State Reporting Bureau

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Department of Justice and Attorney-General

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 04/10/2005

..DAY 17

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

THE COMMISSION RESUMED AT 11.06 A.M.

MR DOUGLAS: Commissioner, can I deal with some administration initially?

COMMISSIONER: Yes.

MR DOUGLAS: The next witness, Commissioner, is Dr Baker, Samuel Patrick Baker. Once Dr Baker's evidence has been completed, Commissioner, it's anticipated that evidence will then be called from four witnesses, statements of whom have been - have been distributed. Can I deal with those statements now for the benefit of those beside me and behind me. The statement distributed yesterday afternoon for Dr Baker has now been signed in unamended form. It was signed this morning by Dr Baker.

Moving on to the other witnesses, there are two statements from Mr Roberts.

COMMISSIONER: Yes.

MR DOUGLAS: The second of those statements has now been signed; the first of those was signed yesterday. There are also statements from Mrs Brennan, Cheryl Evelyn Brennan, Glen Phillip Cuffe - C-U-F-F-E - and Deborah Faye Miller. As to those statements, except for that of Ms Miller those statements have been distributed, I'm instructed, in signed form. I have just received the statement of Ms Miller in signed form but without exhibits. I'm told the exhibits will be with me in the next half an hour or so and that will be distributed in that form. The statements of Brennan, Cuffe, Roberts and Miller go to the issue which was canvassed in this Commission last week you will recall, Commissioner, pertaining to the exchange between Mr Walker and Dr Buckland and others in relation to the SAS service in 2003 and the - how certain documents were dealt with in 2003.

COMMISSIONER: Yes.

MR DOUGLAS: So that's the plan of action, Commissioner.

COMMISSIONER: Thank you.

MR DOUGLAS: I should add I understand that Dr Cuffe and Mr Roberts, and my understanding comes from Queensland Health, will now be separately represented but I'm told that that shouldn't cause any delay in the representation of their evidence.

COMMISSIONER: All right.

MR DOUGLAS: Thank you. I will deal with Dr Baker now, Commissioner. I'm sorry, yes, and Mr Burns appears for Dr Baker.

MR BURNS: I seek leave to represent Dr Baker, Commissioner.

COMMISSIONER: Yes, leave is granted. Yes.

MR DOUGLAS: Thank you.

SAMUEL PATRICK BAKER, SWORN AND EXAMINED:

MR DOUGLAS: Dr Baker, is your full name Samuel Patrick Baker?-- Yes.

Are you a general surgeon by occupation?-- Yes.

In fact, you're a duly qualified medical practitioner registered in this state and you work in private practice as a general surgeon in Townsville?-- Yes.

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

This morning, Dr Baker, did you sign and date today of course a statement made by you in respect of certain subject matter?-- Yes.

Is the content of that statement true and correct to the best of your knowledge and ability?-- Yes.

I tender that statement, Commissioner.

COMMISSIONER: That will be Exhibit 410.

ADMITTED AND MARKED "EXHIBIT 410"

COMMISSIONER: Yes.

MR DOUGLAS: Thank you. Dr Baker, in your statement you say that in 1997 you were admitted to the Advanced General Surgical Training Program conducted by the Royal Australian College of Surgeons?-- Yes.

If I refer to the college from now on, I'll refer to it by that name-----?-- Yep, okay.

-----the college if I may. Thank you. You say that you completed your training as a surgeon at various Queensland hospitals?-- Yes.

And you obtained your fellowship from the college in 2000?-- Yes.

In 2001 you commenced employment as a staff specialist at the

Bundaberg Hospital?-- Yes.

Thank you. You also relate in your statement that in 2001 you applied for and you were appointed to the position of permanent full-time staff specialist at that hospital?-- Yes, that's correct.

And also in your statement you refer to the fact that you were the subject of credentialing and privileging at the Bundaberg Hospital?-- Yes, I received a letter saying I'd been granted clinical privileges in general surgery and gastroscopy and colonoscopy.

That particular letter you received is dated the 12th of June 2001. It is Exhibit SPB3 to your statement?-- Yes, yes.

It's a letter signed by Dr Wakefield?-- Yes.

Who describes himself as the Director of Medical Services?-- Yes.

And, in fact, you knew Dr Wakefield?-- Yes, I do, yep.

And he's also described as - in that letter as the chair of the Credentials and Clinical Privileges Committee?-- Yes.

And you understood that to be and knew that to be that committee as it existed at the Bundaberg or in the Bundaberg Health Service District as at the date of that letter, namely, the 12th of June 2001?-- Yes.

COMMISSIONER: That's an application for continuation of clinical privileges?-- Yes. When you first are employed-----

Just tell us what happened to you?-- Yes, when you are first employed you get temporary clinical privileges until the committee meets. They don't meet that regularly. And then they give you official clinical privileges where you-----

Who granted you temporary clinical privileges?-- It would have been Dr John Wakefield as well.

MR DOUGLAS: For what period of time did you enjoy such temporary clinical privileges before you received this letter?-- From - from about February to this date.

As at February 2001 you were already a member of the college?-- Yes, yeah, a full fellow of the college.

And, in fact, when you commenced employment you had already been admitted to the college as a full fellow?-- Yes.

That is the Australian college?-- Yep.

Thank you. You'd also, before commencing at Bundaberg Hospital, worked in various Queensland hospitals?-- Yes.

Including after you were admitted to the college?-- Yes. You

get - you sit your examination in the May of the last year of your training and then you complete your training in the December of that year.

It would be correct to say, would it not, that at the time you commenced at the Bundaberg hospital, you were a person well known within Queensland Health, at least among those who would be appointing persons to specialist staff positions as surgeons within Queensland Health?-- Yes.

COMMISSIONER: You had in fact worked at Bundaberg Base Hospital before?-- I had done six months of my training in the latter half of 1998 under the guidance of Dr Peter Anderson and Dr Charles Nankivell.

Thank you?-- As a training position.

Yes.

MR DOUGLAS: And as you say in your statement, you'd also worked at other Queensland hospitals during your training, namely, the Prince Charles Hospital, the Townsville General Hospital, the Nambour Hospital and the Royal Brisbane Hospital?-- Yes.

You say in your statement that you were appointed as Acting Director of Surgery at the Bundaberg hospital?-- Yes.

And you remained in that position until November 2002?-- Yes.

What was it that caused you to cease in that position?-- I had grave concerns about the management and their putting the budget in front of patients' safety. There had been a number of incidents which concerned me. I wrote a letter on one occasion which was unanswered. And-----

Can I examine a number of things about which you just said, please?-- Yes, yes.

You ceased at the Bundaberg hospital in November 2002?-- Yes.

Where did you go from that point?-- I - I continued in private practice in Bundaberg until February of 2003 and then moved to Townsville.

That's where you presently undertake your practice?-- Yes, yes.

You indicated that you ceased in November of 2002. At that point in time were you still Acting Director of Surgery?-- Yes.

Is there some reason that you were acting for some period of time as opposed to being permanently appointed to that position?-- They - they offered me an appointment of temporary acting director - Temporary Director of Surgery for 12 months. It was up till I believe January 2003, was the appointment, and that's when they were going to formally advertise.

Queensland Health has a rule that if they offer you a position, it has to be formally advertised, and they hadn't formally advertised the position so they could give it me temporarily and then organise advertising.

From what you've just told the Commissioner, you ceased your duties or tasks prior to the effluxion of that period which was concluding in early 2003. How did that come about? Were you supposed to go through to January?-- I was supposed to go through to January but, yeah, I became more and more frustrated trying to do my job at the hospital due to lack of funding, lack of staffing. In 2001-----

Well, stop for a moment, please?-- Yes, yes.

I will come to that?-- Yeah, okay.

You said to the Commissioner a short time ago that you were becoming frustrated?-- Yes.

And also that there were some concerns that you had?-- Yes.

Can you be more specific now. Precisely what were the concerns that you had?-- I had concern that there were junior doctors unsupervised in the emergency department over the night and they were making mistakes, that all junior doctors make mistakes but which they should be supervised so to minimise the bad outcomes from those mistakes.

You address some of these matters in your statement, do you not?-- Yes, yes.

Were there any other matters that you were concerned about at the Bundaberg Hospital? As at-----?-- Just-----

As at November 2002?-- Yeah, I was concerned about the amount of surgery we were being able to be - to carry out. We had a shortage of anaesthetists. They had restructed the theatre nursing roster so we had less nurses to do - sorry. So cases were being cancelled and it became a very frustrating work environment.

You said to the Commissioner a short time ago that you wrote a letter to someone about those matters?-- Yes.

Can I deal with that topic now?-- Yes.

In your statement, as Exhibit SPB9, there is contained a letter dated the 2nd of November 2001 which you wrote addressed to Mr Peter Leck, District Manager, Bundaberg Health District. Do you have that?-- Number 9, is it?

SPB9. It's dated the 2nd November-----?-- Yes.

-----2001?-- Yes.

That was about 12 months prior to you ceasing your work at the Bundaberg hospital?-- Yes.

And the letter can speak for itself but you opened the letter by saying in effect that you were writing to Mr Leck to inform him that you will accept the position as Acting Director of Surgery offered to you on certain conditions?-- Mmm-hmm.

Do you agree with that?-- Yes.

And among those conditions were as to pay?-- Yes.

And rosters?-- Yes.

And the number of surgeons?-- Mmm-hmm.

