without going to the act, I couldn't remember off the top of my head, but there are registrant categories, educational categories, public members and a lawyer member. The registered categories, recruitment or nominations have to be sought from - and I think the words used in the particular section are: "organisations accepted by the Minister as being representative of the profession".

So, the act structures it in the way the Board - say if it had 12 members, for example, a certain number of those members will be representative of the relevant organisation?-- That's correct.

There will be a legal member?-- Mmm.

There will be a certain number that are representatives of the public, or lay members, as they are often referred to?-- Yes.

And, really, your concern about transparency is that rather than your Board, in effect, dealing with those applications and sending them up, in the case of the Medical Board - and is it the other Boards as well-----?-- Yes.

-----that the Minister, in effect, uses the offices of Queensland Health to gather that information and then it goes to the Minister?-- Mmm.

But there's still requirements within the act that there has to be certain categories met?-- Certainly.

Thank you.

COMMISSIONER: Thank you. Anyone else? Mr Mullins?

MR MULLINS: Thank you, Commissioner.

CROSS-EXAMINATION:

MR MULLINS: A few questions, Mr O'Dempsey. Yesterday, Dr Molloy explained to the Inquiry that there were three gateways, so to speak, through which a practitioner, such as Dr Patel, could pass before moving on to Bundaberg to conduct surgery. One of those gateways was the deemed specialist-----?-- 143A.

The second was to allow them to have a college fellowship or accreditation with a college?-- Mmm.

That's correct?-- Yes.

And the third was the accreditation or registration as an SMO where they are entitled to do specialist work or specialty work; that's correct?-- Maybe if I put it that the act provides for a restriction of titles, not restriction on practices. So, any registrant can engage in a clinical practice if they are competent to do so and have the structures in place to support that competence. So, the pathway for 143A and for holding the college fellowship enables the person to use that restricted title. The Board doesn't have any power to restrict practice, and that was a policy decision underpinning the legislative model right across Queensland in terms of the 13 health practitioner Boards that my office supports and the Queensland Nursing Council. There are some restricted practices in some acts that flowed from the national competition policy review, but none of them are within medicine.

Would you say the Board can't restrict practice, but the Board can impose conditions; is that correct?-- The Board can impose conditions.

I'm interested-----

COMMISSIONER: That's only with special needs applicants or is that with all registrants?-- At the time of registration, the Board can impose conditions on any applicant and they can impose conditions on renewal of registration with any registrant. The only other time that they are empowered to impose conditions is under the Health Practitioner Professional Standards Act.

I don't want to take Mr Mullins off his course, but my understanding is that it has been a longstanding principle in Queensland that anyone who is a registered medical practitioner is not prevented from performing surgery because, given it is a such a far-flung state, there may be times when a GP in a country hospital needs to perform very serious surgery which would normally be performed by not only a surgeon, but perhaps a specialist surgeon - cardiologist or-----?-- And they perform obstetrics and gynaecology and cardiology from the specialty groups because they are an area of need, and that's one of the reasons that the National Competition Policy Review didn't restrict practice under the Medical Act.

But what they can't do is hold themselves out as being specialists, so it may be that they - that a doctor at Cunnamulla who is a GP delivers a couple of dozen babies every year but he's still not allowed to hang out a shingle saying "I'm a gynaecologist"?-- That's correct.

MR MULLINS: Dr Molloy gave some evidence about this issue yesterday and about the qualifications of SMO, Dr Patel. Can I ask you to look at some passages of the transcript? I will take you to them?-- Thank you.

It is pages 569 through 571 commencing at line 30. If you read at line 30, Mr O'Dempsey, we see reference by Dr Molloy to the third alternative - "is that they do specialist work in a public hospital as an SMO, but they have not been deemed, their specialty qualifications have not been run by a college, they're just used to do specialty work." That's the category I'm asking you to consider?-- Yes.

Can I ask you to look at the bottom of the page, about line 56? Mr Tait asked the question: "The particular position where you will have an overseas trained doctor working as an SMO is only if it has been declared an area of need." Answer: "That is correct, but that's also correct for a deemed specialist as well." At the top of the next page we see that the entirety of Queensland is declared to be an area of need. So, that restriction is not really a limitation throughout Queensland, is it?-- I don't follow the reference.

The restriction referred to by Mr Tait on the previous page at the bottom of page 569 that an overseas trained doctor working as an SMO-----?-- I see your point. I'm not quite sure whether the whole of Queensland - I think Dr Molloy's evidence would have been a colloquial - like, the whole of Queensland has been declared an area of need. We, or the Medical Board,

can only function on a certification for that position to be declared an area of need. We don't have any certification that the whole of Queensland has been declared an area of need.

COMMISSIONER: I may have been mistaken, but I think it is in Queensland Health's submission to this Inquiry that the whole state has been declared an area of need. Am I misunderstanding something there?

MR BODDICE: It is. I think the difference is that what Mr O'Dempsey is saying is that even though the whole of Queensland has the potential to be an area of need, the Medical Board, on each case for each position, has to have a certification that that is an area of need. There is a difference between the two.

COMMISSIONER: The matter is - so far as Queensland Health is concerned in issuing certifications anywhere from Herston to Herberton - can be described as an area of need.

MR BODDICE: There will be a witness coming who can explain it better than I can but, as I understand it, the Ministerial Directive is that, in effect, apart from certain specified areas which then themselves have exemptions as to it, yes, there can be areas of need, but there is a witness coming along this week that will be able to explain that.

COMMISSIONER: Splendid. Thank you, Mr Boddice. Does that help, Mr Mullins?

MR MULLINS: Thank you, Commissioner. Continuing on at page 570 about line 6 - sorry, about line 10: Mr Tait says, "So, the Director of Neurosurgery at Royal Brisbane Hospital need not be a neurosurgeon in theory?" Answer: "In theory, yes. I couldn't imagine it happening in practice." The Commissioner says, "But then the people of Bundaberg probably couldn't imagine having the Chief Surgeon at Bundaberg Hospital being someone who is not a surgeon?" Answer: "Well, that's correct, and it comes back to the difference of doing work as a surgeon and being a qualified surgeon."

Now, can I ask you then to go to line 31? Again the Commissioner says: "The difficulty, as I see it, is not merely that people are performing duties in that position, but they're being either directly or implicitly held out to the public as being qualified specialists when they're not?" Answer from Dr Molloy: "Yes, this is a constant problem, that part of the spin that occurs is that - and I don't know if this happened in Bundaberg, but I certainly know that it's, for example, happened in Rockhampton, and it did happen in Hervey Bay, I'm reliably informed - is that a new SMO is employed by the hospital and there will be a press release saying 'We've got a new orthopaedic specialist in town', as it happened in Hervey Bay, or I recently had some good-natured argy-bargy with a local member for Rockhampton who had supplied figures to the press about the number of specialists working in Rockhampton, and in fact many of these were SMOs or - not many, a number of these were SMOs, not specialists." Now, was the Board aware that SMOs were being sent into country locations and being held out as specialists without supervision in those locations?-- If the Board was aware of that, they would have taken action under their legislation to enforce the Title Restriction models and that's based on complaints received. So, yes, the Board has a committee that looks at breaches of the restricted provisions in terms of using titles.

So do you say that prior to February 2005 the Board was not aware that SMOs were being employed in private hospitals?-- No, what I said-----

Sorry, public hospitals?-- No, what I said was if the Board became aware of those, they would have taken action to ensure that these people would not have held themselves out as specialists.

In the individual case or across the board?-- In the individual case.

Are you aware, prior to February 2005, of any instance where there was a prosecution or restrictions imposed upon a particular SMO in those circumstances?-- No, I am not aware of any. We take an issue of an educative approach, warning people they are in breach of the Act and if it continues, then we do show cause as to why they shouldn't be prosecuted and make a decision then on whether it will be prosecuted.

Can I ask you to turn to page 571? At the top of the page, again it is the Commissioner: "As presently advised, I don't think it is even good enough to be very careful in the language you use. You know, it wouldn't, to my mind, be sufficient for the Bundaberg Hospital to be careful to say that this man is our Director of Surgery without saying he is a specialist surgeon. I would have thought, and I would be interested to know, how many of these hundreds of patients we have heard about from Bundaberg were actually told, 'The man that is operating on you is not a specialist, is not a surgeon.'" Mr Tait then continues in his questions to Dr Molloy: "So, have you known for some time that a Director

of Surgery in Queensland may not be a surgeon?" Dr Molloy answers: "We have understood the system for some time that people doing specialist work are not the specialist they are held out to be." Next question: "Sorry" - this is from Mr Tait - "the Medical Board prosecutes general practitioners for calling themselves cosmetic surgeons." He says, "I saw the Court next door where it was prosecuted and fined - but a man who has got no surgery qualifications sufficient to register himself as a specialist is allowed to be called a Director of Surgery." Dr Molloy answers, "Yes, and that's wrong." Do you say that the Board had no knowledge prior to February 2005 that these matters were going on?-- No knowledge that they were using the restricted title "surgeon". Director of Surgery is not a restricted title.

Did you have any knowledge, or did the Board have any knowledge that persons or public hospitals in Queensland were holding out SMOs as specialists?-- I did not have any personal knowledge of that. I can't answer for the Board.

COMMISSIONER: But so far as you know, the Board wasn't aware of that?-- Not aware of it. The Board, in approving an Area of Need registration at SMO level, even with someone with overseas specialist qualifications, understands that the practice system within a hospital is that there is no restriction on practice, that an SMO is equivalent to a Registrar. Registrars are not surgeons and can't use the restricted title and undertake surgery. They don't get appointed as Director of Surgery. But they expect that an SMO will be supervised within the clinical structure of the hospital, just like a Registrar, that there is a clinical supervision provided by a more senior practitioner. I think Dr Molloy described it as the apprenticeship system.

All right. So just to follow up on Mr Mullins' question, if the Board had been aware of a situation where a person who wasn't a specialist was using a restricted title, calling himself or herself a specialist, or a surgeon, or an orthopaedic surgeon, or one of those titles that's restricted, then the Board's usual approach would have been to give a warning and if the warning wasn't heeded, then to take prosecution action?-- That's correct, and I can say that every complaint we've ever received, in the time that I have been with the office, about breach of title has been received from another registrant.

Yes?-- So another medical registrant. They have been - in that sense it has been self-regulatory. They know what titles can be used and how people can hold themselves out. Mr Tait used the example of the cosmetic surgeon. That was based on complaints to the Board from other registrants.

All right. But, as I understand it, leaving aside the public health sector, there has been this sort of turf war. So to take the example of the cosmetic surgeon, a GP might hang up a sign saying "specialising in cosmetic surgery" or "practising in cosmetic surgery"-----?-- They wouldn't be in breach of the Act.

-----and that wouldn't be a breach of the Act. So it is a matter of the form of words rather than the substance?-- Yes. In fact, unless you use the specific restricted title, you are not in breach. You can say that you do surgery, you specialise in this particular area, or you have special skills in this. As long as you are not false or misleading in that, you are not in breach of the Act.

Similarly, if Queensland Health give someone the title "Director of Surgery" but doesn't actually call him a surgeon, that's not a breach of the Act?-- No, that's correct.

Dr Molloy obviously thought it should be, but that's a matter of policy at the moment?-- I believe the Board thinks it should be also but the Board administers the legislation that it has, not the legislation it would like to have.

So are you able to tell us that the Board would like to see the legislation tightened up in this respect?-- Absolutely.

Again, I think it is fair to say that this problem occurs across a variety of professions. For example, I think it is well-known that you can employ people to prepare house plans who weren't architects. If they call themselves architects, the use of that word is an offence?-- Mmm.

But to perform the work of an architect isn't?-- That's right.

Mr Mullins?

MR MULLINS: Thank you, Commissioner. In the most recent exchange it was suggested that as to a question of title, that gives you the entitlement to Act against a particular individual, is that correct?-- That's correct.

But the Board has a broader power or had a broader power that has now been exercised, to control the work undertaken by these SMOs by the use of or the introduction of supervision?-- That's correct.

And the Board was aware, was it not, that it was releasing SMOs into the public system unsupervised? That's correct?-- No, that's not correct. The Board had an expectation that an SMO employed in an Area of Need received the work within a structure that had clinical supervision and auditing, and safety measures in place, just like a Registrar being employed for that purpose - and I should say - and I have seen the term used a career medical officer in that specialty who never achieves the specialty qualifications, but practises in that area lifelong. I believe it was referred to by Dr North in the report to Hervey Bay and they referred to a career medical officer in orthopaedics, not a specialist, not a Registrar, employed as an SMO but performing surgery in orthopaedics for - and that was their career.

And that would have been, so you understood, under the

supervision of a VMO, principal house officer - sorry, under the supervision of a VMO or staff specialist?-- Yes.

And, in fact, that's the condition that you have now imposed by the meeting of, I think, 26 April 2005?-- I think the Board's resolution reflects the evidence that has come before this Commission, that supervision being provided has been less than adequate and that its expectation that the supervision structures within public hospitals are available has not always been met.

To clarify, I think it was 19 April and 26 April-----?-- Yeah.

-----resolutions were passed by the Board that now impose at least two restrictions?-- Requires supervision by a VMO or specialist - staff specialist and adverse reporting.

That's right. The second step was that the supervisor was immediately to advise the Board if there was an adverse incident or adverse report?-- Mmm.

So within two months, between the time that the Board found out about Dr Patel's conduct and April 2005, these resolutions were passed imposing these two restrictions. That's correct?-- To be imposed.

To be imposed?-- Yes.

Now, prior to that time, the Board knew this was an evolving problem?-- The Board knew it was an evolving problem in terms of Area of Need in their assessment. They were always reasonably confident with the supervision in the public hospital structures. The other one I mentioned was yesterday essentially for-----

Is it the case that the reason why the Board didn't act to impose these conditions at an earlier time is that the Board assumed that these things were being done within the public hospital system?-- I think that's been my response. I agree.

What investigations did the Board undertake prior to February 2005 to satisfy themselves that these things were being done within the public hospital system?-- I believe that the - I believe the Board's position was formed from their own experience and expertise of working within the medical profession, including a number of Board members that were previous medical directors, and so forth. So it has come from personal knowledge and experience as practitioners and not from any investigation that I am aware of.

Are you aware of the Lennox Report?-- I am aware of the Lennox Report to the extent of the media coverage at the time. I have never personally seen a copy of it.

Did you understand that that report was part of an investigation into - into IMGs?-- I believe it was a wide-ranging investigation in terms of how IMGs are employed,

registered and supported, and from what I remember of Dennis Lennox's position, it was the support issue also that was as equally important in terms of their entry to practise.

Was one of the concerns that Dr Lennox raised supervision?-- As I say, I don't - I have not seen the report. I can only remember the media coverage at the time.

The report was conducted - was it during 2001 and 2002?-- I don't know. I couldn't answer that, I am sorry. I wasn't in the medical - with the Office of Health Practitioner Boards at that time.

I understand the draft report was ultimately produced in July 2003. Did you ever get a copy of that report?-- No. I wasn't engaged in looking at those types of issues. I believe it went directly to my - to the Chair of the Board. If it was released to the Chair of the Board, it was at a meeting with Dennis Lennox. That's as far as my knowledge extends.

You are the chief executive officer?-- Of the Office of Health Practitioner Registration Boards.

And the Board is responsible for the registration-----?-- The Board is responsible for the registration.

-----of these IMGs?-- Yes.

And there was a report produced, albeit in draft form, that addressed the lack of support for these IMGs, the registration issues and their suitability issues and you never saw a copy of that?-- I have never seen a copy because it hasn't been produced to us.

You are aware of its existence?-- I am aware of its existence because of the media.

Did that throw any question mark over your assumption that the public hospital system was performing its support role-----?-- I can't - I can't speak for the Board on those matters. What I can say is that feedback that we received during consultation on strategic planning raised issues in terms of assessment, supervision, support for IMGs as they came into the system. It also raised issues in terms of the English language, and that the Board has introduced the English language testing, it was addressing the assessment processes nationally through a screening exam and primary source verification, and was going to address the supervision issues, if there were supervision issues, as part of the introduction of the screening exam. So I can say that while the Board was concerned about these things, the level of concern was about - we've had this in an Area of Need registrants in some form or other since 1978 and there was increasing concern and increasing activity to do it. There wasn't this crisis concern.

When you say there was no crisis, the crisis would only arise after patients were injured?-- No, I am saying there was no

crisis concern because there was an expectation that their system, public hospital and GPs, had mechanisms for support and supervision.

But going back to the Lennox Report, surely your knowledge of that, even had you never seen the report, would have commenced to undermine your confidence in the assumption that the public hospital system was supervising these people?-- I reiterate, I did not see the Lennox Report. The Lennox Report I believe was produced at a meeting where our Chair and Deputy Registrar were present, and in terms of its contents and findings, I am - I am still not - sorry, still don't have those available. If they'd become available to me and they raised significant issues, we would have fed them into how we were dealing with it. We might have sped things up on some areas, we may have increased focus on others. That's all I can say.

You say you don't have a copy of the Lennox Report at all?-- No, I say I don't - I have never seen a copy of the Lennox Report.

Senior counsel assisting has one here.

COMMISSIONER: I think it came into evidence yesterday.

MR MULLINS: I thought it did go into evidence yesterday - last night. Mr O'Dempsey, just on the complaint system you spoke about yesterday, were there any complaints about Dr Patel prior to February 2005?-- Not that we can identify in any of our records.

Were there any complaints about surgery at the Bundaberg Hospital?-- Not that we can identify in any of our records.

And the records that you have are as detailed in the reports that you referred to yesterday?-- We have, since 2004, a spreadsheet that documents all inquiries. Prior to 2004, inquiries were filenoted. We have a file that we keep every consultation from the Health Rights Commission about and we have complaint files that are documented here. We have caused a search to be made of all of those files and we've never had an inquiry of a general nature or a specific nature about Patel or Bundaberg Hospital prior to this issue that we can identify. I can say that our process with - if we got an inquiry and they were concerned about a health service, we would have referred them directly to the HRC, the Health Rights Commission.

Is a record taken of that inquiry?-- From 2004, yes.

Prior to 2004?-- No.

Can you give a month in 2004?-- January.

Thank you, Commissioner.

COMMISSIONER: Thank you, Mr Mullins. Anyone else have any - yes, Mr Allen?

MR ALLEN: Thank you, Commissioner.

CROSS-EXAMINATION:

MR ALLEN: Mr O'Dempsey, you saw some merit in the scenario raised by the Commissioner of a one-stop shop for complaints, be it health complaints ombudsman or otherwise?-- Mmm.

Now, one of the advantages of that would be to cut down on any buck passing between agencies?-- I just saw it as a nice - my attraction to it, in terms of the discussion with the Commissioner, was it was a one-stop shop. Their complaints could go to the relevant body and that could be determined through some form of consultation of power. I stress that I thought that the profession self-regulation in terms of investigation and prosecution should be maintained but it also gave that - one of the attractions to it for me was the ombudsman then feeding back to the complainant what was being done with it and the expectation. I actually saw that as a - an effective use of our resources in terms of investigation and prosecution but also a coordinated or cohesive way of giving feedback to complainants.

Yes, so that there would be that triage advantage?-- Yeah.

But also the communication with the complainant?-- Yes.

They wouldn't face the situation of going to one agency and being told it is being referred to agency B, and then agency B referring it back to agency A?-- The section of bureaucracy was there, I think I mentioned that, with section 51 of the Professional Standards Act.

