

Bundaberg Hospital Commission of Inquiry

25 July 2005

Dr Steve Buckland
Director-General, Queensland Health
19th Floor, Queensland Health Building
147-163 Charlotte Street
BRISBANE Qld. 4000

by facsimile number 3234 1482

Dear Dr Buckland,

RE: "LEAKING" OF INFORMATION TO *THE AUSTRALIAN*

I acknowledge the receipt, on 21 July 2005, of your letter dated 18 July 2005.

The purpose of your letter is obscure. You confirm, in the penultimate paragraph, that you "have already stated we do not believe the information came from Queensland Health". You offer no explanation of the reasoning (if any) which underlies this belief; nor do you claim that it is the result of any investigative process; nor do you provide any alternative suggestion as the source of the information obtained by *The Australian*. Yet you seek my "assistance in conducting an internal investigation" regarding something which you already "believe" never happened.

On five (5) separate occasions since the inception of this Commission of Inquiry, information has been "leaked" to Sean Parnell of *The Australian*, in circumstances where:

- the only plausible source of the "leak" was your Department; and
- the only conceivable purpose for the "leak" was to undermine public confidence in the Commission of Inquiry.

In summary, the five (5) occasions are:

- (1) Disclosure of my meeting (in company with Counsel Assisting) with Dr Gerry FitzGerald, your Chief Health Officer;
- (2) Disclosure of the fact that Dr Peter Miach had failed to obtain recognition in Queensland of his specialist qualifications in Victoria.
- (3) Disclosure of selected contents from a preliminary draft (or interim) version of the "Woodruff Report".
- (4) Disclosure of my meeting with the (then) Acting Premier, Mr. Mackenroth, and the (then) Health Minister, Mr. Nuttall, to discuss the "leak" referred to in item (3).

Commissioner
Anthony Morris QC

Deputy Commissioners
Sir Llewellyn Edwards AC
Margaret Vider RN

Counsel Assisting
David Andrews SC
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- (5) Disclosure of information regarding the dinner attended by a number of staff of the Commission of Inquiry, at which two journalists conducted a comedy sketch involving a mock "awards ceremony".

It is apparent that some of these "leaks" could have emanated from sources other than Queensland Health, although it presently appears that item (2), and possibly some of the other items, could only have come from within Queensland Health. In any event, Queensland Health is the only possible source which is common to all five items. That fact has to be considered in light of the question: who, with access to such information, would have an interest in "leaking" it?

Let us now consider the five "leaks" *seriatim*.

Leak (1)

The meeting with Dr Fitzgerald took place at a private club. Present were Dr Fitzgerald, Counsel Assisting, and myself. I have not discussed it, and nor has Counsel Assisting, with anyone outside the Commission of Inquiry. I sincerely doubt that Dr Fitzgerald had anything to do with "leaking" this information. But I have no doubt – and I am sure that your investigations will confirm – that the fact of this meeting was known within Queensland Health, at least at the highest echelons.

It can be inferred that someone with Queensland Health, not being familiar with the way that Commissions of Inquiry operate, thought that there was something sinister or improper about this meeting, and sought to embarrass me (and perhaps also Dr FitzGerald) by disclosing it. And that person found a ready recipient in Sean Parnell, who touted the meeting, in the columns of *The Australian*, as something untoward.

My confidence that Dr FitzGerald had nothing to do with this "leak" is enhanced by the fact that he, more than anyone else, is aware that nothing contentious was discussed at our meeting; that it was merely a "background briefing" on medical and administrative issues. Interestingly, although I had similar meetings (in similar circumstances, and at similar venues) with seven other medical practitioners, the only one which resulted in such a "leak" was the one recorded in an "appointments diary" at Charlotte Street.

Leak (2)

Dr Peter Miach has been an important witness in proceedings of the Commission of Inquiry to date. You are doubtless aware of this fact, given that counsel representing Queensland Health before the Commission of Inquiry would have required your explicit instructions regarding the cross-examination of Dr Miach, especially in relation to any proposed attack on Dr Miach's character or credit.

