Transcript of Proceedings

THE HONOURABLE G DAVIES AO, Commissioner

MR D C ANDREWS SC, Counsel Assisting
MR R DOUGLAS SC, Counsel Assisting
MR E MORZONE, Counsel Assisting
MR D ATKINSON, Counsel Assisting

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 29/09/2005

..DAY 14

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

THE COMMISSION RESUMED AT 10.01 A.M.

COMMISSIONER: I have had, as I indicated I would do, the amended Terms of Reference incorporated in a consolidated document so that we now have one which is Terms of Reference as amended, and I propose to make that exhibit 1A in this inquiry.

ADMITTED AND MARKED "EXHIBIT 1A"

COMMISSIONER: I have also received a letter from the Premier this morning, apparently in response to my intimation yesterday, and I will make that Exhibit 388.

ADMITTED AND MARKED "EXHIBIT 388"

COMMISSIONER: Now, with respect to Mr Leck, Mr Freeburn, have you distributed those doctors' reports, including the amended version of Dr Nothling's?

MR FREEBURN: We distributed to the parties the complete version.

COMMISSIONER: I thought you were also going to - yes, I know, but did you distribute-----

MR FREEBURN: And the proposal was that we make the slightly modified version an exhibit.

COMMISSIONER: Yes, I know, but I assumed you were going to distribute that to the parties also beforehand to ensure they are happy with that.

MR FREEBURN: I am told they have been.

COMMISSIONER: No-one has any objection to that? All right, I will make - I will do this in one bundle. I will make the reports of Dr Jeremy Butler, dated 8 June 2005, 20 June 2005, 17 August 2005, and 14 September 2005, and part of the report of Dr Martin Nothling dated 22 September 2005, Exhibit 389.

ADMITTED AND MARKED "EXHIBIT 389"

COMMISSIONER: I had in mind tentatively that I would not make any decision on whether Mr Leck should be called, or even hear argument on it, until Dr Nothling had been called to give evidence. But I haven't formed any final view about that, and I'd welcome the views, or perhaps I should say submissions, from the parties. Does anyone have any submissions to make about that?

MR ANDREWS: I do, Commissioner.

COMMISSIONER: Yes.

MR ANDREWS: It is my submission that it would be in the public interest to explore with Dr Nothling the effect - the issue of just what deleterious effect there might be on Mr Leck if he were called, and to explore also the issue of whether, if Mr Leck were called in some less confronting environment, that also is feasible, and the issue of whether Mr Leck might still be prevailed upon to give a statement that would have any reliability, even if he were hypothetically not to be publicly examined upon it.

COMMISSIONER: Yes. Anyone else have any submissions? Mr Mullins?

MR MULLINS: We support that submission. Can I just add that the current argument as it is presented in the submission by counsel for Mr Leck-----

COMMISSIONER: We don't have this before us. Do you have any objection to that letter being an exhibit, Mr Freeburn?

MR FREEBURN: No, Commissioner.

COMMISSIONER: I will make the letter from Hunt & Hunt, dated 27 September 2005, Exhibit 390.

ADMITTED AND MARKED "EXHIBIT 390"

COMMISSIONER: Yes, Mr Mullins?

MR MULLINS: That submission is framed as presenting a reasonable excuse to a failure to attend a 5(1)(a) summons, which is attending the Commission of Inquiry to give evidence and, no doubt, be cross-examined.

COMMISSIONER: Yes.

MR MULLINS: The question that I have is whether a summons is currently on foot or whether Mr Leck has been served with a summons under 5(1)(b), (c) or (d) which provide for a number of alternative methods of giving evidence which may also be explored with Dr Nothling.

My submission is not only Dr Nothling should be called to be cross-examined about these issues, but counsel should be allowed to explore with him the prospects of Mr Leck providing evidence to the Commission of Inquiry under a number of different alternatives.

COMMISSIONER: Yes. Thank you. Well, I can't answer your question.

MR ANDREWS: I can, Commissioner. It was a section 5(1)(a) summons, that is to attend and give evidence. It is my submission that it would be appropriate to consider the other forms of summons perhaps after Dr Nothling is examined about the reliability of any evidence that would be obtained.

COMMISSIONER: Yes.

MR ANDREWS: Mr Leck's summons is presently returnable on Monday, but I submit it would be appropriate to excuse Mr Leck from attendance on Monday and to make his attendance subject to notification from counsel assisting.

COMMISSIONER: Yes.

MR ANDREWS: Dr Nothling's secretary has been contacted. Dr Nothling is currently not available and his computer is currently down and his secretary can't tell us yet what days of next week if any Dr Nothling might be able to attend without inconveniencing his patients.

COMMISSIONER: Thank you. Any other submissions?

MR ALLEN: Only one matter, and it is peripheral. The report of Dr Butler dated the 20th of June-----

COMMISSIONER: Oh, yes, there was an interview with Commission - Mr Andrews and I think a member of the Commission staff.

MR ALLEN: Yes.

COMMISSIONER: Mr Freeburn, do you object to that being provided to the parties? I won't make it an exhibit at this stage but it would be provided on a confidential basis. Do you have any objection to that?

MR FREEBURN: Can we see it first?

COMMISSIONER: Yes.

MR FREEBURN: Can we take some instructions about that?

COMMISSIONER: Yes.

MR FREEBURN: I don't anticipate there will be a problem.

COMMISSIONER: Perhaps you might take it during the course of the day. Perhaps you might let me know at 2.30 this afternoon.

MR FREEBURN: Will do.

COMMISSIONER: Thank you. Well, then, on the basis of submissions which have been made by Mr Andrews and supported by Mr Mullins, I am inclined to direct a subpoena to Dr Nothling, if that be necessary, and we'll arrange for Dr Nothling to give evidence. What about Dr Butler? Does anyone want Dr Butler in attendance? No, all right.

I should mention to you at this stage, although I don't believe it makes any difference, that I know Dr Nothling personally. He is a friend of mine. But I can't imagine that his credit is going to be in issue.

Mr Douglas?

MR DOUGLAS: Yes, thank you. Commissioner, I call Dr FitzGerald. He is in the precincts of the courtroom.

MR BODDICE: We seek leave to appear on behalf of Dr FitzGerald, Commissioner.

COMMISSIONER: Yes, thank you.

GERARD JOSEPH FITZGERALD, RECALLED AND FURTHER EXAMINED:

MR DOUGLAS: Doctor, your full name is Gerald Joseph FitzGerald?-- Gerard.

Sorry, I misread it. Gerard?-- That's correct.

You reside at an address known to the Commission?-- Yes.

You are a duly qualified and registered medical practitioner?-- I am.

And since January 2003 you have held the position of Chief Health Officer within the Department of Health in Queensland, is that so?-- That's correct.

For how long have you worked in Queensland Health?-- Since January 2003.

Prior to that, what was your broad history?-- Prior to that, for 13 years I was with the Queensland Ambulance Service, 10 years as Commissioner of the Ambulance Service. Prior to that I was a clinician working at the Ipswich Hospital for about 10 years and then residency at the Mater and the medical school.

A number of statements were provided by you to the previous Commission, Mr Morris' Commission?-- That's correct.

And they are in evidence in this Commission, I can tell you?-- Uh-huh.

They are exhibits 225, 226 and 227. And you have previously given evidence to the Morris Commission?-- That's correct.

There is a number of matters I want to ask you about and they focus upon the clinical audit which you undertook at Bundaberg in early 2005. You know that to which I refer?-- Yes.

Thank you. You commenced that audit in February 2005, is that correct?-- That's correct. We - well, we commenced work on it in January, following my return from leave, in terms of pulling together some material information.

Did you actually travel to Bundaberg in February?-- In February, that's correct, yes.

Before I embark on to that, is it correct to say that, in effect, en route to Bundaberg you travelled to the Fraser Coast Health Service?-- It was actually on the return back from Bundaberg.

Okay. So was that in March 2005?-- No, it was February.

So it was in February you returned?-- It was the same - it was the same trip as when we went to Bundaberg. I think, from memory, it was about the 12th or 13th of February.

For what reason did you attend at the Fraser Coast Health Service?-- That was to investigate a further complaint I had in regard to the death of a patient in transit from Hervey Bay Hospital to Brisbane.

Who requested you to attend at Fraser Coast?-- I think that had come from the - either the district manager or the medical superintendent on that occasion, supported by the line managers.

And you undertook investigation then?-- Yes, that's correct.

Did you produce a report in relation to that?-- I did.

Do you recall the name of that patient?-- It was a P369.

Thank you. If I can take you back then to the Bundaberg audit which you undertook, is it correct to say that your report was completed on the 24th of March 2005?-- That's correct.

You recall that the sequence was that after you returned from Bundaberg in mid-March 2005, some matters were raised in the House - in the parliamentary House?-- That's correct, yes.

By the local member for Bundaberg?-- Yes.

And you were canvassed by your superiors in relation to that?-- I was, yes.

In fact, on the 22nd of March 2005 you had a meeting with

Dr Buckland, the Director-General, in relation to that issue?-- I think so, yes. I can't remember the exact dates but I also had a meeting with the Minister that day, yes.

Two days later you completed your report?-- That's correct, yes.

You gave a copy of your report to the Director-General on that occasion?-- Yes.

Did you give a copy of your report to the Minister?-- I don't recall giving a copy to the Minister.

Is there any reason why you would refrain from giving a copy of the report to the Minister at that point in time?-- Oh, only that I report to the Director-General on those matters.

So there is no particular reason why you wouldn't give it to the Minister. Did you have any expectation that the Minister would be given a copy at some point in time?-- I would have assumed the Minister, or the Minister's office at least, would have been given copies, yes.

By whom?-- By the Director-General.

Was there any protocol in existence at that time in respect of clinical audits in respect of their dissemination to individuals within the health system?-- Certainly no written protocol. There were certain - how would you put it - expectations of clinical audit that this material should not be broadly available but only available to people who needed to know.

Well, who was within the coterie of persons within this informal protocol that would be the recipients of a clinical audit report?-- Usually the people who had - who were required to take some action in regard to it. In a-----

You have already identified - I interrupted you. I apologise?-- In a general sense. I mean, obviously it would be specific to the particular audit, particular type of audit.

Would a copy of the clinical audit always be given to the Director-General?-- I think so, yes, but it depends - the first port of call would be the person who - usually who had commissioned the audit.

In this particular instance, the audit was commissioned by the district manager?-- Yes, that's correct.

That was Mr Leck?-- That's right.

And, again, as part of this informal protocol, apart from the district manager or any other person who might have commissioned the report, and the Director-General, to whom would it ordinarily be disseminated?-- Nobody as a routine. It would usually be the people who were in line management who were required to know about the issues. So the only other

person - there would be the zonal manager and the general manager health services in that organisational structure.

Would it be correct to say that this protocol that you have identified, albeit informal, was one which was directed at a decision being made, having received the clinical audit report, as to whether or not to embark upon any further investigations?-- That's true and also to take whatever action was necessary.

Exactly. I was going to go one step further. It may be necessary, in your experience, to take preemptory action in relation to the subject matter in the event that any matter of grave concern was identified by the audit report?-- Yes, that may be appropriate.

It may even be necessary, perhaps, for example, to suspend staff in consequence of what was derived from the audit report?-- It may be necessary, yes.

And one of the measures that you believe was open - at the time we are dealing with this report, in early 2005 - if preemptory action was required was suspension of medical staff, but on full pay?-- Yes.

And there could be various graduations of that; a person may be suspended from undertaking particular types of activities-----?-- That's correct.

-----within his or her portfolio of responsibility?-- Yes, that's correct.

For example, in the case of a surgeon, the surgeon may be suspended or directed not to undertake particular types of procedures or a particular sphere of that surgeon's work?-- That's correct.

And, for example, if a surgeon was doing what surgeons do as part of their work, namely undertaking operative procedures, he or she might be directed to refrain until further notice from undertaking any operative procedure?-- That's correct.

That's not to say that that surgeon would be necessarily then precluded from undertaking other matters within the bailiwick of his or her activity, such as administrative work, perhaps even seeing patients in specialist outpatient clinic?-- That's correct.

Coming back to this particular report that you prepared in respect of Bundaberg, given the regime of limited dissemination that you have described, was there any reason for you to, as it were, pull any punches in the expression of opinion contained in your report?-- I would always have an expectation that the report would go beyond that small group of people, because - for other people would be required to implement or to comment on and implement certain aspects of it.

Well, by what means was that expectation founded? Are you suggesting that it might be leaked to someone else, it might be the subject of an FOI application? What was the foundation of your expectation?-- No, more the people would need to implement, for example if there was a recommendation there about improved systems and structures, then obviously there would be people involved at either hospital or State level who would be required to develop those. They would need to see that content of that material to know what they were commenting on and acting.

So what you are identifying is that you were careful to ensure, you believed when preparing reports such as this, that those to whom the report might be passed down the chain, had clearly expressed to them what you discerned as a result of the detailed audit which you undertook?-- Yes.

You wanted to make sure that they clearly understood what it was that you had ascertained as part of your audit process?-- Yes, I think that's correct, yes.

That would be a reason for you to be far more open, rather than cautious, in the expressions you utilised in stating your opinion in the report, surely?-- Yes, although we also need to be cautious in terms of naming names or people, et cetera, that I wouldn't necessarily have the informational support.

If the subject matter of the report was generated by reason of the actions of a - or a number of clinicians, it would be fairly difficult to shroud their identity in secrecy on the face of the report, wouldn't it?-- You are probably correct, yes.

If we're dealing with a surgeon-----?-- Yes.

-----or medical director or whoever - perhaps a senior nurse or something like that - one would ordinarily expect the particularity descended to on the face of a proper report would avail at least a local person the ready ability to identify that person?-- I am sure you are correct, although we try, obviously, not to encourage or support that.

If I could just come back to this: when you prepared this audit report, you believed that the persons to whom the report was disseminated, and perhaps those in turn to whom it might be passed for action, were relying upon you to candidly express the opinions and evidence that you garnered, you being the person who undertook the audit?-- Yes.

If I can invite you now to look at your audit report - Commissioner, it is exhibit 230 in this proceeding - I can supply you with a copy if you wish?-- I have a copy here.

Thank you very much. Commissioner, can we supply you with a copy?

COMMISSIONER: I have one here, thank you.

MR DOUGLAS: Thank you very much. Now, you are familiar with the report, obviously?-- Yes.

And it is correct to say that you do identify Dr Patel not by name but by designation. You variously refer to him as "the director", in various parts. On page 11 you refer to him as "the surgeon involved"?-- Yes.

It is fairly clear it is Dr Patel who has been identified - and I don't say that critically of you?-- No, no.

Thank you. It is also correct to say, doctor, I suggest to you, that it was at the forefront of your mind when you travelled to Bundaberg in February of 2005 that it was essentially - not wholly but essentially Dr Patel that was the reason for you being there?-- Yes, it was.

You knew, from your reading and perusal of material supplied to you prior to you going to Bundaberg and when you arrived in Bundaberg, that a number of senior staff were making serious allegations about Dr Patel?-- Yes, that's correct.

I am saying allegations. I am not asking you to be judgmental about it at that point?-- Yes.

You knew serious allegations were being made about him?-- That's correct.

You knew serious allegations were being made about his clinical practices?-- Yes.

You knew that, for instance, serious allegations were being made about him in terms of him having a high infection rate?-- That was one of the allegations, yes.

Yes. And that was particularised in a number of instances by person or persons dictating instances of lack of proper hygiene by him in undertaking surgical practices?-- Yes, that's two allegations were made-----

Yes?-- They are not necessarily linked, as you can understand.

I understand that, but the point I am seeking to canvass with you is there were a kaleidoscope of allegations but the fulcrum was all in the direction of Dr Patel?-- Certainly he was the one mostly mentioned, yes.

Yes, thank you. If I could take you back to the report, can I take you to the summary on page 11? Under the heading - you will see in that page a heading "summary". The next heading down the page is "discussion" - and please stop me if you are concerned that I'm summarising too much myself - you identify in the second paragraph of that section headed "summary" that the concerns raised by staff may be categorised into two main groups, and you do so, you bifurcate them. The-----?-- Yes.

The first one is "General surgical procedures being undertaken

which are outside the scope of Bundaberg Hospital"?-- Yes.

I have correctly recited, have I not?-- That's correct, yes.

The second one, again in bold type, "Lack of good working relationships between all staff in the general surgical service"?-- Yes.

Okay. Could I deal first then with number 1, the general surgical procedures being undertaken outside the scope, et cetera. You go on in that particular section to say that "Comments made in regard to this included", and you detail a number of items, do you not?-- Yes.

Two of those are, and I quote, "Infection rates in wound dehiscence" - have I pronounced that correctly?-- Dehiscence.

"Rates have increased"?-- Yes.

You also identify as an item there "Unplanned returns to operating theatre have increased"?-- Yes.

I want you to put yourself now - with your experience in the position of a reader of your report - to the reader, I suggest, perusing that summary, one would read those last two items which I identified, in the context of the overarching statement which you have made there, namely of procedures being undertaken at Bundaberg Hospital outside the scope of that hospital, and not in any other context. Do you agree with that?-- The reader would, yes, yep.

The point I am seeking to make with you - and I want to make it clearly with you - is that you haven't identified in the summary of your report a separate category, so to speak, perhaps a third category?-- Yes.

Along the lines that, "Look, quite apart from matters being outside the scope of the hospital being undertaken by Dr Patel"-----?-- Yes.

-----"as a freestanding, discrete item of concern or complaint, this surgeon has a high complication rate or a high infection rate in his or her practices", whether it be at the Bundaberg Hospital or anywhere else?-- Yes, I see - you are quite right. I mean, that perhaps should have been a third category because those particular comments - and I would bring to your attention they - they are all linked to the comments made in this regard. I wasn't forming a judgment at that stage as to whether there were, in fact, increased or not comments made but they probably refer to more general practice rather than the particular heading of that section, yes.

So is it your - the point of your response is you are saying as a matter of hindsight, really, on the face of this report it would have been better for you to express to the reader that there was a freestanding concern which you had at that time, short of final investigation, that questioned Dr Patel's competence as a surgeon?-- Yes, perhaps the segmentation of that section would be better structured in much the same way as I used in the latter documents, which is to say they were two separate issues.

I suggest that the way that you have put it was to give a wholly misleading view to any reader of this document as to the matters you discerned upon your audit in relation to the apparent, or arguable incompetence of Dr Patel as a surgeon?-- That certainly wasn't the intent.

In hindsight do you accept that in fact it does objectively involve a misleading account?-- I'd accept that, yes.

Thank you. Do you ascribe that at this point in time with the benefit of hindsight to perhaps insufficient attention to detail?-- Yes.

These clinical audits are fairly important, aren't they?-- Yes.

How many clinical audits had you undertaken prior to this particular one?-- There had been - personally I don't - I don't think I'd done any specific ones. There had been three general ones in terms of looking at areas such as maternity et cetera that had been done within my office.

You'd obviously perused those?-- Yes.

And you'd advised staff in respect of those?-- Yes.

And you would have discussed those with others to whom they were disseminated?-- Yes.

And you would have done so in your capacity as Chief Health Officer for Queensland Health?-- That's correct.

Could I invite you to look further down page 11 of your report under the heading "Discussion"? Can I just preface my further questions by asking you this - I don't say this critically, of course. You're not a surgeon yourself?-- That's correct.

But you are a very experienced medical practitioner?-- Yes.

And you are obviously intimately familiar with the types of procedures - I emphasise types of procedures-----?-- Generally so, yes.

-----which surgeons undertake?-- Yes.

Do you see that under the heading, "Discussion", one of the procedures - surgical procedures which you specifically identified is a laparoscopic cholecystectomy?-- That's right.

A cholecystectomy is a removal of the gallbladder?-- That's correct.

Is it correct to say that at the time you prepared this report, a laparoscopic cholecystectomy was a fairly pedestrian procedure undertaken within hospitals of Queensland Health?-- Yes, I would think so. I might point out I haven't been involved with hospitals for a long time, so I'm no expert on this.

Certainly. But certainly for the purposes of this report, you would have sought to identify this, as you have in your report, as somehow communicating to the reader some information in relation to what was apparently identified as a fairly standard procedure?-- Yes.

Was it your view at the time you prepared this report that a laparoscopic cholecystectomy was well within the scope of procedures which ought be undertaken ordinarily at Bundaberg Hospital?-- Yes, I would think so.

Laparoscopic cholecystectomies - and I don't want to diminish this in any way or be light about it, but that is just a mainstream surgical procedure, is it not?-- I would think so these days, yes.

It's a bit like taking your tonsils out, isn't it? It's one of the standard - I'll start again. I suggest to you that laparoscopic cholecystectomies would be one of the most common surgical procedures undertaken in this country?-- I couldn't really comment on that. I really don't know the figures, but it's a very common procedure.

Very common?-- Yes.

Thank you. Your view at the time you prepared this report, was that even an average surgeon should be able to undertake a laparoscopic cholecystectomy at Bundaberg Hospital without extending himself or herself in any way?-- If they had been appropriately trained in the procedure.

Thank you?-- The difference in this procedure is it's done by a laparoscope. The cholecystectomy is done by a laparoscope as opposed to an open procedure, which I would have been more familiar with my time in hospitals.

Certainly. In days gone by - and we're really speaking about 10 or 20 years ago, cholecystectomies were undertaken by laparotomy?-- That's right.

You knew from your clinical audit that Dr Patel was the principal general surgeon at Bundaberg Hospital?-- Yes. He seemed to have done most of the surgery.

You knew that he had been performing that role since 2003?-- That's correct.

Again, at the time you prepared your report and finalised it, you believed that if there was any increase in the complication rate or infection rate at Bundaberg Hospital with surgical patients, that that was an issue, or issues, which primarily focused upon Dr Patel's practices and competence?-- Yes. There was another surgeon - general surgeon there, as you're probably aware.

There was another general surgeon, but the procedures that you were examining essentially involved Dr Patel?-- I assume the

other - I'm sure the other surgeon would have performed some of the procedures, but the allegations were in regard to Dr Patel, yes.

Thank you. Once you completed your clinical audit and signed off on it, in effect, on 24 March 2005, were you alarmed at the outcome?-- In terms of the findings?

Yes?-- The actual - I was certainly concerned about a number of the rates that we determined - that we were able to find.

You speak about rates; you're speaking about rates of complication and rates of infection?-- Yes.

And the sole practitioner you were focused upon in that regard was Dr Patel?-- The principal one, yes.

You knew - I suggest there was no-one else that you were focused upon when it came to considering the cause, or possible cause of infection or complication by the time you signed off on this report?-- That's probably correct, yes.

COMMISSIONER: It's certainly correct, isn't it? There were no complaints about anyone else?-- There had been some complaints about the other surgeon, but they were relatively minor, and certainly no suggestion that he had a higher complication rate than other people.

No.

MR DOUGLAS: So even compared with the other surgeon, Dr Patel had this high complication rate?-- Yes.

And high infection rate?-- Yes.

By the time you signed off on this report you knew Dr Patel was an overseas trained surgeon?-- Yes.

You knew that - at that time as well, that Dr Patel, prior to commencing at Bundaberg Hospital in early 2003, had not previously worked in the Queensland or otherwise in the Australian health system?-- That's correct.

You knew that he was apparently a person who had trained overseas, either or both in India and the United States?-- That's correct.