Now, as it stands now without that system, can I just explore how complaints are communicated between various interested agencies? Now, you have explained that there is, under the relevant legislation, a process whereby matters may be referred between the Medical Board of Queensland and the Health Rights Commission?-- Yes.

And you have already indicated in evidence, which we don't need to go over, that you believe that there is a refinement of that relationship required which will require some legislative change?-- That's correct.

All right. Apart from that matter that you've mentioned and the possibility of some type of health complaints ombudsman, are there any other changes that are required in the relationship between the Health Rights Commission and the Medical Board of Queensland, as you see it?-- No, not that I see it.

Okay. Now, in relation to any type of communication regarding

complaints in relation to clinical competence of doctors employed by Queensland Health, if we could just explore what current arrangements exist between Queensland Health and the Medical Board of Queensland? Is there any type of formal reporting relationship?-- No, there is no formal reporting relationship. Queensland Health, like any entity, can make a complaint about a medical practitioner. It raises issues there in terms of the entity who could complain making determinations on whether it is appropriate to complain or not. There could be - I say could be a perception within the public system that competence issues should be dealt with by the employer rather than as the regulatory authority, even though competence is one stem of definition for unsatisfactory professional conduct.

It is a very important one, isn't it?-- It is a very important one. Professional Standards Act, however, only provides for a Board - and I talk about any Board here - to deal with competence in the disciplinary or adversarial process, and I have already posited to both the Minister and the Director-General of Health that that health - that Professional Standards Act needs a further component in it to enable all our Boards to respond to complaints about competence through a competence pathway rather than a disciplinary pathway, and similar to what is currently there, being the impairment pathway. So rather than take it into the legal sphere of adversarial investigation and prosecution before a tribunal, we have a pathway of agreed performance assessment which could be switched over, like impairment pathway can currently be switched over into a disciplinary action.

Yes, and that would perhaps address one of the concerns raised by Dr Molloy yesterday evening that doctors, in his perception, may be ready to take to the Medical Board matters concerning impairment of fellow practitioners but perhaps less prepared to raise matters that would initiate disciplinary proceedings?-- And I think competence issue can become a disciplinary matter, but it shouldn't be initially treated as a disciplinary matter, it should be treated as a competence matter.

Now-----?-- And-----

What changes would need to be made for the Medical Board to have some type of competency avenue of investigation?-- Oh, you would have to amend the Professional Standards Act reasonably significantly in bringing in another part - maybe Part 10 or 11 or 12 will increase that Act to 500 pages rather than 400 pages - to give them a pathway similar to the impairment pathway for dealing with issues of competency.

COMMISSIONER: If you will excuse me, Mr Allen, would you personally regard that as an appropriate function for the Medical Board?-- I have got to say yes, Commissioner, because I thought it was an appropriate function for the Nursing Council. I believe there are levels of competence issues that should be dealt with at the local setting but there should be

a mechanism where people can report it to the Board when they know it will be dealt - there is a pathway for dealing with it in a non-adversarial way and look at retraining - assessment and retraining and monitoring rather than having to take someone before a tribunal and prosecute them to impose conditions about retraining. I think it would be a less expensive pathway, too.

And also a pathway that's beneficial to the entire community because it may be that after retraining you are putting another good doctor back into service?-- I think the community invests a significant amount of money in producing a medical practitioner, or any health professional for that matter, and it would be better to have a collegiate pathway for dealing with issues of competence rather than the adversarial pathway.

As indeed with the impairment issue, if you have got a doctor who is drug addicted or suffering from clinical depression or something like that, the important thing is to address the impairment rather than to strike the doctor off?-- But ultimately, if you can't address the impairment issue or the competence issue, that is still available to a Board.

Apart from impairment of the type that we've spoken of, the medical or physical condition of the doctor - and I guess that things like psychiatric illness and drug dependency are the most common examples. What are the other types of disciplinary issues that most frequently come up? Are there matters of personal misconduct like sexual-----?-- Boundary annihilation of a sexual nature and financial nature. The Board does deal with competence complaints. In fact we're prosecuting a disciplinary charge on a - at least three competence matters at the moment, but we're dealing with them at the penal tier to try and get conditions.

I guess also the other problem with dealing with competency issues in a punitive way, in a disciplinary way, is that it becomes an absolute. Either this doctor is over the line or not?-- It's very black and white.

Yes. Whereas competency issues are often shades of grey?-- That's where we need to engage the profession in assisting with that performance assessment and management.

D COMMISSIONER VIDER: To the best of your knowledge, Mr O'Dempsey, the approach that has been taken by the Queensland Nursing Council is working satisfactorily?-- To the best of my knowledge, yes.

Thank you.

D COMMISSIONER EDWARDS: Could I also ask you, following a question asked by Mr Allen, the Chief Medical Officer as a member of the Board, surely at some stage - many stages could be in a very difficult position of conflict in that he is aware of some information that has been fed to him in his role as Chief Medical Officer which may possibly affect a consideration by - or the outcome of a consideration of the Board. Is that a problem and-----?-- It hasn't - I haven't seen it raised as a problem. There are provisions in the Act requiring appropriate declaration of conflict of interest, and the Medical Board is vigilant in ensuring that those provisions are met. If you had have asked that question of me prior to the current Act or prior to the Chief Health Officer position being removed as automatically President of the Medical Board, I would have said it was a significant conflict of interest. I think it's not a significant conflict of interest now.

COMMISSIONER: I guess that's partly for the reason that I have the impression that within Queensland Health the position of Chief Health Officer is treated as semi-autonomous?-- The legislative change to the Health Services Act removed the Chief Health Officer from having day-to-day management responsibilities within Queensland Health and set it up as - with independent powers, particularly in relation to public health generally and private hospital system. So you're right, Commissioner. That does lessen the conflict issue also.

Yes.

MR ALLEN: Thank you, Commissioner. Mr O'Dempsey, if we return then to the situation as it is in relation to any communication between Queensland Health and the Medical Board of matters regarding the clinical competence of doctors, you mentioned in your evidence that the Medical Board sometimes receives referrals from the Queensland Health Audit Branch?-- Audit Branch, Director General, Director of - I can't remember all the titles.

And you also mention in your evidence that you would expect that there would be a policy in existence in Queensland Health which would involve referring matters to the Medical Board in appropriate circumstances?-- I think my evidence was that there is a policy in existence, and has been so since August 2002.

Okay. Now, are you aware as to whether there's any legislative obligation at all upon Queensland Health or any of its employees to refer matters to the Medical Board for their attention in appropriate cases?-- There is no mandatory notification requirements in any of the health practitioner legislation.

What about any other legislation which might govern Queensland Health?-- Not that I'm aware of.

All right. For example, as I understand it there are obligations in legislation for the Director General or other persons in Queensland Health to refer matters of suspected official misconduct to the Crime and Misconduct Commission. You're not aware of any similar provisions that would require referral of matters to the Medical Board?-- I'm not aware of them. I don't believe they exist.

All right. When we look at a situation here of apparently detailed concerns as to the clinical competence of Dr Patel being communicated in writing in October 2004 to a district manager of Queensland Health, would you see it as desirable that in those circumstances there would be a requirement to refer such a matter to the Medical Board?-- I believe that the system requires adequate reporting. If it has to be mandated to achieve it, then yes, I would agree with you.

There wouldn't seem to be any reason why, for instance, there would be a legislative mandate to refer matters of official misconduct to the CMO, but not refer matters regarding serious clinical incompetence to the Medical Board?-- I'd agree.

You would agree?-- Mmm.

All right.

COMMISSIONER: And again - sorry to interrupt, Mr Allen. Again that struck me as one of the potential advantages of having a one-stop shop complaints system, because the sort of mandate that Mr Allen is talking about would have the problem that it requires the person making the complaint to form their

own judgment as to whether it's a Medical Board matter or a Queensland Health Rights Commission matter or something else, whereas if there's a one-stop shop the obligation is to report the matter to the appropriate complaints venue - the ombudsman, if we can use that term, and the ombudsman takes it from there.

MR ALLEN: You would agree with that?-- I've already expressed that I've got some affection for that type of one-stop shop.

I've mentioned the CMC. Are there any type of formal reporting arrangements between the Medical Board and the CMC regarding matters concerning medical practitioners?-- There are no formal arrangements at this stage. We have a draft memorandum of understanding that we're waiting - awaiting comments from the Commission on.

From the Commission of the CMC?-- Yes.

I see?-- And that is related to the same provision that you've referred to under Queensland Health obligation, and it's about official misconduct because a matter that the Medical Board is investigating could also constitute official misconduct for a public sector employee.

I see?-- So it's about our reporting obligations under the Crime and Misconduct Commission Act.

So you're trying to clarify whether there's an obligation on the part of the Medical Board to report such a matter to the CMC?-- Yes.

All right?-- Not trying to clarify, to set up the process for when and how to report such things because Queensland Health, if they're the complainant, has generally already reported it.

I see. All right. Do you know if there's any system whereby matters which come to the attention of the CMC and involve medical practitioners are referred to the Medical Board by that agency?-- Not in my experience.

COMMISSIONER: It's hard to imagine, isn't it, Mr Allen? A CMC matter would have to be, as we know, either criminal misconduct in an official capacity or some form of dishonesty in an official capacity. That would generally be something quite different from the types of issues the Medical Board deals with.

MR ALLEN: As I understand the definition it would include, in relation to a Queensland Health employee, such a breach of discipline as could justify dismissal.

COMMISSIONER: Yes.

MR ALLEN: And that, one could imagine, could encompass a variety of matters, including flagrant incompetence.

COMMISSIONER: Well, I'm not sure that flagrant incompetence is a breach of discipline. It must be a breach of something, but it's hard to see how it would be treated as a disciplinary issue. You're perfectly right, it should be grounds for dismissal, but it seems to me that we're looking at, to use the expression someone else used the other day, a silo. There's the system for dealing with criminal and dishonest and disciplinary matters, and there's a system for dealing with issues such as a doctor's competence, a doctor's incapacity, a doctor's breach of his or her professional obligations and ethical obligations, and my current view is that it would be undesirable to mix up those quite separate concepts, but nonetheless there's force in what you say, that if someone reports a matter to the CMC that's appropriately a Medical Board issue it should be referred over, just as if someone reports something to the Medical Board that's really an official misconduct matter it should be sent to the CMC.

MR ALLEN: Yes, and it once again highlights the advantage of the triaging agency.

COMMISSIONER: Yes.

WITNESS: We've also, Commissioner, got an example with the Coroner's Act where the coroner must turn his mind or her mind to whether a matter should be referred to a professional regulatory authority.

COMMISSIONER: Yes.

MR ALLEN: Just on that point, my attention is drawn to section 87 of the Public Service Act which provides that, "The employing authority may discipline an officer if the authority is reasonably satisfied that the officer is performing the officers's duties carelessly, incompetently or inefficiently." So there certainly does seem to be a possible overlap in relation to official misconduct and clinical incompetence.

COMMISSIONER: I suppose that's right.

MR ALLEN: Yes. Sorry, I've interrupted you. You were about to talk about the Coroner's Act?-- I just indicated that the coroner has to have regard in his findings to whether a matter should be referred to a regulatory authority

And that would include the Medical Board?-- Oh, yes.

And you do receive referral of matters from the coroner?-- Not since that Act has been amended to include that provision.

I see. That was what, the beginning of 2004?-- I believe so, yes.

If I could ask you about any type of system of liaison between the Medical Board and the AMAQ. Now, would it be the case that that organisation would primarily be involved in Medical Board matters as an advocate for doctors who are under investigation or otherwise dealt with?-- No, generally the

Medical Defence Organisation is the advocate for a doctor under investigation. Very rarely is it AMA.

Is there any system for the AMA reporting matters of concern to the Medical Board in relation to its members?-- Like any entity, it can make a complaint to the Board, and we have regularly scheduled meetings with the AMA. It's just - we generally meet at least half yearly, the Chair of the Medical Board, myself, the President and the CEO of the AMA. We've had to cancel our last couple of meetings because other things have come up.

COMMISSIONER: It's been a busy time?-- It has, Commissioner.

MR ALLEN: Has the Medical Board received complaints regarding the clinical competence of doctors from the AMA during the time that you've been involved?-- I can't remember a specific occasion. I'd have to go and look, Mr Allen.

In your statement you refer to a meeting with certain officers of the Queensland Nurses Union?-- Yes.

And the situation is that there had been a meeting scheduled for the 3rd of February 2004, but because of your need to attend a funeral that was postponed to the 15th of February 2004?-- That's correct.

On that day you met with Ms Judy Simpson and-----?-- I think it was Kym.

-----with Kym Barry?-- Yes.

Along with yourself there was an investigator?-- No, it was my manager of my complaints unit at that time, Fiona-----

Jackson?-- Jackson. Thank you.

There were two topics for discussion at that meeting?-- There were.

One of them involved a doctor from the Gold Coast whose name is subject to a non-publication order?-- That's correct.

And the other involved Dr Patel?-- That's correct.

Now, it's the case that the officer from the QNU who had primarily been involved in matters involving the doctor from the Gold Coast was unable to attend that meeting?-- I don't know what her responsibility was with the Gold Coast, but there was a third officer that couldn't attend, yes.

And for that reason in fact there was very little discussion about the doctor from the Gold Coast?-- Other than to clarify a written complaint had been put in and the further material that would be required to inform an assessment of that complaint.

And the primary subject of discussion at that meeting was concerns of QNU members at Bundaberg regarding Dr Patel?-- My perception and memory of that meeting was that it wasn't the primary discussion, that it was in terms of these are the things that are happening, and that these - and that Dr Fitzgerald was actually there that morning interviewing their members.

Well, you were informed that since the time of the originally scheduled meeting, that officers of the QNU had met with firstly the Health Rights Commissioner, Mr Kerslake?-- I'm aware of that, yes. I remember it now.

And it also met with Dr Gerry Fitzgerald?-- I wasn't quite sure in memory whether that was in Bundaberg or prior to him going to Bundaberg.

At the time of the meeting between yourself and Ms Simpson and Ms Barry on the 15th of February 2004, they indicated that they'd met earlier with Dr Fitzgerald about the matter?-- They could have. I'm not quite sure, Mr Allen.

Okay.

COMMISSIONER: Mr Allen, you're going to be a little while with this topic?

MR ALLEN: A little while, yes, Commissioner.

COMMISSIONER: We might take a 10 minute break then.

MR ALLEN: Thank you, Commissioner.

THE COMMISSION ADJOURNED AT 11.47 A.M.

THE COMMISSION RESUMED AT 12.14 P.M.

JAMES PATRICK O'DEMPSEY, CONTINUING CROSS-EXAMINATION:

COMMISSIONER: Mr Allen, just before you continue, a couple of housekeeping things, as we say. Firstly, we have had some inquiries about whether the Inquiry will be sitting this Friday. I mentioned on Monday that that could be a possibility. Could I ask whether it would be an inconvenience if we continued on Friday?

MR BODDICE: Not from our point of view.

COMMISSIONER: It depends on how much evidence we have because we are really still planning next week, but I think we should proceed on the assumption that we are sitting some or all of Friday, for the time being. Similarly, I have been asked in relation to the Bundaberg sittings, given that the CMC sitting has fallen over, whether we are expecting it will go for two weeks or three. I think the best advice I can give everyone is to assume it will go for three weeks. If it finishes within that time, that will be a bonus, but given especially that it is school holiday period, it is probably a good idea to have bookings in Bundaberg for three weeks and be prepared to stay for that long if necessary. Would you agree with that, Mr Andrews?

MR ANDREWS: Yes, Commissioner.

MR DIEHM: Is it intended, Mr Commissioner, to stick to the schedule of Monday to Thursday sittings in those three weeks?

COMMISSIONER: What I was actually going to suggest is we continue with four day weeks, but rather than have Monday to Thursday each week, we might have a sort of Monday to Thursday and then a Tuesday to Friday, so that people who are travelling back to Brisbane can have - can not only see their families, but also attend to their office requirements and that sort of thing. Perhaps if people around the Bar table wanted to consult with one another and let us know what is the most convenient, that struck me as a sensible way to do it.

MR DIEHM: Thank you.

MR BODDICE: We would encourage that.

COMMISSIONER: You have a young family, don't you?

MR BODDICE: Yes.

COMMISSIONER: The only other housekeeping thing is that I've been shown - I know it has been in evidence since yesterday, but I've only been shown for the first time Mr Buckland's memorandum which includes the authorisation under section 62F.

It is perfectly in order, however I've been asked by the secretary to point out that it doesn't include him as one of the persons to whom information may be disclosed and that presents a difficulty because often when information is brought to the Inquiry offices, he is the only official person there to receive them. So, if Mr Buckland would be kind enough to consider adding Mr Groth's name to that - to the schedule, that would be appreciative.

MR BODDICE: We will have that attended to today.

COMMISSIONER: Thank you. Mr Allen?

MR ALLEN: Thank you, Commissioner. Mr O'Dempsey, I've been told that I inadvertently referred to a meeting between yourself and officers of the QNU on 15 February 2004. That excited some degree of interest from the media, I'm told, so we should make it quite clear-----?-- It was this year.

-----that it was the 15th of February 2005?-- That's correct.

Now, at that meeting, Ms Simpson, I would suggest, indicated to you that the previous day she had been in Bundaberg when nurses were being interviewed by the Chief Health Officer, Dr Fitzgerald?-- He was there the previous day and he was still there that morning.

And I suggest that Ms Barry and Ms Simpson raised with you issues concerning the complexity of surgery that was being undertaken by Dr Patel at the Bundaberg Base Hospital?-- Mr Allen, I have no memory of the detail of the meeting, otherwise I would have put it in my statement. All I can say is that an invitation was provided to either make a complaint about it, so that we could get it on foot, or we could await Dr Fitzgerald's report if he was providing a report, and that would enliven the Board's action.

You can't say whether there was specific mention of thoracotomies and oesophagectomies being performed?-- I can't remember the specifics of it, Mr Allen.

Do you recall if there was a matter raised for general discussion concerning appointment of doctors to areas of need?-- A general description of it, I can imagine, would have been provided.

And was there a query raised with you as to what process would be involved in the Board investigating complaints concerning Dr Patel?-- The process in terms of the Professional Standards Act would have been given, yes.

I suggest that the information you provided to Ms Barry and Ms Simpson was that the Health Rights Commission would refer the matter to you for investigation?-- If there was a direct complaint to the Board, we would have to consult with the Health Rights Commission, or if there was a direct complaint to the Health Rights Commission, the Health Rights Commission would have to consult with us. Our preference for health

service user complaints is for the direct route to the Health Rights Commission. That's our preference.

You indicated that. I suggest that Ms Barry informed you that the Health Rights Commission wasn't going to do anything about Dr Patel?-- And then we would have invited the complaint to come to us.

And, in fact, informed you that she had met with Mr Kerslake who had advised that he wouldn't do anything unless he received a complaint from a patient or a relative of a patient?-- I don't have memory of that at all, Mr Allen, otherwise I would either agree or disagree. All I can say is that we would have talked about the processes of getting the matter investigated and if a complaint came to the Medical Board, our preference is for it to go through the Health Rights Commission. If their meeting with the Health Rights Commission had indicated that he could only act on a health service user complaint or someone authorised acting on behalf of that health service user, then the complaint could be made to us by an entity other than the health service user.

