



## Transcript of Proceedings

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THE HONOURABLE G DAVIES AO, Commissioner

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IN THE MATTER OF THE COMMISSIONS OF INQUIRY ACT 1950

COMMISSIONS OF INQUIRY ORDER (No. 2) 2005

QUEENSLAND PUBLIC HOSPITALS COMMISSION OF INQUIRY

BRISBANE

..DATE 14/09/2005

..DAY 4

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THE COMMISSION RESUMED AT 10.02 A.M.

COMMISSIONER: I propose to start by dealing with the order I made yesterday afternoon at 4.30. Perhaps I should repeat the order which I made.

I directed then that by 9.30 this morning, the State of Queensland provide written information verified by a servant or agent of the State having direct knowledge of the same as to the origin and distribution within the State's Department of Health to the Minister of Health and to Cabinet of the following documents, and as to the cessation of collection and collation of the kind of information contained in the following documents: namely, one, Exhibit 267; 2, the bundle of documents produced to the Commission of Inquiry constituted by the Commission of Inquiry Order No 1 of 2005 and marked QH 1.

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Those documents were furthermore specifically identified by Mr Douglas of counsel and they then were incorporated in the effect of the order. Mr Douglas, I understand that that order has not been fully complied with?

MR DOUGLAS: That is so, but in qualification I should say, Commissioner, that what has been received now is the completed affidavit, the complete affidavit of Mr Zanco whose signed affidavit was produced yesterday, that is, completed with annexures. There is a further brief affidavit of Mr Zanco which has been received.

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The affidavit of Mr Walker which was produced to the Commission in draft yesterday has now been produced in a signed form but bereft of annexures. I'm informed by correspondence received this morning at about half past nine from Crown Law that having regard to the volume of the documents annexed to the statement of Mr Walker, that it is understood that that process cannot be completed until 1 p.m. today. Commissioner, I have no further information about the matter.

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COMMISSIONER: Thank you. Mr Boddice?

MR BODDICE: Commissioner, that's so in a sense that we provided the statement as we could, the annexures are voluminous and are literally being photocopied as we speak, I have asked for them to be brought up in a piecemeal form in terms of when we can get them but, it simply was impossible because of the size of the annexures to be able to achieve the purpose of a completed statement, but we ensured that the statement was provided by 9.30 so people had the opportunity to read what was contained within it, and we're attending to the annexures. I apologise but it was physically impossible to have the annexures in the appropriate form by 9.30.

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COMMISSIONER: Well, I would accept that perhaps between 4.30

yesterday afternoon and 9.30 this morning it might have been impossible, but I do not accept it was impossible, given the context in which that order was made, that is, that those documents were to be supplied to the discontinued Commission, there was numerous correspondence about the provision of those documents at the previous Commission. It must have been obvious to those instructing you by at the latest Thursday last week when I indicated that waiting lists were in my opinion within the Terms of Reference of this inquiry that they would be required by this inquiry, so you've had since at the very latest since Thursday last week.

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MR BODDICE: Part of the complication, I'm instructed, is that they involve Cabinet documents which requires, of course, not my client to waive the privilege but the Cabinet Secretary, documents have been sent.

COMMISSIONER: But that was always the case.

MR BODDICE: But documents were sent to the previous Commission and there was an approval given under the previous Commission. The documents were really sent back when the previous Commission concluded and there needed to be a fresh approval with respect to this Commission, which was obtained overnight.

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COMMISSIONER: That would have taken five minutes.

MR BODDICE: That was obtained overnight.

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COMMISSIONER: When you say "overnight" it could have been obtained overnight last Thursday. This is not a criticism of you personally, as I said yesterday afternoon.

MR BODDICE: I understand it was in train and when the new Commission was in place it had not been produced and it was processed urgently last night, on my instructions, to ensure that we could get the documents and the documents will be supplied and, as I understand it, they can be supplied in a piecemeal fashion during the course of the morning. I think the time limit of 1 o'clock was in order to provide all of them within that time period. I will have my instructing solicitors ascertain precisely what the state is in terms of the number of annexures and what can be supplied at the present time, Commissioner.

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COMMISSIONER: But it's a very unsatisfactory state and it would be no doubt used by those who would urge on me the view that there has been a culture of concealment and delay by your client department.

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MR BODDICE: Well, all I can-----

COMMISSIONER: I'm not saying I have a view on that.

MR BODDICE: All I can say is that would be unfair because the circumstances were one Commission stopped, documents were sent back and then the process was started again, the process

started last Thursday afternoon and we're now at Wednesday and these processes aren't necessarily done at simply as we outside the system would expect them to be done.

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COMMISSIONER: No. But apart from anything else, we're wasting a lot of time, Mr Boddice. I order that if those documents are not provided, that if the order is not fully complied with by 1 o'clock today, that Ms Schreiber, the Director-General of the Department of Health appear before the Commission at 2.30 this afternoon to explain why it hasn't been complied with.

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MR BODDICE: I'll convey that order, Commissioner.

COMMISSIONER: Thank you. Yes.

MR DOUGLAS: Commissioner, you will recall yesterday an arrangement was made that Mr Nuttall be interposed and it's proposed to adopt that course.

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COMMISSIONER: Yes, certainly.

MR DOUGLAS: Thank you. I call Mr Nuttall.

GORDON RICHARD NUTTALL, SWORN AND EXAMINED:

MR DOUGLAS: Mr Nuttall, could you give the Commission your full name?-- Gordon Richard Nuttall.

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And Mr Nuttall, you reside at an address known to the Commission?-- Yes.

You're the member for Sandgate in the Queensland legislature?-- That's correct.

And at present you're the Minister for Primary Industries having been sworn in on the 28th of July 2005?-- That's correct.

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Previously you were the Minister for Health commencing in that port folio from the 12th of February 2004?-- That's right.

You remained in that post until being sworn in as the Minister for Primary Industries?-- That's correct.

In response to a request and a list of questions supplied to you and your lawyers by the Commission, have you supplied answers to those questions?-- Yes, I have.

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Thank you. And that's in the form of a written statement?-- That's correct.

Do you have a copy of your statement with you?-- Yes, I do.

Thank you. You can refer to that as you need to?-- Thank you.

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Commissioner, I tender the statement it's a statement dated the 30th of August 2005.

COMMISSIONER: Exhibit number 319.

ADMITTED AND MARKED "EXHIBIT 319"

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MR DOUGLAS: Thank you, Commissioner.

Mr Nuttall, you're obviously familiar with the terms of your statement?-- I certainly am.

Thank you. Could I take you immediately please to paragraphs 72 and 75 of your statement, and for your convenience that commences on page 13?-- Yes.

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Thank you. And I should tell you, Mr Nuttall, please take your time with my questions, if I'm going too quickly, no doubt you'll tell me?-- Yes.

Thank you. That particular portion of your statement deals with the question asked of you as to whether you were briefed as to the issue of whether published waiting lists were concealing the numbers of persons waiting to get on to waiting lists?-- Yes.

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I'll just ask you a couple of questions about that?-- Sure.

Thank you. During your term or tenure as Minister, you were aware of the fact that there was a list of patients maintained by Queensland Health known as the elective surgery waiting list?-- That's correct, yes.

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You knew during that time that that list was one collated by Queensland Health from the various hospitals which made up the cohort consisting of the hospitals run by Queensland Health?-- Yes, that's right.

You knew that that elective surgery waiting list was one which was in terms of patients who had been the subject of a referral to and been seen by a specialist surgeon retained within a Queensland Health hospital and had been placed on a list awaiting surgery?-- That's right.

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You also knew that that elective surgery waiting list throughout your tenure was one supplied to a central Commonwealth body and it was the subject of comparison with the other States and Territories?-- Yes.

You also knew that throughout your tenure, that the elective surgery waiting list was published quarterly on the Net and

otherwise by the Queensland Government?-- That's right.

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Those were all matters, I suggest to you, with which you became familiar almost from the commencement of your tenure as Minister?-- That's right.

Thank you. I suggest to you also that on numerous occasions during your term as Minister, you published, at least under your name, there was published, with the assistance of your staff, press releases dealing with the topic of the elective surgery waiting lists?-- Yes, that's right.

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In fact, you extolled on many occasions, I'd ask you to accept, in press releases the virtue of the elective surgery waiting lists in Queensland in comparison with other States and Territories?-- We did, because we had given an elective commitment during the campaign prior to the election of the Government to address the issue of elective surgery and additional money was supplied to Queensland Health so that we could address those issues and the press releases were an indication of the success or otherwise of how that program was operated.

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Whatever the moneys that may have been injected into it, in your press releases repeatedly over your term, I suggest to you, and I'll show you the press releases if you wish?-- Sure.

You extolled the virtue of the fact that the Queensland elective surgery waiting lists compared favourably with other States and Territories?-- That's right.

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In fact, on many occasions you were wanting to point out that in fact they were the best in Australia?-- That's right, that's right.

Now, when making those statements, you were aware that the Queensland Health system, perhaps unlike other States and Territories, was one which provided to the public of Queensland outpatient specialist services?-- Yes.

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In other words, there was provided within the Queensland Health system at the various hospitals, either through employed specialists or Visiting Medical Officers services whereby persons could consult initially on referral from general practitioners a specialist with a view to ongoing treatment?-- Yes, I was aware of that, that's right, it's not a system that I was happy with but I was aware of it.

Nonetheless you were aware of that, and you were alive also to the fact that that contrasted to other States and Territories?-- That's right.

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And you pointed that out?-- Yes, I did.

To the Parliament, Estimate Committees and the like?-- That's right.

I suggest to you that against that background of that knowledge, that is, the elective surgery waiting lists and how it worked with the background of the outpatient referral service?-- Mmm-hmm. 1

That there was necessarily a body of persons behind the elective surgery waiting lists, that is, patients who may have been seeking surgery through that medium?-- They're - Mr Commissioner, they're two separate arguments: the one argument is about people that have been seen by a specialist and deemed to need to have surgery and that was the focus of my role as the Minister after becoming the Health Minister, to ensure that we tried to address the issue of people waiting for surgery; the second, the second argument, the second, the second issue is the issue of people waiting for an appointment to see a specialist to deem whether they indeed required or did not require to be - to have surgery or not. So it----- 10

COMMISSIONER: And there were lists compiled with respect to those people also?-- My understanding, that's correct, Commissioner, but they weren't lists, unlike the elective surgery lists, the elective surgery lists were lists that were produced quarterly, I took those to Cabinet, they were released publicly and they were released publicly so that doctors and specialists could see where the longest waits were so that----- 20

But they didn't, they were false lists though, weren't they, Mr Nuttall, because the only way in which you would genuinely see where the delay was was from the time when the general practitioner said to his or her patient, "You need an operation" to the time when that operation would take place?-- No, sorry, sorry, Commissioner, that's not quite right. What happens is this: is that, is that to be on the list to get surgery, the specialist actually sees you, the specialist then says----- 30

Yes, I understand all that, I understand what the elective surgery waiting list is?-- But the GP doesn't say, "You need surgery" what the GP does is say, "You need to see a specialist". 40

Well, he says, "I think you need to have surgery but you go to see the specialist.", so the GP really wants to know does that person needs surgery, when that person will get surgery and the person wants to know that?-- Yes, that's right, that's right, but they're two separate, but they're very separate.

I understand they're separate waiting lists, but it seems to me that the first of those, the elective surgery waiting list was disclosed to the public and relied on, the second list was - and I don't say you did this personally Mr Nuttall, but was concealed from the public?-- Well, Commissioner, they were matters, all the material that's been supplied to the Commission would clearly indicate that that material, none of that material was supplied to me at any stage as a Minister, there was no - there was no system in place to supply that information to me, that never occurred on any occasion. 50

It went to Cabinet though, apparently?-- No, what went to Cabinet, my understanding, Commissioner, is the issue around the elective surgery issues.

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Well, perhaps you can clear this up, Mr Douglas.

MR DOUGLAS: Yes.

If I can just clear the matter up what initially involved in the exchange between you and the Commissioner?-- Yes.

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The Commissioner asked you about the existence of separate lists?-- Yes.

So I'd ask you to focus your attention, if you could, upon your time as Minister, and if you wish to break that up in time as the Minister, I'm happy for you to do that. During your time as Minister, were you aware that there was in fact a list of persons within the bowels of Queensland Health of which were, in effect, anterior to the elective surgery waiting list?-- I was well aware that there were a significant number of people that did require to be seen by a specialist to determine whether they did or did not need surgery.

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And at no time you knew the numbers of persons at any point in time within that cohort or body of persons?-- I, I, I was certainly not aware that it was, and I - whether it was collated centrally or not. My understanding was that people, wherever they lived in various parts of Queensland, would see their GP, the GP deemed that they would need to see a specialist, those arrangements would be made at the relative hospital or whatever the case may be.

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COMMISSIONER: But you knew that those lists were collated?-- Well, Commissioner-----

I'm not saying you saw them, but-----?-- No, no sure Commissioner, I didn't, I mean I have - I have - I have no idea the numbers because they weren't-----

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No, I'm not suggesting you knew the numbers?-- -----they weren't reported.

But you knew there were lists collated?-- Well, Commissioner, I have to say to you no, I wasn't, I wasn't aware that there were actually full lists collated and so that, so that if I rang the Townsville Hospital and said, "How many people have you got waiting to see a specialist?", I wasn't aware that they would have a list to say, "We've - we've got 63 people.", they need to see this number of different specialists.

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MR DOUGLAS: Can I take the matter up, Commissioner?

COMMISSIONER: Yes, certainly.

MR DOUGLAS: You say in paragraph 74 of your statement, and please, if you need to look at it, please say so, and I quote,



"There was no system in place" - to your knowledge?-- Yes. 1

"To produce any separate lists of patients waiting for appointments to see specialists"-----

MR GOTTERSON: With respect, that's not a correct quotation of the statement.

COMMISSIONER: Not before me. 10

MR DOUGLAS: I'll read the entirety of the paragraph.

COMMISSIONER: Yes.

MR DOUGLAS: Paragraph 74, "To the best of my knowledge during my time as Minister, there was no system in place to produce for me any separate lists of patients waiting for appointments to see specialists. The focus was always on the elective surgery waiting lists.", and I'll read the next paragraph Commissioner. 20

COMMISSIONER: Certainly.

MR DOUGLAS: "I was not aware of any concealment of numbers of persons waiting for appointments." Can I ask you some questions about that first paragraph, paragraph 74?-- Sure.

It may be a matter of drafting, Mr Nuttall, but it would appear that that statement by you in paragraph 74 either suggests that you yourself made an inquiry in order to make that declaration or that someone told you that there was no such system in place for you?-- No, not at all, not at all. The issue's very clear. As the Minister I would be given regular figures on the elective surgery waiting lists, that was a system that we had in place, they were submissions I took to Cabinet and those details were released for the public to see. There was no system in place, no system in place for me to receive the other figures that you've mentioned. 30

Did you ever ask someone whether there was such a system in place?-- No, I didn't. 40

Against the background of knowledge about which you've already given evidence, did you think it might be wise to ask someone within Queensland Health as Minister whether there was such a system?-- No, because our focus, as I clearly point out to you, was on addressing the issues of the elective surgery waiting lists, that was our - that was our focus. People that required surgery, we had a program in place to ensure that in various categories they received their surgery within an allotted time and our focus was to try and ensure that those people received that surgery within that allotted time. 50

COMMISSIONER: But that can be a list - I'm not suggesting anything improper against you, Mr Nuttall, with respect - but that's a list that can be manipulated by simply not providing appointments to see surgeons, it's, it's false in the sense that it's not the complete list?-- Well, Commissioner, I can

only go on the material that's supplied to me as the Minister. 1

I understand that, yes?-- There were no reporting mechanisms to me, as I've stated to the Commission already, that they just simply - those reporting mechanisms weren't there.

Mmm?-- I go on the figures that are supplied to me, I try and ensure, as the Minister my responsibility was to try and ensure that people did receive their surgery on time if that was possible. It was very difficult in light of the fact that we have a shortage of specialists. What we tried to do was outsource that to the private sector to try and ensure that people did get their surgery. It was a challenging task and something that we always had to keep, keep an eye upon. 10

MR DOUGLAS: Mr Nuttall, do you have a recollection of anyone within Queensland Health, and I'm speaking at the senior level?-- Sure.

Telling you at any time that attention ought be given by you or by them to this outpatients list?-- Commissioner - and I'd need to see the document - but it was only in the last, and I am only guessing here, Commissioner, it was only in the last few weeks or maybe even the last, even the last few days of my time as a Minister did I receive a brief from my department, to the best of my knowledge, that did I receive a brief from my department saying that we have a figure, and I'm trying to remember the figure because I haven't got the document, that there are about 84,000 people waiting for an appointment to see specialists at outpatients. I had not seen that figure before and on the brief on that I made some comments and the brief was in the context of the elective surgery and then there's this other body of people, and I'm reasonably sure, without seeing the document, Commissioner, that I asked for the department to take urgent action to try and ensure and engage the private sector to try and ensure that people waiting for elective surgery were seen and had their surgery, and in terms of the other issue, that the department should look at preparing a submission to the Cabinet Budget Review Committee if we needed more money to do more work. 20 30 40

COMMISSIONER: So that was a document which was produced to - in the last few weeks anyway of your term as Minister for Health?-- That's, Commissioner, I'm sure it's only either in the last few weeks or last few days.

All right, no doubt that will be disclosed if it hasn't been already, and that was - you then made some notings on that, did you?-- Yes, I did, Commissioner. 50

Yes, all right, thank you?-- To address it because I was alarmed at it.

Thank you.

MR DOUGLAS: Can I suggest so you, Mr Nuttall, that once you received that information in the dying days of your term, that it was immediately to the forefront of your mind that the

extolling of the virtues of the elective surgery waiting lists which I took you to earlier?-- Sure. 1

Albeit unintended by you, was misleading?-- No, I - I don't agree with that, I don't agree it was misleading at all, because the statements that I made were in the context and the press releases I made were in the context of the people that were on lists to be required to have surgery and that those lists were lists that were, as I said, made public, they were lists that were done in terms of a national standards, as you have alluded to earlier, and it was a uniform system across Australia. So we were actually addressing, addressing those people that needed surgery most urgently or semi-urgently and we were making significant inroads until the last quarter. 10

Do you mean to say that had you been given that information in, say, 2004 as opposed to a year later-----?-- Sure.

-----in 2005, that you wouldn't have taken any different course than that which you actually did?-- I certainly would have taken a different course because I don't believe the system is sustainable in its present form, and in my submission to the Commission, there is an attachment there which outlines in my view how you address that problem. If it had been brought to my attention in my - in the very early days of my time as a Minister, it's an issue that I certainly would have considered taking to Cabinet, it's an issue that I certainly would have considered changing the system of what we had in place, because it simply cannot work the way it is and it needed to be changed. Now, if those matters were brought to my attention, I would have addressed those issues but they were not brought to my attention at that time. 20 30

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I want you to ask the following questions against the background of your tenure as Minister?-- Sure.

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Not just the Health portfolio but other portfolios and your extensive background in community service and as a Parliamentarian?-- Yes.

It would have been plain to you as Minister that if this information on the outpatient's list, the anterior list as it's been described, was really available, published, that it would be of utility to those involved in the health industry?-- I'm not sure what you are getting at.

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I will be more precise. Assume that this anterior list, the outpatients list had have been published, say, on the 1st of July 2004?-- Mmm.

In the middle of your term?-- Yep.

Then your common knowledge would dictate to you that any GP, the general practitioner, giving advice to his or her patient about referral would justifiably wish to take that information into account?-- Yes, that's right. That's right, and as I said, if it was material that had have been supplied to me, it certainly is an issue that we would have tried to address and address it in a number of different ways.

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COMMISSIONER: And made public?-- Beg your pardon?

And made public?-- Look, Commissioner, I think rightly so. I know that there's been a bit of a view that we tried to hide things, and it's simply is not correct that we tried to hide things. We actually wanted to try and fix the system. We were actually very, very committed to trying to change the system for the better. The system that you have in place, and I don't know if this is the right time to be talking about this, Commissioner, but the system you have in place for people waiting to see specialists in our public hospitals and outpatients is not sustainable because there's simply - we are struggling to get the specialists to do the surgery, let alone get the specialists to look at people who may or may not require surgery. The best way to do this, the best way to do this, is for when people that need their surgery - that need to see a specialist, what we need to do is some sort of - in my view and it needs to be refined - but some sort of a voucher system, Commissioner, whereby if someone goes to see their doctor, the doctor says, "I think you need to see a specialist, you may require surgery.", the doctor can then refer that person to any specialist and then that person can go and see the specialist and make the necessary arrangements for the surgery. There is no need - the system is wrong. There is no need for people to have to come to the hospital. If we can't get the specialists in our hospitals, why can't we not get the patients to go to see the doctors? Why can't we reverse that?

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Well, it costs more, I suppose, is one answer?-- Well, Commissioner, the cost will always be there, but it's about

getting people-----

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That may explain why it hasn't been done in past. That's all?-- I understand that, Commissioner, but if we are going to address it, we need to tip the system upside-down-----

Right. Rightly so?-- -----to what we have today. It is just not sustainable. What you can do, there's a way around that. This is the way to change that. This is the way to say, "Look, you need surgery." You don't necessarily have to have it in a hospital. We have day surgery clinics, we have private - we have private hospitals these days, we have - we outsourced for the very first time a whole lot of operations for the very first time into the private sector, and it worked well and we wanted to do more and more of that so that we could actually get people off waiting lists so we could actually get people cared for, even in the public system - even in the private system, Commissioner, and this is where-----

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Has anyone costed this, Mr Nuttall?-- Well, Commissioner, it's something that we just started on, as I said to you.

