



## 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 19/09/2005

..DAY 6

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THE COMMISSION RESUMED AT 10 A.M.

COMMISSIONER: Yes?

MR DOUGLAS: Commissioner, I call Dr Buckland. He's in the witness box. May he be sworn, please?

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COMMISSIONER: Yes.

STEVEN MICHAEL BUCKLAND, SWORN AND EXAMINED:

COMMISSIONER: Dr Buckland, before you give evidence or your statements are tendered, I notice that in paragraph 5 of your second statement you say this: "On 24 August 2005 the chairman of the former Commission stated that there was no intention of making any findings either positive or negative regarding my responsibility or the responsibility of my predecessor as Director-general, the former General Manager of Health Services and the former Ministers for Health in connection with systemic issues. This statement is made on the understanding that there has been no change in that situation." I want to make it clear to you that I'm giving you no such assurance, Dr Buckland. I don't mean by that that I have any present intention of making any finding positive or negative with respect to you or with respect to any of those other people. I don't. And before I did so, I would give your counsel the opportunity of making submission as to why I should not do so, and I want to make it abundantly clear that you have no such assurance from me. Do you understand that?-- Yes, Commissioner.

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Thank you.

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MR DOUGLAS: Commissioner, the issue that you've just canvassed with Dr Buckland is a matter which I presaged in discussions with Mr Applegarth of counsel who appears for Dr Buckland, and it has since been the subject of correspondence only received - and I make no criticism in this regard - only received just before the commencement of the hearing this morning. So I might just hand over to Mr Applegarth in that respect at this point.

COMMISSIONER: Yes.

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MR APPLGARTH: Mr Commissioner, as my learned friend says, the matter was only raised with us last night and you have before you, as does Mr Douglas, a letter which relevantly says that paragraphs 2 to 5 of the second witness statement were intended to provide a short statement of the sequence of events relating to the two witness statements, and that Dr Buckland accepts that this is a new Commission of Inquiry,

it's not bound by the statement given on 23 August by the previous Commission. Paragraph 5 of his statement was not intended to suggest otherwise and, as the letter says, the findings this Commission makes, positive or negative, about any person or about systemic issues are a matter for it.

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We apologise - I apologise that there was anything that first statement - second statement-----

COMMISSIONER: No need to apologise. It was just a very odd statement to make.

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MR APPLGARTH: I won't take any longer. The paragraph had its origins in another statement and it was included without thinking of the implication that you raised. Once it was raised, we have hopefully made the matter clear, as you have just yourself.

COMMISSIONER: Thank you.

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MR APPLGARTH: May I mention a second matter of a purely formal kind while I'm on my feet?

COMMISSIONER: Certainly.

MR APPLGARTH: That is the witness statements that Dr Buckland has given - and he's given a third because we received some further questions from the Commission on Friday - they refer to Dr FitzGerald's report of March 2002, Clinical Audit of General Surgical Services - Bundaberg Base Hospital. We didn't include that document as an annexure to the statements, but the statements are a little hard to necessarily follow without the annexure. We weren't proposing to duplicate it because it's already an exhibit, but if it assists you, Mr Commissioner, we can hand up a copy just as an aid to you.

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COMMISSIONER: Thank you.

MR APPLGARTH: The witness has one, and we have a few other copies here if any other parties don't have them in Court.

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COMMISSIONER: Thank you.

MR DOUGLAS: The report in question is Exhibit 230 in this Commission.

COMMISSIONER: Yes, I saw that. Thank you.

MR DOUGLAS: Commissioner, before leaving the last issue, I ought tender the letter dated 19 September 2005 from Messrs Minter Ellison Lawyers, who are lawyers for Dr Buckland, addressed to you care of counsel assisting this Commission. A copy is before you and the original has been provided to Mr Groth.

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COMMISSIONER: I haven't seen it. I see it here now.

MR DOUGLAS: Thank you. It essentially reflects that which Mr Applegarth ventilated earlier.

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COMMISSIONER: I'll make that Exhibit 333.

ADMITTED AND MARKED "EXHIBIT 333"

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COMMISSIONER: Yes?

MR DOUGLAS: Thank you, Commissioner. Dr Buckland, is your full name Steven Michael Buckland?-- It is.

And you reside at an address known to the Commission?-- I do.

You are a duly qualified medical practitioner registered in the State of Queensland?-- I am.

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Your present occupation is in fact a general practitioner working in practice?-- As an occupational physician, yes.

Thank you. You graduated with a medical degree from the University of Queensland in 1976?-- I did.

Subsequent to that you obtained specialist registration in the specialty of occupational medicine on 15 May 1981?-- That's true.

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You obtained a Masters in Health Administration from the University of New South Wales in 1990?-- I did.

Since 1987, it is correct to say you've been employed exclusively by Queensland Health or one of its administrative organs?-- That's true.

Prior to that you had worked for Queensland Health but for some time you spent time working in the services?-- That's true.

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From August 1999 until July 2002 you were the Southern Zone Manager for Queensland Health?-- I was.

And the southern zone, as the name suggests, comprised administrative responsibility for the various hospitals within the Queensland Health cohort which were located geographically in the southern zone of Queensland?-- That's correct.

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From 22 July 2002 until 1 November 2003 you were the General Manager of Health Services at Queensland Health?-- I was.

And from 1 November 2003 until 29 April 2004 you fulfilled the position of Acting Director-General of Queensland Health?-- That's correct.

During that period of time the Director-General was Dr Stable, but he was on leave?-- That's correct.

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He took leave pending his departure from the position?-- That's correct.

From 29 July 2004 until 26 July 2005 you were the Director-General of Queensland Health?-- Sorry, could I just have those dates again.

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29 July 2004 until 26-----?-- April.

29 April 2004 until 26 July 2005?-- That's correct.

Thank you. Through the auspices of your solicitors, Messrs Minter Ellison, and your counsel, you have provided three statements to the Commission?-- I have.

They are in response to a number of letters and other communications put to your solicitors asking that you address certain topics in statements to be provided to the Commission?-- That's correct.

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Can I do this first, Commissioner. I've had those assisting me bundle together the various communications from counsel assisting to the solicitors in relation to the matters to be so addressed. I don't say this by way of any criticism of those who prepared the statements, but the questions aren't delineated in the various statements, and it may be of some assistance when understanding the statements or considering them to have that material available to the Commission.

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COMMISSIONER: Yes.

MR DOUGLAS: Thank you. I'll have copies of that distributed. I tender that bundle.

COMMISSIONER: That will be Exhibit 334.

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ADMITTED AND MARKED "EXHIBIT 334"

MR DOUGLAS: They have already been distributed, I'm instructed. You have provided three statements relevantly, Dr Buckland, the first is dated 31 August 2005, the second 16 September 2005 and the third a statement dated today?-- That's correct.

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Commissioner, I tender each of those statements. They ought be separately designated with an exhibit number.

COMMISSIONER: Of course. They will be respectively Exhibits 335, 336 and 337.

ADMITTED AND MARKED "EXHIBIT 335 TO 337"

MR DOUGLAS: By what means was your termination on 26 July 2005 communicated to you, Dr Buckland?-- I was called up to - I was phoned the night before to say that I had a meeting with the Director-General, the Premier & Cabinet, and the Public Service Commissioner.

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Who communicated that to you?-- It was communicated through Mr O'Farrell, who is the Public Service Commissioner, to my secretary.

You attended that meeting the following day?-- I did.

Did you have some communication with some person on that day in respect of your termination?-- Did I talk to - I spoke to Leo Keliher and to George O'Farrell.

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Were you told that you were terminated?-- Yes, I was told that the Premier no longer had any confidence in me and that my services would be terminated.

Were you given any other reasons for your termination?-- No, sir.

Either orally or in writing?-- No, sir.

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Could I ask you to address your first statement, please. Can I remind you, Dr Buckland, if at any time I, or anyone else for that matter, is going too quickly for you, you need time to consider matters, please take that time and indicate as much?-- Thank you.

Do you have your first statement?-- I do.

That was a statement prepared by you on the 30th of August 2005, it bearing that date and your signature on the 10th page of the statement proper?-- That's correct.

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Is it correct to say that after addressing general matters of background, that statement is essentially directed to matters pertaining to your dealings in respect of Bundaberg Hospital and the matters arising out of the audit conducted by Dr FitzGerald, the Chief Health Officer of Queensland Health?-- Yes, that's fair.

Your subsequent statements deal in major part with other topics?-- That's correct.

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You record in your statement, that is the statement of 31 August, that you were on leave from 31 July 2005 until 7 March 2005.

COMMISSIONER: The first of those days might be 2004, I'm sorry.

MR DOUGLAS: I'm sorry. It's 2005.

WITNESS: 31 January.

MR DOUGLAS: 31 January 2005 until 7 March 2005?-- That's correct.

Dr Scott was Acting Director-General during that period of your absence?-- He was.

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On 23 March 2005, following matters being raised in Parliament during question time, you became aware for the first time that Dr FitzGerald was conducting an audit investigation into matters pertaining to the Bundaberg Hospital?-- That's correct.

On that date you knew that part of the investigation focused on a specific individual, namely a surgeon by the name of Dr Jayant Patel?-- That's correct.

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You were told on that day that Dr Patel was an overseas trained doctor working in Queensland Health under an Area of Need registration?-- Yes, that's correct.

You were told on that day that Dr Patel was performing operative procedures outside his scope of practice?-- That's correct.

You were told on that day that Dr Patel was still employed at the Bundaberg Hospital?-- That's correct.

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On that day your initial information came from a senior departmental liaison officer by the name of Mr Dall'Alba, is that correct?-- That's correct.

You were subsequently given further information then on that day by Dr FitzGerald?-- That's correct.

You were advised by Dr FitzGerald on that occasion, and I quote your statement, that, "It was highly likely Dr Patel had performed operations out of scope and had a high infection rate, although he was still waiting on infection data to conclusively determine this."?-- That's right. That's correct.

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Did you mean to communicate by that that you were informed by Dr FitzGerald that this Dr Patel had been performing operative procedures outside his ordinary scope of practice and expertise?-- No, I understood it to be more in line with outside the scope of practice of Bundaberg Hospital, but I also understood that there may have been issues around his scope of practice. But fundamentally it was outside the capacity of Bundaberg Hospital to be able to deal with those types of patients.

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And when he referred to a high infection rate, did you understand him to be communicating to you that it was highly

likely that this Dr Patel, in undertaking his operative procedures, had an apparently high infection rate in the patients that he had operated on?-- I did. Could I add to that that Dr FitzGerald also indicated that that would depend on the type of patients that he was actually operating on at the time and whether he was doing a lot of trauma, whether he was doing a lot of dirty surgery. So the infection rate of itself was a concern, but the patient cohort needed to be understood.

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Dr FitzGerald also told you on that occasion, again to use your words from the statement that, "He" - I understand you to be referring there to Dr Patel - "is not as good as some, but he is not as bad as others." Did you understand Dr FitzGerald to be saying to you that he, Patel, as a surgeon, was not as good as some people working within Queensland Health, but not as bad as others working within Queensland Health?-- My interpretation of what Dr FitzGerald told me was that Dr Patel was fundamentally an average surgeon by peer comparison. He wasn't as good as some and he wasn't as bad as others. I assume he was giving me a framework in which to pitch his view of Dr Patel.

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That framework had to be viewed in light of the other matters discussed by you with Dr FitzGerald during that conversation which I've already referred you to?-- Yes.

Namely the issues pertaining to infection rate and operations being performed outside of scope?-- That's correct.

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In that same conversation Dr FitzGerald told you that he, FitzGerald, was close to finishing the report?-- That's correct.

I suggest to you that on that verbal report by Dr FitzGerald on that occasion, on 22 March 2005, you would have been very disturbed?-- Sorry, counsel, that's - no, I wasn't particularly disturbed at all. I spoke to Gerry - Dr FitzGerald. His indication was that, as I said, Patel was an average surgeon. He had higher than expected infection rates, but he hadn't actually verified that. That was - as that was the first time I'd heard about Dr Patel - and I'd been back from leave a number of weeks - I didn't assume anything more than those things that I've just said.

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Can I suggest to you that as a result of what you were told by Dr FitzGerald in that conversation, which you record in your statement, you would have considered that the matter concerning Dr Patel as a current employee at the Bundaberg Hospital was a matter requiring careful and sensitive attention?-- Yes, I would accept that. Obviously there was a lot more work to be done to have a look at Dr Patel, yes.

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When you speak of a lot more work to be done, the first piece of work to be done was the completion of Dr FitzGerald's report?-- That's correct.



Can I suggest to you that careful and sensitive attention to the issue would have been required by you for fear that any ongoing practice by this surgeon, Dr Patel - that is his practice upon further patients - might produce adverse medical outcomes for those patients?-- At no point in time - can I say to you at no point in time was my anxiety increased to say that Dr Patel should cease practice immediately. There was no indication given to me that patients were placed at increased risk and there were no indications given that he should cease practice during any conversation I had with Dr FitzGerald then or later.

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COMMISSIONER: As to matters that were outside the scope of the Bundaberg Hospital or outside his own skills and experience?-- Commissioner, Dr FitzGerald conveyed to me that the practices of operating outside his scope had been agreed to be ceased. So that component of the concern had actually been addressed.

What about his past efforts, though? You weren't concerned about those?-- Past efforts of what, Commissioner, sorry?

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His past operations which had been outside the scope for the Bundaberg Hospital and outside his own area of skill and experience? You weren't concerned about the consequence of those?-- Commissioner, I was, but at this point in time I didn't have all the details in front of me. Dr FitzGerald was still conducting his investigations and his audit.

But you say - first of all, when you got the report when you had your meeting - and I'm going forward, I suppose Mr Douglas.

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MR DOUGLAS: I will deal with that, Commissioner.

COMMISSIONER: Can I just ask this, though: when you got that report and had your meeting with Dr FitzGerald, by then you knew that he'd not been appropriately considered by the credentialling and privileging committee?-- Yeah, I actually don't recall that-----

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That was in his report?-- No, the initial - sorry, Commissioner-----

No, no, I'm talking about the next day, the 24th of March. The next day you knew that?-- Yes, I did.

Yes.

MR DOUGLAS: Commissioner, can I take the witness to it?

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COMMISSIONER: By all means do.

MR DOUGLAS: Thank you. Prior to receiving Dr FitzGerald's report, I suggest to you that at the forefront of your mind was the need, possibly, to take prompt and expeditious action to deal with, at the very least, Dr Patel's continuing employment in the sense of undertaking clinical provision of

services at Bundaberg Hospital?-- I don't quite understand what-----

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I'll put it another way. Prior to receiving Dr FitzGerald's report, having received his oral report on 22 March-----?-- Yes.

-----you had it at the forefront of your mind that you may need to do something very quickly to deal with Dr Patel?-- No, that's not correct.

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You received Dr FitzGerald's report on 24 March 2005?-- That's correct.

You read the report the same day?-- I did.

It came under cover of a memorandum to you from Dr FitzGerald bearing the same date?-- That's correct.

Would you look at that document, please? It's in your exhibit bundle to your first report. It's designated Exhibit SMB3.

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MR APPLGARTH: Mr Douglas, the witness is looking at the wrong bundle.

MR DOUGLAS: Sorry?-- Okay.

It's a document which has a very large heading "Memorandum"?-- Yes.

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Thank you. It may be apt if this could be put on the overhead, Commissioner. It might assist you in looking at it as well, if you see there's a monitor in front of you, Dr Buckland, but look at whichever document you think apt. I want to ask you some questions about this document. Do you wish to peruse it further before I ask you those questions?-- No, I think - I'll just have a look as you ask.

Thank you. I suggest that after reading the report and that accompanying memorandum you, in your capacity at the time as Director-General, would have been filled with a sense of alarm?-- No, that's not correct.

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If the views expressed by Dr FitzGerald in that covering memorandum were correct, then a surgeon with the deficiencies - or apparent deficiencies identified in that memorandum would continue - would be allowed to continue to operate on patients in a Queensland hospital?-- Sir, I mean, I had a very lengthy conversation with Dr FitzGerald who was my major advisor on clinical audit and clinical safety, and at no point in time - and I stress this - at no point in time did he indicate to me that level of concern which you're now reflecting.

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I'll come to that then. I suggest to you that to shrug off the content of that memorandum would, at the lowest, be cavalier in approach?-- No, I'm sorry, I'd have to reject that.

Let's go on to the memorandum in detail then. It's on the screen in front of you. Dealing with the first paragraph and it's content, I suggest it was plain to you that the expression of concern which apparently led to Dr FitzGerald being asked to indicate this clinical audit pre-dated February 2005?-- Sorry?

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You knew that the matters relating to Dr Patel pre-dated February 2005 when he was asked to undertake the audit?-- Well, I knew once I'd spoken to Gerry on 22 March, yes.

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And when you read this report, you also knew that Dr Patel had been a surgeon working in the Bundaberg Hospital continuously since 2003?-- That's correct.

COMMISSIONER: Just pausing there, who asked Dr FitzGerald to undertake that clinical audit?-- Commissioner, I mean, I didn't have any first-hand knowledge, but my understanding was that the District Manager at Bundaberg had approached Queensland Audit Branch.

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I see?-- And that had been referred to Dr FitzGerald some time in December, I think.

MR DOUGLAS: When you were reading this report and this memorandum, you would have believed that this surgeon, Dr Patel, would have operated on hundreds, if not more than a thousand patients during his tenure at Bundaberg?-- I wouldn't have put a definitive figure on it, but I would have assumed he would have done a significant amount of operating, yes.

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COMMISSIONER: Well, many hundreds?-- Yes, Commissioner.

MR DOUGLAS: Many hundreds in the context of the matters canvassed in the memorandum from Dr FitzGerald. Correct, sir?-- Sorry, yes.

From the second paragraph of Dr FitzGerald's memorandum you knew that Dr FitzGerald's clinical audit was complete?-- Yes, that's correct.

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He uses that language?-- That's correct.

From the third paragraph of that memorandum you knew that Dr FitzGerald was satisfied of various matters. Is that not correct?-- He was satisfied of his findings, yes.

And one of the matters he adverts to in that paragraph is that he was satisfied that there was evidence that Dr Patel, the Director of Surgery at the hospital, had, and I quote, "a significantly higher surgical complication rate than his peer group rate and had undertaken types of surgery possibly beyond his own skills and experience but otherwise", in Dr Fitzgerald's view, "beyond the capability of Bundaberg Hospital."?-- That's correct.

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No alarm bells ringing when that was communicated to you?--  
Commissioner - sorry, I mean, I had, as I said, a lengthy  
conversation with Dr FitzGerald. We went right through this  
and, as I said earlier, there was discussion around what sort  
of patient cohort. What we had at the moment was  
fundamentally crude infection rate data which is significantly  
higher, and I accept that, but it depends on the patient  
cohort in which Dr Patel's operating across the board.

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COMMISSIONER: Those two facts did not ring any alarm bells  
with you?-- Commissioner, it did raise concern, but it didn't  
raise to the point of should this surgeon be ceased  
immediately, and at no point in time was that conveyed to me  
that this was so serious. I would have assumed in all honesty  
- and I'd been back at work from leave for a number of weeks -  
that if the issue had been found to be such, that I would have  
had that conveyed to me long before any written report was  
given to me. So I didn't get any sense - and Dr FitzGerald  
gave me no sense of the immediacy of what this question was  
asking me.

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MR DOUGLAS: Dr FitzGerald, in his conversation with you the  
same day, 24 March, did not resile from any of the statements  
which he expressed either in his report or his memorandum?--  
No, he didn't, but he also reconfirmed that he thought  
Dr Patel was fundamentally an average surgeon.

I'll come to that.

COMMISSIONER: He didn't say that. He said there were some  
better and there were some worse. Maybe there are some worse.  
We don't know how bad some of them might be?-- Sorry,  
Commissioner. I accept that comment, but I mean, my  
interpretation of what he had to say was he sits in that  
average group.

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Yes.

MR DOUGLAS: You knew from the third paragraph of  
Dr FitzGerald's memorandum that there had been "a failure of  
systems at the hospital which had led to a delay in the  
resolution of the matters the subject of this inquiry". Did  
you understand by that that some time had passed since the  
expressions of concern which had led to the Fitzgerald report  
had reached the point whereby they were being reported to you  
and others in the audit report?-- My understanding was that  
there was a delay within the Bundaberg health service in terms  
of addressing issues of concerns, and then there was another  
delay in actually investigating those concerns out of the  
Chief Health Officer's office.

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I suggest to you that that would have only served to heighten your concern for not only the prospective, but retrospective patients cared for by Dr Patel at Bundaberg?-- I was - we were certainly concerned, but can I - you know, all I can say is at no point in time was the level of urgency conveyed to me that this was - I needed to require immediate intervention.

In the same paragraph, it goes on to say - Dr Fitzgerald goes on to say that the "local credentialling and privileging committee had not appropriately considered or credentialled Dr Patel". Do you see that?-- I see that, yes.

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You were, at that point in time, of course, thoroughly familiar with the credentialling and privileging policy that had existed within Queensland Health since 2002 with respect to all practitioners, whether they be foreign trained or local-----?-- That's correct.

-----who worked in Queensland hospitals?-- That's correct.

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You understood that that entailed a need for the local credentialling and privileging committee to undertake, in effect, an audit or investigation, call it what you will, to ensure that the competence of the prospective appointee was identified and, in turn, was matched to the hospital wherein he or she would be undertaking the provision of clinical services?-- That's certainly the intention, yes.

And were you told by Dr Fitzgerald that this had not been undertaken in respect of this Dr Patel?-- That's correct.

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That didn't underscore the concern which you otherwise had?-- I understood that he hadn't been fully credentialled and privileged and I understood also that he operated outside the scope of what was considered to be the scope of Bundaberg Hospital and perhaps his own scope, but, no, I have to say to you the answer is no.