I suggest that you didn't say or ask, "Why haven't the concerns been put in writing?"?-- I asked why a complaint wouldn't be put in writing because we needed a complaint in writing in order to take action.

I suggest that you said words to the effect of, "Well, if Dr Fitzgerald has been involved, he will no doubt refer it to us as he sits on the Board."?-- I have no doubt that I would have said if there are findings adverse to Dr Patel, that we would get a referral.

Why would you have indicated that you could not act without a written complaint?-- Our preference is a written complaint in order to inform the recipient of that complaint.

Do you not have as an executive officer the power to initiate investigations yourself?-- Absolutely not.

You do not?-- Absolutely not.

You can't initiate investigations based upon information received-----?-- I cannot, no.

COMMISSIONER: There has to be a complaint?-- There has to be a complaint under 51-53. There has to be information before the Board under 63. The Board can initiate an investigation in the absence of a complaint, but it is the Board that can initiate that investigation in the absence of a complaint.

I suppose, then, in answer to Mr Allen's question, it would be fair to say that if your attention was brought to something that you thought warranted investigation, you could refer that to the Board and the Board could then-----?-- Absolutely, but it is difficult to refer a matter to the Board under 63 without having some substance there.

Yes?-- Or something definitive before you.

And I imagine you are also concerned about issues of natural justice and you want to know what the details are of the complaint and who is making the allegations?-- What you are actually going to be investigating.

Yes.

MR ALLEN: It wasn't unknown for yourself, as executive officer or Chief Executive Officer of the Nursing Council, to initiate investigations?-- I had a delegated power or authority from the Queensland Nursing Council to initiate assessment and investigations, but it was a delegated authority and it was enabled under the Nursing Act for the Council to delegate that decision-maker. There is no delegation of the Boards - any Board's power to meet and initiate an investigation.

COMMISSIONER: That can't be delegated under the act?-- I would have to go back and reflect on the section of the act. I don't think it can, but I would have to go and look. I know the delegation powers are fairly limited under both the Registration of Professional Standards Act and-----

MR ALLEN: So, as Chief Executive Officer of the Nursing Council, you would, on occasions, read about a matter in the media, for example?-- We could take that-----

And then initiate an investigation?-- As the Boards do in the structure I work in now.

But the difference is that in your present capacity, you can't initiate such investigation yourself?-- No.

You would have to inform the Board and then ask them to - or ask them to consider whether they initiate an investigation?-- That's correct.

Did you apologise to the representatives of the QNU for the shabbiness of the boardroom you met in?-- I did, Mr Allen.

Towards the end of the meeting, did Ms Simpson say words to the effect of, "Are you sure he is a surgeon?", with reference to Dr Patel?-- I cannot remember that being specified.

COMMISSIONER: If that had been asked, the answer would have been, "Well, he is not a surgeon."?-- That's right.

MR ALLEN: I suggest it was responded to with raised eyebrows and a dismissive look?-- Not from me, Mr Allen.

Now, section 65 of the Health Practitioner Professional Standards Act provides an investigation must be conducted as quickly as possible?-- In certain circumstances, yes.

That's a general principle, isn't it?-- Yes.

That investigations should be expeditious?-- Yes.

And there would be good reasons for that?-- Yes.

Not only so as to safeguard the public, but also in fairness to the person who is being investigated?-- Absolutely.

Now, you mention that during this meeting on the 15th of February 2005 there was reference to a doctor whom we will try not to name?-- We won't.

COMMISSIONER: The Gold Coast doctor.

MR ALLEN: The Gold Coast doctor.

COMMISSIONER: Yes.

MR ALLEN: And there was some discussion about a written complaint that had been received by the Medical Board previously?-- Yes.

I suggest that that was a letter that had been received by the Medical Board on the 14th of January 2005?-- I don't know the specifics, Mr Allen.

Certainly before the 15th of February 2005?-- Yes.

Okay.

COMMISSIONER: Without recalling the specifics, does that sound right that you might have had the letter of complaint for about a month before this meeting?-- Yes.

MR ALLEN: And the - would you be aware whether the Professional Standards Unit of the Office of Health Practitioner Registration Boards assessed that written complaint and identified issues in the complaint as including issues of clinical competence?-- Yes, I believe that's the case.

And some substantial issues of clinical competence?-- I believe that there were some issues for clarification around that also.

Well, the complaint involved issues of delay in transferring seriously at-risk pregnant mothers?-- I can't remember the specifics of the complaint, Mr Allen.

You can't?-- No.

You agree that there were substantial issues of clinical competence raised?-- There were issues raised of clinical competence. My memory of the discussions, particularly from my - the manager of my complaints unit was that there were issues that we needed further clarification on in order to form an assessment of whether an investigation should be initiated.

COMMISSIONER: Mr Allen, I don't want to cut you off, but we seem to be straying a fair distance from the Terms of Reference. Is this line of questioning designed to - how shall I put it - to challenge the efficiency of the Board's dealing with complaints, or is there some other purpose?

MR ALLEN: It is going towards the resources available to the Board to expeditiously conduct investigations regarding the clinical competence of medical practitioners.

COMMISSIONER: Well, it is often said that cross-examination doesn't necessarily mean examining crossly. I suspect if you asked Mr O'Dempsey, he would agree with you whole-heartedly that he would like to have further resources to examine things expeditiously.

MR ALLEN: I wish to illustrate perhaps the difficulties he faces in that task.

COMMISSIONER: Well, I won't cut you off, but, as I say, we seem to be straying a bit from the Terms of Reference. You would agree with that in principle, wouldn't you, Mr O'Dempsey?-- Absolutely, Commissioner. It would be the perfect world if we got a complaint, we had it assessed, and we had the resources to immediately put an investigator on it and - or an investigation process in place which was finished within six weeks and there was a decision made. That's a perfect world, but we don't have perfect worlds.

Mr Allen, just if I can follow that up, you are not suggesting, are you - and tell me if you are - that these things are held up in the Medical Board because they are not - the people who staff the Medical Board aren't keen to follow them up or they are bureaucratic bottle necks or something like that? You would accept Mr O'Dempsey's explanation that the Board would like to have more resources and could do these things much more efficiently if they had the resources.

MR ALLEN: Yes, I don't have any instructions or information that would contradict that.

COMMISSIONER: All right. Well, given that's the evidence, is there any need to take it any further?

MR ALLEN: Only one more step, and I'll be brief.

COMMISSIONER: Go ahead.

MR ALLEN: All right. Could you have a look at a copy of this document, please? There are three copies for the Commission. Would it be a fair summary of matters that a written complaint concerning this particular doctor was received in about the middle of January 2005; that the progress, as it stands today, is that on the 26th of April 2005, the Board decided that the complaint would be retained for investigation firstly. What does that mean, that the complaint, as from 26 April this year, would be retained for investigation?-- Would be investigated.

All right. So, an investigator would be appointed to investigate it; is that so?-- Yes.

However, there will be some delay in investigating it due to the number of complaints currently being investigated and the number of waiting investigations?-- I believe this letter is inaccurate and has been written by a staff member who is acting in a position-----

Okay. So, the situation is that as the matter currently stands-----

COMMISSIONER: Have you finished your answer?-- No, I hadn't finished.

MR ALLEN: Excuse me.

WITNESS: Ms Todd has been acting in the position for less than three weeks and may not be fully aware of the authorities of the position to refer complaints for investigation to an external panel, and to the fact that I have two additional investigators that have now become available. I am surprised at this letter and would go back and investigate it immediately, Mr Allen, because I don't believe that any investigation now is put off for six months because of resource issues. That was the case in 2002. That is not the case now.

MR ALLEN: Well, not put off for six months but, according to this, the investigation would commence at some time up to 11 months after the complaint was received?-- That's why I believe it is inaccurate.

That's when the investigation would commence?-- Mmm.

COMMISSIONER: 11 months? You mean nine, don't you? Three months from January to April and then six months after that.

MR ALLEN: This letter is dated May.

COMMISSIONER: I see.

MR ALLEN: It says that the investigation will commence within six months which would be mid-November. I should have said 10.

COMMISSIONER: Seems to be the reporting of the results of a decision made in April.

MR ALLEN: Yes.

COMMISSIONER: But it doesn't matter. Mr O'Dempsey has already told us it doesn't reflect the state of affairs at the Board.

WITNESS: I am surprised by this letter, Mr Allen.

MR ALLEN: The letter is dated the 19th of May-----?-- Yes, I know that.

-----this year, and you are saying despite the clear indication that because of the need to prioritise complaints, that investigation won't commence-----?-- No, I am not saying that, Mr Allen, I am saying something completely opposite, and I have a structure in place for ensuring urgent complaints are dealt with as a matter of course. And there is no six-month delay that I am aware of in putting things into investigation, and I believe this letter is inaccurate and has been issued by an inexperienced staff member.

Well, I will tender the letter from the Acting Complaints Coordinator of the Professional Standards Unit dated 19 May 2005.

COMMISSIONER: Yes, the letter from the Acting Complaints Coordinator of the 19th of May 2005 addressed to officers of the Queensland Nursing Union will be received in evidence and marked as Exhibit 39.

ADMITTED AND MARKED "EXHIBIT 39"

COMMISSIONER: But I would think it is only appropriate that anyone reflecting on the contents of that letter should do so in the context of Mr O'Dempsey's evidence; that as the man effectively in charge of the entire office, he considers that it is inconsistent with the practice that actually exists within the office.

WITNESS: That's correct.

MR ALLEN: If-----

MR DEVLIN: A name appears in the letter.

COMMISSIONER: Yes, this name has previously been the subject of a suppression order, and unless anyone wants to make an application to the contrary, that suppression order will continue in respect of the exhibit.

MR ALLEN: That's the whole document, if the Commission pleases?

COMMISSIONER: The entire document is received into evidence, it becomes an exhibit and will be available subject to the suppression order of the name of the Gold Coast doctor. The only thing that is suppressed is the name of that doctor.

MR ALLEN: Yes. I understood my learned friend might be wishing to suppress the name of the complaints coordinator, and I wouldn't object to that.

MR DEVLIN: Not at all. No, not at all.

COMMISSIONER: No.

MR ALLEN: I would ask for an order in similar terms in relation to the complainants.

COMMISSIONER: Well, they're officers of the nursing union, aren't they?

MR ALLEN: No, they are not, they are members.

COMMISSIONER: They are members, and it is just addressed to them care of their union?

MR ALLEN: Yes.

MR DEVLIN: The whole thing - it is a question of whether the document is of any use to the Commission in its deliberations. I don't see why it has to even be tendered into evidence. You will have enough paper here to sink a battleship by the end of it.

COMMISSIONER: I don't think one A 4 sheet is going to be the straw that sinks the battleship. But, again, unless anyone has a view to the contrary, I will make a suppression order in relation to the individuals whose names appear in that letter as the addressees.

MR ALLEN: Thank you, Commissioner. In your material, and in particular attachment 11 to your statement, you deal with the course of investigation of complaints against Dr Qureshi?-- That's correct.

And it seems that the - well-----?-- Could I just rephrase, Mr Allen? Course of assessment of complaint against Dr Qureshi.

Certainly?-- My investigation.

COMMISSIONER: The complaint was never finalised because he fled the country?-- That's correct.

Yes.

MR ALLEN: So according to your material, on the 22nd of October 2003, Dr Keating wrote to the complaints unit at the Medical Board regarding a complaint of a patient?-- I will have to open it up. What attachment?

JPO11?-- Thank you. Excuse me while I check my wallet.

COMMISSIONER: Again, Mr Allen, so I understand where we're going, this is a further illustration, you would say, of delays in Medical Board investigations?

MR ALLEN: Yes.

COMMISSIONER: Right. Of course, Mr O'Dempsey has already acknowledged, I think very frankly, that in 2002 there were serious problems in investigating complaints properly. I have that right, do I, Mr O'Dempsey?-- Yes, that's correct.

MR ALLEN: This involves 2003.

COMMISSIONER: Right.

MR ALLEN: Did those problems still exist in 2003?-- We have addressed those problems in 2002 until date. We have reduced our backlog by over 150 investigations and we're completing investigations within six to eight months. But this is not about investigations. This is about an assessment of a complaint and ongoing interaction between audit branch and, through audit branch, the police. I will say that if the police are involved, we will always take a backward and

watching brief, particularly where we're given assurances from the hospital that the individual is being supervised or chaperoned. So from my perspective, this is an assessment that complaints have come up to a further level by - between October and December and we put a recommendation to the Board's complaints committee in February to take action against him, and he flees the country.

When did he leave the country as far as the Board understands it?-- As far as the Board understands, it is - we were advised on a particular date. I think it was 23 July 2004. I think.

Well, in fairness to the Board, it may have been earlier than that because-----?-- I am just looking at these paragraphs. Yes, sorry, it was the 29th of January.

So information was received on, what, the 29th of January?-- That's what it says in - sorry, the third dot point - sorry, on 13 April 2004 Mr Michael Shaeffer of the audit branch advised that had been referred to the Crime and Misconduct Commission on 29 January '04 and that the CMC intended to report the allegations to Queensland Police Service. Mr Shaeffer advised that QPS had subsequently advised that Dr Qureshi had fled the jurisdiction and was overseas. So on 13 April the Board was advised by Queensland audit - sorry, the Audit Operational Review Branch of Queensland Health of what they'd done on the 29th and that they had been advised that Qureshi had fled the country.

Okay. The Board had actually resolved to investigate the complaint regarding the doctor on the 24th of February 2004?-- Yes.

What was done between that time and when this information was received on the 13th of April 2004?-- I would have to look at the file, Mr Allen.

Was there any investigation commenced?-- I would have to look at the file, Mr Allen.

Yes, please do?-- I haven't got the file with me.

Oh, I see, all right.

COMMISSIONER: But would you anticipate if you were told-----?-- I would-----

-----it was going to the Crime and Misconduct Commission, that you would not try and double up on a CMC-----?-- We would try not to - if the police and Crime and Misconduct Commission are actually taking action, we would sit back and await their action because they have more power and, at some stages, some parts, more resources than us. Particularly given that if there is a criminal conviction, the Board can actually use the criminal conviction to go straight to the tribunal in the absence of having done an investigation.

In addition, Dr Qureshi was a special purposes registrant?-- He was.

And so his registration would not, in any event, be renewed without an application in the ordinary course?-- Absolutely, and he couldn't work anywhere else other than in that defined Area of Need-----

Yes?-- -----which was at Bundaberg. So I couldn't answer your question without going and looking through the file in terms of steps of initiating investigation.

MR ALLEN: You were just asked whether in fact the investigation might be delayed because the CMC and/or police were looking at the matter. Was it in fact only on 13 April 2004 that you received information that the CMC were involved?-- I would have to go and look in the file for filenotes because from - and it is a vague memory, Mr Allen, that there had been some contact before then.

I see?-- Vague memory.

In paragraph 49 of your statement-----?-- Yes.

-----you make mention of a doctor whose name is subject of a non-publication order?-- Yes.

Doctor was at the Bundaberg Base Hospital?-- 49.

Yes?-- I will just go to it. Yes.

Now, are you able to - I don't want the detail but are you able to say whether the concerns regarding that doctor involved issues of clinical competence?-- They did.

They did, I see. Were they substantial issues of clinical competence?-- I can only provide evidence on one of those issues and there was an allegation of poor decision making rather than clinical competence. The other matters had been dealt with before I started there or as I started there.

I see?-- So they are not high in my memory bank, but I believe that from my knowledge there were a range of clinical competence issues where the practitioner had been referred for a - by the employer, being Queensland Health, for assessment at another major centre. The complaint investigation that is high in mind was about clinical decision making, not gross incompetence.

This is an overseas-trained doctor?-- No.

No?-- Absolutely not.

I see. So in relation to your investigation and the inclusion of the doctor in your statement, that was because the doctor was at Bundaberg Base Hospital?-- That's correct.

I see. And are there any current investigations in relation

to that doctor still underway?-- No.

No?-- There are not.

So there is no outstanding complaints-----?-- No.

-----that haven't been dealt with?-- No, there are not.

Now-----

COMMISSIONER: Mr Allen has asked you a few times whether they are substantive - or substantial competence issues. I guess that's a very subjective term. Are you able to say for-----?-- I have taken it as they have raised issues of competence rather than he is characterising them as major issues of competence or not major issues of competence.

All right. Are you able to say, for example, whether we're talking about issues of competence that could be life-threatening, that sort of degree of seriousness?-- In terms of the last doctor that was mentioned, or generally?

The last doctor that was mentioned?-- The last doctor, it was not a life-threatening issue, the one that the investigation has been completed, that I am aware of. In terms of the general complaints, they weren't life-threatening but they were serious enough to actually have his competence reviewed. There was a potential risk to patient health and safety.

Certainly.

MR ALLEN: Now, if we just step back to the 15th of February 2005?-- Yes.

Matters are left on that date on this basis, regarding Dr Patel: that the Medical Board will do something if the Health Rights Commission refers the matter to them, or if the Medical Board receives a written complaint?-- That's correct.

And, indeed, did you take any steps, by way of communications with the Board or anyone else, to investigate matters regarding Dr Patel after that meeting of the 15th of February 2005?-- Took immediate steps to speak to Dr Fitzgerald at a Registration Advisory Committee meeting - I believe it was the next day - to ask what investigations he was doing and what was the likelihood of a referral from him to the Board. He indicated that he was doing a clinical audit, that there were a number of matters that were - that may be referred to the Board in relation to Dr Patel but he stressed it wasn't an investigation of Dr Patel. I asked him to ensure that we got the information as soon as he'd completed his report in order that the Board could make a decision on what action it needed to take.

And was there any indication given as to when it was expected that audit would be finished?-- He indicated to me that he would be completing the audit when he had the clinical benchmark data and he indicated that that was going to take

three to four weeks.

From a meeting on about the 16th of February?-- Yeah, thereabouts.

So were there any other steps taken by yourself or anyone at the Medical Board apart from that?-- Apart from that, we marked his file so that he could not get reviewed without it being reviewed by the Registration Advisory Committee, and I believe the note also had "awaiting report from Dr Fitzgerald".

COMMISSIONER: At that point in time, am I right in thinking that Dr Patel's registration was current up to the end of March?-- It was and we had 60 days under the legislation to make a decision.

All right. So in answer to Mr Allen's concerns about the urgency with which it was treated, in a sense there was a six-week deadline, or thereabouts?-- Absolutely, yes.

Yes.

D COMMISSIONER EDWARDS: Dr Fitzgerald was doing this in his role as a member of the Medical Board?-- No, as the Chief Health Officer.

MR ALLEN: Mr Commissioner, could I ask this witness to have a look at a letter which I have previously passed up to yourself so that he could read through it and I can ask him a question?

COMMISSIONER: Is it an exhibit already?

MR ALLEN: It is not. It is one which was returned by yourself to me after it was handed up earlier this week and a copy went to my learned friend Mr Boddice who subsequently produced a report to the Commission.

COMMISSIONER: All right. May I see the letter to remind me? I am sorry, Mr Allen, I just see a lot of correspondence, not only within the courtroom but outside. What is it you want to ask Mr O'Dempsey about this matter?

MR ALLEN: I want to ask Mr O'Dempsey if he is aware of the existence of the report referred to therein and can assist the Commission as to whether in fact it was referred to the Medical Board.

COMMISSIONER: Yes, all right. Mr O'Dempsey, you will see the last paragraph of the letter refers to a specific report in relation to a specific incident?-- The last paragraph?