You knew that no scrutiny had been undertaken of Dr Patel about his qualifications beyond that which had been undertaken, apparently, by the Queensland Medical Board at the time of his registration?-- Well, I didn't know that, but I knew what the Medical Board had done, yes.

My point is that you knew that no further scrutiny had been undertaken by you or at your direction-----?-- Certainly that's true, yes.

-----in relation to his background or experience beyond that which you believed must have been undertaken at the time of the registration?-- That's correct, yes.

You knew also at the time you signed off on that report that Dr Patel was continuing to work undertaking operative procedures on patients at the Bundaberg Hospital?-- Yes.

And as at 24 March 2003 you had no reason to believe that he wouldn't continue there for some unlimited period of time?-- I understood that his contract was due for completion soon. I couldn't remember the exact date, yes.

You had no reason to believe that the District Manager would not extend the contract?-- I think the information we had at the time was that he was going to - he was not going to extend his - sorry, Dr Patel was not going to extend his contract.

Did you believe that there were some ongoing negotiations in that respect?-- Yes.

For all you knew, therefore, there may well be a negotiated position which would entail Dr Patel remaining at Bundaberg Hospital undertaking operative procedures?-- That's true.

This is all the state of your knowledge on 24 March 2003?-- As much as I recall it, yes.

Thank you. You didn't send a copy of your clinical report to District Manager Leck on 24 March?-- No.

You didn't send him a copy of that, I suggest to you, until 7 April, about two weeks later?-- That's correct, yes.

What was the reason, if any, for the delay in furnishing Mr Leck with a copy of that report?-- I think the - as the matter had become fairly public, my first intention was to get it to the Director-General.

You gave a copy to the Director-General on 24 March?-- That's correct.

If it had been made public, in effect - not your report, but the issue had been made public about a week and a half prior to the 24th of March?-- I thought it was only a couple of days beforehand.

In any event, you say that because it had been made public, that you weren't going to provide Mr Leck with a copy of the report?-- No, I think my intent was to say the opposite, which was I needed to get a copy of my report to the Director-General because of the publicity associated with it.

Well, what moved you then to send Mr Leck a copy on 7 April?-- I was asked to do so by the Director-General.

Would you not have sent Mr Leck a copy unless you were directed by the Director-General?-- I would have assumed that

he would have, but-----

Would have what?-- Would have sent him a copy of the report.

There seems to be a very loose protocol, Dr FitzGerald. I thought you told the Commissioner about 10 or 15 minutes ago that as part of this informal protocol, routinely you send a copy to the Director-General, ordinarily-----?-- Yes.

-----and to the person who had canvassed the report in the first place, and a couple of other people as well. You did say that, didn't you?-- Yes, that's correct.

You've already said that it was Mr Leck who, in effect, was the genesis of this report in the sense that he requested it?-- Yes.

Yet you didn't send him a copy for some two weeks after you completed your report?-- That's correct. Ordinarily what I would have done is send him a copy to comment on before we finalised the report, but matters had been moved ahead of that normal process.

Well, how had they been moved ahead of that process, say by 25 March, the day after your report?-- Yes, fair comment, but-----

Fair comment? Tell us. What happened on the 25th or the 26th or the 27th of March that made you refrain from providing a copy of this report to the person who initiated it?-- No particular reason. I think we were just trying to deal with the issue in the public arena at the time.

How was it being dealt with in the public arena, say in those several days after 24 March?-- There was considerable publicity associated with the issue.

How was it being dealt with in the public arena in those three or four days after the 24th of March?-- I'm not quite sure I understand what you're asking me, sorry.

There's evidence in this Commission that the Minister and the Director-general - that is Minister Nuttall and Director-General Buckland - attended a meeting with staff at Bundaberg Hospital on 7 April, that is about two weeks after you finalised your report?-- Yes.

You're aware of that fact, aren't you?-- Yes, yes.

What is it that took place in that period of approximately two weeks, that you're aware of, that involved dealing with the issue in the public arena?-- I was asked by the Minister to be involved in a number of press briefings, there was innumerable meetings occurring with a whole range of people about trying to identify what needed to be done.

Did you have any discussions with Mr Leck about the matter?-- Not that I recall, no.

Did you have any discussions with the Director of Medical Services of Bundaberg, Dr Keating, about the matter in that intervening period?-- Not that I recall, no.

Did they attempt to contact you and speak to you about it that you recall?-- Well, I don't recall.

When did you find out that Dr Patel was no longer working at Bundaberg Hospital?-- I think I got a message from Mr Leck at some stage that he'd resigned and left the country.

Was that before or after the 7th of April when the Minister and the Director-General attended?-- I'd probably have a copy of the e-mail in my collection here that I could check if you wished.

I wouldn't mind you checking that, if you could. I might come back to that. You can take that one on notice?-- Certainly.

If we just keep moving-----?-- If I could, I've found it. It's 29th of March.

Beg your pardon?-- 29th of March, an e-mail from Peter Leck saying, "Dr Patel on sick leave. Intending to leave the country."

That didn't generate in your mind a need to provide Mr Leck with a copy of your report?-- No, no.

Can I take you back to page 11 of your report, please? Can I take you to the second paragraph, page 11, sir, second paragraph under the-----

COMMISSIONER: Just before - are you going to come back to these results from the laparoscopic cholecystectomy?

MR DOUGLAS: Yes.

COMMISSIONER: You are?

MR DOUGLAS: I am.

COMMISSIONER: All right.

MR DOUGLAS: I certainly am.

COMMISSIONER: All right.

MR DOUGLAS: Second paragraph under the heading "Discussion"?-- Yes.

It's a paragraph which commences, "With regard to the conduct"?-- Yes.

I'll read it into the record. "With regard to the conduct of inappropriate complex procedures, the surgeon involved has agreed to undertake only those procedures which are within the

scope of the surgical service and relevant support services. The surgeon has also agreed to transfer patients more readily to higher level facilities." I've correctly recited that?-- That's correct.

Now, that was an undertaking - really two undertakings - that you elicited from Dr Patel in February 2005?-- And from Dr Keating, yes.

Thank you. In that regard, though, in order to properly service that undertaking, you knew that in any particular case either matter - that is whether it be undertaking a procedure within the scope of the hospital or transferring a patient-----?-- Yes.

-----was a matter in which Dr Patel's judgment was paramount?-- Yes.

His judgment was paramount in respect of either of those matters, I suggest, because he was the surgeon with the experience who could discern what procedure was required in respect of a particular patient or how serious it was in the case of transfer?-- Yes.

Dr Keating's view, whilst helpful, would not be as salient as that of Dr Patel, because Dr Keating didn't have the same surgical qualifications?-- That's true, but I mean the complex procedures were clear. He would know what those procedures were.

You would expect, in respect of either aspect of the undertaking, that Dr Patel was the person who would be obliged to exercise the principal judgment in respect of either matter?-- Yes, the principal judgment of whether the patient needed that procedure, and that was the procedure to be performed. The judgment of whether that procedure would be performed at Bundaberg could be determined by the Medical Superintendent, by a number of people.

In either case it would be left to his judgment, as a surgeon still undertaking work from the time the undertaking was given in February 2005 in the course of day-to-day practice at Bundaberg Hospital?-- Yes.

Was there any written protocol which was entered into in that respect?-- No.

Such as to particularise the types of matters - or exemplify the types of matters to assist Dr Keating and Dr Patel in exercising that judgment?-- Not to my - not that I was aware of, no.

Do you think it should have been, in retrospect?-- Probably. In retrospect I think the Medical Superintendent should have made it clear with the doctor concerned about what should or shouldn't be done.

I suggest you should have made it clear to Dr Patel that you, as the person eliciting the undertaking, required a very strict and exemplified adherence to what was required in that respect?-- Yes.

But it didn't happen?-- It didn't happen, no.

The fact that it didn't happen, I suggest, exemplifies a very poor approach to your undertaking of this audit. I'm making a suggestion to you, sir, for your comment?-- Well, I don't believe it was a poor approach. I believe, obviously in retrospect, there are things we could have done better.

Come back to the report in that regard, page 11, third paragraph. You set out there the results of your audit in part with respect to laparoscopic cholecystectomies?-- Yes.

Do you see that?-- That was one of the items identified, yes.

Thank you. It would have been readily apparent to you at the time you completed this report, that during the first half of 2003 - that is the first number of months of Dr Patel's tenure - the rates of bile duct injury were virtually nothing, but in the three ensuing six month periods of his tenure they had gone up alarmingly?-- Yes.

They'd gone up to a level in July to December 2004 of 8.06?-- That's correct.

And the 2003 rate at least, Australia-wide, was .29?-- That's correct.

My numeracy may be questioned by some, but that is about 25 times the national rate?-- That's correct.

And it had been that since about four or five months after Dr Patel commenced at the Bundaberg Hospital in 2003?-- Yeah, that's what that data demonstrates.

You were seeking to include that, surely, to exemplify the results of your investigations?-- What we'd done is examine a number of parameters and, I suppose, highlighted the ones that were abnormal.

And you highlight that one because, for the reason I took you to earlier, that laparoscopic cholecystectomy, far from being outside the scope of Bundaberg Hospital, was well within the parameters of a procedure which that hospital would ordinarily be expected to service at the hands of a competent surgeon?-- That's correct.

Why is it then that you don't say what I just said in your report to communicate as much to those who were reading it?-- I haven't got an explanation for that. We just - we identified those areas that were abnormal and highlighted those - those items of data-----

COMMISSIONER: Do you think now in retrospect that that's a shocking dereliction of your duty, doctor? That here's a man who had a complication rate for an ordinary piece of surgery of 25 times the national average, and you don't express your alarm about that in your report?-- I think the concern I have with this is always that the initial data that we're able to obtain from high level examinations like this have to be examined in further detail. They are reliant, usually, on very high level collections of information which aren't necessarily accurate, and so what would normally occur as a result of identifying something like this is further examination through the local quality safety committee of the hospital.

But before you conducted any further examination, shouldn't you have expressed in your report - and don't you agree now that it was a shocking dereliction of your duty not to - that this was 25 times the national complication rate for an ordinary piece of surgery?-- Yes, sir, I accept that, although I would also again caution the numbers were very small in terms of the number of patients with complications.

MR DOUGLAS: But it had been the case for a period of 18 months, three lots of six month periods of his tenure, and a consistently high rate had been obtained?-- Yes.

It wasn't a case of an odd six months. Consistently over a period of 18 months. Isn't that so?-- Yes.

And you've said to the Commissioner that it would be necessary to undertake further investigation?-- Yes.

But you'd been investigating this matter in your audit since January of 2005 when you first received the papers in relation to it before travelling there in February?-- Certainly, but the information we were reliant on is the information that's available off the systems.

It wasn't as though you undertook some shortform couple-of-days audit such that really you couldn't express anything in a prima facie way. You had enough to tell you that this man Patel probably had a serious case to answer in terms of his competence?-- With respect, I think our information was collected from one day's interviews and the collection of information that we had, including the copies of files that we had about which concern had been raised.

There was no shortage of documents that you had, Dr FitzGerald?-- Yes, but I didn't have at that stage any documents regarding the conduct of laparoscopic cholecystectomies.

You had a host of material from various practitioners within the hospital - from nurses, to persons running ICU, to persons running infection programs - to tell you that their anecdotal evidence, and your investigation evidence in terms of the complication rates, were entirely consistent?-- In certain categories. I mean, one of the issues you raised before was

the infection rate, yet the data in the appendix suggests infection rate at the hospital wasn't significantly different.

I'll come back to infection in a moment. Unless it otherwise be clear, I suggest to you that there's no sensible reason why the substance of the views which you canvassed a moment - I canvassed a moment ago with you, that is that there ought be serious concern at least on a prima facie basis with respect to Dr Patel, wasn't expressed in your report?-- I'm sorry, can you repeat that?

I'll say it again. I suggest to you there is no sensible reason why you didn't express in your report discrete concern about the competence of Dr Patel?-- Well, I'll accept your statement. I mean, I would-----

Only if you agree with it, sir, or you wish to comment upon it?-- Well, what I'd like to comment on is the intent of this was a clinical audit. It was not a review of Dr Patel.

COMMISSIONER: I don't understand that, doctor. You went up there primarily, if not solely, because of a long series of complaints about Dr Patel. That's why you went to Bundaberg?-- That's correct, but in the process of working out how we were going to handle this complaint we became aware that we really had nothing - we had a number of assertions and allegations about that we need to examine. What I didn't have was any detailed information about Dr Patel, and my first visit there was to try and find out some further detail about what the concerns were-----

It appears from your report that you had statistical information which showed prima facie that Dr Patel was incompetent to perform the quite ordinary operation of laparoscopic cholecystectomy. Is that not correct?-- We had evidence - sorry, we had data which suggested he had a high complication rate.

That data suggested he had 25 times the normal complication rate, and I suggest to you it suggested prima facie that he was incompetent performing an ordinary piece of surgery. Prima facie it showed that, didn't it?-- That would be the initial reaction. It would require further investigation and examination of those particular cases.

Why didn't you say this in the report, prima facie it showed this surgeon was incompetent performing normal surgery?-- I don't really - I can't really answer that question. I mean-----

There's no sensible answer, is there?-- No, probably not, no.

MR DOUGLAS: Can I suggest that any caution you may have had about crossing the Rubicon in the sense that the Commissioner just identified would have been dispelled when you ascertained, during the course of your audit, that this overseas trained surgeon, who'd never before 2003 when he came to Bundaberg worked in the Queensland or Australian hospital

system, had never been the subject of credentialling and privileging under Queensland Health policy?-- He had never been the subject of it, I understand, yes.

You ascertained that during the course of your audit?-- Yes.

You were quite familiar with the policy, were you not?-- Yes.

You knew that the policy had been laid down in 2002 - or as late as 2002 by Queensland Health?-- Yes.

In fact it had existed for years before that as well?-- Yes.

And it was a policy with which you were thoroughly familiar, quite apart from Queensland Health policy, because it was well-known across the breadth of the medical community?-- Yes.

So with all these other matters which you've agreed were identified by you, you didn't immediately seize upon his absence of credentialling and privileging in contravention of - apparent contravention, I should say, of Queensland Health policy and say, "This fellow has to be the subject of pre-emptory action by Queensland Health."?-- No, that's right.

But you can't provide any sensible explanation for that now, can you?-- No, just except on the evidence and the information we had at the time, that there were clearly things that needed further investigation, that's all.

Was there some touchstone of caution on your part that you were concerned that if you painted a deleterious picture, that the surgeon may be lost to Bundaberg? I'm not suggesting that was your reason?-- No.

But did you have some reason for circumspection?-- No, not particularly, I just felt that we didn't have sufficient information to make a judgment.

You felt that you didn't have sufficient information to make a judgment?-- I didn't have sufficient information to make a judgment.

You tell us in your statement as well that on the 24th of March 2005, when you completed your report, you sent a memorandum to Dr Buckland, the Director-General?-- That's correct.

Can I suggest to you - you're familiar - before I go on, you're familiar with that document, are you not?-- Yes, indeed.

Can I suggest to you that in that particular document you are far more candid in your views about the surgeon?-- Yes.

You - can I suggest to you that you descend in some particular detail to matters going to his competence?-- Yes.

How is it, sir, that when we juxtapose these two documents, the memorandum which is Exhibit GF 14 to your affidavit and the report, that one sees, apparently, a completely different picture?-- Because the clinical audit is intended to look at systems and structures rather than make any judgments about individuals and that was what we were trying to get that balance correct. Now, as a result of the information obtained in there, I felt that further investigation needed to occur of the individual and that was covered often in the letters both to Dr Buckland and to the Medical Board.

When you're expressing your views to Dr Buckland in the memorandum, you're not solely suggesting further investigation, you identify a number of opinions which you harbour, at least on a prima facie basis-----?-- Yes.

-----with respect to this surgeon; do you not?-- Yes.

I'll put it on the overhead, it might be easier.

COMMISSIONER: Yes?-- Thank you.

MR DOUGLAS: On the visualiser, I should say. Thank you very much. Now, I'm dealing with it a little out of order but just if we can scroll up the document, you identify in the last

paragraph that, "The credentials and clinical privileges committee has not appropriately considered or credentialed the doctor concerned."?-- Yes.

In fact, it was - it transcended that, didn't it? He'd never been credentialed or privileged?-- That's what I understand, yes.

And if you go up the page in the third paragraph, you identify matters in respect of his complication rate to Dr Buckland?-- Yes.

At the time you wrote this memorandum on the 24th of March 2005, it was your opinion on the material that you had seen and the investigations that you had undertaken is that to start with, Dr Patel had a higher surgical complication rate than his peer group?-- Yes.

And in fact, you were of the opinion it wasn't just that, rather that he had a significantly higher surgical complication rate than his peer group?-- In certain categories, yes.

Yes. That wasn't a cause for alarm for you in your mindset at this time?-- It was a cause for alarm, yes.

And then let us add to that you then go on to say that, "He had undertaken types of surgery which" - I'll use your words - "in my view are beyond the capability of Bundaberg Hospital and - I'll use your words again - "possibly beyond his own skills and experience."?-- Yes.

And then you go on to say that his surgical competence hasn't been examined in detail?-- That's correct.

You were of the prima facie view at this time that he had undertaken surgical procedures previously at Bundaberg Hospital which were beyond his own skills and experience?-- No, I was - I was - I think the point of that particular paragraph is that he'd undertaken types of surgery which was the principal complaint I was asked to investigate, he undertaken types of surgery which would not have been done at Bundaberg and possibly beyond his own skills and experience. I was not able to form a particular judgment about that because I'm not a surgeon and didn't know in detail his previous experience.

You did know that there was a case to answer, in your opinion as the investigating auditor, that this man had in fact undertaken these procedures beyond his own skills and experience?-- That he'd undertaken those experiences beyond the capability of Bundaberg Hospital and possibly beyond his own skills and experience.

All right. Can I then take you to the next paragraph and it's important. On the 24th of March 2005, you were of the opinion that Dr Patel as a surgeon had flawed judgment?-- Yes.

You expressed the view, which you held at that time, that "his judgment was such that it was below that which was expected by Queensland Health"?-- Yes.

Have I used your language? "Below that which is expected by Queensland Health"?-- Yes.

That's not a view which you expressed in your clinical report, is it?-- No, because-----

Why not?-- Because the clinical report is focussed on the systems and structures underlying the reasons, not the individual.

Dr Patel was part of the systems and structures in the sense that he was the principal surgeon undertaking surgical operative services at Bundaberg Hospital at the time of your audit?-- That's correct.

COMMISSIONER: You speak about Dr Patel's inadequacies in your report. The essential difference is that the extent to which you describe them is critically different between your report and the memorandum and that's something that I just can't understand. It is as if you are talking about two different people?-- I think it's probably that we were trying to keep to the style of clinical audit which is to really not focus on individuals and on their performance and behaviour but rather that look at the systems and structures which underline the events that have occurred.

But you were speaking about him in the report, you were speaking about his competence?-- Well, certainly his competence contributed to the data that we were finding and to the systems - the system issues that had occurred there, but I - but the intent of clinical audits is to try and get at the underlying reasons rather than individual performances.

You keep saying this but what I can't understand is the stark difference between your description of Dr Patel in your report and in this memorandum of the 24th of March?-- Well, I think-----

Can you give any better explanation for why there appears to be a stark difference between the two?-- Sure, only that they were intended to be complimentary and for a different purpose.

Mmm.

MR DOUGLAS: Did you believe that it may be that the clinical report might be leaked to a wider audience but the memorandum may not?-- I don't think that was a consideration in my mind at the time. I mean, I think it's the consideration was that what needed to occur or who needed to take action about individual bits of the information.

What needed to occur, I suggest to you, on the evidence which was before you, that Dr Patel should have been suspended on full pay from undertaking any surgical procedures at Bundaberg

Hospital or any other hospital which might have wanted his services within Queensland Health pending a further investigation?-- Well, that was not - I didn't believe we had that sort of - that level of information at the time. Certainly the suspension about the conduct of complex surgical procedures which was the principal item that was raised with me initially.

COMMISSIONER: You knew he had 25 times the complication rate, or prima facie it appeared that he had 25 times the complication rate for a very normal piece of surgery. What more do you want to protect the potential patients of Bundaberg Hospital?-- A more detailed investigation of those cases.

And in the meantime you let him continue practices and perform surgical procedures?-- I think we need to have a look at those cases first of all to find out whether he was the cause of them or there was somebody else.

I thought you'd accepted that he was the cause of them?-- He appeared to be the cause of most of them on the data that we had, yes.

What more did you want?-- Well, we are never really comfortable with this sort of data because it's usually coded by somebody else.

Are you more comfortable letting him to continue to practice when it appears on the prima facie evidence that he's incompetent, then to suspend him on full pay for the protection of the patients?-- I would always seek to try and protect the patient wherever possible.

You didn't here?-- Perhaps you're right, Commissioner.

MR DOUGLAS: You didn't protect the patients here?-- We could have done better, yep.

What you did was you protected Dr Patel rather than the patients?-- Well, that was not the intent.

That's what happened though, wasn't it?-- Perhaps, yes.

How much worse would the evidence have to be compared with what you did know on the 24th of March 2005 about a surgeon for you to recommend that that surgeon be suspended on full pay from undertaking surgical procedures?-- I think we'd need to - well, I'd need to know more detail about those particular cases and at the moment all we had was very high level data of the systems.

Would you - I'll just put it another way: as at the 24th of March 2005, you'd referred the matter off for the attention of the Medical Board of Queensland?-- Yes.

You were a member of the Medical Board at the time?-- That's right, yes.

You knew that any investigations undertaken by the Medical Board would necessarily take weeks, perhaps months?-- Yes.

Is it the case that as at the 24th of March 2005 you had determined that you were not going to recommend any preemptory action in respect of Dr Patel which would entail him not continuing to provide surgical services at Bundaberg Hospital until those Queensland Medical Board investigations had been complete?-- That's correct, the Medical Board can of course take action to limit practice.

COMMISSIONER: So can you?-- Yes.

Doctor, while I'm interrupting: you keep saying you just had this statistical information, but you had before you at the time four patient complaints to the hospital between April and November 2003 about Dr Patel; you had a sentinel event in 2004 which resulted in considerable concern being expressed by staff with regard to his competence to practice; a further adverse event occurring in August 2004 which resulted in a meeting between concerned staff and the district manager; and it was subsequent to those that your audit was commissioned, you've had a long series of complaints, some of them very serious complaints by staff and patients about Dr Patel?-- Some of that information we didn't have at that time, that's information that's been obtained subsequently, particularly the patient complaints. I think at the time we asked specifically were there any patient complaints, we were told by the administration there hadn't been.

You knew about the sentinel event in July 2004?-- What we knew about was the information that had been raised with us from Miss Hoffman.

You knew about the further adverse event occurring in August 2004?-- I'm not - I don't recall the details, I may have to refer to the particular cases whether I knew about those particular cases at that stage.

MR DOUGLAS: You certainly knew that these matters had gone back over a period of 12 months; isn't that so?-- That's correct.

Look at the memorandum in front of you, last paragraph, third sentence. "The executive management team at the hospital does not appear to have responded in a timely effective manner to the concerns raised by staff, some of which were raised over 12 months ago."?-- That's correct.

The concerns raised by staff that you're identifying there are the concerns raised by staff about Dr Patel?-- Yes.

So it was not only a matter of concern about Dr Patel, but you knew that he'd been continuing to carry out operative treatment on patients, public patients at that hospital for over 12 months whilst these sorts of allegations were pending?-- Yes, that's correct.