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Mmm?-- And so the costing hadn't been done, Commissioner. But it is a way to - we need - we should at least look at it.

I don't doubt that for a moment?-- We should explore it. Commissioner, one of the things we tried to do was to say - I met with the private sector and they were encouraged about us outsourcing surgery. If we didn't have the capacity to do it in the public system, let's outsource it into the private system so that we could get people - so they could get their cataracts done, so we could get their hip and joint replacements done, so we could get people seeing and walking.

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I think that's straying off that point a bit now, Mr Nuttall?-- That was our focus, Commissioner.

Yes, I understand?-- That was our focus.

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MR DOUGLAS: Mr Nuttall, when did you become a member of cabinet?-- 2001, I think, after the 2001 election.

You were aware, no doubt, through your lawyers that Queensland Health have produced in the last 24 hours affidavits pertaining to the outpatients specialist list, the anterior lists?-- If you say so. I haven't - I haven't seen them.

All right. Thank you. There's information which is sworn to in statements provided by Queensland Health to the effect that outpatients lists, specialists lists, were provided to Cabinet through the then Health Minister on a quarterly basis?-- That may have been the case.

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I'm not suggesting that you prior to being Minister for Health ought be across everything that comes into cabinet?-- Sure.

But can you provide to the Commission any confirmation of that?-- Commissioner, we have - I don't know, somewhere in the vicinity of 45 plus cabinet meetings a year, and we would have anything between - you know, 10 to 25 submissions in each cabinet bag, maybe more. They are detailed cabinet submissions. Most Ministers focus on their own portfolio and the contents of their submissions within that portfolio and any submissions that may affect their portfolio. So, in my previous capacity as the Minister for Industrial Relations, certainly the submissions in relation to Queensland Health, except for enterprise bargaining, did not relate to my portfolio. So it's not an area that I took any great - I didn't take any great significance of simply because I was focused on-----

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COMMISSIONER: You would have been if you were Minister for Health?-- No, but he asked me prior, Commissioner.

I understand that. I'm just asking that you would have-----?-- Of course. Of course.

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MR DOUGLAS: Can I ask you about a different topic now, Mr Nuttall. Evidence was given evidence by Dr John Scott about various matters. You know Dr Scott?-- Yes, I do.

Dr Scott gave evidence yesterday, both in documentary and oral form, with respect to what he described as measured quality documentation produced within Queensland Health. You are aware of that, aren't you?-- I'm not - I'm not aware of the documentation that you are referring to. So, I need to have a look at that.

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All right. Well, that documentation has been the subject of a separate request, Commissioner, to Queensland Health, so I can't produce those documents at the present time. I understand - I have requested Queensland Health to supply a further affidavit or an affidavit dealing with that matter.

COMMISSIONER: Yes.

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MR DOUGLAS: Thank you. I intend to proceed in any event, Commissioner.

COMMISSIONER: Yes.

MR DOUGLAS: Dr Scott gave evidence yesterday that during your time as Minister in 2004 that what he described as the measured quality documentation from the various hospitals within the Queensland Health cohort, that they were taken to Cabinet and for that reason, at least in his mind, they couldn't be distributed to the various hospitals. Do you know anything about that?-- No, I don't and, as I said, I'd need to see the documents, and to explain, Commissioner, in my submission to the Commission I point out on page 7 paragraph 40 as an example of the number of briefings and submissions and correspondence that I have received as the Minister, there is some 975 briefings, some 862-----

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COMMISSIONER: Yes, I have read that?-- -----submissions.  
Commissioner, I simply point to that to indicate to you that  
I'm simply not aware of that, given the volume of material  
that does come across my desk. I would need to see it to be  
able to expand.

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MR DOUGLAS: I need to show you a document. I am showing the  
document an extract from Exhibit 267, which are the  
Queensland Health outpatient waiting list documents dated  
1st July 2004?-- Sure.

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This is merely an extract from that document in question. It  
pertains to Townsville. There is no particular reason it's  
Townsville as opposed to Toowoomba, Minister?-- Sure.

But I merely wish to show you this document. There's evidence  
from Queensland Health that this document was produced, it  
seems, on or shortly after 1st July 2004?-- Sure.

And it's in this form with respect to each hospital within the  
Queensland Health cohort?-- Sure.

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Forgetting the numbers for the moment, you will see basically  
that the top half of the longitudinal access of the document  
deals with various general medical items and the bottom half  
starting with, "Cardiothoracic Surgery", and excluding  
psychiatry, deals with largely surgical disciplines?-- It  
also says, "Number of patients waiting for outpatient  
appointments.", and therein, as I said to you right-----

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COMMISSIONER: I think it would be best if you just answer the  
question you are being asked?-- Yes. Sure.

MR DOUGLAS: You see that, don't you?-- Yes.

I merely wish you to refresh your memory in so far as it can  
be refreshed. Was a document in this form ever given to you  
on or after 1st July 2004?-- Look, I simply - as I point out  
to you, what I said to you, the number of briefings and  
submissions and correspondance that have come across my desk,  
I'm not going to say that I haven't seen that. But I can't  
recall seeing it. As I said to you, it's the sheer volume of  
work that comes across my desk. So I - I don't recall seeing  
it but, as I said to you, I pointed out earlier.

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Thank you. That can be returned. That's my examination,  
Commissioner.

COMMISSIONER: Thank you. Who wishes to cross-examine? As  
with the other witnesses we have had, Mr Gotterson, I will  
extend to you the advantage of examining Mr Nuttall last, that  
is before re-examination by Mr Douglas. Is that-----

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MR GOTTERSON: Of course.

COMMISSIONER: If that is what you prefer. Who else would  
like to cross-examine Mr Nuttall? Is there anyone else? Yes.

## CROSS-EXAMINATION:

MR ALLEN: Thank you, Commissioner. Mr Nuttall, John Allen for the Queensland Nurses Union. If I can just ask you some questions about your knowledge concerning matters in relation to Dr Patel and Bundaberg Base Hospital?-- Is it the Dr Patel from the Bundaberg Base Hospital?

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Yes. You mention at page 5 of your statement, paragraph 25, that Dr Patel's name was never mentioned in any briefings to you or any representations made to you by other Parliamentarians, including Mr Messenger, up until March 22 this year?-- My statement says none of the written briefings mention Dr Patel or doctors like Dr Patel either in Bundaberg or any other hospital in this state

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So it's the case that you had never heard any mention of concerns relating to a Dr Patel at Bundaberg prior to the 22nd of March this year?-- That's correct.

So, your first warning of any matters in relation to Dr Patel at Bundaberg occurred when matters were raised in Parliament?-- That's correct.

And was that on the 22nd of March this year?-- That is correct, yes. To the best of my knowledge, that's right.

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Okay. On that same day you met with Dr Gerry FitzGerald, the then Chief Health Officer?-- Yes, I did.

He told you, according to your statement, that he had conducted an investigation?-- Yes. He was doing a clinical audit, yes.

A clinical audit. And that a report was near completion?-- That's correct.

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Was he able to provide you with a copy or a draft of any report at that time?-- No.

Was he able to provide you with any documentation that he'd received for the purposes of his audit?-- No.

You weren't given any documentation then by Dr FitzGerald at that time?-- No.

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What was the detail of the information verbally provided by Dr FitzGerald at that time?-- Dr FitzGerald after Question Time on that day where the issue was raised - I was obviously concerned that the matter - matter had been brought to the attention and that I wasn't informed of it. I asked to speak with Mr FitzGerald. He met with me. He indicated to me that he was conducting a clinical audit of the work of Dr Patel in Bundaberg, that he had found initially that the



doctor was performing outside his scope of practice, and that he had instructed that that - that that was to cease immediately and that he was - there were other issues that he needed to address, and I asked him to make sure that he completed that report as quickly as he possibly could.

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Did he tell you what the other issues that he had to address were?-- Oh, look, he - as I said, his main focus was on the fact that this doctor was performing outside his scope of practice and that the hospital probably wasn't equipped to be able to deal with some of the complex surgery that he was performing, and that's why he had instructed that that cease. That was basically the context of our discussion.

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Okay. It is just you said he told you Dr Patel was performing outside his scope of practice-----?-- Yes.

That that had been told to cease and you said, "And there were other issues that he had to address"?-- And that's what he said to me, "There were other issues that I will have to address."

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Did he say what those other-----?-- He didn't expand on-----

-----issues were? Did you have any discussion with Dr FitzGerald at that time as to whether any patients might have suffered adverse outcomes because of those issues that he was investigating?-- Look, I think when Dr FitzGerald and I spoke, it was about - you know, how good - how - you know, what he was actually doing. I was trying to get a handle on what Dr FitzGerald was doing, because that hadn't been advised to me at all, that the clinical audit was being conducted. To the best of my recollection, we discussed the fact that, as I said, he was performing outside the scope. I don't think he went into any great detail because I don't think he'd had the chance to have a look at each patient's file at that stage.

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Well, the evidence is that he'd been in Bundaberg in mid-February?-- Sure.

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Conducting his clinical audit?-- Sure.

Are you suggesting that Dr FitzGerald told you on the 22nd of March that he hadn't had a chance to look at patient files?-- No, I didn't say that. I didn't say that. I said he didn't expand to me about other patients and the complications because I was unaware whether he had or had not looked at files. I was waiting on the report.

But the information or allegations that have been made to Parliament earlier that day involved rather dramatic allegations in relation to deficit patients and adverse outcomes for patients?-- Yes.

50

You didn't discuss with Dr FitzGerald whether he'd examined any outcomes in relation to those persons?-- No.

You weren't interested to get his opinion as to whether

unnecessary deaths or suffering had occurred at the hands of Dr Patel?-- Yes, I was interested. That's why I met with him straight - that day and that's why I asked him to complete the report as quickly as he possibly could so I could get a handle on exactly what the situation was at the hospital.

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And did he tell you when the report would be available?-- He said it was near completion. That's all.

Okay. Did you ask him for at least a draft so far at that time?-- No, I didn't.

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COMMISSIONER: Weren't you keen to know whether the statements which had been made in Parliament were accurate or not?-- Yes, yes, yes, I was.

And did you ask him?-- Commissioner, I simply said to him, "What is going on at Bundaberg Hospital?" He indicated to me that there - as I have already alluded to the Commissioner. I clearly indicated to him that I was concerned about that. He had said to me is that he had instructed for Dr Patel to cease - to cease doing the surgery that he was doing. The first issue was that he'd stopped the doctor from doing it. That was the first thing. The second issue, the second issue around the patients was that I asked him to have that report completed as quickly as possible. I didn't know at that stage the scope. None of us knew at that stage whether it involved one patient or a dozen patients. We-----

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But-----?-- Well-----

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You knew specific allegations which had been made at that stage with respect-----?-- And Dr FitzGerald had said that, you know, he was there doing the clinical audit.

I understand that. But did you ask him whether those specific allegations were correct or not?-- Well, Commissioner, I didn't - I didn't know exactly what he had looked at.

No, did you ask him whether those specific allegations were correct or not?-- No, no, not at all.

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All right?-- Because he simply indicated to me that the report was very near completion.

All right.

MR ALLEN: Mr Messenger had tabled in Parliament a letter from the Nurse Unit Manager of the operating theatre at Bundaberg in which patients were identified, not by name but by UR number, and detailed allegations were made in relation to outcomes in respect of those patients. The material also included statements by other nurses in relation to those and other patients. Now, did you read that material once it was tabled?-- I - it would have been - if I read the material it would have been read either prior or after my meeting with Dr FitzGerald on the same day. I expressed my concern about it as a matter of urgency by seeing Dr FitzGerald immediately.

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When I finished Question Time that day I returned to my office and I asked to have Dr FitzGerald come and see me immediately because I was concerned about what had been said and tabled in the Parliament. Of course I was concerned as a Minister.

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Obviously you'd want to have that material in front of you when you spoke to Dr FitzGerald?-- No. I didn't need to have the material because Dr FitzGerald said he was conducting the clinical audit.

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No-----?-- Dr FitzGerald would have had that material.

I see. He didn't bring it along?-- He would have had that material if he was conducting the audit. I assumed if he was conducting the clinical audit he would have interviewed staff, he would have seen staff, so I assume that he would have had material, that material and other material.

But you didn't concern yourself with reading the detail of that material and discussing it with Dr FitzGerald?-- Not those personal - not those personal details, because Dr FitzGerald said he was conducting a full clinical audit of all the procedures of Dr Patel. That would have entailed that material that was tabled in Parliament

20

Are you certain that Dr FitzGerald told you on that day that he was continuing to conduct a full clinical audit of particular cases in relation to Dr Patel?-- He indicated to me that his report was near completion. I asked him to have that made available as soon as he possibly could.

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COMMISSIONER: Mr Nuttall, excuse me for interrupting. You requested him to travel to Bundaberg to brief staff on his preliminary findings. You said that in your statement?-- Yes, that's correct.

What were those preliminary findings?-- Commissioner, what happened was in relation to that - that matter is a little bit out of context with this one, Commissioner.

40

No, just tell me what the preliminary findings were?-- I hadn't seen the report.

So you'd obviously made some preliminary findings and you didn't ask him what they were?-- Because the report wasn't complete.

No, no, no. He had obviously made some preliminary findings and you knew about them but you did not ask him what they were?-- No. Commissioner, no, that - I need to go through this in sequence of what happened.

50

All right?-- It was after the Question Time. I met with Dr FitzGerald as I was concerned about what had happened at the Bundaberg Hospital. Dr FitzGerald said that he was nearing the completion of his report. On the 7th of April I visited the Bundaberg Base Hospital and met with the staff. The staff expressed their concerns about whether the report

would or would not be completed. What I indicated to the staff at that meeting - because the report at that stage still hadn't been completed, what I indicated to the staff because they were so concerned was that I would have Dr FitzGerald come to the hospital as quickly as possible to talk to them about where he was with the report and any preliminary findings that he had. Even though I hadn't seen the report it was important for the staff because of their concerns for Dr FitzGerald to go back there and talk to them.

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But you didn't-----?-- I didn't want to wait until the report was completed. I wanted-----

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You did not-----?-- Because of the anxiety of the staff, I wanted Dr FitzGerald to get up there as quickly as possible and talk to them.

You did not think it was important for you to know what those preliminary findings-----?-- Well, I did, Commissioner, but the more important thing was for Dr FitzGerald to talk to the staff first.

20

Did you ever-----?-- That was first and foremost.

Did you ever ask him what those preliminary findings were in the next week or so, for example?-- Well, by that stage, by that stage, Commissioner, I think that we had - there had been a decision made we were going to have an Inquiry and-----

Perhaps there had been, but did you ever ask him? That's a simple question?-- Look, I think, yes, I did. I would have spoken to Dr Fitzgerald.

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And asked him what those preprimary findings were?-- I would have spoken to Dr Fitzgerald and spoken to him about the clinical audit. Dr FitzGerald would have alluded to me there were a number of cases of concern to him. I would have - and then I went through with what I wanted done and, Commissioner, what I said was - what I said was this: I asked for a high level review panel to assist the Bundaberg hospital staff. I asked for the review panel to undertake a further detailed analysis.

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What are you reading from now, Mr Nuttall?-- Well, it's my notes, Commissioner.

Okay?-- I asked the review panel to undertake a further detailed analysis of the cases identified to determine if further clinical care is necessary or if those cases should be further investigated by an independent authority such as the State Coroner.

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What date was this?-- I haven't got that exact date, Commissioner, with me, but, Commissioner-----

What month was it?-- This was the - this would have been at the early month of April - in April.

MR ALLEN: There's been evidence, Commissioner, that such a review was announced by the Minister on the 9th of April this year?-- That's right, Commissioner.

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COMMISSIONER: Thank you?-- And that was my response and I asked - I asked for that to be done. I asked to provide a means whereby patients of Dr Patel could be reviewed to ensure that they have not suffered any direct harm. I asked for the review to examine the quality and safety structures and systems at the hospital and to advise on how those systems may be improved. I asked that there was to be a review to the cultura and relationships within the hospital and with the professional and general community and to identify mechanisms by which those matters could be improved, and I asked to - them to provide a report to the Minister through the Chief Health Officer.

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Thank you?-- Now, Commissioner, that is a fairly detailed response to the concerns from the Bundaberg Base Hospital and I-----

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That's matter of opinion. You may or may not be correct about that. Yes, Mr Allen?

MR ALLEN: Yes, thank you, Commissioner. Do I understand from one of the answers that you gave to the Commissioner that even as at the 7th of April 2005 when you attended Bundaberg Base Hospital you had not yet read a copy of any report from Dr FitzGerald?-- Because none had been provided.

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None had been provided by that date, you are saying?-- That's right. That's right. Not to me. Certainly not to me.

Do you understand that the line of communication would have been - and this might be as a result of any conversation you had with Dr FitzGerald on the 22nd of March - that he would provide that report to you direct or would it come through the Director-General?-- As the chief health officer I assumed that when he completed the report, given the circumstances, that he may have given it both to me and to the District - and to the Director-General at the time.

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Well, we know from evidence that has already been given that Dr FitzGerald did, in fact, provide a copy of that report to the Director-General on the 24th of March 2005 and, indeed, a copy to the District Manager on the 7th of April 2005. Do you still maintain that you hadn't been given a copy by the 7th of April 2005?-- Well, to the best of my recollection that's the case.

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Your evidence is at the time you went and spoke to staff at Bundaberg Base Hospital about the report of Dr FitzGerald that you had not been provided with a copy of it?-- That's correct.

This report that you then told staff would not be released?-- No, I indicated to them that - my understanding was that it couldn't be completed.

Couldn't be completed?-- That's right.

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So that goes to confirm your recollection that it had not been completed and you had not seen a copy of it?-- That's correct.

Is that the truth?-- Well, it's to the best of my recollection. This was a matter that was of great concern to all of us. This was a matter whereby we - we wanted to ensure that the patients firstly at Bundaberg were cared for in a proper and appropriate way. That's why we indicated that we would set up a review team to go up there and assess the files to ensure that we looked at the patients that needed caring. We had staff up there who were greatly concerned. I indicated to them that I would get Dr FitzGerald to come up and see them.

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If we look at the steps you took to address concerns about the patients at Bundaberg Base Hospital, did you speak with Dr FitzGerald on the 22nd of March this year in relation to whether or not Dr Patel should continue as Director of Surgery at that hospital?-- No.

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Why not?-- Because it was a matter - it was a matter - the matter about - around Dr - the matter relating to Dr Patel, Dr FitzGerald was up there doing the work. Dr FitzGerald had instructed that Dr Patel was no longer to do the work. Now, he would have done that with the Medical Superintendent and the District Manager at the hospital. That's the appropriate place for that to be done. He had indicated to me that that had been done.

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So you were quite satisfied that some limitation placed upon the nature of his surgery was adequate to address any dangers to patients?-- Well, that - that's correct, because that's - that was all the information we had as at the 22nd of March.

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You did not ask Dr FitzGerald for his reassurance that that would be sufficient to safeguard patients?-- Well, I think as the Minister you take the advice from the chief health officer and that was the advice given to me by the chief health officer.

Did you then receive any further briefings or information by any means as to whether or not Dr Patel's contract was going to be extended from the 1st of April this year?-- No, I wasn't.

30

You weren't involved in that and received no information regarding it?-- That's right.

So when did you first hear that, in fact, he had not taken up a new contract and had left the country?-- Well, I can't recall that, I just can't recall the date.

So as things stand on the 22nd of March, your evidence is Dr FitzGerald told you the report hasn't yet been completed but you understood that you would be provided with a report once it was completed?-- That's correct.

40

And you weren't provided with such a report prior to the 7th of April 2005?-- To the best of my recollection, that's correct.

So you then go to Bundaberg Hospital along with the then Director-General Dr Buckland to meet the staff?-- That's correct.

50

And did you go to Springsure before that?-- Yes, we did.

A hospital at Springsure?-- That's right.

And opened your comments to the persons gathered at Bundaberg with complimentary comments about Springsure?-- I can't recall exactly what I said.

I suggest you said words to the effect of, "We've just been to Springsure this morning to open a community health centre. What a wonderful town. 900 people have raised \$230,000 to build this community health centre and, now, here we are in Bundaberg"?-- Well, I may have said that.

And you commenced your comments to the staff in a belittling and aggressive manner?-- I reject that totally. That's simply not correct and I - and I have said on a number of occasions that I - there would have been well over 100 staff there. I - I sincerely wish that there was some sort of video of that meeting so people could see the way in which I addressed those staff. This - this is something that has disturbed me greatly, that some people at that meeting have tried to paint a picture of me going in there aggressively, going in there in an uncaring way. That is simply not the case and I reject that totally and I find it very offensive that that is the implication. I went in there as the Minister; the reason I visited that hospital on that day was simply because of what was unravelling about Dr Patel. I was concerned about these staff. I mean the easiest thing for me to do was simply not to go but I wanted to go there, I wanted to reassure the staff, I wanted to give them some comfort, I wanted to let them know that we wanted to support them and that's why at that meeting, when some staff did raise some concerns, I - I offered to make sure Dr FitzGerald came up to speak with them as soon as possible.

Just in relation to the absence of a video record of that meeting, would any member of your staff or the Director-General's staff who may have been present have taken minutes of what was said at that meeting?-- Not - not that I'm aware of, no.

You haven't sought any-----?-- No, it wasn't-----

-----minutes that may have been available?-- We wouldn't have taken minutes. That's not - that wasn't the practice.