Last paragraph, I think?-- I would have to check our records, Mr Allen. I-----

MR ALLEN: You don't have any recollection yourself of any such report?-- May not even come across my desk.

All right?-- I would have to check and, if I can - did you need it in evidence or could I feed that back through my barristers?

COMMISSIONER: Look, that would be entirely satisfactory. Mr Allen, you might communicate to Mr Devlin what you want to know about this matter and I would be happy to receive, for example, a written response from Mr O'Dempsey as to what he would have told you in evidence had he been aware of the matter at the time.

MR ALLEN: Yes. And obviously, Commissioner, you would have no difficulty with myself providing a copy of that letter to my learned friend Mr Devlin.

COMMISSIONER: None at all.

MR ALLEN: Thank you. I will ask for the return of that document then. Thank you, Commissioner.

COMMISSIONER: Well-----

MR PERRETT: Mr Commissioner, I have some questions.

COMMISSIONER: Yes, Mr Perrett?

CROSS-EXAMINATION:

MR PERRETT: Mr O'Dempsey, I think you are aware that I represent the Health Rights Commission?-- Mr Perrett.

At paragraph 22 of your statement you refer to the consultation process that takes place between your office and the Commission - the Health Rights Commission when a complaint is received by the Board as to whether the Board keeps that complaint for investigation or refers it to the HRC?-- That's correct.

Are you able to comment on the factors that the Medical Board takes into account at that point in determining whether the public interest is best served by the Board keeping the complaint for investigation or in referring it to the HRC? What are the factors that entertain the process of that decision?-- Probably three primary factors, and that's whether there is an assessment that immediate action needs to be taken under section 59 to either suspend or impose conditions in order to protect vulnerable people. The other is if there is a matter that could lead to disciplinary action, so it doesn't meet the test of unsatisfactory professional conduct, if the matters are alleged, to prove them. The third major factor would be is there enough information to make decisions about the first two of those. If there is not enough information, then that would inform the delegatees' decision to refer that to the Commission for

further assessment using the Commission assessment powers.

Precisely. In that last context the Commission then takes that assessment, and if appropriate-----?-- Consults with the Board further during assessment.

If it appears disciplinary action will eventuate?-- Mmm.

Can I take you to a separate subject? I would like to give you the opportunity to comment on a matter which hasn't been directly focussed on to date in respect of this inquiry but has been touched upon in a general sense by the submission received from the AMAQ. Also some of the questioning that's been directed to you. The issue is that of the independence of the Medical Board, and what I am particularly interested in in this context, is that independence in respect of the disciplinary processes undertaken by the Board. There is sometimes concerns expressed in respect of bodies - regulatory bodies such as the Board, which have initially an investigative process, then having carried out that investigation, decision making - a decision-making process as to whether they ought then undertake a prosecutorial role, as to whether that gives rise to a perception of some conflict in undertaking those roles. It is referred to on some occasions as a Caesar-judging-Caesar type consideration and it has been a particular issue in recent years in the legal profession. You may recall the Law Society had the investigative role and then the prosecutorial role in respect of members of that profession?-- I thought the wider issue, Mr Perrett, that it was - that it was the judging component.

I was going to go on to say that is then sometimes aggravated further if the body that then hears that matter can take its members from the profession - if the body that then hears that prosecution includes members from the profession in respect of which the disciplinary proceeding relates, that's the background. What I wanted to ask you was whether in the context of the Medical Board's function, that is a perception which has ever come to your attention, either in the past or in more recent times?-- Look, I think that there was a perception in the past that all the Boards, including the previous Nurses Registration Board acted as Judge, jury and executioner.

You are speaking there prior to the amendments around 2000?-- No, I am speaking there prior to the amendments to the Nursing Act - sorry, commencement of the Nursing Act 1992 and then the Health Practitioner Professional Standards Act. Because the Health Practitioner Professional standards Act clearly separated the Board's role out as the Judge in the more serious matters that could lead to conditions or suspension or deregistration. I disagree with the characterisation that just because members of the profession sit on the body that's Judging the final outcome is a problem. I think that they actually add value as long as they are not members of the body that's done the investigation and prosecution. I think that's the problem. So yes, I think those matters - I think there would have been a perception both with the profession and the

public that one body being Judge, jury - of both investigator, Judge and jury was inappropriate and the fact that it was done behind closed doors or in camera. The Acts have provided and addressed that and there have been some additional failsafes put in in terms of review of the decision at the end of the investigation which the Health Rights Commission place under the legislation, Health Rights Commissioner gets a copy of every investigation report that the Board has considered, is informed of the Board's actions in regard - or intended actions and has 14 days in which to make comment or make recommendations about either the report or the actions. I personally value that oversight role from someone that's outside of the Board. I think it has been valuated to the system.

So in terms of the fact that such a perception may exist elsewhere, factors that militate against the reality of that perception are, firstly, that the Tribunal sits independently of the investigative and prosecutorial process and, as we know, has a Supreme Court judge sitting as a member of that Tribunal?-- That's correct, and the panel is similarly structured to the Tribunal. Boards are now only dealing with the lower level matters that could lead to reprimand, caution or advice. They can seek an undertaking, but they can only deal with those lower level matters at a Board level.

Another factor that militates against that perception is at the point where the investigation has concluded and a decision is to be made as to whether it will proceed or not proceed - that is, refer it to the Health Rights Commission who plays, in effect, an honest broking role as to that recommendation?-- Absolutely.

Are there any other features to your processes which come to mind that may militate against the reality of such a perception?-- The investigator is, once appointed, independent of the Board and not subject to Board direction unless they seek that direction.

COMMISSIONER: Did I have the impression from something you said earlier that you also sometimes outsource investigations, refer them to people-----?-- We have an internal investigator or a panel of contract investigators and we set that up to deal with that backlog.

Yes.

MR PERRETT: Just one final matter I wish to take you to. Mr Devlin asked you some questions earlier yesterday, you may recall, as to the general awareness of the Medical Board's role in the complaints processes, and you spoke of various actions the Board takes to enhance awareness of your function?-- Mmm.

Under section 47 of your Act one of the potential complainants is another registrant?-- That's right.

And we've heard a lot of evidence over the last day or so that you first became aware of anything to do with these matters in Bundaberg in about mid-February 2005?-- That's correct.

We've also heard evidence that there were various registrants throughout South-East Queensland who had varying levels of concern about the activities of Dr Patel some time prior to February 2005?-- I believe that's the case, yes.

None of those matters have come to your attention?-- No.

Are you able to offer any comment, based on your experience, as to why the concerns which existed amongst those registrants were not referred to your Board for the purposes of investigation?-- What - I'm surprised there wasn't even a whispering campaign. Normally if there's an issue of this

type of nature, of such significance, even in a hospital, someone will ring a Board member and say, "There's a problem here." We didn't even get that.

So do you apprehend the fact that that didn't occur reflects a lack of awareness amongst registrants that they have a right of complaint to your Board?-- No, not given the number of complaints we get from registrants.

So the cause, if we can call it that, is not one of awareness of your role?-- I believe it's a choice made by the individual not to make a complaint, and I don't know - I don't understand why that would be the case.

So you're not able to offer, based on your experience, any sense of whether there are perhaps cultural issues that impact on that?-- No, the only matter I could offer is what I said earlier in response to Mr Allen, that I think people see competence as not an issue that you complain to the Medical Board about, because it goes into an adversarial process. That's the only matter that I could put it on, because people will complain. Registrants will complain, consumers will complain, other health providers will complain, and we rely on receiving those complaints to actually take action.

I have nothing further, Commissioner.

COMMISSIONER: Thank you, Mr Perrett. Mr Diehm, did you have any questions?

MR DIEHM: No, I don't, Mr Commissioner.

COMMISSIONER: Any questions?

MS FEENEY: No, Commissioner.

COMMISSIONER: Ms Gallagher?

MS GALLAGHER: No, thank you, Commissioner.

COMMISSIONER: Mr Devlin, I just want your assistance, if you'd be so kind, on one question. I know - I think it's fair to say you've probably done more commissions of inquiry than most of us have had hot dinners.

MR DEVLIN: I've done a few.

COMMISSIONER: What's the usual approach in this sort of situation to the rule in Brown v. Dunne? For the benefit of those amongst us who aren't lawyers, in the ordinary Courts there's a rule that if a party wishes to challenge a version of events given by another party, then they've got to raise that in cross-examination. They can't keep their powder dry until the end of the hearing and raise it at the end.

We've now had three witnesses on behalf of your client, Mr Devlin, and although Mr Allen has raised some matters of procedural concern and so on, I don't think there's been any

cross-examination which challenges the essential explanation that we've received from each of the three witnesses, which is that Dr Patel slipped through under the radar essentially because he lied on his application form, that there was a genuine and regrettable mistake, that things weren't picked up in the office, that was done by an employee who is no longer with the Board and who was working under considerable pressure at the time, and that quite exhaustive steps have since been taken to improve the system operating within the Board. None of that seems to have been challenged anywhere here.

Does that really mean that it's the end of the road for your client in these proceedings?

MR DEVLIN: I wouldn't submit so. I'd submit that, with respect, the inquiry process can sometimes bring something to light down the track, then one looks at the reason why it didn't emerge through the industry of all the lawyers and assistants to the inquiry at an earlier point and examine the circumstances under which it now comes forward. I'm sure that's been encountered in the past.

COMMISSIONER: Yes.

MR DEVLIN: So that in the end, a late arrival of information can often be then the subject of consideration as to what weight ought to be given to it.

COMMISSIONER: Yes, yes. That makes sense. Before I ask you whether you have any re-examination, I'll ask, as I have before, if there's anyone present from the general public, or indeed the press and media, who feels that the issues relevant to this witness, Mr O'Dempsey, haven't been fully and fairly canvassed, please say so. This is a public inquiry and I feel that the public have as much right as anyone else to make sure that all issues are fully addressed. Does anyone present wish to raise anything at all?

MR MULLINS: Commissioner, there is a matter - and the rule in Brown v. Dunne is apt - that has been drawn to my attention that I should allow this witness - permit this witness to comment upon. I omitted to do so in cross-examination for one reason or another. It's a specific issue-----

COMMISSIONER: Please do so now.

MR MULLINS: -----I'd just like to have the opportunity to cover.

FURTHER CROSS-EXAMINATION:

MR MULLINS: In October/November 2003, Mr O'Dempsey, there were a series of articles published in The Courier-Mail about some Fijian doctors practising at the Hervey Bay Hospital. Can you remember those articles?-- I can remember those articles.

And it's the case, isn't it, that the allegation raised in those articles was that these doctors were holding themselves out as orthopaedic specialists when in fact they weren't?-- I'm not quite sure of that specific allegation. I'd have to go and look at the media articles again.

You've got no recollection that that issue was raised in those articles?-- I'd have to go and look.

COMMISSIONER: Were you in your present job at the time of those articles?-- In October 2003?

Yes?-- Yes, I would have been.

Had they raised a suggestion that people who were not qualified to hold themselves out as specialists were in fact holding themselves out as specialists, that presumably would have excited your interest?-- It would have excited the Board's interest, and I can't remember the timing of when Dr North and - were engaged.

Dr North and Dr Giblin, yes?-- And it may have been around that time that Dr North actually met with me. I'd have to go and look at my diary to check the registration status of particular individuals at that hospital. So I was aware, and the Chair was aware, that an investigation was on foot and - by the Orthopaedic Association nominees and would have allowed that to take its natural course without intervening on any action. Now, I met specifically with Dr North at the request of Dr Toft, who was President of the Board - or Chairperson of the Board, and provided information as to registration status and conditions at that time.

MR MULLINS: Of those two doctors?-- Of a variety of named doctors, including those two doctors.

Now-----?-- So while the media article may have excited our interest, there was also an awareness that this investigation was under way and that Dr North was - and I'm looking at the timing and I can't remember the timing of the meeting.

I put a further point, that the media articles made specific reference to the Lennox report in October/November 2003?-- As I say, I was aware of the Lennox report from the media articles.

Now, at about that same time you had lengthy discussions with a journalist from The Courier-Mail about those two issues.

Firstly about medical practitioners who are not specialists holding themselves out as specialists at the Hervey Bay Hospital?-- Yes.

Do you have a recollection of those discussions?-- Look, I have a recollection of a - a vague recollection of talking to the media on those specific issues, but I talk to the media on a range of issues and I would have given them the information that is - from specifically the law that applies in terms of the Medical Practitioners Registration Act.

And during your discussions with the journalist concerned, you were advised that he had a copy of the Lennox report?-- I don't - I can't remember that level of specificity, Mr Mullins.

Can I ask you arising out of that - just give you the opportunity to comment on these propositions: firstly, were the two Fijians prosecuted or investigated for holding themselves out as specialists when they weren't specialists?-- They wouldn't have been prosecuted or investigated at that stage because of Dr North's interactions and investigations, and as we know, Dr North's report has only just become available. So no, they wouldn't have been investigated and prosecuted, to my knowledge, during that time.

COMMISSIONER: You've now seen the Giblin/North report?-- I have.

That involves the suggestion that what Mr Mullins is talking about has in fact been going on?-- Yes.

And will that then now lead to further investigation and possibly prosecution by the Board?-- I believe that the Board would await the outcome of the Commission's full investigation before it acted on anything that's before the Commission.

Yes?-- I believe that would only be proper.

Well, I appreciate your saying that. To put it in a slightly hypothetical way then, if you had received the report and this Commission of Inquiry wasn't in existence, would that be a basis for further investigation and prosecution?-- Wouldn't even require investigation. The Board could rely on that report and, yes, it would. It would have got referred to the Board's committee responsible for reviewing such matters, and they would have made a recommendation to the Board.

Is it, in that context, a matter of some concern that Queensland Health didn't seem anxious to let anyone find out what was in that report?-- It's of concern when we provide information to someone like Dr North and we don't take action, because we know that there is an action on foot knowing that if there are issues that are for the Medical Board to deal with they will come back to us.

Mr Allen asked you questions about mandatory reporting requirements. Would you favour a legal regime where

Queensland Health, from the Director General down, are obliged to inform the Medical Board of any matter which may result in either prosecution or disciplinary action?-- That would be - that would deal with part of the problem, but I think it could create a significant other problem. I know that mandatory reporting was to be included in the Nursing Act of 1992. It was in a draft bill that was put out for consultation, and it creates the problem that - how you define what has to be reported.

Yes?-- And who then has the obligation on reporting.

This is a real problem, Mr O'Dempsey, and I'm sincere in trying to get your input because on the one hand, if you have mandatory reporting, that can mean you get a truckload of trivia. On the other hand, if you don't have mandatory reporting, there is the prospect that a body which operates secretively - and I'm not saying that I've got any concluded view about that, but if a body does operate secretively or does have a tendency to shelve or hide adverse reports, then it never gets exposed. How can a system be set up that ensures that if the Director General of Health has a report coming across his desk that is adverse to the interests of Queensland Health but also raises genuine concerns about a medical practitioner-----?-- I wouldn't have thought in those circumstances that a mandatory reporting obligation would be inconsistent with Queensland Health's policy as it's stated now.

Thank you?-- But I agree with what you say. We don't want a truckload of things coming through.

And that again may be why the ombudsman concept would be helpful as a filter. Sorry, Mr Mullins.

MR MULLINS: Thank you, Commissioner. Moving away from the individual situation in respect to those two Fijians, assuming that the reports did reveal - or make allegations that these medical practitioners were holding themselves out as specialists, what is the explanation - and that occurred in October/November 2003 - what is the explanation for the Board not moving to implement the system of supervision, adverse reports and credentialling until February 2005?-- Because we didn't have a report from Dr North and Giblin. We had a media report, and we did not have anything substantive. If we had the media - sorry, the Giblin report referred to us for action, we would have taken that action.

Now, with that in mind, the Fraser Coast report was - the Giblin report was handed down when? I just can't recollect.

COMMISSIONER: I think it was 6 May, wasn't it?

MR MULLINS: 6 May 2005.

COMMISSIONER: It was provided to the Director General on 6 May and I made it public about a week later.

WITNESS: And my response would be the same. Matters before the Commission, we're trying not to take action on them where we don't have to, to allow the Commission to complete its work.

MR MULLINS: I'm distinguishing between the individual situation and the broader situation. We can accept that you didn't take action against those two doctors-----?-- Can I say, our activity and workloads have been consumed in preparing to assist the Commission for at least the last three - sorry, it's not actually three, it's the last six to seven weeks. We haven't even got to the stage of actually going and opening Dr Giblin's report and looking at those wider issues, but I assure you we will.

Mr O'Dempsey, I'm not being critical of anything between February and May 2005. What I want to ask you about is this: firstly, when was the Giblin report commissioned?-- I haven't got the specifics on that.

COMMISSIONER: My recollection was it was about 18 months between commissioning and receipt.

MR MULLINS: In October/November 2003 you became aware of these allegations?-- No, we became aware that there were - there weren't allegations, there were issues being raised in Hervey Bay, and that the Orthopaedic Association was investigating those issues on behalf of Health. One investigation is enough, and with the agreement of Dr North - he was under the understanding at our meeting that if there were matters of clinical competence or misconduct or breach of the Act, that they would be referred to the Medical Board for action. It's very similar to police doing a criminal investigation. We try not to actually do a double investigation when we can achieve the same outcome with one investigation.

Between October 2003 and the middle of 2005 - February 2005, nothing was done to increase the levels of supervision, credentialling and adverse reporting in respect of IMGs-----?-- I disagree with that. I think that my statement shows that there was an increased number of refusals for IMGs. I can also say that the data that we hold for the same period - the same three year period shows a significant increase in the number of conditions imposed on IMGs. I believe the figure to this date - or to March 2005 is something like 140 or 180 applicants have had specific conditions imposed on them, so that the data would support that increased scrutiny and increased concern, but not to the stage where we thought we had major flaws in our processing system.

Just to make it clear, in October/November 2003-----

COMMISSIONER: I think you actually have made it clear.

MR MULLINS: One more question.

COMMISSIONER: You've raised it on a Brown v. Dunne point. Is there something you haven't put to the witness that you feel you should.

MR MULLINS: One last matter. In October/November 2003 this issue was raised in the media?-- Yes.

You had discussion with the media about them?-- Yes.

You were aware of the Lennox report?-- We're aware of it, yes.

Why didn't you get a copy of the Lennox report then?-- Because I was aware that my Deputy Registrar and the President of the Board had considered a draft and had said that most of the material in it didn't have any responsibility for the Medical Board and most of it was unworkable. Now, they were the specifics from both the Deputy Registrar and the Chair. I will respect their assessment of it.

Your Deputy Registrar and Chair considered it and reported back to you?-- They discussed it with me, yes-----

Thank you?-- -----that outcome.

COMMISSIONER: Mr Devlin, Mr Andrews - I'm sorry, is there someone at the back there?

MS WONG: Can I just ask a question?

COMMISSIONER: Come through to the microphone. Can you tell us your name?

MS WONG: Christina Wong. I used to be a medical practitioner under the supervision of the HAM program.

COMMISSIONER: What does your question relate to?

MS WONG: Supervision by the Medical Board of Queensland.

COMMISSIONER: Yes, what is the question?

MS WONG: The question is basically, in a speech by Dr Bruce Flegg, Member for Moggill, in the Queensland Parliament on 11-----

COMMISSIONER: I'm sorry, I'll have to stop you there. We're not going to talk about speeches in parliament. That's off limits. What's your question? What's the issue?