And whilst the Medical Board continued its investigations and deliberations, you no doubt believed as at 24th March 2005 that he would carry out operations on tens if not hundreds of other public patients within the system?-- What had been stopped, of course, was the major procedures that he was undertaking.

You knew that he would be undertaking operative procedures within the scope of Bundaberg Hospital and within the competence of a reasonable surgeon on tens if not hundreds of patients in that ensuring weeks and months?-- He would, yes.

Tell me, Dr FitzGerald, you're still the Chief Health Officer at the present time?-- I'm acting as Deputy Director-General at the moment, so, yes.

Thank you. Well, since this particular audit, have you been involved in other audits?-- There's been a number of other audits that have been conducted out of my office, I haven't been personally involved in them, apart from the P369 case that's been referred to.

The P369 case? That's the case at the Fraser Coast that you identified earlier in your evidence?-- That's right, yes.

You would have read those audits?-- I'm just trying to think whether any of them have been completed yet but I have read some audits, yes.

As to the conduct of clinical audits, do you consider that Queensland Health have learnt any lessons from this particular audit procedure in respect of Bundaberg?-- Well, I'm sure I have in terms of process, but certainly what we've learnt, of course, is that we do need to be - to try and get experts in initially. I felt that at the time I was being called upon to try and judge surgical procedures where I didn't have the expert - personal expertise. The subsequent establishment of the Mattiussi Review et cetera brought that expertise to bare.

There is some other evidence before this Commission to the effect that you remarked to Dr Buckland on or about the 24th of March 2005, if not two days earlier, the 22nd of March?-- Mmm.

That Dr Patel was not the best of surgeons but he also wasn't the worst?-- Yes.

Do you recall saying something like?-- That - yes, I do because that was the information we obtained from people in Bundaberg at the time, comments to that effect were made to us.

I suggest to you on the information that you knew on or about the 24th of March 2005, you couldn't bring to mind a worse surgeon, that is, a more incompetent surgeon apparently than Dr Patel working within Queensland Health?-- I wouldn't - there was certainly none that I was aware of but I would -

could I just comment on the fact that comment that was - he wasn't the best, he wasn't the worst, that came from the people who knew him and observed his surgery, but it also came from the data which we retrieved which we commented on at some length because one of the things that did concern us then when we drew that data from various hospitals, various hospitals are up and down across the parameters and some of them were much more.

The patients would have been given the benefit of the doubt in relation to Dr Patel pending an investigation, shouldn't they?-- Yes, I'd accept that.

And they weren't, Dr FitzGerald?-- That's true.

Do you have any other questions, Commissioner?

COMMISSIONER: No.

MR DOUGLAS: Thank you.

COMMISSIONER: I'll take a short adjournment now.

THE COMMISSION ADJOURNED AT 11.17 A.M.

THE COMMISSION RESUMED AT 11.31 A.M.

GERARD JOSEPH FITZGERALD, CONTINUING:

MR DOUGLAS: Commissioner, could I just mention something on a different topic?

COMMISSIONER: Yes.

MR DOUGLAS: Just before coming down here after the break, I have received from Queensland Health a bundle of further material pertaining to - if I can call it it falls within the genre of waiting lists.

COMMISSIONER: Mmm.

MR DOUGLAS: It may well be pertinent to the evidence of Mr Walker who's the next witness.

COMMISSIONER: Mmm-hmm.

MR DOUGLAS: I'll have that material copied and distributed within a very short period of time, but hopefully it won't cause any delay with the disposition of Mr Walker today.

COMMISSIONER: All right. Thank you. Doctor, I do have one further question and that's with respect to your visit to Hervey Bay?-- Yes.

What was the concern there? What was the complaints there?-- There was a lady who had died in an aircraft on the way between Hervey Bay Hospital and Nambour Hospital.

And was that after surgery at Nambour?-- No.

At Hervey Bay, I mean?-- No, it was in regard to the fact that this lady, they didn't want to do the surgery at Hervey Bay.

Right?-- And were transferring her to another location.

I see?-- I mean, I can explain the details of the case if that would help?

No, well, you've produced a report?-- Yes, there is a report, yes.

Well, we can look at the report if necessary?-- Yes, I think it's in the documentation that's been presented.

All right, thank you. Now, have we agreed upon an order? Yes, Mr Allen.

CROSS-EXAMINATION:

MR ALLEN: Dr FitzGerald, John Allen for the Queensland Nurses Union?-- Yes, Mr Allen.

You explained in answer to some questions this morning as to why significant negative issues in relation to Dr Patel and Bundaberg Base Hospital weren't contained in your audit report, Exhibit 230, that the purpose of the clinical audit was to examine systems issues?-- Yes.

And not focus on any one individual?-- That's correct, yes.

And that's a correct understanding on my part of what your evidence was?-- Yes, yes.

Now, it's true though that in your audit report, you specifically made comments about an individual?-- Yes, yes, you raised this when we last spoke, yes.

That individual being Dr Patel?-- I don't think we mentioned the name but identifiable as Dr Patel, yes.

Well, page 5 of your report where you made several references to the divisional director, you were referring to Dr Patel?-- Yes, that's correct, yes.

And likewise, at page 6 when there was references to the divisional director?-- That's correct.

And page 7, that was your comments in relation to an individual, Dr Patel?-- Yes, yes.

And you may have already agreed with me on a previous occasion that where you identified that individual by his office, the only comments included were positive ones?-- I think I did agree with you in that I think what the intent or the reason behind that was to - that the clinical audit should avoid adverse comments about individuals but it doesn't necessarily exclude positive comments.

So your approach was you were prepared to comment on an individual, being Dr Patel, but only in a positive manner, never in a negative or critical manner?-- That's the - the intent behind a clinical audit is to try and avoid adverse comments about individuals.

But that's absurd, isn't it, if the purpose of the clinical audit is to try and assist the safe delivery of health services to people of this State?-- All I can say is that every bit of information that I have from experts in the field and from the literature regarding clinical audit, that a non-judgmental, non-adversarial approach is the way to exact system improvements and improve the quality of health care.

COMMISSIONER: But if on your examination pursuant to your going towards your report, you discover that there is a person who is, as appears from what I've read of your report so far, grossly incompetent in performing standard surgery; surely you would make some comment about that in your report?-- Usually make some comment or seek an alternative means of dealing with that particular issue.

Such as by immediately suspending him?-- Or by referral to the Medical Board.

Well, that's a grossly inadequate response though, isn't it? I think we've been through this before?-- Yes sir.

You did a grossly inadequate response just to refer it to the Medical Board?-- Well, the Medical Board were in the position to take action.

So were you?-- Yes, or the administration of the hospital, yes.

All right.

MR ALLEN: Doctor, if you follow that approach of only including positive comments about an individual and deliberately omitting any negative comments, that must necessarily present to any reader of the report a skewed picture of that individual, surely?-- I'm sure you're correct, yes.

And that's what your report did?-- Yes.

By only including positive comments about Dr Patel and deliberately omitting any negative ones, it presented a false picture regarding Dr Patel to any reader of the report?-- I accept your point, that was not the intent, the intent was to identify the issues, the structural and organisational issues that needed to be improved to address the issue - address the concerns.

You say it was not your intent, but it is the obvious inevitable consequence of such an approach?-- I accept that.

So it didn't happen - without your understanding that that would be the result, did it?-- Sorry, could you repeat that?

You must have understood as an intelligent man that that approach would result in a false picture being presented to a reader of the report of Dr Patel?-- But that was not our intent, the intent was to focus on the issues.

COMMISSIONER: No, listen to the question and answer it please?

MR ALLEN: You must have understood that that would be the result?-- In retrospect, yes.

COMMISSIONER: No, you must have understood at the time that that would be the result, surely?-- I don't recall having a consideration in my mind about that, so it was a matter that I didn't really think about, I'm sorry.

MR ALLEN: I asked you about the inclusion of the comments regarding Dr Patel, but also at page 7 of the report you refer to that individual by his position Divisional Director; that's in the discussion of "Staff Feedback", page 7?-- Yes.

It's only the second paragraph that refers to an individual being the Divisional Director?-- Yes.

And the only comment made about that individual is that some staff made complimentary comments about his teaching and mentoring of junior medical staff?-- Yes.

So in the discussion of staff feedback, the only comment made about Dr Patel is, once again, positive?-- Yes, I accept that.

You say, however, that it would be the purpose of the clinical audit and therefore important to include any relevant comments about systems issues?-- Yes.

If you just go to page 6 of your report, the second topic, "The credentialing and clinical privileges process has not yet been fully implemented."?-- That's correct.

"Opportunity for improvement being to complete this process

for all medical staff."?-- Yes.

That's obviously a very important systems issue?-- Yes, correct.

The lack of appropriate credentialing and clinical privileging?-- Yes.

Now, why didn't you say in the report the current Divisional Director, the person in charge of surgical services at the hospital has not been credentialed and privileged?-- I have no particular reason as to why, except that he wasn't the only one who hadn't been credentialed, of course.

He would not, by merely by that comment, have been criticised or denied any natural justice, would he?-- No, that's correct.

Because it's a systems failure?-- Yes.

It's not a failure on the part of the individual?-- Yes.

It's a critical systems failure which should have been of utmost importance-----?-- That's correct.

-----to any reader of the report?-- That is the system issue, yes.

Why did you not make clear that the Director of Surgery had not been credentialed and privileged?-- I have no particular explanation, except to say that he wasn't the only one who hadn't been. The system issue underlying it was the fact that it hadn't occurred. There was no particular intent to exclude him.

COMMISSIONER: But that was the central reason for your going to Bundaberg?-- Yes.

MR ALLEN: Who else did you identify as not being credentialed and privileged at that time?-- Well, we didn't go through the detail, but I understood that the committee had not really functioned for two years.

So you didn't ascertain that in fact there had been credentials and privileges in relation to certain disciplines?-- No, not at that time, we didn't know the detail, no.

Did you look into that issue when you investigated?-- No, we - I mean, what we were there - we were there for a day and we basically tried to identify what were the issues, what had been functioning and what hadn't been functioning.

Well, you identified that there was a problem with the credentialing and clinical privileging process; did you not take it that further step and ascertain which of the medical staff had been credentialed and privileged and which had not?-- We didn't. The subsequent review I understand went

into that in some detail.

Forget the subsequent review?-- Yes.

Because that wasn't announced until the 9th of April?-- Sure.

Why didn't you look into that?-- Because - well, the only reason is that we identified that the committee had not been functioning and raised that as an issue. I did not go into the detail of who had or had not, the recommendation was that it should be attended to.

So what, even in relation to Dr Patel about whom such serious concerns had been raised so as to initiate your review, you did not investigate whether he had been credentialed and privileged?-- We were advised that he had not been credentialed.

Right?-- Yes.

So you knew that he hadn't been?-- That's right. We didn't ask the question about other people, no, specifically by name.

Well, do you know if there were any other people who hadn't been?-- Well, I understand that the other surgeon had not been for the same reasons, that was Dr Gaffield.

Why didn't you report then in relation to such an important systems failure, that the surgeons operating at the hospital had not been credentialed and privileged?-- Well, I think that was the concern, I thought we did but perhaps not in those specific words. But I mean, we've said that the credentialed and clinical privileges has not been fully implemented.

You didn't feel that the fact that surgeons at the hospital had not gone through that process was of such importance that it should be highlighted in your report?-- I didn't feel that at the time, no.

Now, in your memorandum to the Director-General, GF14, in the last paragraph you identify "most significant systems failure", and you say, "The audit report also identifies that there has been a failure of systems at the hospital which has led to a delay in the resolution of these matters."?-- Yes.

Now, where is that identified in the actual report?-- Well, the credentialing and clinical privileges issue, the fact that they hadn't - that complaints had been made two years previously and had not been - well, whatever time it was, but had not been appropriately managed.

Okay. So in your memo you go on to say, "The credentials and clinical privileges committee is not appropriately considered or credentialed. The doctor concerned". You were prepared to say that in your memorandum but for some reason didn't feel that you should say that in the report? Can you just explain why?-- I think what we were trying to do again is focus on the system issues in the report, the detailed issues about Dr Patel which - I mean, could I say that we were getting very contradictory information from people about Dr Patel, so we really-----

This is a fact you have ascertained?-- Yes.

You state it as a fact in the memorandum-----?-- Sorry, I haven't got it in front of me.

-----that "the doctor concerned has not been credentialed and privileged"?-- That's right, yes.

But you didn't feel it necessary to state that fact in your report?-- No.

It goes on in the memorandum, "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.

Now, that is a very serious finding in relation to systems matters?-- Yes, therefore something which would have been highlighted in the report itself?-- Yes.

Can you take us to that part of your report which deals with that topic?-- I am just trying to remember but there is issues around the management of complaints and - I am just trying to find it - I am trying to find - there is something about complaints management. Well, there is - certainly there is some issues there about staff needing more support from senior management.

Where is that?-- That's in the second last row.

Of?-- Of the page 6.

Page 6. So the summation of comments as included there is "sometimes staff need more support from senior management."?-- Yes.

"Implement appropriate processes for staff to access senior management."?-- Yes.

All right, anything else?-- The audit reports, "the audit process to monitor, assess, take appropriate action, review" as indicator under "safe quality dimension". The two lines above that, the "implement audit processes, monitor", et cetera.

Well, those comments were made in the fact that there were increased lengths of stay and complication rates, and you were recommending that there should be an audit process to look at those things?-- That's correct, yes.

Nothing to do with what you refer to in your memorandum as being "the failure of the executive management team to respond in a timely or effective manner to concerns raised by staff." I am asking you to identify where you have dealt with that important systems issue in your report?-- It is probably not dealt with specifically but there are a number of other areas that fit into the service - the "institute team building between disciplines", "policies for the multidiscipline management of patients", "clinical documentation", "clinical audit", the team building - it is probably - I am struggling to find a particular reference.

Yes. Look, can I put it to you that, in fact, nowhere in your report does there appear the important finding that "the executive management team at the hospital does not appear to have responded in a timely or effective manner to concerns raised by staff." That only appears in the memorandum?-- It appears in the memorandum, and-----

Now, why wasn't that important finding in relation to a systems failure not included in the report itself?-- My only explanation I think would be because we were focussing on clinical systems rather than management systems. I think we had this discussion last time, yeah.

I see. So is it analogous to the approach you took regarding individuals; that if you found any particular failings by the managers, by those persons who were the executive management, that you would deliberately omit that from the report?-- And cover - and attend to that in another instrument.

Why would you deliberately omit that from a report in relation to systems?-- I think - well, certainly the intent at the time was to focus obviously on the clinical systems. The issues I think that you are raising would be critical of the management at the time which I will attend to in another instrument, which would be an advice to the management, of

those individuals to deal with. I accept that the issue - I thought we had addressed the issue of complaints management procedures, yeah.

So the approach would be to present not only a skewed picture of the performance of Dr Patel but an incomplete and skewed picture as to the performance of executive management?-- Sir, I respect that that's the outcome. It was not the intent at the time. That's all I can say. I mean, would we write this differently now? Of course we would write it differently now. But I can't - I mean, that's what we wrote at the time. It was not intended to produce a skewed picture. It could have been done better, I accept that.

The report wasn't intended to be deliberately misleading?-- Absolutely not.

Can we just finish the sentence of that part of the memorandum? "Concerns raised by staff, some of which were raised over 12 months ago."?-- Yes.

You thought that that delay was of such significance that it should be communicated to the Director-General?-- I did, yes.

You considered that to be a significant period of delay?-- That's correct.

Could we just go to page 7 of your report under the heading "Discussion of staff feedback"? And the first sentence, "In general, staff have enjoyed their work at Bundaberg Hospital and only relatively recently have issues arisen which have caused concern."?-- Yes.

Do you see any contradiction between that statement in the report and what you wrote in the covering memorandum?-- Well, it depends on the relative - definition of "relatively recently". I mean, my understanding - and I am sorry we didn't scrutinise these words with the detail that we are now, but the intent - my understanding of our experience was that people generally had enjoyed work but over the last previous 12 months to two years there had been deteriorating relationships in the hospital.

So you are saying it was in relation to any communication of time-frame, it was meant to communicate the same thing? "Only relatively recently" equates to over 12 months ago?-- That - well, the - what we were trying - I mean, what we had in our mind was that this was over the last 12 months to two years. I am sorry, we did not apply that level of scrutiny, exactly what the words meant, and concern ourselves that that "relatively recently" constituted 12 months or two years. I am sorry.

You didn't say "but over the last 12 months to two years issues have arisen which have caused concern"?-- No, I didn't.

You said "only relatively recently"?-- Yes.

That wasn't meant to be deliberately misleading?-- No.

Thank you.

COMMISSIONER: Ms Dalton?

MS DALTON: Thanks, Commissioner.

CROSS-EXAMINATION:

MS DALTON: Dr FitzGerald, my name is Jean Dalton. I act for John Scott and I would like to ask you some questions about a topic that was raised earlier, and that is damaged bile ducts during the laparoscopic removal of gall bladders?-- Yes.

One of the reasons you gave, I think, for not making more definite statements about Dr Patel's performance was that you were looking at, you said, data at a fairly high level of abstraction?-- Yes.

Were you provided with statistics that the Bundaberg Hospital had kept for all surgical patients that showed complication rates for Dr Patel for damaged bile ducts for that procedure? Is that the sort of data you mean?-- The data we asked for and were provided with was their ACHS reporting data, which they report to the Australian College of - Council of Healthcare Standards for adverse incident.

I am afraid that doesn't mean much to me. Is my description of the data accurate? Is that the kind of thing you were looking at; statistics by surgeon, by operation, by complication?-- I think the statistics that we were provided there were by the hospital - for the hospital only.

All right-----?-- The ACHS-----

You must have had it by surgeon to be able to see that Dr Patel's rate was 25 times higher than the national level?-- The data that was obtained on my behalf by Mrs Jenkins was that from two sources: one was data from the hospital about their ACHS reporting, which is done from the hospital to the ACHS directly, and the other information came off the health information system. The health information system-----

Can I stop you? I am not interested in where the data came from. I am interested in understanding what the data was. Was it - did it show complications from Dr Patel's surgery by operation type, that is laparoscopic removal of the gall bladder, and by complication type, that is damages to the bile duct? Is that what the data showed?-- I don't know.

Did you ever look at it?-- Well, what I looked at was the information that was translated into that table by

Mrs Jenkins.

Could you have a look at Exhibit 11 to your larger statement, please?-- Yes.

Have a look at the second last dot point. This is a memo, isn't it, from the lady who was assisting you, letting you know what she had asked Bundaberg to get out pending your arrival to investigate?-- Yes.

And the second last dot point says that she has asked Bundaberg Hospital to get out the patient charts?-- Yes.

That is, the medical records for the patients-----?-- That's right.

-----who had unplanned admissions to ICU, unplanned returns to the operating theatre and infections. Is that right?-- That's not what that says, sorry.

Well, what-----?-- They were the patients who had been identified in Toni Hoffman's letter.

Well, whose medical records were got out?-- Those patients.

What charts?-- The patients who had been identified in the complaints that had been received.

From Toni Hoffman?-- From Toni Hoffman.

So only those patient charts?-- Only those patients at that stage.

All right. Well, if a patient had gone in to have a laparoscopic removal of a gall bladder and the bile duct had been damaged during that operation-----?-- Yes.

-----that would be noted in the patient chart, wouldn't it?-- Yes.

It would be probably noted on the operation report if the surgeon had noticed at the time of operation he had damaged it?-- That's true, yes.

The operation report for a cholecystectomy would be, what, one page, two pages at most?-- Oh, I think so, yes.

And if the surgeon managed to damage the bile duct and not notice during the operation, people would find out either in the ICU straight after the operation or pretty soon after that on the ward, wouldn't they?-- Oh, I think so, yes.

And that would be noted in the ward notes or the ICU notes?-- That's correct.

Even with that complication, what, there would be four, five, six pages of patient notes?-- Oh, I would imagine so, yes.

Not any more than that?-- No, depends on whether the complication got better quickly, how long the patient was in hospital, et cetera.

So once it came to your attention that Dr Patel had a rate of 25 times the national average, and, as you pointed out when Mr Douglas was asking you some questions, it was on - you said a very small number of patients, about eight or nine patients?-- Yes.

Would have been a very easy matter for you to have asked Bundaberg Hospital to have got out those charts, photocopied the six, 10, 12 relevant pages and sent them down to Brisbane, wouldn't it?-- It would have been.

Why didn't you do that?-- Because, I mean, we got that sort of data out later in the procedure after we had been to Bundaberg.

Yeah, you were back in Brisbane?-- We are back in Brisbane.

Cogitating about your report?-- Yes, yeah.

Well, in the course of that you noticed that Dr Patel had a rate 25 times the national average. It would have been an easy matter to have picked up the phone and asked Bundaberg Hospital to get out eight, nine charts?-- Yes.

Photocopy a dozen pages from each of them and put them on the fax, wouldn't it?-- Yes, it would have been.

Why didn't you do it?-- I think there were a number of other issues that would have required a much more exhaustive review of this doctor's history. I mean, at that time we were really trying to look at the high level system structural issues.

I accept that you were looking - you say you were looking at the system structural issues, but in the course of that investigation, something really alarming had come to your attention. That's right, isn't it?-- Yes, on the data available, yes.

And - on the data available?-- Yes.

You see, this is why I am asking you these questions because you keep coming back and saying, "Well, it was only on the data available", but what I am saying to you is there was a very simple, easy, quick way to check for certain and get the facts?-- On that particular data, yes, there would have been.

On that particular alarming data?-- Yes.

Any reason why you didn't do it?-- No, because I think we were just trying to progress the high level report. I wasn't going into a further, more detailed examination of particular details.

All right. You say that you were doing a clinical audit and

that the idea behind clinical audit is a no-blame approach?-- Yes.

But in the course of doing that, some fairly alarming information, probably deserving of blame, if I can put it that way, had come to your attention?-- Yes.

Now, the Chief Health Officer is an important statutory position, isn't it?-- It is a statutory position. I will leave the judgment to you.

I think you are. One of the first substantive sections in the Health Act sets up the - sets up the position?-- Yes.

It is an important statutory function, isn't it?-- Sure.

If you have a look at an organisation chart - and I presume you have got a picture in your head, but for the record it is JGS2 to Dr Scott's statement - the chief health officer on the organisation chart sits above all the directorates and all the directors, sits above the Deputy DG, reporting straight to the Director-General?-- That's true, yes.

And your position description, which we see at the second exhibit to your statement, you have a primary reporting function straight to the Minister?-- On the issue - in regard to the private hospitals - private health facilities.

No, in relation to more than that, isn't it, Dr FitzGerald?-- That's the principal reason, to report directly to the Minister. Otherwise you report through the Director-General.

Have a look at GF2 to your statement?-- Yes.

Have a look at 5(a). "High level medical advice to the Minister on health issues, specially on standards, quality" - relevantly here?-- Yes, that's correct. Certainly my discussions with the Director-General when appointed was that I would report through him.

All right?-- That was the previous Director-General.

Maybe so, but you knew what your position description said, didn't you?-- Yes.

And you knew under the Act you had power to report to the Minister, too, didn't you?-- The only power under the Act is - to report to the Minister is on the Private Health Facilities Act, the specification - the role of the Chief Health Officer is not defined, only the creation of the position.

All right. Certainly nobody was directing you - when Peter Leck asked you to go up to Bundaberg because he was concerned-----?-- Yes.