I see. You'd told the persons present at the meeting that because of the release of material in parliament and the fact that Dr Patel had left the country, the outcome of Dr FitzGerald's investigation would not be released?-- That's correct, because the standard practice is that clinical audits to - and that's what was advised to me by my department, that clinical audits were not - were not audits that were released as a matter of course. However - however - because of that and because of their concerns, I wanted to ensure that they were kept abreast of matters and again - and I repeat it again, and that's why I asked Dr FitzGerald to visit and talk to those staff about the report and where he was with it.

Did you tell the staff at the meeting that Dr FitzGerald's report would not be made public because Dr Patel had left the country and been denied natural justice?-- I - look, my understanding was that I indicated to them that the report wouldn't be able to be released because Dr Patel wouldn't have



a chance to respond to the report. That - that there were a number of issues in the report and that's why I asked Dr FitzGerald to go and talk to the staff, so he could talk to them about those concerns.

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COMMISSIONER: Did you mention natural justice?-- Commissioner, look, I'm not trying to be evasive; I just simply can't remember. In my capacity as the Minister, I - I visited a number of hospitals throughout the state and spoke to a number of staff in a public gathering on nearly every occasion I visited those hospitals. So to ask me to remember every single word I said at every one of these meetings is just impossible.

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MR ALLEN: You wouldn't recall if Dr Buckland mentioned natural justice?-- Look, I'm not saying either he or I didn't say that. I'm simply saying to you it's very difficult to recall something like that.

Do you recall one of the nurses at the meeting saying, "Well, Dr Patel can reply to the allegations from America"?-- Well, the nurse may have said that.

20

Do you recall Dr Buckland saying that he supported his staff 100 per cent and would not tolerate his staff being tried by the media and being denied natural justice?-- He may have said that.

Do you recall a nurse asking Dr Buckland if he supported his staff 100 per cent, then what about the support of the nurses who'd made complaints about Dr Patel?-- Look - look, both Dr Buckland and I, when we were at that meeting, the purpose of both of us going to that meeting was to try and show some support to the staff in terms of the difficult circumstances they found themselves. There was - there was no intention by either Dr Buckland or myself in any way to try and stymie the staff and their concerns and that's why, again, we asked Dr FitzGerald to come back and meet with them. Our - both of us, our intentions were honourable intentions, to try and care for the staff.

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I suggest that an effect of what was said by yourself and Dr Buckland was that Dr Patel was being defended by yourself and Dr Buckland and staff were being blamed for him being denied natural justice by leaking of material?-- I reject that totally.

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Would you accept that some persons at that meeting were genuinely offended and upset by the comments made to them by yourself and Dr Buckland?-- Look, there were two - there were several people there that were - and I think they were nurses, were very concerned, and it was because of that concern, it was because of that concern, that we wanted - that we sent Dr FitzGerald up there.

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But the clear message given to the staff at that meeting was that for whatever reason, the report would not be released and the matter finish there?-- No. I reject that.

Well, the only promise you made was that Dr FitzGerald would come up and talk to staff?-- That's right, and as Dr FitzGerald has told the previous Commission of Inquiry, that it wasn't normal practice for clinical audits to be released.

You didn't tell staff that you were going to undertake this high powered review you've told us about earlier, did you?-- No.

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Because you hadn't decided to have one on that date, had you?-- I - I think the date, the 7th of April was a - and I'm just not sure, it may have been a Thursday, and I think that the decision to conduct the review was made on the Friday and then we contacted - and the sequence of events, and then we contacted the people to see if they could do the review on the Friday and the Saturday.

Yes, well, we'll come to that very shortly?-- Sure.

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But just before we leave the 7th of April, I suggest you told the meeting words to the effect that, "The only way we can stop this rubbish", and that is these public ventilation of complaints about Bundaberg Hospital, "The only way we could stop this rubbish and stop Mr Messenger was to vote him out at the next election"?-- That is a total fabrication. Simply - that is simply not true and, again, I find that very offensive.

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Mr Buckland in your presence said that, "No decent doctor would want to come to work in Bundaberg in such circumstances"?-- They're matters you'd have to put to Dr Buckland but I do not recall Dr Buckland saying that.

And I suggest that when a nurse asked if you and Dr Buckland were telling them that nothing could be done further in relation to Dr Patel, the Director-General responded by saying, "How are we going to get him back from America now"?-- Again, they're matters you'll have to ask Dr Buckland about.

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You don't have a recollection?-- But I don't - I don't - I don't recall - look, I don't recall Dr Buckland doing that. Again, Dr Buckland - and I have to say this, Commissioner. Dr Buckland and I went up there in a supporting role, not in a role to be aggressive as is being - as is being put to me.

In paragraph 28 of your statement, when dealing with this meeting, you acknowledge that you were asked several questions about Dr FitzGerald's report and you state that you answered by saying that the report could not be published because it was incomplete, that in the absence of Dr Patel's version of events it could not be completed and that there were privacy issues because the report referred to individuals by name. Now, if we could just deal with that. The report was incomplete, what, only in the sense that Dr Patel's version of events was not included?-- Well, I hadn't - as I said to you, I hadn't seen the report.

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Well, how could you answer at the meeting saying that the report could not be published because it was incomplete?-- Because Dr FitzGerald hadn't provided me with the report so to the best of my knowledge, the report hadn't been completed.

Well, there had been a completed report provided not only to the Director-General two weeks before but-----?-- Well-----

-----to the District Manager present that day?-- Well, I don't know - I'm not aware of that.

So you-----?-- As I said-----

-----were prepared to say it was incomplete even though you didn't know one way or the other?-- No, not at all. I mean, I asked Dr FitzGerald to make sure the report was completed as soon as possible. As of the 7th of April, I hadn't been provided with a report, so the - in - and my understanding was the report hadn't been completed.

You state in your statement that you told staff that in the absence of Dr Patel's version of events, it could not be completed. Now, what led you to understand that Dr Patel hadn't been given an opportunity to give his version of events?-- Because he wasn't in the country.

But this report was in relation to an investigation that had occurred from February, during which I expect Dr Patel was interviewed. Well, during which we know he was interviewed?-- Well, that may have been the case.

Well, why are you telling staff that it won't be released because Dr Patel hadn't given his version of events?-- Look, I simply point out to you that to the best of my knowledge at that day, on the 7th of April, the report hadn't been completed. Now, if the report - Dr Patel had left the country, I'm not sure what date he left the country but it was earlier than the 7th of April to the best of my knowledge, and that the report had not been completed and had not been provided to me. So if Dr Patel had left the country, Dr FitzGerald wouldn't have been able to complete his interviews with Dr Patel if he'd left the country.

COMMISSIONER: Unless he completed them before he left the country?-- That may have been the case, Commissioner, but it wasn't provided to me.

MR ALLEN: Well, I'm asking you about the terms of your statement, yes.

You answered by saying inter alia that, "In the absence of Dr Patel's version of events, it could not be completed." Now, is that truthful that part of your statement?-- To the best-----

Did you say that to the meeting or do you wish to change that?-- No, I don't wish to change it because that's - that's

to the best of my knowledge. That's what the events were.

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Okay. On what information did you rely in saying that Dr Patel hadn't given a version of events?-- On my own version, on my own understanding.

And what was that understanding based on?-- The fact that Dr Patel had left the country, the fact that if Dr FitzGerald hadn't completed the report, that there was more information that would have been required as Dr FitzGerald was investigating and doing his review so that, therefore, my understanding was that the report couldn't be completed because he couldn't ask Dr Patel more questions. I think - I think-----

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COMMISSIONER: That was speculation by you?-- Yes. Yes, it was, Commissioner, and I think that's a fair assumption.

MR ALLEN: Because you had no knowledge as to whether Dr Patel had been given a full opportunity to give his version of events before he left the country?-- No.

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So, on a speculative basis, you provide that as a reason for not releasing the report?-- No, it wasn't a matter for me to release the report. It wasn't a matter for me to release the report. As - as I indicated to you, that clinical - as Dr FitzGerald has also stated to the previous Commission, that clinical audits as a matter of course were not audits that were released publicly.

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The rest of that sentence, "That there were privacy issues because the report referred to individuals by name"?-- That's right.

Is it correct that you told staff that, that you offered that as a reason why the report would not be released?-- I can't recall that but I may have - I just can't recall that.

So that part of your statement may not be correct?-- No, I didn't say that. I said I can't recall that.

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Well-----?-- I can't recall - look - look, the issue - the issue around the report says there were in the clinical audits, my understanding was, doctors and nurses - in any clinical audits, that names are mentioned in those reports and that it is not normal practice to release that because there are issues then around about people's reputations.

Well, we have seen Dr FitzGerald's confidential audit report. It is Exhibit 230?-- Well, that's-----

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And there is no individuals mentioned by name, not even Dr Patel, let alone any patient?-- Sure.

On what basis did you state that the report wouldn't be released because of privacy issues because the report referred to individuals by name?-- Because that's what would have been advised to me by my department.

Who? Who advised you that?-- Look, I can't recall that. 1

Would it have been the Director-General?-- Look, I can't recall that.

Or Dr FitzGerald?-- It may have been Dr FitzGerald.

So-----?-- Look, I just - I'm not trying to be evasive. I'm simply saying to you - you're asking me to comment on matters in relation to a report that I haven't seen. I - my statement there simply talks to the people and says, "Look, the doctors" - "Dr FitzGerald has come to do a clinical audit. My understanding in the clinical audit, that there would have been names" - "names mentioned", and that's why I made that statement. 10

So, once again, assumption and speculation provided by you as a positive reason for not releasing the report?-- Again, it's - it's not about not releasing the report. It was never about not releasing the report. As Dr FitzGerald has said, clinical audits are normally not released, so it was never about not releasing the report. What the concern was for the staff----- 20

COMMISSIONER: It was about your statement about not releasing the report?-- I beg your pardon, Commissioner?

It was about your statement about not releasing the report?-- Yes, that's right. 30

MR ALLEN: See, you deal with it in your statement. You claim that at the meeting you said, "The report could not be published because", and then you provide reasons?-- Yes.

And now you say, "Oh, but it was never an issue whether it could be released or not." That's just nonsense, isn't it?-- No, it's not - the issue - the issue was this, the issue was that a report was being prepared by Dr FitzGerald. The issue was that as a normal - a normal course of events, those reports are not released. The issue was that in terms of preparing this report, Dr Patel was no longer in the country. The issue was that I still hadn't received and my understanding was that the report could not be complete, could not be complete, so therefore I was in a dilemma, as the Minister, if the report was - could not be complete, how could I release the report if we were going to release the report----- 40

COMMISSIONER: But you gave your reasons at that meeting as to why the report should not be released and now you're saying, if I understand you correctly, that those reasons were mere speculation by you?-- Commissioner, those - those reasons why the report could not be released were reasons that would have been given to me by - by my department. 50

Your Director-General, who had a copy of the report?-- Well, Commissioner, as I said to you, I had not seen the report.

Mmm?-- I can't - I can't - if the report - if I didn't have the report, I didn't have the report.

Very well. Yes.

MR ALLEN: Why were you providing reasons for not releasing the report if because of general principle it was never going to be released in any case?-- Because based - because people were concerned about - the nurses at the hospital were concerned that the issues that they've raised were not going to be addressed.

They were concerned that the whole thing was going to be swept under the carpet-----?-- That's right.

-----with the excuse being that Dr Patel had left the country?-- They were concerned about that, yes.

Yes. And they had a sound basis for such concern, didn't they?-- No, they didn't.

Because that was the approach at the time, was it not?-- No, it wasn't. The approach-----

The whole thing was going to be swept under the carpet and forgot?-- I couldn't disagree with you more. The issue was that what we wanted to do, first and foremost, was to ensure that the patients were cared for. That's why we set up the review team. The second issue was to ensure that those - those staff that did have concerns would be - those concerns would be addressed and they would be addressed by way of Dr FitzGerald going there and talking to them about his findings. So there was never any intention, never ever any intention for us to sweep this issue under the carpet. From my point of view, whether the report was publicly released or not, I had problems with that simply because I hadn't seen the report, simply because, as I stated in my statement, they were my concerns, but we wanted to ensure that anybody that had been affected by what had happened by Dr Patel was looked after and cared for.

Well, we will come in a minute to the reasons that might have motivated that decision to set up the further review but just before we leave the 7th of April 2005, at paragraph it is 97 through 101 of your statement, you respond to some questions asked about contact between a journalist Mr Thomas and a media adviser to yourself, Mr Potter, on the 7th of April 2005?-- Yes.

And that appears to be later in the day after you've returned to Brisbane from Bundaberg?-- I - yes, I'd say so.

Because you state in paragraph 98, "Mr Thomas was aware that I had been to Bundaberg with the Director-General. Mr Potter told Mr Thomas what had already been relayed to staff at Bundaberg Hospital, that the report could not be completed because Dr Patel no longer worked for Queensland Health and

had left the country." Consistent with what you'd told staff?-- Amongst - yes.

1

All right. Also, in light of Dr Patel's absence and the - that the report was incomplete, and that because the report contained confidential patient information, it would not be released publicly?-- Well, it's consistent with what I said to the Commission earlier.

All right. "After speaking with the Director-General, I was of the same opinion that the report should not be publicly released for the above reasons." Now, does that indicate the Director-General told you that the report contained confidential patient information?-- Well, it may be. It may be. You'd have to ask Dr Buckland that question.

10

But the Director-General's advice to you was that the report should not be publicly released for the reasons that Dr Patel had left the country, the report was incomplete and the report contained confidential patient information? It's clear you're saying the Director-General told you that?-- Well, that's what my statement says.

20

Okay. So no-one indicates either to the staff at Bundaberg or, indeed, to the journalist on that date that there's going to be any further review. That's not announced till the 9th of April?-- That's right. But the staff - as I said to you, we indicated to the staff that we would ask Dr FitzGerald to come to them and talk to them about the concerns that they had.

30

Right?-- So we didn't - we-----

That's not this review, not the Mattiussi review?-- Well, we didn't - we didn't want the staff to feel that we weren't going to address the issues that were being - that were being raised by them and I think that's an important point. That the staff were well aware - the concerns that they've raised, they were worried that they weren't going to be addressed. I - I indicated to them, "Look, I'll get Dr FitzGerald to come up to you and talk to you and work through those issues with you."

40

Okay. This review that's announced on the 9th of April, does it arise because another crucial piece of information comes to your knowledge on the 7th or 8th of April this year which changes the whole picture?-- You'd have to elaborate on that.

Because we know that the Director-General does an Internet search on the 7th of April after being given information by someone in Bundaberg which reveals that Dr Patel is - had been subject to disciplinary action in Oregon and that his licence to practise had been severely restricted?-- Certainly that wasn't relayed to me.

50

We know that Dr Buckland discovers that on the 7th of April and Dr FitzGerald?-- Well, I - I-----

On the 8th of April perhaps, if not the 7th. Now, are you saying that that wasn't conveyed to you prior to you announcing this further review on the 9th of April?-- To the best of my knowledge, that's correct.

1

When did you first hear about it?-- Hear about?

About the fact that Dr Patel had this extremely chequered history in the United States?-- Certainly - certainly not before - certainly not before the 7th of April. Some - some time after that, obviously.

10

Yes. It was on the Friday or the Saturday, wasn't it?-- No, look - look, when we were travelling back from Bundaberg, Dr Buckland and I had some concerns about, obviously, the way the staff were feeling. We had a number of concerns about how we were going to ensure that the patients that were treated by Dr Patel were cared for and looked after. We had concerns that the system at the Bundaberg Hospital had broken down totally and Dr Buckland's recommendation to me was to get this review team up there to try not only to look after the patients but to see where - why the system had broken down in Bundaberg and how we could fix that, and that that was the basis for establishing that review team.

20

So you're claiming Dr Buckland recommended to you the establishment of a further review on the 7th of April?-- It may have been on the way home or it may have been the next day. I just - it may have been on the way home in the plane or the very next day.

30

On the way home in the plane did Dr Buckland say, "Look, the Medical Superintendent's just come up to me and said that he's done an Internet search and we've got real problems with Dr Patel's registration"?-- Not that I'm aware of.

Not that you're aware of?-- No.

Surely you'd remember that?-- No, well, as I said to you, not that I'm aware of.

40

Did the Director-General contact you the next day and say, "Look, we've got a major problem with Dr Patel's registration"?-- No, no, the issue of establishing the review team was around those matters that I've outlined to you earlier.

No, please answer the question. Did he contact you after you got back to Brisbane-----?-- No.

50

-----either on the night of the 7th or the following day, the 8th of April and tell you that he'd discovered something about Dr Patel's past disciplinary history?-- No.

So you did not receive any information on that topic from anyone prior to announcing the further review on the 9th of April?-- That's right.



And you're sure about that?-- Yes.

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You didn't receive any information from Director-General, chief health officer or anyone else?-- Not to the best of my knowledge, no.

Yes, thank you, Commissioner.

COMMISSIONER: Thank you. Well, I'll take a short break now.

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THE COMMISSION ADJOURNED AT 11.29 A.M.

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GORDON RICHARD NUTTALL, CONTINUING:

COMMISSIONER: Now, is there anyone - Mr Gotterson's not here anyway, we've got no-one to cross-examine or examine Mr Nuttall?

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MS KELLY: I wish to cross-examine Mr Nuttall.

COMMISSIONER: Yes.

MS KELLY: And I understand others do too.

COMMISSIONER: Which order do you want to go in?

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MS KELLY: I'm not related to Bundaberg, since we're related to Bundaberg issues, perhaps it would be convenient to go straight to someone who wants to cross-examine on Bundaberg issues.

COMMISSIONER: Right. Who wants to go first then?

MR APPLGARTH: Can I say, and you can decide a batting order, I have quite a few questions but I don't think I'll be able to complete my cross-examination without, for example, the document that the witness told you about earlier that he saw a few weeks before he stopped being a Minister, so I can try and do as much of my cross-examination as possible.

30

COMMISSIONER: Do we know whether that document - where that document is? Do we know where it is?

MR APPLGARTH: I don't want to hold up the Commission a minute longer, I'm happy to go on with the Bundaberg issues, I have some questions arising out of Bundaberg but not that many.

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COMMISSIONER: I'm just concerned about this document. Mr Douglas?

MR DOUGLAS: Queensland Health has been asked to search for it.

COMMISSIONER: Right.

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MR DOUGLAS: I can say that much.

MR APPLGARTH: I discussed with my learned friend Mr Douglas that I would, if it suited you, Commissioner, to do as much of my cross-examination as possible at a point to where it would either be unfair to the witness or advance matters without seeing the document.

MR DOUGLAS: Mr Boddice is back. Mr Boddice has been alerted to the need to search for the document.

1

MR BODDICE: If I can indicate, I understand it relates to a Cabinet submission and I'm having the document brought up.

COMMISSIONER: All right. Thank you. All right, well you go first.

MR APPELGARTH: I'm just told by my learned friend Mr Harper that he has some Bundaberg questions and his questions aren't very long, so that's another-----

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COMMISSIONER: Okay, all right. Mr Harper?

CROSS-EXAMINATION:

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MR HARPER: Mr Nuttall, my name's Justin Harper, I appear on behalf of the Bundaberg patients. I might just take you back to those - the time after you were alerted to the circumstance in Bundaberg. You referred to setting up a referral service for patients of Bundaberg. Do you recall how long after the - you were initially informed of it that action was taken?-- No, I can't. Our concern was to the issue was to - obviously a lot of the patients wouldn't feel comfortable about going to the Bundaberg Hospital to be checked, we needed to try and get a panel, we met with the AMA and asked them to assist us establishing a panel of doctors that patients might be able to see so that they could have some confidence in the doctor that they saw and we did that. Look, I - can I say to you I think it was in a matter of days rather than, you know, longer than that.

30

You had the meeting with the staff on the 7th of April-----?-- Yes.

40

-----you spoke about earlier. Is it fair to say that you didn't though meet with any of the patients until around the 27th or 28th of April?-- I - yeah, that probably would be right, I'd say.

Okay?-- Because matters were unfolding, as you can appreciate, that at that time we - none of us realised the extent of what had happened, so, and then the Patient Support Group evolved as a result of that and then we met with them, I think the Premier and I met with them at the hospital.

50

What steps did you take to reassure patients and the people of Bundaberg about what was going to happen as a result of what had gone on?-- Well, I think, as you know, we announced the Commission of Inquiry, we announced the review by Peter Forster, we announced that-----

No, can I just interrupt there?-- I'm sorry.

I'm interested, you meet with the staff on the 7th of April?--  
Yes.

There's no meeting with the patients until the 27th or 28th of  
April?-- Yes, yes.

In between that time, what steps did you take to let the  
patients and the people of Bundaberg know about what was going  
on?-- Look, I think you'll find that we did a series of ads,  
and I don't know whether that was in between or after that  
period of time, a series of ads in local provincial papers, we  
intended to write to all the patients. The first thing we had  
to do was to identify which people in Bundaberg had been seen  
by Dr Patel. What we needed to do immediately was to  
establish who they were, then write to those people and say,  
"Look, our files indicate that you'd been seen by Dr Patel,  
we've got a system in place where you can be referred and seen  
to if this is what you'd like to do.", so that's what we did.

If I said to you that the Patient Support Group had its first  
meeting on the 14th of April?-- Yes.

And at that time there had been no correspondence with the  
patients of Bundaberg about what was going to happen to them;  
would you agree with that?-- Look, that may have been the  
case, I just don't have the timeframes there, obviously.

Okay. Would you concede then that the establishment of the  
Patient Support Group was really one of the main drivers  
behind getting the support to the people of Bundaberg?-- Oh  
look, certainly, they played a significant role, and I don't  
think anyone questions that, and they've been through a really  
tough time. What we initially wanted to do was we had to have  
a plan in place so that we could say to the Patient Support  
Group, "These are the steps we're taking to try and care for  
the people that have been dealt with or seen to by Dr Patel  
and we're doing steps A, B, C, D.", but we had to have those  
in place so that we could relay that then to the support  
group.