MS WONG: Basically just, can I give an outline of what he said and ask the question-----

COMMISSIONER: No, what's the question?

MS WONG: Basically, the question is that from what Dr Bruce Flegg said, and also from the FOI documents that I had received from the Medical Board, that I believe Mr O'Dempsey -

he and the others in the Board were the authors, and they had sent draft copies of a number of misleading letters, I believe, to Health Ministers.

MR DEVLIN: May I rise, Mr Chairman?

COMMISSIONER: Yes.

MR DEVLIN: This is an appropriate matter where this lady ought to refer matters to counsel assisting where proper questions should be formulated.

COMMISSIONER: Indeed. Indeed.

MR DEVLIN: This questioner is a person with a particular personal interest, therefore the proper filter is through counsel assisting. The Medical Board's more than willing-----

COMMISSIONER: I agree entirely.

MR DEVLIN: -----to reply to matters which are properly formulated and require an answer within the Terms of Reference of this inquiry.

COMMISSIONER: Yes. I'd like to know what the question is before I take this any further. This isn't the time to make statements or speeches.

MS WONG: Okay. The question was just basically why there were a number of covering up, including misleading statements that were made to the Health Minister regarding my issue.

COMMISSIONER: All right. If you have concerns that there's been covering up or false statements - I understand you've already provided documentation to the inquiry.

MS WONG: Yes.

COMMISSIONER: Those matters will be examined and raised, but you'll understand this isn't the way to put a question, to say to a witness there's been a covering up or false documentation. The way to raise an issue is to provide the specifics so counsel assisting can investigate them and pursue them if appropriate. You've raised these matters with the inquiry already and they will be examined.

MS WONG: Okay. Sure.

COMMISSIONER: All right?

MS WONG: Okay. Thank you.

COMMISSIONER: Thank you. There was another gentleman that I thought wanted to say something. No? All right. Any re-examination, Mr Devlin?

MR DEVLIN: I'll be as quick as I can. I have two matters.

COMMISSIONER: Thank you.

RE-EXAMINATION:

MR DEVLIN: In relation to supervision of Dr Patel as an SMO, Mr O'Dempsey, you would be aware that in Exhibits 33 and 38 to Mr Demy-Geroe's statement the Board has produced the renewal applications for Dr Patel received in late '03 and late '04 or early '05. As part of the documentation for renewal, is there an assessment form that must be filled out?-- There is.

And on that assessment form, in respect specifically of Dr Patel, do we see a certificate of a supervisor, that is Dr Keating, which purports to describe Dr Patel's excellent work?-- We do.

To what extent does the Medical Board, in granting a renewal, rely upon such certificates as evidence of proper supervision?-- Significantly. It places significant reliance on it.

If a certificate from a Director of Medical Services is produced in that form, is it of the usual significant weight to the assessment or renewal?-- Absolutely.

Thank you. The second matter is about the competency pathway that's been discussed. You seemed to have in mind - we're looking for a non-adversarial pathway. You seem to have in mind a model which came in under your time at the Queensland Nursing Council-----?-- Yes.

-----of seeking another way to deal with any claim of lack of competence on the part of a nurse?-- Yes.

Is it more likely that suspected incompetence might be reported by other professionals if a non-adversarial outcome is perceived as the likely outcome?-- That's my belief, yes.

However, would that probably mean the creation of another committee to run alongside the Registration Advisory Committee, the Complaints Committee and the HAM Committee within the structure of the Medical Board's affairs?-- Would not only require a committee, it would need a dedicated unit to manage and monitor, because the monitoring in this regard for education, training and assessment is going to be significant.

Would there also then be the need for greater accountability and transparency so that the public who raise such questions of competence don't start thinking that again it's Caesar unto Caesar?-- Absolutely.

Again the role of an ombudsman or the Health Rights Commission would be critical to bringing about that pathway to eliminate such perceptions of cover up?-- I believe so.

Thank you. I have nothing further.

D COMMISSIONER VIDER: Mr O'Dempsey, could I just ask a question? You have already indicated though, that in that form that's currently used for renewal of registration, that the clinical assessment will be signed by a competent person who is doing the clinical assessment so that you've got an officer to refer to?-- We've updated it, yes.

Thank you.

COMMISSIONER: Mr Andrews?

MR ANDREWS: Yes, I have some questions, Commissioner.

COMMISSIONER: Will they take long?

MR ANDREWS: No.

RE-EXAMINATION:

MR ANDREWS: Mr O'Dempsey, with the forms that you propose for forms 1 - and I think it might be 3?-- Three. The employer form.

Will you be able to provide copies of those to the Commission?-- I saw the draft versions of them yesterday. I should be able to provide them to you through our barrister.

And with the forms that you propose, will they alert the Board if a person such as a Director of Medical Services gives a glowing clinical endorsement of a - an IMGs performance in circumstances where the Director of Medical Services actually has no opportunity for clinical supervision?-- I don't believe a Director of Medical Services who doesn't provide clinical supervision will be approved as a clinical supervisor, because the form requires the clinical supervisor to be specified and the clinical supervision that's going to be undertaken and how it is going to be undertaken, and reporting then will be required from that clinical supervisor addressing the types of supervision provided and the outcomes of that supervision.

I see. So, in a situation such as Dr Patel's, if at the Bundaberg Hospital there was to be no clinical supervision of an overseas trained doctor who was to be appointed as an SMO-----?-- In surgery.

-----in surgery, is it likely that the registration might not be given?-- It would be refused under those circumstances, yes.

Now, on a different topic, and that is an issue which was raised in the Lennox report and also appears in a submission of the AMAQ, and that is whether there ought to be some kind of examination of an overseas trained doctor as a condition for registration. I'm aware that if an overseas trained doctor isn't seeking an Area of Need Registration, that doctor might submit to the examinations of the Australian Medical Council?-- If you are migrating to Australia, you have to do the AMC exam.

How difficult would it be to insist on such a thing for-----?-- The resources are just not there at AMC level to do those exams. They have already increased their exams by 50 per cent this year to deliver more general registrants to address doctor shortages. They would need significant resourcing to do that. They are currently funded primarily through the Commonwealth and partially by each of the Boards. I have got to say it, too, the panacea of an exam equalling performance is a false - will give you a false level of confidence. All the examination would do for you is infer a level of competence or safety. Performance is what happens when you get in clinical practice, and it is having effective

supervision. I agree on having examination processes, not to the detail of having to do the AMC exam, but screening safety examination, but having that effective apprenticeship style of supervision that has generally been available in the past to those that are coming up through the system.

COMMISSIONER: Nothing presents better protection to the health consumers of Queensland than overseas trained doctors being supervised by respected, competent doctors?-- Good assessment and good supervision. An exam doesn't give you anything other than a level of comfort.

Had Dr Patel been supervised in that way, from what we have heard, the suspicion would be that the problems that have brought us here simply wouldn't have occurred?-- Mmm.

And had your Board known that he was going to be in charge of surgery rather than an SMO in the Surgery Department-----?-- On the staff - he wouldn't have got the Area of Need approval as far as my belief system will go. I don't think a Board member would have approved it.

Mr Andrews?

MR ANDREWS: No further questions, Commissioner.

COMMISSIONER: Thank you so much for your time. As I said yesterday to Dr Cohn, it is obvious that your organisation has put in a huge amount of effort, and I add to that the counsel and solicitors representing the Board have done a tremendous job in presenting their evidence in an efficient and helpful way. There will inevitably be some further questions that we need answers to and those will be communicated through your counsel and solicitors, but on behalf of the Inquiry I would like to thank you for your time, and perhaps it is inappropriate to say this, but I'll say it anyway: any reservations one might have had about bureaucrats generally have been overturned by hearing the way in which your Board has addressed problems that have been identified. Thank you, ladies and gentlemen. We will adjourn now until 2.30.

THE COMMISSION ADJOURNED AT 1.35 P.M. TILL 2.30 P.M.

THE COMMISSION RESUMED AT 2.34 P.M.

MR S THOMPSON (instructed by Phillips Fox) for John Hugh Bethell

COMMISSIONER: Mr Morzone?

MR MORZONE: If it please the Commission, I call John Hugh Bethell, B-E-T-H-E-L-L.

MR THOMPSON: Commissioner.

COMMISSIONER: Mr Thompson, pleased to see you.

MR THOMPSON: If it please the Commission, I seek leave to appear on behalf of Mr Bethell and his company, Wavelength Consulting Pty Ltd.

COMMISSIONER: Certainly. Leave is granted. I assume that that leave is, for the time being, only for the purposes of while he gives evidence. You are not expecting to be here throughout?

MR THOMPSON: That's correct, Commissioner.

COMMISSIONER: Do you anticipate you will be wanting to make submissions at the end?

MR THOMPSON: Can I reserve my submission in relation to that?

COMMISSIONER: Yes.

MR THOMPSON: That's a likelihood, I expect.

COMMISSIONER: Certainly. Thank you, Mr Thompson.

JOHN HUGH BETHELL, SWORN AND EXAMINED:

COMMISSIONER: Mr Thompson, you are not appearing alone, or are you?

MR THOMPSON: Sorry, I am appearing alone, Mr Morris, instructed by Messrs Phillips Fox.

COMMISSIONER: Thank you. It's a busy firm.

MR THOMPSON: Yes.

MR MORZONE: Is your full name John Hugh Bethell?-- It is.

And are you the Director of a company called Wavelength Consulting Pty Ltd?-- I am.

Is its business address at level 1, 257A Oxford Street, Paddington, in Sydney?-- It is.

And have you been a Director of that company for the past five years?-- I have.

Have you prepared a statement relating to matters relevant to this Commission?-- Yes.

Which has been sworn by you?-- Yes.

Can I hand to you a copy of that statement? I also hand to members of the Commission a copy of that statement. Now, there is a statement which is six pages and attached to that statement there is a bundle of documents starting with numbers JHB1?-- That's correct.

Can I inform you that that bundle of documents has been collated from documents in the possession of the Commission since your statement has been sworn using some documents which you handed to the Commission and also other documents which have been found?-- Right.

So, leaving those aside for the moment, which I'll take you to in your evidence, are there some corrections which you wish to make to your sworn six page statement?-- At this stage, no.

Are the facts in the statement true and correct to the best of your knowledge and belief?-- To the best of my knowledge and belief.

Okay. Can I take you to your statement in a number of respects? You refer in paragraph 4 to having received a verbal request from Dr Nydam and you used the terms, "to find and refer a surgeon that you may have available for the position of Senior Medical Officer at the hospital". Do you recall precisely what qualifications were sought by Dr Nydam at that time, if any?-- I don't specifically recall any qualifications being mentioned.

Do you remember-----

COMMISSIONER: Mr Bethell, you will understand that there is a difference between a person who would come to Australia and receive either qualification or deemed qualification as a specialist surgeon and a person who comes to Australia and simply works as a surgeon in a surgical department?-- I do, yes.

Did your instructions differentiate as to whether the person being sought was someone qualified for registration or deemed registration as a surgeon or simply someone to work in a surgery department?-- I don't specifically recall the conversation at that time, but-----

Well, can I ask you in a slightly different way: had your instructions been to find someone to act as Director of Surgery in a specialist surgeon capacity-----?-- No.

-----would you have applied different criteria in the selection process or in the head-hunting process than you, in fact, applied?-- It's very likely I would, yes.

MR MORZONE: And what differences would you have looked for if the difference was for a specialist surgeon as opposed to a Senior Medical Officer, particularly?-- I would imagine that in order to function as a Director of Surgery, the candidate would require specialist recognition in this country.

When you were requested to - or to find a person who may be available for the position that you have described, were you provided with a job description as to what position that person would fill and, in particular, the kinds of qualifications that might be expected of that person and to whom that person might report?-- The only job description I can find in my records is for a Senior Medical Officer, and I don't recall receiving a different job description.

Is that job description that you are referring to in your records a written document or note by you?-- It is a written document.

And have you got a copy of that document?-- I'm not sure if we - I have a copy here in my-----

You have a copy there?-- In my bag, I think.

Could you obtain it for me, please, just to check-----?-- Yes, okay.

MS McMILLAN: Could I ask the witness to speak up a little bit? I'm having difficulty hearing. He fades in and out somewhat.

COMMISSIONER: Mr Bethell, if you could keep your voice up? The microphones here don't seem particularly sensitive?-- I'll do my best.

While Mr Bethell is looking for that, may I mention there was the lady before lunch who wanted to ask a question. I'm very anxious that we don't lose track of the issue that she wanted to raise, and I don't see her here at the moment, but if anyone knows her or is in contact with her, could you kindly pass on that we are anxious to follow up the matters that she raised and to see whether they are matters that we need to address in specific evidence.

MS McMILLAN: Indeed. Mr Devlin is wanting to make some submissions about that to you in-----

COMMISSIONER: Mr?

MS McMILLAN: Mr Devlin wants to make some submissions about

that, and the Medical Board is very cognisant of the matters that were raised, Commissioner.

COMMISSIONER: Yes. I should make it clear we have received a bundle of documents from that person, but from the bundle of documents it is not entirely clear to us what the complaints really are and whether her complaints - if we knew what they were, if they are within the Terms of Reference, so we can sort that out. I don't want to waste a lot of time in a public hearing-----

MS McMILLAN: Yes, we are happy to liaise with counsel assisting on that matter. We might have some further information.

COMMISSIONER: I'm afraid the brusque way I dealt with the matter before lunch may have created the feeling that we are not interested in what she had to say, but we have to work out if it is relevant to the subject of this Inquiry and, if so, to make sure it is presented in an intelligible way.

Ms McMILLAN: That's so. There's also some complexity and history to the matter, Mr Commissioner, so it will need some exploration.

COMMISSIONER: Certainly. If indeed it needs to be explored at all.

MS McMILLAN: Yes, indeed.

COMMISSIONER: Yes?

MR MORZONE: Dr Bethell, if you go to the bundle of documents which I have got in the statement, at JHB5 there is a letter of appointment dated the 24th of December 2002. Is that the document to which you are referring, or are you referring to an earlier document than that?-- What is the name of the document?

It should be an E-mail. It should have JHB5 at the top. It is about halfway through the bundle?-- No, I'm referring to a different document which is a position description as opposed to a letter of offer.

May I see it, please?-- Yes.

Do you recall how you obtained this document?-- I do not recall.

Are you able to tell from your records whether you were retained or when you were first engaged in the course of searching for an applicant?-- I can't through my records - I can't determine exactly when that document arrived in our office.

A position description which you have provided to me refers to a Senior Medical Officer, Surgery, and a person reporting to the Director of Surgery?-- That's correct.

And it also has on the bottom of page 2 the person's specification being a person who possesses qualifications appropriate for registration as a medical practitioner in Queensland?-- That's correct.

Does that accord with your recollection as to the type of person whom you were looking for for appointment to the hospital?-- That's an appropriate list of requirements.

Is there any other reason why you think you would have a copy of this document in your file if it didn't relate to the person whose position you were seeking to fill?-- The document in question was found by me in the candidate's folder - his placement folder - when I went to search for documents pertaining to this case after April 8th, which is when I first heard about it. So, there was no doubt in my mind that it was pertaining to this person.

I tender that document.

COMMISSIONER: Dr Bethell, unfortunately some of us are blessed with mellifluous quiet voices and some aren't. You are one of those who are so blessed. I wonder if I can ask you to try as hard as you can to try and keep your voice up. It is a public inquiry and it is important that the public are able to hear what you say?-- I will.

MR MORZONE: If I take you back to-----

COMMISSIONER: Sorry, the position description will be received into evidence and marked as Exhibit 40.

ADMITTED AND MARKED "EXHIBIT 40"

COMMISSIONER: Should we also give an exhibit number at this stage to Dr Bethell's statement?

MR MORZONE: Thank you.

COMMISSIONER: That will be Exhibit number 41.

ADMITTED AND MARKED "EXHIBIT 41"

MR MORZONE: In paragraphs 5 and 6, you refer to typically responding to requests by notifying candidates, as I understand it, already on your file; is that correct?-- That's correct.

That may fit the criteria. Then in paragraph 6 you refer to

Dr Patel in this instance contacting you via your website. Was Dr Patel on your books?-- The first time Dr Patel came on to our books was the day after I picked up the position for Bundaberg Hospital.

And you refer in paragraph 6 to him expressing an interest in working in Australia as a - and you have got in capitals - "General Surgeon", or capital G, capital S?-- Yes.

Does that accord with your recollection of what position he was looking for?-- That's correct. On our day-to-day or on our website, candidates can select level of seniority and type of specialty that they wish to apply for, and he had selected "consultant" and "general surgery" as his requirements.

And you refer then to calling him to conduct a verbal interview to find out more about his clinical background and his interests in working in Australia?-- That's correct.

Do you recall briefly what he told you on that occasion about his clinical background and his capacity to practise in the United States?-- He described himself as a general surgeon with some experience in paediatric surgery and some vascular surgical experience and also laparoscopic skills.

Now, you refer then on 13 December to sending him some generic information about Bundaberg and on the same day receiving a copy of a CV. Could I ask you to go to the bundle of documents whilst we are speaking of this? The first exhibit to that is a copy of terms and conditions which is a document which has been obtained independently of you. Do you know whether they were the terms and conditions pertaining to this appointment or were there other terms and conditions?-- The terms and conditions in this bundle of papers were drawn up subsequent to the placement of Dr Patel. We had previous terms and conditions in place at the time.

Can I ask you to look at this document? Were they the terms and conditions that were pertaining to the appointment as at the relevant date?-- They were.

COMMISSIONER: Are these the terms and conditions of appointment or terms and conditions of your firm's appointment in the placement of a consultant?-- Those are the terms and conditions that we have with the hospital, our client.

Right.

MR MORZONE: I tender that separately, Commissioner, and are in place of the others.

COMMISSIONER: Terms and Conditions of Wavelength Consulting which were in force in the year 2002 - is that a correct description?-- Yes.

Will be admitted into evidence and marked as Exhibit 42.

ADMITTED AND MARKED "EXHIBIT 42"

MR MORZONE: Down at the bottom of the page of JHB1, there is a code. Does that obliterate where a date may have been on these terms and conditions?-- That is possible.

Looking at the new terms and conditions, is it the case that the relevant condition that you draw to the attention of the Commission is condition 6 relating to responsibilities of Wavelength and also of the client and, in particular, the client making and relying upon its own inquiries with regard to the matters the client considers relevant in determining whether to engage the candidate?-- Sorry, can you clarify that? Am I drawing attention to this?

Yes?-- Where did I draw attention?

Is it the case that the Commission - the relevant term and condition to which you draw attention to the Commission is condition 6?-----

MR THOMPSON: I don't think the witness has drawn the attention of any clause to the Commission.

COMMISSIONER: I think Mr Morzone meant whether the witness wishes to draw our attention, rather than having done so.

MR MORZONE: Thank you.

COMMISSIONER: Clause 6 is the one which gives you exemption from liability?-- Yes, it would be most relevant in terms of this Commission.

Looking at clause 6, I want to make sure I have the complete document. What I have is a two page document and I see clause 6 has subclauses (1) and (2) and then following that there's a subclause (a), but there doesn't seem to be any other lettered subclause. It looks as if there might be a page missing. Do you know whether that's the position?-- These were definitely two pages - Terms and Conditions - and I can't explain that.