It appears that Dr Miach's oversight was discovered by the Queensland Health officers – Drs Mattiussi, Wakefield and Hobbs – who, along with Dr Woodruff, comprised the "team" (appointed by you) which compiled the so-called "Woodruff Report". According to the contents of that Report, the members of the "team" (apart from Dr Woodruff) chose to review personnel files, including Dr Miach's, whilst visiting Bundaberg Base Hospital between the 19th and 22nd of April and the 9th and 13th of May. It is not

immediately apparent how this was connected with the "team's" terms of reference, of which you were the author.

They did not, however, bring the discrepancy to the attention of Dr Miach, for whom it would have been a very simple matter to rectify immediately. Indeed, it does not seem to have been mentioned to anyone (other than Parnell) outside Queensland Health's "Corporate Office", before it was revealed in the pages of *The Australian* on 11th June. It is difficult to avoid the conclusion that somebody within Queensland Health – and I do not suggest that it was necessarily any of Drs Mattiussi, Wakefield and Hobbs – saw an opportunity to harm the work of this Commission, by discrediting one of its principal witnesses.

Leak (3)

As you know, selected contents from a preliminary draft (or interim) version of the "Woodruff Report" were leaked to Parnell, and details appeared in *The Australian* on 16th June 2005.

It can only be surmised that Sean Parnell was chosen to receive this "leak", on the footing that he – alone amongst journalists covering the story generally – could be trusted, from the viewpoint of Queensland Health, to put a "positive spin" on the information. If such an expectation existed, it was fully realized in the article published in *The Australian* on 16th June, which was entitled "DR DEATH'S ERROR RATE 'WITHIN LIMITS'," and stated that the draft contained a finding that Patel is "to blame for only [emphasis added] 13 of 124 patients". In fact, the draft – like the final version – indicated that Patel was responsible for at least double the number of adverse outcomes mentioned in Parnell's article, and possibly as many as four times that number.

Once again, it is difficult to avoid the conclusion that somebody within Queensland Health was anxious to have the contents of the draft "down-played" before it became generally available.

Leak (4)

I am assured by Mr. Mackenroth that he has not disclosed to anyone, and that Mr. Nuttall has only disclosed to his top Departmental officers, the meeting which we had to discuss the "leak" referred to in item (3). Yet this meeting became the subject of Sean Parnell's article in *The Australian* on 16th July, headed "SCRAMBLE TO PLUG DR DEATH LEAKS".

On this occasion, it is apparent that Parnell had a readily accessible "source" for his "leak". When he first contacted me for comment on this meeting, he was under the mistaken impression that the meeting was attended by the Premier. I pointed out to Parnell that this was wrong, and that the Premier was overseas at the time. Within hours, Parnell was back to me, saying that he had checked his "source", and had been informed that the meeting was, in fact, attended by the Acting Premier.

There is an intractable irony in the fact that a meeting, the sole purpose of which was to discuss "leaks" from Queensland Health, was itself the subject of such a leak. Again, this

would seem to be a case of somebody with Queensland Health hoping to embarrass me (and maybe also Mr. Mackenroth and Mr. Nuttall), by disclosing the fact that we had met.

Leak (5)

I have already commented publicly that the "awards ceremony" was in poor taste, and perhaps showed a lack of sensitivity. Because Commission staff were present, even though they took no part in the "awards ceremony", I accept that the acting Director-General (Dr Scott) was rightly concerned about this incident. But it is, for that reason, all the more surprising that he did not convey his concerns to me – for example, through counsel representing Queensland Health at the Commission of Inquiry – before the information which had been gathered by Queensland Health was "leaked" to Sean Parnell on 14th July, and appeared in *The Australian* on 15th July under the heading "COMPLAINTS OVER DR DEATH INQUIRY DINNER".