Minister, can I ask you about another area? In your  
experience when you're in the Health port folio, when you  
received ministerial correspondence about the complaint about  
clinical practice, what was the usual practice you went  
through to process that correspondence?-- Normally what would  
happen is that correspondence would be dealt with, it would  
come into my office, my office would send that through to the  
department to have that concern raised in that letter  
addressed.

Okay, so it will be recorded into your office?-- Yes, it -  
normally it would be, that's right.

Okay, be read within your office initially?-- Yes, and then  
it would be sent through to the department for a suitable  
response.

Okay. If it's an issue about clinical practice, would you normally get a report about the voracity of or otherwise of the allegations?-- It would be dealt with as per normal with any other correspondence, it's not to say it wasn't treated seriously, obviously it would be, but it wasn't the normal practice to say if - regardless of what the issue was, it would come into my office, it would be recorded, it would immediately go down to the department so that the department could supply me with some sort of response.

1

Okay. Would you though, you wouldn't - you wouldn't ordinarily get a report about the substance of the allegations though?-- Not in the normal course of events, no.

10

All right. Okay. Can I ask you then, after you were alerted about - sorry, one further question?-- Sure.

If there were telephone complaints to your office, were those recorded in any way?-- We had people in my office called departmental liaison officers who were departmental employees, I think there was, there were two positions shared by three people, they normally would take those calls and deal with them and either refer those people through to the various sections within the department of health or would deal with them accordingly.

20

Can I ask then after you first were alerted about the concerns about Dr Patel through the media, did you take steps to check your office records about correspondence which had been received?-- What we did was obviously within my department and within my office the concerns about Dr Patel, the first thing to do was we established a team of people from the department to go up to Bundaberg Hospital and start working on the files-----

30

No, sorry-----?-- No, I understand where we're coming from - to work on the files in relation to those issues, so.

All right. Did you do a search of your files though about whether you'd received your records about whether-----?-- Look, I certainly didn't do it personally, it may have been done by some of my staff.

40

Right?-- And if it was the case and there were issues around Dr Patel, no doubt they would have been referred to the review team in Bundaberg.

Okay. So you're not aware then of a search of your records showing up that in about August 2004, Mr Messenger wrote to you on behalf of Mrs Bramich?-- That certainly may be the case, there was a substantial amount of material that was - that Mr Messenger wrote to me on a number of issues in Bundaberg, not just hospital, but a number of health issues, and I would respond to those appropriately and accordingly.

50

Okay. But wouldn't it have raised alarm bells to you when you got the phone call from Mr Thomas of The Courier-Mail, would the first step for you or your staff would not have been,

"Let's check the correspondence to see whether we received anything."?-- I had already, I had already - all the correspondence from Mr Messenger to me regarding any issue at the Bundaberg Hospital I had collated that quite some time, I recall standing up in Parliament and waving it around in Parliament.

1

Right?-- Saying that this is all the material that you've written to me in relation to matters in relation to the Bundaberg Hospital. Dr Patel's name was not mentioned until March.

10

Okay?-- So we did have evidence.

All the correspondence though must have identified, I assume some of the patients-----?-- I didn't table that material in the Parliament.

No?-- I just waved it.

20

Okay, but you would have been aware then of complaints about some of the patients?-- Oh, of course.

Okay. Did you or your office make any attempt to contact those people at least as early as possible after you were alerted to the problems with Dr Patel?-- No, because in the letters that were sent to me by Mr Messenger, Dr Patel's name wasn't mentioned, so we wouldn't have been aware whether those patients were Dr Patel's patients or another doctor's patients at the hospital.

30

But it wouldn't have been a long stretch, would it, at least in relation to Mrs Bramich, it wouldn't have been a difficult task to find out that the complaint of Mrs Bramich was about Dr Patel?-- But that's - but that's why, as soon as the issue around Dr Patel arose, that's why we sent the review - put in place.

Yes?-- Not, that's why we put in place a group of people from the department separate from the review team to go up there and work on every file within the hospital to see who had been identified so that would have been just a duplication, we were doing that at the hospital as a matter of course.

40

Okay. Were you in your briefings alerted to the fact that one of the initial complaints, serious complaints made by Nurse Hoffman was about the death of Mr Bramich?-- That did - oh gee - I need to refresh my memory. I do recall receiving the - I'm sure there was a letter to me about Mrs - about Mr Bramich and I think it was in the, in '95? I think in early '95 - look, I'm sorry if I've got the dates wrong, but I just can't recall that.

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Okay?-- But certainly the matter - we would have addressed the matter.

I have no further questions, Commissioner.

COMMISSIONER: Thank you. Mr Applegarth.

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CROSS-EXAMINATION:

MR APPLGARTH: Mr Nuttall, my name's Applegarth and I'm appearing with my learned friend Ms Klease for Dr Buckland. I just want to ask you some questions off the Bundaberg topics, some rather general questions to start with?-- Yes.

10

And it relates to a matter dealt with in your statement which is briefings given to the Minister for Health. Can I just deal with the process to start with? When you were Minister for Health, you were assisted by a personal staff of a senior policy advisor, three or four policy advisors?-- That's correct.

20

And you'd have administrative staff in addition to those?-- That's correct.

And when you became Minister for Health, Mrs Edmonds tells - or Mrs Edmond tells us that she left behind two filing cabinets of important documents that she left behind for the use of you and your staff; is that the case?-- Well, the only reason I laughed at that is when we went to the office, there were probably a dozen filing cabinets in the office and-----

30

Presumably, you got someone to work out the wheat from the chaff?-- Yes, we did, and look, my staff would have done that, they would have gone through that material.

Now, in terms of the assistance that the department and the Director-General give to the Minister and the Minister's office, that consists of providing advice in a number of ways?-- That's correct, yes.

And that would consist of formal submissions and briefings?-- Yes.

40

That would be there would be direct access from senior executives and their staff to the Minister or the Minister's staff?-- Yes, yes.

Either in person or by phone?-- Oh yes, of course.

There's personal briefings of conversations between people there?-- Regularly.

50

In the case of the Director-General, it might be what, three times a day?-- Oh, sometimes none, sometimes half-a-dozen, it just varied where we were and what we were doing and what the issues were.

And apart from you, and you've got other things to attend to, you go to Parliament, you might be out of the office, you're

aware there's no inhibition upon your staff, the Ministerial staff from seeking out the Director-General or people in the Director-General's office or senior staff within the department?-- Not at all. In fact, can I say, and I think it needs to be said publicly, that the relationship was a very strong one and a very good one and a very positive one and we worked very closely together and there was always - I was always able either myself or my staff there was never any - anyone tried to stop us from seeking information or meeting with people at all. In fact, they were very cooperative.

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Now, notwithstanding that you'd had previous Ministerial experience when you became the Minister for Health, you would have been on a steep learning curve?-- I think anyone that becomes the Minister for Health goes on a steep learning curve.

And although the Ministerial staff consisted with at least one of them consisted with one of health background?-- Yes.

20

Is it the case that when you were appointed as the Health Minister, that the department increased its resources in your office by putting someone on secondment, a senior officer with additional knowledge that could help you and your staff gain information?-- There was a departmental liaison officer but based - he was based in the - I had two, as I said, or three people but two positions.

Okay?-- And there was another person that we had direct access to, but they were based in at the Director-General's office but we had access to those people.

30

And you and your Ministerial staff had a secure web site that you could access briefings and submissions and the like electronically in the department?-- I presume my staff did but certainly not me, I just - I left that to my staff.

Okay, and there were regular structured weekly meetings between the Director-General and one or two of his officers and you and your staff?-- Yes, there were, and - yes, there were, yeah.

40

And I take it, for example, if you or your staff wanted something from, say, the Chief Health Officer, from the answer that you've given to my previous questions, there'd be no difficulty in you obtaining a report from the Chief Health Officer?-- No, not at all, not at all. I had access either to the Chief Health Officer either directly or through the department.

50

And now, you and Dr Buckland would have occasion to travel together?-- Yes.

You'd go to towns, I think you gave an incident of you went to Springsure earlier?-- Yes.

And so you were in the airport lounges and on planes, you'd have a lot of time to talk to each other-----?-- Yes.



-----about the department and issues confronting the health system. And during - now, Dr Buckland was appointed Director-General in - I should know this by now - 29th of April 2004?-- Mmm.

1

So he had been Acting Director-General for a few months during the first few months of your Ministry?-- And prior to me being Minister, yes.

10

So during the time that you and Dr Buckland served together, you as the Minister and he as either the Acting Director-General or Director-General, you would have had discussions to discuss the types of challenges and concerns that you deal with in your written statement?-- On a regular basis.

And when you put forward in your witness statement the types of concerns, and we don't need to go over them in detail, you weren't meaning to suggest that they were just your personal concerns, Dr Buckland shared them, didn't he?-- Yes.

20

Issues like the chronic national and international shortage of trained medical professionals?-- Correct, we had a shared vision, yes.

And that included doing something about preventative health to try and relieve the burden on the hospital system by reducing this burden?-- That very much so.

30

And your views about partnerships with the private sector were shared by him?-- Yes, they were.

Apart from in the general sense that Dr Buckland was interested in trying to achieve things in, say, country towns by having local GPs work in the town hospital?-- And in some cases we would even meet with the - collectively we would meet with those local GPs to talk about those issues.

Now, when you became Minister in February 2004, apart from informal briefings of the kind that we've just been discussing where you could seek out Dr Buckland or anybody else for advice, there were formal briefings, weren't there, to familiarise you with issues affecting your port folio?-- Yes, that's right.

40

And you attached one of them as Attachment 4 to your statement?-- Yes, yes.

And one of them I'll put up on the screen. I think I can read it quicker than we can perhaps get it up on the screen, that the medical staffing issues?-- Yes.

50

And I apologise for the people who can't see it on the AV just at the minute - but you were told that in writing in February 2004 about the medical shortages that existed, particularly in rural areas; do you see that-----?-- Yes.

-----at the top of 4?-- Yes, yes.

1

That the public sector is unable to compete with the lucrative returns available to private sector doctors?-- Yeah.

And you see the second paragraph there, "Employment of overseas-trained doctors provides a short-term solution to doctor shortages. However, this approach brings with it a range of skill and competence issues."?-- Yes.

10

And then further down the page there's a more detailed account?-- Yes.

Summarising the position in relation to overseas-trained doctors?-- Yes.

Now, leaving aside overseas-trained doctors for the moment, from that briefing and all subsequent briefings, you appreciated that one of the problems confronting the department was with its finite resources, it had an inability to pay its workforce what perhaps it would like to without those budget constraints?-- That's probably fair comment.

20

And I'm not asking you to criticise the system, we understand the system, but in terms of the workforce challenges that faced you as Minister and faced the department, there was inability to pay salaried medical officers what perhaps you'd like to pay them and this was leading to a drain of salaried medical officers out in the public hospital system into the private sector?-- I think that that's part, part of the reason why they left the public system, yeah.

30

COMMISSIONER: Or what other States were prepared to pay them?-- That's correct, Commissioner, but there are other reasons I think they left.

MR APPLGARTH: As, for example, Dr McNeil gave evidence here, he's the head of the Acute Care Section at Prince Charles, that he lost a valued member of his staff to Victoria because the pay at Ballarat was so much better?-- Sure.

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You appreciate that was an issue?-- It was difficult for us, of course.

And similarly I don't want to go over the war, the recent wars now that there's been declared a peace?-- Neither do I.

But similar issues with VMOs, that you'd like to pay VMOs more, but not being able to pay them as much as you'd like, you don't have as many VMOs you'd hoped for?-- But Dr Buckland and I also talked about changing the system of how we operated, so there was a number of issues.

50

Just so we're not leaving nurses out of the picture, the same tension existed, that with the budget that you had, there were - had to be industrial negotiations with the nurses union?-- I know that only too well being the former IRO.

Very quickly, so you can give the Commissioner insight into that, the health department can't, as it were, of its own volition make a decision how much to pay nurses and doctors, that there's a whole-of-government approach and the Department of Industrial Relations has a say in that process?-- Yes, that's correct.

1

And can in fact veto a deal that might be done by the health department with nurses or VMOs as the case may be?-- That's not correct because we wouldn't be able to do any deals, you can't.

10

Any deal in principle, I'm sorry?-- Still can't do a deal in principle without the approval of the Cabinet Budget Review Committee, so all you can do is put an offer on the table subject to approval, so-----

I stand corrected. Apart from whatever role the Department of Industrial Relations may have, you might even get the tick from them, it would still have to pass the Cabinet Budget Review Committee?-- That's correct, that's correct.

20

Thank you. Now, in your statement at page 8, you deal with the issue of morale. I just wanted to clarify something there. You mention that you were conscious of-----?-- Sorry, I beg your pardon? Paragraph 8 or page 8?.

I'm sorry, Mr Nuttall, at paragraph 50 of your statement, you were responding to some questions about whether you ever received - and I better turn it up myself rather than rely on memory - the heading is "Low Morale Among Doctors and Nurses in the Public System"?-- Yes, okay.

30

And you deal at paragraph 50 with your awareness of longstanding complaints about morale from nurses; do you see that?-- Yes, yes.

But they weren't the only ones who were complaining about morale, were they, medical professionals were as well?-- Yes, of course.

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And so in paragraph 51 where you say, "However, I was never briefed along the lines that there was a major morale problem across the department."?-- Yes.

What you're meaning there is you weren't given a formal briefing document that said low morale in the department?-- No, that's right, that's right, and in actual fact, Dr Buckland in the restructure that we had approved by Government, wanted to set up a unit within the department to try and address those issues and was very proactive in that regard.

50

And that's the division that looked into workplace reform?-- That's right, that's right.

Even before that, and I'm handing out here - if I could hand up one for you and one for the Commissioner and the others

will be circulated, perhaps. This is an extract from a letter that's below it, you'll see that in his application for the job as Director-General on the 29th of March 2004, Dr Buckland identifies the fact that certain things had resulted in a quote "disaffected workforce"-- Yes.

1

We'll leave aside whether he's identified the proper cause, but there he stated that there was a disaffected workforce in his job application; correct?-- Yes, yes.

10

And he didn't alter that view during the time that he was Director-General, he always appreciated that fact as did you?-- Worked very hard at it.

Because if you've got a workforce that has low morale, you've got to do the best you can to make sure that it doesn't sink any lower and hopefully improve it?-- Well, I think the focus was on improving it, not so much holding the bottom line, it was about trying to fix the low morale problem rather than just say, you know, we'll just have to make do with what we've got. It certainly wasn't the approach that either Dr Buckland or I took.

20

And in terms of shared approach, if I can use that expression?-- Yes.

You realised that it couldn't be business as usual, that you'd have to do some major changes to the way the department was organised in order to try and overcome the types of problems that he identified?-- We needed to do that.

30

And part of that was facing the reality of a shortage that wasn't just known to Queensland, a shortage of the medical workforce?-- That's right.

There has been a suggestion that there's a practice of - or was a practice at least during sometime when you were Minister and when Dr Buckland was Director-General of not releasing reports that may be embarrassing to the Department or to the Government. Was that ever an instruction by you?-- No it wasn't and-----

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That's enough to answer the question?-- No, it wasn't.

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Can I ask you whether you recall that Dr Buckland commissioned an external review for birthing services that was undertaken by Dr Hirst?-- Yes, he did.

And-----?-- It was a government - it was a government commitment in the election campaign.

When I say Dr Buckland, he recommended to you because - I haven't got the paperwork - but the process would have been he would have sought your approval?-- Yes, that's right.

10

And you accepted that recommendation?-- Yes.

And Professor Hirst - sorry, Dr Hirst should undertake that review?-- That's correct.

And her report was critical in some respects-----?-- It was.

20

-----of the department?-- It was.

And it was publicly released?-- It was.

More recently, do you recall that in 2004 Dr Buckland commissioned an external review of what's called Fatal Mental Health Sentinal Events?-- Yes, that's right.

And that was a report - that led to a report by Dr Michael Bolton?-- I think that was - I'm not 100 per cent sure of the author.

30

That came in in March of this year which - under the title, "Report of the Queensland Review of the Fatal Mental Health Sentinal Events."?-- Yes.

And a copy of that report was provided to your office?-- Yes.

And with all your explanation of how many reports come through I would readily appreciate that you can't remember the detail of the report, but it's about 160 pages without annexures. It dealt with a lot of incidents but - and dealt with some particular case studies, didn't it?-- Yes. It probably did, yes.

40

In any event, do you recall that Dr Buckland proposed that at least the executive summary of that report be released?-- Look, I can't recall that.

Okay. Can I deal briefly, but I may not be able to do it completely, with some issues in relation to Bundaberg Hospital and Dr Patel. Jumping forward, as it were, when you and Dr Buckland visited the hospital on the 7th of April 2005, is it the case that so far as you could tell he was surprised by the depth of feeling that came forward from the staff at the meeting?-- It was a shock to both of us.

50

And is that because that up to that time the content of

Dr FitzGerald's report and anything you have been told by Dr FitzGerald hadn't alerted you to the extent of possible problems there?-- Well-----

1

COMMISSIONER: He said he'd never seen Dr FitzGerald's report.

MR APPLGARTH: I withdraw the question. Anything that you read or been told about Dr FitzGerald's investigation didn't prepare you for the extent of the staff concern?-- No, not at all.

10

Just on the FitzGerald report, I think it's the case in your statement that you say that you met with Dr FitzGerald on the 22nd. You say that in paragraph 27 of your statement. He told you that the report was near completion?-- Yes.

Correct?-- Yes.

Now, this was a very public matter because it had been raised in the Parliament; correct?-- Yes.

20

Your staff were alert to the fact that it was potentially quite a controversial matter?-- It was - I just recall that it was the first time it was raised publicly. So, it - obviously events unfolded but it was one event of many events that as a Minister you deal with on a daily basis, but it's - but I did take great concern about it. That's why I saw Dr FitzGerald.

When you saw Dr FitzGerald did you have a member of your staff with you?-- Look, I genuinely can't recall whether I did or didn't.

30

Now, I can't help you and that's why I'll leave this topic for a moment, but in light of what you told me earlier when I was asking you questions about the process of obtaining advice and documents, it wouldn't have been terribly hard for your staff to obtain a copy of Dr FitzGerald's report when it was completed a few days later if they'd wanted it?-- But the problem there was we didn't know. We didn't know it was finished. We - I would have expected Dr FitzGerald in light of the fact that I actually met with him and spoke with him, that he would have come and seen me and provided it to me.

40

COMMISSIONER: Or you speaking to Dr Buckland after he received a copy of report over the many occasions you chatted at airports and going to Bundaberg to have told you he had a copy of the report?-- Well, Commissioner, that may be the case, but the fact that I actually met with Dr FitzGerald in the first instance to me would indicate that Dr FitzGerald would come back directly to me.

50

MR APPLGARTH: Commissioner, I can't take that any further and I have sought instructions. My client's away. We're trying to get some instructions. It's probably better if we look into, through the assistance of Queensland Health, what actually happened in terms of the document within either the Director-General's office or the Chief Health officer's office

rather than me speculate and cross-examine on this topic without further instructions.

1

COMMISSIONER: Matter for you.

MR APPLGARTH: I can't take it further at the moment, I am afraid.

But I can take further, Mr Nuttall, some events after you'd seen the staff at Bundaberg on the 7th of April and I suggest to you that on the flight back from Bundaberg to Brisbane Dr Buckland said to you that from what he'd been told by, in particular, Dr Keating that Dr Patel may not be everything that you and he had heard?-- Look, I don't recall that. I genuinely don't recall that discussion.

10

And he said, "There's more to this guy than we know. I will have a look at it."?-- Well, he - look, I'm not denying he didn't say that to me.

20

And I suggest to you that he went home, as it were, and the next morning, which was Friday the 8th of April, he spoke to you and told you that Dr Patel had restrictive registration in Oregon and New York?-- No. I don't recall that discussion at all.

It's the sort of thing you'd recall if-----?-- Exactly.

-----it was said?-- Exactly. You would recall. That's why I'm saying I don't recall.

30

COMMISSIONER: You are saying it didn't happen?-- I am saying I don't recall it.

Then you would have recalled it if it had happened?-- Yes.

MR APPLGARTH: Now, can I deal briefly with the appointment of the review team. By the way, you would expect the enactment to be taken by the Medical Board of Queensland, of which Dr FitzGerald's an ex officio member, once that issue in relation to Patel's registration came to light?-- Yes.

40

Can I move then to the appointment of the review team and can I suggest to you that on Saturday morning, the 9th of April 2005, Dr Buckland contacted you and said that in the light of the seriousness of the matter a comprehensive review of Dr Patel and the Bundaberg Health Services were required?-- Well, it was - he did speak to me about that matter, yes.

That was on the Saturday morning?-- Yes.

50

And he advised you that he intended, subject to any view that you had, to form an investigative team comprising Dr - I will try not to mispronounce his name - Dr Mattiussi-----

MR DOUGLAS: Mattiussi.

MR APPLGARTH: Dr Wakefield and Leonie Hobbs and also

Professor Peter Woodruff as a representative of the College of Surgeons?-- That's right. And I actually rang Dr Woodruff.

1

All right. And you agreed to that proposal and the membership of the team?-- Yes, I did.

Can I move to the issue of waiting lists and see how far I can go. Long before you became Health Minister you knew that people had to wait sometimes lengthy periods for an appointment to see a specialist in an outpatient clinic in the Queensland public hospital?-- Yes.