Sorry, there is a (b) there. I missed it. It is right at the - the last line of the page, subparagraph (b)?-- Yes.

All right. So that is a complete document?-- That is the complete document.

MR MORZONE: Doctor, I omitted to mention at the beginning you are a duly qualified doctor, aren't you?-- I have a medical degree.

Okay. Doctor, we were referring to the CV and JHB2 is a copy of a CV again which has been obtained. That document has your company's logo at the top of it?-- That's correct.

Can I show you another document, and perhaps you can explain how your company's logo came to be on it?-- When we save the CV to our system, we imprint it with a copy of our logo so that there's no confusion when CVs are circulated around the hospital as to the source of that document.

Now, the document that I've handed to you is a document without the logo on it. Are you able to identify that document?-- It looks like the same CV.

Do you recall now which CV was sent through to you, or do you have a copy of the CV sent through to you by Dr Patel?-- I believe Dr Patel referred his CV on more than one occasion to our organisation. Initially, when he made the application through myself for the position, and then subsequently when he was being processed through the regulatory pathways, he sent a copy of his CV to a colleague of mine.

The document JHB2, has that been compiled in any way other than in a heading by you, or is it a replica of what Dr Patel said to you?-- Sorry, can you repeat the question?

Is the document JHB2 a document which has been compiled by you in any content, or is it a document which has simply been reproduced by you with your letterhead at the top?-- Purely reproduced.

Purely reproduced?-- Can I make the comment that this document looks as though it has been faxed - this one here.

COMMISSIONER: That's the document without your firm's letterhead on it?-- That's right, yes.

And would you have had that then retyped on your letterhead?-- No, he sent me a Word document via E-mail.

Right.

MR MORZONE: Are you able to say how the document JHB2 would relate to the document he sent to you by E-mail? Is it the same, is it different, or are you unable to say?-- It looks identical on first impression in terms of content.

Are you able to check that from your file there at the moment?-----

COMMISSIONER: I don't think there's any need to go to that trouble. I've seen the other copy and there are no significant differences anyway.

MR MORZONE: Thank you. You then refer to having sent that CV to the hospital, Dr Nydam later having informed you that he was interested in Dr Patel. Did you send any other documents to Dr Nydam at that particular time, that you can recall?-- Not that I can recall.

And you state then in paragraph 10 that between the 13th and 20th of October, Dr Nydam advised you - or Dr Nydam spoke with

Dr Patel, is that correct, as you understand it?-- That's correct.

And then Dr Nydam advised you on the 20th that the hospital wished to offer Dr Patel a one year contract?-- That's correct.

At that time - that is at the date of 20 December 2002 - had you forwarded to Dr Nydam any document other than the CV to the best of your recollection?-- To the best of my recollection, no.

COMMISSIONER: So, the decision to employ Dr Patel wasn't based on any references that had been provided at that time?-- On the basis of the interview, Dr Nydam indicated that he was interested in making an offer at which point I asked him if he would like to see some references and volunteered to do those references.

I'm afraid you will find that I'm going to be a little bit legalistic about this, but what you earlier said is that Dr Nydam told you that they wished to make an offer of employment. Was it more along the lines that they were interested in making an offer of employment?-- As I recollect from my E-mail correspondence, he stated that he wanted to make an offer.

Right.

MR MORZONE: There are attached to your statement a bundle of references which are JHB3. There are six references in total, and they bear a date - a facsimile date the 17th of December 2002?-- That's correct.

Do you recall how you came to obtain those references?-- They were sent to our office by Dr Patel himself.

And-----

COMMISSIONER: Did you notice at the time that all of those references were more than 18 months old?-- I did note at the time.

Did you follow up any inquiries to ascertain why the references you had been given were more than 18 months old?-- The references faxed by Dr Patel were sent to us as what we call open references - "To Whom It May Concern" - and within our organisation we consider open references useful in terms of presenting the candidate, but fundamentally not valid in terms of ascertaining the quality of the candidate and the credentials of the candidate.

If we go back to JHB2, the curriculum vitae of Dr Patel?-- Yes.

According to the information which he provided to you, his last employment had ceased in September 2001, which is about 15 or 16 months, I think, before the period of time we're talking about?-- That's correct, yes.

Did you seek any explanation for the fact that Dr Patel had apparently been out of medical employment for over a year?-- I did inquire as to why that was.

With Dr Patel?-- With Dr Patel.

And what did he say?-- He said that he was considering early retirement and had left Kaiser Permanente at that time, September 2001, but that he was now interested in working as a doctor again in other countries.

He was - at the time when he left Kaiser, he would have been aged about 50?-- Yes, that's correct.

People may have different views but that seems an exceptionally early age to be taking early retirement?-- In our experience, it is not unusual for US doctors to retire in their 50s. They tend to have made a significant amount of income during their careers and worked extremely hard in a very political environment. So it didn't strike me as unusual and it would be consistent with other candidates that we've had apply to us and I have spoken to since.

Do you attract a significant number of candidates from the United States?-- Not a significant number.

An earlier witness has raised the suggestion that in one sense you might feel suspicious about a candidate coming from the United States, given the very matter that you have mentioned-----?-- Yeah.

-----that medical salaries and incomes are well-known to be very high in the United States. Was that a matter that excited any concern on your part at the time when you received this application?-- It would be fair to say that when Dr Patel applied, we hadn't advertised in the States and had not received a huge number of applicants from the US. But in speaking to a lot of candidates since, we as an organisation have come to a similar view, which is that the motivations of the doctor wishing to come to Australia should be thoroughly investigated.

Please understand none of this is directed as criticism towards you or your organisation?-- Yeah.

Our concern is not to apportion blame, but to seek ways to ensure that these things don't happen again. And it seems, with the wonderful benefit of hindsight, that when you see a doctor who has been out of employment for over 12 months

coming from the United States and, as we later see, with incomplete documentation, that there are reasons why you might, in retrospect, have had suspicions about him?-- I agree.

D COMMISSIONER VIDER: I had a further point to that, Dr Bethell, and that was in the same area but just noticing that Dr Patel ceased employment at Kaiser Permanente in September 2001 but the references are either May or June 2001, that would indicate to me that perhaps there was some planning in his move. One doesn't always obtain references that many months in advance unless one has reason to anticipate resignation. Did you have any such knowledge in your discussions with Dr Patel?-- I did not.

Did that strike you as being unusual?-- Not at the time.

No, thank you.

COMMISSIONER: Again, with the benefit of hindsight, it does seem a little suspect?-- I agree.

Particularly when, just to follow up the Deputy Commissioner's point, a number of the references which are dated from May 2001 specifically refer to Dr Patel's recent decision to resign. And looking at the first document from Dr Ariniello - I think that's the first in the bundle - you will see that the second last paragraph refers to Dr Patel's recent decision to resign from the group. So it looks as if really he was leaving north-west Permanente in May of 2001 or earlier. Obviously that didn't-----?-- Not at the time.

-----strike a note of concern at the time?-- Not at the time.

No.

D COMMISSIONER EDWARDS: Did you speak to any of the referees personally by telephone?-- I did, yes. I spoke to two referees.

Were there any points in the referees' written reports that you asked for clarification upon?-- Did I ask for clarification?

Any points in the referees' reports, such as there does not seem to be, for example, much reference to his activities in the last year or so he was at his previous employment. Did you raise any point of concern in the referees' reports that would have made you ask questions of his former employer?-- In terms of the verbal references that I took, I followed our normal reference pro forma and, you know, I felt that there was ample opportunity for the referees to raise concerns during the process of that reference taking.

Did they raise any issues that made you be concerned?-- At the time, no. No, the references were glowing.

COMMISSIONER: I know we will be coming to this shortly, but

to follow up on Sir Llew's point, one of the referees used, according to your reference check document, the words "Sometimes took on complex cases handed to him by colleagues. Found it hard to say no." One might see that as glowing praise or a note of caution?-- It certainly seems ambiguous in retrospect, but at the time the whole feeling of the references was that Dr Patel was a very high quality candidate-----

I was going-----?-- -----in which you would have no hesitation to hire.

That would strike me as the sort of comment which an experienced placement consultant like you would assess based on, as it were, the vibes of what the person was saying to you; whether it was said in a tone of voice that implied a concern at his willingness to take on complex cases, rather than an endorsement or enthusiasm for the fact that he did so?-- It did not strike me that way at the time.

MR MORZONE: You have referred to Dr Patel having shown a general interest in working in Australia. Did he give any greater reason than that for coming to Australia?-- Really not. He was looking for an experience, working overseas.

I was asking about paragraph 10 and what Dr Nydam had possession of when he advised you on the 20th that the hospital wished to offer Dr Patel an appointment. In that paragraph you refer to having at that time received, and the facsimile notation would confirm, the six references from Dr Patel. You don't believe you had sent them on to Dr Nydam at that time, is that correct?-- I have no recollection of whether I sent them to Dr Nydam and I have no notes in my database to that effect.

Okay.

COMMISSIONER: Indeed, on the 20th of December you received explicit authority from Dr Nydam to offer the position?-- I can't recall at this stage whether it was explicit authority but there was certainly a strong intent to move towards that position.

Your statement refers in paragraph 11 to an email from Dr Nydam giving you permission to make an offer to Dr Patel. Is that email amongst the material we have here?

MR MORZONE: It is not, I don't think, Commissioner. There is the email JHB5.

COMMISSIONER: That's four days later.

MR MORZONE: That's four days later, yes. Do you have a copy of that email?-- Possibly.

Would you have it with you?-- Possibly. Yes, I do.

COMMISSIONER: I don't think we need to put it in evidence.

Can you just read out what it says?-- It says, "John, I have the District Manager's approval for a one-year contract. The HR folk have already left the building, so I'll get the letter of offer drafted first thing Monday. Happy Christmas."

The 20th was a Friday, it looks like?-- That was the 20th, yes.

I think it would be a good idea to get that into evidence. Maybe one of the Commission staff can get photocopies made so that this witness can keep his file complete. Do you mind making it available to one of the people there to photocopy?

MR MORZONE: Thank you, Commissioner. Sir Llew has referred-----

COMMISSIONER: Sorry, Mr King, make sure we have enough photocopies for everyone at the Bar table.

MR MORZONE: Sir Llew referred to reference checks, just for the matter of proof - seeing these are being put together after your statement - are the reference checks you are referring to, JHB4 documents, the two documents there?-- These documents are generated by Crystal reports, which is a program that takes information out of our database and puts them in a more compatible or more palatable format and these are the transcripts of the verbal references that I took.

Now, the bottom of those has a facsimile date 20/12/02 and your name on it. Do you know to where those were faxed - or is that a receipt fax or sending fax, do you know?-- It looks like a sending fax.

And is there anything to assist us with to whom it was sent? There is a number there but I don't-----?-- There is a number there. We didn't put forward these documents so I am not sure who presented them.

Okay. In any event, that marking is there-----

MR THOMPSON: If I can assist the Commission, the fax number which appears inverted at the bottom of those pages is in fact Wavelength Consulting Pty Ltd's fax number, so it is a sending fax number.

COMMISSIONER: Yes, it was faxed from Wavelength to someone.

MR MORZONE: You can't help us with whether or not that went to Dr Nydam or to Bundaberg Hospital?-- I have no - nothing in my notes to indicate that I sent him any transcripts but I would imagine that he would be the right person for me to send the faxes to.

All right.

COMMISSIONER: Mr Morzone, I don't think we have got to waste a lot of time on this because we have the Queensland Health file and it does contain these documents. So obviously they

were obtained from Wavelength at some moment in time. I think the two copies we're looking at here are ones which went to Queensland Health because I see they have got the barcode on them indicating that they have been supplied to this inquiry by Queensland Health.

MR MORZONE: Thank you. You refer then in paragraph 16 - paragraph 15 and 16 to applications which were made to the Medical Board and which included a number of documents, and there is a date in paragraph 15, 6th of January 2005. Should that be 2003?-- It should, yes. That's a typo.

Typographical error. Those documents have already been placed into evidence. Could I just ask you to have a look at, for your own purposes, a copy of exhibit MDG14 and MDG15, which is a statement of Mr Demy-Geroe?

COMMISSIONER: Mr Morzone, I don't think there is any need, unless there is some forensic purpose in showing this witness-----

MR MORZONE: There is not.

COMMISSIONER: No dispute about the authenticity of those documents as the ones that went to the Board.

MR MORZONE: There is not, thank you, Commissioner.

COMMISSIONER: In paragraph 17, doctor, you say in the last two sentences: "He subsequently sent us the original of this document, again without any attachment." That's the Oregon verification of licensure without any attachment. Do I take it you didn't notice at the time there was no attachment?-- We didn't notice.

No. Had you noticed, you obviously would have followed that up?-- As soon as I received a call from the Medical Board on the 8th of April, I contacted the Oregon Medical Board myself, the chief, to obtain a copy, which they have, including the attachments.

Thank you.

MR MORZONE: And can I ask you to just look at one other document for me, and it is a copy of a sponsorship for temporary residence document, a form 55 document. You refer to this form in paragraph 19. My interest in it is primarily on the second page. It has been suggested that the position had been advertised a number of times over the past six months and there had been no Australian applicants. The date that you refer to in your statement, which is the 14th of November 2002, was that the first time the position had been placed with you?-- It is the first time the position had been placed with us. I don't know the previous history of that-----

And-----

COMMISSIONER: Do you only do international placements or do

you also place Australian doctors?-- The majority of the business that we do, on a permanent side of our business, is with overseas-trained doctors.

When you say on the permanent side, you do some locum placements?-- We have a locum division which specifically places doctors within Australia.

All right. Normally an Australian doctor looking for a job in Australia would simply see the advertisement in the paper and make his or her own application rather than going through a consultant firm?-- That's correct. It would be - it would be much easier business for us if Australians were willing to come through our organisation, but they tend to organise work themselves locally and our clients come to us as a point of last resort.

MR MORZONE: And was in fact the position advertised at all by you, or was it simply placed or given to candidates on your register?-- From our organisation's perspective, as I mentioned earlier, it was either advertised - and I have no record of that - to our existing candidates or it wasn't. But we would never have submitted an advert to the public press.

In Australia, the local-----?-- In Australia, no. We would have - the adverts would normally have been conducted by our client prior to coming to us.

COMMISSIONER: Do you place - I am not sure if advertisements is the right word but do you place position vacant on your website so that doctors overseas viewing the website can look it up and say, "Well, they are after a surgeon for Bundaberg. I would be keen to get that job."?-- We had that facility at the time but at the time our website was not as sophisticated.

Yes.

MR MORZONE: I will tender that document, Commissioner.

COMMISSIONER: I think Mr King has come back with the other document we were talking about, if you want to deal with that as well.

D COMMISSIONER VIDER: Dr Bethell, you were familiar with the Medical Board's processes here, that the Act provides for restriction on title, not restriction on practice. So if they were seeking a senior medical officer, surgery-----?-- Yes.

-----that requires someone to be able to practise under supervision?-- That's correct.

You would expect there would be a Director of Surgery in a hospital such as Bundaberg that would be able to provide that supervision?-- I would expect that someone would be nominated to provide supervision for the doctor in the SMO position, whether that person was a Director of Surgery at Bundaberg, in other words, a fully salaried doctor, or whether it was a VMO or someone from another hospital, all those variations are

possible.

So you were aware that you were recruiting an SMO, surgery?-- In terms of?

Bundaberg?-- We were looking for someone to do surgery for Bundaberg Hospital.

Under that title, though, of senior medical officer, you were expecting that there would have been supervision available for this person?-- At the point where we were processing the candidate as a senior medical officer, yes.

Thank you.

COMMISSIONER: Just so the record is kept straight, Exhibit 43 will be the email from Dr Kees Nydam to this witness, Dr Bethell.

ADMITTED AND MARKED "EXHIBIT 43

COMMISSIONER: Exhibit 44 will be the sponsorship for temporary residence in Australia non-business in the name of Dr Patel.

ADMITTED AND MARKED "EXHIBIT 44"

MR MORZONE: You were party to submitting documents to the Medical Board. Was it ever the intention to have Dr Patel registered as a specialist or a deemed specialist?-- Never.

Okay. Now, the balance of your statement probably speak for yourself, so long as you are satisfied that the documents that have been attached to it are the documents which you refer to in your statement or are authentic documents. Are you satisfied about that?-- In the time you have given me to look at them, yes.

Okay.

COMMISSIONER: Well, I don't want there to be any doubt about that. We will be taking a short break during the afternoon and I would like you to check that to make sure-----?-- Yes, I will.

-----it is entirely in order.

MR MORZONE: The only other document I wish to draw your attention to is JHB9 which is a feedback form, as you refer to in your statement, received from the hospital?-- That's

correct.

And it is dated the 28th of April 2003 and down the bottom there is in bold type the name Kees Nydam with a signature X. Is that how the form comes back or is that a reproduced form, is it?-- Well, the form is submitted as a word document to our clients as part of our service and feedback on the service we have delivered to them. Under normal circumstances a client would print that out on a piece of paper, circle the numbers that they wish to circle, sign it and fax it back to us, but on this occasion Dr Nydam, I believe, merely highlighted the numbers that he wanted to highlight on the word document and emailed it back to us, and obviously he couldn't import a signature.

Those highlighted numbers, they are numbers in bold on that document, is that correct?-- That's correct.

Okay.

COMMISSIONER: That's the feedback form referred to in paragraph 22 of your statement, is that right?-- The feedback form, yes.

Yes.

MR MORZONE: Thank you, Commissioner.

COMMISSIONER: Thank you. We might take just a five or 10 minute break now and let you check that the documents attached to the statement are the exact ones you intend to refer to.

THE COMMISSION ADJOURNED AT 3.24 P.M.

THE COMMISSION RESUMED AT 3.38 P.M.

JOHN HUGH BETHELL, CONTINUING EXAMINATION-IN-CHIEF:

COMMISSIONER: Dr Bethell, have you had the opportunity to compare the copies attached to your statement, and can you confirm that they're the right documents?-- They are the right documents, although my counsel would like to raise another issue-----

MR MORZONE: I think there's some incompleteness that my learned friend Mr Thompson will take the witness through. There was one issue that I wished to ask this witness, if it please. Dr Bethell, do you recall whether or not there was any arrangement made with Dr Patel as part of the negotiations or terms of his employment that he would receive one return trip to the United States from Australia per renewal of contract?-- I have no recollection of that, and there is nothing in my recorded notes to substantiate it.

COMMISSIONER: Have you recently been - or your organisation, has it recently been contacted about that within the last couple of months, for example?-- No.

MR MORZONE: Do you have a recollection of being contacted about it towards the end of 2003?-- No.

Do you have a recollection of being contacted about it at any time after you received back the feedback letter from the hospital?-- Not at all.

Would there be any other person in your organisation who would have had knowledge of such negotiations such that any communications differently to what you have said are likely to have been passed back to the hospital?-- All negotiations pertaining to the offer were with myself, and no-one else in my organisation, unless they saw notes on the database to that effect, would have had any knowledge of such an agreement.

Are you able to recollect ever having a conversation with Dr Keating?-- I'm not sure that I've ever spoken to Dr Keating.

Thank you, Mr Commissioner.

COMMISSIONER: Thank you. Mr Thompson, the practice here has been that counsel representing a witness or a witness's interests has the opportunity to add further examination-in-chief and then to re-examine after everyone else has cross-examined. Does that suit your convenience?