And you also have an item there, "The substandard and dangerous surgical instruments currently in use in the operating theatre complex are either repaired or replaced immediately"?-- Yes.

And there's a number of other items as well going to administration of the hospital, are there not?-- Yes.

The penultimate one is the, "Lack of supervision and seniority of the medical staff in the emergency department, especially after hours, be addressed urgently by implementation of alternative models of medical staff rostering"?-- Yes.

I think I've recited it correctly?-- Yes.

Are these matters in this letter-----?-- Yes.

-----that you had raised with any person in authority at Bundaberg Hospital prior to the 2nd of November 2001?-- Sorry?

Had you raised those with anyone at Bundaberg Hospital in authority prior to 2nd November 2001?-- Yes, I raised them with the Director of Medical Services, but this was the formal-----

The Director of Medical Services was whom at that time?-- He was an Acting Director of Medical Services, Dr Lyn Hawken and prior to that it was Dr Kees Nydam.

One sees in this letter which is exhibited to your statement, Exhibit SPB9, that there are a series of marks on it?-- Yes.

Some ticks, some crosses, some dashes?-- Mmm-hmm.

Is this your personal copy of a letter which you wrote?-- Yes.

Do those marks bear some significance in relation to their disposition following the forwarding of this letter?-- I made those marks at a meeting, an initial meeting with Mr Leck where he-----

Stop for a moment?-- Yep.

Are you speaking about a meeting that takes place after the

2nd of November 2001?-- Yes.

You met with Mr Leck and who else did you meet with?-- Lyn Hawken.

Is that a meeting which is different from that which was the subject of the transcript of a tape-recording otherwise referred to in the statement?-- No, that was the same meeting.

You say it was the same meeting?-- Yes.

Tell us about the significance of these marks if any?-- The cross was that wasn't accepted by the District Manager. The ticks were what they - what we discussed, what was accepted. But having said that, the cross on the lack of supervision and seniority of medical staff in the emergency department, the Bundaberg health District got Dr Mark Mattiussi to come up and look at alternative models of rostering and they did eventually, after my meeting, employ a medical education officer.

Right?-- So some of those crosses became ticks later on.

Thank you. The two that I read out to you, dealing with the first one initially, the fourth dot point down is that concerning the instruments and I read it out earlier. You've put a cross beside that?-- Yes.

Did some improvement take place after the 2nd of November 2001 pertaining to that issue?-- I cannot recall whether any - any improvement occurred. Instrumentation was frustrating.

Can I go then, please, to the penultimate item, the other item I read out, pertaining to the lack of supervision and seniority?-- Mmm-hmm.

Did some change or alteration occur after the 2nd of November 2001 pertaining to that issue?-- No.

I want to then take you back in time to the subject matter of one of your - or some of your earlier answers?-- Mmm-hmm.

That is to the point in time about a year later when you ceased your employment. Did you have any meeting with any person prior to ceasing your employment in which you raised any concerns you had pertaining to the Bundaberg hospital?-- No, not with the Director of Medical Services but I was Chairman of the Medical Staff Advisory Committee and at every meeting there were issues raised and the Director of Medical Services was at that meeting, but there was no specific meeting. At that point I felt like I had frustrated all avenues of asking for them to change things.

Could I invite you to be more precise, please?-- Yes.

There was a staff organisation of which you were chairman; is that correct?-- There was a group of senior clinicians called the Medical Staff Advisory Committee of which I was the

chairman.

Who manned that group in terms of names of persons?-- There was the anaesthetists, the physicians, the surgeons, the pediatricians.

For what periods of time did you chair that group up to November 2002?-- I believe it was approximately 12 months or just under. I cannot recall exactly when I was appointed.

How often would that group meet?-- Once a month.

Did the Director of Medical Services routinely or occasionally attend those meetings?-- Routinely.

Were any minutes kept of those meetings?-- They were and the - I did give them to the investigators.

You gave them to the investigators?-- Yes.

And is it the case that the issues that you're raising here were canvassed at those meetings at any point in time?-- They were; not only by myself.

Was any attempt made to have you change your mind about leaving the hospital?-- In 2002?

Yes?-- At that stage, no. The director - the Acting Director of Medical Services at that stage was Kees Nydam and he did ask whether I would like to help with on-call over Christmas but I was going away so I declined the offer. That was the only-----

Okay. Could I invite you now to go to the portion of your statement commencing at paragraph 22?-- Mmm-hmm.

Paragraph 22 deals with you resigning from your employment in November 2001?-- Yes.

Notwithstanding your resignation, you did subsequently take up the position as you told us?-- Mmm-hmm.

Of Acting Director of Surgery?-- Yep.

Is that correct?-- Yeah, I withdrew my resignation.

Thank you. You refer in paragraph 23 to coverage in the media. What was the coverage that was occurring in the media at that time?-- There was a - an article in the Bundaberg News Mail saying the second surgeon resigns from Bundaberg Base Hospital. Just before country cabinet met in Bundaberg it appeared in the paper.

When you speak of a second surgeon, was there a surgeon who early had resigned?-- Charles Nankivell, the previous Director of Surgery.

That was the tone of the media articles as you recall them?--

Yes.

You say in that paragraph 23 of your statement that Mr Leck told you that the Director-General Dr Stable was not happy with the media treatment of the issue?-- Yes.

The word you used is "media embarrassment"?-- Yes.

You subsequently, as you recount in your statement, had a meeting with Dr Stable?-- Yes, we had a meeting with senior staff. Initially he just wanted to meet with me but I negotiated a meeting with the senior staff.

Sir, I want you to deal with this issue as best as you can recall it albeit prompted by your statement. In paragraph 23 there is a sentence which commences, "He said, 'We don't want to see your career damaged'"?-- Yes.

Then you deal with that in two further sentences; do you see that?-- Yes.

Are you speaking there of a conversation that you had with Mr Leck or with some other person?-- No, a conversation I had with Peter Leck.

Was any other person present during that conversation?-- Lyn Hawken, the Acting Director of Medical Services.

Is that the same conversation which was the subject of the tape-recording?-- It was after the meeting and the tape-recorder had been turned off and we were leaving the room.

Thank you. What's your best recollection as to what Mr Leck said to you with respect to your career, your best independent recollection?-- My best - my best recollection is he said the Director-General is not happy, Queensland Health was a large organisation and the Director-General will protect the organisation and he said, "We don't want to see your career affected", or damaged, I cannot recall the exact words.

You-----?-- I interpreted it as an implied-----

Well, whatever you interpreted it as, I'm not particularly interested in how you interpreted it?-- Okay.

I'm interested to know about the conversation if you would, please?-- Yes, yep.

Did you respond to that statement that was made?-- I did. I said - I asked, "Is that a threat?"

Who did you ask that of?-- Peter Leck.

Did you receive a response to that?-- I received no response.

How did that conversation end?-- We were walking out the door; I just walked out.

Did he subsequently give you any response to that question that you asked?-- No.

Commissioner, that's the evidence I propose to lead from this witness apart from the statement. I'm having Mr Cowley-Grimmond furnish to me copies of these minutes of the meetings referred to by the witness. I haven't seen those documents before and once I see those documents and inspect them, I may be desirous of asking this witness some further questions.

COMMISSIONER: All right. We can proceed with the other counsel.

MR DOUGLAS: Yes. Yes, Commissioner.

COMMISSIONER: Are we agreed on an order of questioning? Mr Harper?

MR HARPER: The agreement is I go first.

COMMISSIONER: Thank you.

CROSS-EXAMINATION:

MR HARPER: Doctor, my name is Harper and I appear on behalf of the Bundaberg patients. I would just like to clarify the history of your employment?-- Yes.

You commenced in February 2001?-- That's correct.

What was the capacity you were employed in at that time?-- Full-time staff surgeon.

In paragraph 6 of your statement you say that in June 2001 you were offered the position of Temporary Director of Surgery but later at paragraphs about 11 to 13 you say that it was about November that you were appointed Acting Director of Surgery?-- I was - I wasn't offered - yeah, in June 2001 I was offered, yep.

Were you director of - were you Temporary Director of Surgery from June or were you still a full-time staff specialist?-- No, Dr Nankivell was still there and he was the Director of Surgery.

So it was from November that you became Acting Director of Surgery?-- Yeah.

In relation to the credentialing and privileging process which was undertaken in relation to your appointment?-- Yes.

Were you separately - obviously the credentialing only needs

to be done once?-- Yes, it actually is reviewed every three years.

Yes. Is it reviewed once you take a position of higher responsibility?-- I'm not sure. I'm not sure what the Queensland Health policy is there.

It wasn't in your case, though?-- It wasn't in my case, no. I would see no reason for it, because you would be credentialled to perform surgery and you would still be performing surgery as Director.

But the second part of it is to assess what the scope of practice is?-- Mmm.

It is not the case that the scope of practice for a Director of Surgery might be greater than for a specialist staff surgeon?-- No, no. All the Director does is a lot more paperwork.

Can I take you to the transcript of the interview - of the interview you had with Dr Hawken and Mr Leck, which is SPB4?-- Yes.

Can I just ask: do you know who transcribed the tape?-- I believe the Commission - the investigators got part of it transcribed and they sent me a copy and I went through it again and put the medical terms in.

Okay. Did you have - when the tape was originally done, did Mr Leck or Dr Hawken have a copy of that tape?-- No, they didn't.

The transcription, though, is consistent with your understanding of the conversation?-- Yes.