-----he didn't say, "Listen, can you come up and do a clinical audit?", did he? He said, "I have got concerns about

Dr Patel. Can you come up here and investigate it, please."?-- That's right, yes.

He didn't know all about clinical audits and no-blame policies and things like that, did he?-- No, that's correct.

He had a concern about Dr Patel?-- That's what happened initially, yes.

And it was you who decided that the appropriate way of dealing with that would be to conduct a clinical audit?-- That's correct.

Equally, having conducted a clinical audit - and bearing in mind what you say about it is a no-blame process - having found something very important in the course of that, you could equally have made a report to the Minister or to the Director-General about the standard and quality of medical services up there at the Bundaberg Hospital concerning Dr Patel?-- Yes, I could have. I think that's what the intent of the letter was.

But you should have?-- You mean another report?

Well, a report?-- Well, I think that's what the memorandum I wrote to him essentially was.

The memorandum to the Director-General?-- Yes.

You didn't think that those matters were important enough to warrant something more than that?-- Not at the time, no, no.

You didn't think it was important enough to warrant, say, asking for the files about laparoscopic removal of the gall bladder where the bile duct had been damaged? You didn't think it was important enough to have a look at that?-- To do a further investigation?

Yeah?-- I think a further investigation needed to occur. My assumption at that - sorry, the intent at that stage is that that would occur under the auspices of the Medical Board.

Even though it would have been quicker and simpler for you to just pick up the phone and ask for a few pages of a few charts to be photocopied?-- In retrospect you are correct.

Can I ask you to look at exhibit 15 to your statement, GF15? This is the letter you wrote to Peter Leck on the 7th of April enclosing the audit report that you had written earlier?-- Yes.

There was nothing in that letter to alert Mr Leck of the serious concerns you had about Dr Patel. Nothing similar to the memo which is the exhibit immediately preceding this, that is GF14?-- Yes, that's correct.

In fact, the tone of this letter to Mr Leck is that it is all business as normal, isn't it? "Here is the report. I would

be grateful if you would provide me in due course with a response about how you might set about implementing my recommendations."?-- That's correct.

Nothing to alert him to the fact that you had found a very serious problem in his hospital?-- Well, nothing specific in that letter. I mean, there were certainly system and structural issues in the report that we talked about before, and the letter to Dr Buckland suggested to him or recommended to him that he should take action to deal with Mr Leck - well, that was the implication of "deal with the management issues".

Sorry, you have lost me. Your letter to Dr Buckland?-- Yes.

Yeah, but I am asking you about what Mr Leck was supposed to make of all of this. He got a report that had the negative parts taken out and the positive parts put in and a letter asking him to deal with it "in due course"?-- I was asked to provide him with copy - and effectively that was a covering letter, that's all it was, not intended to be an instruction by me because I don't instruct or direct the district managers.

That puzzles me a little bit, too. Why would you wait for the Director-General to tell you to send a copy to Peter Leck? Why wouldn't you just send a copy to Peter Leck?-- I reported it to the Director-General and the - I suppose the discussions were ongoing as to where - as to what - as to who should get it but ordinarily I report to - I sent copies to the Director-General, whoever has commissioned it. I haven't got a particular explanation except there was an awful lot happening at the time.

You're an experienced doctor and I think you say you were one of the first emergency physicians in Queensland, is that right? You set up the College of Emergency Physicians?-- Yes, back in the 1980s, yes.

And you had looked at the material from Bundaberg and you say that you didn't really have enough hard facts to be making decisions about what should happen, particularly to Dr Patel. Mr Leck wasn't a doctor at all, and you didn't give him a memo of the kind that you gave Dr Buckland alerting him to your negative findings, if you like?-- No, that's correct, yes.

It would be fair enough, wouldn't it, for him not to be alerted to any issue?-- Oh, I am sure he was fully aware of what was going on by then-----

What, from your report-----?-- -----early April.

-----that omitted all the negative information?-- And the public disclosure around this issue which had occurred.

Through the media?-- Yes.

But you didn't think to be alerting him to it?-- In writing officially, no.

Well, not orally either?-- I cannot recall what sort of conversations I had with Peter over this.

Thanks, Dr FitzGerald. Thank you, Commissioner.

COMMISSIONER: Thank you. Who is next?

CROSS-EXAMINATION:

MR APPLEGARTH: Dr FitzGerald, my name is Applegarth and I appear for Dr Buckland. Can I take you back to the 22nd of March, which was when the matter of Dr Patel and your investigation was raised in the Parliament. Do you remember that day?-- Yes, indeed.

Could I suggest to you that after the matter was raised, the senior departmental liaison officer, Mr Dall'Alba contacted you?-- Yes, that's my recollection.

And he asked you whether you could provide some notes for the Minister and brief the Minister orally later that day?-- That's correct.

On the same day, you orally briefed the Director-General around lunchtime?-- I remember that, yes.

And you then went on, as expected, to brief the Minister and some people presumably from the Minister's office later in the afternoon or the early evening?-- Yes, I can't recall who was there apart from the Minister.

Now, do I take it the substance of your advice was the same throughout that day, whether it was in writing or orally?-- That's correct, yeah.

And as at the 22nd of March, your report was in, what, a fairly final draft form? You were awaiting some statistics?-- Yes, the information, that's correct.

Next, just in terms of the timeline, two days later, the 24th of March, you have a report done and you have a memorandum to the Director-General and you also see the Director-General, don't you?-- That's correct.

And do I take it the substance of your advice to the Director-General that day when you delivered, as it were, the report and the covering memorandum was essentially the same as your advice had been on the 22nd of March?-- Yes.

Could we just work through those then in a little more detail? I think you have agreed with me that Mr Dall'Alba asked you to prepare some written information to enable the Minister to possibly respond to the matters that had been raised in

Parliament?-- That's correct.

Excuse me, Commissioner. I suggest to you that there may have been some earlier drafts, but in the early afternoon you were able to respond to his requests by sending down a backgrounder and some suggested responses for the Minister?-- That's correct, yes.

My junior, Ms Klease, is just outside trying to make a phone call, but I'll circulate this. I think she's got multiple copies of this document. If you could look at this document, please.

COMMISSIONER: Has this never been provided before?

MR APPLEGARTH: Well, we've only just obtained it ourselves.

COMMISSIONER: Well, it's never been provided before.

MR APPLEGARTH: No, and-----

COMMISSIONER: And it's a Department of Health document.

MR APPLEGARTH: Well, it appears to be. That's where we obtained the understanding, but these things come in ways that I don't understand. I leave those to my solicitors-----

COMMISSIONER: It's not critical of you, Mr Applegarth. It's critical of the Department of Health, that we should be getting something which appears to be a very material document at this stage of the Inquiry.

MR APPLEGARTH: There's a copy for the Commissioner, and I had hoped there might have been one on top that had some highlighting on it that can go to the gentlemen with the projector.

MR ALLEN: I've got one with highlighting.

COMMISSIONER: Thank you.

MR APPLEGARTH: Now, you recognise that's an e-mail that was sent by you to the SDLO - senior departmental liaison officer - the early afternoon on 22 March?-- That's correct. I was asked to, as you indicated before, prepare some information for the Minister.

And walking through the document, as it were, there's the suggested response that contains a background, then if you go over to page 2 and the second dark - sorry, the first dark dot point on the page?-- Yes.

"The significant issue regarding the competency of Dr Patel appears to relate to a preparedness to take on cases which are beyond the capacity of the Bundaberg Hospital"-----?-- Yes.

-----"and possibly beyond his personal capacity. There is no evidence that his general surgical skills are inappropriate or incompetent." Do you see that?-- Yes, that's right.

That was the state of your belief on 22 March?-- That's correct.

That's the state of your belief on 24 March?-- Generally speaking yes, although I think between those two days there was access to Appendix 1 to my report which contains some

further information.

Then you go on to remark about the poor judgment that he had displayed in the respects you've said, and that it may be grounds for disciplinary action. Do you see that?-- Yes.

COMMISSIONER: Just pausing there, how could you have possibly reached the conclusion that there was no evidence that his general surgical skills are inappropriate or incompetent when he had 25 times the average rate in routine surgery?-- Firstly, I don't consider at that stage we had that data. That was the last bit of data to be brought into the report, and secondly-----

And did you correct that immediately with the Director-General and the Minister as soon as you became aware of it?-- I certainly indicated to the Director-General, to my memory, that we had this additional data.

And did you do that in writing?-- Not specifically. It would be in discussion-----

Did you do another paper immediately for the Minister?-- No, I wasn't required to-----

It would have been a matter of alarm for you, wouldn't it, having expressed your view that there was no evidence that his general surgical skills were inappropriate or incompetent, to find that he had 25 times the average rate of complication for normal surgery?-- Yes.

And yet you didn't immediately attempt to correct that in a supplementary briefing note for the Minister?-- Not to my recollection, no.

All right.

MR APPLEGARTH: Thank you, Commissioner. Dr FitzGerald, you see above the heading, "Suggested Responses", there's a sentence, "I've prepared some suggested response points below. I've also enclosed a draft of the report", but doing the best that we can to understand the information system which appears, I'm told, to be recorded on the back page of that document, it looks like the only document that was sent at about 1.25 is the actual document itself, "Response to Parliamentary Questions". It doesn't seem as if there was an annexure of any draft report?-- Okay.

MR DOUGLAS: Excuse me, can I interrupt Mr Applegarth? I don't want another topic to be gone on to if it can be dealt with conveniently. Could I invite you, Commissioner, to have regard to this document, first page, foot of the page, last circled dot point, "With regard to other complications, these concerns relate particularly to the more complex procedures", and then, more importantly, "Benchmarking data suggests that for one complication Bundaberg Hospital appears to have a higher rate than for other similar hospitals. However, this has not been tested for statistical significance." This may

well be pertinent to the last question that - last substantive question that Mr Applegarth put to this witness.

COMMISSIONER: Indeed.

MR APPLEGARTH: The draft of the report was all but complete save for the information that you wanted on the statistical point of comparison. Is that right?-- That's correct, yes.

Do you know where a draft of the report would be now? Would it be stored or would the draft have necessarily been updated?-- I'm not sure. We have a number of drafts that people have been able to retrieve from the system. Can I say that my assistant in this regard was the holder of the report, so she actually managed the version control-----

COMMISSIONER: So there are drafts in existence?-- There are drafts that have been found.

And they would be dated?-- Sorry?

They would be dated?-- Yes, they've been - the system has been able to identify when these drafts - we don't have physical copies, we just have the computer investigations.

MR APPLEGARTH: Would they be watermark drafts?-- I have copies here. No, they're not.

COMMISSIONER: Do you have them with you?-- I have some copies - various copies of drafts that have been retrieved from the system.

MR APPLEGARTH: I'm not sure if I do, but I'll continue my - I don't think I do, but I'll continue - I propose to continue my cross-examination.

COMMISSIONER: Yes, please do, but I think at some stage we should see those drafts.

MR APPLEGARTH: If I can continue then, Dr FitzGerald, in the heading, "Suggested Responses", in the fourth dot point, "There is insufficient evidence at this time to take any particular action against any individual, and to suspend anyone would be unjust and inappropriate." That was your view at the time?-- That was my view at the time.

That remained your view on the 24th?-- Yes.

And your advice to the Director-General on the 24th was consistent with that view?-- It was.

And you note next that - in terms of dot points, "The Bundaberg Hospital's taken certain action to limit the scope of some general surgery performed at the hospital which should address the majority of issues raised by staff."?-- Yes. Yes, that's correct.

That addresses the point that came to be addressed in your report when you're talking about the scope of some general surgery. That's the matter that's, for example, dealt with at page 11 of your report about treating patients that should have been transferred and the tendency to treat patients-----?-- That's correct. That was the essential complaint that was raised, that it was - he was doing the oesophagectomies at Bundaberg, which he shouldn't have been doing.

Just finally, the last dot point on the page is you go on to say how, "Dr FitzGerald raised concerns about the clinical judgment exercised by one member of staff and he will be referring these to the Medical Board for consideration." That, of course, refers to Dr Patel?-- Of course.

And the concern was about his clinical judgment, not precisely his surgical skills or competence?-- The principal information I had was about him - evidence we had was he was doing procedures that he shouldn't have been doing, and to me it was a matter of clinical judgment to have actually done that.

COMMISSIONER: Doctor, just while on that question of Dr Patel specifically, you say on the first page under, "Background", that - the second last dot point, "Concerns were also raised regarding the rate of unplanned readmissions. This rate also appears to be reducing."?-- Yes.

They were in fact, at least with respect to the laparoscopic procedure, increasing dramatically?-- That's a very specific thing which is measured. The rate of unplanned readmissions, sir, is that a patient discharged from hospital is re-admitted in an unplanned way.

Yes?-- That's a specific complication.

Yes?-- And that rate appeared to be reducing on the data we had.

But you didn't think it relevant to mention that with respect to operations - quite normal operations which Dr Patel was performing, that the complication rate was increasing alarmingly?-- I haven't mentioned that in that document, no.

You didn't think it relevant?-- Well, I'm not quite sure of what I knew at the time, what I didn't know at the time, I'm sorry.

You must have known that at the time?-- What I didn't know - I think the last bit of information was the benchmarking about what the rate was in other ACHS hospitals in comparison-----

Yes, but you did know that it was, in Bundaberg, increasing alarmingly. It was increasing from nought to 8.6?-- I cannot recall whether I knew that at that time.

Increasing eight times in a short period of time?-- I do not recall whether I knew that at that time. I certainly didn't raise it in this issue.

MR APPLEGARTH: If I could move to another topic, that is, as you've said, you briefed the Minister later on the afternoon or early evening of the 22nd of March?-- Yes.

It wasn't just the Minister, there would probably be a member of the Minister's staff there?-- Yes. I don't recall who was there, but I'm sure there were other people there.

Yes, but the Director-General wasn't there?-- I don't think he was, no.

Because not simply on this matter, but on other matters you brief the Minister and/or the Minister's staff directly, don't you?-- On this matter I was asked to brief him directly. It would be unusual otherwise for me to brief the Minister without the Director-General being present.

You've already agreed with Ms Dalton that as Senior Health Officer you have a statutory appointment, and you have a stand-alone position in the organisation, don't you?-- Yes.

You - as you say in paragraph 9 of your major statement, you act independently of the Director-General in conducting investigations?-- That was because I'd been appointed as an investigator by the Director-General.

And your appointment as an investigator was for years, as it were?-- Yes, that's correct.

Just in terms of the reporting function, my learned friend Ms Dalton has directed your attention to your job description which says that you report directly - I should say - I won't say "directly". I'll quote it exactly. It says that you report to the Minister and the Director-General?-- Yes.

In these proceedings where you've been represented by our learned friends, Dr Buckland gave in his third statement, Exhibit 337 at paragraph 5, this statement: "The CHO has dual reporting functions. In addition to reporting to the DG he also reports directly to the Minister via the Minister's office." Now, I can't recall that proposition being contested by anyone on your behalf. Do you want to contest it now?-- Well, all I can say is that the - my experience in the position is that when I first joined the position it was made very clear to me by the Director-General of the day that I'd report through him, and I think I would have briefed the Minister, for example, an average of just a couple of times a year personally.

But I'd suggest to you that there's nothing said by Dr Buckland to restrict your access to the Minister or the Minister's staff?-- I don't recall him ever saying so, but I think normal practice would be to engage him in conversation anyway.

Well, let's see about normal practice. The practice on 22 March was that you reported directly to the Minister with Mr Dall'Alba, as it were, acting as the conduit?-- I was asked to brief the Minister directly, yes.

You didn't feel the need to involve the Director-General in your communications to the Minister on the 22nd of March?-- Sorry, I would have assumed that he was involved in that discussion for me to be asked to go and brief the Minister.

In any event, you'd go and brief the Minister-----?-- As requested.

-----in writing and orally?-- As requested, yes.

You don't send this possible response to parliamentary questions via the Director-General for him to send on via the SDLO?-- No, sir, I send it to the SDLO who, of course, works in the office of the Director-General.

In terms of your access or your staff's access to the ministerial offices, that's a fairly easy access. You walk up some internal stairs, I'm told, and the Minister's office is on the floor above yours?-- I don't have - well, I certainly haven't up until now had personal access to the Minister's office.

But-----?-- There's a security code.

If a report needed to be delivered to the Minister's office it would have been an easy matter for a member of your staff to walk it into the Minister's suite?-- Yes, it could be, although that's not how - it would normally be delivered through the departmental liaison officer.

Well, on this occasion on 22 March, this matter is in the political arena, isn't it?-- Yes.

That's why you're briefing the Minister in writing and orally?-- Yes, at the request of the Minister.

And your meeting with the Minister and the Minister's staff on 22 March presumably concludes on the basis that you tell them that you've got a draft - a report that's nearly complete?-- Yes.

You can't personally recall having walked the audit report into the Minister's office, can you?-- Prior to that or at that time?

No, when it was done a few days later, or in the week following?-- No, no, no.

And you don't personally recall someone from the Minister's office calling for it?-- No.

But given that you had briefed the Minister on 22 March, you told them that a report was pending, is it at least possible that someone from your staff, or someone from the Minister's staff, arranged for your report to be walked into the Minister's office?-- That's entirely possible, yes.

Leaving aside this walking-in process, there's a system for electronic transmission of reports, I suppose?-- Yes.

Do you remember a lady who works in the Director-General's office - or she worked there back in March/April, a Jill Pfingst, P-F-I-N-G-S-T?-- I know Jill, yes.

I just have to spell these things sometimes?-- Yes.

Chasing you up about where your draft reports or final reports were to be found on the electronic database?-- I don't recall it particularly. I couldn't say that it didn't happen by any means.

This might jog your memory: do you remember saying to her words to the effect, "I don't have anyone down here who knows how to use Recfind", R-E-C-F-I-N-D?-- Yes, I don't recall saying that, but-----

In any event, you rely upon personal assistants and others to transmit documents, and you hope that they know how to negotiate their way through the system?-- Yes, and particularly in this circumstance where I did the version of the document that was held by Mrs Jenkins.

I'm sorry?-- The document was held by Mrs Jenkins on her computer.

Well, can I just ask you about that, the versions of the documents, or the version of the document, because we have under your statement, under GF14, the covering letter, but we don't have the precise form in which the report went to the Director-General's office on or about the 24th of March. Maybe you can look at it and we'll see if you have a copy of it?-- It may be in these versions here. We have a version of the 24th of March.

The version that I'm working off is Exhibit 203. I just want to check - and I won't take any more time because you or someone on your behalf can look at this - I just want to check whether Exhibit 203 might be different in any respects from the one that was in circulation on 24 March. Can you answer that question?-- I understand the version that we have here is the one of the 24th of March. The big glitch was the table at the back. The appendix was actually held on a separate file, and I know when I was last here there was some confusion about the completion of the report.

Just finally, and getting back to your oral briefing to the Director-General, or the then Director-General on 24th of March, that dealt with a couple of issues, didn't it?-- I don't remember - I know it was about this-----

By that time you got your memorandum and the report that accompanied it?-- Yes.

And the Director-General seeks you out for an oral briefing?-- Yes.

Now, in terms of the problem that you identified in your report, and also in the covering memorandum about the fact that Dr Patel appeared to be undertaking types of surgery which, in your view, Dr FitzGerald, were beyond the capability of Bundaberg Hospital, and possibly beyond his own skills and experience, your report at page 11 had said, in the second paragraph under, "Discussion", "With regard to the conduct of inappropriate complex procedures, the surgeon involved has agreed to undertake only those procedures which are within the scope of the surgical service and relevant support services. The surgeon has also agreed to transfer patients more readily to higher level facilities."?-- Yes.

And apart from the surgeon having agreed that, did you derive some confidence from other people you spoke to at Bundaberg that there'd been a stop to that type of behaviour?-- I did, yes, from Dr - particularly from the Director of Medical Services, Dr Keating.

Did you impart that orally to the Director-General on the 24th of March?-- Yes.

In terms of the referral to the Medical Board of Queensland, that related to - your covering memorandum states about his lack of judgment?-- Yes, the principal, yes.

It wasn't saying that you were thinking about reporting to the Medical Board of Queensland because of a lack of clinical skill?-- Well, the principal information that I had at that time was - that I could prove, was his judgment in actually undertaking these exercises at the time.

My learned friend Mr Douglas has asked you earlier about the question of suspension and why you didn't think Dr Patel should be suspended, say as at 24 March, and I think you said words to the effect, "I didn't believe that we had sufficient information at that time."?-- Yes.

That was the substance of your advice to the Director-General too, wasn't it?-- That's true. That's true.

If you thought that you did have a basis to have Dr Patel suspended, you would have recommended that to the Director-General, both orally and in writing?-- Yes.

Apart from suspension, noting that your briefing to the Minister refers to other action, you didn't recommend to the Director-General that some other action be taken, for example some restriction on his practice or supervision or something of this kind?-- No, I hadn't, mainly on the basis that the principal issue again, about the complex surgery, had been

dealt with.

I have no further questions, but I neglected to tender the e-mail and its attachment.

COMMISSIONER: Yes. That will be Exhibit 391.

ADMITTED AND MARKED "EXHIBIT 391"

MR APPLEGARTH: Thank you, Dr FitzGerald?-- Thank you.

COMMISSIONER: Yes. Anyone else asking questions of the doctor?

MR DIEHM: Yes, Commissioner.

COMMISSIONER: Yes, Mr Diehm?

CROSS-EXAMINATION:

MR DIEHM: Dr FitzGerald, Geoffrey Diehm for Dr Keating?-- Yes.

The data that you obtained regarding bile duct injury that is referred to in your clinical audit, where did that come from?-- I understand the data came from the Bundaberg Hospital itself.

All of the data?-- The benchmarking data came from another source, which I assume is the ACHS. I'd have to check with Mrs Jenkins.

That's a data source in Brisbane?-- No, the ACHS data comes from the Council for Healthcare Standards.

I see. Remote from Bundaberg?-- Yes.

Thank you. You mentioned during the course of your memorandum to the Director-General, which is GF14 to your statement, the concern about the executives' response to complaints?-- Yes.

That you flagged as possibly not being timely or effective. Were you expressing a concluded view about those matters?-- No, just that that was the substance of the concerns and allegations raised, that matters hadn't been - people hadn't been listened to and hadn't been attended to.

You hadn't investigated that issue per se, had you?-- Only by virtue of asking peoples opinions and views.

Yes. You'd not pursued the matters with the executive themselves, for instance?-- No, no.

So really all you were really doing in that memorandum on that topic was saying, "This is an issue that needs to be looked into."?-- That's right.

Thank you. I have nothing further, Commissioner.

COMMISSIONER: Thank you.

MR ASHTON: One very short matter, thanks, Commissioner.

CROSS-EXAMINATION:

MR ASHTON: Thank you, doctor. Ashton is my name, counsel for Mr Leck?-- Yes.

On the last occasion you gave evidence you agreed with me that Mr Leck sought your guidance in this matter?-- Yes.

The investigation, that you were in charge. In passing response to a question from one of my colleagues - I'm not sure now which - you made a reference to what hospital administration might or might not have done. You'll agree with me, won't you, that Mr Leck, and for that matter Dr Keating, were waiting on and intending to rely upon your report and your recommendations as to what action they should take?-- I would assume that, yes.

Thank you. Thank you, Commissioner.

COMMISSIONER: Yes?

MR BODDICE: Thank you, Commissioner.