Although one of Parnell's fellow journalists from *The Australian*, Leisha Scott, was present at the dinner, it is plain from the contents of the article that she was not consulted. But Parnell strongly indicated his "source", when he wrote that: "It is understood the health staff have made a formal complaint"; "The health staff included patient liaison officers who are understood to have had contact with Dr Patel's patients"; "One of the staff allegedly criticized the journalists and commission staff for being tactless"; and so forth. These statements come directly from correspondence and Statutory Declarations which Dr Scott obtained on 14th July, but which did not become available to me (or, to my knowledge, anyone else outside Queensland Health, apart from Sean Parnell) until 15th July.

Had the matter been handled by Dr Scott in an appropriate way, the fact that Commission staff (including Counsel Assisting) were in no way involved in the objectionable incident could have been established before the matter was reported in the media. In the result, considerable unnecessary embarrassment has been caused to staff of the Commission and, at least indirectly, to the Commission itself. The handling of this matter by Queensland Health strongly suggests that somebody at a high level – and I do not imply that it was necessarily Dr Scott – cynically regarded it as a good opportunity to undermine public confidence in the Commission of Inquiry, and was anxious for the matter to attract publicity before the facts could be properly investigated.

Conclusions

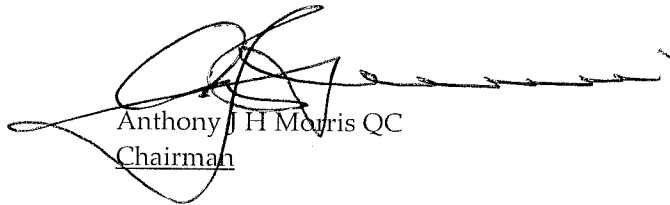
I have been told by other journalists that Sean Parnell is "close" to senior officers of your Department. I do not know who those officers are; nor do I know what precisely is meant by the statement that Parnell is "close" to them. These, no doubt, are matters which any serious "internal investigation" should reveal.

It suffices for me to say that, for the reasons outlined above, all indicia point to a concerted campaign of disinformation being orchestrated from within Queensland Health, apparently designed to discredit and derail this Commission of Inquiry, characterised by the strategic "leaking" of information to Sean Parnell of *The Australian*. I will be pleased to learn what your "internal investigation" makes of all this.

I do not propose to comment on the other matters canvassed in your letter dated 18th July. In particular, the quality of your Department's "support" for the Commission of Inquiry will be judged on the basis of its performance, rather than your assurances.

I assume, Dr Buckland, that, consistently with my policy of ensuring that proceedings of the Commission of Inquiry are as open and transparent as possible, you will have no objection to my publishing your letter dated 18th July – and this reply – as exhibits.

Yours faithfully,



Anthony J H Morris QC
Chairman

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21 JUL 2005



Queensland
Government

BY:.....

Queensland Health

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Commissioner A Morris
Bundaberg Commission of Inquiry
Level 9 Brisbane Magistrates Court
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Dear Commissioner Morris

I write to seek your assistance in conducting an internal investigation into the alleged 'leaking' of information to *The Australian* newspaper last Thursday 14 July 2005 involving details of a dinner involving Commission staff and journalists.

Having just returned from several days leave, I have only now become aware of your public concerns that you believe 'senior bureaucrats within Queensland Health' have leaked this information to unfairly undermine the Commission of Inquiry.

These are concerns that I take seriously, and as such I would ask you to forward any evidence that may assist us in an investigation to find the source of such a 'leak'.

In terms of the process followed, I am advised that staff in Bundaberg complained about the incident to their District Manager who in turn wrote to the Acting Director-General Dr John Scott. Dr Scott raised the matter with the Premier who was provided with information and statutory declarations from staff.

Queensland Health does not condone the leaking of information, and while we have already stated we do not believe the information came from Queensland Health, you have my assurance that any new evidence would be taken seriously as part of a full investigation.

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As I have stated publicly on many occasions, the Commission of Inquiry has the full support of Queensland Health.

I look forward to hearing from you, should you consider this appropriate.

Yours sincerely

A handwritten signature in black ink, appearing to read "Steve Buckland". The signature is fluid and cursive, with a large initial "S" and "B".

Dr Steve Buckland

Director-General

15 07 /2005