10

You would have known that as a local MP with constituents relying on the public hospital system?-- That's right.

And before you became Health Minister, you would have been aware that this was an issue that was on and off the political agenda. You would have been in the House where questions were asked about that?-- Oh, yes.

20

And we have seen under Dr Scott's statement, questions are asked of your predecessor about these issues by Mrs Cunningham, Miss Simpson, Mrs Pratt and so on. So you knew about the issue?-- I knew there were people waiting for an appointment to see - to see specialists in the outpatients of the hospital.

COMMISSIONER: You knew from time to time it had been a hot political issue, questions asked in Parliament?-- Oh, yes.

30

MR APPLGARTH: When you became the Minister, part of the briefing that you received was about waiting lists. Did you look at this document? We will hand some around.

COMMISSIONER: Thank you.

MR APPLGARTH: Do you recognise that to be part of the briefing that you received in February 2004 about various issues dealing with outpatient waiting times?-- Yes.

40

If you have got - I think it's double-sided photocopying, it's the second page after the title page, it's on page 170. You will see there that's there an account given of the specialist outpatient waiting times. Do you see that?-- Yes.

And it refers to inconsistent practices relating to the management?-- That's right. That's right.

That wasn't the only briefing that you received about specialist outpatient waiting times, was it?-- Oh, as I pointed out, if you look at my statement, there are significant number of briefings over - I think over 900 briefings that I received in my time as the Minister, so I don't recall every one of those.

50

COMMISSIONER: Do you recall any further briefings about-----?-- Oh, Commissioner, I'm not trying to be difficult but when you receive 975 briefings, it's just hard.



It's a simple question. Either you do or you don't recall?--  
I don't recall.

1

All right.

MR APPLGARTH: And in preparation - sorry, there would be  
questions placed on notice in the Parliament about these  
issues, wouldn't there?-- That's correct.

10

And one was placed on the notice paper on the 27th of  
April 2004. Commissioner, I neglected to tender that.

COMMISSIONER: You wish to tender that?

MR APPLGARTH: I think so.

COMMISSIONER: Yes.

MR APPLGARTH: It's supplements the record.

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COMMISSIONER: Yes. Exhibit number 320.

ADMITTED AND MARKED "EXHIBIT 320"

MS McMILLAN: What was that Exhibit number?

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COMMISSIONER: 320.

MS McMILLAN: Thank you.

MR APPLGARTH: Can I just say for everyone's purposes, I  
don't mind whether the previous one, which is the extract from  
Dr Buckland's letter of appointment, being the exhibit. It  
will go in under his statement but I am in your hands as to  
whether you want it in.

40

COMMISSIONER: We don't want it in twice, I wouldn't have  
thought.

MR APPLGARTH: Yes. Thank you. Mr Nuttall, could you look  
at this document which appears to be a question on notice and  
a response to it?-- Yes.

And you will see that the document speaks for itself. I will  
just deal with the first sentence, the answer,  
"Queensland Health does not currently collect waiting times  
for specialist outpatient appointments in any consistent  
manner." It goes on to say what's being done in the-----?--  
Yes.

50

-----process of implementing matters, and that same topic  
arose in the Estimates Committee that same year-----?-- Yes.

-----didn't it? You can look - I'm not sure, you may not have seen it. It's under Dr Scott's statement, part of JGS17, but just if the witness could be shown this document. I don't propose to spend more than a few seconds on it. You will see on the page that I have tagged it's got a heading, "21 July 2004, Estimates Hearing."?-- Yes.

1

Question by Mr Copeland - you were talking about waiting lists - and the last two lines on the page, "The waiting times for specialist outpatient services do vary quite considerably throughout the State."?-- Yes.

10

Then you go on in the next page to talk about matters and then you deal with the management practices that are in place?-- Yes.

And it's likely it's reflective in the answer you gave to the questions on notice?-- That's right.

20

COMMISSIONER: Can I just come back to the answer to the question on notice, Mr Nuttall. You say, "Queensland Health does not currently collect waiting times for specialist outpatient appointments in any consistent manner." Whether you - did you ask someone in the department in order to answer that question?-- Commissioner, I - the question would have come to me on - as a question on notice. I would have asked the department to give me the data so I could answer the question properly. And that would have been the response that I would have received.

30

All right.

MR APPLGARTH: This isn't a question for the witness but it may assist you, Mr Commissioner, if I may, in terms of technical matters. It seems that's addressed in paragraph 24 of Mr Zanco's statement.

COMMISSIONER: Right. This question on notice, do you want that-----

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MR APPLGARTH: Yes, if that is convenient.

COMMISSIONER: I think it is too. 321.

ADMITTED AND MARKED "EXHIBIT 321"

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MR APPLGARTH: Now, Commissioner, I am at a point where I can go on and ask some further questions about the oral evidence that the witness gave this morning about the document that he saw. I am happy my to do that but in that sense I only have a couple more minutes of my cross-examination. I am conscious that Ms Kelly wishes to ask some questions, so I can ask a few more questions on this topic and then I will probably have to

stop at that point.

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COMMISSIONER: What's your preference?

MR APPLGARTH: Well, I will just ask a few questions, if I may, depending - if anyone objects in terms of unfairness I will stop then, but I can ask some questions.

HIS HONOUR: Okay.

10

MR BODDICE: Can I just indicate, Commissioner, that that document has arrived and I have given it to Commission staff to photocopy so that copies can be provided to my learned friend Mr Applegarth.

COMMISSIONER: Thank you.

MR APPLGARTH: I am in your hands.

COMMISSIONER: Is it more convenient that you ask the questions after you get that document?

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MR APPLGARTH: I think it's probably more efficient.

COMMISSIONER: All right. Ms Kelly?

CROSS-EXAMINATION:

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MS KELLY: Yes, thank you. Mr Nuttall, I act for Dr Aroney and the Queensland Clinician Scientist Association. Can I ask you about something you said this morning, that you can, "Only go on the material that's supplied to me as the Minister". You said that in answer to Mr Douglas in relation to waiting lists. Now, did you intend to indicate by that that you have no capacity to go beyond what is volunteered to you by the department?-- No. Of course I can.

40

You certainly receive submissions from members of the public?-- Yes.

And from stakeholders in the health system?-- Yes, of course.

And so that when matters of disquiet or concern are raised by such persons, you have every capacity, don't you, to seek from your senior bureaucrats information in relation to those matters?-- Yes, I do.

50

Yes. And, Minister, did you indicate - did you intend to indicate that you had never heard of the waiting list for the waiting list?-- Because it - it was a separate issue. It was about appointments.

Yes?-- One was about waiting - I think that's the problem with the terminology.

COMMISSIONER: I think we know what they are?-- Yes.

1

But the question is whether you'd heard of this?-- I'd heard about people waiting for appointments, not waiting - well, it wasn't waiting list for waiting list, it was about appointments to see the specialist. They were very separate issues.

MS KELLY: You had heard about a phrase used, the waiting list for the waiting list?-- Sure. Yeah, of course.

10

You had heard about that since Ms Edmond, you predecessor-----?-- Of course.

-----first raised it in '98. That right, isn't it?-- That's right.

It had been a live issue, in fact an election issue in the June '98 election?-- May well have been, yes.

20

All right. Now, are you saying that upon you coming in to the Health portfolio that that election issue had dropped off the agenda in Queensland Health?-- The focus on the election was on the elective surgery lists. That was the focus and that was the election campaign. The campaign was around that and around election commitments. That's where we were coming from.

Can you just turn back to the document that's been tendered, Exhibit 320?-- Yes.

30

Can I ask you to turn to what is, in fact, page 202, which is the fourth page in?-- Yes.

COMMISSIONER: Numbers are down the bottom, Mr Nuttall?-- Yes.

MS KELLY: Do you see at the top of the page the subject gives a background of eight-----?-- Yes.

40

-----commitments, election commitments?-- Yes.

The waiting list reduction strategy?-- Yes.

And after listing the eight points the sentence, it reads, "A further element was added to the eight point plan being the collection of waiting times for specialist outpatient appointments"-----?-- Right.

50

-----"to assist in clinical prioritisation for surgery"-----?-- Yes.

-----"and appointments." Now, this is a briefing to you upon coming in to the portfolio?-- Yes.

In February 2004?-- That's right.

You were advised as at that time that the waiting list strategy included a point whereby the collation of the data of specialist outpatient appointments was to be included?-- And it wasn't consistent, so we had to do some work around it.

1

And what work was done after you received this briefing prior to you leaving the portfolio in July this year?-- Look, I would have to go back and have a look at material that would have been supplied to me. But no doubt there would have been.

10

COMMISSIONER: Don't speculate. You either know what work was done or you don't?-- Well, Commissioner, with the greatest respect, there is an enormous amount that goes on in Queensland Health.

I understand that, Mr Nuttall, but I just don't want you to speculate. I would like you to give the evidence to the best of your recollection but not go beyond that?-- Commissioner, without seeing the briefings that I have had, I couldn't answer that honestly.

20

Very well. Thank you.

MS KELLY: Was there ever any discussion between you and Doctors Buckland or Scott to the effect that that additional point added to the eight point plan should be dropped?-- No, not to best of my knowledge, no.

All right. Did you ever seek from Doctors Buckland or Scott a progress report on the performance of that ninth point?-- No. Not to the best of my knowledge, no.

30

You say that notwithstanding having received, shortly prior to your change of portfolio, advice to the effect that some 84,000 people - I accept you have said you are not sure of that figure-----?-- That's right.

-----were on the specialist appointment waiting list, you say that despite that you don't consider that your previous statements in relation to Queensland's performance or waiting lists was misleading?-- No. Because we were talking about - as I said, there were two categories and two arguments. My statements were focused main - were focused totally on the people waiting to have surgery that had been told that they required surgery. That's what that focus was on. None of those media statements were intending to be misleading in any way.

40

So if they were misleading, it was unintentional on your part?-- They weren't - but they weren't - yes. But they - from my - in my point of view we were talking about the elective surgery, people waiting to have surgery, and our media statements were based around that.

50

So, do you consider then that Doctors Scott and Buckland have not failed in their performance to keep you fully and frankly informed?-- Could you repeat that, please?

Do you consider in relation to this issue that Doctors Scott and Buckland have not failed in their duty to keep you fully and frankly informed?-- No, I don't believe they failed in any way. This would have been one of many, many, many, many issues that Doctors Buckland and Scott and I would have had to deal with in the health portfolio and our focus at first was on fulfilling the election commitments, which was around the elective surgery, and that's where the energies were. We were around ensuring that people got their surgery on that elective surgery list and that's where the main focus was.

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10

Well, you see, Mr Nuttall, you have just conceded that the eight point plan, which was the election commitment in relation to waiting lists-----?-- Yes.

-----had a further ninth point added to it?-- Yes, which was the collation of this data.

You have told us a few minutes ago that you cannot recall having been briefed with any progress reports in relation to that ninth point, but notwithstanding that, you do not consider that your advisors had failed you in any respect?-- What I said was that I have to have a look at the material that was supplied to me, and I indicated that to the Commission, that I would need to have a look if there was further material. But I want to make it very clear that our - there was a - there is whole range of issues. It was around preventative care. There was a whole range of issues. This is but one small part of a range of issues that we dealt with, and I don't for one minute believe that either Doctors Buckland or Scott in any way - in any way - failed in their duties.

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30

Why was Dr Scott then summarily dismissed?-- Well, that's - Commissioner, with the greatest respect, that - I don't employ Dr Scott, and Dr Scott and Dr Buckland are employed at a senior executive level. They are not employed by me as the Minister.

COMMISSIONER: Was he dismissed on your objection?-- No, Commissioner, certainly not.

40

Was he dismissed on your recommendation?-- No, certainly.

Not?-- No.

Nothing to do with you?-- I didn't recommend that either - that either Dr Buckland or Dr Scott be dismissed. I didn't - I don't have the power to make that.

50

No, no, no, I'm not questioning what power you have. You could make a recommendation. You have power to make a recommendation. Did you have any say on the matter?-- Commissioner, in relation to both Doctors Buckland and Dr Scott, I indicated to them right from the 5th of February, the day we received the first brief, that we needed to develop a strong working relationship. That strong working relationship continued. That is an unfair question in

relation to their dismissal. I mean-----

1

I don't see it unfair?-- I don't have any say in that.

Well, that's why I asked you. Did you have any say in the matter?-- No.

None at all?-- No. I was gone before they went, Commissioner. I was gone as the Minister.

10

You were still at Cabinet?-- Yes. But it certainly wasn't discussed at Cabinet.

It wasn't?-- No. Certainly not. Certainly not, Commissioner, and once I was - my portfolio's changed, I don't - you know, I don't have the power, nor should I, to meddle in someone's else portfolio.

You had no say?-- Beg your pardon?

20

You had no say in the matter?-- No.

All right. Thank you.

MS KELLY: In relation to Dr Aroney, Mr Nuttall, were you briefed on any occasion by either Dr Scott or Buckland in relation to matters which Dr Aroney was publicly raising?-- Yes.

And what form did those briefings take?-- Look, they may have been written. There was certainly some verbal briefings. There may have been some written briefings. I'm not - I don't have those with me, but obviously - but certainly we discussed the issues around the problems - the matters of Dr Aroney raised.

30

And, Mr Nuttall, do you have a capacity in your current status as a Cabinet Minister to seek copies of those documents from the current Health Minister?-- Oh, I'm - well, I think the Commission has that capacity.

40

If you'd answer the question. Do you have the capacity to seek copies of those documents from the current Health Minister?-- Yes, I could ask.

Okay. Are you able to commit to producing such documents as are-----?-- I am more than happy to. More than happy to-----

Thank you?-- -----if the Commission doesn't already have them.

50

Thank you. I just say that yesterday Dr Scott gave evidence at page 5266 of the transcript to the effect that he briefed you on several occasions?-- Yep.

I think was his phrase?-- Yep.

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Both orally and in writing?-- Yep.

About matters raised by Dr Aroney?-- Sure.

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So one would expect there will be written briefings-----?--  
Yeah, sure.

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-----in the possession of the current Minister; is that  
right?-- Well, either in his possession or in the possession  
of the Commission.

Because when you left the portfolio, all of the documents  
pertaining to the ministry of health-----?-- That's correct,  
that's so.

10

-----remained in now what is Mr Robertson's office?-- Yes.

All right. Thank you. Now, were you advised in terms of the  
oral briefings you received, were you advised on any occasion  
that Aroney was muckraking or raising allegations which were  
false?-- We - we discussed a number of issues around the  
matters raised by Dr Aroney in terms of funding and what we  
might do about cardiac-----

20

COMMISSIONER: Mr Nuttall, I've really asked you this before.  
The questions are fairly simple. Why don't you listen to the  
question and just answer it?-- Yes.

Would you repeat the question.

MS KELLY: Were you advised in the oral briefings given to you  
by Dr Scott that the allegations being raised publicly by  
Dr Aroney were either muckraking or false?-- No.

30

In relation to the assertions by Dr Aroney that patients were  
dying on cardiac waiting lists at Prince Charles, were you  
advised that that was false?-- We weren't sure about the  
allegations made by Dr Aroney. They would have had to have  
been checked.

So did you instruct Dr Scott or Buckland to investigate the  
allegations being made by Dr Aroney and get back to you?-- I  
may have, yes.

40

Well, do you recall whether you did or not?-- No, I don't  
recall.

All right. Was it your practice to give such directions,  
"Look into this and get back to me"?-- Yes.

All right. And you do not recall anyone producing to you  
evidence of such an investigation?-- No.

Dr Aroney was causing the government and, in particular, you  
some low level, perhaps, public embarrassment, wasn't he?--  
Certainly not to me. Certainly not to - well, not - not in  
our view, no.

50

All right?-- It was certainly an issue raised, as - as many  
people raise issues publicly, but-----

All right. Can I ask you this: are you aware of anyone who

regarded Dr Aroney's - who regarded, as related to you, Dr Aroney's disclosures as offensive to them?-- I think - I think there was some - and I think there was some disquiet between Dr Aroney and Dr Scott but I don't know to the level of what that was. I just don't know.

1

All right. Did Dr Scott tell you that he regarded Dr Aroney's statements as personally offensive to him?-- He may have - he may have told me that.

10

Are you saying you do recall that or it could have happened but you wouldn't know?-- Look, we have numerous discussions. I can't recall every discussion, I'm sorry.

No, I'm not asking about every discussion. I'm asking you do you recall-----?-- No, I don't.

All right. Do you recall that Dr Scott met with Dr Aroney after Dr Aroney had written to the Premier in December 2003?-- I wasn't the Minister at that time.

20

No, all right. But you became the Minister in February 2004?-- Yes.

Is that right?-- Yes.

All right. And in February 2004 Doctors Buckland and Scott met with the Cardiac Society to exchange views, to use a neutral term, about the provision of cardiac services in Queensland. Are you aware of that?-- Yes.

30

All right. Did you receive a briefing following that?-- I may have.

All right. Can I ask you to look at this document and for ease I'll put it on the screen. It's CA2, which is the document, the second attachment to Dr Aroney's statement, Dr Aroney's statement being Exhibit 263. Now, just in - by way of background, Mr Nuttall, this was a submission which arose out of a request by Dr Scott for a meeting with the Cardiac Society which meeting occurred on the 15th of February 2004. After that meeting the Cardiac Society-----?-- I'm sorry, I'm sorry, I'm confused. The - the document in front of my screen says 29th of July 20004.

40

Yes?-- You said it's a document prepared for the meeting of - in February 2004.

No, no, I'm sorry. I said the document arose out of a request by Dr Scott to meet with the Cardiac Society, which meeting occurred in February 2004?-- Right, okay.

50

Following which the Cardiac Society prepared this submission. You see it's addressed to you?-- Yes.

Do you recall the document? Do you need to look at it in detail?-- No, no, I don't. It wouldn't have come direct to me. It would have come to my office or - and to the

department obviously, and it would have been sent down for a briefing or a response.

1

All right. Now, it's a 36-page document. Is it your practice to read documents prepared by the colleges and other professional organisations with stakes in the public health system?-- No, no.

Is it your practice then to simply read the summary page, the executive summary page for example?-- The practice is for the department to have a look at it and to supply me with a briefing and some recommendations about whether I should further read the document or some suggestions around those documents. That's the practice.

10

All right. Now, do you recall then having received a briefing from the department in relation to this-----?-- No, I don't recall.

-----submission?-- No.

20

All right. So you say at paragraph 110 of your statement?-- Mmm.

COMMISSIONER: Have you finished with that document?

MS KELLY: No, I'm not.

COMMISSIONER: Okay. We'll leave it there.

30

MS KELLY: I'm just wanting to be fair to you. That, "I was not provided with any written briefing regarding 'dangerous' waiting periods for patients"?-- Mmm.

Now, it's that issue to which I want to address you in relation to this document?-- Mmm.

Can page 2 of the document - of CA2 go on to the screen, please. Just ignore the side marks on this, Mr Nuttall, please?-- I'm sorry, I don't know what the document is you're putting in front of me.

40

This is page 2 of the submission you've just seen the first page of?-- Right, right.

All right. At the top of this page it says-----?-- Yes.

-----"Overview"?-- Yes.

What you might be familiar with as an executive summary?-- Yes.

50

Have a read?-- Yep. Okay.

All right. It identifies six issues, five of which are major unmet demands in relation-----?-- Oh, that-----

Sorry?-- Major unmet demands as deemed by the Cardiac

Society.

1

Yes?-- Yes.

It's their submission?-- Right. It's their submission, that's right.

And the sixth one being a crisis, which is obviously a different species from-----?-- Well, that's their submission.

10

Yes, all right. You see in the next paragraph there's a deficiency of cardiologists, 25 in the - in place of the 75 needed, in their submission?-- In their submission.

And then the following paragraph, "Waiting lists for cardiac outpatients", et cetera, "are excessive and dangerous." Now, in fact, you were in possession, whether you knew it or not, of briefings to the effect that waiting lists were dangerous?-- Well, that's-----

20

Weren't you?-- It's their submission.

Yes?-- It is not a submission from my department.

Right?-- Which says to me, as a Minister, if I received a submission from my department that indicated that, obviously I would act on it, but this is not a submission from my department.

But you-----?-- That's why my department looks at it and makes recommendations to it.

30

You've told us you're not able to say whether the department gave you a briefing paper in respect of this document?-- No.

All right. Would you have expected to be advised by your department if a submission had been received from a respected professional organisation to the effect that waiting lists were dangerous for your department to so advise you?-- That's correct.

40

So-----?-- If - if the briefing was correct.

In so far as you cannot recall such advice and, in fact, you have sworn to the effect that the contrary is true, that you were not briefed in relation to any dangerous waiting lists?-- I also clarified that.

Sorry?-- Well, the question says, "Briefings regarding dangerous and unacceptable waiting periods", and then my statement goes on. It's more than just the first sentence.

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Are you suggesting that the first sentence doesn't mean what it says?-- No.

COMMISSIONER: I think he said that the briefings being written briefings from his department.

MS KELLY: Yes.

1

COMMISSIONER: Is that what you're saying, Mr Nuttall?--  
Sorry, Commissioner?

COMMISSIONER: Are you saying written briefings being written  
briefings from the department?-- Yes, that's right, that's  
right.

MS KELLY: But, Mr Nuttall, I have already asked you would you  
have expected your department to have briefed you if they  
received such a submission from a respected professional  
group?-- Yes.

10

And you said yes?-- Yes.

You've also told us that if you were not so briefed by your  
department, you would regard that as a failure on the part of  
the department?-- But their briefing to me may not have  
coincided with the views of this submission.