MR THOMPSON: Thank you, Mr Morris.

COMMISSIONER: Thank you.

EXAMINATION-IN-CHIEF:

MR THOMPSON: Dr Bethell, you were asked by my learned friend and the Commission as to whether the documents which are attached to the statement which has now been tendered as your statement as Exhibit 41 were complete, and there was a qualification you mentioned. Does that relate to the CVs which were submitted by Dr Patel to your company?-- Are you referring to point 16?

I'm referring to Exhibit JHB2 which is attached to your statement, which is a CV from Dr Patel which has imprinted on it the Wavelength Consulting logo. Were there other CVs received by your company from Dr Patel?-- There was another CV received in early January as a result of a request by the administrative person that was handling the paperwork.

All right. Was that CV submitted for the purpose of lodgment with the Queensland Medical Board?-- It was.

And in the last couple of days have you had an opportunity to closely compare the two CVs, namely the one which is JHB2 attached to your statement, and the other CV which was submitted to your organisation for submission on to the Queensland Medical Board?-- Yes, as part of my preparation for this meeting I've looked closely at both CVs.

That the first time you've carefully compared the two?-- It is.

Now, the second CV, did that accompany various other documents, together with a handwritten note from Dr Patel in January of 2003?-- To the best of my knowledge, yes.

Could you just identify that note? I'm sorry I don't have multiple copies, because this issue has really just arisen, but we'll have copies made.

COMMISSIONER: Again, Mr King might be kind enough to organise copies.

MR THOMPSON: I'll pass up one copy to assist the Commission just for this passage of examination. Is that the handwritten note which accompanied the second CV sent to the person in your organisation who was concerned with attending to the administrative matter of submitting documents to the Queensland Medical Board?-- To the best of my knowledge that would be the document.

Would you look then at this CV, and are you able to identify that as the CV which was received from Dr Patel some time in January together with the documents mentioned in that handwritten note?-- That is the CV.

Did you notice on your examination of that document that there was - or there were a number of differences?-- I did.

And this is the examination you undertook just recently?-- Yesterday.

And was one of the differences that it identifies the position held by Dr Patel with the Kaiser Permanente - is that how it's pronounced?-- Permanente.

Portland, Oregon, as being until September 2002?-- That's correct.

COMMISSIONER: What was the difference? One said September 2000-----

D COMMISSIONER VIDER: 2001.

MR THOMPSON: The first one submitted, Mr Morris, to Dr Bethell's organisation was 2001, and this one was different in that respect, and in certain other respects.

COMMISSIONER: Yes.

MR THOMPSON: I'll tender, if it please the Commission, the second CV, if I could call it that, together with the handwritten note which accompanied it.

COMMISSIONER: To avoid confusion I will admit and mark as Exhibit 45 the handwritten list of documents supplied by Dr Patel to Wavelength in January 2003, and as Exhibit 46 the curriculum vitae supplied by Dr Patel to Wavelength in January 2003. Are those each accurate descriptions?

MR THOMPSON: Yes.

COMMISSIONER: Thank you.

ADMITTED AND MARKED "EXHIBIT 45"

ADMITTED AND MARKED "EXHIBIT 46"

MR THOMPSON: Can I just clarify that, Mr Morris, you've described one as December and one as January?

COMMISSIONER: I thought the handwritten list was also January.

MR THOMPSON: The handwritten list is January?-- That's January.

Together with the recent CV?-- The CV that has 2002 arrived in January.

COMMISSIONER: So both came in January 2003?-- The first CV was sent to my office in December.

Three documents - there's the CV attached to your statement which came in December 2002?-- That's correct.

Then in January 2003 you received two separate documents. One was the handwritten list of documents with the documents mentioned in that list?-- That's correct, and the CV with-----

And the new CV, if we can call it that?-- And the new CV, yes.

D COMMISSIONER VIDER: There was no correction, though, to the dates on the references. The references still stand as 2001, May and June 2001?-- Yes, the references were identical.

Thank you.

MR THOMPSON: Now, Dr Bethell, can I just clarify one other matter with you about your statement before I go on to some other matters. Could you go, please, to paragraph 36 of your statement? You were asked by my learned friend Mr Morzone whether there were any corrections to your statement, and I think we noted one typographical error in the course of your evidence earlier, but would you just look at paragraph 36, please? You will see that the second sentence of that paragraph is referring to the attachment public order on file which was omitted from verification of licensure provided by Dr Patel, and your statement says, "At the time of receipt of the document this did not appear to be significant." Just so it's clear, Dr Bethell, do you have any recollection at all of looking at the verification of licensure from Oregon at that time?-- I have no recollection of ever sighting it myself.

COMMISSIONER: It's not that it didn't appear to be significant, you didn't notice it at all?-- I didn't notice it.

MR THOMPSON: And to your knowledge was it noted by anyone else within your company?-- To my knowledge, I don't know.

Is it fair to say that the omission of that annexure first came to your attention when this Commission began - or at or about that time this year?-- It came to my attention when the Board contacted me on 8 April this year.

Can I then move on to something different. Firstly, Dr Bethell, you mentioned that you hold medical qualifications?-- That's correct.

Did you obtain those qualifications in 1990?-- 1990, yes.

In Aberdeen?-- That's correct.

And did you complete an internship in the United Kingdom?-- I did, yes.

And had you also undertaken some work as a Registrar in Psychiatry in the United Kingdom?-- That's correct.

Did you come to Australia in 1994?-- I initially came to Australia in 1991.

Did you go back to the United Kingdom after that?-- I did, yes. I returned to Australia in 1994.

And did you cease full-time clinical work in about 1995?-- 1995, yes.

And was that in connection with commencing your own recruitment business for medical practitioners?-- Whilst I was setting up my first business, I was continuing to work as a locum, but when I joined a large recruitment firm full-time I ceased medical practice.

And was that in 1996?-- That was in 1996, yes.

Was the recruitment firm that you joined Morgan & Banks?-- It was.

Is it the case that by 1997 you were the team leader for Morgan & Banks in their health care team?-- That's correct.

The business Wavelength, was that a business which you established in 1998?-- I did.

Initially as a partnership?-- As a partnership.

With Miss Ponsford?-- Yes.

And then was that subsequently incorporated as a company in about 2000?-- That's correct.

And just to deal with that company for a moment, could you tell the Commission how many staff are employed?-- Currently, including both directors, there are 14 staff members.

And about how many appointments does the company - or is the company involved in on an annual basis at present?-- At present we place about 250 permanent doctors per annum.

And I think you were asked by the Commission what number of those are overseas candidates. Is there a percentage?-- On the permanent side?

Yes?-- It would be in excess of 95 per cent.

In relation to the business that is conducted by your company, how much of that could we describe as repeat business?-- Most of it.

And so-----

COMMISSIONER: Sorry, repeat from the employer?-- From the employers, yes.

There are not many employees that come back?-- The hospitals and the general practices.

It's not repeating the same employees being placed?-- No.

MR THOMPSON: Thank you, Mr Morris. Can we just expand on that a little bit more. Could you give the Commission a general view, firstly, of the kinds of clients for whom your company recruits medical practitioners and the kinds of medical practitioners that it recruits?-- The majority of our clients are public hospitals throughout Australia and New Zealand, and the majority of candidates are - all candidates are doctors from the Junior House Officer or the RMO level up to specialist level.

We referred earlier to repeat clients?-- Yes.

That was clarified as repeat hospitals or employers, if we like?-- Yes.

How often, for example, would you seek medical practitioners for particular institutions? Is it possible to say once, twice, up to five or six times depending on the institution?-- Per annum or-----

Well, per annum?-- -----overall? Some clients we place upwards of 10 doctors a year with that client.

So does that repeat business have any implications for the kind of communication you maintain between your company and its clients concerning applicants, and in particular any matters that might emerge which adversely affect an applicant?-- In terms of issues that arise that suggest that the candidate is potentially a problem?

Yes?-- It's a matter of policy in our organisation to disclose fully and completely and early any issues that we feel are likely to impact on the client's decision to make the hire.

COMMISSIONER: Do I also understand that your company is one of a small number which are approved under a federal scheme whereby the federal government provides funding to state public hospitals to utilise your firm's services?-- No. There's a Commonwealth scheme that exists, but we're not party to that particular scheme.

Right.

MR THOMPSON: I think attached to Exhibit 41 as the last attachment there is a list of entities. Is that a list which you prepared or caused to be prepared for the purpose of this Commission?-- Yes, I was asked to provide a list.

Can you just quickly tell us what that list comprises?-- In detail or just in general?

Well, who are the entities which are listed there? Are they the only medical recruitment providers in Australia or are there others or-----?-- There are others, but I don't have specific knowledge of whether they work in Queensland.

So this is a list which comprises not necessarily a comprehensive list, but-----?-- It's not a comprehensive list, but it's one which I'm confident comprises agencies that work in Queensland.

COMMISSIONER: They're the major players that you compete with in the market?-- It includes some major players and some smaller organisations that I'm aware of in the Queensland market.

MR THOMPSON: Now, can I come, please, to paragraph 8 of your statement, Exhibit 41. You refer there to an initial discussion that you had with Dr Patel when you informed him of the position in Bundaberg?-- That's correct.

In that discussion did he say anything to you which might have caused you concern or raised any suspicions about his expertise or qualifications?-- Not at the time.

You subsequently received the CV which is attached to Exhibit 41, that is the first CV in December?-- That's correct.

And can I just ask you to go to that? Firstly, did you review what was stated in Dr Patel's CV?-- I did.

There are a number of qualifications which are listed on that document, but can I ask you to comment on a couple of them? There's reference there under "Education" to Diplomat of American Board of Surgery 1988, re-certified 1996. Could you explain to the Commission whether that reference had any significance to you at the time and what that significance was?-- Yes, the American Board of Surgery issues certification to specialists in the United States to practise as specialists. As a diplomat he would have had to have sat their exams to gain that qualification.

COMMISSIONER: The word "diplomat" is used in the American sense of meaning the holder of the diploma?-- Exactly.

MR THOMPSON: And is there some significance in "re-certified 1996"?-- It's not an automatic requirement, as far as I'm aware for doctors, to re-certify, but in the States they often do to bring their skills up to scratch and to add credibility to their practice.

What does re-certification involve?-- It involves, to my knowledge, an exam.

Is that set by the American Board of Surgery?-- It is, yes.

And what is the status of a Diplomat of American Board of Surgery? What was your understanding of its status as a qualification?-- It gave him the right to practise as a specialist in the United States.

Did you have any particular knowledge at the time of how well or otherwise such a qualification was regarded worldwide?-- It was our understanding that American qualifications of that level were roughly equivalent to Australian or UK qualifications at a similar level.

What Australian or UK qualifications are you referring to?-- The Certificate of Completion of specialist training which is issued by the Royal College of Surgeons in the UK and the Fellowship of Surgery which is provided by the Australasian College of Surgery and - the Royal Australasian College of Surgery.

The institution Kaiser Permanente, did that mean anything to you at the time?-- Didn't mean a lot to me at the time, but in subsequent research it appears to be a very significant private health care provider in the United States with a number of centres across several states.

In terms of the positions held, was there anything at the time which struck you concerning the level of Dr Patel's qualifications or expertise?-- Nothing struck me as out of the ordinary.

Did anything strike you as indicating that he was a good or otherwise candidate?-- He held a position as a staff surgeon for 12 years with the same organisation. He also held some academic positions which carries a degree of credibility and kudos with it, and he'd been the head of the surgery residency program which meant that he had a role teaching and mentoring junior and up and coming surgeons.

COMMISSIONER: He also seemed to be quite widely published?-- He was very widely published in some credible and internationally recognised peer review journals.

D COMMISSIONER EDWARDS: Not on his own publication, with other people?-- With many other people.

Quite a few people on each occasion?-- Yes, that's right.

It could have been that he could have been the junior of those?-- He could have been, yes.

Was that checked?-- No.

COMMISSIONER: Although on many occasions he's listed first, which tends to suggest that he was the team leader rather than the junior member?-- Possibly by himself in terms of-----

Yes, it may have been his choice to put his name first?-- Yes.

MR THOMPSON: Just dealing with those publications for a moment, Dr Bethell, if one looks at the CV, he states that he published in the journal entitled Surgery - I think it's the third from the-----?-- That's right.

What's the status, for example, of that journal?-- I believe it's a very widely acknowledged journal within the world of surgery. It's recognised as one of the main journals in that specialty.

Is it reviewed in the sense that it's peer judged, the contributions are peer judged?-- I understand that it is peer reviewed, yes.

Item 6, the reference to JAMA, is that a reference to the Journal of the American Medical Association?-- It is.

And how is that internationally rated or recognised as a journal?-- Similarly, it's very prestigious and widely read amongst the medical profession.

Are there any others there that strike you as being reputable and highly regarded international journals?-- Ones that I recognise are the Journal of Trauma and the Journal of Paediatric Surgery, which are - to my knowledge are amongst the most prominent in their areas.

When you had reviewed this CV in December, how did you perceive Dr Patel then as a candidate?-- On an initial reading of his CV he appeared to be a very highly qualified and experienced surgeon.

Nothing in the CV caused you any concern about his qualifications or experience?-- The only thing that drew my attention was the fact that his work had finished since September 2001, and I specifically asked him about the reasons for that and he informed me that he was in the process of retiring.

COMMISSIONER: Again without implying the slightest criticism - and I mean that quite sincerely - with the benefit of hindsight, it does look a bit too good to be true, doesn't it?-- It does, yes.

MR THOMPSON: Did you raise the matter that he had not worked for yearly a year in an email to the Bundaberg Hospital, Dr Nydam, which I think is Exhibit 43?-- I did, yes.

All right. Now, you mentioned that you had some telephone discussions with two of the referees that had been nominated or had given references in respect of Dr Patel. The two that you spoke to appear to be the two which he had referred to in his application to the Medical Board. Did you have some discussion with him about which referees you should seek a reference from?-- I asked Dr Patel to nominate some referees for me to call and he nominated three referees, all three of whom included doctors that had sent - that had provided him with "To Whom It May Concern" references.

What was the practice at that time of your company in respect of ringing and verifying written references received in respect of candidates seeking employment through your company?-- Our requirement for specialists was a minimum of two verbal references, although there was no upper limit. If there were any concerns that we felt, we would still do further reference checking until we were satisfied.

I think the references you spoke to were a Dr Feldman and Dr Singh?-- That's correct.

And Dr Singh, I think, was an anaesthetist who worked quite regularly with Dr Patel or said he had worked quite regularly with Dr Patel?-- Yes, I believed he worked once or twice a week.

All right?-- Over the period of 10 years.

Now, as a consequence of this Commission of Inquiry, have you extracted the telephone records which confirm the dates and times of those conversations?-- I have done.

COMMISSIONER: I don't think we need to trouble you with that, Mr Thompson, unless there is some challenge to the evidence.

MR THOMPSON: Thank you. Was anything said in the course of those conversations which caused you any concern?-- Not at that stage, no.

And if anything had been said which caused you concern, what would you have done about it?-- At the time I would have followed a line of inquiry around those issues and depending on the outcome of that, I would have sought and pursued further references around those issues.

Now, we arrived, I think, at a position on or about the 20th of December 2002 or 24 December 2002 in which it appears a decision had been made to offer an appointment to Dr Patel?-- That's correct.

After that point, was it necessary to take some steps for him to become registered as a medical practitioner in Queensland?-- To become registered as a medical practitioner in Queensland, he needed to be submitted to the Queensland Medical Board administration.

What role does your company have in that process?-- Our role is an administrative role to assist in the collation and submission of documentation, which is part of the service which we offer to our clients.

Is that something which you'd normally handle personally yourself, or do you have staff who deal with that?-- At that time in our business, we might - my co-director and myself had a staff member who looked after the administrative paperwork.

And that was a process of providing Dr Patel with the relevant application form and for him to provide your company with forms which may be required by the Queensland Medical Board?-- And the Immigration Department.

And the Immigration Department?-- And any other body that required them as part of the process.

Was the Oregon Verification of Licensure the document which was received in that process?-- It was the main sheet of it, yes.

Now, you have, I think, looked at the attachments which form part of the Oregon Verification of Licensure document?-- Subsequent-----

As a consequence of these proceedings?-- That's correct, yes.

And there is-----

COMMISSIONER: I think it is said as a consequence of the Medical Board contacting him.

WITNESS: Yes, that's right.

MR THOMPSON: Sorry. Perhaps I don't need to take you to it, but there's a reference to an annexure which, of course, was not there?-- That's correct.

And there's a reference immediately below that to an endorsement which said, "No limitations"?-- That's correct.

Had you had any previous experience in relation to practitioners from the United States and, if so, what experience was there?-- The only previous doctor I can think of was one that coincidentally came from Oregon earlier in 2002.

And do you have some knowledge of the way in which Certificates of Good Standing are issued for practitioners in the United Kingdom, Australia and New Zealand?-- Yes, I do.

If there is some impediment to or qualification to the practitioner conducting practice imposed by a Medical Board in one of those jurisdictions, is it the case - or what is the position with respect to Certificates of Good Standing?-- My understanding is that the Certificate of Good Standing is only issued if the applicant is in good standing and is refused if

they are not.

COMMISSIONER: In this instance, to be fair, we have already been told by representatives of the Medical Board that this form of document was quite different from what they were used to, and when you look at a document which says, "Limitations: None. Extensions: None.", the words "Public Order on File" don't really carry much meaning. Would that be consistent with your experience?-- That would be consistent, yes. Having scrutinised the document as a result of, you know, the Board's notification in April, my own views were that the reference was vague and ambiguous.

Yes.

MR THOMPSON: Have you ever come across the words, "Public Order on File" on any other certificate?-- It means nothing to me.

Now, as a consequence of - well, I'm sorry, I withdraw that. Following the appointment of Dr Patel, you have referred earlier in your evidence to a document which was completed by Bundaberg Hospital which contained a series of responses in relation to various performance characteristics of your firm or performance indicia of your firm or your company in placing Dr Patel. I think that's attached to the statement, Exhibit 41?-- Yes.

And in addition to that, did you or did your company get feedback from the Bundaberg Hospital concerning Dr Patel's performance, and did your company maintain contact with Dr Patel after his appointment?-- Yes, it is normal part of our procedures to follow up calls at one and three months, which were done in this case, although an additional call was made by a staff member after one week, or in less than a week after he started just to make sure he had arrived and was settled.

All right. I'm just going to show you a bundle of documents. Can I pass three copies up to the Commissioners? Are they documents which are generated by your company's computer-----?-- That's correct, the database.

Now, they have been printed off the computer at the date which appears on the bottom left-hand corner, which is the 16th of April 2005?-- That's correct.

But the entries were made on the dates entered, presumably, which is immediately above that?-- That's correct.

And do those record a series of contacts, firstly with Dr Patel, and then with the hospital - sorry, I have got that out of order. I think the first one is dated the 4th of April-----?-- 4th April. The first one is with a representative of the hospital.

Yes. Then the next one after that is also the 4th?-- That's correct, and that's with Dr Patel.

And then there's another one in May of 2003?-- That's correct.

And another one with Dr Patel, the same day?-- On the 8th of the 5th - is it 2003 - yes.

And then there's one of 8 July 2003; is that right?-- That's correct.

It seems to be entered on a date which says, "Entered 31 December 2002." I'm not quite sure - all of them seem to have an entered date?-- The reason - I can explain that. The reason why it says "entered" there is that these are already generated at the time of placement and the placement was logged in the database on the 31st of the 12th, 2002.