RE-EXAMINATION:

MR BODDICE: Dr FitzGerald, could we start with one matter? You said that you had received an e-mail from Mr Leck on 29 March when you were asked some questions by Mr Douglas. Do you recall that you said that you had been e-mailed by Mr Leck on the 29th of March?-- Yes.

And you started to read that note - that e-mail out. The e-mail from Mr Leck said, "Gerry, just a note to keep you up-to-date. Jay Patel is currently on stress-related sick leave. His current contract is through to 31 March. He will not proceed to take up the contract which was to take effect from 1 April and will return to the United States early next

week."?-- Yes.

So on 29 March you had been informed that Dr Patel was leaving the hospital?-- That's correct. I think even before that we'd heard that he was not likely to stay.

And then you were taken to the letter of the 7th of April that enclosed the report that you sent to Mr Leck?-- Yes.

You will recall that letter was dated the 7th of April?-- That's correct.

Now, at the time you sent that report, was it your understanding that Dr Patel had left the hospital?-- Yes.

So the concern in relation to Dr Patel raised in your memorandum was no longer an issue in terms of his working at that hospital?-- That's entirely correct, yes.

When you sent the clinical audit report to Mr Leck for him to deal with it?-- Yes.

You were asked some questions in relation to what steps you had taken. After you had been to Bundaberg in mid-February, did you contact the Medical Board in relation to your concerns?-- I did. I recall soon after returning having a discussion with Mr O'Dempsey of the Medical Board, saying that concerns had been raised about this Dr Patel, and that it is likely that there would be - those concerns would be substantiated to some extent, and so as a result of those discussions it was indicated to me that his registration was due for renewal. I can't remember the exact date when that was due for renewal, but we agreed - it was due to be submitted to the Registration Advisory Committee, so we agreed to put that application on hold until such time as I'd been able to determine some further information.

COMMISSIONER: When was that conversation?-- Could I check my-----

MR BODDICE: I was just about to say, Commissioner, at paragraph 67 of Dr FitzGerald's statement he indicated it was 16 February 2005.

COMMISSIONER: And you said in that conversation that you thought those concerns about Dr Patel had been substantiated.

MR DOUGLAS: Likely to be substantiated.

COMMISSIONER: Sorry, likely to be substantiated?-- The principal concern being the conduct of the complex surgery.

But you said concerns generally?-- Well-----

What were the others?-- Sorry, I don't recall the exact tenor - I'm sorry if I'm using words incorrectly - inconsistently here. What I remember, the tenor of the conversation was that there had been concerns raised about Dr Patel and that there

seemed to be some substance to those concerns, and that from the information that I'd been provided in my visit to Bundaberg, which had been in the immediate preceding day or so, and that therefore I thought we should not progress with his registration until such time as I'd had a chance to get my head around those concerns.

But those concerns, which in your view at that stage were likely to be substantiated, included but were not restricted to his practice of complex surgery?-- That's correct.

All right.

MR BODDICE: And did you understand that Dr Patel was registered as an Area of Need registration?-- Yes, he was.

And through your knowledge with the Board, you understood that that only lasted for a 12 month period?-- Exactly.

And you knew that that was coming up for renewal?-- That's right.

And the effect of that was that unless the Board renewed it, Dr Patel wasn't allowed to work?-- Exactly.

And you had taken steps that the Board would defer the renewal of Dr Patel's registration-----?-- Yes.

----- pending receipt of your report?-- That's correct.

And the further investigation?-- Yes.

COMMISSIONER: But in the meantime, despite your concerns, he would continue to practise as a surgeon?-- Yes.

MR BODDICE: But you said your primary concern at that time was in respect of the complex surgery?-- That's exactly right.

And you had obtained an undertaking from Dr Patel and from the Director of Medical Services that that surgery would not be undertaken?-- That's correct.

By Dr Patel?-- That's correct.

Then subsequently, after you had done your report, did you write a letter to the Medical Board setting out your concerns?-- I did, yes.

And was that letter dated the 24th of March also?-- It was the same day, I'm sure.

You were asked some questions in relation to the separation between the clinical audit issues and the other issues?-- Yes.

And you said that what is the basis of clinical audit, that it's a no blame system?-- Yes.

In your report, you were taken to your report and you were asked some questions in relation to paragraph 11 page 11 of your report and our learned friend Mr Douglas asked you some questions about the fact that you hadn't broken up under heading 1 the general surgical procedures and the infection rates issues; do you recall that?-- Yes, that's correct.

Could you look under the discussion section on that same page? Do you see in the first paragraph there you raised that, "There were two issues that appear to have been of significant concern to staff and the general surgical services have been the performance of complex procedures without the appropriate level of support services and the poor working relationships between some staff members."?-- Yes.

Now, you'll see there that's really items 1 and 2 above, isn't it, and then you said, "In addition, concerns were also raised", so under the discussion section you actually have broken them up?-- Yes, you're quite right, yes.

But under the heading section you've lumped them together, so to speak?-- Yes.

You said that you have identified, however, apart from the clinical audit issues, these issue of a concern of a lack of judgment on the part of Dr Patel?-- Well, my concern in regard to the lack of judgment was that he actually decided to do these operations, his decision to do these operations at a hospital which did not have the resources to support that in my view represented a substandard judgment.

And this is the complex procedures that you're referring to?-- Yes.

And you'd also identified some concerns in relation to whether management had appropriately addressed concerns that had been raised?-- Well, that was certainly the concern of the staff that we spoke to when we visited Bundaberg in early February.

Now, the memorandum that you gave to the Director-General which is dated the 24th of March, that memorandum enclosed your report, didn't it?-- That's correct, yes.

So at the time you delivered the report to the Director-General, you raised those very concerns with the Director-General-----?-- Yes, yes.

-----in your accompanying memo?-- Yes, that's right.

Your difference is that you sought to separate them out because of your views in respect of what a clinical audit

is?-- That's correct.

And the purpose of a clinical audit?-- Yes.

But at the time of delivering your report, you identified those concerns to the Director-General?-- That's correct.

And you did so on the basis that action would need to be taken in respect of it?-- Yes.

And you also brought to his attention that you had already notified the Medical Board-----?-- That's correct.

-----in relation to those matters. When you went to Bundaberg, you said you were receiving some conflicting information?-- Yes.

Did you speak to staff in relation to Dr Patel whilst at Bundaberg?-- We spoke to a number of members of staff and obviously Dr Patel was, as the Commissioner's correctly indicated, was the principal focus of the questions asked, we spoke to a number of staff, there were disparate views about Dr Patel on the issue of competency, practical competency in surgery. I mean, my personal experience is that people who are usually most observant of people's surgical skills are anaesthetists because they see the full range of surgeons and I do remember asking blunt questions to the anaesthetists of saying, "What do you think of this bloke, you know, what's his surgery like?", and the general feedback that I got from anaesthetists was that in their view, yes, he was undertaking complex procedures that perhaps he shouldn't be doing there, but in terms of his general surgical, their view was that he - I think the words that have been used - are not the best and not the worst.

And that was information that you received when you were up there doing the clinical audit?-- That's correct, yes.

So when you were asked some questions about positives and negatives, you had received some complaints?-- Yes.

And you refer to that in your report?-- Yes.

You were taken, for example, to page 7 of your report; could you go to page 7? And it was suggested to you by our learned friend Mr Allen that you'd only put in the - about the complimentary comments being made about the Divisional Director?-- Yes.

But that sentence actually reads, "However, as well as raising concerns."?-- Yes.

"Some staff made complimentary comments"?-- Yes, that's true.

So you refer to the fact that concerns have been raised by staff but also that complimentary comments had been made by staff?-- Yes, but I accept that the - in its presentation perhaps the balance isn't there, yes.

And did you speak to some of the junior staff as to-----?-- Yes, we spoke to a number of nursing staff and because of the numbers and the short time that we had available, Mrs Jenkins and I met with some groups together and some groups separately and we spoke to some of the junior medical staff who we also spoke to a number of nursing staff from a number of areas.

COMMISSIONER: But you didn't get a list of - a full list of complaints?-- No.

Apparently?-- Sorry?

Apparently?-- What we got was the lists from the - the information that had been provided to us by Toni Hoffman.

MR BODDICE: But you said whether you'd - whether there were any other complaints?-- At the time, yes. Oh, the patient complaints?

Yes?-- We asked the medical administration one of the things, "What do the patients feel?" "What's the level of the patient satisfaction?" And, "Have there been any complaints against Dr Patel by patients?", and we were advised at the time that there hadn't been.

Finally, you were asked some questions in relation to the data and you said that some of the data is data that was provided by the Bundaberg Hospital?-- Yes.

But you were asked some questions as to whether that would be specific to surgeon?-- Yes.

Your understanding of the data, is it specific to surgeon or is it specific to hospitals?-- My understanding is that the data provided by the Bundaberg Hospital wasn't, but I really don't know what data we received in terms of the actual raw data.

COMMISSIONER: You don't know whether it was a specific reference to a specific doctor or not?-- No.

You've got no idea about that?-- No.

MR BODDICE: This data was obtained by your assistant, Mrs Jenkins?-- Yes.

COMMISSIONER: And you didn't inquire?-- I didn't look at the source material, no.

MR BODDICE: Yes, thank you.

COMMISSIONER: Now, you will supply to the Commission and to the other parties copies of Dr Fitzgerald's draft reports, won't you?

MR BODDICE: Certainly, Commissioner.

COMMISSIONER: Thank you. Mr Douglas?

MR DOUGLAS: Yes, thank you, Commissioner. I need to look at those perhaps over the adjournment. I was going to ask the doctor to produce the drafts that he has right now.

COMMISSIONER: Yes.

MR DOUGLAS: Could we deal with that now?

COMMISSIONER: Yes.

WITNESS: I'm happy to do that.

COMMISSIONER: Well, perhaps if we adjourn now and we'll resume at 2.15.

MR DOUGLAS: Thank you.

THE COMMISSION ADJOURNED AT 12.51 P.M. TILL 2.15 P.M.

THE COMMISSION RESUMED AT 2.15 P.M.

GERARD JOSEPH FITZGERALD, CONTINUING:

COMMISSIONER: Yes, Mr Douglas.

MR DOUGLAS: Commissioner, over the luncheon adjournment, I obtained from Dr Fitzgerald a - through Mr Boddice, a bundle of documents. In fact, they are not Dr Fitzgerald documents as such, they are documents which have been produced by Queensland Health in the last 24 hours extracted from the electronic records system, and what they purport to demonstrate or what they consist of is a series of drafts of the audit report about which evidence has been given today and in fact, they transcend the date of 21st - I should say 24th March 2003, that is, there was a further version which was changed in some respects - I don't know that illicitly.

COMMISSIONER: No, no.

MR DOUGLAS: As late as the, it seems the last date 29th of March.

COMMISSIONER: There was the concern by Mr Applegarth, that the one we have here also is the one which was given to Mr Buckland or not?

MR DOUGLAS: Yes, I merely wanted to tell you, Commissioner, what had happened over the break. I'll attempt to deal with it now with the witness.

COMMISSIONER: All right.

MR DOUGLAS: Thank you.

RE-EXAMINATION:

MR DOUGLAS: Before I do that, Dr Fitzgerald - and you heard what I just said to the Commissioner in my exchange?-- Yes.

Can I just deal with a couple of matters raised with you by the counsel: my learned friend Mr Boddice, who appears for you and Queensland Health today elicited from you that you had discussions with one or more anaesthetists who worked in the Bundaberg Hospital; do you recall that exchange that you had with Mr Boddice?-- Yes, I do, yes.

And as I understood your evidence, the effect of it was that they were the source or genesis of the comments that you ultimately made to Dr Buckland on, I think both the 22nd and

the 24th of March 2005 to the effect that Dr Patel wasn't the best but also wasn't the worst of surgeons?-- That's correct.

I suggest to you you were in a far superior position having conducted the audit and completing your report, to express a view as to the competence of Dr Buckland than those anaesthetists?

COMMISSIONER: Dr? Dr Patel.

MR DOUGLAS: Sorry, Dr Patel, I apologise, than those anaesthetists?-- Only sir on the basis of the data that I had, I have no particular expert knowledge of surgery as I've indicated.

In fact, you've pinpointed the very issue of my question, because those anaesthetists only had available to them what they could observe during the course of any particular operation or series of operations; isn't that so?-- That's true, yes.

They didn't have available to them the infection rate data, for instance, that you elicited from the Bundaberg Hospital ultimately some time between the 22nd and 24th of March; isn't that so?-- I'm not sure whether they'd have that because it was available at the hospital.

It's certainly not a matter that you discussed with them as to whether they knew of the infection rate data that you obtained from Bundaberg Hospital?-- That's right, yes.

And you didn't seek to canvass them with respect to that issue to perhaps prod them further as to some amplification or indeed challenging what the views were that they expressed to you?-- No, because we didn't get that data until after the conversations with the anaesthetists.

Even when you obtained the data, did you think perhaps to telephone those individuals and canvass that data with them?-- No, I didn't.

If you had have done so, it would have put you in a better position to weigh the effect of the comments that they'd made to you?-- I'm sure so.

Notwithstanding that, it was the substance of their comments which you canvassed, among other things, with Dr Buckland both on the 22nd and the 24th of March when you conferred with him?-- That combined with the mixed picture that was being presented from the data.

I beg your pardon?-- The mixed picture that was being presented from the data.

Well, can I take that further then: those anaesthetists also, as far as you know, didn't have available to them the rates of complication data that you also canvassed in order to produce your final report, that is, with respect to the

cholecystectomy complication rate compared with the national rate?-- That's - they wouldn't have had access to that data. They would have had access to the Bundaberg data but not the - I don't know where they'd have access to the comparative data, that's right.

I suggest to you in the context of all of the investigation that you'd undertaken and the data that you'd canvassed in order to produce your final report, the exchange which you've spoke of with Mr Boddice pertaining to your conversations with the anaesthetists bore little if negligible weight in expressing an opinion with respect to the competence of Dr Patel?-- I'm sorry, I missed the point of your question, sorry?

I suggest to you that knowing everything that you did know by way of data and otherwise investigation in order to produce your final report, the substance of those conversations with the anaesthetists bore negligible or no weight in expressing a view about the competence of Dr Patel?-- I think the anaesthetists are usually very well placed to give an opinion about the competence of surgeons.

COMMISSIONER: But of far great importance was the fact that he had 25 times the complication rate in fairly routine surgery?-- Yes, that would have been more important, yes.

Well, far greater importance?-- Yes sir.

MR DOUGLAS: Do you recall that you were asked questions also by my learned friend Mr Applegarth pertaining to the questions you prepared for the Minister on the 22nd of March?-- Yes.

Could you give me that, Mr Groth, that Exhibit number please? The exhibit number of the, of this document, 22nd March? 391, thank you very much. It's Exhibit 391 in this Commission proceeding. I want to ask you some questions about that if I may. Were you the sole author of the document?-- I really don't remember, I'm sorry. I remember I was probably the principal author of the document.

Was it a document you perused in its final form before it was e-mailed to the recipient?-- I would imagine so, yes.

It certainly came from you, I notice that the sender of the e-mail is you?-- Yes.

You would have carefully perused this document before sending it, surely?-- In so much as time would have allowed at that time.

In so much as time would have allowed, because you were providing information to the Minister for the purpose of in turn him providing information to the House?-- Yes.

Indeed, the State in relation to these issues?-- That's correct.

If I could take you to the first page or the first substantive page of the document towards the foot of the page, the penultimate and third last dot points; was that factually correct that each of those matters, that the rate of each of those matters was reducing?-- To certainly the second dot point was correct on the information that we had at that time.

When you say the second dot point, when - do you mean the second last dot point?-- Sorry, well, both of the dot points. If I may refer you to the data that we had at the tame of the 22nd, that's what that data was showing at that stage.

Well, before you do, is it the case that between the date of this document, the 22nd of March 2005 and the 24th of March, two days later, you received further data in relation to the third last dot point?-- I'm not sure what I received, I'd have to actually do the comparison, if I may?

All right, thank you?-- I don't know whether you want to move to the two versions of the report on the 22nd?

No, I'll deal with that a different way?-- Okay.

You said to the Commissioner that at no time subsequently, that is, subsequent to you finalising your report on the 24th of March 2005 did you contact the recipient of the document or the Minister to make any correction to the information that was contained in it?-- After the 24th?

Yes?-- No, that's right.

And as far as you knew, on the - certainly on the 24th of March, the Minister had not received a copy of the report?-- That would be correct, I think, yes.

Now, if you just put that to one side, I want to deal with the reports now. Dr FitzGerald, you're aware that over the luncheon adjournment, Mr Boddice has supplied to me a number of documents?-- Yes.

I've circulated those to the parties. Can I just identify the documents first?-- I have copies.

You have a copy, don't you?-- Yes.

You have a copy, don't you, Commissioner?

COMMISSIONER: No.

MR DOUGLAS: Over the adjournment I had as many copies made as time would permit by those who were assisting me.

COMMISSIONER: Don't worry about me.

MR DOUGLAS: Thank you, thank you very much, I'm indebted to my learned friend Mr Mullins, I can put a copy in your hands.

COMMISSIONER: All right.

MR DOUGLAS: I received two documents from Mr Boddice; you're aware one is a bundle which is headed, "Requests for Information" that's a bundle of what appear to be drafts of your ultimate audit report; is that correct?-- That's correct.

Thank you. And there was also provided what purports to be a summary of differences, it's a document headed, "Key Differences Between Versions of CHO Clinical Audit"; is that not correct?-- That's correct.

The second document I won't refer to again because it's really a mechanical document?-- Sure.

Commissioner - and before I do that, you've looked through these documents have you?-- Yes.

And you believe them to be, at least within the bounds of what appears to be there, a correct bundle dictating the succession leading to the final version of the audit report completed by you in early 2005?-- That's my understanding. What I don't know is whether there were other versions that were prepared in the process as well.

All right?-- But that's what's been retrieved from the computer systems this morning.

You haven't downloaded these documents yourself?-- No, no.

Someone else from Queensland Health has?-- Indeed so.

But you've perused them?-- Yes.

And obviously having perused them, you're reasonably familiar with them, but not having just recently perused them today but having regard to the history of your preparation of the report?-- Yes, inasmuch as I recall the detail.

So as far as you recall the detail, these appear to be an accurate series of copies of the succession of this particular report that you prepared, there may well be others outside these parameters?-- Yes.

But certainly within these parameters they seem to be correct?-- Yes, I have no reason to doubt that they wouldn't.

And you say that accords with your recollection of matters as well; is that so?-- Yes, that's correct.

If I could just take you please to the first of the documents in the bundle? You'll see from the cover page, which is a box headed, I believe it's, "SJ Report Bundaberg.Properties" and you see there there's a notation about halfway down that page saying, "Created: Tuesday, 22 February 2005"?-- Yes.

And there's a date that it's been modified and it's about two seconds, I think it is, two seconds later, so perhaps it might

well be the same document. But do you see if you go to the next page, it purports to have a header page, "Queensland Government, Queensland Health" and the title is "Clinical Audit of General Surgical Services, Bundaberg Base Hospital"; do you see that?-- Yes sir.

It has a date at the foot on the left-hand side, February 2005?-- That's correct.

Now, you recall fairly well, don't you, the terms of the final form of the report, about which you have given evidence already and been cross-examined about, don't you?-- Yes.

Thank you. With those matters in mind, can I invite you to turn into the body of this February document? If you could note the pagination on the bottom right-hand corner? Do you see first on the page, which is page 4 - pagination has been obscured - the previous page is page 3 - page 4 has at the top of the page "Report of the clinical audit - Bundaberg Base Hospital", and the first subheading is "introduction". Do you have that?-- Yes.

Look towards the foot of that page?-- Yes.

There is a paragraph which commences "Also concerns raised"?-- Yes.

You mention there rates of infection?-- Yes.

Then you have got a series of dot points. Do you see those?-- Yes.

And there is a reference there to "conflict with commercial interests of private surgeons". What's that got to do with-----?-- I have no recollection of writing those words.

Look at the next dot point. "Credentials and clinical privileges committee has not considered the scope of practice within the hospital. Granted interim privileges."?-- Yes.

That was a reference to Dr Patel, wasn't it, that entire dot point paragraph?-- Well, it would be in principle Dr Patel, but I think - the point I was trying to say before, I think the committee had not been working at all.

The only person you knew who had been granted interim privileges was Dr Patel?-- Yes.

You knew of no other person when you were there who had been granted anything?-- We had no further detail, yes.

So it was Dr Patel you were talking about?-- I would imagine so. It is a very early draft.

COMMISSIONER: It couldn't have been anyone else?-- Sorry?

It could not have been anyone else?-- Well, no, it can't.

MR DOUGLAS: You didn't mention anything about Dr Patel having been granted interim privileges in your final report?-- No, I don't recall there was, no.

Why not?-- I have no idea, I am sorry.

This surgeon had been operating, at the time of your report, for about two years in this hospital on interim privileges?-- Well, our - the information I thought we had was that the - he had not been granted privileges at all.

So in other words, in the interim he had been granted some privileges, short of credentialing and privileging, which had yet to be undertaken?-- He had been allowed to operate, yes.

And allowed to operate in a manner you knew was in contravention of the then established credentialing and privileging policy laid down by Queensland Health?-- Yes.

Look at the next paragraph on the next page, thank you. Do you see a paragraph which commences "These concerns"?-- Yes.

And you say there in the draft, "There is a perception among those concerned that their concerns were not addressed satisfactorily."?-- Yes.

"Subsequently those concerns have been brought to the attentions of the district manager and information provided to the Nurses' Union."?-- Yes.

Did you understand that to be correct?-- Yes.

Okay. At about halfway down that sheet - it seems to be perhaps on another page-----?-- Yes.

-----there is a fourth item. "Dr Patel has indicated he does not intend to renew his contract past its completion in March. However, he has indicated the preparedness to undertake a three month locum until the end of June."?-- Yes.

When you were present in Bundaberg in February of 2005, you were of the belief that Dr Patel may well continue to operate as a surgeon at Bundaberg Hospital until at least the end of June 2005?-- That's correct.

And your belief in that respect remained intact until the communication, about which you told us, that you had with Dr Leck - I should say Mr Leck on the 29th of March 2005?-- That's correct. The issue of him extending his contract seemed to be very confusing.

The best information you had when you completed your report on the 24th of March 2005 is that Dr Patel May well continue to operate, that is carry out operative procedures, at the Bundaberg Hospital up until 30th June 2005?-- The information we had at the time was that his contract was complete and negotiations were occurring about an extension of that contract.

So the reality is you had an expectation he may well be operating there for another period of three or four months on patients who required operative treatment?-- That was possible, yes.

An uncredentialed and unprivileged doctor?-- Yes.

All right. Now, if I can take you then to what is the next document in the bundle, if I could put it that way, the header page which is a boxed page "SJ Report Bundaberg", and you will note in the "date created column", about halfway down the box, it says 10th March 2005. Do you see that?-- Yes, I do.

Thank you. If you then turn to the 10th page - by reference to the pagination on the bottom right-hand corner of that particular document - do you see the heading "Discussion"?-- Yes, I do.

The third paragraph down commences "As can be seen"?-- Yes.

You recite in that paragraph the "unplanned admissions data collected" and the "laparoscopic cholecystectomy data"-----?-- Yes.

-----for at least two six-month periods, and they're at the rates that you subsequently dictate, at least for those periods, in your final report?-- Yes, that's correct.