I pause to raise with you another point: at the time you were considering these matters on the 24th of March, you knew that Dr Patel was an overseas-trained doctor?-- I did.

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In paragraph 24 of your statement, you say that you met with Dr Fitzgerald on the same day to discuss the report?-- That's right. That's correct.

And you say that you were told by Dr Patel - and I use your language - sorry, I will start again. You say that you were told by Dr Fitzgerald that Dr Patel, to use your language, "was not the worst of surgeons"?-- That's correct.

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Did you ask Dr Fitzgerald what he meant by that?-- No, I didn't. I assumed it was exactly the same conversation - extended to the same conversation we had on the Tuesday, the 22nd.

Is that your recollection of what he said on that occasion -

"he was not the worst of surgeons"-- That's my recollection. He's not as good as some, he's not as bad as others. The same sort of statement.

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I suggest to you as at 24 March 2005 you did not know of any surgeon working within Queensland Health to whom could be attributed the description or attributes which Dr Fitzgerald ventilated in his memorandum of the 24th of March?-- I'm not sure I can answer that. I'm not quite sure what the point is.

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The point is could you think of anyone working within Queensland Health on the 24th of March who one could write a similar memorandum about in terms of their competence and ability?-- I can't think off the top of my head, but I equally would say to you I don't know.

If, on the 24th of March 2005, you had have been asked whether Queensland Health - or to point a person to act as a surgeon and the only information that you had about that person was what was contained in this memorandum of 24 March, what would be your response?-- I think I would have to have a look - understand much more about the detail of what I've been told. I mean, because he hasn't been fully credentialled and privileged doesn't mean he is not a capable individual. That's a process of appointment. And what sort of operations can be carried out-----

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COMMISSIONER: No, no, it wasn't just that?-- Sorry, Commissioner-----

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There are two other matters: one is that he appears to have had a higher than average complication rate, and that he was apparently operating outside his own level of expertise?-- Can I come-----

Would he be the sort of doctor that you would want to employ?-- Commissioner, no, I wouldn't, but can I add that in the history of regional practice in Queensland, going back as far as I can remember - and even probably longer, before I was even a medical student, there's been a large number of procedures performed in regional Queensland by surgeons that have been done either out of necessity or out of their skills. It is only in recent times that we have tried to recognise the risk of that and to limit it, but, you know-----

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No, I wasn't talking about any one factor, of course. I'm sure you understand that, Dr Buckland. I was talking about the combination of all three of those factors?-- Yeah, I mean, the infection rate needs further exploration because it depends on the patient cohort. The information, of itself, raises significant concern, but you actually have to know what sort of patients he's actually operating on, are they all trauma patients, automatic major gut patients. The out-of-scope issue, as I understood it, related directly to oesophagectomies, which is a limited amount, and I absolutely agree oesophagectomies should not be done in regional hospitals because of the potential for the outcomes that occurred, but in terms of those three things - and I go back

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to the very fact what we are talking about is in a written piece of paper - but I had a significant conversation with the Chief Health Officer. At no point in time did he indicate to me that Dr Patel should cease operating forthwith.

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MR DOUGLAS: Did you ask him whether that should occur?-- Sir, I would have expected him, as my major advisor on clinical audits, to tell me that. I would have expected that if he had those concerns in March-----

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COMMISSIONER: That's not the question, Dr Buckland?-- Sorry.

MR DOUGLAS: Did you ask him whether that should occur?-- No, I didn't.

Did you think to ask him whether that should occur?-- No, because I don't have the indication that that's what the message is.

Did it occur to you that that's what should ensue?-- No.

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You could have directed that Dr Patel be suspended forthwith from providing clinical services at Bundaberg Hospital?-- I could have. I could have done that, yes.

And his suspension could have taken place on full pay?-- I could have done that, yes.

All you knew about what was proposed to be done in relation to Dr Patel in terms of him being dealt with was that Dr Fitzgerald told you the matter was being referred to the Medical Board of Queensland for further investigation?-- Yeah, he did convey that he was taking it to the Medical Board, yes.

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Your belief was any investigation by the Board was going to take longer than days, weeks or possibly months?-- Yes, that's potentially true, yes.

And you believed also, in the absence of any suspension, that Dr Patel would be continuing to provide operative services at the Bundaberg Hospital?-- That's correct.

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I want to make this suggestion to you - and I ask you to carefully consider it before you give your answer - I suggest to you that your decision on 24 March 2005 to, in effect, refrain from taking any step forthwith to suspend Dr Patel from undertaking clinical duties at Bundaberg Hospital involved a dereliction of your duty as Director-General?-- Sir, I reject that absolutely.

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I suggest to you, in the alternative, that you failed to give proper consideration to the content of this memorandum and report forthcoming from your Chief Health Officer, Dr Fitzgerald, in relation to the makings of Dr Patel as a services provider at the Bundaberg Hospital?-- Sir, I've tried to paint a very clear picture of what I was informed. If you read Dr Fitzgerald's report, if you can glean out of

that that Dr Patel needs to cease operating immediately, then I'll stand corrected. But if you read the substance of the report, the substance of the report raises two major issues: one is the issue around out of scope and complications, and the second is issues of staff disharmony, but there is nothing in that report - and I repeat there is nothing in that report that would indicate to me, as a senior administrator of Queensland Health, that Dr Patel should cease operating immediately. There's nothing in the conversations, sir, that I had with Dr Fitzgerald which indicated to me that Dr Patel should cease operating immediately.

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Looking at this memorandum that you received with the report, putting it into the scope of a hypothetical decision you may have to make about another doctor, how much worse does it have to get before you would make a decision to suspend the provision of clinical services by a surgeon in a like position?-- I don't quite see the linkage you are making to the immediacy of the comment, with all due respect. I mean, I have a surgeon who has been operating for two years in Bundaberg. He has not come to my attention in those two years at all-----

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COMMISSIONER: Weren't there complaints going back for over 12 months?-- Not to me. I was unaware of Dr Patel-----

No, no, you knew on 24 March that there had been complaints about Dr Patel going back over 12 months?-- I did, Commissioner, yes.

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MR DOUGLAS: You knew that because the matter had been raised in the House on the 22nd of March by Mr Copeland, a member of the opposition party?-- That's correct.

And, indeed, that's what led to a meeting that day involving the Minister, yourself and Dr Fitzgerald?-- Yeah, I'm not sure that I actually had a meeting with Dr Fitzgerald and the Minister. I don't recall if I was at that meeting. I actually met with Dr Fitzgerald personally.

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I have asked you about how much worse a doctor so described would have to be. Could I seek to elicit an answer from that question, and I would ask you to see it in this context: I'm seeking to elicit from you, in respect of a decision to which you are party, in the conduct of Queensland Health during your time as Director-General, how bad a surgeon has to be, working within Queensland Health, in order to move the Director-General to cross the Rubicon and suspend that person?-- I would have to be concerned to the point where I thought that the individual was dangerous, that patients were dying unnecessarily, or that there was some other major event in terms of the surgeon's either mental or surgical capacity.

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COMMISSIONER: You would have to have proof that they were dying or being injured, would you?-- Commissioner, you would have to have significantly more evidence than what I had available to me at the time. I mean-----



MR DOUGLAS: I suggest you wouldn't to suspend a person from undertaking the further provision of clinical services?-- If I can go back into context, because Dr Patel has been operating for two years. I've not heard of him, the other associations - and there's a whole lot of issues that get raised in health and sort of other mechanisms, be they informal or otherwise, that advise you you have an issue. I have not heard of Dr Patel in two years out of Bundaberg, the Australian Medical Association has not raised Dr Patel with me at any time, none of the other associations with which I meet have raised issues, the QNU have not raised issues specifically around Patel with me, so all the other parameters which you would expect to say "we have a real problem here" - none of those flags were up. At the same time, the Chief Health Officer who conducted the audit, who actually spoke to Dr Patel - I have never met him - did not raise with me the urgency of the issue and the way it was delivered was not delivered in the manner in which you may have thought.

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Can I suggest to you that your Damascus experience in respect of this issue only came when Dr Keating told you later on the 7th of March - I should say the 7th of April 2005 - that, in fact, there were problems with Dr Patel's registration?-- No, I think, really, the crunch point came fundamentally when the Minister and I visited - the meeting just prior to Dr Keating actually telling me, because when we went to that meeting, sir, I mean, we had believed - we had actually gone to - I'm probably going to another place - but we actually had gone there to support the staff and the mood of the meeting was such that it was very clear to me, having been around hospitals for some time, that there was significantly more issues than we had been appraised of.

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Coming back to 24 March, can I put the matter I suggested to you earlier in a different fashion? Knowing what you knew from the memorandum of 24 March and the accompanying report, if you were, or a member of your family had been living in the Bundaberg region on that day and required immediate surgery, and Dr Patel was the only available surgeon, you would have refused that he touch you, I suggest?-- No, I haven't given that consideration.

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Well, give it consideration now, please?-- So, would I have let Dr Patel operate on me?

Knowing what you knew?-- In an emergency? I think if it was a life-saving emergency - I mean, that's very speculative. I don't know the answer. There would be a number of doctors around Brisbane I wouldn't want operating on me.

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COMMISSIONER: If it was elective surgery, you certainly wouldn't have accepted Dr Patel?-- Personally what I know, I would have liked to have known more.

What you knew on 24 March?-- On 24 March I knew he operated out of scope, the credentialling and privileging process had not been completed, and the infection rate was higher than normal. That's what I knew.

MR DOUGLAS: He had a significantly higher complication rate than his peer group?-- But it goes back, sir, with all due respect, to the sort of patient cohort we are actually looking at-----

COMMISSIONER: If those were the only facts, though, that you knew, would you let him perform an elective operation on you?-- I suppose, to be honest - I mean, I don't know. I mean, probably the answer would be no, but it is a very speculative answer.

MR DOUGLAS: On 24 March 2005, you, as Director-General, were performing a stewardship function on behalf of the government and the people of Queensland in relation to matters pertaining to the proper and efficient conduct of Queensland Health; is that not correct?-- That's correct.

And within the bounds of that stewardship was included the proper manning of Queensland hospitals?-- To the best of our ability, yes.

And Dr Patel fell within that band of proper manning of Queensland hospitals?-- Yes.

You knew that Dr Patel, whilst he remained a surgeon providing surgical clinical services at Queensland hospitals - at the Bundaberg Hospital in particular - would be providing, at the very least, elective surgery procedures to people in the Bundaberg region?-- That's true, on 24 March, I knew that.

You did nothing to curtail him continuing in that role, given the information you had received?-- All I can say, sir, with all due respect, is the information I had available did not ring alarm bells to me to say that Dr Patel should cease operating immediately. The Chief Health Officer did not advise me. The Chief Health Officer is, in fact, the statutory officer and has direct access to the Minister. At no point in time, as I understand it, did he advise the Minister that he should stop. So, if you speculate that I should have ceased his operating, then the Chief Health Officer had alternative mechanisms if he had concerns to say, "I don't think the Director-General is executing his role appropriately."

COMMISSIONER: Your answer to me, though, doctor, indicated that knowing the facts that we have discussed, you would not let him perform an elective operation on you on that date, but you were quite willing to let him to proceed to perform elective operations on other people?-- Commissioner, as I said, that's purely speculative. I haven't really sat down and gone through - I was asked a specific question, and I've speculated an answer, but, you know, as I said earlier, there were lots of medical practitioners in Queensland that I may not choose to go to or refer my family to, with all due respect.

MR DOUGLAS: Please look at Exhibit SMB4 to your first

statement. That should go up on the screen as well,  
Commissioner. A further matter that you attended to on  
24 March 2005 following the - if you could just, on the  
screen, push it up so the first E-mail can be read, thank you.  
Down a little. Thank you. The first matter or a matter you  
attended to after the reading of the report and memorandum and  
the discussion with Dr Fitzgerald was to communicate by  
telephone with Mr Peter Leck; is that not so?-- Sorry, I  
was-----

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You spoke to Mr Peter Leck by phone on 24 March?-- Late in  
the afternoon, yes.

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And Mr Leck you knew from previous dealings?-- Yes, I've  
known Peter for a long time, yes.

And Mr Leck was the manager of the Bundaberg Hospital  
District?-- That's correct.

Did you discuss with Mr Leck the content of Dr Fitzgerald's  
memorandum or his report?-- Not that I recollect, no.

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You didn't think that appropriate in light of the matters  
which had been previously communicated to you that day?-- No,  
I don't recall actually talking to Peter about that. We were  
actually talking about something else.

You didn't think it might be apt to canvass with him some of  
the matters that had been communicated to you by Dr Fitzgerald  
with a view to obtaining an on-the-ground view, so to speak?--  
I may have had a conversation with Peter around that time. I  
actually don't recall it. I'm not saying I didn't. I just  
don't recall.

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If we look at this exchange of E-mails, and if you could push  
that up, now, please, it would appear that the substance of  
your communication pertains to Dr Patel continuing to work in  
the Bundaberg Hospital over the Easter period and at least up  
until about the 1st of April 2005?-- That's correct.

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You wanted him to work in the following week - that is, the  
week following the 24th of March 2005?-- Sir, the 24th  
of March was Easter Thursday. Dr Patel was rostered for  
emergency work in Bundaberg on that Easter weekend. I had  
concerns, obviously, that if there was no surgeon available  
for acute services, that there would be a significant risk to  
the community.

You also communicate in your E-mail that, to use your  
language, you would "look at his contract from 1 April during  
next week". Do you see that?-- I see that, yes.

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You had no reason to mislead Mr Leck in your communication  
with him on that occasion?-- Sir, there's a high probability  
we understood that Patel was going, and that we were not going  
to enter into any new negotiations and that would be the end  
of his contract.

Is it the case that you were asking Mr Leck to, in effect, entice Dr Patel to work for a further seven days with the carrot of a further contract available to him-----?-- No, sir, that's not the intent. The intent is to say to him we are not entering into - my interpretation of what Peter was telling me was that - quite the opposite; that Patel was trying to hold a negotiation with us saying, "If you don't give me what I want, I won't work over Easter.", as a sort of bargaining tool, and, "I want this sort of money." My communication was fundamentally saying, "That's an issue for next week. We are not going to enter into contract negotiations under those sorts of circumstances."

What you said is quite erroneous?-- I'm sorry-----

I suggest if you look at Mr Leck's E-mail, you will see in the fourth paragraph that the question of money canvassed involved a contract at \$1,500 to \$2,000 per day from 1 April through to July; that is, not involving Easter?-- Sorry, I was just reading, sorry.

The question of him being paid an amount of money that he was asking for only pertained to the period from 1 April, not for the period of Easter which preceded?-- Absolutely, but we are not debating - what I'm saying is that my interpretation of this bid for money was, in fact, an attempt to strong-arm, to say that, you know, "If you want me to work Easter, then I want you to guarantee that you are going to pay me this sort of money in any new contract." That's my understanding of what we are talking about.

In your E-mail in response - I will start again. From your E-mail in response, do I take it that you were prepared, if Dr Patel worked the Easter period up to 1 April, to seriously consider affording him a new contract, as long as he was prepared to modify his demands for a daily stipend?-- No. In fact, the conversation I had with Peter Leck - Peter had expressed to me the view that he was not really interested in renewing Patel's contract.

Why do you say the words, "We would look at his contract from 1 April during the next week.", unless you intended to seriously consider reemploying him for a further contract period?-- No, I think - that's not the interpretation of what I'm saying. I said I think he should work over the Easter weekend and we would look at his contract from 1 April during next week. In other words, "Will there be a contract? What are we going to do with him?", and, "How much does he want?" I mean, in the conversation that I did have with Peter, I got the distinct impression from Peter Leck that he was actually not interested in renewing Patel's contract after it had expired.

Why do you use the words, "We would look at his contract from 1 April during next week.", if, in truth, the mental position you had adopted at that time was that that would be unnecessary because he didn't intend to stay there?-- It is a statement back to Peter saying, "If you are going to talk to

him, we want him to work Easter and we will look at his contract next week."

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In other words, were you trying to say to Peter, "Look, tell this bloke, 'You work for the next week.', and we will entertain some negotiations with him about a fresh contract, but in reality we are not going to employ him."?-- That would be Peter's recommendation to me. It is not my call whether or not he - I don't contract Patel and I don't actually sign the contract for Patel. Peter is talking to me about, "What are we going to" - the fundamental here, with all due respect, is to try and keep a service to the Bundaberg community over the Easter weekend.

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And keep it a service which is manned by competent professionals?-- Absolutely.

And on the understanding you had on the occasion that you exchanged those E-mails and conversations with Mr Leck, you had serious concern that Dr Patel didn't come within that description?-- No, I had serious concerns about Dr Patel, but I didn't have serious enough concerns about Dr Patel to say that he shouldn't be on a roster for emergencies on an Easter weekend in Bundaberg.

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You believed there were other surgeons in Bundaberg on the 24th of March?-- I hadn't been advised that they were available, no.

Did you make any inquiry as to whether any other surgeon might be available to replace Dr Patel?-- No, sir.

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That would be a sensible course to adopt in light of what you had been told on the 24th of March?-- Perhaps it would have been, but, I mean, it wasn't an issue that I had actually thought of.

Can I take you now, please, to the travel that you undertook with Mr Nuttall to Bundaberg on the 7th of April?-- Yes.

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Between the 24th of March and the commencement of the discussion with staff on the 7th of April, did you have any discussion with Minister Nuttall about the content of the Fitzgerald report or memorandum of 24 March?-- I don't recall any specific conversation with the Minister. We had actually had conversations around what Dr Fitzgerald had advised him and what Dr Fitzgerald had advised me, and his view was - as I said earlier, Gerry didn't really raise significant alarms about Patel and that he was an average surgeon.

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You are saying that that's what Minister Nuttall said to you?-- That's what I believe - that's what I believed he believed from the advice he'd been given by the Chief Health Officer.

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Did you ask Mr Nuttall at any time between the 24th of March and the commencement of that meeting on the 7th of April whether he had read the FitzGerald report or accompanying memorandum to you?-- No, sir.

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Did you ever discuss the detail of either of those documents with him in that interval?-- Not at any - not in any great detail, no.

Do you recall discussing it with him at all?-- Not specifically, but I am sure we had conversations around Dr - Dr FitzGerald's review and report, but I actually don't recall that. Can I add one other thing? I mean, I made an assumption, and maybe that's an incorrect assumption, that because the Minister was dealing directly with Dr FitzGerald on this case and because of the nature of this case, that in fact a report may well have been made available to him or his staff.

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But you didn't ask him that?-- No. That's an assumption I made.

COMMISSIONER: But you had some discussion with him which assumed his knowledge of the report?-- Yes, Commissioner, yeah. I mean, I had a general discussion which didn't go into any great details.

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You must have discussed it. You are going to Bundaberg together to talk to these people, in effect, about Dr FitzGerald's report, the subject matter of Dr FitzGerald's report?-- No, Commissioner, that was not - actually not the intention of us going into Bundaberg. The intention of us going into Bundaberg was for the Minister to be able to display support to the staff who'd been under significant public pressure-----

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You knew-----?-- -----over the preceding week.

But you knew that there was concern in Bundaberg and from the staff at Bundaberg about Dr Patel and you knew there'd be interest in discussing Dr FitzGerald's report. You must have known that?-- No, no, that's true. That is true, Commissioner, yes.

It follows you must have discussed that with Mr Nuttall before you had your meetings with the people of Bundaberg?-- No, I agree that we would have discussed it, but I specifically can't tell you the level of detail which we discussed it, but I agree we would have discussed it, yes, sir.

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MR DOUGLAS: You would have had copies of documents with you on the trip to assist you in your discussions with staff?-- Oh, no, sir.

You wouldn't have?-- No.

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COMMISSIONER: You didn't take that with you?-- No.

You have a copy of his report. You are going to talk to the people about matters the subject of the report, and you didn't have it with you?-- The report - the only copy of the report, as I understand, had been sent by the Chief twice, to the two District Managers.

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MR DOUGLAS: Why wouldn't you have a copy with you to assist you in your dealings with staff?-- The purpose for us going to Bundaberg, we originally were going to go to Springsure. That was going to be the whole day and the opening of a multipurpose health centre there, and that was really what it was. The Minister took the opportunity because of the proximity of Springsure and Bundaberg and we were in the government plane to be able to divert the flight back to Bundaberg to fundamentally reassure the staff of his total support for them. The issue wasn't, "Should we go back to Bundaberg and brief them on the Dr FitzGerald report?", the issue for the Minister, as I understood it, was that we were going into Bundaberg to meet with the staff to reassure them that, in fact, they were fully supported by the Minister and by myself. That was the - the purpose - that was the purpose, and not to go back into say, "We're here to give you feedback of a clinical audit process.", which in fact is the domain of Chief Health officer. So we didn't - it wasn't a specific, "Let's go and talk about Dr FitzGerald's report." The issue very much was the staff at Bundaberg had been under significant pressure and duress in the media and in the Parliament, we were concerned that they were - you know, they were probably wilting under that and it was really to go in and reassure them they had our full support. That's what the purpose of the trip into Bundaberg was about. It was just a fly in and fly out, and probably totalled about an hour and a half, I think, on the ground.

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In your statements you have repeatedly told this Commission that you had a number of issues to deal with, multiple issues to deal with on a day-to-day basis; isn't that so?-- That is true.

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As Director-General?-- Yeah, that's true.

You believed on the 7th of April that one - that the fulcrum, if not one of the essential fulcrums of the problems in Bundaberg was Dr Patel?-- That's true.

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You went to Bundaberg to deal with staff but you didn't take with you the report or the memorandum which dealt with the very issue which generated the need for you to travel there in the first place?-- No, I didn't. I think I have answered why I didn't.