20

To brief you in respect of a submission - I'm sorry, I'll  
withdraw that. I'm not suggesting to you that the only  
briefing you would receive is if your department agreed with  
the submission received from the group?-- No.

You would have expected to be briefed about the assertion made  
by a group that waiting lists were excessive and dangerous,  
wouldn't you? That's what you've already told us?-- All  
right.

30

That's right, isn't it?-- The briefing would come to me  
based - they would - they would read the report. They would  
read this report given to them by the Cardiac Society. They  
would then come to me with - with - no doubt they would come  
to me, I would expect them to come to me, with a briefing to  
me saying, "We've received this. These our are  
recommendations." "This is our view. These are our  
recommendations."

40

So in relation to a submission that waiting lists were  
excessive and dangerous, you would have expected either your  
department to brief you, saying, "This submission has been  
received and it's a load of rubbish", or, "This submission has  
been received and it's valid"?-- "And this is what we're  
doing."

Yes?-- Yes.

But you would have expected a briefing?-- Well, yes, in the  
normal course of events, that's correct.

50

Right. So when you say at paragraph 110 that you were not  
provided with any written briefing regarding dangerous waiting  
periods for patients, you mean confirming-----?-- Well, they  
may not have used that terminology. They may not have  
confirmed, they may not have agreed that there was a danger.  
I can only go on the briefs that are supplied to me.

Yes. Now, in preparation of paragraph 110, did you access the briefing register in the Health Minister's office?-- No, I don't think I did.

1

Well, how was it that you were able to say positively at paragraph 110 about what you were briefed?-- Because if there was such a briefing that said it is dangerous, there is - it would be highlighted. It's one of those - it's one of those briefings that would stand out and you would remember. You would remember. Or you would expect to remember. Look, I simply point out - I simply point out to you, in my submission, the amount of material that comes across my desk-----

10

COMMISSIONER: You've said that many times but the point really is, Mr Nuttall, whether you're - you have stated positively in your statement that you were not provided with any written briefings regarding dangerous waiting periods?-- No, that's correct.

20

That's stated as a positive statement, not something that you can't recall?-- Yes, and I stand by that statement, Commissioner.

All right. So you say that you would certainly have remembered it if you had been and, therefore, you haven't been?-- That's right, that's correct.

All right, thank you. Now, I see it's pretty close to 1 o'clock and I want to ask Mr Boddice, Ms Kelly, some questions about the documents.

30

MS KELLY: Yes, I can finish after lunch. I have another 10 minutes.

COMMISSIONER: Mr Boddice, what position have we reached?

MR BODDICE: The documents have arrived. They arrived about 12.30 and they have been given to the Commission staff, and with all the annexures.

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COMMISSIONER: In those circumstances there is no need for the Director-General to be here at 2.30.

MR BODDICE: Thank you.

COMMISSIONER: We will adjourn now.

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THE COMMISSION ADJOURNED AT 12.59 P.M. TILL 2.30 P.M.

THE COMMISSION RESUMED AT 2.31 P.M.

MR DOUGLAS: We're just waiting for the witness, Commissioner. Those documents received from Queensland Health were copied over the luncheon adjournment.

COMMISSIONER: Thank you.

GORDON RICHARD NUTTALL, CONTINUING CROSS-EXAMINATION:

COMMISSIONER: Yes, Mr Nuttall?-- My apologies, Commissioner.

MS KELLY: Thank you, Commissioner. Mr Nuttall, in one of the attachments to your statement, in fact the first one, is a ministerial statement of the 29th of April 2004. Can I ask you to turn to that?-- Yes.

The top of the second page: "I'm asking every person to put their patient issues or their questions about the health system to my department where we can try and address any issue"?-- Yes.

Now, was that directed only at members of the House or persons generally?-- The statement was made to all members of parliament because I wanted to change the way we had done things in the past.

Yes?-- But - but it could be read as all people, and I was relaxed about that.

Was it your intention at the time at which you made that statement that any persons who had concerns about Queensland Health's performance or patient issues, their questions about the health system, would be at liberty to approach you about them?-- Well, to approach me or my - I said to my department.

Yes?-- So, yeah, of course. Of course.

Yes. All right. Now, in the preparation of your statement, to which this ministerial statement is attached?-- Yes.

You have had an opportunity to look at all of the other evidence previously given to the Morris Commission which reflected upon you in any respect; that's right, isn't it?-- I have - I have chosen not to do that.

Sorry?-- I have chosen not to do that.

All right. Well, did you at least look at Dr Aroney's statement?-- No, I did not.

All right. So when you say at paragraph 80 at page 14 - paragraph 81, I'm sorry, when you were asked a question about briefings which you might have received about matters raised by Dr Aroney, you didn't go to Dr Aroney's

statement in these proceedings - in that Commission and have a look at it?-- I - sorry, could you repeat that.

1

All right. In order to answer the question set out at paragraph 80 and to make your response set out at paragraph 81, you did not go to Dr Aroney's statement which had been tendered in the Morris Commission and read it?-- No, because the question was about whether I had been briefed and I assumed whether I had been briefed by my department.

10

All right. So were you generally unaware of the allegations made by Dr Aroney in the Morris Commission at the time when you swore this statement?-- I - I was aware of Dr Aroney making some comments regarding he believed that there were a cut back in services at the Prince Charles, I was aware of that.

Were you generally unaware of the detail of Dr Aroney's evidence given to the Morris Commission?-- Yes.

20

All right. Did you seek advice from the current Health Minister's office in relation to any briefings or other information contained there reflecting on Dr Aroney?-- No.

So when you say to the best of your knowledge there was dot, dot, dot, no punishment of Dr Aroney, you were relying solely upon your memory and not upon any information that might have been contained in your previous office as Health Minister?-- That's - that's correct.

30

Now, Dr Aroney says at paragraph 50 of his statement that in October 2004 he wrote to you. Let me read it to you since you haven't read it. "On the 28th of October 2004 I again wrote to the Premier and the Health Minister requesting a meeting to discuss all these issues and was again refused." Were you unaware that Dr Aroney had written to you on the 28th of October 2004?-- Oh, look, he - look, obviously he did write to me and I may have responded to that letter. I would need to check my records about that, but normally what I would have done is ask my department to meet with him on those issues. That would have been the normal course of events, but you indicated to me that he wrote to the Premier and to me. I'm not sure whether he wrote to the Premier with a copy to me or whether he wrote both to the Premier and to I. If - if it was to the Premier with a copy to me, it would necessitate obviously a response from the Premier or to-----

40

All right. But requesting a meeting to discuss these issues?-- Mmm.

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So the request was to you to discuss these issues with you?-- Well-----

Did you - let me finish the question?-- Sure.

Did you meet with Dr Aroney or anyone from the Cardiac Society following such a request?-- No. But I did have my department meet with people.



Are you telling the Commission that you understand that officers of your department did this for you?-- To the best of my knowledge, yes.

1

All right. Are you saying you assume that that might have happened or are you saying to the best of your knowledge it did happen?-- I would need to check my records.

In fact, at the same time, October 2004, Dr Buckland and Dr Scott and you were all making appearances and statements in the media attacking Dr Aroney, were you not?-- That's incorrect.

10

All right?-- At no - at no stage have I attacked Dr Aroney.

All right. Do you not recall radio interviews upon which you did?-- I - I certainly did a radio interview but, certainly, to the best of my knowledge I did not attack Dr Aroney.

20

All right?-- I may have disagreed with-----

Are we being particular about the word "attack"? Let's adopt a neutral expression. Did you make criticisms of the allegations being made by Dr Aroney in the media?-- I may well have done that. I would need to see the transcript. You may - you must have it.

All right. And at the same time, Dr Buckland and Dr Scott were both making criticisms of the allegations made by Dr Aroney in the media, that is in October 2004. That's right, isn't it?-- That's a matter you will have to ask them. We make a million statements to the media on a regular basis. As to whether - you're asking me whether I recall Dr Scott and Dr Buckland making statements to the media in October of last year; I simply don't know.

30

Mr Nuttall, this was a matter which caused your government some embarrassment. That's right, isn't it?-- No, I don't agree with that. There were a number of matters that - that we - that we as a government deal with on a regular basis and in relation to health, that was one of many matters, one of many matters.

40

All right. Now, Dr Aroney was unable to speak to you pursuant to the request he says he made by means of a letter. It was unsuccessful it seems in having you read the submission made in July 2004, which you saw on the screen this morning. How was it then that persons who had concerns or questions about the health system were able to raise such matters with you?-- I said with me and/or my department.

50

All right. So do we get now to the nub of your no surprises rule, Mr Nuttall: by ensuring that no bad news ever got through to you, you were unable to be surprised?-- I disagree with that. That certainly wasn't the case.

I suggest to you that the consistent conduct of you with your

senior bureaucrats, doctors Buckland and Scott, during the course of your ministry of health was to ensure that you were never placed in possession of unpalatable news?-- No, I disagree with that. That's incorrect.

1

All right. You're aware, are you, that Dr Scott has attached to his statement - have you read his statement incidentally?-- No.

Are you aware then that yesterday Dr Scott was taken to JG3, which is an attachment to his statement, in which it was indicated that the no surprises rule in relation to advice to you meant no surprises except pleasant ones?-- No, I disagree with that.

10

Were you unaware that within the documentation, which Dr Scott put in yesterday, reference was made to there being a no surprises rule, which meant no surprises except pleasant ones?-- No, I wasn't.

20

You weren't aware of that?-- No. And on numerous occasions my department - my department's job is to give me information whether it's good or bad, and they did that.

Well, should they adopt a policy of only giving you pleasant news-----?-- No, not at all.

Let me finish the question. Should they adopt the policy of giving you only pleasant news. That would be a breach of your expectation?-- That's right.

30

And that would be a breach of their duty to fully and frankly keep you informed?-- I - I expect - I believe the department did keep me fully informed of all - of events whether they be good or bad.

See, I suggest to you that - well, are you aware of the classic, the famous approach by Peter Reith to irrefutable evidence; that is, if the video shows that, we should not see the video. Are you familiar with the incident to which I refer?-- No. Yes.

40

The children overboard incident?-- Yes.

Are you referring that you didn't have such a policy in your office?-- That's right.

"If the news was bad, make sure I don't see it"?-- No.

"Or, if necessary, bury those who are exposing it"?-- No, I couldn't disagree with you more on that.

50

You see, I suggest to you, Mr Nuttall, that you had a particular reason to be very concerned to ensure that bullying didn't take place on your watch?-- I don't support the concept of bullying full stop. And as IR Minister, that was quite clear because I was the Minister responsible for working on that policy for the government.

So were you to come across evidence of such bullying, you would be deeply concerned and asked for your officers to implement a process whereby it could be stamped out; is that right?-- That's - that's correct, yes.

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All right. Are you satisfied that occurred?-- I'm satisfied that we did the best we possibly could to try and eliminate bullying in the workplace.

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And is it the case that Dr Scott was the principal person who would have been charged with the stamping out of bullying in your department?-- I'm not sure whether it would be his area or the area of Dr Waters who would be responsible for that, but I do need to say that anyone that knows Dr Scott would certainly not think that he was a bully in any way, shape or form.

1

Well, Minister, with respect, you know Dr Scott as his superior, you do not know him as his inferior in the food chain, do you? And as far as I'm aware, I'll suggest to you there is no allegation that Dr Scott bullies those above him on the food chain?-- I - I take people as I see them, I think in all the dealings that I've had with Dr Scott and the way I've seen him deal with people, he treats them with a great deal of respect and courtesy and he always has.

10

And he treated you with a great deal of respect and courtesy?-- I said as I've seen him treat all other people.

20

Yes. Can I ask you to have a look at CA 6 please? This is attachment CA 6 to Dr Aroney's statement. Now, this is a minuted - a minute of a meeting to which I referred this morning prior to your watch as Minister in which Dr Scott met with the other persons therein following a letter that Dr Scott had written to - Dr Aroney had written to the Premier in December.

COMMISSIONER: How can he make any useful comment about this?

30

MS KELLY: Sorry, your Honour?

COMMISSIONER: How can this witness make any useful comment about this?

MS KELLY: I want the - I wanted to ask the witness whether the threat to "come after us", come after Dr Aroney caused him to reconsider his view just given that Dr Aroney was not bullied.

40

COMMISSIONER: I think it's a question of interpretation of what he meant, that's a question for this tribunal.

MS KELLY: All right, thank you.

Would you have a look at the next document on the screen? This is a letter written by Dr Aroney to the Premier some fortnight or so before you became the Minister. Now, firstly, is it right that when such letters relating to one port folio go to the Premier, they are ordinarily passed to the relevant Minister for handling and drafting of a response?-- Sometimes that is the case, sometimes the Premier chooses to answer himself.

50

All right. Now, have you seen this letter before?-- I think you indicated it was before my time.

Yes. It was about a fortnight prior to you becoming the

Health Minister?-- It was in the middle of an election campaign. 1

That's right?-- It was written in that context.

Have you seen this letter before?-- I can't recall, I may have, I may not have, I just simply can't recall.

All right. Would you have a read of it please?-- Yes. 10

Do you now recall?-- No.

All right. So Mr Nuttall, do you remain, notwithstanding the disclosures made in this Commission and its predecessor, the Morris Commission, do you remain confident that you have been well served and dutifully served by the two senior officers in your department, that is, Drs Buckland and Scott?-- Yes, I do.

Thank you. Nothing further. 20

COMMISSIONER: Mr Applegarth, are you in a position to complete your cross-examination?

MR APPLEGARTH: I've seen the documents and I don't think I need to take anything further. I anticipate that they will be tendered, put before the Commission by someone and I don't think I need to take the matter any further.

COMMISSIONER: All right, thank you. Is there anyone else that wants to - oh, two? Do you want to, Ms Dalton? 30

MS DALTON: I wanted to put those documents to the Minister.

COMMISSIONER: Very well.

MS DALTON: I think he should comment on them, unless Mr Douglas wants to do it? I don't mind.

COMMISSIONER: Very well. All right. 40

MS DALTON: We're just missing one set.

MR BODDICE: The letters, I've provided a copy to my learned friend Mr Douglas, I just don't have a spare copy of the letters that was part of those documents. That's them.

MS DALTON: Is there just one of those?

MR BODDICE: Just the top one, that's all it is. That one. 50

MS DALTON: I don't know if there's a spare copy for you, Commissioner, floating around.

MR BODDICE: Commissioner, I can provide copies of the Cabinet submission and attachment but not the letters.

MS DALTON: And Mr Applegarth volunteered his copy.

COMMISSIONER: Thank you.

CROSS-EXAMINATION:

MS DALTON: Mr Nuttall, I'm Jean Dalton, I act for John Scott?-- Yes.

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I've given you three pieces or three collections of paper and I might get you to look at the Cabinet decision of the 1st of August 2005 first?-- That's that one?

Yes?-- Yes.

The decision that the Cabinet made is on the first two pages of that document, isn't it?-- Yes.

20

And would you agree with me that behind that is something called an information submission which is the information submission that you as the Health Minister took to Cabinet in relation to the decision that's recorded on the front two pages?-- Yes, that's correct, that's correct. Could I just - sorry, just correct the record?

Sure?-- The difficulty was I did sign this submission, Commissioner, and it was my submission, unfortunately, I couldn't present the submission because I was a Minister in a different port folio at the time, but it was my submission initially.

30

It was on the cusp of your tenure, wasn't it?-- Yes.

And the summary on the front page of the information submission in the second paragraph of the summary there, "The implementation of the strategy rests with the Senior Executive Director, Health Services.", that's Dr Scott, or was Dr Scott at the time; is that correct?-- That's correct.

40

All right. Now, I'll get you to look at the document that is called "Attachment 2, Information Submission"?-- Yes.

Do you have that one there?-- Yes, that one?

Yeah. Do you recall that document?-- Yes, obviously, obviously. I would have - it would have been a document for us to consider, it would have been a document being prepared for consideration as to whether I should take it to Cabinet or not.

50

Yeah, so it's something that the department, the Health Department has of their own initiative, if you like, put up to you as Minister?-- Yes.

And it was, Attachment 2, it was the second attachment that

was to go to Cabinet-----?-- Yes.

1

-----for their consideration?-- Yes.

In, at the same time as they considered what is on page 3 and following of the first group of documents we looked at?-- Yes, yes.

All right. And would you agree with me that if you have a look at the second page of this Attachment 2 Information Submission?-- This one?

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Yes?-- Page 2?

Page 2?-- Yes.

The second paragraph is there's the 84,000 figure on the anterior waiting lists?-- Yes.

And that's your department telling you and proposing that you take to Cabinet?-- Yes.

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That although the outpatient appointment waiting lists are not corporately collected - whatever that means - it's estimated that there's 84,000 waiting to be seen?-- That's correct.

For a surgical outpatient appointment?-- That's correct.

And that's what Mr Douglas has been calling the anterior waiting list?-- Yes.

30

And of them, about 60,000 don't have that appointment yet?-- Yes.

Can I take you to page 7 of this document?-- Which document?

The same one, Attachment 2, Information Submission?-- Yes.

And there's the department's advice to you that they propose you take to Cabinet about the cost of addressing the long wait category 2 and 3 patients?-- Yes.

40

And that - that's not people on the anterior list, that's people on the actual elective surgery waiting lists?-- Yes.

And we know that because they got a category number?-- Yes.

You don't get that until you've had your first appointment?-- No, that's correct.

50

And then option 2 is the department's advice to you to take to Cabinet about \$88 million to remove the category 3 patients?-- Yes.

And again, that's not anterior lists?-- Yes.

That's the elective surgery waiting lists?-- Yes.

And they're talking about outsourcing it?-- Yes.

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As a way of really acknowledging it can't be done within the system as it stands?-- That's correct.

So let's try and think what solutions can we get?-- Yes.

So as a rough costing of outsourcing of \$88 million a year, and the year to - say it's per year, that's because they're addressing, if you like, the notion that once you clear the first lot of category 3 on elective surgery, it makes room for, if you like, the people on the anterior waiting lists to get on to the elective surgery lists, isn't it?-- Yes.

10

So it's - that's the department's advice, that it's \$88 million recurrent, per year?-- Yes.

If we're going to be addressing this anterior list?-- Yes.

Now, I'll get you to look at the last bundle of documents that you have, and I'll ask you to just for the minute ignore the front page which seems to be a copy of an e-mail?-- Mmm-hmm.

20

And go to the second page which is a letter, it's not signed but I think it's a letter - copy of a letter from you to the Premier?-- Yes.

And you're saying look, I want to bring to Cabinet the information submission and what we've been calling attachment 2 to the information submission but I'm late in terms of getting it in for consideration for this Cabinet meeting?-- Yes.

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COMMISSIONER: I can't see a date on this?

MS DALTON: No. Yeah, I think Mr Applegarth's very helpfully pointed out the next page gives you some guidance at least about that.

COMMISSIONER: I see, 21 July.

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MS DALTON: Yeah, received on, so - I don't - Mr Nuttall, you should probably tell us, the Premier responds on the next page saying, "Thanks for your letter received on the 21st of July"?-- Yes.

So it was around about that time.

COMMISSIONER: On or about that time.

50

MS DALTON: So you're saying to the Premier, look, we really need to get this before the next Cabinet but I've - it's late for unavoidable reasons. Can you exercise your discretion and let it go forward into the Cabinet?-- Yes, that's the Cabinet submission itself.

It's both, isn't it, the information submission and the document which is attachment 2?-- Yes.



That's what you're asking him to relax the rules and let you bring it to that very next Cabinet-----?-- Well, the - yes, that's correct, yes.

1

And then he writes back and that's the letter there dated the 22nd of July 2005?-- Yes.

And he says that he agrees with you that you shouldn't be delaying on this issue so he authorises - he says the late first lodgement of this submission, so it can be considered by Cabinet on the 1st of August?-- Yes.

10

Then he says, "I note that the draft of the submission provided on the 19th of July to my department and seen by my office contained a paper that outlined possible options to address category 3 waiting times."?-- Yes.

And that is the document that I've been calling in my discussion with you attachment 2 to the information submission?-- Yes. Yes.

20

Yes?-- But he also says, "I would appreciate a policy submission in relation to that separate matter being provided to Cabinet at the appropriate time." So he's looking for a separate submission on that.

So he's saying bring forward the information submission that we now have attached to the back of the Cabinet decision of the 1st of August?-- Yes, yes.

30

Bring that forward and I'll relax the rules because I think we shouldn't delay looking at that?-- Yes, and do some more homework on that one.

He says don't bring attachment 2 to Cabinet?-- Yes, do some more homework.

Do some more work, yes. And then the next document you might have to help me with this, it might be past your time too, the next document is a memo, isn't it, from the new Director-General asking - is it asking the department - she's asking Gerry Fitzgerald who's now got Dr Scott's job to do that work that the Premier thinks should be done, at item 3?-- Yes, yes.

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So that's - she's obviously some way, that we don't have in the document trail, been told of the direction that's come back from Premiers?-- Yes.

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And she's sending that downstream, as it were?-- That's right.

Saying that Gerry Fitzgerald will, "I'd appreciate it if you would get on with this and I want your advice by the 16th of September."?-- That's correct.

All right. And then the last document in this bundle also at

point 4 records, doesn't it, from the Cabinet Liaison Officer to the Director-General that more work's to be done on this document?-- Yes.

1

The subject matter's that's contained in annexure 2 to the information submission?-- That's right.

And to address the specialist outpatients waiting including the estimated 60,000 that don't have their appointment?-- Yes.

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All right. And I just - you probably won't know about the e-mail on the front, but it's from someone called Brad Smith who you'll recall was the Cabinet Liaison Officer in Health; is that right?-- Yes, that's correct.