But there doesn't appear there the Australian comparative data?-- That's right. That was the final data to obtain.

Before you obtained the Australian comparative data, did you consider those particular rates, that is the rates recited there?-- I remember considering them. What I didn't know is what the comparative data rates would be.

Did you consider, short of obtaining that Australian comparative data, that those rates appeared to be quite high?-- They appeared to be high.

That was your considered view, even short of obtaining the Australian data?-- Yes, but I had no real reason to know what the normal rate would be.

COMMISSIONER: And that they had increased over a period?-- Well, that's correct, sir, because if you see in the later versions we actually got some previous information to the one-----

But even then, even at this date you were conscious of the fact that they were increasing? They had been increasing over some period of time?-- For those two periods, yes.

MR DOUGLAS: And you also considered them, again short of receiving the Australian data, to be apparently high?-- To my ignorant knowledge of them, I don't know.

It was the ignorant knowledge of the person who was undertaking the audit, namely you?-- Yep.

Correct? And it was also the ignorant knowledge of the person who, on the 22nd of March 2005, armed Minister Nuttall with

information to be utilised in the House, correct?-- Correct.

Why didn't you, having known the information you just expressed in the exchange between the Commissioner and the exchange with me, say to the Minister on the 22nd of March, "Look, I really shouldn't give you this information to use in the House because on the information I have to date, I am concerned there appears to be an increasing rate and a rate which is high for an apparently pedestrian surgical procedure, and you shouldn't act on any of this information until I get further information, which I am expecting in the next couple of days."?-- I mean, I was not - I did not - would not have been aware as to what the normal rate would be expected at that stage. I would not have been able to make that judgment.

You had every reason to be cautious about it, didn't you?-- Yes.

For the reasons you just ventilated with the Commissioner and I?-- I was trying to be cautious about it.

But you weren't cautious about it because you were happy to arm the Minister with information to the effect that appears on the first page of this document, specifically, among other things, with regard to other complications. "These concerns relate particularly to the more complex procedures."?-- Yes.

On what you believed cautiously, but without the Australian data, at that point on the 22nd of March 2005 to be the case, it wasn't confined to more complex procedures at all, was it?-- There was some evidence to support that there were other complications, yes.

There was enough evidence for you to warrant to Minister Nuttall that he could go into the House and ventilate these matters with the Parliament and, indeed, the public; is that so?-- Yes.

That's a highly irresponsible course for you to adopt, I would suggest? I suggest?-- Well, that's your opinion. I-----

I suggest. I invite your comment, sir?

COMMISSIONER: What's your opinion?-- Well, I believe that I was working on the information that was available to me at the time and the judgments that I could make on that information which was - you know, the data that was actually available. It is not only that but there is a whole range - there is the other data that was showing a much different and much mixed picture.

MR DOUGLAS: You go on, in this document that you sent to the Minister on the 22nd of March, to say this: "Benchmarking data suggests that for one complication Bundaberg Hospital appears to have a higher rate than other similar hospitals, however, this has not been tested for statistical significance." When you speak about one complication, are you speaking there of nicking of the bile duct in a

cholecystectomy?-- The information that was based on is the information that's in the appendix, which was the information drawn from the health information system which does not go down to that level of specificity.

Well, when you said "appears to have a higher rate than other similar hospitals", what was the information pertaining to other similar hospitals to which you were referring in that document communicating with the Minister?-- It was on the appendix which is attached to the final version of the report, the back page which was - which shows the T81/2, which show the rate of 4.2 compared to the peer group of .66.

In fact, the situation was then that other hospitals within the Queensland Health cohort had a complication rate of, what, 4.-----?-- Of .66.

.66. And yet the rates that you had from this hospital for this procedure were?-- 4.2.

4.2?-- It covers not only that procedure but a number of other procedures.

It was far higher than the rate for other similar hospitals?-- On that data, yes.

But you are saying to the Minister, in this document of the 22nd of March, "that appears to have a higher rate than other similar hospitals, however, this has not been tested for statistical significance."?-- Yes.

Wouldn't it have been far more correct to say it has a much higher rate? I think, again on my poor mathematics, something in the order of - something in the order of about eight times - seven or eight times the rate of similar hospitals?-- Yes.

You think that comparison which you had made to date, short of, to your knowledge, obtaining the Australian data, sufficed for you to be able to inform the Minister and, in turn, to enable him to inform the House, if necessary, that it "appears to have a higher rate than other similar hospitals, however, this has not been tested for statistical significance"?-- That's correct.

I suggest to you that a more honest and sensible course would be for you to say to the Minister, "On the information I have undertaken or ascertained to date when I am comparing the rate for this pedestrian procedure with similar hospitals, it is eight times the ordinary rate but I am waiting on the Australian data and I don't know what that's going to say."? Wouldn't that be a more honest and sensible course for you to adopt in informing the Minister, in your capacity as Chief Health Officer?-- In retrospect, I am sure you are right.

Oh, in retrospect. What were you doing when you were saying these things? Were you just hoping to placate the Minister, mollify him by giving him information that he could quieten down the public clamour which originated first in mid-March?--

That was not my intention at all.

Well, that was the effect of it, it seems, in retrospect. Is that your evidence?-- Well, I accept that that was the effect, yes.

Can I come back to the bundle of documents which Queensland Health has provided?

COMMISSIONER: Can I just ask you why were you concealing this?-- I don't think I was concealing it. It is just that I didn't have confidence in that data because of - the systems that we have to collect this data are not resilient, they are not strong systems.

You seem to have confidence in expressing the contrary point of view, sufficient to allow the Minister to tell the public that?-- Well, that was not what I was intending to do, sir.

MR DOUGLAS: It seems to be there are lots of things you weren't intending to do but you did, sir, do you agree with that? That you have expressed that, on probably 20 or 30 occasions today whilst giving evidence, you weren't intending to do something but that's how it turned out. Do you recall?-- I said that, yes.

I am merely seeking to ascertain from you whether or not you had some overarching touchstone which was dictating your course in objectively misleading those who might be receiving information, or whether it was just lack of attention to detail? Which is it?-- Well, certainly no overall intent. However, I accept that we could have got further detail or analysed the detail in a further way.

COMMISSIONER: See, one possible view that I could form, doctor - and I am not saying for the moment that I have formed it or that I am - is that you were deliberately concealing this unfavourable data in the hope that because Dr Patel was likely to leave reasonably soon, it would all go away?-- Well, that was not my consideration at the time.

MR DOUGLAS: So you put it down to lack of attention to detail?-- I would accept that.

I suggest to you, to take up the Commissioner's linguistic of earlier today, it was a gross dereliction of your duty to allow that document of 22 March 2005 to be delivered to the Minister - Minister Nuttall - in that form?-- Well, I am sure I don't accept the gross dereliction of duty.

Would you accept dereliction?-- I would accept it could have been better - better phrased.

You certainly would accept that the approach that you adopted, when disseminating this document, was extremely poor in approach?-- I am not quite sure I can answer that. The - the - I mean, it was - events happened very quickly on that day. I was asked to provide information as quickly as possible.

In subsequent scrutiny, I am sure it could have been better done.

You are not some, with respect, lower level public servant; you are the Chief Health Officer. You were really at the apex of the clinical branch of Queensland Health, were you not?-- I am not quite sure that's a good description of the Chief Health Officer.

How would you describe it then?-- Well, the Chief Health Officer is advisor, essentially, to the Minister and Director-General.

The principal advisor?-- Yes.

Correct?-- Yes.

And you had access to all of the facilities and all of the expertise that lay within Queensland Health in order to enable you to discharge your duties and obligations?-- Yes.

Coming back to your report, in fact it did change somewhat after the version that was finalised on the 24th of March 2005, according to these documents?-- Yes, yes, I understand, yes.

There would appear to be a number of changes which would seem to be more or less summarised in this second key difference - or this "key differences" document that Queensland Health has provided. If one looks at the final column and goes over the pages - that is the column headed 29 March 2005 and 1st June 2005 versions - on this material the truly final version was promulgated on the 29th of March 2005?-- I understand there were changes made after the 24th that I wasn't aware of.

How could you not be aware of them?-- Because my assistant, Ms Jenkins, was the holder of the report and she obviously made some changes that I wasn't aware of subsequently.

So there was a version which you gave to the Director-General, Dr Buckland, on the 24th of March 2005?-- Yes.

And there is a - or there is actually two 24 March 2005 versions here?-- Yes.

So it was one of those that you gave to Dr Buckland?-- That's correct.

And then there is the version of the 29th of March 2005, and that added a number of items, which appear within here, to that 24th March version?-- Yes, that's correct.

That was the version which was in turn supplied to Mr Bergin, the zone manager, and also Mr Leck?-- It would appear so, yes. I mean, I wasn't aware that it had changed after the 24th until we drew this information last night.

When you wrote to Mr Leck on the 7th of April supplying him

with a copy of the report, are you able to say what version was supplied to him?-- No, I can't. I was not aware until last night there was a version after the 24th.

29th of March, did you say?-- After the 24th.

Thank you. And the letter that you wrote to Mr O'Dempsey of the Queensland Medical Board on the 24th of March 2005, I take it that supplied the final 24th March 2005 version?-- That's so, yes.

Now, it is correct to say from this bundle of reports that the version for the 22nd of March 2005 didn't carry the Australian comparative data?-- On the 22nd, that's right.

22nd?-- Didn't have the ACHS comparison data.

That was contained in the interim?-- Yes.

Between the 22nd and the 24th?-- I understand, yes.

Correct? And the same goes for the infection rates?-- The comparative data, sorry?

Yes?-- Yes, for all of that comparative data from the ACHS.

Thank you. Commissioner, I am not sure if I have tendered this bundle or not yet.

COMMISSIONER: No, you haven't.

MR DOUGLAS: I tender it.

COMMISSIONER: I am not sure I have the same bundle as you. I have most of those documents. I don't have that comparative document.

MR DOUGLAS: No, you don't.

COMMISSIONER: I seem to have added to the end of it two copies of a statement by a Dr McNeil.

MR DOUGLAS: I see. That's where they are.

COMMISSIONER: I don't think they have anything to do with the matter.

MR DOUGLAS: Thank you.

COMMISSIONER: I think I will give this back to you.

MR DOUGLAS: Commissioner, can I supply it to you in due course?

COMMISSIONER: That will be exhibit number 392.

ADMITTED AND MARKED "EXHIBIT 392"

MR DOUGLAS: Commissioner, obviously the bundle in question requires some greater attention, but rather than calling Dr FitzGerald back, I thought it was best to deal with it today. If it transpires, as a result of this exercise and the eliciting of any further documents by Queensland Health by way of further versions, I need to recall Dr FitzGerald, well so be it.

COMMISSIONER: Yes.

MR DOUGLAS: I will advise Queensland Health accordingly.

COMMISSIONER: Is there anyone else who wants to ask some questions out of that? I appreciate that document came in at a late stage.

MR APPLEGARTH: I think I could ask a couple and leave it at that, if I may.

COMMISSIONER: All right.

FURTHER CROSS-EXAMINATION:

MR APPLEGARTH: Dr FitzGerald, do you still have that bundle in front of you?-- Yes, it is out of order now.

Now, if you just go to the very back of it and go in the three last pages - and, again, we have something in common, that we are not information technologists at Queensland Health - but it looks like the third last document is giving a description of when the next document is created and that little computer table says "created 11 April 2005". Do you see that?-- No, sir. Mine has become out of order. The Monday, 11th of April 2005?

Yes. In the bundle I have got?-- Yes.

That's on top of a document which is an appendix?-- Yes, that's correct.

Do you see that?-- Yes.

Now, doing the best that we can, that would appear to suggest that the appendix with that data in it, that my learned friend Mr Douglas just took you to, was only created in that table form on the 11th of April?-- Or printed on that day because that - that appendix was certainly attached on the preceding versions. What had happened is that Ms Jenkins had kept them in a separate file and that's why. But certainly that table was available much earlier than that.

You see the earlier versions that are here-----?-- Do not have the table.

-----don't have the table. For example, the ones on the 24th of March don't have the appendix. They have the appendix in the index but there is not actually an appendix with the document?-- But certainly, if I may, some of the data referred to in the body of the reports previously refers to that.

Yes?-- That table was available much earlier.

Well, just again, this may have to be explored by others, but the "key differences" document, that someone has produced for the 24 March versions, points out that the body of the document talks about things that are going to be appendix 1 but it says appendix 1 is not part of either 24 March 2005 version-----?-- Off the computer system. They were kept in a separate file, I understand.

Very well. I can't take the matter any further.

COMMISSIONER: All right. Anyone else?

MR DIEHM: Can I just say that I have not had the documents long enough and I don't have the comparative document either that sets out the key differences. It is unlikely I would have anything come out of them but can I tack on to what Mr Douglas said in the unlikely event there is anything that arises, an approach can be made about Dr FitzGerald being recalled.

COMMISSIONER: Subject to that, no-one has any objection to him being excused?

MR APPLEGARTH: Just one separate matter I should ask the witness.

Dr FitzGerald, you gave evidence a little while ago about the answer to possible parliamentary questions that were sent down on the 22nd of March, and the document I showed you before lunch, might there have been an earlier draft of that earlier in the day?-- Oh, I am sure there were, yes.

So-----?-- I don't recall.

Is it the case that you probably were getting asked before lunch to provide a response in writing for the Minister and there may have been more than one response, the one that we looked at earlier that went in about 1.25 may have been an updated version of an earlier response?-- It could have been. I really don't recall the day, sorry.

Those documents would be somewhere, one would hope?-- Yeah.

Okay, thank you.

MR DOUGLAS: Yes. May - just one further question.

FURTHER RE-EXAMINATION:

MR DOUGLAS: Is Ms Jenkins still working for the-----?-- Yes, she is. She is overseas at the moment so I have been unable to test her memory on some of the details on this.

For how long is she overseas?-- Three weeks, I think.

When does she return?-- I don't know, I am sorry. I am not working in that area at the moment, so I haven't seen her.

Thank you. May Dr FitzGerald be excused?

COMMISSIONER: Thank you, doctor, you are excused from further attendance.

WITNESS EXCUSED

MR DOUGLAS: Commissioner, before I deal with the next witness, there is a couple of housekeeping matters, one of which arises out of the last witness, and that is that subject to Ms Jenkins' availability, and these other people as well who apparently have access to these things, I think it is appropriate, and I should say in the open Commission that Queensland Health be required to produce an affidavit which traces the various versions in full, including appendices over their life.

I don't say this disrespectfully of anyone, but I am not confident that the last exhibit necessarily encompasses all of the versions that existed. So I am saying that in open Commission, if I can ask Mr Boddice to attend to that, and I don't think a direction is required at the moment.

MR BODDICE: Commissioner, we shall.

MR DOUGLAS: It may well be, once that's done, that witness won't be required for examination, but it needs to be completed.

COMMISSIONER: And search, too, Mr Boddice for the various versions Mr Applegarth raised of the draft for the Minister.

MR BODDICE: And my learned friend Mr Douglas looked at me when that occurred, and I indicated we would undertake that search as well.

COMMISSIONER: Very well.

MR DOUGLAS: All the body language going on at the table, Commissioner.

COMMISSIONER: Yes.

MR DOUGLAS: Can I mention one other housekeeping matter for Monday? It is proposed on Monday to call at 10 a.m. Dr Crawford. Dr Crawford is the surgeon who has examined the Fraser Coast files.

COMMISSIONER: Yes.

MR DOUGLAS: His statement is being distributed on a CD this afternoon.

COMMISSIONER: Yes.

MR DOUGLAS: I did say Monday, did I not?

COMMISSIONER: You did say Monday, yes.

MR DOUGLAS: Thank you. Also on Monday at 2.30 p.m. it is proposed to call Dr Nothling.

COMMISSIONER: Right.

MR DOUGLAS: Thank you.

COMMISSIONER: And tomorrow?

MR DOUGLAS: Yes. Well, tomorrow, Dr Aroney, as you recall, has been arranged for tomorrow. I anticipate, Commissioner, as I think I have already canvassed with you privately, this witness is likely - that is the next witness, Mr Walker - will probably go into tomorrow. What I propose, Commissioner, particularly as the Commission doesn't ordinarily sit on Friday, and it was anticipated that Dr Aroney would not take up much time, that the Commission sittings tomorrow commence at 9 a.m. I mention that in case it embarrasses anyone at the Bar table in terms of other commitments elsewhere at that time.

COMMISSIONER: Anyone have any objection to that course? You might welcome the opportunity to have the rest of the day to prepare for next week? All right, we will start at 9 a.m. tomorrow.

MR DOUGLAS: Thank you. Commissioner, would you prefer to - assuming we don't finish Mr Walker this afternoon, would you prefer to start Dr Aroney at 9 a.m. or complete Mr Walker and-----

COMMISSIONER: I'm in your hands. Whatever you think.

MR DOUGLAS: Thank you. We will complete Mr Walker tomorrow morning, then get to Dr Aroney.

COMMISSIONER: All right.

MR DOUGLAS: I'm only concerned that Dr Aroney may have clinical commitments, but I'll check that during the course of the afternoon. I call Mr Walker.

MR FREEBURN: Before that happens, Commissioner, can I mention another housekeeping matter?

COMMISSIONER: Yes, certainly.

MR FREEBURN: Commissioner, you may recall that I promised to get back to you about our attitude to a document going into evidence which is a record of interview.

COMMISSIONER: Yes.

MR FREEBURN: We've looked at it. We think it's unreliable on three different levels. It's - and I can broadly state this. First of all, it's unsigned and unverified by the transcriber. Secondly, it's inaccurate and incomplete on its face, and we've identified a lot of inaccuracies in it. We're happy to supply a version which identifies those inaccuracies. Thirdly, it's subject to the problem that the medical issues that are going to be raised with Dr Nothling-----

COMMISSIONER: Why wouldn't it be helpful in raising those matters with Dr Nothling to see that?

MR FREEBURN: You asked what our attitude was to that document going into evidence and we-----

COMMISSIONER: You're not objecting to it being seen by the parties who might want to cross-examine Dr Nothling.

MR FREEBURN: No.

COMMISSIONER: You're happy for that to happen.

MR FREEBURN: Yes.

COMMISSIONER: All right. Well, I won't admit it as an exhibit at this stage. I'd have thought the first two concerns you have could be readily overcome. That is, that if there are inaccuracies or inadequacies, that they can be fixed up, because as I understand it, it is a recorded interview, and secondly, I'm sure it can be verified by those people who were present at the interview. So I don't think that that -

either of those is likely to be a problem.

MR FREEBURN: It may be, may not be. I should say that some of the inaccuracies and gaps in it are, to our way of thinking, rather significant.

COMMISSIONER: Well, no doubt we could perhaps supply not only the transcript, but a copy of the tape of the interview to those who are interested, which includes you.

MR FREEBURN: Yes.

COMMISSIONER: All right. We'll endeavour to do that, and I won't make that an exhibit at this stage, but if any party wants to see that transcript or to obtain a copy of the tape, we'll endeavour to provide both.

MR FREEBURN: Thank you, Commissioner.

COMMISSIONER: Yes, Mr Douglas?

MR DOUGLAS: May Mr Walker be sworn?

GARY JOHN WALKER, SWORN AND EXAMINED:

MR DOUGLAS: Sir, is your full name Gary Walker?-- Gary John Walker.

Thank you very much. And you reside at an address known to the Commission?-- That's correct.

And you are the team leader, Surgical Mortality Audit, Clinical Practice Improvement Centre, Innovation and Workforce Reform Directorate. That's a rather wordy title?-- That's the one.

Thank you. And you're based at the Royal Brisbane Hospital?-- That's correct.

Is that position one which pertains discretely to the Royal Brisbane Hospital, or does it transcend that hospital and cover the various hospitals around the state?-- The various hospitals in the state.

Thank you. It's just that you're geographically located at that hospital?-- That's correct.

Thank you. Now, sir, you have provided to the Commission a number of statements?-- That's correct.

Thank you. Some of those statements have already been tendered. Commissioner, Mr Walker's existing statements - and there are actually two of them - are Exhibit 328. As they're recorded in the exhibit register they're expressed in the

singular. In fact there's a very substantial statement of a couple of volumes, and a single page statement, and they've been tendered as the one document.

COMMISSIONER: Yes.

MR DOUGLAS: So if there's any wrong impression created by that, it perhaps needs to be stated. Are the contents of those two statements true and correct to the best of your knowledge and belief?-- They are.

Thank you. Do you have copies of those statements with you?-- I don't, I'm sorry, no.

Thank you. We'll arrange for that. You've provided a further statement to the Commission as well, is that so?-- It is.

And that statement has been provided through your solicitors, Messrs Gadens?-- Yes.

Thank you. That statement is dated the 27th of September 2005?-- I'm almost sure it is. I just can't locate it at the moment.

That's okay. I'll put a copy in your hands. Is that a copy of your statement?-- Yes, that is, thank you.

And is the content of that statement true and correct-----?-- It is.

-----to the best of your knowledge and belief?-- It is.

I tender that, Commissioner.

COMMISSIONER: That will be-----

MR DOUGLAS: You have a copy of that statement.

COMMISSIONER: I do. That will be Exhibit 393.

ADMITTED AND MARKED "EXHIBIT 393"

MR DOUGLAS: Thank you. I'll try to deal with matters in the order of the statements as you've provided them, Mr Walker. If at any time I'm going too quickly, you want me to re-state the questions, just tell me, all right?-- Thank you.

Thank you. Can I deal with waiting lists. Sorry, before I deal with that, you told us about your present position. It is - your first statement recites that you joined the Elective Surgery Project - ESP by acronym - in early 1996 as an officer in the project team. That's correct, isn't it?-- That's right.

And your statement also recites that you became the manager of what was renamed the Elective Surgery Team - acronym EST - in 1997?-- That's correct.

And you continued in that position as manager of EST until January 2005?-- Yes.

You then took up your present position?-- That's correct.

Thank you. I want to ask you just a couple of questions, even though they're in the statement, set the scene, if we may, about your qualifications. You hold a Bachelor and a Masters degree in Science, is that not so?-- That's right.

And you also hold a Masters degree in Business Administration?-- I do.

When did you obtain each of those Masters degrees?-- Fairly good question.

Approximately will do?-- 1976 was when I obtained the Master of Science degree, and the Master of Business Administration degree was some four years later.

Thank you. Where did you obtain the Master of Business Administration from?-- University of Queensland.

Thank you. If I can maintain the progression of renaming of this team, what was the EST became the Surgical Access Team - acronym SAT - in 1998?-- Sorry, your question again?

It became - the EST became the SAT?-- That's right.

Surgical Access Team, in 1998?-- That's right.

And subsequently in 2001 the same body became the Surgical Access Service - acronym SAS?-- That's right.

And it retained that title until 2005?-- That's correct.

What happened to the team in 2005?-- It was dissolved and the various functions were allocated to other parts of the organisation.

Thank you. You say in your statement that in fact a number of the functions were transferred to the individual zones?-- That's correct.

And how did that transition occur, in the sense that how did it work at the zone level as opposed to an overarching level under the SAS?-- Well, I really only have information that is fairly sparse at the moment from talking to people after the fact, but I understand that, for example, a single person who, within the SAS, managed the overall funding and activity function, is now doing exactly the same thing for the state from within the southern zone, as an example.