Did you refresh your memory from the documents before you left?-- No, I read the report.

On the 24th of March?-- I read it - I read it a couple of times after the 24th March, sir. With all due respect, and I go back to my earlier statements, the report does not raise the flags that you indicate for me.

Did you expect that staff may ask you questions about matters?-- I did.

You didn't think that the report of the memorandum would provide you with some assistance to have recourse to in order to deal with those matters?-- No.

You think that's a responsible way to go about discharging the task as Director-General?-- Yes, I do, and can I just say again that I didn't go into Bundaberg for any other reason than to assist with the Minister in talking to the staff and reassuring them they had our full support. That was the fundamental purpose. What came out of that meeting was a very clearly different message and what we found on the ground. I have to say in all honesty when we went in there we did not expect the sort of response that we - that we received, and it was very clear then there was a lot more to that than we had been briefed, and I would put it too there's a lot more to it than is in Dr FitzGerald's report.

COMMISSIONER: I think you made that point several times.

MR DOUGLAS: In paragraph 33 of your statement you say that you told staff, and again I use your words in the statement, "As Patel had left the country, the audit process being conducted by Dr FitzGerald in relation to Dr Patel would be difficult to finalise as natural justice had not been afforded to him." I think I have quoted correctly?-- That's - yeah, that's correct.

On the 7th of April when you made that statement you knew that the clinical audit which had been undertaken by Dr FitzGerald had been completed?-- Yes.

You were told as much by Dr FitzGerald in his memorandum of the 24th of March?-- Yes.

Why did you make that statement to staff?-- Because the audit process is far more than just a report. What normally would happen and what, in fact, did happen, even in this case, was that the Chief Health Officer would conduct an audit and do his - do his audit. He would make certain findings. It's then normal to take those findings back to either the individuals or the organisation to say, "This is what I have got. This is what I have found.", and get some response as you went through that. The whole process is not a process of accusation, the process is a process of improvement, and trying to do that in a no blame situation, so there may well have been, as I said earlier, plausible or understandable or even clinically correct explanations for certain sets of outcomes. So, those sorts of things have to be fully investigated. So that's - that's the reality. So the process



we're talking about here is Dr FitzGerald has been asked to do a review by Mr Leck. He does - goes and does that. He completes the report. The report goes back to the District and Dr FitzGerald would normally then go back in and discuss with the District and the individuals who were within that report the outcomes of what he found and confirm, in fact, what they showed or recommend whatever investigations need to be carried out.

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If Dr Patel had left the country-----?-- Yes.

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-----then, in fact, whilst it may have been difficult to obtain his view on matters, the audit processes as you have just described it could still be completed?-- Well, it could be completed except for the series particular to Dr Patel's ability to be able to say, "No, this is what it is, this is not what it is." I mean, he would have to deal with the data, have to present his case, but it's normal for people to be afforded that. I mean, if you are going to make very serious recommendations or accusations about people's clinical practice, then you need to make sure that they are based on solid fact.

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Why would you be expressing it in such a negative language, "difficult to finalise"?-- Well, that was my belief at the time, that it would be very difficult because Dr Patel was not there to be able to inform the whole process. I mean, sure we could have grabbed the data, we could have looked at that, and Dr FitzGerald had done some of that in relation to infection, but not to the whole patient cohort.

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That language certainly suggests, I put it to you, that you were attempting to convey that it may never be finalised?-- No, that's not the case. We are saying Dr FitzGerald will come back to Bundaberg the following week. There's no attempt to not continue to investigate the issues that have been raised because there are significant issues, both within the system and how that happened and significant issues for Dr Patel and Dr Patel's patients. So, it was never, "No, we are not going to go any further.", and that would be the wrong thing to do that.

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COMMISSIONER: If Dr Patel had left the country and wasn't coming back, you would never be able to accord natural justice to him in the way you have described it?-- That's probably - that is probably true, Commissioner, yes.

You would have known that at the time and, therefore, you were going to close the whole inquiry down?-- No, that's not true. That wasn't the intention at all. We gave a very clear indication, both the Minister and myself, that Dr FitzGerald would be returning to Bundaberg to meet with the staff to talk about his findings and to meet with the District Executive to be able to follow through with what he had. But there certainly was not an attempt-----

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MR DOUGLAS: The stance you adopt in your statement - sorry, I cut you off?-- Sorry.

The stance you adopt in your statement, was there a communication breakdown at that meeting with staff?-- Yes, yes, sir.

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And you would agree that in hindsight the meeting was poorly conducted by you?-- I think that's very fair comment, yes.

You say in paragraph 35 of your statement that Dr Keating told you after the staff meeting that he'd undertaken an Internet search involving Dr Patel which demonstrated that there were problems with his - that is, Dr Patel's registration in the United States?-- That is correct, yes.

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Did he give you any details in that regard in that conversation?-- From my recollection, when I spoke to Dr Keating he'd said that he'd done a Google search, that he had had restricted registration in Oregon, I think, and had been withdrawn from the register in New York. I think that's the conversation. I wouldn't be absolutely confident that's the case but it was conveyed along those lines.

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You subsequently confirmed that-----

COMMISSIONER: But before you go on to confirmation of that?-- Sorry.

Can I just ask a question? His Google search would have revealed what you did, presumably?-- Presumably, sir, yes.

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Yes. And that is that in Oregon that he, Dr Patel did not contest the charge of having been disciplined for negligence involving surgical patients?-- That's correct.

Did Dr Keating tell you that?-- I don't recall the conversation in those terms, no. It was much more about restriction of registration.

There is not much point in talking about restrictive registration unless you know what it's for, is there?-- Yeah. Well, that was the reason, that I thought I'd go back and have a look myself so I understood clearly what I was dealing-----

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Didn't you ask Dr Keating what it was for, why he had restrictive registration? Surely you did?-- Commissioner, he may have told me. I don't recall.

It would be surprising, wouldn't it, if you didn't ask him that?-- No, I agree, but I honestly don't recall.

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All right.

MR DOUGLAS: In paragraph 36 of your statement, and again you deal with this in paragraph 14 of your third statement, you say that you said to the Minister words to the effect, "There is more to this guy than we know. I will have a look at it."?-- That's correct.

You are saying that to Minister Nuttall?-- That's correct, yes.

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You didn't discuss with him why you said that?-- We had - I think, to be honest, the first thing we did when we got on the plane - I mean, we were both quite taken aback by the meeting and how the meeting had gone.

You're experienced campaigners, aren't you, you and Mr Nuttall? You are used to dealing with the rigours of day-to-day matters in Queensland Health, aren't you?-- I am - well, I wouldn't call myself an experienced campaigner, that's a political comment, but I certainly am an experienced administrator, yes.

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Surely you would have said to Mr Nuttall, "Look, I have just been given some information which I think I should check and that is that this fellow Patel, about whom we have heard so much, has got restricted registration in Oregon."?-- I could have said that but I chose not - I needed to understand for myself what it was I was dealing with before I would advise the Minister correctly or incorrectly. I mean, it's important. We were in a situation now where we'd been - we decided to go down to Bundaberg with a particular view, we'd been to a meeting which was particularly hostile and not well managed and probably contributed to - or not probably - was contributed by the - some of the terminology and language that I used, that we'd hopped back on the aircraft and it was very clear, I think, to the Minister and myself in the conversations we had that there was a lot more to this than we had - not just a lot of feeling on the ground, from the staff about, you know, what was happening in Bundaberg, but in fact, a lot more to the whole story than both he and I had appreciated to that point in time. And so that was - that's the fundamentals of it, and then when I spoke to Dr Keating he said to me, "This guy, he has got problems with his registration." I don't - as I said, I don't recall how much detail he went into. He asked me specifically not to source him, and with due respect the Minister, once I said I would - you know, "We need to continue to have a look at this guy. He's not what we think he is. I will go and have a look at him and I will come back to you.", that's basically how it worked.

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Did you think the Minister was a fool?-- No.

Weren't you treating him as a fool by not conveying that information to him, even if you didn't disclose the source as being Dr Keating?-- I didn't know all the things that I had in front of me at the time to be able to advise him. No, I didn't - I don't think he's a fool.

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COMMISSIONER: You know what the search revealed?-- Sorry?

You knew what the search revealed?-- I knew that he had - yeah, I recalled, Commissioner, that he had restricted registration.

And-----?-- The details of which I don't recall whether I knew at the time or not.

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He didn't answer a charge that he was - he'd been disciplined for negligence involving surgical patients?-- Well, I knew that on the 7th - the - on the 9th. I don't recall the detail of the conversation with Dr Keating.

MR DOUGLAS: To be fair to the witness, Commissioner, your recollection is that the information you obtained from Dr Keating was more truncated than that which you obtained in your own Google search that evening?-- That's my recollection, yes.

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What the Commissioner put to you earlier was that surely you would have asked Dr Keating for any further details that had been elicited by his Google search on the occasion when he mentioned it to you?-- Yes. When - and I think there may be - I don't recall to be - as I said, I don't recall, but can I just give you the circumstance in which that information was given? We'd finished the meeting. The Minister had gone down to another hospital to visit a relative. We had just finished talking to staff and we were just about to leave Bundaberg to get on the plane or to go and meet the Minister to get on the plane when Dr Keating approached me. So it wasn't as though we had a long fireside chat. There was a short period of time. He took me aside, "Can I talk to you?" He told me this and then we left.

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You communicated the results of your own Google search to the Minister the following day?-- That's correct.

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And then an inquiry was appointed on the 9th of April?-- That is correct.

Can I take you to a different topic? I was going to go on to a different topic, Commissioner. Were you planning to take a break?

COMMISSIONER: Yes, I shall.

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MR DOUGLAS: Thank you.

THE COMMISSION ADJOURNED AT 11.17 A.M.

THE COMMISSION RESUMED AT 11.33 A.M.

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STEVEN MICHAEL BUCKLAND, CONTINUING EXAMINATION-IN-CHIEF:

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MR DOUGLAS: May I proceed, Commissioner?

COMMISSIONER: Yes.

MR DOUGLAS: Dr Buckland, you are aware of what has been described in this Commission and the previous Commission as the Lennox report?-- I am.

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That was a report prepared by Dr Dennis Lennox, as you acknowledge in your statement, in or about late August 2003?-- Yes, that's correct, yes.

You were the chairman of a committee which was formulating proposals pertaining to overseas trained doctors?-- Chairman of - which committee was this?

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It was the committee which you identify at about paragraph 150 of your statement. I will take you to that.

COMMISSIONER: Are we going to a second statement?

MR DOUGLAS: I am in the second statement now, I'm sorry?-- Okay.

You refer at paragraph 150 to the preparation of the statement by Dr Lennox, and moving back to paragraph 145 you deal with your participation as a joint committee member?-- No, I wasn't a committee member. That was - sorry, you are talking about the Skills Development Centre? Or you talking about the Overseas Trained Doctors committee?

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The Overseas Trained Doctors committee?-- No, I wasn't a member of that committee.

Were you a member of an adjunct committee?-- No.

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So, how was it that you were dealing with Dr Lennox in late August 2003 in relation to this report?-- Under two banners. As the General Manager for Health Services at the time, the Principal Medical Advisor reported through to that position, and I also had set up the initial committee with - in conjunction with the AMA and then others around reviewing overseas trained doctors.

So far as Queensland Health was concerned, it was handled by the Principal Medical Officer and he or she in turn answered to you in respect of that issue?-- Yeah, through another person, yeah, through to me.

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Who was the other person?-- Well, they went through the position called at that time the State Manager Organisational Development. I think that's the correct title.

The Principal Medical Officer at the time dealt with in your

statement was Dr Catchpole?-- Correct, yes.

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Dr Lennox was the acting Principal Medical Officer, that is acting in lieu of Dr Catchpole?-- Yes. He also in his normal role reported, I think, to Dr Catchpole.

Thank you. So he was a person involved continuously in the process of this committee's deliberations, even when Dr Catchpole resumed his position as a Principal Medical Officer?-- The OTD committee?

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Yes?-- No, I assume that Dr - I'm not sure whether Dennis attended all the meetings. I assume that Dr Catchpole was the primary contact and that was - he was the nominated contact.

You read Dr Lennox's report that he drafted in late August 2003?-- I have read it but I would have to go back to it.

You could see that it raised important issues in respect of the training of overseas doctors?-- That's correct.

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Are you aware of evidence given to the previous Commission and in turn placed before this Commission that Dr Lennox was not asked at any time after August 2003 to undertake any redrafting of that report?-- The original - the answer is I'm not - I'm not aware of the specific evidence that you talked about, so whether he was or he wasn't-----

Does that evidence surprise you if it's true?-- No, but the original - no, because the original report that I'm aware of was actually written as part of a - of that overall committee report and wasn't actually a report directly to Queensland Health at the time. Dr Lennox wrote a number - I'm just - need to be careful, I don't want to mislead - Dr Lennox wrote a number of different briefs and reports around the same time, some of which overlapped and some of - sorry, some which included parts of others.

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On the 1st - I should say on the 1st of November 2003 you became Acting Director-General?-- That's correct, yes.

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In that capacity, from that date, indeed beforehand when you were General Manager of Medical Services, Queensland Health within your respective departments undertook monitoring of media production. You monitored the meeting?-- There were - there were - there were meeting monitors usually through the Senior Departmental Liaison Officer.

Quite apart from any media monitoring undertaken within Queensland Health, you were closely following any item in the major newspapers pertaining to the performance of Queensland Health?-- Not necessarily.

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Did you read The Courier-Mail on a daily basis?-- Not often.

In November of 2003?-- I may - I may well have read it in November 2003, but it's not a paper that I read religiously

every day.

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Thank you. I want to you show you a media item in The Courier-Mail for the 3rd of November 2003. Could it be placed on the screen, please. It will have to be adjusted slightly. The highlighting is mine. You can ignore that if you wish, but I do wish you to refer to that in due course. Thank you?-- Okay.

Now, do you recall reading or having that article referred to you by media monitoring on or shortly after the 3rd of November 2003?-- I recall seeing that article. I don't recall the content - sorry, I recall seeing the article, I don't recall all the content obviously, but I do recall the article.

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When you say you recalled seeing the article, do you recall seeing and reading the article?-- Not in any detail, no.

Whether or not you read it in detail, it is a matter which you would have averted to formally as Director-General with a view to following the matter up?-- This article, as I recall - this is the Hedley Thomas article, I think.

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It is, correct?-- This article, as I recall, came as a consequence of an interview - I might be mistaken but I hope I'm not - of an interview that Mr Thomas did with the then Director-General just before he departed, and I actually sat in on the interview. I think this is the one. Maybe it's not.

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I will show you another article in the moment, but having read the article, no doubt you would have been aware reading it that it referred to the same report which Dr Lennox had submitted to you in late August 2003; that is, several months beforehand?-- I'm not - I'm not sure which version of the report you were talking about. The report may well have - being talked about was one which was presented as part of the joint AMA Queensland Health review of OTD. I assume it is the same report. But I - I don't know what Mr Thomas said, so I don't know. But I assume it's the same report, yes.

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Let me show you the second newspaper article for the 4th of November 2003. Just before you read this, the highlighted texts which appear in the previous article raise matters of apparent legitimate concern in respect of the training of overseas doctors?-- Yes.

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You didn't dismiss those matters of concern?-- No, I think there was general concern right across the health system about skills and - of overseas trained doctors and other doctors.

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Could I invite you now to read the second article. Again, the highlighting is mine?-- Yes.

Do you recall reading that article in The Courier-Mail on or about 4 November 2003?-- No, I don't.

Was it referred to your attention at all on or shortly after the 4th of November 2003?-- No, I don't recall it, because I certainly don't recall reading Premier Beattie's comments.

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Were you ever asked by Mr Beattie or anyone in his department to follow up on this report?-- Not that I recall, no.

Would you expect that the media monitors in your department, that is the Department of the Director-General, would have taken this particular article somewhere in terms of an administrative source? That is, would have they followed it up administratively?-- This particular-----

Yes?-- You mean this article from Mr Thomas?

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Yes?-- It would depend on the article. I wouldn't expect that every article is actioned. I mean, as I said, I don't recall ever reading anything that the Premier said about it, and I'm not sure - so would I have an expectation that we might follow up? The answer is yes. But I don't recall the article.

When one reads the words of the Premier, if you accept for the purposes of my question that they were in fact made, you'd hardly need an invitation to follow it up. It's clear that that was what was required?-- Oh, sir, I mean, this is reported in a newspaper article. If the Premier of Queensland wants me to do something for him, he will inform us, not normally via the media, and I don't recall any direction either from - to the best of my knowledge anyway - from either the Department of the Premier & Cabinet or the Premier via the Minister's office requesting the same thing. So, I mean, we wouldn't action requests by the Premier by what's reported in a newspaper article.

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No doubt you wouldn't, but in fact if it was reported in the newspaper that there has been attributed to the Premier a statement to that effect, then it's a matter which you proactively - or you would expect someone in your department would proactively follow up with the Premier's office to check its accuracy?-- No, that would be the other way around. We'd expect the Premier's office to follow up with us. That's how



it works.

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What's the point of having media monitors except to discern matters of importance to Queensland Health raised in major newspapers?-- But this is an issue of policy for government, with respect. This is not an issue for Queensland Health. The article says he wants a copy. If the Premier of Queensland wants a copy, he will tell us he wants a copy, not The Courier-Mail. So that's the reality. In terms of what do we monitor, yes, we do monitor issues in the newspaper. We don't certainly take policy direction or action in instigating documentation to the Premier that has not been requested by the Premier.

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So you wouldn't want to proactively follow up with the Premier's office, if the Premier's office hadn't contacted you, what it was that the Premier was seeking by an apparent statement to this effect?-- Let me assure you that if the Premier's office or the Department of Premier & Cabinet require anything of me, that is communicated.

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You don't see it as any role on your part to follow up with another level or tier of government any issue raised in the press pertinent to the sphere of your responsibility?-- I don't - and I wouldn't act on any comments attributed in the media to the Premier without being expressly invited to do so either by the Minister or by the Department of the Premier & Cabinet. That's how government works. I don't try and best guess what the Premier of Queensland wants.

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If you hadn't been contacted, say - assuming you had received a communication like this ventilated in the press, if you hadn't received from the Premier's office or the Minister any communication, wouldn't you follow it up yourself?-- Follow up this communication?

Yes?-- No.

COMMISSIONER: You don't act proactively, you only act reactively?-- No, we do, but I understand the question to be - and correct me if I am wrong - I understand the question to be did I read this and see that the Premier told The Courier-Mail that he'd follow it up, and therefore send it to the Premier, the answer is no, that's not how government works. If the Premier is making a statement to the media - the Premier makes many statements to the media, many of which I didn't monitor when I was a Director-General. He makes all sorts of noises around what may or may not happen, and we don't necessarily act on those. We get clear direction not from media, but from either the Department of the Premier & Cabinet, which is conveyed directly to us, or usually via the Minister's office. But rarely, and certainly in the whole time I was Director-General, did the Premier ring me directly to say, "I want to see this" or, "I want to see that." That's not how government works.

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MR DOUGLAS: I accept as a premise you say that you haven't read this article as opposed to the previous article

concerning the Lennox report?-- Yes.

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But in the abstract, having read it now, if a statement like this is made concerning a report which has its source - or at least partial source in your Department, you would see fit just to ignore it unless someone from the Premier's office or the Minister's office followed you up?-- No, we were already doing - I already signed a letter that Dr Lennox had given me to send to the Medical Board saying, "Here's a report. It requires, you know, response from the Board", and we did that, I think, in September 2003. So there was action actually happening around this. It wasn't as though we just said, "Thank you very much" and left it alone. There was actually action happening around it, and this is really just an issue for the media, with all due respect.

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I should tender those two media reports, thank you.

COMMISSIONER: They will be Exhibits 338 and 339.

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ADMITTED AND MARKED "EXHIBIT 338 AND 339"

MR DOUGLAS: Can I put it to you directly, sir. The evidence in this Commission in respect of the Lennox report would appear to be this: the Lennox report, once completed in August 2003 - at least from the point of view of Dr Lennox-----?-- Yes.

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-----he not being asked to undertake any redrafting - as a report disappeared - or moved perhaps, to put it neutrally, into the ether. That is, it went nowhere?-- No, that's not true.

You say that's untrue?-- That is untrue.

Tell us about that. Where do you say it went?-- When the Lennox report came to me, it came to me - I'm just playing with timeframes, but in August 2003. At the time it came to me Dr Lennox gave me a letter to write to - to sign - a letter to sign to the Medical Board to follow up on issues that were raised, I assume out of the Overseas Trained Doctors' Committee in conjunction with the AMA, to send to the Medical Board to see whether the other parties - this is a multi-party report. It's not just a report on what Queensland Health should do. We were actually interested in furthering those particular issues and how they might be taken forward, and I think that correspondence has already been tabled in the Commission. So it wasn't just sort of, "Thank you very much. We'll see you later." We actually continued to go on and we did continue to meet - I personally continued to meet with the AMA and others on a regular basis in ongoing discussions. At the same time we clearly had a plan to move the Centre for Overseas Trained Doctors into the Skills Development Centre which was due to open, and that there were other mechanisms to

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implement a lot of what Dr Lennox had to say. I don't think - I think Dr Lennox's report is a significant report, and it did inform a number of other processes that happened along the way.

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What processes did it inform?-- Well, it informed the fact that we went to the Board and said, "How do you see this" - I'm just paraphrasing, but fundamentally, this is the document - and it went there in September 2003. It informed the fact that we would move into using the Skills Development Centre to be able to pick up - and that's subsequently being developed - pick up recruitment, assessment, training and evaluation. So it actually just didn't go into the ether per se.

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Did you see any value in the publication of the report?-- For whom?