I might just put those two pages up on the screen. At about page 5 of that transcription, there's discussion about - the context of the discussion is your concerns about the roster for surgery at the hospital, and you see there about halfway down on the screen there's a reference to a person Inian?-- Yes.

I would like to take you through the discussion about - the possible appointment of Inian?-- Yes.

And the discussion about what actually happened with that?-- Okay.

You will see there there's firstly a mention that Inian, if he took this position, the likelihood is that he would be employed as an SHO, or Mr Leck says an SMO?-- He corrected Lyn Hawkin.

That was to be a Senior Medical Officer in Surgery?-- In Surgery, yes.

Reporting to you?-- Yes.

And that's to remain until he is registered with the Board?-- Yes.

Dr Hawken you will then see says, "We would immediately, of course, support him for permanent residency so he can become a

member of the College, or whatever."?-- Yes.

That's correct. Can we continue up, please?-- Do you want that explained?

Yes. You might explain that?-- What Queensland Health does - and this is one of the things that concerned me - is they will employ - Inian was a non-training Registrar - junior doctor - doing surgery under consultant supervision. They wanted me to elevate him to a Senior Medical Officer to replace Charles Nankivell as long as I supervised him, and when they employ these overseas trained doctors as Senior Medical Officers-----

COMMISSIONER: He was an overseas trained doctor?-- He was. He was from India, who was actually applying for advanced surgical training and had not got on that particular year. They support them for permanent residency, and then they refer them to the College of Surgeons for assessment, and the College then decides whether they need to do all their training again, part of their training again or just be supervised for one to two years.

MR HARPER: So part of being a Senior Medical Officer in surgery, there's an expectation that you will be registered with the College?-- An expectation - you don't register with the College, but the College - you should be referred by the administration to the College to be assessed and have your credentials assessed.

Can we then just scroll again further? You will see there that - about the fifth line down, Dr Hawken says, "See, Inian would have to have someone like yourself as a supervisor for us to appoint him in that role."?-- Yes, that is the correct procedure. The Senior Medical Officer needs to be supervised by an Australian-trained surgeon in surgery.

You will see there highlighted, that's confirmed by Mr Leck?-- That's correct.

"Because he is not registered as a specialist, we would need him to go through a credentialling process to begin with, but you would need to commit to being his specialist supervisor."; that's correct?-- That's correct, yes.

Just go down a little further, please. And again, Mr Leck confirms that: "We just need to be assured that you are satisfied not only to do his supervision with him in terms of a practitioner and being your off-sider." There is discussion from Dr Hawken which I've highlighted there about how that supervision should occur?-- Yes, and he uses the department of obstetrics and gynaecology as an example. They had a fully qualified obstetrician and then there was a Senior Medical Officer who was supervised.

Can I ask: was Inian ultimately employed by the hospital?-- No. After this meeting, I had a chat with him and said I didn't think this was the right thing for his career path, and he subsequently went back to India and is now a consultant

surgeon-----

Was there someone else employed in that role to report to you?-- No.

You never had any other person employed reporting to you and being supervised?-- No, they - I resigned before they even did that.

But your understanding is that that is the appropriate process for someone to be employed as an SMO?-- As an SMO, they need to be supervised.

Thank you. I have nothing further, Commissioner.

COMMISSIONER: Thank you. Mr Allen?

MR ALLEN: Thank you, Commissioner.

CROSS-EXAMINATION:

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

You mention in paragraph 15 of your statement, "Whilst I was at Bundaberg Hospital, I did not ever perform an oesophagectomy or a Whipple's procedure."?-- Yes.

"The most complex surgery that we performed was bowel surgery and gastric surgery for cancer and diverticular disease, and the whole gamut of trauma surgery."?-- Yes.

Now, does that mean to indicate that not only did you never perform an oesophagectomy or a Whipple's procedure whilst employed at Bundaberg, but no other surgeons during that period of time ever performed an oesophagectomy or a Whipple's procedure to your knowledge?-- In the period of time I was at the hospital, I - Dr Nankivell and I never performed an oesophagectomy or a Whipple's procedure or any major liver surgery. We referred all that on to Brisbane.

And the main reason for that was the capability of the Intensive Care Unit, which was a Level 1 Intensive Care Unit only?-- Yes.

And it was therefore quite outside the scope of practice of the hospital for such complex procedures to be undertaken?-- Yes. You need a proper Intensive Care Unit for post-operative care.

Do you recall ever having any discussions on that topic with anyone in management; that is, the capability of Bundaberg Base Hospital to cope with more complex procedures such as oesophagectomies or Whipple's?-- No, I never had a meeting

with anyone in management about that.

The whole impression you had during your time there was that it was a given?-- Yes.

Those sort of procedures would not be undertaken because Bundaberg did not have the capability to properly deal with them?-- Correct.

Paragraph 20 of your statement, you refer to attending a meeting about a business case on utilisation of the operating theatres at the Bundaberg Base Hospital?-- Yes.

At what period - what part of the period of your employment did that occur? Are you able to place it at all as to what position you held or when it may have occurred?-- I'm not - I cannot exactly recall. Probably in the mid-point of that - or the last part of 2001. I do have a copy of that report.

Of the business case?-- Of the business case.

Of the business case. You have that with you now?-- I have that with me.

If you could perhaps produce that?-- 3 September 2001 it is dated.

So, the meeting would have been soon after that, perhaps?-- Yes. I would imagine so.

All right. Now, you say that the business case, as far as you can recall, was prepared without consultation with the medical or nursing staff in the operating theatre?-- Yes, the meeting involved the theatre nursing staff and the doctors, and the first we heard of it was it was put into our hands at this meeting.

What is a business case on utilisation of operating theatres?-- I'm not particularly - I have never done a business case, but I believe it is a procedure you go through to change something in Queensland Health if it involves spending money or saving money. You have to put a business plan together. It was put together by the Director of Nursing and the District Manager.

And if it was implemented, it would change the way that activities in the operating theatre occurred?-- Our real concern was it was going to decrease our capability to perform elective surgery.

Any business plan would affect the way procedures occurred?-- Exactly.

All right. Well - and you are saying such a plan was prepared without consulting with either the doctors or nurses who actually worked in the operating theatre?-- Yes. The first we heard of it was at the meeting saying it was going to be implemented.

It seems bizarre that someone could attempt to prepare such a plan without actually consulting with the medical staff and nursing staff involved?-- It is bizarre, but not unusual with Queensland Health.

Now, you say that the business case was prepared because a hospital executive wished to increase operating theatre utilisation?-- Yes.

So, that means be able to undertake more procedures, treat more patients?-- Not exactly. My understanding of utilisation is the amount of time where actually someone is being operated on in a theatre. It doesn't necessarily mean more cases, but it is a measure of the total time of the shift underneath and on top of the theatre time the patient is in the theatre. I never understood the advantage of knowing - of improving that up into the high 90 percents because you have no capability to absorb emergencies if you have nearly 100 per cent utilisation all the time.

I see. But it was designed to try and use the operating theatre as much as possible?-- Yes. That was the proposal.

There are certain disadvantages with increasing the utilisation over 90 per cent because you don't have the capacity then to deal with emergencies?-- No.

But in any event, you say that the business case's proposed benefits were: "Realisable savings will occur with the employment of fewer nursing staff in theatres."?-- That's on the second page of this business case. The first benefit - that's a direct quote from it. That's what - we couldn't understand how we could increase the utilisation with having fewer nursing staff in the theatres.

There's a logical problem with that, isn't there?-- Yes, and that was our concern.

You need nurses to be able to conduct operations?-- Exactly. You need a team, yes.

The ability to undertake procedures doesn't depend merely upon the availability of an operating theatre?-- No.

But it depends upon the availability of a surgeon?-- Yes.

An anaesthetist?-- Yes.

And the nursing team?-- Yes, exactly.

If you don't have enough nurses to constitute that team, then you can't safely undertake the procedure?-- Correct.

How is it possibly going to increase the utilisation of the operating theatre reducing the number of nurses in theatre?-- That perplexed me. I didn't think it could. I didn't believe that they could increase utilisation by doing this.

Was this matter raised with Mr Leck or the then Director of Nursing at this meeting?-- I believe it was quite a hostile meeting and a lot of the nurses were upset about it.

Did Mr Leck give any explanation as to the logic behind this proposed business plan?-- I cannot recall any logic.

You certainly didn't gain any enlightenment from Mr Leck as to why this would be a good idea at that meeting?-- No. I was cynical that it was just to save money.

So, there was going to be a saving of money to the hospital by reducing the nursing staff?-- Yes.

That wasn't in any way going to increase the utilisation of the operating theatre?-- I didn't believe so.

That was in no way going to improve the operation of the hospital?-- I didn't believe so either.

In fact, the only logical inference to be drawn is it would impact negatively upon the services provided by that hospital to the public?-- It subsequently did. Do you want a copy of this?

Yes, I will tender a copy of that business plan referred to by Dr Baker.

COMMISSIONER: Thank you. That will be Exhibit 411.

ADMITTED AND MARKED "EXHIBIT 411"

MR ALLEN: SPB1 to your statement includes a letter which basically sets out your terms of employment?-- Yes.

And I think it is about four pages in, there's a page which begins with a topic, "Orientation"?-- Yes.

And then the second topic is confidentiality/Code of Conduct?-- Yes.

And the second sentence of that reads: "All employees are reminded that irresponsible discussion of any matters regarding the health service facilities, staff, and, most importantly, the patients is regarded as an offence."?-- Yes.