Right. And in turn for the central zone and the northern zone?-- That's correct, although the person who went to the central zone, her role was really to coordinate a group of people called the Elective Surgery Coordinators, people stationed in each of the hospitals, who had a major daily role of managing elective surgery services and waiting lists and what-have-you. My understanding is that that person within the central zone still coordinates the Elective Surgery Coordinators, but only from two of the three zones.

Do you know a person by the name of Colin Roberts?-- I do.

How do you know him?-- Colin Roberts is the person I employed to join the Surgical Access Service to take on the role of the Principal Project Officer, Financing and Incentives. In other words, the person responsible for setting targets and, I suppose, distributing money.

Do you know a gentleman by the name of Dr Glenn Cuffe?-- I do.

What do you know him as, in the context of the SAS?-- Yes, Dr Glenn Cuffe was my immediate line manager for the years since, I believe, 1998, and was my line manager as the manager of the Procurement Strategy Unit when the Surgical Access Service was dissolved in January of this year.

You also knew Dr Buckland?-- I did.

Did you know him in his capacity as General Manager of Health Services?-- Yes, I know Dr Buckland. I've known Dr Buckland for many, many years, right back to the days when he was the District Manager of the Redcliffe district, and every position that he's held since.

You've both worked more or less for Queensland Health for many years?-- That's correct.

You know, of course, that he subsequently became Director-General?-- Yes.

I now want to ask you about waiting lists, if I may, and I'll do so by reference to your first major statement. Can I do that, please? Before I do that, Commissioner, can I indicate to you that my staff today have received a plethora of documents from Queensland Health. I've been through some of it, but there's a lot of it. I'm correct in saying that it's all been distributed. It's all been distributed. It may or may not be, once I've had an opportunity to look at that properly overnight, that I may wish to tender all or some of that material, but I welcome - if I don't, of course, anyone at the Bar table is welcome to refer to that material and tender it, if they wish. But everything that my office has received today, I'm instructed, has been distributed.

COMMISSIONER: All right.

MR DOUGLAS: It's correct to say that there was and are two waiting lists within Queensland. I don't say that pejoratively, but there are two waiting lists, are there not?-- At least two.

Certainly one of them is what's described as the elective surgery waiting list?-- That's correct.

That is a published list?-- It is.

It's been published since 1998?-- That's right.

And it's indeed published interstate as well?-- It's published on the Internet.

Thank you. The elective surgery waiting list, we've been told in evidence thus far, is a list of persons at a particular hospital, and in turn at each other hospital, who have been assessed by a specialist in the specialist outpatient clinic or clinics at a particular hospital, and have been placed on a list awaiting surgery in any particular discipline?-- That's a fair description.

Thank you. There is another list - and in reality it probably consists of a couple of lists - and that is a list of persons who are on a specialist outpatient waiting list?-- That's right.

And am I correct in saying that that list is probably bifurcated into two parts - I should say into these parts: the first part being patients who have been referred by a general practitioner to the hospital and they wish to see a specialist in respect of some complaint which may or may not result in surgery, but they haven't yet been allocated an appointment to see a specialist?-- Yes, that's part of the list.

And the other half consists of persons, in effect, coming to the hospital on the same basis, by referral from a general practitioner, but they have been allocated an appointment, but that appointment hasn't yet ensued?-- That's correct.

The Queensland system, in so far as it comprehends a specialist outpatient waiting list of the type we've just discussed - and in future I'll call that the anterior list as opposed to the elective surgery waiting list - involves a phenomenon which is different from other states. Is that not so?-- That's correct.

In no other state or territory does there exist a specialist outpatient waiting list of that character?-- That is my understanding. My belief is that most other states have moved down the path to substantially privatising their outpatient waiting list.

So what would occur in those other states, so far as you're able to say, is that the referring general practitioner, rather than making the referral off to the local, or some

other hospital within the Queensland Health cohort, would refer that patient to a specialist in his or her private capacity and that person, that patient, would see that specialist in due course?-- That's correct.

And in turn, if that specialist was of the view and recommended that the patient undergo surgery - and assuming the patient acceded to that recommendation - then that specialist would in turn refer that patient off to the local private - I should say the local public hospital, and that person would go on the relevant elective surgery waiting list?-- That is my understanding.

The alternative for the patient would be, of course, to go privately if he or she had insurance, or if he or she wished to confront the impost of private surgical treatment?-- Yes, that's right.

Thank you. Could I take you, please, to paragraph 53 which is on page 11 of your statement. Paragraph 53, page 11. Just read that to yourself and I'll ask you some questions about it. Just read it to yourself and we'll proceed?-- Thank you.

Under the SAS service, which I'll call it, which you headed up, one of the, if not the principal strategy with which you had to deal was the management of the elective surgery waiting lists?-- That's correct.

And there were various strategies, all of which had the genesis in governmental policy from time to time in how those waiting lists were to be managed or reduced?-- Yes, on a statewide coordination basis, yes.

Across the hospital cohort of Queensland Health?-- Yes.

Can I suggest to you that what you're identifying in that paragraph - and you identify it in other paragraphs as well - is this: that any policy which has as its focus, its principal focus, the reduction of elective surgery waiting lists, that there is a real risk that such a focus will result in a disproportionately large volume of resources being attributed to that task at the expense of the anterior lists?-- That's a fair summary, yes.

And in fact that's not something which was a phenomenon in 1998. It's something which pervaded the whole time over which the SAS existed?-- That's correct.

I don't say that critically, because in fact if, as a matter of government policy, there is that focus on reduction of elective surgery waiting lists, a concomitant consideration is how that's going to impact on the anterior lists?-- Yes, it is.

What occurred during the life of the successive elective surgery waiting lists policies that existed from 1998 to 2005 was that the apportioning of resources to anterior lists, as opposed to elective surgery waiting lists, was left to the

individual hospitals?-- Can I have the question once more?

Certainly. What occurred during that period of 1998 to 2005 when the SAS existed, under the successive policies of government, was that the apportioning of resources between the elective surgery waiting lists and the anterior lists was left to the individual hospital?-- To a degree, and just by way of explanation, the elective surgery waiting list - there was, if you like, special funding over and above that provided in base hospital budgets-----

I'll come to that, yes. Keep going?-- -----that was directed at reducing elective surgery waiting lists. Now, it's really important to appreciate that this is over and above the elective surgery services that were required to be delivered from the base budget anyway. So sure, to a large degree what you say is correct. However, there was a special bucket of money that helped out in the elective surgery area.

There was that special bucket of money, but that bucket of money carried with it, in terms of policy at a hospital level, a need to achieve a target?-- That's correct.

COMMISSIONER: Are you going to raise at some stage the source of that bucket of money?

MR DOUGLAS: I am, Commissioner. I know you're anxious to hear about that. There was - if I could just pause for a moment, surgery was undertaken at a hospital - at any hospital there's lots of surgery, is there not?-- That's right.

And that hospital is given a budget which includes a budget for surgery?-- Yes.

From 1998 to 2005 there was, in addition, a separate bucket of money, to use your metaphor, which was designed to encourage hospitals to reduce the existing elective surgery waiting lists. Is that not correct?-- That's correct, although-----

And as part of that bucket approach there was a target which each hospital had to achieve in order to have access to the bucket?-- That's correct, but just a correction, the bucket of money, or at least some of that bucket of money, existed as far back as 1995.

Thank you. Where did that bucket of money come from? What was the source? Was it solely within the state, to take up the Commissioner's point, or was there - was it the subject matter of contribution from the Commonwealth Government?-- My understanding is, and I have to say that back in those days, which was 1996 when I joined the team, we inherited to a very large degree an existing funding arrangement. The money, the sorts of dollars that were in the system over and above what was provided in base budgets for elective surgery, was about $33 million. My understanding is that maybe half of that was Commonwealth money. That was provided on a recurrent basis. So - and the other half obviously was state funds.

COMMISSIONER: And specifically earmarked by the Commonwealth-----?-- Specifically earmarked.

-----for elective surgery?-- That is my understanding, Commissioner.

Thank you.

MR DOUGLAS: We'll pause at that point, if you could, please, to characterise different types of surgery. Within a hospital there is elective surgery, is there not?-- Yes.

And that's the subject matter of these lists which you describe in your statements, and three categories into which they're divided?-- Yes.

In addition to that there are other types of surgery which are undertaken within the hospital?-- Yes.

There's emergency surgery, for instance?-- That's right.

Emergency surgery is what it seems. It's trauma surgery and like surgery - road accidents, whatever it be - which is undertaken at any particular hospital upon patients who are brought in for that immediate treatment?-- That's correct.

Are there any other types of surgery?-- There is a category we simply refer to as "other surgery", and these are - I'm going to use a technical term - diagnostic related groups, or DRGs, that are surgical, but do not actually fall into either elective or emergency.

Those two categories which you've just identified, and which you've summarised, consisting of emergency surgery and other surgery, are they funded from the individual hospital's ordinary budget?-- That's correct.

They aren't funded from the bucket?-- They are not.

COMMISSIONER: What's the surgery that doesn't come into elective surgery and isn't trauma surgery? Can you give me an example?-- What sort of - some of the procedures that are based on scopes, Commissioner. So an endoscopic procedure, for example, may be such a procedure.

I see. But is there just a limited number of them, are there?-- It is a relatively small proportion of the total surgical profile of any hospital.

Thank you.

MR DOUGLAS: So the two main groupings are elective surgery and emergency surgery?-- That's correct.

In paragraph 67 of your statement on page 15, you refer to various briefings to the then Director-General in 1998 and 1999 concerning outpatient data. Do you see that?-- Yes.

From your statement, it would appear that at least the number of patients from time to time on the anterior lists, as I've described them, had been collected by Queensland Health. Is that so?-- Yes, it is.

And from 1996?-- No.

When was it first collected?-- From a central perspective - that is, I'm talking about a Corporate Office perspective - in terms of a statewide collection, the collection of outpatient waiting list data only began after the election in 1998.

Necessarily it would have existed at the individual hospital level prior to that date, surely?-- Most likely.

It would have to have existed at a purely administrative level so a hospital could know how many people were on the list from time to time?-- It is a good question. Certainly some of the work we did at the time indicated that the procedures and practices for managing access to outpatients varied dramatically across hospitals. So there were situations, for example, where individual surgeons kept referrals in their drawers, for example.

Just excuse me for a moment. I want to show you a document which is part of GW19 to your affidavit. I'll put it on the overhead, Commissioner. That would make it easier.

COMMISSIONER: Mmm.

MR DOUGLAS: It's a very large affidavit. I think you'll recognise this document once you see it. This is one of the attachments to your - one of the briefings that I just took you to made to the Director-General in 1999, this particular document. In broad terms there were two parts to the documents referred to in your briefing. One part of it consists of the numbers of persons across various hospitals within the Queensland Health cohort as at this date across a range of specialties. This particular document, though, is different, isn't it?-- Yes, it is.

The particular document actually gives information at least by reference to those various hospitals referred to there in the nature of the time in weeks that one will wait to see a specialist within each of those disciplines?-- That's correct.

And they're not all surgical disciplines that appear on the vertical - I should say the horizontal axis either?-- They're not.

But a number of them are nonetheless-----?-- Indeed.

-----on the vertical axis, I suggest one sees the largest hospitals in Queensland?-- Sorry, the question again?

Those hospitals there are not all of the hospitals?-- Yes, that's right, they're all of the largest hospitals in Queensland, correct.

Thank you. Now, what you say in your statement, as I understand it, is that after - I should say that the information was collected for some period of time; is that correct?-- Yes. The collection began, as I said, soon after the new Government took up power in July of 1998. Prior to that there was no central collection of waiting - waiting list data for specialist outpatients or in fact outpatients.

And was it collected, what, for about eight months or so?-- I think it was, I believe it was collected for a longer period than that.

For how long was it collected?-- Well, if I can just explain that? This was the first time that this ever occurred. There was all sorts of problems with collecting the data. Just as an example, we found that individual hospitals described something in the order of 200 separate clinic types for specialist outpatients. Just actually getting those 200 separate clinic types down to the sorts of specialties that we're all familiar with and are outlined on the page there was a fairly major mapping exercise in itself. There were no information systems in place at the time, so all of this data was collected manually, a major resource intensive exercise at the individual hospitals.

You did put in place, at least by way of proposal, a policy to ameliorate that difficulty; did you not?-- Indeed, we did, it was an attempt at providing some level of consistency in terms of the management of specialist outpatients across the State.

And what did that consist of?-- It consisted of guidelines for the management of specialist outpatient departments, we pulled together some senior nurses from the larger outpatient departments in Southern Queensland and over a period of time, which was in excess of one year, overseen by a body of clinicians called the Clinical Advisory Committee. These guidelines were in fact developed.

This information which appears on the visualiser was never

publicly released?-- It was not.

I suggest to you there's no sensible reason as a matter of policy, and I don't say this critically of you?-- No.

Why this information could not have been publicly released?-- I personally would have difficulty in releasing this data certainly at that stage, simply because of the fact that it was very early days in a manual collection.

The other data which appears in the same exhibit which consists of the numbers of persons on waiting lists, that was easier data in relative terms to collect, was it not?-- It appeared so, yes.

I suggest to you as a matter of policy, and again, I don't say it critically of you-----?-- Mmm.

-----or your team, that there was no sensible reason why that data should not be made publicly available along with the elective surgery waiting lists either which was published?-- I mean, once again, I would put that rider on it that we need to actually make sure that the data was actually accurate.

The elective surgery waiting lists data isn't a lot more accurate, is it?-- I would suggest that it's much more accurate, only because we've been doing it for such a long time, it's been fed back to hospitals over a long period of time, people know the system, those data quality processes have been in place for a lot of years. My belief is that that is a far more robust data collection than what we're looking at here.

You were never asked by your political masters whether or not either form of data, the times or the numbers ought be published?-- No.

You told the Commissioner that, in fact, you attempted to put in place a system which would have facilitated or at least ameliorated some of the problems associated with collection of this anterior list data; is that not so?-- That's correct.

Can I suggest to you from your statement that you seem to have been stymied somewhat by funding; is that correct?-- I think that's a fair comment, yes.

You seem to address that in paragraph 71 of your statement, I think I have that correct. Just read that and I'll ask you some questions about your last answer. In the context of time, what was the difficulty with funding and with respect to what?-- There were a number of difficulties: firstly, the system, the major hospital base information system was mooted for replacement. Here we were in a situation where we were looking to expand one module of that system when we were told that the system was to be replaced in the not too far distant future. So there was an issue there of really how much money we could reasonably spend on a system that was going to be replaced in the near future. Just so, at the end of the day,

we managed to get approved $180,000 to enhance a module of the hospital information system on a statewide basis, so that's $180,000 for the State.

And what module was that?-- That was the elective admissions system.

And what happened to that system?-- Well, the money was finally approved and I probably just need to give you a bit of a feel for a comparative situation here. At about the same time, both Royal Brisbane Hospital and the Princess Alexandra Hospital spent $2 million between them in implementing an appointment scheduling system from the company Cerner, the big American Cerner company, so $180,000 we were provided with for the State to two of the large hospitals in Brisbane spent $2 million between them.

You're speaking an appointment system, you're speaking of an outpatients specialist appointment system?-- Yes.

And that comprehends surgical appointments and other appointments?-- Yes.

Thank you?-- Sorry.

And what was the outcome of that? Did that facilitate the obtaining of this sort of information?-- At the end of the day, it did not. I suppose from where I sat as manager, the outpatient, the specialist outpatient collection and specialist outpatient as an issue went off the radar, if I could put it that way. I was resourced in my team to do certain things. Certainly elective surgery was the number one priority, I would suggest, followed by a major emergency department strategy that we began implementing from July 1998 or so.

Notwithstanding what you've just said, it is the case, is it not, that from September 1998 until in or about June 2003, on a quarterly basis, a report was furnished to the Minister to the Director-General and to the General Manager, Health Services recording various matters pertaining to elective surgery waiting lists, together with information pertaining to the anterior lists?-- I think you may be talking about a monthly report rather than a quarterly report.

I'm sorry, I do mean that, yes?-- And it was the report on the progress with the implementation of the waiting list reduction strategy and certainly contained outpatient waiting list information.

In order to be able to report to each of those persons on, among other things in that report, the anterior lists, the information had to be collected from the individual hospitals?-- That's correct.

In turn in the reports it was collated to a statewide basis; correct?-- Yes.

But I think it was divided into zones, southern zone, central zone, northern zone?-- Eventually. I mean, the presentation of data in the monthly report-----

Mmm?-- -----was by specialty and it also provided the specialties with the largest numbers of patients waiting. We also did some fancy graphics as well in those early reports. We finally received instructions just simply to report the total numbers by zone.

The information collected, that is, the base information which went to make up that reported in those monthly reports with respect to anterior lists?-- Mmm.

Could easily have been publicly disseminated had your political masters directed you to do so?-- It could have been, although once again, I have to say that I would be most concerned about the quality of the data, once again, manual collection, the hospitals had never seen it other than supplying it to us in the first place.

I suggest to you though, that some information is better than no information?-- Absolutely.

You've no doubt read on the Net or perhaps read in the newspapers a number of propositions put to witnesses in these proceedings. You would agree that a referring general practitioner is better armed to advise his or her patient who may have to undergo surgery and needs referral for that purpose?-- Mmm.

If he or she knows not just the length of the elective surgery waiting list but the length of the anterior lists?-- Yes.

Can I come now, sir, to your third statement, that is, the statement provided most recently to this Commission? Can I ask you a number of preliminary questions? You refer in your statement to a recording phenomenon known as the Queensland Health Network?-- Yes, I do.

To your knowledge, for how long has the Queensland Health Network existed?-- So long as I've worked within Queensland Health corporate office, I would suggest.

It is an electronic network?-- It is.

It records information in electronic form?-- That's right.

It is a network that you have accessed on many occasions?-- That's correct.

You do so on a daily basis?-- Yes.

It's a network off which you work in order to disseminate information in the course of your daily tasks on behalf of Queensland Health?-- That's correct.

And that's been the case for so long as it's existed?--

Yes?-- Mmm.

With you coexisting with it?-- That's correct.

Is there some formality about that network in terms of it being a record within Queensland Health?-- I'm just not sure I understand the question?

I understand that. Who has access to the Queensland Health Network?-- My belief is that each employee of Queensland Health would have access to a certain part of the network, in other words, if they wished to store corporate files, then normally a business unit would have a certain component of the overall Queensland Health Network allocated to that business unit to store files.

I want you to think about the period that the SAS existed by that name or a previous name; there would have been many occasions when you would have provided submissions or briefings to your superiors in relation to various matters arising out of SAS activities?-- Yes, indeed.

On all of those occasions, would you utilise the Queensland Health Network?-- Yes.

When I speak of briefings or submissions or the like, I'm obviously referring to a written format of submission or briefing and you understood me that way?-- I did.

Once you have completed your briefing or submission, did you have some understanding as to whether or not that document, in whatever form it be, briefing submission or otherwise, would be retained on the Queensland Health Network?-- To a degree once the hard copy of the submission was sent off and was actioned, then it would really be up to the individual business area what they did in terms of storage of electronic records.

What course did you adopt in the SAS in terms of storage of those records which were the subject of briefings submissions or like documents?-- Well, I organised my team such that we had, we had various directories for various things. For example, all issues surrounding funding and incentives, for example, sat in the one directory.

That was a directory within Queensland Health Network?-- That's correct.

Can I take you to paragraph 10 of your third statement please? You give evidence through medium of this statement of an occasion of destruction of certain documents, obviously enough, and I'll come to that in a moment, but you say in paragraph 10, and I'll read it into the record, "To the best of my knowledge this is the only occasion during the period of my employment with Queensland Health that I have been instructed to destroy all copies of a document or to remove a document from the Queensland Health computer network?-- That's correct.

You're quite confident about that?-- Yes, I am.

The instruction that you give evidence about in this statement, was it one that surprised you?-- Yes, indeed.

Why?-- I suppose because the particular document in question, I believe, was generated as a part of what I considered to be my core responsibilities and I would have expected the response, particularly if there was - if there was some problem with the particular document, that I might be asked to make changes to the document or something along those lines.

But still maintaining it on the network?-- Yes.

If I could just go to the document in question now? Commissioner, you have a copy of the document?

COMMISSIONER: I'm not sure, have I?

MR DOUGLAS: It's already in evidence, in fact, Commissioner. It's Exhibit 368.

COMMISSIONER: I see that. No, I don't think I have. I haven't got it in front of me now.

MR DOUGLAS: That's okay. Commissioner, I'll use the visualiser with respect to relevant parts. The document in question is a document dated the 30th of July 2003; is that not so?-- Yes, it is.

Now, before I put it on the visualiser or put portions on the visualiser - in fact, I'll do it now, I'll put the opening page. If you can just identify the various people referred to there, albeit not referred to by name, the General Manager of Health Services was Dr Buckland?-- That's correct.

And in fact-----

COMMISSIONER: I do have a copy of that.

MR DOUGLAS: Thank you. And the various other persons referred to there apart from yourself is Mr Colin Roberts and Dr Cuffe about whom you made mention earlier in your evidence?-- That's right.

And the subject matter of the document was the reclassification of emergency presentations as elective surgery?-- That's correct.

This document, perhaps as the title suggests, but I ask you to recall this if you can, was actually drafted by Mr Roberts?-- It was indeed.

It says it was cleared by you?-- That's correct.

What does that mean, "Cleared by Gary Walker"?-- It means that essentially I have read the document, that I'm reasonably

comfortable with its contents are accurate and that I'm comfortable in terms of what we as a business unit are in fact asking of the General Manager, Health Services.

Sir, this document has been addressed by the Commission before, so I won't labour the issue, but it's obviously a document which you're very familiar; is that not so?-- Yes.

Thank you. If I could just show you this particular page please? It is the third page of the document and I'll ask you some questions about it. The document otherwise discloses that the purpose of the document was to gain the approval of the General Manager of Health Services, Dr Buckland, to an audit process to identify reclassification of emergency presentations; isn't that so?-- That's right.

And if I can just jump ahead a little, ultimately, that audit proposal that is canvassed by this report was in fact adopted?-- Yes, it was.

It was adopted in the surgical - elective surgery rules for 2003/2004? I'll take you to the document later?-- Okay.

But you recall it was adopted though?-- Are you saying that the major recommendation of this which is the audit process?

Yes?-- Was actually adopted?

Yes?-- Well, I'm not sure that it has a lot to do with the Business Rules of 2003/04. I mean-----

You say it doesn't?-- Well, it has - it - there's certainly some relevance but I think the major recommendation from the submission was to actually engage in a further audit process. As I understand it, that further audit process was really about speaking to the individual hospitals that were engaged in this practice, that with some further work being done by my staff member Col Roberts and for the surgical axis service to come up with some final proposition.

Thank you. If the visualiser can just be scrolled upwards? What this document, I suggest to you, identified, summarised economically, was that the view that a number of hospitals within the Queensland Health cohort had been - to use the language of the document - "Double-dipping" in relation to elective surgery funding?-- That was the terminology that was used, yes.

And relating it back to the evidence you gave the Commissioner earlier, what was being identified was the belief that a number of hospitals were reclassifying emergency patients as elective surgery patients in order to fulfill their targets under the elective surgery program in order to garner money from the bucket that you described earlier?-- That was our concern, yes.

COMMISSIONER: And that appeared to be the fact?-- It did, Commissioner, but at the end of the day, I only mention that

simply because the definitions, the national definitions for "elective surgery" are somewhat open to interpretation.