For public consumption?-- The reports are not normally released into the public domain.

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COMMISSIONER: Did you see any value in the publication of this report?-- Not into the public domain, Commissioner, no. I didn't consider it.

MR DOUGLAS: Did you think that the matters contained in the report were worthy of being available to members of the public to peruse about the conduct of health within Queensland?-- I think that the debate - the short answer is no, I didn't think that, but I think the debate around overseas trained doctors had already started within the public domain. I don't know that any report ordinarily is commissioned - and this report was not commissioned by us. Clearly it was from the joint committee. This committee is commissioned to do that.

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You said to the Commissioner that you thought that the report essentially was a very valuable document?-- Yes.

In the newspaper report of the 3rd of November which you said you read, and looked at a moment ago, there were components of that report which were quoted?-- I'd have to go back and refresh my memory from the report, but I assume that's correct, yes.

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And do you recall that the Minister at the time, Ms Edmond, said that the status of the report was unofficial?-- Yes, that's correct.

It wasn't adopted?-- I thought she said it was unofficial, yes.

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And is it the case that you considered that the content of the report ought be adopted?-- I considered that the content of the report was very informative and it needed to be - we needed to continue to work through the issues that it raises. I can't talk for the previous Minister, clearly, but my assumption in that comment was that if it was going to go to a full-blown business case, you know, within a bureaucratic sense, then it would have to go through all the other

stakeholders involved in signing on to the process, we then have to look at funding mechanisms and go through for it to be signed off as an official document. Remembering this document is generated, as far as I understand it, as part of a committee which is a joint committee over a number of stakeholders, and not an official government document.

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You said to the Commissioner that you had dealings with others in relation to the broad subject matter of the report after the newspaper articles. Do you recall saying that?-- I did, yes.

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At any time did you give any direction or seek that those within Queensland Health, or others outside Queensland Health who were on the committee, ought finalise and formalise this report?-- No, I didn't.

You didn't do so notwithstanding that you say that the report was used as the foundation for the implementation of a number of items of policy which were adopted by Queensland Health?-- Yes.

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Do you believe that the matter having been raised in the public domain in The Courier-Mail was worthy of publication to the public of Queensland, the users of the health system?-- I think the information in it was certainly an important - a lot of information that the public would be very interested in, yes, but I mean, I go back and say reports are not normally - and it's not-----

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COMMISSIONER: We're not talking about general reports. We're talking about this one?-- Yes, sir. Commissioner, I understand that, but I mean, I'm just trying to put this report in the context of all other reports.

MR DOUGLAS: It's a report, I suggest to you, which you read and you saw raised a number of issues of concern pertaining to the, in broad terms, credentialling of overseas trained doctors practising in Queensland?-- That's correct.

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There were issues of serious concern which Mr Lennox - I should say Dr Lennox raised which you thought ought to be addressed?-- That's correct.

And notwithstanding that you identified those matters, you considered that it wasn't worthy of formalising into a final report and being publicised?-- No, I didn't say that. You asked me did I actually instruct for it to be finalised with a committee. The chair of the committee at that time of the AMA was Dr Mark Godsall. So no - did I instruct? No, I didn't. Would I normally put that sort of document into the public domain? The answer is probably not. But the issue for me was what was raised in the report went on to inform other things that we did to try to improve the system for overseas trained doctors. The Medical Board, for example, introduced English - was introducing English tests. The way recruitment had happened - and it goes back to August, because Dennis also put up a proposal that all-----

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COMMISSIONER: It was a matter of public concern-----?--  
Sorry.

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-----Dr Buckland?-- Sorry, Commissioner.

It was a matter of public concern, the matters raised in this document?-- That's true, Commissioner, yes, it was.

Why shouldn't it have been disclosed to the public?-- I guess that's not a decision that I would have - was mine to take, really.

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Why?-- Because normally-----

If you thought it was a matter of public concern?-- I think the issue of overseas trained doctors is certainly an issue of public concern.

No, no, the matters raised in that report were matters of public concern?-- Yes.

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Why wouldn't you have thought that it was appropriate to make that report public?-- Well, I don't think I had the authority to make-----

No, no, no?-- -----that report public.

Assume you had authority. Why wouldn't you make that public? Don't you think the public should be fully informed?-- Absolutely. I do, absolutely. Absolutely. I hadn't come at it from that angle before. I think the only way that you can solve the health issues is really to have a very open, public debate. The problem is how you get that into the public domain.

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He was an employee of your department, correct, Dr Lennox?-- Yes.

He was under your direction?-- Yes.

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If you had asked him whether the matters contained in that report were true and the opinions expressed therein were his opinions, he would have, no doubt, said yes to both those questions?-- I assume so, yes.

Why wouldn't you then have had the power to disclose that report, he being an employee of yours, his opinions being accurate and the facts being true, he said? What's to stop you disclosing it?-- Well, we would have to go through-----

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No, no, no.

MR APPLGARTH: Well, with respect, the witness is trying to answer.

COMMISSIONER: Is he?

MR APPLGARTH: Yes.

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COMMISSIONER: I didn't think he was. Go ahead. You go right ahead and answer?-- Well, nothing - physically nothing would stop me doing it, but the process would not be the normal - that would not be the normal process. If reports are done - remember, this is a report of a joint committee of the AMA and others. If - it's just not - you don't normally take those reports - they're done for particular reasons to improve the health system, and many of the reports that are done within health to improve the system-----

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We're not talking about other reports. You keep going back to what other reports might be done, whether they're of public interest or not. You've agreed this was a report of public interest. I just want you to explain why, it being a matter of public interest and you having the power to disclose it, you didn't do so?-- Well, Commissioner, I would argue that I had the power to disclose it.

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All right?-- That's my point.

MR DOUGLAS: Would you have to seek the consent or imprimatur of the Minister to disclose it?-- Absolutely.

You could make recommendations to the Minister as to its disclosure?-- I could have, yes.

Again, you were acting in the stewardship role on behalf of the people of Queensland in conducting your department?-- Yes, I'd been acting for about two days at that stage.

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And you'd been working in the department since 1987, as you've told us in your statement?-- Yeah, mostly in the operational side of the organisation.

And steeped in medical and organisational tertiary qualifications, as you've told us in your statement?-- I do have tertiary qualifications, yes.

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As far as you were concerned, you were well able to discharge your role as Director-General, and before that as General Manager of Medical Services?-- Sorry?

As far as you were concerned, you were well able to discharge your role, by reference to your experience, as Director-General, and before that General Manager of Medical Services?-- I hope so, yes.

And in that capacity the Minister would ordinarily be looking very carefully at the advice which you gave in respect of, among other things, the publication of any material?-- That's correct, yes.

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You knew that this matter had been raised in the public domain by The Courier-Mail on 3 November 2003?-- Yes.

You knew that the Minister had then characterised the report as being either unauthorised or not finalised or incomplete, or language which conveyed as much?-- Yes.

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Having the matter - you believed that the report was valuable as a tool in identifying a number of concerns within the medical community in relation to overseas trained doctors?-- Yes.

I suggest to you that there is no good reason why you would not recommend to the Minister that the report in final form be published?-- Well, the answer is I didn't.

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Did you ever consider doing so?-- No.

Do you think there's good reason to consider why such a report would be published?-- I think in hindsight yes, we could have a conversation, but at the time it was not the usual thing to do to publish reports.

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Do you mean that it was not the usual policy at the time within Queensland Health to publicise - that is make available to the public - reports that had been prepared identifying problems within the health system?-- I don't mean that at all. I just mean reports in general. It's not the nature of government to publish reports.

The nature of which government?-- Of any government. You just - I don't know if I'm explaining myself clearly enough. I mean, it's not an option you suddenly get up one morning and say, "Gee, I think that's a really important document. I'll go and put it in the public domain." There's a process you must go through which includes signing off at a political level to be able to say, "This is a document which is agreed to be put in the public domain."

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That is a process of which you were well aware and knew how to engineer?-- Well, I was aware of the process, yes.

Could I take you to a different topic now? You deal at paragraph 207 of your second report with the-----?-- Sorry, I missed-----

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Paragraph 207 of your second statement, the same statement?-- Yes.

The Vincent Berg issue?-- Yes.

Now, this issue culminated in a final brief, there having been a preliminary incomplete brief-----?-- Yes.

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-----a final brief prepared by Drs Allen and Johnson and Ms Fawcett of the Townsville district ventilating - and I quote from your exhibit SMB62 on the final page, "Many clinical staff maintain that there exists an ethical obligation on Queensland Health to inform patients that they had been receiving care from a person whose qualifications to provide that care may have been found to be invalid", and the

quote goes on, "This raises serious concerns about the potential for adverse public comment. Direction is sought from GMHS as to whether any of the patients subject to this audit are to be informed of the validity of Vincent Berg's claimed qualifications."?-- Yes.

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Thank you. Now, the reference to GMHS is, of course, a reference to the position which you then enjoyed as General Manager of Health Services?-- That's correct.

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What I then wish to do, perhaps as a matter of convenience, is to have you read into the record, because it's in handwriting, your response to that as it appears in that exhibit. You will find it on the last page of the exhibit. It commences with the words, "I have had"?-- Yes.

Could you read that into the record, please? Before you do so, that is written in your handwriting?-- Yes, that's my writing.

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You've signed it at the foot of that handwriting. You've dated it 31 October?-- January.

Sorry, 31 January-----?-- '03.

-----2003?-- Yes.

Could you read that, please?-- Sure. It says, "I have had this discussion on at least four separate occasions with medical and management staff, including Drs Allen and Johnson. My instructions have been clear and have not altered. The process is appropriate, ethical and clinically sound given the client base have a mental illness. Any at risk patients have been identified and managed."

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Now, you wrote that response on a briefing which was to be conveyed to the Minister. Is that so?-- That's correct.

At the time that was Minister Edmond?-- Minister Edmond, that's correct.

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Would your comments have been supplied concomitantly to the authors of the briefing note to the Minister?-- No, I don't think so.

I suggest to you it's plain from the comments you've written that your views with respect to the disposition of that issue of disclosure had never changed?-- Not since we'd had the initial conversations and had a look at the audit report, that's right.

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One could be forgiven for thinking, sir, that you had resort in those written comments to rather terse language, because the medical staff in Townsville had yet again raised the issue of whether there should be ventilated with patients the validity of Berg's qualifications. Do you agree with that?-- I don't see the comments as terse. I'm just recording what happened.



You make no mention in those written comments of you having consulted anyone else, whether or not in the psychiatric field, before expressing your view as to what should be done?-- That's correct.

You say in paragraph 224 of your statement - that's paragraph 223 actually, I apologise, on page 47 of your second statement. I do mean paragraph 224, and I'll read it into the record. "Reaching that decision", that is the decision I understand which you've written on the briefing note to the Minister, "was perhaps one of the most difficult decisions I have made as a medical practitioner and as an administrator." You adhere to that view, do you not?-- I think my comment was broader than this particular brief, but I do adhere to the view.

When you say it's broader than this brief, the issue involving whether or not there should be ventilated with patients the validity of Berg's qualifications was part and parcel of this most difficult decision?-- That's correct.

You say in paragraph 223 of your second statement, the prior paragraph, and I use your words, "I consulted with psychiatrists in the Mental Health Unit of QH", Queensland Health?-- Yes.

Do you see that?-- Yes.

Whom did you consult?-- I can't really recollect the individual names, but it was - there's usually two - there's two psychiatrists within the Metal Health Unit. There's the Director of Psychiatric Services who - it's a statutory position for the whole of the state, and there's a Principal Advisor in Psychiatry.

When did you consult them?-- In December.

Did you make a note of your conversation with them?-- No, I didn't.

How many times did you consult them?-- I don't - I can't recall the actual number.

Given the importance of the matter, did you think it apt to obtain a report from those persons - or that person?-- Did I ask for a report?

Did you think it apt that you ought obtain a report?-- No.

Why not?-- We had conversations - this - we'd had a meeting to go try and work out which is the right way forward. I mean, this is a really, really, very difficult debate.

All the more reason to obtain well informed and detailed consideration from persons expert in the field, namely psychiatry, I suggest to you?-- Well, I consulted.

What information did you provide to those psychiatrists?--  
The psychiatrists were all well aware of the situation in  
Townsville.

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How do you know that?-- The situation in Townsville, I think,  
had been well known to everybody.

Do you know what documents they were supplied with?-- No, I  
don't, but the Director of Psychiatry and the Principal  
Advisor in Psychiatry are well advised right across the state.  
They report through those positions.

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As one proceeds through the various issues involved in this  
Commission, one finds no dearth of documents, briefings,  
memoranda written by various people about sometimes important,  
sometimes not so important issues?-- Yes.

One doesn't find that in respect of this issue in relation to  
your dealings with these psychiatrists from whom you say you  
obtained this advice?-- Yes.

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Do you find that surprising?-- No.

It is, I suggest, the penchant of Queensland Health to document most things, particularly important things?-- Yes. Look, it probably reflects the way I tend to do business. I tend to do my business with people personally so that I can get and interrogate and understand the situations as they arise. I find that if you rely only on written briefs - written briefs can either be misleading or difficult to understand - you can end up in intricate processes of going backwards and forwards trying to resolve an issue. This is an issue that required conversations, and that's what happened.

You didn't hesitate in respect of other issues, whether it be Bundaberg, whether it be Fraser Coast, to solicit written reports from persons, even on an interim basis, with respect to issues of concern in those spheres of Queensland Health, did you?-- No, I didn't also get briefs on all topics that I dealt with.

Yet, on this - which again you described as "one of the most difficult decisions I have had to make as a medical practitioner and as an administrator" - you didn't seek out any written report or memorandum from persons expert in the field of psychiatry?-- No, but I did consult. The reason this is a difficult decision is not a bureaucratic process. The reason this is a difficult decision is because we are trying to weigh up the balance of what's the risk to the individual, what's the risk to a large number of individuals, and there are very - there are two separate weights in this.

I suggest to you that, acutely, that is a matter which would entail input from a person well versed in psychiatric issues in order to resolve?-- No, I don't think it is only that input, with all due respect.

I suggest to you that's a major foundation of any decision that has to be made in respect of that matter?-- It is a consideration, absolutely.

A major consideration?-- It is an important consideration.

Do you recall the substance of what these people whom you haven't named told you?-- You are asking me to go back to 2003.

That's why documents are very handy when these matters have to be reviewed within the ranks of the Public Service, do you not agree?-- Well, I agree that they are very handy, but I don't know that they actually shed any more light.

They shed light because you understandably have difficulty in recalling what it was that you canvassed with these unnamed individuals in respect of this most difficult issue?-- That's true. But, with respect, I didn't expect to go where we are now. The issue - and I don't know how else to explain it - but if you give me a minute I will explain what the rationale

is behind it-----

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If it is responsive to my question, please do so?-- It is. I mean, the issue is this: Berg had left more than two years before. He was a Psychiatric Registrar, not a consultant. He was supervised as a Registrar. The advice even out of Townsville was equally that was the case. Dr Allen had done a review of patients, and we had to weigh up the debate around - first of all, the patients at risk were contacted, and that was happening. The question was only whether or not we talk about the fact of Berg's qualification, not the fact of whether we follow patients up or identify patients at risk or anything. This is the vexed question. The question therefore remains would you cause greater harm by putting - because remember this is two years ago, and it is a Registrar, and most patients, I would put to you, wouldn't actually know who the Registrar was that treated them, so if you put it in the public domain or do it in another way, you will have a lot of people who are identified or concerned. They may not approach the service at all. They may actually stop taking the medication. They are all the considerations I went through. I mean, I equally accept that other people would have made a different decision. I accept that. I mean, this was very difficult. I didn't go into it in some sort of fashion and say, "This would be a good idea." This was really, really difficult, and other people-----

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I'm going to ask you to respond to my question. I'm not asking you about the decision you made per se, I'm asking you about the mode of your decision-making. So, could you address that, please? (A) You agree with me, I suggest, that the proper course was to seek out professional advice from qualified psychiatrists in relation to the decision which you made as an input into your decision; do you agree with that?-- Yes.

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(B) I suggest to you that ultimately you had to make the decision on the issue?-- Ultimately I make the recommendation, not the decision.

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"Recommendation". I meant that, thank you?-- Yes, not the decision.

The point that I'm putting to you is that there seems to be a dearth of information in relation to precisely what it was you were advised by these psychiatrists. Do you recall whether they told you what the pros and cons were?-- Well, I can tell you that - the sorts of topics we covered. I mean, if we can go through them - because there's a history of difficulties in the Townsville Mental Health Service, going back to the days of Ward 10B. The service was trying to reestablish itself at the time. It was growing quite rapidly, and you need not to - I mean, in that environment, that's really what we are talking about. I'm just a bit lost in exactly what you are asking me, because ultimately I make a recommendation, it gets either signed off or not signed off, and either - people can consult if they don't like the recommendation. I mean, if you say to me should I have it in writing, I would accept that that's a

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fair point. Did I have it in writing, no, I didn't. Did I think of putting it in writing, no, I didn't.

1

You think the Minister would most likely act on your recommendation?-- The Minister may - this conversation had been had right through December.

Do you think the Minister would most likely act on your recommendation?-- She may well have, but it would have gone through the Director-General as well. The process is from me to the Director-General. He would give his advice and then we'll go to the Minister.

10

You expected that the Director-General would most likely act on your recommendation?-- Only the Director-General could answer that.

Most likely he would, you being the person-----

COMMISSIONER: Your opinion about it. You have been asked the same question three times. What was your belief? You don't seem to want to answer it?-- Commissioner, I do.

20

Answer it, would you mind?-- Is the question would the Director-General have agreed with me? I think probably, yes.

MR DOUGLAS: The reason he probably would have accepted your recommendation, as would the Minister, is because their expectation would be that you would have made all proper inquiries and consultations before arriving at the recommendation which you pitched in the ministerial briefing?-- I accept that.

30

I suggest to you not to obtain a detailed written report from an expert psychiatrist in order to found your decision, and assist you in making it, was a dereliction of your duty?-- No, I don't accept that.

You say to the Commissioner that you did consult psychiatrists within Queensland Health?-- I believe I did, yes.

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Can you again attempt to recall the name or names of those persons?-- Look, I've tried, and I honestly can't remember. I know - I'm sure that Peggy Brown was the - and I think Arnold Ward - but I'm only speculating and it would be wrong of me to give an indication that they are the individuals.

Do you believe that they might have some notes or memoranda pertaining to the issue?-- I don't know.

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Thank you. I want to go on to a different topic, Commissioner. Dr Buckland, the Measured Quality Program was introduced into Queensland Health in 2002; is that correct?-- I think around that time, yes.

Thank you. Essentially, the Measured Quality Program involved a system of recording, reporting and comparison of performance data pertaining to hospitals in the Queensland Health

cohort?-- That's correct, yes.

1

For that purpose, the hospitals making up the cohort are divided into smaller cohorts, reflecting, essentially, hospital districts of the same size?-- Yeah, to try and make peer groups.

So, for instance, a peer group might consist, inter alia, of Toowoomba and Bundaberg?-- Like that, yes.

10

Something like that?-- Yes.

Until your employment as acting Director-General in late 2003, you were Chairman of the Board within Queensland Health which introduced and conducted the Measured Quality Program?-- Yeah, the program was actually introduced in auspices by Dr Young, my predecessor. The answer is yes.

Once you took over the position as General Manager of Health Services, you assumed the role of Chairman of that program?-- That's correct.

20

In turn, when you became acting Director-General, Dr Scott fulfilled that position?-- Yes, I think - I think that's true. I'm not quite sure - once we established the Innovation Workforce Reform - whether that's under Safety and Quality - whether that was Dr Ward, but perhaps-----

Perhaps it doesn't matter. If you don't know, don't say so. The program is still on foot?-- Yes.

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It was when you were terminated, in any event?-- Yes, to the best of my knowledge, yes.

You are aware of the concept of freedom of information?-- Yes.

And it is a concept which is enshrined, to your knowledge, in statute, in an act, and it doesn't matter about the year of the act, but it is the Freedom of Information Act?-- Yes.

40

In fact, I can tell you, if you don't know, it is a 1992 act?-- Thank you.

You know it has been on foot for some years in Queensland?-- Yes.

You are also aware that a number of items of documents are exempt from FOI?-- Yes.

50

And you also know that one of those exemptions is where a document has been submitted to Cabinet?-- Yes.

Dr Buckland, in your view, during your time as General Manager of Health Services and, in turn, as acting and, in fact, Director-General, was it a legitimate administrative tool utilised by a public servant within Queensland Health that a document be managed in such a way as to trigger the FOI

exemption by submitting it to Cabinet?-- I know that's - there seems to be a view that's the case. It is not my - it is not my view that is the case.

1

That wasn't something that you confronted at any time when you were fulfilling either of the roles I just identified?-- I know that Measured Quality, for example, did go to Cabinet, yes.

And do you believe it was sent to Cabinet in order to trigger that exemption?-- No, I don't think so. I mean, this is the first time - Measured Quality Reports were designed, I think, for the first time anywhere in Australia to try to look at the quality of health services comparably across the state, and there was a fair degree of excitement nationally around what we were trying to do, but because it was the first time it was run, it really went to Cabinet - this was my understanding - went to Cabinet fundamentally as an information. "These are the reports. This is what it shows." It does give - you know, there is information in it which may be controversial, but it was not - I don't believe it would go there for that purpose, no.

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Why do you say it might be controversial?-- I think the reports - once you start to compare various sets of performances, then people will try to rank, "Where does my hospital go? What does" - you know, "What's number 1? What's number 2?", or, "This place has a problem with that-----"

Do you see that there are deleterious features associated with that being done?-- Oh, God, no. It is absolutely the right thing to do. You know, you do have to know exactly what you are doing where and what outcomes you are getting in any particular place. I think the process is the right process. The problem for Measured Quality at the time once it started was that the data - certainly the clinical outcome data at that stage was a couple of years old. So, we were - it was the first real attempt anywhere to match up those four quadrants that you talk about.