Look, I don't suppose you ever went to the relevant legislation-----?-- No.

-----to see whether, in fact, that was an accurate statement or not, but did anyone ever explain to you that, in fact, the only possible offence that might be committed would be disclosure of confidential patient details?-- Sorry, did

anyone-----

That the only possible offence that might be committed by a health service employee in that regard would be disclosing confidential patient details?-- No-one ever explained - I mean, I understand that from being trained as a doctor, but no-one ever explained that to me, no.

But this document, on its face, seems to be telling you, as an employee, that if you irresponsibly discuss any matters regarding the health service facilities or staff, that you could be prosecuted?-- Yes.

No-one ever attempted to correct any such misapprehension?-- No.

And then apparently enclosed is a copy of the Queensland Health Code of Conduct?-- Yes.

And also a Bundaberg Health Service District confidentiality policy and a Bundaberg Health Service District confidentiality agreement which you are required to sign and return?-- Yes.

Do you recall what sort of obligations you undertook by signing such an agreement?-- I actually don't recall ever signing an agreement.

Right, okay?-- There may have been one, but I don't recall signing one.

You have been directed to Exhibit 3 to your statement, which is the letter confirming your credentialling and privileging, and you have indicated that Dr Wakefield was the chair of the Credentials and Clinical Privileges Committee?-- Yes.

Do you have any knowledge as to who else sat on the committee at that time when your credentials and privileges were considered?-- I believe it was Peter Leck and Dr Charles Nankivell, who was the Director of Surgery.

Okay?-- The process when you are credentialled usually is someone from your field of practice is part of the committee to assess your capabilities.

Now, if we can just go to another exhibit? It is SPB13. It is quite a lengthy document, but-----?-- Yes.

-----from what I can work out from your statement, this isn't the audit that was completed by yourself and referred on to management, but one completed by Dr Carter in relation to anaesthetics and the Intensive Care Unit?-- It actually includes his and mine under the same - mine - my writing is in the latter part of that large document.

I see?-- So, both our "Self-assessment Mandatory Criterias" of our departments are in that document.

I see. It includes both?-- Both. And then there's the

E-mail regarding it.

All right. Can we just clarify that then? SPB13 starts with the cover page, "Self-assessment Mandatory Criteria, Department of Anaesthetics.", and then there's some typewritten pages which, what, set out some relevant criteria?-- Mmm.

If we go past those typewritten pages, it starts off with standard 5.1?-- Yes.

So, is that Dr Carter's writing?-- That's Dr Carter's writing, 5.1.

And then the following pages then, which are also in similar writing about the letters, would all be Dr Carter?-- Yes, they are all his writing.

Can you see at page-----?-- Then on mine there's a blank page.

COMMISSIONER: Yes.

MR ALLEN: I see, just before that blank page, you see it still seems to be part of Dr Carter's document, Standard 1.3?-- Yes.

Consumer patient needs for quality and safe care with desirable outcomes are addressed through the planning, delivery and evaluation of care?-- Yes.

And the comments by Dr Carter seem to be that, "Care is delivered on an ad hoc basis as continuum of care is impossible with current staffing levels." Now, is that consistent with your view as to how things were at that time?-- Yes, that would be consistent.

And then, "ICU complies with its status in transferring patients."?-- Yes.

So, is that referring to the situation that you have referred to before that, for example - I withdraw that. What does that mean?-- The ICU had a rule that if the patient was going to be ventilated for more than 24, 48 hours, we would transfer to Brisbane, and we adhered to that rule.

You adhered to that rule at that time?-- Yes.

Can you interpret what's further down that page? The type writing refers to-----?-- "Criterion LA not achieved."

What's "LA"?-- "LA" is - I think it is explained in these pages at the front - 1.3 - "LA" is awareness, and it says, "Guidelines on care, planning and delivery are available. Care is provided in response to immediate consumer patient needs, based on established policies and procedure, and care is planned and delivered in accordance with medico-legal requirements." So, it's the lowest of those assessments on a

scale. There's LA, SA, MA, EA and OA.

LA is the lowest?-- Lowest.

The least satisfactory standard?-- Least satisfactory standard.

What Dr Carter is saying, therefore, is even that lowest standard was not achieved?-- I believe so.

Because of lack of staff?-- Yes.

Was the difficulties with numbers of staff confined to doctors, or did it include nursing staff?-- Both.

Can we go past the blank page then? Does your writing in this document start, "Continuum of Care, Mandatory Criteria, Standard 1.2"?-- Yes, that's my writing.

If we go back in a few pages, can you see that there's a page headed, "Leadership and Management Mandatory Criteria"?-- Is that one point something?

Standard 2.1?-- 2.1. Yes.

Now, this is your writing?-- Yes, that's my writing.

This is the opinion that you honestly formed at that time?-- Yes.

And reported to management?-- Yes.

"There is little direction from management with regards to strategic direction. They refuse to clearly define the hospital's operational role in delivery of services and the critical mass of medical staff required to meet this role. They appear more interested in making targets than delivery of quality health care."?-- Yes.

Who is "they" referred to in your opinion?-- Bundaberg Hospital Administration.

And who are the individuals that would have formed that management at the time you expressed that opinion?-- The District Manager, the Director of Medical Services.

COMMISSIONER: Mr Leck?-- Mr Leck.

Director of Medical Services at the time was?-- Was Kees Nydam.

MR ALLEN: Anyone else?-- Director of Nursing.

COMMISSIONER: The Director of Nursing was who?-- Glennis Goodman, I think, and the people who worked in that field of quality management and quality assurance. I'm not sure who they are.

MR ALLEN: Does that include someone who features in an E-mail subsequently when you say "those people who worked in that field of quality management"?-- Yes, Leonie Raven, Quality Coordinator.

And further down that page, your opinion expressed at that time - I suppose you give the rating, and LA is the lowest?-- Yes.

That's the one you have ringed. "The Department of Surgery's operational role needs to be clearly defined with reference to the budget provided. Staffing levels need to be set in order to maintain services. There needs to be an operational plan for the continued development of surgical services in the Bundaberg Health Services District."?-- Yes.

Well, fairly clear propositions that you have set out?-- Yes.

Were you aware of those matters being acted upon, remedied?-- I don't believe they have been acted upon or remedied, otherwise we wouldn't be here.

Next page, once again your writing?-- Yes.

"Management continues to ignore safe hours practices and the fact that the anaesthetic department is grossly understaffed."?-- Yes.

Once again, that understaffing was in reference not only to doctors but to nursing staff?-- Well, that refers to the anaesthetic department, that particular comment.

So that was referring to the number of anaesthetists?-- Anaesthetists, yes.

But it was your view that, indeed, the ICU, or, indeed, surgical department, including theatres, were also understaffed in relation to nursing staff?-- Yes. We commonly had to cancel cases because staff had been in overnight for emergencies and there was no slack in the system, so we had to cancel the next day's elective surgery.

Further down that page - it might be relevant to what you have just said - you express the view that "what needs to be improved in this regard is improved critical levels of staff"?-- Yes.

Then you make reference to, I suppose, the on-call numbers for surgeons and anaesthetists?-- Yes.

And then you say, "Evening nursing shift (OT)" - is that overtime?-- No, that's operating theatre.

"Operating theatre". "Evening nursing shift operating theatre to avoid cancellation of elective surgery by emergency surgery."?-- Yes.

So what you are saying is that there needed to be that slack in the system?-- Yes.

So that if nursing staff were involved in emergency procedures in the operating theatre, you could still have other staff available to undertake the elective surgery?-- Yes.

Do you know whether that matter, a very significant matter, was ever addressed before you left the hospital?-- No. That was part of the reason for me leaving.

Next page - I suppose this would be a matter which was well and truly within your means of knowledge and over which you would have had some benefit over the management: "Safety of senior medical staff performing long hours of service without sleep are ignored."?-- Yes.

Can you provide any examples of that? What sort of long hours of service were you referring to?-- You can be up all night. Work all day, be up all night, and still be expected to work the next day.

How many hours in total without sleep then?-- You - 24.

Or more?-- You know, greater than 16, up to 24, and when you are on call every second night, you can't catch up your sleep.

Sleep deprivation, I don't suppose you need to be a doctor to realise can really affect people's ability to undertake even simple tasks-----?-- Definitely.

-----let alone the complex procedures of surgery?-- Definitely.

Was that matter ever remedied before you left the hospital?-- No. On occasions we took matters into our own hands where we just cancelled things and went home and went to sleep.

And you go on-----?-- And on-----

Sorry?-- On one occasion I know one of the anaesthetists who was an SMO was questioned over it by the District Manager, why he cancelled elective surgery.

So he was taken to task by Mr Leck?-- Yes.

The anaesthetist had gone home because he realised that he was unsafe-----?-- Yes.

-----to continue and was taken to task about that?-- Yes.

You go on: "Staff levels are allowed to deteriorate until crisis point, eg anaesthetics"?-- Yes.

Are you referring there only to staff levels in relation to doctors or also nursing staff?-- Mainly doctors, yeah, it would be doctors. When someone leaves, Queensland Health appears very slow to advertise for a replacement, and over my years of employment with Queensland Health, I have become cynical that I think they do that to try and save money, and part of the reason for my meetings with the District Manager was when the Director of Surgery resigned and I looked like doing a one-in-one, 24 hours a day, seven days a week, covering surgery at Bundaberg Base Hospital. I-----

How long did you do that for?-- Well, I was not going to do it.