And is it the usual practice of your company to record the responses or report on the candidate and your customer's - your client's response to the candidate?-- It is, correct.

I tender that bundle as a bundle, if it please the Commission.

COMMISSIONER: The bundle of documents will be admitted and marked Exhibit 47 and I'll describe them as - generally as feedback from Bundaberg Base Hospital to Wavelength regarding Dr Patel.

ADMITTED AND MARKED "EXHIBIT 47"

MR THOMPSON: Now, I think the Commission asked you to - or asked you to comment on Australian candidates for positions such as the Bundaberg Hospital position which was given, in this case, to Dr Patel. Can you, in your - based on your experience, perhaps inform the Commission of what is the situation about filling positions such as this one at Bundaberg and other regional centres in terms of the availability of Australian qualified medical practitioners and overseas medical practitioners?-- The position in our experience is that at any given time around the country there are a wide range of specialist positions that have not been filled by the hospital's own efforts in advertising, and at the point where they have failed to fill that job, they will do one of either two things: they will either try to advertise themselves overseas, or they will come to a specialist agency such as ourselves.

Is it your experience that these positions have been difficult to fill with Australian medical practitioners?-- Certainly that is what our clients report to us, that they have advertised and had either none or very limited response to their advertising, and usually on two occasions, which tends to be a requirement for Area of Need.

And you mentioned earlier that you place somewhere in the vicinity of 250 candidates annually?-- We do. The majority would be junior doctors in fixed-end contracts of six to 12 months.

Are they predominantly in regional areas or metropolitan areas?-- The majority would be in regional areas, but it can range everywhere from metropolitan to remote.

Thank you. That's the evidence, Commissioner.

COMMISSIONER: Thank you, Mr Thompson. Dr Bethell, based on your - I think it is close to 10 years' experience in - as a placement consultant with medical practitioners, there are some general matters that I would ask your assistance on. Obviously if it is outside your knowledge, feel free to tell us that, but we have been told some things, and it may be that you are able to confirm them or deny them or shed some light on the things I'm going to mention to you. The first proposition is that there's a worldwide shortage of doctors. There just aren't enough doctors to go around anywhere in the world; is that your experience?-- Very much so, and I would suggest that that crisis is deepening around the world.

The second proposition is that Australia is a poor competitor in the international market for doctors because we are offering lower salaries paid in Australian dollars as compared with salaries available particularly in North America and Europe, including the UK?-- Over the 10 year period that I have been in this area, that's become increasingly the case, particularly with the UK. Prior to recent negotiations in the UK, salaries there were at a lesser level or comparative to Australians, but in the last three or four years, that trend has reversed.

The third proposition follows from the first and second, and that is that Australia tends to have a lot of difficulty in attracting medical practitioners from first world countries and that the pool of applicants available to Australia tends more commonly to be from second or third world countries?-- I would say in terms of attractiveness of Australia, that would be a correct statement.

Yes. But also in terms of numbers of applicants - that there are very few or comparatively few prepared to give up practice in the United States or Canada or Continental Europe or the UK to come to Australia as compared with parts of Asia or Africa, for example?-- That would be the case, yes.

I think to qualify that last point, it has been suggested that there is an exceptional group of international candidates, being mainly English medical graduates, who choose to spend a year or a couple of years in Australia, and there is a pool of those sorts of graduates who are available to come to Australian hospitals, but that's really quite a separate category from those seeking permanent employment in Australia?-- It is a separate category, although that pool is drying up as well as salaries in the UK have leapfrogged

Australia.

The next proposition then is that with all these difficulties in attracting suitable candidates to Australia, there has been an increasing tendency to rely on sources that have not been traditional sources for doctors coming to Australia. Some of the countries that have been mentioned are countries like Cuba, Albania, countries in the Middle East, South Asia and even the African continent; is that your experience?-- Not our direct experience, not in terms of our own practice. I mean - but in terms of our knowledge of what's happening in the market place, we would probably see a trend in that direction, but we don't have - we don't have much direct contact with doctors that work in hospitals apart from the ones that we place.

Right. The next proposition then is that with this critical shortage of doctors and difficulty in obtaining doctors to come to Australia, Queensland is less competitive than other Australian states - I'm speaking only of the public sector, not the private sector - Queensland is less competitive because public sector salaries here are less attractive than in other parts of Australia. Are you able to comment on that?-- If you compare the medical State Awards that are issued by the various Departments of Health, the overall base salaries do appear to be slightly less for Queensland than some other states, particularly New South Wales and Victoria, although reasonably comparable with the other states, although with packaging options and payments in lieu of private practice, quite often the Queensland packages can be made more attractive.

Well, one suggestion we have heard, and perhaps you could comment on this particularly, is that whilst the Queensland packages appear superficially to be quite attractive, so that an applicant will be told that he or she has a package of, shall we say, $200,000, when you look closely at what that involves, there is, for example, a component taken into account to represent the fact that Queensland public hospital doctors don't need to take out private medical insurance, so that's one of the components that is factored into the package, and that when one identifies the various components in the package, it is not really as attractive as it seems at first blush?-- I would say that is the case, although that does happen in other states as well.

Right. The effect of all of that, it has been suggested to us, is that with the starting position that there is this world shortage, that Australia is not attracting the best applicants on a world scale and then Queensland isn't attracting the best applicants on an Australian scale. We are actually in a fairly desperate position in terms of getting foreign trained doctors to come to work in Queensland public hospitals?-- Mmm.

Can you comment on that?-- I think that's a fair comment, yes.

In this case, what we have seen is that Dr Patel - his position was advertised as an SMO - Senior Medical Officer at the hospital. He was registered with the Medical Board to be a Senior Medical Officer, but as soon as he arrived at Bundaberg, or virtually as soon as he arrived at Bundaberg, he was immediately given the position of Director of Surgery, which traditionally would be a specialist position. Is this a unique occurrence, as far as you are aware, or have you seen other instances of doctors being recruited for a - an apparently lower position in the hierarchy, but given very quickly a position which corresponds with a specialist position?-- I would say that that specific scenario is not one that I have seen elsewhere, although I might make the comment that around Australia there are a number of people who don't have specialist qualifications who go by the title of Director of any particular unit, and what that tends to imply is merely that they have a greater administrative workload, rather than that they have attained specialist qualifications, and the reason, as I can see it, behind that is that there simply aren't any specialists to fill the role. In particular, in emergency medicine, there are a lot of emergency departments around the whole of Australia run by SMOs, or career medical officers as they are called in New South Wales.

From what you have told us, had this position been provided to your company by Queensland Health or by the Bundaberg Hospital as a Director of Surgery position, you would have applied more strict or rigorous requirements in the recruitment of a person to fill the position - that's not to say that Dr Patel mightn't have been on the list, but you would have been more rigorous in obtaining the suitable person?-- In order to qualify to be Director of a surgical department, as a specialist he would have had to have gone through the assessment process by the Royal Australasian College of Surgeons and we would have submitted him through that process had we been presenting him as that sort of candidate, and that's a service we provide to our clients around Australia all the time.

I'm not sure whether you can comment on this, but given your experience in dealing with the College of Surgeons, one suggestion that has been made is that Dr Patel deliberately avoided going down that route because the greater scrutiny that he would have experienced in an application to the Royal College of Surgeons might have resulted in his history in the United States coming to light. Are you able to say whether there is that higher level of scrutiny?-- There certainly is a higher level of scrutiny in terms of going through the College process. As to whether Dr Patel deliberately steered us away from that pathway, I can't comment. I can't speculate as to his thoughts at the time.

It has also been suggested that there are some attractions to a health authority such as Queensland Health or individual hospitals in Queensland Health in having an overseas trained doctor such as Dr Patel who is in an area of need and has special registration in that capacity, because the practical

effect of all of that is that he becomes a bonded slave to Queensland Health. He can't work for anyone else if the conditions aren't satisfactory. He can't go down the road to the Mater Hospital and get another job, he can't go into private practice. His only option really is to pack his bags and go back home. Is that a fair statement?-- In our experience, dealing with our clients, I would say that our clients would always prefer an Australian candidate over an overseas trained doctor. The requirements to bring a doctor in from overseas are fairly onerous, and it is not something that most hospitals undertake lightly, and further to that there's a strong risk that the doctor in question may have to leave the country after a year, or they are always likely to leave on their own volition to go back to the country of origin. So, there's a big investment that can take up to a year to process, only to lose that doctor a year later and have to start again. So, in our experience, I would say that that's not our understanding of the situation.

I have seen advertisements, not in Queensland, but in the public health sector in other parts of Australia, where applicants are invited on the footing that they will be given a - in effect, a part-time position as a visiting medical officer, say, working three days a week or two days a week in a public hospital, and even though the relevant public health authority isn't able to offer a particularly high salary by private sector standards, there is then the potential to make up the difference by working two or three days a week in the private sector. Is that a common form of filling positions in the public hospital sector?-- Can I just clarify, are you asking about for the recruitment of overseas doctors or just in general?

Just in general?-- Yes, that's very common, yes.

From your experience, would that be likely to produce more attractive - sorry, that word is not the best word - a better quality of doctors, and particularly Australian-trained doctors at public hospitals than the system of recruiting from overseas?-- I would say that Australian doctors would certainly be more attracted to an offer that includes a greater degree of flexibility and greater remuneration package, yes.

Doctor, I should have asked were you planning to stay in Brisbane overnight?-- I have a flight booked at 9 p.m.

9 p.m.?-- Tentatively.

All right. Looking around the Bar table, is there anyone going to have lengthy cross-examination for Dr Bethell, because if there is, I am afraid we will have to adjourn until tomorrow, but if you are expecting to be quick we might try and finish tonight.

MR BODDICE: Doing the best I could, I would think I could be up to a half an hour?

COMMISSIONER: Anyone else? Mr Mullins?

MR MULLINS: 15 minutes, depending upon what Mr Boddice asks.

COMMISSIONER: Yes, indeed. Anyone else?

MR ASHTON: I have some questions, Commissioner, but they might be from one minute to 20 minutes, depending on what the others ask.

COMMISSIONER: Of course, that's always the difficulty.

MS McMILLAN: Just a couple of questions.

MR DIEHM: I don't have anything at the moment, Mr Commissioner.

MR ALLEN: Nothing from me.

COMMISSIONER: Sounds as if it is going to add up to an hour plus, doesn't it, being realistic.

MR BODDICE: Yes.

COMMISSIONER: Particularly with injury time from the Bench we have always got to factor in. All right. Well, perhaps I will ask my colleagues if they have anything they want to ask before we adjourn.

D COMMISSIONER VIDER: I don't.

D COMMISSIONER EDWARDS: Dr Bethell, could I ask you have you gone back to the referees that gave you reasonable referees' reports?-- I have.

And what was their response to what has been alleged about Dr Patel?-- I spoke to Dr Singh initially and I gave him a brief outline of what was happening in Australia and he expressed some surprise. I personally didn't want to engage overly in a discussion in case it became confrontational, so I asked my lawyer to contact him and take a statement on two issues: (1), if they recall speaking to me, just to confirm that it was a general reference, and also if they were aware

of Dr Patel's disciplinary action in Oregon, and Dr Singh apparently reported that he did remember speaking to me but he was not aware of any disciplinary action against Dr Patel in Oregon, and Dr Feldman remembered speaking to someone in Australia and declined to comment on the second question. He declined to comment on whether he was aware of the disciplinary action.

In your submission to us, you say in paragraph 17 that on both occasions his documents were without any attachment?-- That's correct.

Surely that was a note of warning that something may have been deficient in his performance, qualifications, or his record of practice in retrospect?-- I can't disagree with your comment, yes.

Have you had that done before? Have you found that in any other applicant from a similar country before?-- I think given the fact that our experience was that the document was either issued or wasn't, we took it that if we received a document, particularly one without strongly-worded warnings, that we were, you know, I guess misled into thinking that everything was okay.

Did I hear you say that you considered his qualification, or some people did, equivalent to the Australian Fellowship; Fellowship of the Royal College of Surgeons?-- I think it is a general understanding that qualifications from the United States and Canada and the United Kingdom, Australia, New Zealand are all roughly on par. Now, his primary degree is obviously not.

But isn't it true that there are some States in the United States, including perhaps one or two - one to which you referred that may not have an extremely high level of post graduate surgical qualifications, certainly in the equivalent to RFS, FRCS, or FRACS?-- My understanding is that the American Board of Surgery is a national body of the United States.

COMMISSIONER: I think to be fair, Sir Llew might not have picked it up when you said it was equivalent to the Australian college. You were talking specifically about the American Board of Surgery?-- The American Board of Surgery is what I was referring to, yes, as opposed to any individual State qualification or certification.

D COMMISSIONER EDWARDS: Could I just go back to this point of no attachment?-- Sure.

Why did you not follow that through, and surely the health department should have expected that to be done?-- We didn't notice the fact that there were no attachments.

You didn't notice that there were no attachments?-- We didn't notice, no.

Is that common in your organisation?-- No, it is a unique event.

Thank you.

COMMISSIONER: Gentlemen, ladies, I am very reluctant to keep the doctor here overnight. How would everyone feel about continuing till 5.30? Would that be a problem or does anyone have conferences or commitments to go to?

MR ASHTON: For my part I have a conference at 4.45, Commissioner. It is not the end of the world, of course.

COMMISSIONER: But you do have some questions for the doctor, don't you?

MR ASHTON: Yes, I do.

COMMISSIONER: There is little point starting for 10 minutes, is there, Mr Boddice?

MR BODDICE: I think that's probably right.

COMMISSIONER: I am very sorry, doctor. We have Dr Molloy coming back tomorrow evening, don't we, resuming at 4.30?

MR ANDREWS: Yes, Commissioner that's correct.

COMMISSIONER: But I would be very reluctant in particular to keep Dr Bethell here till tomorrow afternoon doing nothing at all. Why don't we proceed on the basis that we will resume at 9.30 tomorrow and at least finish his evidence and work out where we go from there. Will that suit everyone?

MR BODDICE: Yes.

MR ANDREWS: I believe there is a witness who can follow Dr Bethell conveniently tomorrow,-----Dr.

COMMISSIONER: We have received a statement from Dr Kees Nydam. Is that who you had in mind?

MR ANDREWS: Yes, Commissioner.

COMMISSIONER: All right. Is that in order?

MR BODDICE: Yes, he came down from Bundaberg today and we had arranged for him to stay overnight.

COMMISSIONER: Yes.

MR BODDICE: So he could give evidence tomorrow.

COMMISSIONER: That's excellent. The other thing I was wondering, Mr Boddice, if you could assist us, I understand that one of our team, one of our counsel assisting has been in contact with Dr Lennox with a view to taking a statement from him. What emerged when that happened was that in fact those

who instruct you have already obtained a fairly detailed statement from Dr Lennox, so if that could be circulated then we might see if we could arrange for him to come down probably on Friday.

MR BODDICE: Yes, I can make some inquiries.

COMMISSIONER: In any event, if you can liaise with - I think Mr Atkinson has control of that particular matter. So if you liaise with Mr Atkinson we will see what can be done there.

MR BODDICE: Yes, because we also had Ms Huxley's, which is the Area of Need, which has been distributed and we were going to call her as well. But, of course, with Dr Molloy coming tomorrow afternoon and Dr Nydam, we would have had to sort of work out what's left in terms of time for the week, I suppose.

COMMISSIONER: Yes, all right. We will resume at 10 o'clock tomorrow morning. And just work through the day and then we might have a late start on Friday to make up for that.

MR BODDICE: Commissioner, you said initially 9.30 and you said 10 just then.

COMMISSIONER: I did, didn't I.

MR BODDICE: I am happy for 10, I am not-----

COMMISSIONER: Well, look, if we resume at 10, and that will then give Dr Bethell an assurance that he should be able to get on a plane at lunchtime, if that's suitable.

WITNESS: Yes.

COMMISSIONER: Does that fit with you, Mr Thompson?

MR THOMPSON: Thank you, Mr Morris.

MR DEVLIN: Would your Honour-----

COMMISSIONER: One at a time. Mr Andrews?

MR ANDREWS: I was going to alert you that Mr Devlin has a submission he would like-----

COMMISSIONER: Yes, Mr Devlin.

MR DEVLIN: Two people better doing it than one. I would like to hand up some written submissions in view of the events that occurred at lunchtime today with a member of the public.

COMMISSIONER: Oh, yes.

MR DEVLIN: The submissions address nothing but what's on the public record. There is a chronology that is simply drawn from a judgment of the Health Practitioners Tribunal. I don't seek to address the matter in public at this stage out of deference to the lady concerned, but I do make a solemn

submission that the practice of the Commission in seeking or allowing members of the public to ask questions from the Bar table, in my respectful submission ought to be revisited before - particularly before the Commission goes to Bundaberg.

COMMISSIONER: Yes.

MR DEVLIN: My submission in short would be that although it is a commendable demonstration of the transparency of the inquiry, the time-honoured course is to continually exhort members of the public to seek out those who assist you, to give their accounts, where those accounts can be weighed against other known facts, and I have included in that submission on behalf of the Medical Board salient material on the public record which might assist you in evaluating what I have to say.

COMMISSIONER: I will regard myself as very appropriately rebuked by those remarks, Mr Devlin.

MR DEVLIN: It wasn't intended, Mr Commissioner-----

COMMISSIONER: I know it wasn't, Mr Devlin. It was an experiment and I think perhaps what occurred before lunch showed some of the dangers involved.

MR DEVLIN: Indeed.

COMMISSIONER: In future, I will think about this overnight and discuss it with the Deputies. But in future it may be more convenient at the same stage of each witness's evidence to advise members of the public that if there are any issues they would wish to have raised with the witness, they should approach counsel assisting or one of the staff of the inquiry and we will make sure we have staff of the inquiry available to do that.

My concern - and I make it perfectly frank - is that there is a perception - a belief in parts of the community that the tentacles of government spread to every sector and there is even a sense that if people speak with counsel assisting or the staff of the inquiry, that they are not - their story is not getting through. I can only reassure everyone that those involved in running the inquiry have been handpicked by me and the Deputy Commissioners as being people of absolute integrity and competence and totally independent of any form of governmental control, but I would still like to leave an avenue open for members of the public, who feel that their story is not getting across, to have the opportunity to make sure it comes straight to the inquiry, and perhaps we will be able to work out some other way at some stage of proceedings people who feel that they haven't been fairly heard will be given the opportunity to. But I take on Board what you say, Mr Devlin, and, as I commented this morning, you are probably within at least the leading two or three practitioners in this State in terms of your experience with inquiries of this nature and your comments are very appropriate and are taken on Board.

MR DEVLIN: Thank you.

COMMISSIONER: Anything else?

MR ANDREWS: Nothing further, thank you, Commissioner.

COMMISSIONER: What I will do - I won't mark this as an exhibit at the moment because I am not even sure that any of it falls within our Terms of Reference. So I will simply accept this as a submission to the inquiry and if it is to be taken any further, then of course, Mr Devlin, you will be heard on that, and the lady Christina Wong will likewise be given an opportunity to be heard, either personally or through a representative of her choice.

MR DEVLIN: Thank you.

COMMISSIONER: We will adjourn till 10.00 a.m.

THE COMMISSION ADJOURNED AT 4.43 P.M. TILL 10.00 A.M. THE FOLLOWING DAY