30

You told the Commissioner that Measured Quality is still on foot in Queensland?-- To the best of my knowledge it is, yes.

40

It is an annual process, economically described?-- Yes, I think we had a delay in '03/'04 to make sure we had a bigger proof of clinical data, but the answer is yes.

I suggest to you there is no reason why Measured Quality reports ascertained from this process should not be publicly available?-- I think that's a reasonable comment.

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Thank you. Would you have a look at this document, please? It will be put on the screen for your assistance, but I can give you a hard copy if you wish?-- Thank you.

Sir, this is a document which was obtained from the - by the Counsel Assisting this Commission from the Crime and Misconduct Commission. It purports to be an E-mail forwarded

by Mr Brad Smith, the Manager of the Parliamentary and Ministerial Services Unit to, among other people, you?-- Yes, that's right.

1

Did you know Mr Brad Smith, in effect, as the Secretary to Cabinet; is that what he was?-- No, he was the departmental Cabinet liaison officer. Each department - and they liaised directly with the Cabinet Secretary, yes.

Do you recall receiving this document?-- I don't recall receiving it, but having read it, I probably - I'm sure I've seen it. I don't recall - I didn't remember until I had seen it now.

10

Do you recall the subject matter?-- Yes.

Do you recall there being a direction from Cabinet, in effect, to the effect that a proposed public report which had been submitted to Cabinet - and it is the 60 individual hospital reports having their genesis in the Measured Quality Program - were not to be distributed to anyone?-- Yes, I do, but I think there's a subsequent bit to this around building some sort of plan to go back, but the answer is yes.

20

Do you recall having a discussion with anyone above you, in effect, with respect to this issue at the time of this E-mail?-- I think there was a lot of - I would be misleading if I said I recall any specific conversations, but there was a lot of conversation around the Department around what this meant. It is fair to say that we were significantly disappointed because - and this is very early in the Safety and Quality agenda, but if you really are going to try to improve the safety and quality of the system, then you really do need to put those benchmarking type documents into circulation so people can actually make good utilisation, and particularly if you involve clinicians in the process and then you limit the feedback, it becomes a real issue. So, it is a long-winded answer, but, yes.

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Measured Quality was directed at those safety and quality issues which you identified in your last answer?-- It was part of the Safety and Quality Program, yes.

40

Measured Quality was directed at improving the safety - to patients - of the system across the board of the Queensland Health hospital cohort?-- Yes, it was designed - yes, it was designed to give you that comparison to say, "What outcomes are you getting?", and it also looked at other quality decisions, patient satisfaction, efficiency and system integration.

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I tender that document, Commissioner.

COMMISSIONER: That will be Exhibit 340.

ADMITTED AND MARKED "EXHIBIT 340"



MR DOUGLAS: Let me show you another document. To be fair to you, I will show you another document which precedes that which I specifically want to take you to. 10 March 2003. At that point in time, you were the General Manager of Health Services and also you are the Chairman of the Measured Quality Program Committee?-- Okay.

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Do you agree with that?-- Yes.

This document purports to be one which - I'm sorry, I will say to you again, this document is a document which has been obtained through the Crime and Misconduct Commission by Counsel Assisting. The drafts person of the document - and I'm not suggesting it was you - requests a briefing with respect to Measured Quality Reports - Phase 2?-- Yes.

Can you explain to the Commissioner what was involved - broadly - in Phase 1 and Phase 2?-- Phase 1 was the initial - I'm just going on recollection now.

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Certainly?-- Phase 1 was the initial lot of reports and then Phase 2 was then to be the second wave, and I guess a refinement with more current data. I think, from memory, greater performance - sorry, outcome data over a broader number of years. So, Phase 2, I guess, was the second stage of what had happened.

The person identified in the document before you is one Elizabeth Head?-- Yes.

30

Do you know or did you know her?-- Yeah, Elizabeth Head worked in the - I think - I will have to get the title right - basically the correspondence unit for the Minister's office - and within Queensland Health, but correspondence. She has got a pocket title. I can't recall it.

Did she work within the Minister's office assisting the Minister?-- No, there's a group of people who basically deal with correspondence in and out of the ministerial office and any other requests. I think it is just called a correspondence - oh, anyway, sorry, I might be mistaken.

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Again, you can't say, as a matter of practice, if such a person was requesting such a report, that such a request most likely would have come from the Minister?-- Yes, Elizabeth Head wouldn't have been an officer who would have requested it off her own bat. It would have been asked by someone else.

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Thank you, I tender that document.

COMMISSIONER: Exhibit 341.

ADMITTED AND MARKED "EXHIBIT 341"

MR DOUGLAS: If I can invite you to look at the next document? You will see it on the overhead.

MS DALTON: Can I ask counsel assisting to put in a description of that last document?

MR DOUGLAS: Last Exhibit is a document dated 10 March 2003 entitled, "A Briefing to the Minister", and the subject matter identified on the face of the document is, "Measured Quality, Hospital Reports, Phase 2." Can I indicate, Commissioner, lest it be thought otherwise, on the instructions I have, a folder containing these documents was copied over the weekend and this morning delivered to each of the parties at the Bar table.

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COMMISSIONER: Thank you.

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MR DOUGLAS: These are in the AV portion of that. Commissioner, what I will do at this point is hand up to the Commission - or to you - copies of the last three documents which I have identified. If the next document could be placed on the screen, please? I believe there is a header page to it. The document which I would ask you to read now would appear to be the very prompt response by Mr Justin Collins to the Minister in response to the last mentioned request for a brief. If you could go to the first page? Can I start by saying do you know Mr Justin Collins?-- I do, yes.

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Was he the administrative head of the Measured Quality Program?-- He was the project manager - yeah, program manager.

He remained in that position until you ceased as Director-General? If you don't know, please tell me?-- I'm not sure.

Just read through that document as it is scrolled through, thank you. The highlighting is mine. You can ignore that, if you wish. Have you finished that?-- Yes.

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Dr Buckland, I'm not suggesting this document bears your mark or imprimatur, but are you able to recall whether or not you read this document?-- I don't recall - I don't recall reading it. Unless it has got a "B" on it, I wouldn't know that I have seen the document. It is a document to the Minister.

Would a document of this kind ordinarily come to you?-- It would normally go to the Director-General. It may come to me, but not necessarily, yes.

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Having read that document, does it refresh your memory that there was a secure path adopted through the QHEPS program in respect of the Measured Quality reports?-- Yes, that was done in response to try to deal with the Cabinet decision.

The one to which reference was made earlier?-- Yes.

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And do you see under the heading "Key Issues", which appears at the foot of the document, second paragraph, there's a reference to the matter to which I adverted earlier, namely FOI exemption?-- Yes.

I suggest to you that a public servant within Queensland Health, acting properly, would not be giving consideration to FOI exemption attributes as a tool within the administration of the department?-- As I said earlier, it is not a regular event.

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When you say it is not a regular event, in your view, as an experienced public servant and manager, it is an improper approach to matters, I suggest?-- No, I agree with that. I'm just trying to make-----

Do you agree with that, do you?-- I'm just trying to make sense of what the - the sentence - and whether there's an assumption that it would go back for the same reason. I'm not sure. Yes. I mean, I agree.

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In the abstract, I suggest to you that a public servant giving consideration to the use of a matter that is a document going to Cabinet as a means of engaging in FOI exemption, in order to further the administrative tooling of an issue, is highly improper?-- I agree, but I'm just going to put one caveat on why I think it might be there, and that is for the - because there's no protection for quality assurance data in Queensland under the - under act - whereas in other states, audit reports are protected. It may be that's the case. I'm just speculating.

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Do you see the reference further up the document above "Key Issues" to the language, "In conjunction with the Cabinet in-confidence caveats"? Thank you, Commissioner. I tender that document.

WITNESS: Yes.

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COMMISSIONER: That is Exhibit 342.

ADMITTED AND MARKED "EXHIBIT 342"

MR DOUGLAS: If I could show you one further document in this bundle or this issue. Can you put this on the overhead, please? Commissioner, do you have a copy of this document in hard form?

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COMMISSIONER: Not in hard form, I don't, no.

MR DOUGLAS: Thank you. I will give it to you.

If you can scroll the document, please. Scroll back for a moment, please. See the date identifying that document is the 11th of March 2003? It purports to be a board meeting of the Measured Quality Program?-- Yes.

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Item 3 of the program purports to identify matters under a heading, "Strategy to disseminate the contents of the hospital reports."?-- Yes.

I'm not suggesting that you have immediate recollection of this meeting, but do you recall there were meetings at about this time dealing with this issue and that minutes were taken?-- I would assume so, yes.

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Thank you. You can scroll the document, please?-- Yes.

Do you generally recall the subject matter of that meeting?-- Generally, yes.

Thank you. I tender that document.

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COMMISSIONER: That will be Exhibit 342.

MR DOUGLAS: I want to show you another document now which I can only suggest to you may incorporate matters which were canvassed in greater detail at that meeting. I can put it no higher than that, I emphasise, Dr Buckland.

COMMISSIONER: 343.

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MR DOUGLAS: Commissioner?

COMMISSIONER: 343, I'm sorry.

ADMITTED AND MARKED "EXHIBIT 343"

MR DOUGLAS: Again, I have highlighted parts of this, Dr Buckland. You may wish to focus on those as you go through. Can I put you in the picture insofar as I can put it to you at the moment on the information that I have read. But this purports to be a note taken by Mr Collins of matters which he utilised at the meeting to ventilate matters with those who were present. Do you understand the point that I am making? So it may well be, Dr Buckland, that he's mentioned some of these matters, it may well be that he hasn't, it may well be that he expanded on these matters. I can't put it any higher than that. I am seeking to refresh - ask you to refresh your memory as to whether matters of this kind were canvassed?-- Sorry.

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Could you go back, please?-- Can we just go down? Thank you. Okay.

Thank you. Dr Buckland, just to put matters in sequence, I

have already taken you through the following documents. I have taken you to the e-mail from Brad Smith of the 12th of November 2002 shortly prior to Christmas. Then we have the request for a briefing by the Minister on the 10th of March 2003, that responded to on the same day by Mr Collins of the Measured Quality Program. We then have a board meeting of the Measured Quality Program on the 11th of March 2003 which yielded, it appears, the one and a half pages of minutes which you have looked at, and now we have what I can tell you would purport to be or seems to be Mr Collins' notes. Mr Collins, you will recall, would have been present - was present at all the measured quality meetings?-- Yes.

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Particularly those in about early 2003?-- I would assume so, yes.

I suggest to you also that your recollection is that he was the principal informant in relation to issues, certainly at that point in time in the introduction of Measured Quality Program?-- Yeah.

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He was the main man?-- He was in charge, yeah.

Thank you. And do you recall also that there was this meeting that took place - I'm not suggesting you recall the date or the precise substance - that was, in effect, the precursor to the phase 2 introduction of measured quality?-- On what I have just read now.

I am not suggesting to you this was the meeting that yielded the one and a half page minutes that you read earlier?-- Yes, yes.

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And you do you recall now at that meeting that there were, in fact, a range of issues which were canvassed by Mr Collins and others from the department, that is from the department insofar as they came from the program?-- Yes. Having read that, I accept that, yes.

Do you recall that having read that document the matters canvassed at the 11 March meeting were really far more extensive than those canvassed in the minutes and recorded in the minutes, I should say?-- It would appear - yes, that would appear.

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I'm not asking you to say so on my - on my say so?-- Yes.

Having given you this document-----?-- I honestly don't recall the detail but - I mean, having read what you put in front of me, that is the case.

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The language used in the document I have lastly put in front of you, so far as it might refresh your memory, seems to involve language, can I say, which involves putting a spin on things, "market this", language like that which I highlighted to you?-- Yes.

Is that consistent with how you recall a measured quality was

discussed in terms of its introduction?-- No. Do I recall -  
no, the introduction of measured quality wasn't about any  
spin. The issue at hand was how do we actually communicate  
this and then the-----

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You mean communicate it to the public?-- No, communicate it  
to the organisation so that we can get best value out of it.

COMMISSIONER: What do you mean by "the organisation", the  
hospitals concerned?-- Yes, yes, Commissioner, yes.

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Yes.

MR DOUGLAS: And this was also canvassed, the dissemination of  
the issue to the public, because what had already been  
submitted to Cabinet and which also was canvassed at this  
meeting was a public report to be signed off by the  
Director-General to be issued in relation to this - the  
introduction of this program?-- Yeah, that's correct.

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And, in fact, you may or may not recall that some months after  
this, in or about mid-2003, there was publicly distributed a  
document under the hand of the Director-General which was the  
public communication of measured quality?-- I don't recall,  
but I accept that.

Insofar as you might recall, I suggest to you it didn't  
descend to any detail in relation to the measurements  
pertaining to any particular hospital?-- That would be  
correct, yeah, in the public.

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Because that was part and parcel of the dissemination  
decision, which had been preordained by the Cabinet  
communication of November 2003?-- Yes, I think so.

Yes, I tender that document. That's obviously a document I  
will have to ask another witness about, Commissioner.

COMMISSIONER: Yes.

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MR DOUGLAS: But I can't say that this witness has adopted any  
portion of it.

COMMISSIONER: Do you want it an exhibit for identification or  
are you tendering it?

MR DOUGLAS: I will tender it, Commissioner. I can indicate I  
will be asking questions of Mr Justin Collins about the  
matter.

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COMMISSIONER: If no-one has any objection I will mark it as  
an exhibit.

MR DOUGLAS: Thank you. Mr Collins through Queensland Health  
has provided us with a statement this morning. It came after  
resumption this morning.

COMMISSIONER: That will be Exhibit 344.

ADMITTED AND MARKED "EXHIBIT 344"

MR DOUGLAS: Commissioner, it's almost time. Can I indicate to you and also to others present that I only have, subject to any issue you wish to raise, Commissioner, one more topic with which to deal and that is the issue of waiting listing.

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COMMISSIONER: Yes. Thank you. Very well. I will adjourn until 2.30.

THE COMMISSION ADJOURNED AT 12.57 P.M. TILL 2.30 P.M.

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THE COMMISSION RESUMED AT 2.29 P.M.

STEVEN MICHAEL BUCKLAND, CONTINUING EXAMINATION-IN-CHIEF:

COMMISSIONER: Yes?

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MR DOUGLAS: Dr Buckland, for your guidance, I want to now deal with the issue of waiting lists. You deal with that at paragraph 153 or commencing at paragraph 153 of your second statement. You may wish to go to that just to access it if needs be.

COMMISSIONER: Sorry, what page?

MR DOUGLAS: Paragraph 153.

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COMMISSIONER: Thank you.

MR DOUGLAS: Under a heading, "Waiting list background.", page 135 of the statement?-- Yes.

Doctor, you are aware that from 1998 till 2003 information was collected by the Surgical Access Service or team in Queensland Health as to the number of patients on waiting lists for specialist outpatient services?-- That's correct, yes.

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You were also aware during your tenure as General Manager Health Services and as Director-General that during that same period, '98 to 2003, and also in 2004 and 2005 there was published by Queensland Health elective surgery lists of patients who had been referred by specialists within Queensland Health hospitals for surgery?-- Elective surgery

waiting lists, yes.

1

We are dealing with two separate lists?-- Yes.

The first I referred to are those persons who have been referred by their general practitioner to a public hospital for specialist referral and, secondly, those who have seen such a specialist and are placed on a list waiting surgery?-- That's correct, yes.

10

To be fair, those who are referred for specialist treatment may be referred for disciplines bereft of any likelihood of any surgery being undertaken, maybe some general physical complaint or the like?-- That's true.

The elective surgery waiting list, however, was published; correct?-- Yes, that's correct.

But the anterior list, that for specialist outpatient services referral, was not published?-- That's my understanding, yes.

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It wasn't published even though information was collated, at least from 1998 to 2003?-- That's correct, yes.

Now, you refer in your statement to the fact that I think you said from 1st July 2005 under a Commonwealth scheme that outpatient list, which I will refer to as the anterior list, was to be published. Have I understood your statement correctly in that regard?-- The - yes. My understanding was that from the 1st of July 2005 the Commonwealth required all States to be able to provide data on a national basis to be able to publish outpatient waiting lists, yes.

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Is it your understanding that under that scheme the anterior lists are to be publicly available?-- That's my understanding on a national basis, yes.

Do you know whether that, in fact, happened from the 1st of July?-- No, it didn't, and it hasn't for any other State, as far as I know, because of the difficulty in collecting accurate data. So I think every State's been given another 12 months period of grace, if you like. That's on my understanding. Other people would be able to give you a definite answer.

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Again, before you were appointed General Manager of Health Services, you were the zonal manager for the southern zone?-- That's correct, yes.

Before that you worked otherwise in the hospital system?-- Yes.

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So you are reasonably familiar with the different styles of waiting lists that I have described in my questions to you?-- Yes.

Queensland commenced collating that anterior list information in 1998. Do you agree?-- That's my understanding, yes.



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That followed the reelection of the Labor Government in that year and it transpires the accession to the Ministry of Health of Ms Edmond?-- That's correct, yes.

And you could recall there was a flurry of public statements, ministerial statements made in the latter half of 1998 dealing with that issue?-- I'd have to - I don't recall them but I would assume that would be the case after an election.

10  
Do you know whether any other State has been collecting that anterior list information for that long?-- I have no idea.

You have no - you made no inquiry during your tenure as to your conferees interstate as to the collection of that information?-- No, Queensland is the only State that runs a large number of public specialist outpatients. Most of the other States have - run them either as private practice clinic or a have limited capacity, so comparing the two is really a very difficult issue. So the answer is no, and - but there are differences between Queensland and every other State in Australia.

20  
Indeed. You have anticipated my next question. The Queensland system is quite unique because it is the only State or Territory which conducts specialist outpatient clinics within public hospitals?-- Primarily in the way we do it, yes, in large numbers of free public outpatients, yes.

I suggest to you that to publish, as has occurred in Queensland since '98, the elective surgery waiting lists without publishing contemporaneously the anterior lists is apt, to put at its lowest, to mislead the public?-- I think there are - there are two issues. One is obviously the issue that we're required to report on a national basis, which is the elective surgery program, and that's patients who have been identified suitable for surgery and how long they wait. That's a national reporting mechanism. That's what's nationally published.

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COMMISSIONER: Listen to the question. Is it or is it not apt to mislead the public?-- Commissioner, I don't think it's designed to mislead.

No. No?-- No.

Is it likely to mislead the public?-- Oh, I think if you don't - I think that's probably true, yes.

50  
It's almost certain to mislead the public, isn't it?-- Well, I think there's a lot - well, yes.

Thank you.

MR DOUGLAS: In paragraph 174 of your second statement you say this, and I will read it into the record, "The fact that people have to wait to see and sometimes have to wait for excessive lengths of time to see a specialist in an outpatient

clinic is no secret. This waiting list is known to the people on those lists, their families and their GPs. They are known to the medical practitioners who these people wait to see and the administrators who have to administer the system." I think I have recited it correctly. That's your statement, isn't it?-- That's correct.

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I suggest you would agree that the state of the anterior lists would be a matter of significant importance to a general practitioner seeking to properly inform his or her patient in respect of referral for surgical and other services within the Queensland public hospital system?-- I think the answer to that question is the time waiting is very important to the general practitioner, yes.

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If a general practitioner under a published list, a notionally published list of those waiting outpatients in a particular hospital, say the Townsville Hospital, is told that, for instance, the number of people waiting to see a specialist with or without an appointment is double or three times the list of people on the elective surgery waiting list, that is a valuable piece of information for that general practitioner in advising his or her client - his or her patient, I should say?-- As I said, it depends very much on the time rather than the real number because it depends on the capacity of the hospital to be able to deal - depends on how they can prioritise the patient if they are urgent or not, so it's - it's - the answer is yes, but it requires a broader explanation than just straight numbers.

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Some information's better than none at all?-- No, I think some of the information can be misleading.

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And I suggest to you some information, namely publication of the elective surgery waiting lists, as you have agreed, I think, is misleading?-- No, I don't believe that the publication of the elective surgery waiting list is misleading. That's a national definition. It meets national standards of definition for elective surgery. It's not designed to mislead. It's designed to report on a national program.

40

Is it your view that the only reason that the elective surgery waiting lists ought be published is to comply with Commonwealth guidelines and not to inform the publish?-- No, not at all. But I am saying that's the benchmark against which we are measured, and that's - it's a national program.

It's unlikely that someone who receives a referral from his general practitioner in Logan is going to want to know what the waiting list is in Sydney, because or he is likely to have surgery at the Logan Hospital?-- No, sorry, that's not what I'm saying. What I'm saying is that we report as a comparison of our benchmark on a national basis. We report internally on the waiting list for each hospital and on the length of surgery waiting list for each hospital, and they're readily available in each hospital.

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You have acted as a general practitioner on many occasions over the years, haven't you?-- Off and on, yes.

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I suggest to you that if you were acting as a general practitioner in, say, 2000 and you were told not - just - what the numbers were on the elective surgery waiting list at the nearest hospital, but also that you knew the number of people on the anterior list, that would enable you, for instance, to say to your patient, "Well, there's a lot of people on this list. I can't tell you how long they have been waiting, but before they even get to that final list, which I can also hear is this particular number, is such that you may be better off cobbling together some money and going off and having private treatment." Do you think a patient is entitled to be told something like that?-- I think the patient is entitled to know what options that have, yes.

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That's one of the options the patient is entitled to?-- I think the patient is entitled to know that, yes.

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I beg your pardon?-- I agree, the patient is entitled to know.