But what was proposed?-- Well, they kept on saying that they were going to try and get someone, but advertising was a very slow process.

So you had the prospect of being available every hour of the week for how many weeks?-- Indefinitely.

Indefinite period?-- Indefinitely, but I made a stand and refused to do it.

If you go on a few pages, do you see that there is a page "human resources management - mandatory criterion standard 3.1"?-- Yes.

Your writing appears to read "surgical skill mix is not even considered in recruitment or" - I can't read the next word?-- Either can I. I think it has been cut off.

Perhaps it could be "surgical"?-- "Or encouraged".

"Or encouraged"?-- It might be "or encouraged".

What were you referring to there?-- Well, surgery is in a state of change at the moment, where we are super specialising our trainees and not creating a general surgeon anymore. They are usually subspecialty trained or have special interests. And in order for provincial centres to survive, I do believe that we need to look at skill mix to get general surgeons with special interests in different areas who do the work in those particular areas, but overall they all cover the trauma on call and emergency and it is what - it is the system we have set up in private in Townsville, and I proposed that to management, that they had to think about that for the future. There is a distinct lack of future planning of surgical services in Queensland in the public system.

All right. Well, if we go on to the end of your document which is the self assessment, you have included an email which is SPB14?-- Yes.

Now, is this email really dealing with the whole of the document SPB 13 which comprises the form completed by Dr Carter and also that completed by yourself?-- Yes. Dr Carter told me he was asked to do his again because it was too critical, and then this email was accidentally sent to me.

Oh, I see. So the first email is at the bottom of the page. That's from, what, Leonie Raven who is the quality coordinator?-- Yes.

To the then Director of Medical Services Kees Nydam?-- Yeah. Yeah, it is to Kees from Leonie Raven, and the top one is from Peter Leck to Kees Nydam and Leonie Raven.

So the first one seems to attach the self assessment against the mandatory criteria which was completed by yourself?-- Uh-huh.

So that would be the document we have just had a look at some parts of?-- Yeah.

"While not as scathing as the anaesthetics document", so do you understand that to refer to the document which had been completed by Dr Carter?-- Yes.

"Some of the comments in the surgical document are still not appropriate for inclusion in the district response." Was that ever taken up with you by anyone in management or by Ms Raven, that?-- No.

The comments in your document were not appropriate for inclusion in the district response?-- No.

And do you understand the district response would be some type of reporting by the Bundaberg Health Service District to corporate office?-- Yes.

There is then reference to, it seems, some discussion that occurred between Ms Raven and Dr Carter in relation to his document?-- Yes.

And then the response to that email actually comes, not from Kees Nydam, but from Mr Leck?-- Yes.

And it is directed to Kees Nydam and Leonie Raven. And reads partly: "There appears to be some issues in the document that should be able to be easily fixed, eg scalpel blade removers, sharps containers." Now, do you understand that to be reference to the contents of your document or that of Dr Carter's?-- I am not quite sure. I would have to go - there must be some - I think there was some reference by Dr Carter about sharps procedures-----

Yes?-- -----in his.

And then "others that appear uninformed, eg lack of security training"?-- Yeah.

That may have been from Dr Carter's as well?-- I believe so.

All right. So there doesn't seem to be any specific comment by Mr Leck in relation to the contents of your document?-- No.

Were you ever approached by anyone in the executive, that is the Director of Medical Services or the District Manager, or even Ms Raven, the quality coordinator, to discuss the matters you dealt with in your self assessment?-- No.

You weren't asked at all to amplify upon those matters?-- No.

Did you get any feedback at all from management in relation to the concerns you had raised?-- No.

So the document just went off and that was the last you heard of it?-- The last I heard of it, and the only reason I knew it went to corporate office is because of that email which was accidentally sent to me.

Well, it doesn't seem to be apparent even from that email that it went to corporate office?-- He says "for inclusion in the district response", and the district response would be to corporate office.

Yes. It is just that - see, that's a reference to your document, isn't it?-- Mmm.

"Some of the comments in the surgical comment are still not appropriate for inclusion in the district response"?-- Yes.

That's what I am asking about?-- Mmm.

The email seems to be saying the document you have completed contains comments which aren't appropriate-----?-- For inclusion.

-----for the district to send to corporate office. You have never been approached in relation to the contents of your document?-- No.

Do you have any knowledge as to whether it actually became part of the district response?-- I have no knowledge of what happened after I handed it in.

Thank you, doctor?-- Thanks.

COMMISSIONER: Mr Devlin?

MR DEVLIN: No, thank you.

COMMISSIONER: Mr Martin?

MR MARTIN: No, thank you.

COMMISSIONER: Mr Diehm?

MR DIEHM: Yes, Commissioner, briefly.

CROSS-EXAMINATION:

MR DIEHM: Doctor, Geoffrey Diehm is my name and I appear for Dr Keating?-- Yes.

I just want to ask you about the oesophagectomies and Whipples procedures that you have said were not performed by you?-- Yeah.

In answer to some questions from Mr Allen, you said that you were never approached or never had any discussions with the executive about those particular types of procedures?-- Right.

So I take it that you were never given a direction by anybody in the executive that those procedures should not be performed at Bundaberg?-- No.

Nor did you ever seek out the advice of the executive as to whether those procedures should or should not be performed there?-- No, but I - when I started, I sought direction from the Director of Surgery as to what was appropriate and what was not appropriate at Bundaberg.

All right. Do you recall specifically discussing those procedures with the Director of Surgery?-- We discussed a

range of procedures.

Would it be the case that as you had a patient come in with a particular condition, you might discuss whether that condition could be treated surgically at Bundaberg or whether the patient should be referred to Brisbane?-- For some procedures that may be the case, but for advanced procedures, such as oesophagectomy and Whipples, that would - there was - when I discussed it with the Director of Surgery, we were not - we were going to refer them to subspecialty units in Brisbane.

Yes?-- And there is good evidence in the medical literature they have better outcomes-----

Doctor, I am not challenging you about that conclusion of yours, but are you saying that there were discussions between yourself and the Director of Surgery about oesophagectomies and Whipples procedures and about whether they should be sent on - referred on to Brisbane?-- When I first started, we had a discussion about what we would do in Bundaberg and what would we refer to Royal Brisbane or Princess Alexandra Hospital.

COMMISSIONER: And that included?-- That would have included oesophagectomies and Whipples. I can't recall the exact conversation but it would have included major liver surgery as well.

MR DIEHM: Yes?-- And pancreas.

When you were credentialed and privileged, as we can see by the letter that's annexed to your statement, there wasn't any process whereby you were limited as to the nature of the surgery you could perform?-- No.

Other than to say that you were credentialed - sorry, you were privileged for performing general surgery?-- That's correct. You - there were no list of operations you cannot perform.

Yes?-- Part of our training is to learn the limit of - our limitations and with our resources, and that is part of the 12 years that we do supervised training.

COMMISSIONER: By resources, you mean there would be also the limitations on the hospitals?-- Resources and own limitations.

By resources you mean the limitations of the hospital?-- Limitations of the hospital, the intensive care unit, yeah. That actually forms part of the training in Australia. So - I am unaware that we have ever - I have ever seen anyone been given a list that they cannot do, but people know by the end of their training what they can and can't do.

MR DIEHM: The expectation is, and has been, and, indeed, your practice was at Bundaberg, that as a surgeon you would exercise your own judgment about what was appropriate and not appropriate in terms of the complexity of procedures to be

performed?-- Yes, yes.

And to the extent you may have had any doubt, you would discuss it with your Director of Surgery?-- Yes.

And those were the areas of responsibility for making those decisions, because that's where the expertise to make the decisions lay?-- Yes, yes.

COMMISSIONER: But these are matters which are, in fact, discussed with the Director of Surgery when you started there?-- Yes, yes, we had informal conversation about it.

MR DIEHM: Thank you. That's all I have, Commissioner, thank you.

COMMISSIONER: Thank you. Mr Ashton?

MR ASHTON: Thank you, Commissioner.

CROSS-EXAMINATION:

MR ASHTON: Doctor, my name is Ashton. I am counsel for Mr Leck. I missed a little of your evidence, doctor, so forgive me if I accidentally plough it to death. I am sure the Commissioner will keep me on the straight and narrow. Doctor, you were taken by my learned friend Mr Allen to a passage - a passage in your letter of engagement about confidentiality. Remember that?-- Yes.

And he referred you to the section that talks about a discussion of matters regarding the health service facilities, staff and, most importantly, the patients?-- Yes.

Now, did you ever read that?-- Read this letter or-----

Read that letter?-- Yeah, I did.

Read that passage?-- Yes, I would have read the passage, yes.

You would have?-- I would have.

You don't think you signed anything-----?-- I cannot-----

-----that's referred to there?-- I cannot - I recall signing an acceptance of the offer but I do not recall signing a confidentiality agreement.

You didn't regard that as inhibiting you, did you, in your freedom to discuss issues about the hospital health facilities?-- That passage there?

Yes?-- Not particularly. I have always taken the stand that if it is serious enough, I will discuss it.

Yes.

COMMISSIONER: Discuss it with whom though?-- With the relevant people. The Australian Medical Association, or my director, the superior.

MR ASHTON: Well, you wrote to - when you - the first of the avoidable deaths that you refer to?-- Yes.

You wrote not merely to your management, but you wrote to the AMA?-- I wrote - the letter was directed to the Director of Medical Services and a copy was sent to the AMA.

Yes, and to the relevant union official?-- Yes.