Yes, but subject to that, that's what it appears to be?-- Yes, absolutely.

Yes.

MR DOUGLAS: Expressing that another way, you were expressing concern that the so-called bucket of money, additional money?-- Mmm.

Was being illicitly accessed by these hospitals, perhaps innocently but ultimately objectivity illicitly?-- That was my concern.

If your concerns were validly arrived at, was it your concern that there were other bodies either within the Queensland Government or within the Federal Government who may have to be answered to with respect to that illicit garnering of funding?-- Well, certainly there were implications for continuing to go down a path that effectively eroded the buying power of the so-called dedicated elective surgery funds that we were provided with.

COMMISSIONER: But they're implications with respect to past conduct too, possibly?-- Yes, Commissioner.

If the Commonwealth knew that that had been done, they might ask for some of the money back?-- I doubt that that would be the case, simply because my understanding is that the Commonwealth money provided initially was a recurrent addition to base, and after a settling in period, I think it might have been three years or something like that, the reporting arrangements back to the Commonwealth in terms of that money would have ceased is my understanding.

But I thought you said that part of that extra bucket of money was in part from the Commonwealth, that you said it is-----?-- It was sourced from the Commonwealth, that's right, the Commonwealth provided that money to Queensland Health to conduct extra elective surgery services.

And if it appeared that in fact what had been said to be elective surgery services?-- Mmm.

Were in fact not of that character?-- Mmm.

And had been - there the money had been used for that purpose, it's at least a possibility that the Commonwealth-----?-- It's a possibility.

-----could have said, "We want that money back."?-- It's a possibility, yes.

Yes.

MR DOUGLAS: Could I suggest to you conversely, or as a

corollary to that, there would also be implications for the future, because if a body providing such funding either State or Federally, was to be approached for ongoing funding, they could hold this particular issue, if it was correct, over your head like the Sword of Damocles?-- Yes, that was my worry.

You go on in this document to identify a number of political implications or considerations as well; do you not?-- Yes, that's correct, the document does.

If this could be placed on the overhead, thank you. If it could just be scrolled up slightly, thank you. There's the heading six there, "Political Considerations". That's where you identified the key point being not just the exposing of the then Minister for Health to criticism politically perhaps, but also the jeopardising of $10 million in funding for Queensland hospitals?-- That's correct.

That can be returned to me. Shortly after this particular memorandum was compiled, you understand it was passed on to Dr Buckland; is that so?-- Yes, that's my understanding.

Now, did you ever have a meeting with Dr Buckland about this subject matter shortly after that?-- Yes, I believe I did.

When you say you believe you did, did you or didn't you?-- Well, I have a recollection that I did. The reason I haven't confirmed it is I keep an electronic diary. The electronic diaries in Queensland Health are actually scrubbed after six months, so I don't have those records.

That's unhelpful?-- It is.

What's your best recollection of having a meeting with this man?-- I believe the meeting was held within a month or so of the date of the submission.

Who was present at the meeting?-- My belief was that Glenn Cuffe.

Please don't tell me what you believe; do you mean your recollection?-- My recollection.

Give me your best recollection, if you don't recollect, say so?-- My best recollection is that Glenn Cuffe and I were at that meeting and possibly Col Roberts as well as Dr Steve Buckland and Debra Miller.

Who is Debra Miller?-- Debra Miller was the - it was formerly called Principal Policy Officer attached to the General Manager, Health Services, that name changed within the last couple of years and I'm just unsure what that name change was to.

Do you remember the substance of what was discussed at the meeting?-- I remember the marching orders that came out of it, if you like.

Please answer my question. Do you remember the substance of what was discussed at the meeting?-- I remember some of the substance.

Please relate that as best as you can?-- I recall that it was either this meeting or possibly a meeting along a similar topic about the time that Dr Buckland actually commented that the document was a good piece of work but that we must have been out of our minds to be sending it up considering the FOI provisions. Following that, I recall that we were asked to-----

When you say "we", who are you speaking of?-- Well, the three of us, if Col Roberts was in fact present, but Glenn Cuffe and I certainly - we were asked to-----

By whom?-- By Dr Buckland, to discuss these issues with each of the district executives and to get back to him on our findings.

Now, subsequent to that meeting or meetings, did you receive a direction from some person with respect to the retention of this document, that is the submission of the 30th of July 2003?-- Yes, I did.

You seem to deal with this in paragraph 11 of your third statement?-- It is possibly 9 and 11, is it?

Paragraph 9 commences on 30th of July 2003, does it not?

COMMISSIONER: No.

WITNESS: No.

MR DOUGLAS: I am looking at the wrong document. I am sorry, I am looking at the wrong document. I apologise for that. You deal with this in paragraph 9 of your statement?-- That's correct.

Thank you. And you say that Dr Cuffe came to your work area and spoke to you and Mr Roberts?-- That's right.

And he told you that he had received an instruction, apparently from Dr Buckland via a lady by the name of Cheryl Brennan?-- That's correct.

You knew Cheryl Brennan at that time to be the executive secretary to Dr Buckland?-- That's correct.

And the instruction which you say was given by Dr Cuffe was to the effect that all hard copies of your submission of 30th July 2003 should be destroyed and the electronic version of this submission should be removed from the Queensland Health computer network?-- That's correct.

And he told you that that instruction had been passed on to him by Ms Brennan?-- He did.

You then say, as you recited earlier, that was the first time you had ever been instructed to destroy copies of a document or remove a document from the Queensland Health computer network?-- To the best of my knowledge, that's correct.

Did you comply with that instruction?-- Not fully. I-----

To what extent did you comply with it?-- I destroyed all the hard copies that I had on my desk and my recollection is that the electronic version of the document remained either on the network - on the Queensland Health network or at least on the hard drive of Col Roberts' computer.

So it remained on the Queensland Health network?-- Well, one or the other. There was certainly an electronic copy of the document still available to us in the surgical access service.

But you don't know the precise record in that respect?-- I do not.

Why didn't you go into the Queensland Health network and remove it?-- Well, my belief is that it was highly irregular, the directive, and that in fact may have been illegal, at least under the Public Service Act provisions.

Did you take the matter up with Dr Buckland?-- No, I didn't.

Why not?-- It is not the sort of thing you did with Dr Buckland, would be my view.

Did you take it up with anyone else?-- Only my immediate line manager, Dr Cuffe.

Dr Cuffe. And what did he say?-- His view was that we should also keep an electronic version of the document.

And you kept your own electronic version, didn't you?-- I am not sure of that. It is possible but I just don't recall. I mean, it was such an unusual request, I may have kept my own electronic version. I mean, at the end of the day, I know I took away a copy - an electronic version of a copy on a floppy disk.

When you say took away, you mean took away when you took up your current position?-- No, it was at a later date when I had a further exchange with Dr Buckland over this particular document.

Was that this year?-- No, it wasn't. It was back in 2003.

So when you speak about a later date, you are speaking about a later date after the destruction of the hard copies?-- Yes.

In paragraph 13 of your statement, you lead into an exchange with Dr Buckland about this particular issue, do you not?-- Yes, that's correct.

All right. If you can just put your statement down for the moment, please? If you can tell the Commissioner how it was that you came to have this exchange with Dr Buckland?-- I - I was approached once again by Dr Cuffe.

This was after the 2004 election?-- It was. I know that for a fact because one of the areas that was covered in the conversation I subsequently had with Dr Buckland was the election commitments from that particular election. So Dr Cuffe informed me that - that a staff member from Dr Buckland's office had apparently seen a copy of the document that he asked to be destroyed on my desk. There was a second issue that apparently was brought up with Dr Cuffe and that was that I had recently spoken to the Medical Superintendents Advisory Committee, a role that I play every month - this is a group of Medical Superintendents from the large hospitals throughout the State that meet once a month in corporate office to advise the Surgical Access Service on operational issues surrounding the delivery of elective surgery. Apparently I was reported to outline to the medical superintendents' meeting certain statements made by Dr Buckland and he took umbrage at that.

You say in paragraph 15 of your statement that you telephoned Dr Buckland's secretary to make an appointment to meet with him?-- I did.

At that point in time he would have been certainly the Acting Director-General?-- That's correct.

And you did subsequently meet with him?-- That's correct, in the Director-General's office.

You say that only the two of you were present?-- That's right.

Is that unusual, for only two of you to be present in the Director-General's office?-- It is fairly unusual - certainly it is unusual for me to meet on a one-to-one basis with the Director-General. I think because the issue was a personal issue, that it wasn't such an unusual thing.

You recite matters in your statement as to what transpired. Could you tell the Commissioner, please, giving your best recollection, of what was said between you? If you can remember the exact words, or something close to it, please say so. If you can't, please, as accurately as you can, recite the substance of the conversation as to what was said by each of you?-- I mentioned to Dr Buckland what the meeting was essentially about. It was about the - the first part was about the document that he asked to be destroyed. He admitted that Deb - that is Deb Miller - had seen a copy of the document on my table. I said that that couldn't be so as I'd destroyed all the hard copies of that particular document. I then furnished a further document, a document that I had provided at a later date from the 30th of July, a document that basically picked up some of the points of the initial document.

Is this a document that you had brought along to the meeting?-- It was indeed.

Indeed, it is the document which you annex to your statement?-- That's correct.

What did he say in response to that?-- Well, I said to him that maybe that Deb got it wrong and saw this particular document, and I provided that to him, and he seemed to accept that.

Did Dr Buckland query, question you about the exchange with respect to this document being apparently destroyed by direction?-- No, no. It appeared to be in a fairly secondary - this discussion appeared to be, at the end of the day, fairly secondary to really what he wanted to talk to me about. In other words, he simply accepted what I had to say and took the copy of the document, that is the briefing notes that I took with me, he took it from me.

What I am seeking to raise with you is did Dr Buckland say at any point, "What are you talking about?"; destroying a document, or removing a document-----?-- No.

-----or eliminating a document?-- No, no, there was no discussion along those lines.

You say that you also discussed with Dr Buckland at that meeting the apparent comments made at the Medical Superintendents' Association?-- Yes, I did.

If I could take you now, sir, to that other document, a copy of which you took along to the meeting, that is exhibit GW36, which is annexed to your third statement, is it not?-- It is.

And this particular document is dated the 15th of October 2003?-- That's correct.

Could I put this on the overhead or visualiser, thank you? You recall this document?-- I do.

Thank you. Who was the author of this document?-- I was.

It is noted as being prepared by you, Gary Walker, is it not?-- Yes.

And it is cleared by Dr Cuffe?-- "Clear" is a bit loose there.

Why is it a bit loose?-- I provided it to Glenn Cuffe who assured me that he personally delivered this to Dr Buckland.

Now, this particular document carries an inscription - a typed inscription, as you can see in the top right-hand corner. Do you see it reads "Confidential brief for GMHS. This document has been removed from the Queensland Health network" Was that a macro on your desktop?-- Oh, I think it was one of those

Word packages that allows you to actually include text over the top of a document.

You speak about this matter in your third statement, but why did you put those words there?-- Well, obviously there was some sensitivity around - around this particular issue, given the instruction to destroy the previous document, so I just simply wanted to assure the General Manager Health Services that this was purely confidential, that it was an issue that I thought he really needed to know, at least about the risks of allowing hospitals to continue the reclassification of emergency records, and to set his mind at ease I indicated that the document had been removed from the Queensland Health network.

Have you ever inscribed words to that effect, or anything like them, on a briefing or submission or like document to a superior on any other occasion?-- Not to my knowledge, no.

Did you receive a response from Dr Buckland to this document?-- No, I did not.

Yes, that can be returned to me. Commissioner, unless you have something else to ask the witness, that's my questioning.

COMMISSIONER: Thank you. Do you have an agreed order for asking questions?

MR BRADLEY: Commissioner, I appear as the representative of Mr Walker.

COMMISSIONER: Yes.

MR BRADLEY: And I may-----

COMMISSIONER: What's your name?

MR BRADLEY: Bradley.

COMMISSIONER: Mr Bradley, yes.

MR BRADLEY: And I may have a couple of questions to ask him just to elaborate on a couple of matters that have been covered.

COMMISSIONER: I will let you ask those questions last, if you prefer that?

MR BRADLEY: That would be fine, Commissioner.

COMMISSIONER: Yes, anyone else?

MS DALTON: I will ask two questions about a point that I have been accused of becoming obsessive about.

COMMISSIONER: I won't accuse you of that, Ms Dalton.

MS DALTON: Thank you, Commissioner.

CROSS-EXAMINATION:

MS DALTON: My name is Jean Dalton. I act for Dr John Scott. I became curious with your statement which annexed all the quarterly briefings to cabinet, information submissions to cabinet?-- Yes.

That there seemed to be a gap between October 2003 and August 2004, and I have noted in your most recent statement that you say you were put under a lot of pressure to finalise that statement in circumstances where you weren't really sure that you had found all the documents that had been asked for. And we've just been given another four inches worth of cabinet documents, but they don't seem to fill that gap. Are you able to shed light on that?-- I possibly can. We relied, to a very large degree, within the Surgical Access Service of being requested by the Parliamentary and Ministerial Services section of Queensland Health as to when we were required to prepare a so-called quarterly briefing to cabinet. I know for a fact that we failed to receive a request from this particular unit at certain times. So, in other words, despite the fact that my understanding was that we were required to report to cabinet quarterly, this did not always occur.

October 2003 seems to be the last one. That may be because there was an election pending in early 2004, some disruption to the one that should have come right at the end of 2003. Would that accord with your general knowledge or understanding?-- That may have been so. I have no recollection, I am sorry.

Okay. But there is no real reason why there shouldn't be reports after that time through 2004?-- No, that's correct. There should not be - should not be a break there. Once again it really would be up to the Parliamentary and Ministerial Section within Queensland Health to identify the required timing of the next cabinet submission so that we could prepare it.

All right. And, again, and I am not wanting to criticise you, because you have explained you were under pressure to put that document together, but I think you say that the last time waiting list figures from the anterior list, if you like - not the elective list, but the anterior list, was back at the end of 2003. That was the last time they went to cabinet. We've seen a document at least from August 2005 giving up-to-date figures to cabinet?-- Okay.

But that may just not have come from your department or you may not - or your area or you may not have realised what the information was going to be used for, is that right?-- What was the date, I am sorry, on that 2005-----

August 2005?-- August 2005. Well, there was - there was

certainly a fair bit of activity within the Surgical Access Service from the election in 2001 when we were asked to actually start the development process for some policy framework documents, one being the policy framework for specialist outpatients. Now, that was a fairly lengthy development process, and in - I believe it was April of 2004, I received approval from the General Manager Health Services, who was Dr John Scott at the time, to proceed with the implementation, if you like, of this policy framework for our specialist outpatients that we had developed.

And you exhibit that to your statement?-- Yes, I do.

And that was to get some sort of logical categorisation evenly across all the hospitals so that you'd have a basis at least for a logical collection of data about that list?-- That's exactly right, and part of this implementation process was to actually find out - or really, what the status of the outpatient departments' management processes across the state.

Yes?-- Which included a snapshot of the waiting list, if you like, the specialist outpatients at that date of 1 July 2004.

Yes?-- So my belief is that the Cabinet submission in 2005 would have included possibly the latest waiting list data, which would have potentially come out of that survey.

And would it have been - I understand that you've got concerns about the collection of data beforehand. Would the August 2005 data then probably be the most reliable because it's after that standardisation across the hospitals?-- Well, I'm not so sure that - I have no idea as to what the collection process is in place now. If it's still manual, I would certainly have some problems. I mean, with any collection process you've really got to involve the people who are actually providing the data. You've got to feed it back. I mean, there needs to be a number of iterations of the processes, and at the end of the day, if it continues to be manual and it continues to be resource intensive, the quality of the data will not improve, is my belief.

So it depends on whether that 2004 strategy has been implemented, and you're not able to help us with that?-- It was implemented after the Surgical Access Service was dissolved.

All right. So you don't know the current-----?-- Well, I know only by hearsay.

All right. Well, is it your belief it has been implemented?-- Yes. It was - the implementation, as I understand it, was completed in June of 2005.

I see. All right. Thanks, Mr Walker. Thanks, Commissioner.

COMMISSIONER: Anyone else?

MR APPLEGARTH: I've had a discussion with my learned friend Mr Martin. He will be rather short, I think, but he just can't ask the question at the moment. I think he needs instructions. I'm happy to start if it doesn't inconvenience him.

COMMISSIONER: Yes.

CROSS-EXAMINATION:

MR APPLEGARTH: Mr Walker, my name is Applegarth. I appear for Dr Buckland. You've dealt with two documents in answer to my learned friend Mr Douglas. Now, just to make things clear, you're not suggesting that those documents were in fact destroyed. You're evidence is about someone told you something that they'd been told about what Dr Buckland said?-- That's correct.

And in fact in recent days your lawyers, those who instruct me, the Commission of the Inquiry, have been shown, as it were, the original copy of that document of the 30th of July 2003?-- Yes, that's correct.

The information we've been given by Crown Law lawyers is that that document was found in the General Manager Health Services area?-- Okay.

And the second document that you marked, as you explained, that you put that notation on, the information that we've all received seems to indicate that it is in fact on the Queensland Health information network?-- Yes, I noticed that this morning. I have to say I was quite surprised that it was still there.

You intended it wouldn't go on there, but it did go on there, it seems?-- I actually worked on it on the network, but my understanding was that I removed it, like, soon after.

COMMISSIONER: You did your best and it didn't work?-- It sounds that way, Commissioner.

MR APPLEGARTH: I'll come back to that issue a little later.

MR DOUGLAS: Just while Mr Applegarth does that - I'm sorry to interrupt you, Mr Applegarth, but it does arise out of one of his questions. Crown Law has provided me a short time ago with the original of the document which apparently was found within the office of the General Manager of Health Services. A copy of that, as you know, Commissioner, was provided to the Commission yesterday. It might be appropriate if I tender that now.

MR APPLEGARTH: I'm happy to, yes.

MR DOUGLAS: Commissioner, can I-----

COMMISSIONER: That's the original of Exhibit 368. Is that right?

MR DOUGLAS: Yes. It's actually the same document, but it's the document which bears - yes, it is. It's the original that was lodged, and it has some handwriting on it.

COMMISSIONER: Yes.

MR DOUGLAS: Thank you.

COMMISSIONER: All right.

MR DOUGLAS: Commissioner, can I also indicate for the benefit of Mr Applegarth as well - I think I've already told him this yesterday - that at my instigation today, and it will be completed by tomorrow morning, Ms Miller, Dr Cuffe, Mr Roberts and Ms Brennan will have been interviewed by the Commission and, hopefully, statements obtained from them. They will be distributed once they're obtained.

COMMISSIONER: Right. Thank you.

MR DOUGLAS: Thank you.

COMMISSIONER: Did I say that's Exhibit 394?

ADMITTED AND MARKED "EXHIBIT 394"

COMMISSIONER: Yes, Mr Applegarth?

MR APPLEGARTH: You mentioned, Mr Walker, that the Surgical Access Team, or the Surgical Access Service, was stymied by funding. That was an expression that you used earlier. There were a lot of things you had to do in terms of administering the system, and you didn't have the resources to, for example, get the type of computer system that would have enabled a good upgrade of the outpatient waiting list data?-- That's correct.

Just in terms of trying to get a big picture of the system and where the Surgical Access Team fitted into it, if we start with this proposition: there is an obvious demand for surgery of all of its kinds, as you say, elective surgery, emergency surgery, other surgery?-- Absolutely.

And from wherever that funding comes, Commonwealth or State, there doesn't ever seem to be enough money for it?-- Absolutely.

The system that you perhaps lived with and had to administer, had you, in a sense, in charge of the pot of money that was allocated for elective surgery?-- Yes, and really only a small part of the overall elective surgery produced each year from hospitals.

And the system that you had to live with and try and administer with not enough resources was one that had a system of rules that dictated whether a particular procedure was going to be funded for out of base funding or that elective surgery funding that you administered?-- Yes.

And so you had to administer what we'll call business rules?-- That's correct.

Now, the patient who's got cancer and wants the cancer removed very quickly, they don't care whether the surgery that they have is paid for out of that bucket or that bucket or whatever. They just want the surgery, don't they?-- Yes.

The doctor who is removing the cancer probably doesn't have too much interest in whether the surgery that he's performing in a public hospital is going to be paid out of this bucket or that bucket or some other bucket. They just want to help the patient?-- Yes.

But the system that you had to operate in was one in which you had to try and preserve the funding that you administered so that it was properly earmarked for elective surgery only?-- That's right.

And you had targets to meet, effectively, that there was a government desire for the elective surgery waiting list to be reduced, and for so many procedures to be done or so many weighted separations - I'm not on top of the detail, but the goal was the budget that you were given, there was to be a certain amount of activity?-- That's correct.

This is an enormously technical area, so at any time you can correct me?-- Okay.

But I'm just trying to get the picture at the moment?-- Yes, you're going well.

You aren't going too bad yourself. Now, so there are targets and activity. There's a lot of detail as to how one matches up targets and activity, but the basic orientation was that government policy provided this amount of funding and there was an expectation that there would be a certain amount of activity funded out of that dollar amount?-- That's correct.

And leaving aside this issue about classification and reclassification and how things could be classified, if we just take for granted that a particular procedure was truly an item of elective surgery, what you are doing at the Surgical Access Service is providing money to a hospital, and effectively offering them a price to do that procedure, or tens of those procedures or 100 of that procedure, whatever it might be, at that hospital per annum, in rough terms?-- That's a fair summation.

There's a lot of technicality?-- Yes.

You are offering them a price, and they were expected to do so many procedures, so many activities, there might be some difficult mathematical formula-----?-- That's correct. That's the principle.

And in terms of elective funding, the money that you were able to offer them, you appreciated, would barely cover the costs

of the hospital in undertaking that procedure?-- In latter years that is absolutely correct.

In fact I don't know if you've got your first big statement, Mr Walker.

COMMISSIONER: If you're going to go on to that, I see it's 4.30, Mr Applegarth. How much longer do you think you'll be?

MR APPLEGARTH: I think I'll - I could be an hour. I don't know. I just will need to review it overnight.

COMMISSIONER: Yes. You'll be more concise after you've done that.

MR APPLEGARTH: Yes, but I heard what my learned friend Mr Douglas said earlier about Dr Aroney, and I, of course - if it gives Dr Aroney and his patients more certainty, I don't mind having my examination of this witness interrupted by Dr Aroney being interposed, of course.

COMMISSIONER: No.

MR APPLEGARTH: So it's a matter for the Commission and the convenience of witnesses.

COMMISSIONER: We might do that, but just to give some indication, Mr Martin how long do you think you'd be.

MR MARTIN: Nothing to one minute, I would expect.

COMMISSIONER: All right. We've heard those estimates before, mind you. Who else wants to ask questions? Mr Bradley, you want to ask some questions?

MR BRADLEY: I just have two so far. I only have two questions so far.

MR DOUGLAS: It sounds like about an hour and a half at most, Commissioner.

COMMISSIONER: All right.

MR DOUGLAS: It's a matter for you. Commissioner, do you wish to start at nine?

COMMISSIONER: If Dr Aroney Is available at 10-----

MR DOUGLAS: It seems to be the process.

COMMISSIONER: We'll start at nine.

MR DOUGLAS: Thank you.

COMMISSIONER: All right.

THE COMMISSION ADJOURNED AT 4.31 P.M. UNTIL 9 A.M. THE FOLLOWING DAY