Is it correct to say that this information about anterior lists which was maintained at least between 1982 to 2003 by the Queensland Health service was such that it was only ever utilised internally?-- I would understand that to be true. I wouldn't have absolute knowledge but I think that's probably right.

30

Did you ever have recourse to it?-- To?

It?-- I was aware of it in terms of monthly reporting initially when I was General Manager of the Health Services, yes.

When you were General Manager of the Health Service you received on a monthly basis from the Surgical Access Service or team a report which ventilated not only the elective surgery waiting list for that month compared to the previous year, but also the anterior waiting lists for that particular month and the previous year?-- I think that's correct, yes.

40

And it seems that Queensland Health had no particular difficulty providing you with that information on a monthly basis?-- That provided me with the information but the information was advised to me that it wasn't of much value, it was just raw data, that the numbers couldn't be validated, and they weren't actually dealt with in a meaningful way and that the data was in fact meaningless.

50

Who advised you about that?-- The Surgical Access Team.

Again I suggest to you that some information is better than none at all?-- And I would - I agree with that but I would also add that clinically it's the length of time that's critical, not the raw numbers, because it depends on capacity, it depends on whether the GP can pick up the phone and talk to

the surgeon and say, you know, "This is Steve Buckland, he's got this. Can you - where are you at that with that?" I think there's more mechanisms afoot and available than just raw numbers, because if you just publish raw numbers, with all due respect, you actually stop people seeking treatment in the right facility when people don't know the capacity of that facility to move through those number of patients. So it's not just a numbers game, I guess, is what I'm saying.

1

And how is that going to be remedied once the Commonwealth scheme is up and running, according to your understanding?-- Well, I don't know that it will actually remedy too much at all, to be honest. I think it will put - it will standardised the reporting mechanism and it will put that into the public domain. I don't believe and I honestly don't know enough about it to give you a true meaningful answer, but I don't see it would change things too dramatically.

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But your understanding is that under this Commonwealth scheme this anterior list information is intended to be published?-- That's my understanding. I assume it will go to the AI - Institute of Health and Welfare on national basis.

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It is correct to say that when you were General Manager of Health Services, a particular focus was upon the reduction of the extent of elective surgery lists?-- That's true, yes.

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I suggest to you that in a - I'll start again. I suggest to you that against the background of publishing the elective surgery waiting lists but not publishing the anterior lists, that circumstance is apt to lead to the devotion of disproportionately large resources to reducing elective surgery waiting lists and not to reducing the anterior lists?-- I think - again in a clinical perspective - the people who are on the elective surgery waiting list are known to need surgery and have the greatest need immediately. People who are outpatients, as you quite rightly pointed out before, may have options of either accessing the public or private sectors for consultation. So in terms of clinical priority, the answer is obviously if you know people need surgery then they will be the priority, and then you would move to the others to make sure that they get the proper consultation, because not all of those need to progress on to surgery.

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20

If hospitals are directed by policy to devote their resources in large part to reduction of elective surgery waiting lists, there is a serious risk of manipulation by those hospitals?-- Well, the answer is I suppose there is, but I mean, it's fairly heavily regulated.

Can I suggest to you also that to impose penalties upon hospitals in not reaching the elective surgery targets that are imposed upon them, penalising them by reducing their budgets in consequence underscores the prospect - conscious or subconscious - of such manipulation?-- I think it's a perverse driver, yes.

30

It was a driver nonetheless which you championed when you were General Manager of Health Services?-- That I championed-----

As a policy?-- The policy was already in place and the policy continued, and I changed it in 2004/5 for the reason that I just said, that it was a perverse driver.

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Look at this document, please. I'll have a copy put in your hands. It's a document, for those behind me, which is dated 19 October 2000. It's a memorandum to District Managers, Zonal Managers from Dr S Buckland, Acting General Manager Health Services, Subject: Elective Surgery Performance. A copy for the Commissioner, please?-- Yes.

You were Acting General Manager of Health Services in October 2000?-- I assume it would have been-----

50

COMMISSIONER: What's the document you're looking at?

MR DOUGLAS: I'm sorry. It's this document. The wrong document has been put in your hands. I'm sorry. It's part of the bundle which you have, Commissioner, but it's better if I put the copy in your hands. You were the author of that

document?-- I was a signatory, yes, not the author.

1

Well, there was nothing in the document you sought to change?-- No, that was the policy at the time.

Is it a policy which at any time in or about 2000 you advised anyone above you was an inappropriate policy?-- No, I didn't advise anybody above me that it was an inappropriate policy. It was a personal view. Nonetheless it was government policy.

10

Can I understand the policy correctly. What would occur is that targets for elective surgery would be placed upon hospitals?-- That's correct, yes.

And those hospitals which didn't achieve those targets would have their next budget diminished to the extent of that non-achievement, and that would be given to another hospital?-- It may be taken or re-allocated, yes, unless they could justify their performance.

20

The consequence of that policy is such that there was heavy pressure upon any hospital, if it wished to maintain the elective surgery availability within that district, to achieve those elective surgery targets?-- Yes.

And that - even if it be at the expense of an amplification of the anterior lists?-- As I said earlier, the priority is you have a limited resource - the answer is yes, but you have a limited resource. You may have to make the best use of that resource in the best interests of the patients that you have. I mean, you know there are patients who need surgery. They need to be operated on in a clinically appropriate time. There are other patients who will move through the system who will either have a consultation, who may or may not need surgery. I assume the policy is based on the fact that it's the best utilisation of resources available.

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But in your view then, and now, it's an inappropriate policy because it is a negative driver?-- I think - sorry, I think the withdrawal of funding and turning taps on and off is in fact - has a negative impact and it is a perverse driver, and that's the reason I changed it.

40

To be fair to you, you do say in this memorandum in the third paragraph, "District managers should also monitor the allocation of specialist outpatient sessions against surgical sessions to ensure an appropriate balance is struck."?-- That's right.

You were seeking to identify there the need for a district manager to keep a balance between elective surgery lists and anterior lists?-- It was to do both. It was to actually say you've got to make sure the balance is right one way or the other, and to make sure your mix is right, and if I can - the short answer is yes. I was just going to - I won't offer an explanation, sorry.

50

Notwithstanding that you've said that in that particular document, there was no policy laid down as to precisely how the district manager should go about achieving that, as you put it, appropriate balance?-- No, I don't think there was a policy, but if I can just expand what I was going to say before. If, for example, you had a large number of operating lists with one specialty - say gynaecology or something like that - and you actually didn't have enough outpatients to generate those lists, then the question was do you re-allocate that list to another specialty? Do you go back and see what your outpatient waiting times are to facilitate that? It's an overall capacity issue.

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I tender that document, Commissioner.

COMMISSIONER: Exhibit 345.

ADMITTED AND MARKED "EXHIBIT 345"

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MR DOUGLAS: I'll put another document in your hands. For those behind me, it's a document headed, "Issues Report Waiting List Reduction Strategy, May 2002, by Medical Superintendents' Advisory Committee". Before I proceed, Dr Buckland, did you have some opportunity over the luncheon adjournment, through your counsel, to look at these documents?-- Sir, I had a scan. I didn't look at them in great detail.

30

Thank you. I don't want to rush you. If I'm going too quickly, you tell me?-- Thank you.

In May 2002 what was the Medical Superintendents' Advisory Committee?-- From memory, the Medical Superintendents' Advisory Committee was a subset - or a group that advised the Surgical Access Team on issues around elective surgery. Now, I think that's correct.

40

Thank you. Is it a body that still exists?-- I honestly don't know.

Thank you. Have you seen this document before today?-- When I had a quick scan, sir, I didn't actually - I don't remember it. I'd have difficulty saying yes or no.

Is it the sort of document which would come into your possession?-- It may. It may, but I don't know.

50

You don't know. Thank you. If I could just take you - I'm sorry, before I go to that. You would expect, though, it is a document which the Surgical Advisory Service or team would be given on or about the date which it bears?-- I would think so, yes.

And you expect them to take at least into account these matters which the Medical Superintendents' Advisory Committee thought apt in respect of the subject matter?-- I think - within reason I think that's the case. As I said, I don't remember the document or the timing.

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I'm not suggesting for a moment they'd be slavish to it, but it would be a readily accessible group-----?-- They're a valuable group.

10

They're the superintendents that work at the very hospitals?-- Yes.

At the coalface?-- Yes.

Could I ask you to turn, please, in that document to page 8, paragraph headed, "5.4 Quality Management"?-- Yes.

Tell me when you've had a chance to read that. Do you agree with what is recited in that paragraph?-- Sorry, which paragraph?

20

Paragraph 5.4.1?-- Yes.

Down to and above the word "Recommendations"?-- In general I do, yes.

Is there any portion that you disagree with?-- No, probably not particularly, no.

30

Thank you. Really the whole gambit of the deficiencies in the elective surgery waiting lists are identified in that paragraph, aren't they?-- I think the issues that are raised there are issues which - yeah, which are inside the system, yes.

The manipulation of the categories within the lists, particularly Category 3?-- Yeah, I'm not actually sure what the body of stuff behind it, but I mean, I assume these guys should know what they're talking about.

40

And also, when they speak about the anterior waiting lists, what they're saying is that the elective surgery waiting lists of a hospital can be made to look pretty, so to speak, by reducing resources devoted to the anterior outpatient service?-- Again I go back to my earlier comment. It's a continuum of-----

COMMISSIONER: That's what's being said there, isn't it?-- I think that's what they're saying.

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MR DOUGLAS: You've already said you agree with what's in those three paragraphs?-- Yes, sir.

Commissioner, I tender that document. Can I indicate to you, Commissioner, that it's proposed to prove this document by calling evidence from Dr Leigh Hunter who is the Elective Surgery Coordinator at the Toowoomba Hospital and has been in



that position for about nine years. The statement was  
obtained from her last Friday. So at this point in time I  
tender it. I'm alive to the fact this witness cannot say he  
read this-----

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COMMISSIONER: If no-one objects to it, I'll accept it as an  
exhibit.

MR DOUGLAS: Thank you.

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COMMISSIONER: Exhibit 346.

ADMITTED AND MARKED "EXHIBIT 346"

MR DOUGLAS: For those behind me, the document I'm showing the  
witness now is headed, "Elective Surgery Business Rules  
2002/2003 - Surgical Access Service Waiting List Reduction  
Strategy". Again this is one of the documents which you might  
have briefly perused over the luncheon adjournment?-- I  
actually haven't looked through this one at all, sorry.

20

Thank you. If you could just look at that. I'm not  
suggesting for a moment it has your signature on it or any  
initialing of yours on it?-- Thank you.

If you just go to the last page of that document, page 6 of 6,  
the penultimate entry says this: "The Health Services Council  
is responsible for" - first dot point - "approving the  
elective surgery business rules". What is the Health Services  
Council?-- The Health Services Council was the group that was  
established by, I think, John Youngman, which was made up of  
the zonal managers - it's a senior executive group within the  
Health Services Branch of the organisation at that time. I  
can't recall all the membership.

30

Who manned that?-- Who-----

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Manned that?-- Three zonal managers, General Manager Health  
Services-----

Which was you?-- Well, I don't know whether it was this time  
or not, whether this pre-dates me or not in the '02/'03  
financial year. The head of Pathology Services, the head of -  
the person to whom the Surgical Access Team reported, probably  
about - probably about eight executives, I think, within that  
branch.

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Would you have read that document?-- I probably would have.

I tender that document.

COMMISSIONER: That's Exhibit 347.

ADMITTED AND MARKED "EXHIBIT 347"

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MR DOUGLAS: I have one more document to show the witness. Would you look at this document, please, and for those behind and beside me, it's headed, "Elective Surgery Business Rules 2003/2004 - Surgical Access Service Waiting List Reduction Strategy"?-- Thank you.

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You've read that now?-- Not totally, but yes.

The document bears your signature on the second page at the foot of the page?-- Yes, it does.

It was signed by you, apparently, on 29 October 2003?-- Yes.

It also bears the signatures, apparently, of the various zonal managers for northern, central and southern zones respectively, and also the signature of the manager of the Procurement Strategy Unit. That's so, isn't it?-- That's correct, yes.

20

Thank you. Can I just go to a number of aspects of that document. Before I do, you can certainly say that you read this document on or about the date that you signed it?-- That's correct, yes.

At the latest by that date you would have read it?-- Probably on that date.

30

You would have given your approval to it?-- That's correct, yes.

Prior to that date you would have given your approval to it?-- Yes, on that date, yes.

If you turn to the 10th page, page 10 of 12, at the foot of the page there is a heading, "Maintaining Total Surgical Throughput"?-- Yes.

40

Does that correctly record the advice in fact which you had given as General Manager Health Services to all district managers at about that time?-- I think that's correct, yes.

So in the passage of approximately four years between the time you wrote the memorandum on 19 October 2000 to this occasion when you've signed a document on 29 October 2003, the same policy existed whereby pressure was being placed upon cohort hospitals to achieve their elective surgery targets?-- That's correct, yes.

50

Was it a matter in that intervening period - I'll start again. Was that a matter in that intervening period which you at any time canvassed with anyone as being a wholly inappropriate system?-- The - I think there was a lot of debate within - both within the district and within the zones, when I was in

the zone, to say the system is becoming more and more rule bound and more and more difficult to administer.

1

But this was after you left the zones?-- Yes, that's true, and then I went into General Manager Health Services, which I did for 15 months, and I changed that in the first year I was Director-General.

When you were Director of the southern zone, was it a matter which you canvassed with your superiors as being a wholly inappropriate practice to adopt, having regard to its negative features?-- The funding of elective surgery?

10

Yes?-- Only to the point where we would argue that if there was an excessive emphasis on elective surgery.

Who did you raise that with?-- I would have - well, I would have raised it with my superior at the time which would have been Dr Youngman.

20

Was it a matter you ever raised with Dr Stable?-- I don't recall. I may have. I mean, I honestly just don't recall, but I may have. I think there was a lot of conversation surrounding elective surgery.

If you go to the next page, page 11 of 12, under a heading, "Audit Regime", there's a preface and five dot points. Page 11 of 12?-- Yes.

There's a heading, "Audit Regime"?-- Yes.

30

When you're ready to answer my questions, tell me?-- Yes.

Can I suggest to you that none of the dot points there direct attention to the devotion of resources at any cohort hospital towards elective surgery waiting lists as opposed to outpatient lists?-- That's correct.

When we speak there of manipulation in the second dot point, that's within the various categories on the elective surgery list, isn't there?-- That's what it means, yes.

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50

Are you able to say from that recitation that, at least, for that year, the 2003/2004 year, no audit process by the Surgical Access Service was being expressed as to be undertaken so as to detect any disproportionate deviation of resources between those two lists?-- Sorry, I'm just - could you just ask me again?

I will start again. I'm looking at this document, and I'm putting myself, as much as possible, in the position of a reader of this document who would receive it within a zone or a district, and I look to see what is expressed to be the audit regime?-- Yes.

And if I was reading that against that background, but with all your knowledge as to how these things work, I would be saying to myself, "Gee, this audit process will not be, on the face of this, descending to or dealing with any disproportionate deviation of resources as between elective surgery waiting lists and the anterior lists."?-- I think that's correct.

I suggest to you that in the minds of some, that might be agreeing, like with any district, to disproportionately devote resources to elective lists so as to maintain the budget allocation for that year and the next year?-- That could happen, yes.

I suggest to you that there is a high risk of that occurring?-- I think that could occur, yes.

Dr Buckland, I suggest to you that there is no sensible reason why, from 1998, when they were collected by Queensland Health, anterior lists should not have been published to the general public at any time that they were available?-- I think that waiting times - out-patient waiting times could have been published. I had my reservations about numbers, as I said. It can be misleading both clinically and in time, but I think they could have been published.

COMMISSIONER: The problem with numbers applies to surgical waiting lists, too - the one that was published?-- Commissioner, it does to probably category 3s more than 1s and 2s. Ones and 2s tend to be very much on clinical priority-----

It is the same problem: numbers gives no indication directly of time. You make the same criticism of that as the anterior lists?-- Except for 1s and 2s in particular, most of those are monitored within 30 days or 90 days, so there is -----

MR DOUGLAS: There are significant numbers on the category 3 lists?-- Yes.

They are the people who need the hip replacements and things like that, among other things?-- That's correct.

People who might be in employment, who might need to make some

pretty hard decisions, perhaps with their employers, as to how long they are able to go on without undertaking operative treatment?-- Yes, that's correct.

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Commissioner, I tender that document.

COMMISSIONER: Exhibit 348.

ADMITTED AND MARKED "EXHIBIT 348"

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MR DOUGLAS: Commissioner, those are the matters which I intended to canvass with this witness. It may be as a result of the receipt of the statements in the order they were and the time they were, there may be some other questions you may wish to ask.

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COMMISSIONER: There are one or two. Dr Buckland, I have a few questions to ask you with respect to the Giblin North Report which you deal with in paragraph 232?-----

MR DOUGLAS: Commissioner, sorry to interrupt, you should also note Dr Buckland also deals with that in paragraphs 19 to 23 of his last statement, too.

COMMISSIONER: I did know that, thank you.

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MR DOUGLAS: Thank you.

COMMISSIONER: I wanted to take you in particular to paragraph 242?-- Sorry, Commissioner, which number?

242?-- Thank you.

In subparagraph 8 of that paragraph, you say of the report that, "It failed to demonstrate the information or evidence on which the doctors based their conclusions. Much of the report only referred generally to the investigators being told certain matters at interviews. It contained no evidence that the investigators had actually observed the three doctors operate and it was not clear whether any clinical cases they referred to were from interviews or an inspection of files." You had no reason to doubt the honesty of Dr Giblin?-- Absolutely not, Commissioner, no.

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So, you believed that what they said they had been told by the staff at the hospital from Dr Mullen was, in fact, what they had been told?-- Yeah, I'm not doubting that at all.

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You had no reason to doubt the expertise of those two doctors?-- No, Commissioner.

Quite the contrary?-- Yes, Commissioner.

They were both highly respected orthopaedic surgeons?--

Indeed.

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You, yourself, I take it, did not have any qualifications in orthopaedics?-- No, sir.

So, if you accepted that they were told what they said they were told, and you had no reason to doubt their expertise in forming conclusions, why would you not accept their conclusions?-- Commissioner, what I was asking for, and the reason I tried to meet with Dr North in particular, was to have a look at the information behind that, because there are very strong and major recommendations.

10

I understand that?-- I'm not saying I didn't agree with the recommendations, but from the body of the report to reach those recommendations, I was asking for them to be able to confirm those issues that I've just raised, that are these doctors as they say they are, or are they hearsay?

They were very serious in the sense that to allow that orthopaedic service to continue when two respected orthopaedic surgeons expressed the opinion based on evidence which they thought was sufficient to express that opinion, had said they should be terminated-----?-- Commissioner, the problem with - by the time I received that report, Dr Kwon, who is a fellow - the whole service profile had changed. I understand that that's dealt with separately in paragraph C. I'm directing you at the moment to paragraph A?-- Yes.

20

I'm finding it difficult at the moment to understand why you did not accept the opinion of those respected doctors that the evidence that they were given was sufficient to justify the opinion which they expressed at the time of their inspection that the service should be closed down?-- Well, Commissioner, it's a - it is the close - the closing of a service is a major event. It is not something you are going to walk into - and you have the opinion of two doctors - until you actually understand the details behind the recommendation. I have never questioned the ability or standing of either of the doctors. What I was asking for was, "Can you meet with me to explain to me how you worked through that to reach those conclusions.", and that wasn't evident to me from the body of the report.

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Dr Buckland, you could put it another way: that it would be a very serious matter to continue a service when two respected doctors had thought that on the evidence that they saw, it should be terminated?-- In July 2004?

Yes?-- I think - I accept that comment.

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What you say, however, is that once Dr Kwon had taken over, that that had answered the criticisms contained in the report?-- As to the standard and safety of the service, yes, I believe that's the case.

Had the numbers of orthopaedic surgeons in Hervey Bay and Maryborough increased between the date of that inspection and

the time when the service was closed down?-- Sorry, in May when it was closed?

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Yes. Had it increased over that period?-- Between 2004 and the closure?

Yes?-- I don't think it had. I think, in fact, Dr Naidoo had not been doing much work of any sort at Hervey Bay-----

No, but Dr Kwon had replaced him?-- Dr Kwon had replaced him, that's right.

10

There were exactly the same number of orthopaedic surgeons in the Fraser Coast service over the whole of that period?-- I assume that's right, yes.

You were given the Giblin North Report?-- Yes.

And you are aware that they expressed the view in that report that a minimum of four specialist orthopaedic surgeons was required to deliver orthopaedic services of an adequate nature in that area?-- Yes.

20

That never occurred?-- No, it didn't, and the rationale behind the large numbers that I would understand would be basically to cover off on-call and other emergent issues, rather than the full function of the service on a day-to-day basis.

Whatever purpose that was, they thought to maintain adequate service - I assume from that it means a safe service - required four orthopaedic surgeons?-- I understand.

30

Is that not correct?-- That's what they are saying, Commissioner, and it - that would close a number of orthopaedic services around the state. I assume it is for the on-call purposes alone. It is not - I mean, I'm not trying to belittle or downplay the value of this report or, indeed, the quality of the people who provided it, but what I needed to understand was exactly those sorts of things. How do you move through these things and how do you reach that conclusion? We were never walking away from what they told us.

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Doctor, it was put to you by Mr Douglas that with respect to Bundaberg-----?-- Yes.

-----paraphrasing what he put to you, and it is not perfectly accurate - but your opinion was that it was better to maintain an inadequate service and consequently an unsafe service, than none at all?-- Well, no, I don't think that's true. I don't think that's what he put to me.

50

Might that be suggested to be the case with Hervey Bay?-- No, sir.