And when you are anxious about rusty instruments, you wrote to your insurance company?-- That was Dr Nankivell's, not mine, letter.

I see. Well, he apparently wasn't inhibited either?-- Sorry?

He apparently wasn't inhibited either?-- Inhibited, no.

Inhibited in his view about who he could talk to about these things?-- He spoke to his medical defence company quite regularly.

I see. You had no inhibitions about talking to the president of the AMA about your resignation and after it?-- No.

No, all right. The anaesthetist who went home, who was that?-- Chris Jelliffe.

When was that?-- I don't know the exact date.

Approximately?-- It would have been in 2001.

And what work had he done before he went home?-- He had been up for most of the night doing emergency procedures.

And how do you know this?-- I have spoken to him about it and it has been reported as well.

Reported where?-- In The Courier-Mail.

I see?-- He was interviewed by The Courier-Mail.

Sorry?-- He was interviewed by The Courier-Mail

I see, but you have spoken to him personally?-- I worked with him every day, so.

Have you spoken to him about this matter?-- About - not recently, no.

Have you spoken to him about this matter at all?-- I did at the time.

What did he tell you?-- He told me that he had been called in to see the District Manager after cancelling elective surgery.

Yes. Is that all he told you?-- And he felt threatened.

He felt threatened?-- Mmm.

That's what he said to you?-- Mmm.

Did he tell you what the District Manager said to him?-- Not exactly.

He just felt threatened?-- Yeah.

That's a curious conversation, wasn't it?-- It was.

"Mate" - I mean, the conversation between you and him, "Mate, I was called in by Peter Leck and I felt threatened."?-- Yeah.

You are telling me that was the conversation?-- He - he felt threatened about his Visa because he was not a fully qualified specialist.

Did he say that Peter Leck threatened to do something about his Visa?-- No, he didn't - he did not say that Peter Leck had threatened to do anything about his Visa but-----

Did he say Peter Leck had threatened him at all?-- He said he felt threatened.

About his Visa?-- Yeah.

I see, he was insecure about his-----?-- Yes.

About his residential status?-- Yes, yes.

I see?-- Yeah.

But he didn't tell you that Peter Leck threatened him about that status?-- No.

Or threatened him about anything else?-- No.

COMMISSIONER: His residential status was very largely in the hands of Mr Leck, wasn't it?-- Yes.

MR ASHTON: Why do you say that? Do you say that? You are saying it, are you?-- Well-----

COMMISSIONER: I was saying it.

MR ASHTON: Yes, I know. I am asking is he saying it, Commissioner.

WITNESS: I would agree with that because the senior medical officers are offered permanent residency as part of their

senior - the overseas-trained doctors that come into employment with Queensland Health, a lot of them are offered permanent residency.

MR ASHTON: Are you suggesting - are you suggesting that Mr Leck, the repository of this enormous power, threatened to use it against this Chris - what was his name?-- Chris Jelliffe.

Are you suggesting he threatened to use it?-- I am not suggesting that. I am just telling you what the conversation was. You would have to talk to Chris Jelliffe.

Let's get back to that conversation, because once - you agree with me it is a very strange one? He is a friend of yours?-- He is a colleague.

All right. And he said "I felt threatened", but he didn't tell you what was said?-- About his Visa.

He just told you about his feelings? That was it?-- He didn't tell me the exact conversation, no.

No.

COMMISSIONER: I don't see anything strange about this, Mr Ashton. You can go ahead if you like.

MR ASHTON: I think it is a very strange conversation, with respect.

COMMISSIONER: You can make that submission later on.

MR ASHTON: I would like to understand where the feeling came from. It seems to be implied it came from my client, and, if it did, I would like to know the foundation of it. But he doesn't seem to be able to help on the subject.

COMMISSIONER: I thought he did, but anyway.

MR ASHTON: I am sorry, Commissioner, he says he can't say anything about the conversation. All he can say is he was told.

COMMISSIONER: The man felt threatened, he mentioned his Visa. He has told his Visa was in some respects in the hands of Mr Leck. It seems to me to be a logical inference.

MR ASHTON: Excuse me, Commissioner. Doctor, did you say that Mr - the anaesthetist - what was the surname again?-- Jelliffe.

He said that Leck mentioned the Visa?-- No, he said to me he felt threatened about his Visa after-----

But you are not able to tell us anything that Leck said upon which that feeling might be based?-- I was not at that meeting.

No. He didn't tell you about that-----?-- He didn't tell me the exact conversation, no.

All right. What did you do about your rusty instruments, doctor?-- I refused to use them.

Did you?-- Yeah.

Did you go to somebody about them?-- No, I left it in the hands of the Director of Surgery, who was Charles Nankivell at the time, and he referred it on to the - his medical - United Medical Protection.

I see. And what happened about them?-- I believe they were taken out of use.

Were they?-- Because we were refusing to use them.

Yes. And - well, the insurance company couldn't take them out of use?-- No.

So the director must have done something, did he?-- I believe the head of the operating theatres-----

Sorry?-- The head of the operating theatres would have taken them out of use.

I see. All right, so your complaint got action?-- I believe so.

Good?-- I never saw a written reply but I believe-----

Well, they were taken out of action?-- Yeah.

Did you want a certificate as well, did you?-- No.

Good. Can we just talk about Dr Anderson for a moment?-- Yes.

He is referred to at paragraph 8 of your statement?-- Yes.

Do you say you were aware of ill will existing between management at Bundaberg Hospital and Dr Anderson?-- Yes.

Whom do you mean by management?-- Peter Leck.

Just Peter Leck?-- Well, the ill will was evident at the meeting I attended with Peter Leck and Lynne Hawken.

This ill will borne by Mr Leck towards Dr Anderson-----?-- Yes.

-----is borne out on the tape recording?-- Yes. In the-----

Could you take me to that, please, in the transcript?

COMMISSIONER: You were about to say something, I think,

before Mr Ashton interrupted you?-- I was about to say in the tape recording - in the transcript.

Yes?-- When I ask if I can get outside help.

Yeah?-- For on call, they say I can do everything - I can ask anyone except Pitre Anderson.

MR ASHTON: Take me to something said by Mr Leck which indicates he bore ill will to Dr Anderson?-- Lynne Hawken actually says, "The only VMO out there who is not suitable"-----

Mr Leck we are talking about?-- Mr Leck - Mr Leck. I-----

COMMISSIONER: Did Mr Leck - when Lynne Hawken said that, did he attempt to correct her?-- It was-----

Correct him, I should say?-- No, he did not correct him at all, and Lynne Hawken says, "For historical reasons. There is nothing personal."

Again Mr Leck didn't say-----?-- Didn't correct him.

MR ASHTON: All right, "there is nothing personal". Well, where is the ill will?

COMMISSIONER: He didn't say there was nothing personal in it.

MR ASHTON: He just read the words, Commissioner, "Lynne Hawken says for" - "said for historical reasons, there is nothing personal."

COMMISSIONER: You will have to slow down?-- And then later Lynne Hawken says, "I am sure we will get to a point where we can afford a VMO to at least help with on call but I guess we have to overcome the issue of Pitre Anderson and I can imagine that his colleagues are not going to put up their hand even if they wanted to because they would feel they were being disloyal to him."

What was the problem with Pitre Anderson? Did you know what that was, what that person was referring to?-- I do not know the exact details but Pitre Anderson was forced to resign.

Right.

MR ASHTON: Now, doctor-----?-- And then he was reinstated by Rob Stable.

You know more than that, don't you?-- I don't know the exact details.

You know more than you just told the Commissioner. Would you please tell us?-- I can speculate. He was forced-----

COMMISSIONER: No, don't speculate. Tell us what else you know?-- Well, what else I know was he had asked to go from

full-time to part-time-----

Yes?-- -----VMO and he was refused that, and he started doing private work at a private hospital in hospital hours.

Right?-- And that led to him being forced to resign-----

Right.

MR ASHTON: He resigned?-- -----as it reached the award-----

COMMISSIONER: Let him finish. Keep going?-- Sorry?

MR ASHTON: He resigned and paid back a substantial sum of money, didn't he?-- I don't know about the money.

You have heard about it?-- Hey?

You have heard about that?-- No, I haven't. I don't know about the money being paid back.

I see. You are aware, aren't you, that the allegations were of dishonesty?-- They were.

Yes. You know that? Why didn't you tell the Commissioner that when he asked you before?

COMMISSIONER: He said he didn't know the full details?-- I didn't know-----

MR ASHTON: But you were ready-----

COMMISSIONER: He still hasn't given us any full details and doesn't know.

MR ASHTON: You were ready to hop in with limited detail on the anaesthetist. Now, doctor, you say, do you, that that's it, is it, for the ill will borne by Mr Leck to Dr Peterson - Dr Anderson? That's all you can do?-- Well, I was told that I could not employ his services so I assumed there was some ill will there.

COMMISSIONER: All right.

MR ASHTON: But you told us also it was historical and you've told us you know what that is and it's not personal?-- That's the comment from Lyn Hawken.

You deduced ill will on the part of Leck, who said nothing?-- My - would be the ill will of the Bundaberg Hospital administration of which he is the head.

I see. When I asked you before, I asked you who and you said Mr Leck. Then you couldn't find anything in the tape. Now it's the hospital, is it?-- He never mentioned anything in the tape.

Mmm. He was in fact away on extended long service leave, wasn't he, when this - all of this happened with Anderson?-- I'm unaware of that. I was not employed by the hospital at that time.