Commissioner, can I tender those as three separate exhibits?

COMMISSIONER: Yes. In what order?

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MS DALTON: The first one being the Cabinet decision 1 August 2005 together with attached information submission.

COMMISSIONER: That will be Exhibit 322.

ADMITTED AND MARKED "EXHIBIT 322"

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MS DALTON: The second one, Attachment 2, Information Submission to Cabinet treating category 3 patients from the elective surgery list.

COMMISSIONER: Exhibit 323.

ADMITTED AND MARKED "EXHIBIT 323"

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MS DALTON: And I don't know what - how you want to describe the last one, bundling of e-mail letters and memorandum, I suppose.

COMMISSIONER: Exhibit 324.

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ADMITTED AND MARKED "EXHIBIT 324"

MS DALTON: Thanks Mr Nuttall. Thank you, Commissioner.

COMMISSIONER: Now, do you have some questions you want to

ask, is that right?

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MS GALLAGHER: Thank you.

CROSS-EXAMINATION:

MS GALLAGHER: Mr Nuttall, my name is Gallagher and I appear for the AMA of Queensland. In response to a proposition that was put to you by Mr Applegarth before lunch, which if I've taken accurately was that you can't pay VMOs what they'd like to be paid so you get less of them, you said that you and Dr Buckland had spoken of changing the system?-- Mmm.

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That change to which you referred, was that a plan to reduce the VMO involvement in clinical health care delivery-----?-- No, certainly no.

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-----in Queensland Health?-- No, certainly not, no.

But you are of course aware that the VMOs within the system has decreased over time during your port folio as Minister?-- Yes, there was, that's why we needed to change the system of how we worked with VMOs in the past.

But at this point in time it still remains an issue that has not been successfully addressed?-- We were working on it but something else eventuated obviously that precluded that.

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Thank you, that's all I had, thank you.

COMMISSIONER: Thank you. Before I ask Mr Gotterson to ask any questions he wants, Ms Kelly, you asked Mr Nuttall at one stage to undertake to produce documents. I take it you're not pursuing that?

MS KELLY: No, I'm sorry, Commissioner, I am pursuing it and I forgot, I sat down having forgotten. I'm assuming Mr Nuttall can't produce it without some notice, but I'm content to have the witness produce the documents at such time as he can.

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MR GOTTERSON: That's a misapprehension. He can't produce them at all, he doesn't have them and I've explained this to Ms Kelly and she doesn't seem to be able to take it on board, they're not his records.

COMMISSIONER: And he's not the Minister.

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MR GOTTERSON: No, he's not.

COMMISSIONER: But she's invited him to obtain copies of them and produce them which he undertook to do.

MR GOTTERSON: Well, he could make a request.

COMMISSIONER: He could make a request, I'm not going to order for him to produce them. If the request is granted, he'll produce them for us but if a request is denied, he can't produce them.

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MR GOTTERSON: No, but it can't go anymore than that.

COMMISSIONER: Yes, but you don't want to retain Mr Nuttall for cross-examination on this, surely?

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MS KELLY: No, no, but I'm content to await the arrival of the documents and then make any application arising out of them as is necessary.

COMMISSIONER: All right, thank you Mr Gotterson.

MR BODDICE: Commissioner, there was one area that I just wanted to ask questions.

COMMISSIONER: I'm sorry, I didn't know you wanted to ask. Yes, go ahead.

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CROSS-EXAMINATION:

MR BODDICE: Mr Nuttall, you gave - in evidence you were asked some questions about the waiting lists?-- Yes.

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And you spoke of the focus being on the elective surgery waiting lists?-- Yes.

Because they're the people who have been given appointments, and you said that of course there are other matters that the department is looking at and you mentioned there's preventative programs, and I take it those programs are relevant to trying to address the issues of people going on to the elective surgery waiting list?-- They certainly were. Particularly we did some work around - obviously around smoking legislation and that was about ensuring that the young people of today were not Dr Aroney's patients in years to come and it was about encouraging young people to take better care of their own well-being, the same about young children exercising, school tuckshops, those sorts of programs, we wanted to encourage primary health care so that all the focus wasn't on preventative care but certainly focussed on primary health care and that was a view held by me and Dr Buckland and Dr Scott.

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And one of the other areas, of course, is that in order to start to address those people who are yet awaiting appointments, you have to deal with those that have been given appointments but have not yet been seen?-- That's correct.

And so the focus - when you speak of the focus, is the focus really from Queensland Health's point of view is that, of

course, if you can clear those lists up, that then frees up space and also specialists to deal with those that are still awaiting appointments?-- Certainly was. That's why we wanted to try and partner with the private sector to try and get the backlog dealt with.

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And is that the reason why the focus obviously is on the elective surgery waiting lists to try and address that issue?-- Yes, so we can get them off there so we can look after the people coming through.

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Thank you.

COMMISSIONER: Thank you. Mr Gotterson.

EXAMINATION-IN-CHIEF:

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MR GOTTERSON: Can I hand your Honour a copy of the Ministerial briefing note and a copy also for Mr Nuttall? It's been circulated. Mr Nuttall, would you look at this document and you will recall that you of course gave evidence that you were informed very close to the end of your time as Health Minister of the number of individuals who were waiting to see specialists at outpatients departments and you mentioned that a figure of 84,000 people?-- That's correct, yes.

30

And there is - and you also mentioned that having received a document containing that information, you wrote some handwritten instructions on it as to what was to happen?-- Yes, that's right.

Now, I've handed you a document, it's a Ministerial briefing note. It's dated the 27th of June 2005. Can I ask you whether this is the document that you received that first advised you of the figure of 84,000?-- That's correct.

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And do we see that figure on the second page in the fourth paragraph?-- That's correct.

And it says clearly there that the 84,000 is for outpatients appointments-----?-- Yes, that's correct.

-----waiting to see specialists, all right. And little more is said and it rather reflects what's subsequently found in the exhibits that have just gone in, the Cabinet briefing note?-- Yes.

50

And particularly, this handwriting on the last page, that's your signature, I take it?-- Yes.

And the date 25th of July 2005?-- Yes.

And that was about two days before you ceased to be Health

Minister?-- That's correct.

1

And the handwriting is yours?-- I have to say yes, I know it's very untidy, a bit like a doctor.

All right. And what was the intention in your writing that note there?-- My intention was that we needed to address the matter, we had a Cabinet submission going forward and my view was that - and I discussed it with my office - the officers of the department and the view was look, we've got an inquiry going on, we've got a review going on, let's see what the recommendations come out of that and when we see those recommendations, we should take a submission to Cabinet and also a submission to the Cabinet Budget Review Committee for funding to address the issues based on what recommendations the Government would accept.

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Your Honour, I'd tender that briefing note.

COMMISSIONER: That's Exhibit 325.

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ADMITTED AND MARKED "EXHIBIT 325"

MR GOTTERSON: I have nothing further, thank you. Thank you.

COMMISSIONER: Thank you, Mr Douglas.

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MR DOUGLAS: Yes, some re-examination.

RE-EXAMINATION:

MR DOUGLAS: Mr Nuttall, could I ask you some questions about the matters canvassed pertaining to your attendance in Bundaberg-----?-- Yes.

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-----on the 7th of April 2005-----?-- Yes.

-----and matters thereabout. Just to put you back in the picture again, you had the meeting with Fitzgerald, Dr Fitzgerald on the 22nd of March 2005?-- That's right.

You attend in Bundaberg on the 7th of April 2005?-- That's right.

50

Following that, on the 8th of April, there is an exchange with your Director-General, Dr Buckland, and then on the 9th of April, the following day, the review is appointed and publicly announced?-- That's right.

Can I understand your evidence about a particular issue then:

the Fitzgerald report, did you obtain a copy of that report at any time?-- Not - no, not to the best of my knowledge, I didn't receive a copy of that report.

1

Even after the - sorry, even after the 9th of April 2005?-- That's correct.

Did you ever ask for a copy of that report?-- No, I didn't.

At some point in time, were you told by someone that an Internet search or some other search had been undertaken and as a result of that, it was ascertained that Dr Patel enjoyed a restricted registration in the United States?-- My recollection of this - of the matter is that I first became aware of that through The Courier-Mail and the article in The Courier-Mail and I'm not - I can't give you an exact date of when that article appeared, but I know I did meet with the - Mr O'Dempsey from the Medical Board subsequent to that to find out if that was correct and what they were doing about it.

10

When you ascertained that fact, did you discuss it with Dr Buckland?-- Oh, I'm sure I did, I'm sure I did.

20

Can you recall Dr Buckland's response when you raised it with him?-- We would have discussed that amongst a number of other things, particularly the review what we were going to do with the review, yeah, a whole range of issues and I'm sure that was entailed in that.

It's the sort of matter that you'd want to discuss with Dr Buckland?-- Oh, of course.

30

And it was a matter of can I describe as a revelation to you?-- Yes, it was.

Hard to forget?-- That's right.

The first person you want to speak to about the matter is Dr Buckland?-- Well, I would have thought so, yes.

40

But you don't recall his response?-- Well, as I said to you, if we'd have talked about that, we would have been talking about not just that, it would have been the review team, what else is happening in Bundaberg, what support mechanisms we're putting in place for the patients.

COMMISSIONER: Well, the answer is no, is it?-- I beg your pardon?

The answer is no?

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MR DOUGLAS: You don't recall what his response was?-- No, no.

COMMISSIONER: Do you recall his response?-- No.

MR DOUGLAS: You don't recall him saying to you words to the effect, "Oh, I already knew that."?-- No.

When you were in Bundaberg on the 7th of April or travelling to or from that locality for that meeting, did you discuss with Dr Buckland the Fitzgerald report or forthcoming report in whatever fashion?-- Yes.

1

It would have been natural to discuss that?-- Yes.

It would have been natural to discuss it after what transpired at the meeting?-- Yes.

10

You said you were shocked by the response at the meeting?-- Yes.

Did Dr Buckland say to you words to the effect, "I have received a copy of that report."?-- No.

Did you ask him whether he'd received a copy of that report?-- No, because I indicated to the meeting, as is in my statement, that the report wasn't complete. Now, if Dr Buckland felt the report was complete, I'm sure he would have told me.

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If Dr Buckland had have said to you, "Look, I have received the report.", that's something you'd remember because it would have been, in effect, contrary to what you'd represented at the meeting?-- That's correct.

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That is, represented the report was incomplete?-- That is correct.

Yes, thank you, Commissioner.

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COMMISSIONER: Thank you. Does anyone not want Mr Nuttall excused?

MS KELLY: Only subject to the extent that I have indicated, your Honour.

COMMISSIONER: That's a matter for you later on, Ms Kelly. Mr Nuttall, you are excused from further attendance. Thank you for coming?-- Thank you, Commissioner.

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WITNESS EXCUSED

COMMISSIONER: Dr Scott?

MS DALTON: Could I-----

MR DOUGLAS: Yes, it's appropriate to bring back Dr Scott.

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JOHN GRANT SCOTT, CONTINUING:

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COMMISSIONER: I'm sorry you have been kept waiting, Dr Scott, but I am sure you know it's not the Commission's fault?-- Thanks.

MR DOUGLAS: When we finished with Dr Scott yesterday Mr Gotterson was examining the witness.

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COMMISSIONER: Yes. I am not sure - that doesn't have to ensue now, because he's gone.

MR O'SULLIVAN: He will be back in a moment. I can go and find him.

COMMISSIONER: Can we go on with someone else? Is there someone else? Yes.

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CROSS-EXAMINATION:

MR ALLEN: Thank you, Commissioner. Dr Scott, John Allen for Queensland Nurses Union. At paragraph 8.17 of your statement you mention that you were on leave from the 25th of March.

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COMMISSIONER: I think Dr Scott wants to get a copy of his statement?-- Sorry.

MR ALLEN: Doctor, paragraph 8.17 on page 13?-- Yes.

So you were on leave until the 3rd of April this year?-- Yes.

Was that the date that you returned, or was it on the 4th or shortly afterwards, to your duties?-- I'm just not sure of the dates, but I'd say that's probably the Friday and I would have started on the Monday.

40

Okay. And your memory is that when you returned the Director-General had already received the report of Dr FitzGerald?-- Yes. My recollection is within the ensuing few days, the previous few days.

Okay. During the period of time that you were on leave?-- Yes.

50

Okay. And you have included a copy of that report as JGS13?-- Yes.

There's nothing in that report to indicate that it's a draft, preliminary or interim report?-- I don't think so, no.

And that wasn't your understanding. You understood that the complete was report - the report was complete and, therefore,

had been forwarded to the Director-General?-- That was my understanding at that time, yes.

1

Okay. Did you have any knowledge as to whether or not the report had been forwarded to the Minister?-- No, I didn't. I didn't. I think I talked about it briefly in the morning with the Director-General and then I went back to my office to bring myself up-to-date with what had happened while I was away, and I think subsequently my recollection was the Director-General and the Chief Health Officer were talking during the day, but I wasn't party to those discussions.

10

Okay. Were you then party to any discussions leading up to a trip by the Director-General and the Minister to Bundaberg on the 7th of April?-- Not anything specific to that trip. I mean, my recollection is that there was a trip, I think, through Springsure and to Bundaberg on the return from Springsure, but that's as much as I can recall.

During those days did you have any discussions with the Minister yourself in relation to Bundaberg issues?-- Certainly nothing of any importance, no.

20

Any discussion regarding the contents of Dr FitzGerald's report?-- No. My recollection is that the discussion on that was occurring between the Director-General and the Minister.

What recollection do you have as to any discussion occurring between them on that issue?-- No, I'm sorry, I wasn't party to those discussions.

30

Okay. When did you - I will withdraw that. Did you have any discussions with the Director-General or the Minister as to what had transpired during their visit to Bundaberg Base Hospital on the 7th of April?-- I had some discussions around the whole trip. I understood that the visit to Springsure was positive, but that when they'd gone to Bundaberg, in the meeting there was discussion between the Minister and the Director-General and the people who attended the meeting they had with staff, and I understood that there had been some - I guess some unhappiness in that meeting.

40

Who told you that?-- I think that came from - my recollection is that it came from, I think, the Director-General or alternatively his executive officer.

Okay. And did you receive any information at about that time raising doubts as to the registration status of Dr Patel because of difficulties he faced in the United States?-- No, I didn't. My recollection, and again I'm hazy on the dates when this occurred, was that subsequently the Director-General became aware of the issues that he'd had with his registration in the United States, but I understood that it was at that time then that was reported to the Minister.

50

How did you become aware that the Director-General had received such information?-- I think I think it was at one of the meetings we had in the mornings, so it was an 8 o'clock

meeting. We talked about it then.

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A meeting with the Director-General?-- Yes.

And do you recall how soon after the Director-General's visit to the Bundaberg Hospital that meeting would have occurred?-- No, I really can't. I mean, my only recollection would be along the lines that it was a relatively short period of time, but I certainly couldn't say exactly how many days it was. I just really don't remember.

10

Do you recall if the Director-General indicated that he'd inform the Minister of his discovery?-- My recollection was that he advised the Minister as soon as he became aware, and I understood that he became aware through doing a check of the Internet.

Okay. And what's the basis of your understanding that he advised the Minister as soon as he became aware? Is that something the Director-General told you?-- Yes. Well, it's a combination, I suppose, of my expectation of what he would have done on the basis of his past performance, my understanding of what he intended to do when he told me that, but that's pretty much all that I can recall.

20

Okay. So, do I understand from that that he told you of his discovery and said that he was going to advise the Minister?-- I'm sorry, I just can't recall whether it was that explicit or whether it was just my expectation that having told us that he'd done the search and he'd done it at home the night before that then there was my expectation that he was going to tell the Minister straight away.

30

Okay. Did you become aware at any time during the meeting with staff at Bundaberg Hospital on the 7th of April 2005 the Director-General and/or the Minister had told staff that the report would not be released, one reason being that it was incomplete?-- No, I don't. I don't - I think the first that I recall of hearing about the report was that I'd had the discussion when I came back on the first day. I think then, and again my recollection of one day or the next might be hazy, but I was actually phoned by a journalist from The Courier-Mail that evening asking about the report and that's when I became aware that people were looking for the report, but at no stage was I told that the report was incomplete.

40

Did you, however, hear that staff at Bundaberg had been told that the report would not be released because it was incomplete?-- No.

50

Were you involved in any discussions to appoint a review team, including Dr Mattiussi and other persons, to review matters concerning Dr Patel and the Bundaberg Base Hospital?-- Only peripherally. I think the discussion occurred between the - my understanding is the Director-General and the Minister and the Chief Health Officer and I think I was asked after the make-up of the team had been decided what was my thought, but

that was pretty much all that I was involved in.

1

Were you able to discern from anything you were told whether the decision to appoint such a review team was in any way affected by the discovery in relation to Dr Patel's qualifications?-- I am sure that it would have been if that discovery had occurred, but at the same time I think it was also a matter of a realisation that there was a significant issue that needed to be investigated, that the report that had been provided from the Chief Health Officer wasn't giving us sufficient information on which to base any sort of clear decisions or actions, and we needed a much more in-depth examination of what had gone on.

10

When were you first aware of any discussions along those lines, that a further in-depth investigation was required?-- Again I'm not clear on the dates, but it would have been fairly soon after there was the - my recollection was that there was action in Parliament, that there was a recognition that the finding of the problems with the registration of Dr Patel had arisen and I think at that point in time there was the expression of concern about a number of patients who had been treated by Dr Patel, and I think it flowed then that we needed to have a significantly more in-depth look at what had gone on, and that's why the team was put together.

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So to the best of your recollection, that approach was - first received consideration after the discovery regarding Dr Patel's registration difficulties?-- That's my recollection, yes.

30

In the same paragraph of your statement you refer to the contents of Dr FitzGerald's report and point out that the report does not make criticisms of surgical outcomes in Bundaberg - sorry, it does make criticisms of some surgical outcomes?-- Yes.

Although none particularly are identified, are they?-- No.

There's no-----?-- I mean, it's not just regarding surgical outcomes, it actually comments on other things like pharmacy outcomes as well.

40

But you say there was nothing in it that rang alarm bells as to Dr Patel being incompetent; is that so?-- Yes.

Yes. Or behaving in a way which justified his immediate review or removal?-- Yes.

And, indeed, although Dr Patel is not identified by name, he is identified in some parts of the report by position, as being the Divisional Director?-- Yes.

50

And where he is particularly identified by that means only positive comments are included in relation to his leadership, willingness to train, et cetera?-- Yes. I mean, I'd have to go back and look at the report, but I certainly don't remember anything different to that.

No. And you point out quite reasonably that there was a real difference between the contents of that report and the subsequent briefing to the Minister, which you include as JGS134?-- Yes.

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And you say that that briefing contained markedly different advice in relation to Dr Patel as compared to the earlier report?-- Yes.

10

In the briefing on 15 April 2005, now we have concerns raised as to Dr Patel's competence and the question as to whether he should be permitted to operate on patients at all?-- Yes.

Now, you say, "I cannot explain this difference."?-- Yes.

Did you try and investigate the reasons for that difference?-- No. I think I also make the point in my statement that the copy that I've seen of that briefing doesn't bear my signature, and usually if I were clearing a briefing to go to the Minister or to the Director-General or anywhere else further up, I'd usually sign it off to indicate that I'd read it. So I'm not sure - and I think I have said this in other parts of my statement as well - I'm not sure that it actually came across my desk before it went to the Minister. So, I'm just saying that at the point where it went to Minister, I'm not confident, unless there is an original which bears my signature somewhere, that I had actually read the briefing before it went forward. Subsequent to that, events unfolded fairly quickly in terms of the Chief Health Officer going to Bundaberg, and at that point in time, I guess, I was in a position where there was no value in trying to investigate why there'd been a difference between the original CHO report and the briefing.

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30

You didn't see the preceding communication from Dr FitzGerald to the Director-General which provided the information that found its way into that briefing?-- I don't recall it, no.

You never spoke to Dr FitzGerald yourself to ask about any apparent difference in tone between his original report and subsequent advice being given in April?-- No.

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Thank you, Dr Scott.

COMMISSIONER: Who else apart from Mr Gotterson?

MR ASHTON: Commissioner, I have got a couple of short things, five or 10 minutes at the most, if that's convenient.

COMMISSIONER: Yes, it is Mr Ashton.

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CROSS-EXAMINATION:

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MR ASHTON: Thanks, Commissioner. Dr Scott, my name is Ashton. I am counsel for Mr Leck. I just wanted to ask you some questions very briefly about an attachment to your statement, and can I assist you by taking - with some context by taking you to the paragraph at which - it is 8.17 on page 13, and you refer in the last sentence of that paragraph to JGS15. Do you see that?-- Yes.

10

You asked for a briefing as to the issues surrounding the alleged cash payments to Dr Patel and the payment of his airfare to Los Angeles?-- Yes.

Can I take you then to the attachment JGS15. Do you have that?-- I do.

If you look at the last page there, under the heading, "Actions Taken and Required", there's a reference to referral to the Audit Operational Review Branch for the review?-- Yes.

20

And that, in fact, occurred, did it not? Are you aware of that?-- Yes.

Yes. And a fuller report was in due course prepared. It's been received, in fact, in evidence in this - in the previous Commission and is now in evidence in this Commission. On the previous page you will see at the foot there's a reference to some key issues. I just wanted to clarify your perspectives now on those issues. There are two issues mentioned. I will take the second one first. It's at the top of the last page. It refers to an apparent departure from Queensland Health policy by reason of the use of Jetset Sunstate Bundaberg. Do you see that?-- Yes.

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Now, this was in fact reimbursements to Patel, wasn't it, Dr Patel, was it not?-- Yes, yes.