You never maintained an adequate service and consequently a safe service according to the view of Drs Giblin and North?-- Commissioner, I spoke personally to Dr Kwon-----

No, no, listen to my question. According to Drs Giblin and North, you never maintained an adequate and consequently safe service on the Fraser Coast - orthopaedic service on the Fraser Coast?-- On the basis of that information, yes.

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I have no further questions. Who wants to ask questions of Dr Buckland, other than you, obviously, Mr Applegarth?

MR APPELGARTH: I'm happy to go second last.

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COMMISSIONER: Yes, I'm happy for you to go second last.

MR DEVLIN: I have no questions of the witness, but I would like to tender into the record, as it seems the right juncture, an affidavit of Dr Lloyd Toft, who was the President of the Medical Board of Queensland when the Lennox Report was - when the April draft copy of that report was given to him. This affidavit has been supplied to the Commission, but I do seek to formally tender it into the record.

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COMMISSIONER: I haven't seen it. What's it about?

MR DEVLIN: It concerns the fact that a draft was sent to Dr Toft personally and that he met with Dr Lennox on one occasion to discuss some aspects of it and supported some aspects of it and understood it to be a report in draft form which would go to other stakeholders as well.

COMMISSIONER: I assume no-one has any objection to that?

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MR DEVLIN: Thank you, your Honour.

COMMISSIONER: Affidavit of Dr Toft will be Exhibit 349.

ADMITTED AND MARKED "EXHIBIT 349"

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MR DEVLIN: Otherwise, I have no questions for Dr Buckland.

COMMISSIONER: Thank you. Anyone else?

MR GOTTERSON: I have a few questions.

COMMISSIONER: I wonder if, in future, counsel could agree upon the order in which they would like to ask questions, and it will save me a lot of trouble. You go first, Mr Gotterson. You got up first.

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MR GOTTERSON: Yes. Mr Boddice may be after that. If we can agree now, just down the line?

COMMISSIONER: From which direction?

MR GOTTERSON: That direction. Thank you, your Honour.



## CROSS-EXAMINATION:

MR GOTTERSON: Dr Buckland, one or two questions: in paragraphs 41 or 42 of your first statement - perhaps you won't need to go to it - but I can remind you that you refer to telephoning the Minister, Mr Nuttall, on the morning of Saturday, 9 April 2005?-- Yes.

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And you advised him that you proposed to form the investigative review team; do you recall that?-- I recall the phone conversation, yes.

And that was a day or so after you had done your own Google search and found out information about Dr Patel's registration?-- That's correct, yes.

20

And in that phone call on the 9th of April, you sought the Minister's agreement to your proposal about the review team - I think you say that?-- Yes. If I can say on the flight back from Bundaberg on the 7th, the Minister and I actually talked about possibly putting together an investigative team to be able to go into Bundaberg and have a look.

Was it by the morning of the 9th, you, in your own mind, settled upon the individuals who should comprise that team?-- Yes, except for Professor Woodruff, who I believe the Minister had actually suggested would probably be a reasonable person to do that.

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Did you agree with his suggestion?-- I think that's correct, yes.

And you would agree with me that the Minister immediately indicated his approval of your proposal and the individuals you proposed?-- Yes, I think that's correct.

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Would you agree with me also that this was the first plan of action that you, yourself, had proposed in relation to the Patel matter for which you had sought the Minister's agreement or approval?-- Yeah, that is correct.

And the other matter I turn to relates to paragraph 8 of your third statement, and you refer to your expectation with respect to briefing of the Minister, Mr Nuttall, about the Fitzgerald Report. I'm going to ask you to look, please, at a Ministerial briefing note. It is dated 15 April 2005. I ask that it be circulated and I hand up two copies, one for the Commissioner and one for Dr Buckland. If you would take a moment to look at it, please, Dr Buckland?-- Yes.

50

Although you may not have been the author of it, do you identify - or are you familiar with it as a Ministerial briefing that went to Mr Nuttall on the 15th of April 2005?--

I'm aware that it did go through - I don't believe it actually went through me. It was cleared by Dr Scott.

1

I see. Rather than yourself?-- Yes.

And would you agree with me that though the pages aren't numbered, if I could take you to the second page of it, that at the top there is a summary in five dot points of the findings in the Fitzgerald Report?-- Yes.

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And would you agree with me that on the last page of it - or I should say the last - third page rather than the last page, there is a heading, "Key Messages"; do you see that there?-- Yes.

And the fifth item says this: "It would further compromise natural justice to make public comment about the competence or otherwise of Dr Patel and other staff at the Bundaberg Hospital until the review process is complete." I want to ask you whether that was consistent with the advice that you understood that Minister Nuttall was being given by officers in the Health Department about the publication of the Fitzgerald Report?-- I assume, sir, that this review process does refer to Dr Fitzgerald's report, but it might also be the second review process where we were having a much closer look at the performance of Dr Patel.

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As you said earlier in your evidence, the completion of the audit process?-- Yes, I did. I'm just commenting that I don't know off the top of my head if that review process they are talking about is the second review process which the Minister authorised.

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All right. I see. May I tender that briefing note, please, Mr Commissioner?

COMMISSIONER: Yes. That will be Exhibit 350.

ADMITTED AND MARKED "EXHIBIT 350"

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MR GOTTERSON: Perhaps as it goes in, could you identify the signatures on the bottom page? It appears to be Mr Nuttall's signature?-- It appears to be his, yes.

COMMISSIONER: I have marked that copy now. I presume that's not the one you are tendering?

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MR GOTTERSON: Yes, it is.

COMMISSIONER: It is?

MR GOTTERSON: Yes. I can hand up a second one, your Honour.

COMMISSIONER: No, it's all right.

MR GOTTERSON: Thank you. That's all I had, if your Honour pleases.

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COMMISSIONER: Just before anyone else asks questions, you refer to the District Manager conducting an operational audit regarding the need for review in October '04. Is that a - I shouldn't say you do, the document does. Is that an audit evidenced in writing in some way?-- Sorry, Commissioner, which-----

10

On the first page-----?-- Yes.

-----it says about five lines from the bottom, "In October '04 the District Manager conducted Operational Audit."?-----

MR DOUGLAS: It is "contacted". To be fair to the witness, it is referring to a division in Queensland Health.

COMMISSIONER: Sorry, I'm misreading it. Mr Boddice?

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MR BODDICE: Commissioner, I don't have any questions, but previously we have gone last because obviously there is a crossover with some individuals, and I just ask - not last, but after counsel assisting, but we've gone towards the bottom end of the cross-examination because-----

COMMISSIONER: You prefer - I think I'll let Mr Applegarth go second last, but, if you like, you can go immediately before him.

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MR BODDICE: Yes, thank you.

COMMISSIONER: Mr Mullins?

MR MULLINS: I have some brief questions, but Mr Allen is going to go before me.

COMMISSIONER: All right.

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CROSS-EXAMINATION:

MR ALLEN: Dr Buckland, John Allen for the Queensland Nurses Union. If I can ask you a few questions about the weeks in late March, early April this year when events regarding Dr Patel transpired. Obviously you had some conversations with the then Minister on the 22nd of March 2005 after matters were raised in Parliament?-- That's correct, yes.

50

Mr Nuttall has given evidence that one of the matters that was being discussed by him and various persons on that date was how to respond to media inquiries as to whether the report of Dr Fitzgerald would be publicly released?-- Yes.

And he's given evidence that he was aware of a media advisor advising a journalist that the report would not be released for a number of reasons, those being that Dr Patel had left the country and therefore the report could not be completed and also because the report contained confidential patient information?-- I'm not aware of that, but I'll take that at face value.

1

The reason why I ask if you have any knowledge as to this is that Mr Nuttall's evidence, as demonstrated in paragraph 100 of his statement, is that after speaking with the Director-General, "I was of the same opinion that the report should not be publicly released for those reasons." So, he suggests that he spoke to you and then formed the opinion that the report should not be released for the following reasons: it couldn't be completed because Dr Patel had left the country and it contained confidential patient information?-- Can I just answer, from my recollection, the report doesn't contain confidential patient information.

10

That's correct. Your recollections are quite accurate there, but was that a reason for not releasing the report discussed between yourself and Mr Nuttall?-- No, I don't think so. Ordinarily - I mean - and I didn't hear the Minister's testimony, obviously, but ordinarily, any reports that do contain identifying information, even remotely, would tend not to be published. Clinical audit reports, of themselves, are not normally published as part of the process of protecting, if you like, the information of the informant and engaging people in a proper audit process. So, it is not an uncommon - it would be uncommon, in fact, to publish the report, as opposed to not publishing it.

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So, you certainly wouldn't have advised Mr Nuttall that one reason the report should not be released publicly is that it contained confidential patient information?-- Well, on the - I'm not sure of the sequence of dates here-----

30

22 March?-- On the 22nd, the report wasn't finalised.

You couldn't have told him one way or the other whether it contained confidential patient information?-- No.

40

At any time after that date, did you tell Mr Nuttall that the report could not be released publicly or should not be released publicly because it contained confidential patient information?-- I don't believe I did, no. Not to the best of my recollection, because the report doesn't contain confidential information and-----

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And you wouldn't give - sorry, yes?-- I would have briefed him along the line to say, "This is a clinical audit report and we wouldn't, as a matter of course, publish that.

You wouldn't deliberately give false information to the Minister telling him it contained confidential patient information?-- No.

So, you are able to say categorically that you did not say such a thing?-- I'm confident that I didn't, yes.

1

Did you discuss with him on the 22nd of March 2005 that the report could not be released publicly, then, because it had not yet been completed?-- He had already spoken to Dr Fitzgerald. He was aware that the report had not been completed, I think, on 22 March.

And do I understand your evidence to be that you never received any follow-up communication from the Minister or the Minister's staff asking whether the report had been completed?-- I don't - I don't believe that I did personally, no, and I made one assumption, and that was because the Minister had been talking and dealing separately with the Chief Health Officer, that that report would go via that channel. If the Minister's staff required it, they would have been able to go through the C and D departmental liaison officer to seek a copy, but wouldn't have necessarily come-----

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20

So, when did you first become aware that the Minister hadn't received a copy of the report?-- I'm not aware that the Minister or his staff, more than the Minister, haven't received a copy of the report.

So, you had the assumption that he would have received a copy from Dr Fitzgerald?-- Yes.

And you never heard anything that led you to question that assumption?-- Not that I recollect, no.

30

The 24th of March 2005, you received the memorandum from Dr Fitzgerald?-- That's correct.

Along with the completed report?-- That's correct.

And the memorandum - you have a copy in front of you - that's Exhibit SMB3 to your statement?-- Yes.

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And do you also have available to you a copy of the audit itself - Exhibit 230?-- I'm not sure.

I will hand up a copy of the report for your assistance?-- Thank you.

Now, I just want to get an understanding of your state of mind, given the information that was made available to you at the time - so, the sort of information that was made available to you on 24 March compared to what subsequently came?-- Subsequent to the 24th of March?

50

Yes?-- Yes.

To your knowledge. That's not a question, but if we could just go to these two documents, because they are the ones that you receive on 24 March?-- That's right, yes.

Now, I think you have commented in your evidence on a number of occasions that there was really nothing in the report itself which indicated any urgent need to dispense immediately with the services of Dr Patel at Bundaberg Base Hospital?-- That was my view, yes.

1

And, indeed, is it fair to say that, for example, page 5 of the report, which purports to be an identification of staff opinion-----?-- Yes.

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-----that whenever Dr Patel is referred to, not by name but his position as divisional director, the comments are only positive?-- It would seem to be the case, yes.

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For example, in the third row of the table, "The director of this division is accessible to GPs, easy to contact"?-- Yes.

1

"Has a good work ethic, heavy workload"?-- Yes.

"Undertakes most procedures. Carried out excellent work triaging in ED following the tilt train disaster"?-- Yes.

Bottom row, "Keen to be involved in activities such as ASHS accreditation"?-- Yes.

10

And there's other examples that follow. But if you then go to page 7 of the report under the heading, "Discussion of staff feedback.", which purports to summarise the result of the audit, there's reference to, "Staff having enjoyed their work at Bundaberg Hospital and only relatively recently issues of concern arising"?-- Yes.

"Staff demonstrating their keenness to provide health services of a high standard"?-- Yes.

20

"As well as raising concerns, some staff make complimentary comments about the Divisional Director's commitment to teaching and mentoring of junior medical staff." So once again some positive comment regarding Dr Patel highlighted?-- Yes.

And then, "A significant improvement in efficiency, especially in the operating theatre", which was Dr Patel's venue of work, was it not?-- That was, yes.

30

"In meeting elective surgery targets with significant reductions in waiting times for surgery." Now, there's certainly nothing in this report that rings any alarm bells about Dr Patel at all, is there?-- Well, there was nothing that I gleaned from the report that would have raised the alarm for me to cease him operating immediately, no.

All right. Well, then, if you go to page 11 of the report for the summary, it refers to a number of issues and concerns raised with the reviewers during the audit. There's no particularisation of those being concerns about Dr Patel's clinical competence; that's so?-- That's so.

40

It goes on then, "In addition, positive comments were made about the general surgical service, including the commitment of the Director of Surgery", and it goes on to make positive comments along the lines that I have already taken you to about Dr Patel's commitment to teaching throughout of elective surgical cases, increased level of efficiency in the operating theatres; that's so?-- Yeah, yeah, I can't - find it below.

50

This is the first paragraph under the heading, "Summary", right at the top. Okay?-- Sorry, yes, I'm looking further down. Okay. Yes. All right.

So once again that seems to paint a rosy picture about Dr Patel at the Bundaberg Base Hospital?-- That's so, yes.

1  
And then it summarises the concerns of staff into two main groups, which is being procedures undertaken outside the scope of Bundaberg Base Hospital and, as you understood it, Dr FitzGerald was telling you contemporaneously that that matter had been addressed?-- That's correct, yes.

And then the second group of concerns, "Lack of good working relationships."?-- Yes.

10  
And the way that was described in the report was that - or included comments that, "The Director of Surgery", that's Dr Patel, "has high standards and this has led to some degree of conflict with staff"?-- Yes.

So, the report on its face was suggesting one of the difficulties is that Dr Patel had high clinical standards?-- On face value, that's what it says, yes.

All right. And then, of course, there's a discussion which in no way includes any suggestion whatsoever that Dr Patel's clinical competence is such that he should be suspended from further surgery?-- That's right, yes.

20  
And then the last page - or page 12 - at least before the appendix, there's recommendations. None of those included any further restrictions upon Dr Patel's clinical undertakings?-- No.

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And also there was no recommendation that any further investigation was warranted in relation to any of Dr Patel's practices?-- That's correct.

Or any further investigation recommended in relation to the Bundaberg Base Hospital?-- That's correct, yes.

Okay. Now, you did receive by way of a covering memorandum the document which is SMB3?-- Yes.

40  
And in that memorandum from Dr FitzGerald there's reference to firstly the high surgical complication rate of Dr Patel as compared to his peer group?-- Yes.

There's the opinion expressed that, "Dr Patel's judgment in undertaking procedures outside scope of practice and delaying the transfer of patients to a higher level facility is below that which is expected by Queensland Health."?-- Yes.

50  
Recommendation that these matters should be examined by the Medical Board?-- Yeah, Dr FitzGerald would take the issue to the Medical Board, that's right.

Did you ask Dr FitzGerald just so that you could properly understand the situation in your role why the report itself didn't contain any recommendation that the matter should be investigated by the Medical Board?-- No, I didn't.

Did you ask him why the report didn't deal with concerns as to



Dr Patel's judgment being less that should be expected of a Queensland Health employee?-- No, I didn't. As I said earlier, he described him as - you know, not as bad as some and better than others.

1

You have got this report, on the one hand, which when it deals with Dr Patel only says positive thing?-- Yes.

And you have got this covering memorandum saying that his judgment is below that which should be expected by his employer?-- Yes.

10

You didn't note that discrepancy?-- I had - as I said, I had a discussion with the CHO for him to talk to me about who - what Patel was like and while that - that's what he says in the memorandum. His description of him is probably a combination of both the memorandum and what's in the report.

COMMISSIONER: They contradicted one another?-- Yes, you are right.

20

MR ALLEN: You didn't ask for any reason for that apparent contradiction?-- No, I didn't.

See, one that immediately perhaps rises for consideration is that the report's being completed on its face some time in March 2005?-- Yes.

The body of it completed perhaps by the 22nd of March 2005, but then the memorandum is only written on the 24th of March 2005. You didn't ask whether something might have occurred that could have changed the tone of the respective documents?-- No, I didn't, no, because the conversation was very - on the 24th was very similar to the conversation that I'd had with the CHO on the 22nd.

30

See, that was the event that really occurred, hadn't it, the disclosures in Parliament on the 22nd of March in Parliament?-- As I said in my statement, I don't believe that I was aware of Patel until the 22nd of March.

40

No. But on that date you were told by Dr FitzGerald the report was almost completed?-- Yes.

And, indeed, that he was only waiting some further information regarding infection rates?-- That's right, yes.

Which then become appendix 1 to the report?-- Yes.

So, you didn't seek to query Dr FitzGerald, "Well, hold on, is - had you written one thing about Dr Patel before things become public and then you have added this memorandum after things become public."?-- No, I didn't think - I didn't think to do that, no.

50

It didn't occur to you that was a matter worthy of your investigation?-- No, sir, I have to say no, because, as I said, when I discussed it with Dr FitzGerald I did not get the

sense that they are things that needed to be done immediately.

1

One of the parties I took you to in summary - excuse me - discussion - yes, discussion of staff feedback at page 7 of the report, there was that reference in the report itself to, "Only relatively recently have issues arisen which have caused concern"?-- Sorry, which?

That's towards the top of page 7 of Dr FitzGerald's report?-- Yes, okay.

10

In the first sentence?-- Yes.

But then in this memorandum of the 24th of March, we see in the last paragraph, "The executive management team at the hospital does not appear to have responded in a timely or effective manner to the concerns raised by staff, some of which were raised over 12 months ago."?-- Yes.

Well, the two statements are completely contradictory, aren't that they?-- Yes, they are.

20

Did you ask Dr FitzGerald about that apparent contradiction?-- No, I didn't.

For the first time we get criticism of the executive management at the hospital in this memorandum, pointing out that complaints have been raised 12 months before?-- Yes.

30

But there's nothing in the report itself along those lines?-- No.

You didn't see that as such a significant contradiction you might demand an explanation from Dr FitzGerald?-- No, I didn't seek to challenge Dr FitzGerald. I believe he's an eminent person who would have given me the right advice. I didn't actually seek to challenge the veracity of what he was telling me.

40

There wasn't some type of culture within Queensland Health in the executive that bad news was not to be communicated up the train if it could be avoided?-- No, quite - no, that's - quite the opposite. The no surprises rule was - is - well, has two facets to it. One is to say we each know when things are wrong and we know - you know, in a proper timeframe, and the second facet is fundamentally if there are good news opportunities for the Minister then they should be communicated as well. So, it's a two - it's a double-barrelled policy. No, I don't think that's the case. I would have believed if Dr FitzGerald, as I said this morning, had believed that Patel needed to cease operating immediately, he would have told me that and he probably would have told me that before - you know, once I returned from leave, rather than waiting for an issue to be raised in Parliament.

50

So you don't believe that this culture of Queensland Health at

that time would have been such that Dr FitzGerald would have been reluctant to communicate in his report to you, for example, that the executive management at the hospital had failed to act appropriately on concerns which had been raised 12 months earlier?-- No, I don't - well, I don't believe so. I mean, I guess you'd have to ask Dr FitzGerald that.

1

Well, I'm asking you, given your knowledge as a manager-----?-- Yeah.

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-----in this system, do you believe that such a communication would have been discouraged by the culture?-- No.

That such a thing is not to be communicated unless there's no other choice, for example, once the matter blows up in Parliament?-- No.

No. All right. Now, by the time that you went to the staff meeting at Bundaberg on the 7th of April 2005-----?-- Yes.

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-----the report was well and truly complete as at the 24th of March 2005?-- That's correct, yes.

And you and Dr Nuttall addressed the staff meeting?-- The Minister and I, yes.

Now, Mr Nuttall's evidence is that during that meeting he was asked some questions about Dr FitzGerald's report?-- Yes.

And that he answered by saying that the report could not be published for a number of reasons. Do you recall the Minister - then Minister explaining to the meeting why the report would not be released publicly?-- Not off the top of my head.

30

Well, his evidence, according to paragraph 28 of his statement, is that it could not be published for a number of reasons, including that it was incomplete?-- Yes.

Do you recall Mr Nuttall saying that the report was incomplete?-- I don't recall those specific - I mean, he may well have said. I - I can't say yes or know.

40

Why can't you say yes or no?-- I can't recall whether he used those exact words.

But if you heard him say that, you would have immediately corrected him, would you not?-- Not in front of the public meeting I wouldn't have, no.

You would have permitted him to give false information to the meeting?-- I would have taken him aside - if I'd heard him say that.

50

So are you saying he didn't say that?-- No, I'm not saying he didn't say that, I am just saying I didn't hear him say that.

This meeting, were you both sitting next to each other or standing?-- No, sir, we were standing - there was - it was a

very big meeting, large number of staff. We were sort of - I don't know how far away the Minister and I were, but while he was talking I was basically watching the meeting. I mean, I - I don't want to sound wrong, but, I mean, I didn't necessarily listen to every word the Minister said.

1

Weren't you both addressing the meeting?-- Well, he was going to address the meeting first and then I was going after him, yes.

10

Where were you when he was addressing the meeting?-- I was in the meeting.

In the meeting?-- Yes.

Were you in the audience?-- No, I was standing in proximity to him.

How far away?-- Oh, I'm - close. I don't know how close.