Well, I put it to you he was. You don't disagree?-- I can't make any-----

If I were to put to you - if I were to tell you that he wasn't there when all this happened-----

COMMISSIONER: He said he didn't know. You can't keep asking him questions.

MR ASHTON: You don't disagree with me?-- I wasn't at the hospital at that time.

I see. So you don't seem to have much upon which to conclude your judgment of ill will borne by Mr Leck. In fact, you have only this transcript, do you?-- Only this - this refusal to let me get him to help me with on-call.

I see. Why did you tape the meeting?-- I was - I was not getting any written response to some of my concerns and then I was called to this meeting and I asked Lyn Hawken, Peter Leck if I could tape it so there would be no disagreements afterwards and they consented to it.

I see. Why were you anticipating disagreements?-- Because I had not received any response from them from previous - two previous letters and I personally did not trust the contents of the meeting to be reproduced so I started to tape it for future reference.

The correspondence to which you refer is your letter of the 2nd of November; is that right?-- I'm just looking for it. Yep, the 2nd of November, yes.

Yes?-- And then there's another letter.

Yes, all right. Stay with me, will you.

COMMISSIONER: Well, he mentioned there were two letters. What was the other one?-- There's three. There's one dated the 1st and then one dated the 8th.

Yes.

MR ASHTON: The letter dated the 2nd of November, it announces that you'll accept the position of Director of Surgery subject to these conditions?-- Yes.

Yes. And there's some pretty handsome conditions there, aren't there?-- Such as?

Such as, well, you're looking for a higher salary than he was authorised to pay, aren't you?-- Yes.

Yes. You're looking to bargain with him?-- Yes.

Mmm. And you knew on that and other matters he would have to go to head office; he didn't have the authority to do it?-- No, he didn't have the authority.

No, you knew that?-- No.

Yes, all right. So you meet with him on the 16th?-- The 30th.

No, no, no, no?-- Oh, yeah, yeah, we met on the 16th.

Yes. Fourteen days later?-- Yes.

Did you have it on bring-up?-- What's that?

Did you have it diarised to follow up in 14 days?-- No.

You just chose 14 days. You had a meeting. What happened at that meeting?-- At that particular meeting, I have no record of that meeting.

You didn't tape that one?-- Didn't tape that meeting, but I was told that he could not authorise the salary increase. They could increase it one level but not to MO17, and then we would have discussed the other issues but I have - I have no record of that. There was no minutes taken.

I see?-- And I didn't receive any written confirmation of that meeting - of what we discussed from him.

Can I put it to you that you're a little - with respect, a little hysterical about written confirmation?-- No, I'm not.

Do you notice that you had a meeting with him 14 days after your letter?-- Mmm-hmm.

Knowing full well that it contained matters that he would have to go to others about?-- Yes.

Is that right?-- Yes.

And knowing full well that it will take some doing, if it were to be done at all, to meet your demands?-- Yes.

You knew that?-- Yes.

But 14 days later he's meeting with you?-- Yeah.

And three working days later you're complaining that you haven't had a written confirmation of that meeting or of the earlier letter?-- Five days later.

Three working days, although you work 24 hours a day seven days a week as they say, so five working days.

COMMISSIONER: There is no need to make gratuitous comments, Mr Ashton.

MR ASHTON: My observation would be-----

COMMISSIONER: Just ask questions.

MR ASHTON: My observation would be that this statement is full of gratuitous comments about my client.

COMMISSIONER: Just ask questions, Mr Ashton, and don't make gratuitous statements.

MR ASHTON: It is three days or five days, is it?-- Yes, yes.

Can I put it to you that this is all a bit precious. That here you are making demands that you know to be outside his authority; 14 days later you get a meeting?-- Some of those demands are within his authority, not all-----

Well, some are?-- Not all those demands have to go to Corporate Office.

I see. But did your letter say, "Let me know about the ones you can okay and we will wait about the others"?-- No, it didn't.

No. Well, what do you say to my proposition that this is all a bit precious?-- What do you mean by precious?

It is all a bit - making yourself a little special in all of this, isn't it? Here you are demanding of the District Manager, a pretty busy man, demanding things that you know to be beyond his authority, demanding - of getting a meeting, demanding confirmation in writing, giving him another three days or five days as the case may be, demanding again and this time with a resignation?-- I'd expect some sort of correspondence.

I see. But is that your usual turn around time before resignation?-- I wouldn't know. Is there a usual turn around time?

I don't know. Have you tendered your resignation before - had you at that hospital?-- I withdrew this one. I don't believe I had tendered my resignation before at that hospital.

You don't believe so?-- This was the first time.

It is the sort of thing you would remember-----?-- This was the first time.

I see. Well, I was going to ask you about that in fact. I wondered what the point of the meeting was since you'd resigned?-- It was to impress on them that we had to have a meeting and discuss issues.

But did you regard yourself as having resigned or not?-- I put - I put - you have to give three months' notice.

Yes.

COMMISSIONER: And you were still employed there until three months expired?-- I was still employed, still employed, yeah.

And you were still concerned about the other matters raised in your letter?-- Yes.

Yes.

MR ASHTON: Not interested in discussing the position any further?-- The position?

Yes, the position that was offered as Acting Director of Surgery?-- I wanted to see some changes made at Bundaberg Hospital and I was trying to negotiate changes.

I'm sorry, you were what?-- I was trying to negotiate some changes at Bundaberg Hospital.

But you didn't have much of a bargaining position given that you'd resigned?-- Well, you give three months' notice. You can always withdraw that resignation.

I see. So that was a strategic move?-- Yes.

Yes. I see. Now, Doctor, the famous "Business Case".

MR DOUGLAS: I distributed copies of the "Business Case" to the parties, Commissioner.

MR ASHTON: Yes. Yes, thanks. Now, forgive me if I'm going over something you've already answered but do you know now the date of the meeting at which this was discussed?-- No, I cannot recall.

Does the action sheet at the back of the document help you?-- 17th of September 2001.

Do you think that was probably it?-- Probably it.

What's it called there in that document, in that sheet?-- "Consultation with all staff".

Yes. I see. To whom was this case to go as you understood it?-- I do not know.

It is not addressed to anyone?-- I don't know who it goes to. Presumably-----

It is not addressed to anyone yet, is it?-- No.

No. All right. So you had your meeting probably on the 17th of September. And who was there?-- Theatre staff nurses, anaesthetists and surgeons.

Where did this "Business Case" finish up, do you know?-- In terms of being implemented?

To whom did it go, do you know?-- No, I do not know.

Do you know if it went in this form?-- I do not know.

No. All right. Just bear with me, Doctor. Now, "The Business Case as I recall was prepared without consultation with the medical or nursing staff in the operating theatre." Do you want to change that statement now, that sentence in your statement?-- No.

You don't?-- No. When you attend a meeting and you're told this is going to be implemented, that's not consultation.

I see. Can you give me the exact words and who used them?-- I can't give you the exact words but that's the - that was the tone of the meeting.

I see. So it was called staff consultation. It's not yet addressed to anybody. You don't know if it went to anybody. You have a lively, robust meeting at which you all have your say but you are not prepared to accept that there was staff consultation?-- The - we were told this was going to be implemented.

And-----

COMMISSIONER: Who said that?-- By - by the chairman of the meeting.

Who was the chairman of the meeting?-- I cannot recall which person - which person from administration was actually chairing the meeting.

Right. But whoever chaired the meeting said that?-- Whoever chaired the meeting.

MR ASHTON: "This is going to be implemented"?-- "This is what we're going to implement."

I see. It couldn't have been, "This is what we want to implement"?-- It was not - it was not that. We were told this was going to be implemented.

I see. You see, what would you say to this: here is a document that's not addressed to anybody yet, not signed off by anybody yet, it hasn't gone to anybody yet, you're not sure if it ever went to anybody, it provides for staff consultation and you have a lively meeting and you say somebody but you're not sure who said, "We're going to implement it." You see, that sounds to me like consultation. What do you say to that?-- It sounds like consultation but the tone was they were going to implement it.

I see. It's tone now, is it?-- Well, we were told it was going to be implemented and as far as I'm aware it was implemented.

Doctor, would you agree with me when I put to you that your statement is full of - not full of, contains a number of criticisms of my client Mr Leck, expressly or impliedly, based on feeling, on tone, on sense, do you agree with that?-- No, no.

MR BURNS: Well, it is an unfair question with respect, Mr Commissioner. It should indicate the respects that he finds in the statement offensive-----

MR ASHTON: All right. "Tone", the expression you just used-----

MR BURNS: The parts of the statement.

COMMISSIONER: Identify the part of the statement.

MR ASHTON: I was just reading from it, Commissioner, only a moment ago, paragraph 20.

COMMISSIONER: Excuse me, can I just say something, if you don't mind me interrupting you.

MR ASHTON: Yes, Commissioner. Of course.

COMMISSIONER: If you could just identify each of these matters and identify the part of the statement which refers to each of them.

MR ASHTON: All right. Well, we were talking about paragraph 20 and you have now told me that your conclusion that this was not consultation - I invited you to withdraw the passage which complained about the lack of consultation and you've told me now that your conclusion that what I described to you at some length didn't amount to consultation was based on the tone of what was said by this person whom you can't identify?-- We were told it was going to be implemented at that meeting.

You used the word "tone" a moment ago, didn't you?-- I did use the word a moment ago.

Are you still using that or not?-- No.

You've changed your mind?-- I'm telling you that we were told it was going to be implemented.