40

And not a payment in the first instance by Queensland Health?-- That's right. I think it took us, from recollection, probably two or three days of going through the records to understand that.

Yes?-- So, yes, subsequent to this briefing, that was recognised.

And the policy doesn't apply there, does it?-- No. I think-----

50

Obviously if the purchase had been through Queensland Health, that would be so that Queensland Health would pay for it?-- Yes.

This is reimbursement?-- Yes.

That's not really a departure from policy-----?-- No.

-----as it now appears. All right. If you have a look at the other key issues, that's at the foot of the previous page, "Payment of return travel to the United States was approved by the District Manager. However, there are no contractual requirements for this payment to be made, nor are there file notes to explain why this payment was made." Now, are you aware of the evidence that Dr Nydam has given on that matter to the previous Commission and since received in this Commission?-- I think I am, but I certainly would benefit from your reminding me.

Well, can I put to you that it's emerged, for example, that he informed the recruitment agent about relocation expenses, "If he is coming for the year we would normally pay return airfare economy for him and his spouse. If he came on his own, I would be prepared to upgrade that to business class." Do you remember that, remember hearing that?-- Yes.

Yes. Do you remember hearing also of Dr Nydam's evidence that he had intended always that that be part of the contract?-- Yes.

And that he would have - if he'd realised the - if he'd seen it before it went out he would have ensured it went in there?-- Yes.

Well, given that background, are you now relaxed that that's not a key issue or not seen to be a key issue that you would have thought to be a key issue at the time?-- I think-----

Setting aside, of course, all we since know about Dr Patel?-- Yes.

Yes?-- Yes. I think you'd have to. I think in that context I believe that Peter Leck as District Manager is put in a position where he has to make a decision about whether he makes that payment, and I believe it was appropriate for him to decide in the context of what you have explained that he did make the payment.

Quite aside from this contract matter, it would have fallen within his special payments delegation, wouldn't it?-- Yes. That's right.

Yes. That delegation, Commissioner, appears in the Financial Management Practice Manual for Queensland Health. It's specifically paragraph 8.5.2. I have spare copies of that particular entry, but a cross refers to another entry. My submission respectfully would be that the appropriate way to receive it would be in the manual in its entirety and I would be confident that that document is with the Commission, though not formally in evidence. I think it could be uncontroversially be passed up by Counsel Assisting at some convenient time.

MR DOUGLAS: We can attend to that, Commissioner.



MR ASHTON: Thanks, Commissioner. All right. Is that delegation sometimes also called the HR delegation?-- Well, it would be probably a subcomponent of the HR delegation.

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Yes, all right. Thanks. Just one other matter, thanks, Dr Scott. You gave some evidence yesterday about privileging and credentialing and, please, if I put your evidence in any way incorrectly, stop me, but I think in summary it was that there is, of course, Queensland Health policy on that subject but that it's then left to and expected of the districts that they will develop their own committees and implement that policy?-- Yes.

10

I'd like the witness to see Exhibit 276, if the Commission pleases. I have got multiple copies of it here to save rummaging if that's convenient, Commissioner.

COMMISSIONER: Yes.

MR ASHTON: Just while we are getting that, doctor, were you aware that the Bundaberg district and the Fraser Coast district combined to develop their privileges committee?-- Yes.

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That was to improve the pool of talent, so to speak, was it not-----?-- That's right.

-----available for service on this committee?-- Yes.

All right. Now, this document is headed, "Bundaberg Health Service District Policy and Procedure Document." Can you see that?-- Yes.

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And can I take you to the coloured panel on the left-hand side of the first page. It's colour on my photocopy. You will see that it has an effective date of the 1st of January 2003?-- Yes.

Further down the imitator is described as Dr Darren Keating.

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COMMISSIONER: Sorry, where are you now, on page what?

MR ASHTON: First page, Commissioner.

COMMISSIONER: Yes.

MR ASHTON: There is a panel on-----

COMMISSIONER: Oh, yes, sorry.

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MR ASHTON: Yes. The ignitor is described as Dr Darren Keating?-- Yes.

And it's authorised, "Original signed by Peter Leck"?-- Yes.

Have you seen that document before?-- No, I haven't.

Well, I wonder if you could have a look at it now. I'm just

going to put to you that it articulates a proper policy, procedural policy, in accordance with the Queensland Health umbrella policy, and I want you to agree with that proposition, if you do, and I would like you to just look at that to satisfy yourself about that matter. This is quite aside from what did or did not happen in respect of Dr Patel. I simply want you to agree with that proposition of mine, if you will?-- Yes.

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Yes, thank you. I have nothing further, thanks, Commissioner.

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COMMISSIONER: Thank you.

MR O'SULLIVAN: We have no further questions of Mr Scott, Mr Commissioner.

COMMISSIONER: All right. Ms Dalton?

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CROSS-EXAMINATION:

MS DALTON: Thank you, Commissioner. I really have very little arising by way of re-examination but I did want Dr Scott to make some comments on the statements that we have been receiving from Queensland Health.

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COMMISSIONER: Yes.

MS DALTON: Should I make these exhibits for identification or should we put them on the letter list, not the number? I am just going to show him one by one and ask him if he needs to comment on them.

COMMISSIONER: If he needs to comment on them and they are relevant issues then we should make them exhibits in the hearing, shouldn't we?

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MR DOUGLAS: They should be made exhibits in the hearing. These are from the statements that's been-----

MS DALTON: Statement of Michael Zanco and statement of - draft statement of Gary Walker.

MR DOUGLAS: Anyone, including from the Commission, would have to consider them. Those documents are quite detailed. They should be tendered at this time. It's possibly likely - not too sure at the moment - that the deponents of those statements will be called to give evidence at some point in time. If they are not, then it doesn't matter either way. They should be tendered.

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COMMISSIONER: All of the documents?

MR DOUGLAS: Yes.

COMMISSIONER: Why don't you tender all of them now?

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MR DOUGLAS: Yes, I will.

COMMISSIONER: That will save Ms Dalton tendering them and she can identify them and put them to the witness, if necessary.

MS DALTON: I wonder if I could ask Mr Douglas if he's got a spare copy of Michael Zanco's statement.

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MR DOUGLAS: Yes, I do. Thank you. There were two statements by Mr Zanco, as I indicated.

MS DALTON: I've only ever seen one. I think Dr Scott has two.

MR DOUGLAS: Excuse me. I indicated to you this morning, and perhaps Ms Dalton wasn't here at that time because she was somewhere else as was indicated yesterday, that we were also supplied this morning with another brief statement by Mr Zanco.

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COMMISSIONER: Yes. All right.

MS DALTON: If Dr Scott can see both of those.

COMMISSIONER: I am going to tender all these first, I think. Are we going to tender these first?

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MR DOUGLAS: Yes, we are. I tender the two statements of Mr Zanco. Can I have it back, please? I might just ask Mr Groth whether he has copies of the Zanco statements on the Bench? Thank you. There are two statements of Michael Carlo Zanco.

COMMISSIONER: Do you want these all tendered as one exhibit?

MR DOUGLAS: No, they should be tendered, I think, as separate exhibits.

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COMMISSIONER: Two statements. All right. Well, how do we identify each of them?

MR DOUGLAS: The statement of the first-----

COMMISSIONER: One's an addendum statement.

MR DOUGLAS: Yes. We will describe it that way.

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COMMISSIONER: All right. The statement of Michael Zanco is Exhibit 326. That statement is dated the 13th of September 2005.

ADMITTED AND MARKED "EXHIBIT 326"

COMMISSIONER: Right.

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MR DOUGLAS: The addendum statement is dated the 14th of September 2005.

COMMISSIONER: That will be Exhibit 327.

ADMITTED AND MARKED "EXHIBIT 327"

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MR DOUGLAS: Yes, thank you. While I'm dealing with those statements, the other statement provided by Queensland Health today is that of Gary Walker. I should tender that statement at this point in time. That statement in the form which it's been supplied also carries an addendum which we've put into the front of this exhibit book. The statement of Gary Walker should be tendered. That statement, Commissioner, obviously, is dated today the 14th of September 2005 and the addendum statement also bears that date.

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COMMISSIONER: Do you want them as one exhibit?

MR DOUGLAS: Those can be one exhibit.

COMMISSIONER: All right. The statement of Mr Walker and the addendum statement of Mr Walker will together be Exhibit 328.

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ADMITTED AND MARKED "EXHIBIT 328"

MR DOUGLAS: And Mr Groth has copies of those.

COMMISSIONER: Do those statements include annexures?

MR DOUGLAS: They do.

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COMMISSIONER: All right.

MR DOUGLAS: The addendum statements don't but the primary statements do.

COMMISSIONER: That's all right. But the primary statements are being tendered with the annexures.

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MR DOUGLAS: Yes. I'm putting in the witness's hands as requested by Ms Dalton copies of Mr Zanco's statements.

MS DALTON: Dr Scott, looking at the big bundle of paper first, that's a - at the front of that is a statement of Michael Carlo Zanco which I think you've had a chance to read?-- Yes.

At particularly, say, paragraphs 22 and 23, that deals with what we've been calling the anterior waiting lists?-- Yes.

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Do you recall that?-- Yes.

Is there anything in those paragraphs about the anterior waiting lists that you disagree with?-- No.

COMMISSIONER: You should look for that also at Exhibit MCZ8.

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MS DALTON: See, that's referred to as paragraph 23, Dr Scott. Have you had a chance to look at Exhibit 8 this morning?-- I have, Ms Dalton.

Does that accord again with your understanding of what went on?-- Yes.

Now, you haven't had a chance to look at the smaller of those two statements of Michael Zanco. Can I ask you just to look at paragraphs 4 and 5, seem to be the relevant ones?-- Yes.

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Do you have any quarrel with any of that?-- No, I don't.

All right. Thanks, Dr Scott. Now, I'm sorry, Commissioner, I'm not sure why, because my junior has been here even if I haven't been here all morning, but we've never seen the signed statement of Gary Walker. We have just had the draft. Apparently Mr Boddice has just told me now the signed statement is different.

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MR ALLEN: I'm in the same position.

COMMISSIONER: I beg your pardon?

MR ALLEN: Likewise, Commissioner.

COMMISSIONER: Well, do you both need - do you want to cross-examine on it too?

MR ALLEN: No, no, but I wouldn't mind a copy of the statement, if there is one available.

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COMMISSIONER: You can have a copy of the statement, but I assume that Ms Dalton might want to ask some questions based on it. Is that right?

MS DALTON: Look, I was just going to treat it in the same way I have treated Mr Zanco's and, Commissioner, could I ask for this indulgence: could we put the draft in as something that the witness has seen and if there's anything in the signed one when the witness gets a chance, could we supplement it by a written statement if necessary?

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COMMISSIONER: All right.

MR BODDICE: The only thing is, Commissioner - the difficulty of course was it was indicated yesterday that that draft was supplied in circumstances where Mr Walker hadn't seen the

final one.

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COMMISSIONER: What are the differences though? Are they substantial.

MR BODDICE: They're relatively minor as I understand it.

COMMISSIONER: Is it going to matter?

MR BODDICE: Well, I don't know because until I look at the ones - and I just wouldn't want it to go in as something of Mr Walker because it was provided on the basis of the draft.

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COMMISSIONER: No, it is just I don't want to keep Dr Scott-----

MR BODDICE: I don't want to keep Dr Scott either but I just wanted to bring that to the Commission's attention, that it shouldn't go in as if it's something that Mr Walker has seen and then it's been changed.

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COMMISSIONER: We won't hold it against Mr Walker but at least for the purpose of ascertaining what Dr Scott's view is about a document that Mr Walker may or may not accept as accurate-----

MR BODDICE: And I have no difficulty on that basis.

COMMISSIONER: Are you satisfied on that basis, Ms Dalton?

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MS DALTON: Exactly, Commissioner.

COMMISSIONER: You want to say something.

MR APPLEGARTH: Ms Kleasey had a quick look at the two documents. We think that there are probably some substantial additions. We are not wanting to interfere but it seemed to us that there were some parts of-----

COMMISSIONER: I think what I'll do is, because I think we should try and finish this afternoon, I think I will adjourn for 10 minutes and give you an opportunity to look at the two documents and compare them.

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MS DALTON: Thank you.

COMMISSIONER: Then ask whatever questions you like based on the real document.

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THE COMMISSION ADJOURNED AT 3.50 P.M.

THE COMMISSION RESUMED AT 4.06 P.M.

JOHN GRANT SCOTT, CONTINUING RE-EXAMINATION

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COMMISSIONER: Have you had enough time, Ms Dalton?

MS DALTON: Certainly to look at the statement itself. There's three volumes of exhibits so we haven't looked at the exhibits but I don't think it matters really. I'm content to proceed on the basis if any-----

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COMMISSIONER: If necessary, unfortunate though it might be, we might have to - you might have to ask Dr Scott to come back, but we hope that doesn't happen.

MS DALTON: We shouldn't intimidate him at this stage of the afternoon.

COMMISSIONER: I'm sure that won't happen.

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MS DALTON: Dr Scott, have you had - you've had a chance prior to this short break to read a draft statement of Mr Gary Walker. Have you had a chance to compare that draft in the 20-minute break of the real signed statement of Mr Walker?-- Yes, I have.

And the main change seems to be that there's certainly an expanded section about documents that went to cabinet?-- Yes.

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And in relation to that, was your attention particularly directed to I think it is annexure 30 to Mr Walker's statement?-- I thought what he said in there were statements of fact that I didn't have any argument with, yes.

All right. If we see - can you just look for me at Exhibit 30. You will find those little transparent tags and it is the first one in one of those folders. Do you see that?-- Yes.

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Are you able to identify the page for me because I don't have a copy. Is there a table in there that sets out for cabinet in October 2003 the outpatients waiting list numbers total for the state?-- I'm sorry, are we talking about attachment 30?

Yes, attachment 30. Is that a cabinet document from October 2003?-- It is, yes.

There's a-----?-- Good news.

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You have found it?-- Yes.

What page is that, Dr Scott?-- That is actually attachment 2, to the document.

Attachment to the cabinet document?-- Yes.

Does it have a page on it?-- No, it doesn't. It's got a

barcode with CAB0007.0001.00569.

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Does it show a total anterior waiting list number for the state at that stage?-- It does at 1 July 2003, a total of 55,684.

And that's for specialists outpatients appointment?-- Yes, outpatients department numbers waiting, table 3.

So that would be outpatients appointments for surgery and also outpatients for gynaecology, all sorts of things that weren't classed a surgery?-- Yes, medicine, paediatrics and psychiatry.

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Now, you say in your statement that the department was collecting this information and that if you or anyone else wanted it at any stage, it was available on request; is that right?-- Yes.

And it would be available in a form like that table in that cabinet?-- Yes, yes.

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All right. Thank you. You can put that folder to one side. And I'll ask, please, Commissioner, if Dr Scott could see Exhibits 323, 324 and 325. Have you had a chance to look at those over the lunch time?-- Yes.

Looking at the document which is 324, that is attachment 2, "Information Submission". Can you explain how that document came into being?-- 323?

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324, see attachment-----

COMMISSIONER: Doctor, if you can go to attachment 2.

MS DALTON: The one that didn't go to cabinet?-- I've got that as 323.

COMMISSIONER: Just hold it up. Oh, yes it's 323?-- That's the number on here.

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That would be correct. I could be wrong. Anyway, that's the document?-- Yes.

Yes.

MS DALTON: 323. It is my fault?-- I think the reason that this was developed is described in the introduction. Essentially, there had been a significant commitment of money after the election in 2004 to elective surgery and there was approximately \$110 million submitted over three years. What we had found was that in spite of a major effort from the Queensland hospitals in the early part of 2004, that we appeared - while we were maintaining our waiting times in regard to categories 1 and 2, we were actually starting to go backwards in relation to category 3.

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MS DALTON: Even with the extra money?-- Even with the extra



money. So we were essentially saying in this document and the attached part that went to cabinet that we believed that we needed to look at what we could do to address waiting times because it seemed that even with the significant investment that had been made, we didn't have the capacity to - to make inroads into either the category 3 waiting times or the anterior waiting lists that existed beyond those and we were proposing some consideration be given to either trying to address the people who were on those waiting lists, at least to get them off the waiting list, or an option which said, "We need to look at whether we can make an investment that is going to address waiting times and waiting lists into the future", and we gave two options in terms of funding that would be needed to address those. So, I think about a 40 plus million dollars investment to shift the roughly 7,000 people that were waiting in category 3 or about an 88 million dollar investment recurrently to get people off those waiting lists and to treat people who were waiting in outpatients in a way which was going to see that we kept our waiting times down.

Okay. And can you have a look at 324, which has an e-mail on the front. Says, "Good afternoon John"?-- Yes.

That's you, "John"?-- Yes.

And that's from the cabinet liaison officer?-- Yes.

Essentially telling you that attachment 2, which was the funding to address the long waits of people who had already seen a surgeon and were waiting for surgery, and the anterior lists hadn't gone to cabinet and you were requested to do some more work on it?-- Yes.

There's just two things that arose out of evidence yesterday. You've mentioned again after the 2004 election there was extra money put into trying to reduce elective surgery waiting lists. Is it that money that resulted in a temporary increase in the amount of procedures performed out at the cardiac lab at Prince Charles while Dr Aroney was there?-- Yes.

Some of that anyway?-- Yes, and I think I made the comment that the then Minister, Minister Nuttall, had recognised that we needed to support the notion of not just elective surgery but elective procedures and had been happy to support some of the extra money that was available going into extra angiograms, extra stents and extra operations to treat holes in the heart. So we'd seen the increase because we'd been able to make that investment.

Yes. Is that what you were talking about yesterday when you say that when - when that extra election commitment money ran out, it went back to the baseline budget, which was 57?-- Exactly. Exactly. And - and I think it's also picked up in these documents that you provided for me here that we said that we can't continue to ramp up and then slow down. That we need to have a sustainable ongoing amount of money which says to hospitals, "This is not just a speed up and slow down process but this is how we're going to manage ourselves on a

continuous basis into the future."

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That was-----?-- It was-----

That was your view, that you didn't just throw a poultice of money at it for a temporary time. You had to look at doing something about it in the long term?-- Long term. It was discouraging for people, and I think Dr Aroney voiced that, to see that activity increase but then went down when the money that had been provided ran out.

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All right. And lastly, Dr Scott, you wanted to add - you were asked some questions yesterday about the credentialing and privileging of Dr Patel in the context of Bundaberg Base being a regional hospital with a lot of long-term problems and I think you wanted to add something to that evidence?-- Yes, thank you. Commissioner, forgive me, this is an impassioned plea I suppose. I didn't like to leave yesterday with the impression that I was critical of the management in Bundaberg. I think what I'd like to finish up with is the idea that it's a very difficult system for everyone to work in and that people at the coalface get sandwiched between the demands of politicians and the demands of the media and the demands of constituents and the finite resourcing base that we have. So, I think that the people in Bundaberg, Peter Leck as District Manager and Darren Keating as med super, were trying to do their best and I suspect that they were confronted with a situation of is someone better than no-one at all, and I think they were probably acting with the best interests of their patients and their constituents and the political process when they appointed Dr Patel. I wouldn't like to imply that they didn't have positive motives when they did that. I guess with hindsight we can all see that it was a bad decision to make but I think that I'm sure at the time they were sandwiched between a whole lot of competing interests and I wouldn't like to appear to be - to be just nakedly critical of what they have done. I would just like to try and add some balance in terms of the difficulties that existed with trying to still deliver services at the coalface.

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COMMISSIONER: Thank you.

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MS DALTON: That's all I have. Can Dr Scott be excused?

COMMISSIONER: Well, Mr Douglas-----

MR DOUGLAS: I have a couple of questions about that.

COMMISSIONER: Yes.

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RE-EXAMINATION:

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MR DOUGLAS: On that last point, Dr Scott, you have been involved in bureaucracy for quite a long time now, haven't you?-- Yes.

And you know from that history that policy is important?-- Yes.

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Policy is laid down in the health system to basically, among other things, protect the users of the system; correct?-- Yes.

Credentialing and privileging was part of that policy?-- Yes, yes.

It was an important part of that policy; correct?-- Yes.

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It was an important part of that policy directed principally and saliently at the protection of the users of the system?-- Yes.

You expected that policy to be adhered to by all the cohort hospitals that made up Queensland Health?-- Yes.

And you would view a departure from that policy as a matter requiring particular and serious consideration?-- Yes.

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And you would expect if there was to be an intended departure from that policy, that you, during the period of your tenure, would be directly approached by the district or zonal manager?-- Yes.

Thank you?-- If I can just say, Mr Douglas-----

Certainly, if it answers my question, yes, certainly?-- Yes, I absolutely accept what you're saying. I think my point was more to say that whatever system - health system we end up with out of this Commission and the Forster review, I think we need to just be mindful of the pressures that can exist at the local level for a variety of reasons and put mechanisms in place to ensure that the policies are adhered to whilst at the same time, I suppose, protecting the - the sanity of the people who are required to - to uphold them.

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And protecting the people who are utilising the service?-- Absolutely. I mean, all of us in the medical profession and the nursing profession and beyond would believe that our first duty is do no harm.

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Thank you. May the witness be excused, Commissioner?

COMMISSIONER: No-one would have any objection to that I take it. You're excused from further attendance, Doctor. Thank you for coming.

WITNESS EXCUSED

COMMISSIONER: We don't have any other witnesses?

MR DOUGLAS: No.

COMMISSIONER: We will adjourn till 10 a.m. tomorrow morning.

THE COMMISSION ADJOURNED AT 4.21 P.M. TILL 10.00 A.M. THE FOLLOWING DAY