20

A few feet?-- Probably - no, I think - well, probably. I honestly can't remember how close I was to him. I was - stood back from him to let him talk. I wouldn't have been standing at his shoulder.

And you would have been listening to what he was saying?-- Most of the time, yes.

What were you doing the other time?-- I was catching the meeting and the - part of problem - part of the job is while one person's talking the other person's watching to see what sort of feedback you are getting off the floor, you know, are people expressing concerns. It's not just about the verbal communications of what's happening at the meeting and what the Minister's saying, it's really much more about what's happening in the meeting - sorry, how people are reacting to that. It's not just simply a narration. It's actually an address to the staff.

30

So you can't say whether Mr Nuttall told the meeting that the report couldn't be released because it was not complete? You can't say that one way or the other?-- I can't say definitively that he said that, no.

40

COMMISSIONER: Had you heard him say that you certainly would have remembered it, wouldn't you, because you knew it was wrong?-- Commissioner, if I'd heard it - the answer is yes.

Well, then you didn't hear him say that?-- Say again?

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Well, then, you did not hear him saying that?-- I did not recall him saying that, no.

No. He did not say that because you were standing next to him. You must have heard what he said. If he'd said it, it would have stuck in your memory, surely, as something which was plainly wrong and misleading?-- Commissioner, I - what I'm saying is I didn't necessarily listen to all the things

that the Minister said. That's what I am saying.

1

You have said that before. All right.

MR ALLEN: Do you recall whether Mr Nuttall said to the meeting that in the absence of Dr Patel's version of events the report could not be completed?-- He - he probably - I don't know. I can't recall exactly what the Minister said at that time. He may have said that at the time, yes.

10

Well, do you think that would have provoked you to say, "Oh, excuse me, Minister, the report is complete."?-- No, because I was going to talk after him. I-----

Could you-----?-- Sorry.

Did you hear Mr Nuttall say that one of the reasons the report could not be released was that the report referred to individuals by name?-- No, I don't recall him saying that specifically, but I - I do recall him talking about the fact that people could be identified from the report. That would be individuals, I guess, is what he's talking about.

20

The report didn't refer to any individuals by name?-- No, but in terms of staff - it indicated by staff you, as you quite rightly point out, that people are mentioned by role rather than name, but - I mean, you could identify people by name. So, it's ordinarily you don't - you don't publish those things.

30

Well-----?-- It's fairly - you don't public clinical audit reports.

The divisional director was identified by position?-- Yes.

So was the concern that he could be identified from that report, Dr Patel could be identified and, therefore, it could not be released publicly?-- No, the issue - I mean - and I don't - I can't talk to the Minister's knowledge of understanding, but it's not usual for us to release clinical audit reports. It's not the norm.

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COMMISSIONER: You have said that many times, but-----?-- Yes, sir.

It doesn't seem to answer the questions you are being asked?-- Well, I'm - maybe I'm misunderstanding the question, Commissioner. Could you-----

MR ALLEN: Did Mr Nuttall address the meeting that one of the reasons this report could not be released was that the report referred to individuals by name?-- I honestly don't recall him saying that.

50

Do you recall Mr Nuttall saying at one point, "The only way that we could stop this rubbish and stop Mr Messenger was debate him out of the next election."?-- No, I don't recall that.

Are you able to say one way or the other whether that was said or not?-- I don't think it was said. I mean, I don't think it was said.

Do you recall saying at any point that, "No decent doctor would want to come to Bundaberg to work in such circumstances"?-- I don't - I don't recall the words I said but it's probable that I did say that, yes.

Do you recall being asked by someone at the meeting whether you were saying that nothing could be done regarding Dr Patel?-- Not specifically. I mean, unless there's a transcript of it. I mean, I - there was - I don't recall specifically saying that or answering that question. There were certainly questions around - you know, if that's a specific question, I'm not sure, but there were certainly questions around - you know, what would happen, can Patel respond, and we were saying at the time, "Well, you know, it's difficult to go forward if he can't respond", and I talked about that early in the day in terms of him getting access to any further follow-up around what would happen in Bundaberg.

See, I suggest you were asked a question to that effect and you responded by saying, "How are we going to get him back from America now"?-- It's probable that I said that, yes.

You didn't have to get him back from America to provide him natural justice, did you?-- No, but I believe - well, the Commissioner asked me that question - I think the same question this morning, and I guess the answer in hindsight is no, but at the time we are saying, well, we really wanted him face to face to be able to follow up with him what's happened to the patient cohorts he operated on and what decisions he made. Otherwise, you have to rely on basically the clinical audit of paperwork without being able to understand necessarily where he's coming from. I mean, I guess the answer in retrospect is no, but at the time that - I believe that was right.

I suggest the tone of the comments you made to the meeting were supportive of Dr Patel and his right to natural justice?-- I would support the right of anybody to natural justice, not just Dr Patel.

The tone and effect of your comments were critical of the way that the matters had been ventilated in the media?-- I have - the answer to that is probably yes. The meeting by this stage - I mean, as I said at the very start, sir, to go into - I don't want to drag it on, but - I mean, the intent was really not to go to Bundaberg and engage in a major confrontation. The intent was quite the opposite. It was to go there to reassure the staff they had our support. It was very clear once we - that meeting started that, in fact, there was a lot more feeling and hostility of the - from the staff than we had anticipated or been led to believe, so the meeting probably and I - as I said in my statement, probably contributed to that by interchanging words, which shouldn't have been

interchanged. But the meeting became a very difficult meeting.

1

The clear effect of the message given to the staff was Dr Patel has left the country, the report won't be released, and that's the end of it?-- No, that's not true. We certainly said that Dr FitzGerald would be back the following week to brief the staff.

On his report?-- But - to interact with his staff on his findings and that would give the staff the opportunity to get that feedback, which you asked me about earlier. I mean, that's the normal - the normal process would be the CHO would go back and follow up his audit report at the start.

10

He gave them a bit of feedback as to what his findings were, but not provide them with a copy of the report?-- That's correct, yes.

What's the purpose of having clinical audits if the employees of the hospital don't get the full benefit of what's being discovered?-- The audit report had already been distributed to the District Management at Bundaberg before we arrived.

20

But the District Manager isn't on the floor dealing with patients?-- No, the District Manager's the accountable person for the district and he, therefore, would actually be able to distribute it to the appropriate people. I mean, I don't know who they are all. Dr FitzGerald's been up there. He's going to come back and meet with whatever staff it's appropriate for him to meet with, and the District Manager as a copy of the report. So the report hasn't been left on a shelf somewhere, it's actually alive and well in the district.

30

But Mr Leck isn't given authority to distribute the report to anyone he feels like?-- He can in conjunction with the CMRO. The order of the report is to give feedback to the District and the District can use that to the best way possible to improve their services. What you are talking about is not publishing the reports, but the report was available and in fact my belief is that it was actually in the district at the time.

40

Why shouldn't it be available to the nursing staff-----?-- Well-----

-----and the doctors who work at the hospital?-- I'm not saying it wouldn't have at the end of the day. It could have been. It's up to Dr FitzGerald and the management to go back and work through the report with the staff and their findings and any other review they want to do.

50

Could you see any good reason why someone in Dr FitzGerald's position should decide that the report itself will not be available to the medical and nursing staff?-- No, not particularly - not - certainly not that report, no.

Nothing was said at that meeting by yourself or the Minister

to indicate that there might be some further review team appointed to further investigate matters regarding Dr Patel?-- That's correct.

1

And, indeed, do I understand your evidence to be that you only came to the decision to do so because of really two factors, the extent of feeling you experienced at the meeting and the discovery confirmed by yourself of Dr Patel's United States registration history?-- Yeah. I think the first one was the major driver. The second one was certainly an issue but, I mean, it was very clear to both the Minister and myself when - after we left Bundaberg and we talked about the meeting that there was certainly a lot more involved and a lot of anxiety if you like - you know, quite open anger really from the staff that things needed to be done and that was the conversation that we had on the night back from Brisbane.

10

But that anger at the time didn't provoke any promise from you to consider any further review?-- Not - I wouldn't have - I honesty wouldn't have committed in an open meeting without discussing with others what we would and wouldn't do. I mean - but it certainly had a significant impact on myself and the Minister in terms of taking further action, yeah.

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Could it well be the case that if not for the discovery made and confirmed by yourself on the 7th of April 2005 of Dr Patel's chequered US history that that further review may never have occurred?-- No, I don't think that's the case, because when we - when I discussed it on the plane on the way back with the Minister, the Minister did not know what I'd been told by Dr Keating, and he was already talking about we probably needed to do a board of investigation. So we had a preliminary investigation at that time. So, he - I think it was going to go where it was going to go. I mean, what certainly precipitated the need was really around the fact that we'd been there, we had a view, we'd gone up, we got a very different view from the staff on the ground certainly from that meeting, and the fact that new information had come to light. So that was really the order.

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The Google search by yourself?-- Yes.

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That's what put it beyond doubt that there'd been some further investigation?-- I didn't know - as I said at the start, I didn't know what that - what that - this is why I rang Gerry FitzGerald and I said, "Can you take - you need to take that to the Medical Board and take that forward", because - I mean, it could have been - and I don't know this - it could have been that Patel was still registrable even with those sort of restrictions. Restricted practice doesn't necessarily stop registration and that would be an issue you would have to ask the Board, not me, but that was - that was certainly a major - look, I'm not trying to underplay. It was certainly a significant issue, but the thing that really precipitated us was the reaction from the staff. We completely - I would be very honest with you. We completely misread the situation.

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Because, indeed, in your evidence earlier today you commented



that at that time you discovered that there was, in fact, a lot more to it, that's Dr Patel and Bundaberg-----?-- Yes.

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-----than was in Gerry FitzGerald's report?-- Yeah, and in conversations I'd had with him, yes.

Or indeed memorandum?-- Well-----

Or any conversations with him?-- Yes, yes.

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So what you discover on the 7th of April 2005 is that you haven't yet received the full picture as to the extent of the problems at Bundaberg?-- That's correct.

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And that became remarkably clear to you as something of a shock?-- I think if you were at the meeting you would have seen that it was remarkably clear and the force of the staff and the feeling of the staff was very clear.

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So did that then cause you to question Dr FitzGerald as to the terms of his report, memorandum and discussions, this concern that you hadn't been presented with the full picture up until that date?-- I didn't challenge him in that regard. We did talk - when we came back I rang him that night and said we'd been in Bundaberg and he needed to chase that up. I then had a further conversation, clearly with the Minister, around what actions were taken and then that review would then report back to Dr FitzGerald, yes.

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Right. So you didn't take him to task about the fact that his report seemed to be in neutral or complimentary terms regarding Dr Patel and that his subsequent memorandum didn't provide you with the full picture, nor did any of his discussions with you?-- Not particularly, no.

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All right. Just finally, you've explained that you spoke to Mr Nuttall regarding your findings in relation to Dr Patel's registration restrictions in the United States on the Saturday, 9 April?-- Yes.

And that you also had a conversation with him regarding that on 12 April 2005?-- That's correct, yes.

When you were driving from Atherton Hospital?-- Yes.

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Are you sure about that?-- Yes, I'm pretty sure, yes. We were - I'd been in Yarrabah on the 11th, and the Minister then came up on the night of the 11th to Cairns. He came back into Yarrabah, then we went up to Atherton, and it was when we were coming back after we'd been to Atherton that Jim O'Dempsey rang Jill Pfingst, who was one of my officers in the car, asking about - saying, I think, that in fact The Courier-Mail had rung him around Patel and his registration, and I then went through the whole process again with Jill. I was driving, the Minister was next to me, and there were two in the back. One of the Minister's people and Jill were in the back, and I just went through with them what had happened.

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Okay. So you're driving the car, the Minister's in the front passenger seat?-- Yes.

And Jill Pfingst and Cameron Miller are in the back?-- Milliner, yes.

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Milliner, sorry. So that's a staffer of the Minister and Ms Pfingst from your staff?-- Yes.

And what, there'd been some communication with Ms Pfingst from a journalist?-- No, from the Medical Board.

From the Medical Board?-- Not from the Board itself, from Mr O'Dempsey.

Indicating that a journalist had contacted him?-- Yes. 1

And so what information did you then explain to Ms Pfingst in the car?-- I went back over the fact that we'd done a Google search, that it had showed that Patel had limited - had restricted registration - had given up registration in New York and had limited - restricted registration, and that he - and that had gone back to the Medical Board. Basically that was the conversation. 10

Did you indicate that his registration had been restricted in relation to being unable to perform certain types of surgical procedures?-- I can't recall. I don't remember that bit. We just - I know we talked generally. I would have included it. I honestly can't remember the total detail.

Did you know that by that stage?-- That his-----

That his registration had been restricted in regards to not performing certain procedures?-- Yes. 20

For example, operations on the pancreas?-- Yes.

So you knew that at that time, but you don't know if you descended into that much detail during the car journey of the 12th of April?-- No.

And this occasion of the drive from Atherton Hospital was certainly before The Courier-Mail first published a story concerning a Google search by a journalist in relation to Dr Patel?-- Yes, I think that was - from memory, The Courier-Mail published on the 13th and this was the evening before, after we'd finished at Atherton Hospital, yes. 30

Yes, thank you.

COMMISSIONER: Mr Mullins?

MR MULLINS: Very briefly, thank you, Commissioner. 40

CROSS-EXAMINATION:

MR MULLINS: Dr Buckland, my name is Mullins. I appear on behalf of the Bundaberg Hospital Patient Support Group. Just quickly on that chronology, you discovered on the 7th through Dr Keating about Dr Patel's registration in the United States?-- That's correct, yes. 50

And on the 8th you advised the Minister of the problem with the registration. That's correct?-- I believe so, yes.

You say at paragraph 39 of your first statement, "From the moment Dr Keating passed on the fact of his restricted

registration I began to believe that the problem was more extensive than was known."?-- Yes.

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"If I had known this before speaking to the staff at Bundaberg I would have consulted with the Chief" - Dr Fitzgerald?-- Yes.

"And had a very different approach to the staff meeting in Bundaberg."?-- Yes.

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"Had a very different approach to the staff meeting in Bundaberg." That's correct?-- That's correct.

The discovery of that knowledge, that is the restricted registration of Dr Patel, was very important information?-- It was important information because it fitted more in keeping with the out-of-scope operations that had been performed in Bundaberg, yes.

And you would agree that that would be information that the patients would like to know?-- I think it's information everybody would have liked to have known, particularly the Board.

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The patients have this question: when were you planning on telling them?-- About the restriction on Dr Patel?

Yes?-- Once - I mean, the first thing I had to do was obviously go back and check with the Board what the implications of that were. As I said, I'm not - I didn't - I knew what had happened, but I didn't know what the impact of that might have been, and then put in the full review, and then the following week, as you know, we then put in a major support team to try to work through all the patients of Dr Patel's who'd been injured.

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Yes, but my question was did you have a plan about when you were going to tell the patients that Dr Patel may not have been qualified at all?-- The short answer is not having thought through that at that stage, not at that point in time, no.

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Thank you.

COMMISSIONER: Thank you. Ms Dalton?

MS DALTON: Thank you, Commissioner.

CROSS-EXAMINATION:

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MS DALTON: Could Dr Buckland be provided with the second two volumes of annexures to Mr Waters' statement? I want to take him to some issues relating to waiting lists.

COMMISSIONER: Yes.

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MS DALTON: Dr Buckland, I think you will find in there some transparent tags with numbers on, and I'd like you to go to number 21, if you can find it?-- Is this Walker?

Yes?-- Sorry, I thought you said Dr Waters.

I probably did?-- Twenty-one?

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Twenty-one, please?-- Yes.

See there the Cabinet decisions and information submission from 12 April 1999?-- Yes.

All right. Now, I'll tell you, because I don't think you will know from the position you were in at that time, this is the first of the information submissions that Ms Edmond took to Cabinet about the waiting list reduction strategy?-- Okay. No, I didn't know this.

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I'll get you to look at page 3 of the - it's got "3" at the top of the page anyway?-- Yes.

It's part of the information submission to Cabinet. Have you got that?-- Page 3, yes.

See at point 1 they talk about the Government's eight point plan to cut waiting lists?-- Yes.

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And then point 2 is a further element was added to the eight point plan. "This element is the collection of waiting times for specialist outpatient appointments."?-- Yes.

Were you aware at that time of what was being done as a practical matter to put that policy, that is the collection of waiting times for specialist outpatients, into practice?-- No, I don't recall. I mean, I think when - this was April '99 I was still in the districts. I hadn't even arrived in Corporate Office at that stage.

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All right?-- So I don't recall it anyway.

You don't recall it then?-- No.

And again I'll ask you to take my word for this, but as we track these things through each quarter, these information submissions that go to Cabinet-----?-- Yes.

-----those two points, one and two, get repeated at the beginning of each of the information submissions?-- Okay.

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And two in particular - neither of them change in their terms?-- It's interesting it talks about waiting times as opposed to waiting numbers.

Yes, it does say that. Well, the point I was going to draw your attention to is that it talks about collection rather

than collation or publication?-- Yes.

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Now, again we can look at the documents if you like, but the wording stays the same right through to the end. After you moved into the position of General Manager Health Services, or after you began acting as Director-General-----?-- Yes.

-----were you aware of any direction from the government as to its wish that anything more than a collection take place?-- No, I've never been aware of any request to publish.

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Or to collate indeed?-- No.

Because the collection from the hospitals was all manual data, wasn't it, during your time?-- Yes, it was. It was that. There was an attempt to try to make it electronic, and I think they spent a couple of hundred thousand dollars trying to do that and it failed.

So that you could collect it even from each of the individual hospitals, but it was a separate job again to collate it so that you had times for the state - patients waiting across the state?-- Yes. It was a manual - I think in those days even it was manually collected by the districts to start with, and then manually - would have required manual collation within the department as well.

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All right. Have a look at the page that's got "7" at the top, and point 33. That foreshadows a document called, "Guidelines for the Management of Specialist Outpatient Waiting Lists"?-- Yes.

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If I take you to the next tab which is 22, and the first - you will find that's another Cabinet decision and information submission?-- Yes.

And the first annexure to the information submission to Cabinet is, "Guidelines for the Management of Specialist Outpatient Clinic Waiting Lists"?-- Yes.

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Have you got that? Now, I think this is a document that Dr Stable drew up as Director-General, or took charge of anyway as Director-General, but I wanted to ask you - and I think later in these documents we see that you as Director-General revamped it?-- Yes, '04/'05, yes.

Do you recall that?-- Yes.

If you look at page 2 of that document, which is quite a number of pages in?-- Yes.

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There's a heading "Referrals", and then there's a heading, "Urgency category"?-- Yes.

Is the way that this policy worked that once a patient was referred to a specialist clinic, say by the GP, when that referral came - the written referral, not the patient - when the written referral came to the hospital there was an officer

in the hospital who was supposed to assign a Category 1, 2 or 3 to that referral?-- Now, my understanding - this is not a universal understanding, but my understanding in most of the places was that they would be reviewed - outpatient referrals would be reviewed either by the Director of the unit or somebody working for them to be able to give them a categorisation, yes.

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So the patient hadn't turned up, just the piece of paper?-- I think that's right, yes.

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So you say that your understanding was that it would - if it was a urology referral, it would go to that department and that department would have somebody in charge of categorising those patients?-- Yes, that's my understanding, yes. I mean, it's not first-hand. It's only what I-----

And is it your understanding that that's what this policy required?-- My understanding is the policy says from what they say comes in, then the patients are categorised on urgency, yes, as a 1, 2 or 3.

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Okay. And the names of the categories are the same as the categories that are used after they see a specialist, because once they see a specialist they get a categorisation too?-- You mean if they needed surgery?

Yes?-- Then they would go on - in fact the categorisation is the same, yes.

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Same words used?-- Yes.

But so the patients on the anterior waiting lists were supposedly categorised 1, 2 and 3?-- That's what this policy says, yes.

Do you know if that was widely implemented?-- I honestly can't answer that in great detail. As I said, my understanding was in most of the places that the patient referrals from general practitioners or others would be reviewed by someone in the clinic, and it may well - usually was - I don't want to be too - overstate it, but it was usually then one of the clinicians who would review it and say, "This person needs an urgent appointment. This one can wait." So there was sort of a triaging system there. Whether this was applied universally in a paper documentation sense, I'm not so sure.

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All right. Can you go to tab 25?

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COMMISSIONER: Before you do that, I think it's a convenient time to finish, Ms Dalton. How much longer do you think you'll be?

MS DALTON: Ten or 15 minutes at the most.

COMMISSIONER: Mr Applegarth, you've been busily gathering information about other people.

MR APPLGARTH: By reports-----

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COMMISSIONER: What's your report? How long?

MR APPLGARTH: Mr Diehm wants to cross-examine. He thought he might be 10 to 15 minutes.

COMMISSIONER: Yes.

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MR APPLGARTH: I don't think anyone else has a special interest in cross-examining, but someone can correct me if I am wrong, and then my re-examination will be less than two minutes.

MR DOUGLAS: I did raise with you, Commissioner, last week the prospect of Dr Buckland possibly finishing today. It's a matter for you, Commissioner, but-----

COMMISSIONER: I don't believe-----

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MR DOUGLAS: The prospect was raised last week.

COMMISSIONER: I never accept counsel's estimates of time for cross-examination.

MR APPLGARTH: If I promise to be less than two minutes, would that help?

COMMISSIONER: We'll see how you go tomorrow. I'll see if I can hold you to that tomorrow. Well, it looks like somewhere between half an hour and an hour, I suppose. That gives us some idea about witnesses tomorrow. I'll adjourn until 10 o'clock.

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THE COMMISSION ADJOURNED AT 4.32 P.M. TILL 10 A.M. THE FOLLOWING DAY

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