All right. Feeling, feeling. You told me about the submission. This is not even your feeling. It is your feeling about his feeling?-- Yeah, that's a conversation - yeah, a conversation.

I see. And impression. What about the tape that we spoke about? You can't take me to a single word spoken by Mr Leck but your impression, I think you told me, was that he - I'm asked by my learned friend to - your impression was that he bore ill will?-- He did not disagree with the Acting Director of Medical Services that we were not allowed to re-employ Peter Anderson and I interpreted that as the ill will.

Thanks. Now, you deal in the last five or six paragraphs with your resignation from Bundaberg?-- Yes.

Excuse me, Commissioner. Thank you, Doctor, for your patience, no pun intended. Doctor, you said that your resignation attracted some attention, media attention?-- Yes.

And you were called to a meeting with Mr Hawken?-- Yes.

And Mr Leck?-- Yes.

When was this?-- 30th of November 2001.

Right. Who called that meeting?-- Lyn Hawken and Peter Leck.

Well, did they both contact you?-- I cannot recall which one of them contacted me.

So it was one of them?-- It was one of them.

Now, you didn't record this meeting-----?-- Yeah, this is the meeting that was tape-recorded.

I beg your pardon?-- This is the meeting that I tape-recorded with their consent.

Well, I don't think so, is it?-- Yes.

This is the meeting that you had immediately after your resignation when you were told you couldn't - is that the same meeting? You see in paragraph 13?-- Thirteen?

Yes. You refer to the meeting that followed up on your letters?-- Yeah, on the 30th of November.

Mmm?-- Yes.

So this - this is the same meeting?-- Yes.

Oh, I see. All right. Well, would you take me in the transcript to the threats to which you refer.

COMMISSIONER: Well, you-----?-- I have already told the Commission the context of that.

MR ASHTON: All right.

COMMISSIONER: It was after the tape-recording was taken off and as they were leaving the meeting?-- It was as we walked out the door.

MR ASHTON: I see. Just explain to me again, please, how Mr Leck passed on what Dr Stable had said.

COMMISSIONER: He gave the evidence once. Do you want him to give it a second time?

MR ASHTON: I'm sorry, I didn't - I didn't understand that at all, Commissioner.

COMMISSIONER: He gave his evidence, perhaps when you weren't here, Mr Ashton-----

MR ASHTON: Yes, I must have missed it.

COMMISSIONER: -----saying what he said, and you want him to give it again.

MR ASHTON: If I may.

MR DOUGLAS: You will recall I did actually ask the witness to expressly recount matters. I didn't just rely upon what is in his statement.

COMMISSIONER: No, he did. It would save a lot of time if you were here though, Mr Ashton.

MR ASHTON: Yes, of course. I apologise, Commissioner. I was here at 10.30.

COMMISSIONER: But not when that evidence was given.

MR ASHTON: Yes. Can you help me-----?-- Do you want me to repeat that?

Yes?-- Peter Leck said to me that the Director-General wasn't happy with - with me, that Queensland Health is a large organisation and the Director-General will protect the organisation and he said, "We don't want to see your career damaged."

Was this being passed on from Dr Stable?-- I don't know because I don't know whether Peter Leck was passed on a message but I assumed he was.

Yes?-- From what - from those words, I assumed he was.

I see. So you assume he was passing on what Dr Stable had said?-- Mmm.

And you - you then reported what Dr Stable had said to-----?-- Charles-----

-----the AMA president, didn't you?-- Yeah, I rang a number of people. I informed the Director of Surgery Charles Nankivell, who told me to speak to the head of the college in Queensland and I subsequently spoke to Dr Bill Glasson.

Yes?-- Who was head of the AMA at that stage.

You told him of Dr Stable's threat that had been passed on to you?-- I informed him of what had occurred, yes.

He doesn't seem to have agreed with you that it was a threat.

MR DOUGLAS: See, there is a problem when Mr Ashton wasn't here. The witness did go on to say, as he said in his statement, "I asked Mr" - I'll say for Mr Ashton's benefit, "I asked Mr", in the presence of Mr Leck and Dr Hawken, "whether that was a threat", and he said he didn't receive a response to that at that time. I then asked him whether or not he received a response to it at any subsequent occasion and he said no. That was the effect of the witness's oral evidence this morning.

COMMISSIONER: What, do you want to somehow contradict it by going over it again and getting a word here and there different this time, Mr Ashton?

MR ASHTON: I'm not sure how counsel assisting's intervention helps me at all on that matter.

COMMISSIONER: It tells you what the evidence was when you weren't here, Mr Ashton.

MR ASHTON: I said - my question was Dr Glasson doesn't seem to have agreed that it constituted a threat?-- How do you arrive at that?

Read his letter?-- Just because it's not in the letter you think-----

No, no, no?-- All right.

Because he's congratulating Dr Stable on his leadership.

COMMISSIONER: What's this got to do with the price of eggs, Mr Ashton? It doesn't seem to be leading anywhere. Whether Dr Glasson agreed with what this witness's interpretation is seems to me to be utterly irrelevant to anything in this Commission.

MR ASHTON: With respect, Commissioner, he seems to be implying - he doesn't say it now but Dr Stable's threat - but when he reports that so-called threat to the president of the AMA, the AMA doesn't interpret it as a threat at all. The president doesn't interpret it as a threat; he congratulates the alleged author of the threat.

COMMISSIONER: Maybe he does, maybe he doesn't; so what?

MR BODDICE: I'm testing how reasonable his assumption is that it was a threat.

COMMISSIONER: You can test that later on in the Commission, about how reasonable his assumption was it was a threat. It doesn't seem to be relevant cross-examination?-- Can I-----

No, don't answer. Go on.

MR ASHTON: Yes, thanks, Commissioner. The assessments my learned friend Mr Allen took you through, you don't know and did I correctly understand your evidence in response to his questions, you don't know what their sort of destination was?-- No. I was never informed of their destination.

No. You've seen a reference to a district report in that e-mail?-- Yes.

And that's your first awareness of this, is it?-- Yes.

All right. And - so you don't know, I suppose, whether Dr Naidom's view that some of the answers are inappropriate for that report is correct or not?-- What do you mean by that?

Well, you don't know what the report was so you couldn't know whether your answers were appropriate for that report, could you?-- I never saw the final report.

No?-- I don't know.

So you're not in a position to disagree with Dr Naidom if he says some of those answers are inappropriate for that report?-- I don't know what the context of the report was.

You're not in a position to disagree?-- No.

No, all right. You were asked a couple of questions about specific references. The last - very last page of the document, which I think you've explained is in your handwriting?-- Yes.

Refers to sharps containers?-- Oh, yes.

I think that might be yours?-- Yep, "More sharps containers, Qlicksmart scalpel blade removers more widely available."

Yes. So there is treating with your issue you raised there it would seem?-- I believe so.

So I'm just looking now at Mr Leck's response to Leonie Raven and Dr Naidom. "There appear to be some issues in the document that should be able to be easily fixed", and he refers to them. That's fair enough, isn't it?-- Yep, yes.

Then he says, "And others that appear uninformed, for example, lack of security training." And that might be fair enough too, mightn't it?-- It might be fair enough.

Yes?-- I never underwent any security training.

No, but you don't know who did?-- No.

No. And you don't know what it was. "Please liaise with infection control and advise Dr Baker of what has been occurring with part-training." Do you know what part-training is?-- No.

No. All right. Now, you say that you got no feedback at all on this document?-- Got none.

So, clearly, neither Ms Raven nor Dr Naidom carried out Mr Leck's request?-- What was his request?

"Please liaise with infection control and advise Dr Baker of what has been occurring with part-training"?-- Yeah, no, that never occurred.

No, all right. Just have a listen to some of these answers for me if you would. I'm looking - I think these are Dr Carter's but they're part of your statement. Standard 5.1, "Have no information on this topic"?-- What page is that?

Well, the pages aren't numbered but it's standard 5.1.

COMMISSIONER: Yes, but there are several pages of 5.1?-- Oh, yes, "A symptomatic risk management program is used to manage services and facilities and ensure safety and health of all persons within the organisation are protected."

MR ASHTON: Had no information?-- That's Dr Carter's writing.

Yes, yes, I understand that. Then about three or four pages over, standard 5.1, "If there is an emergency response, I have yet to be informed of it." And a few more pages over-----?-- That's his writing again.

Yes. "Problems of fatigue are ignored. Safe staffing levels are not maintained"?-- Where is that?

That's three or four more pages over. Again, it is still his writing. You proffered this document as being his document?-- Yes.

And you've implied criticism and you say it's criticised - you say this document was criticised as it was yours?-- Mmm.

As far as I can see, the descriptions are that some answers are unhelpful, "Care is delivered on an ad hoc basis as continuum of care is impossible with current staffing levels."

COMMISSIONER: Are you asking him questions about these,

Mr Ashton?

MR ASHTON: No, not yet, not yet?-- Is that his writing?

Yes. What does your organisation want to do to improve your outcomes?" "Appropriate levels of staffing to address problems." Now, my question to you is do you think Dr Naidom might have had answers like that in mind when he described them as unhelpful?-- I don't know, you'll have to ask Dr Naidom.

Well, you proffered this document and you say it's criticism?-- Saying there is a lack of staff is a criticism of-----

Of course it is?-- Yes, yeah.

How helpful is it?-- It is helpful in identifying the problem.

Would you agree that I could reduce that document and yours to not enough staff, not enough money, we have to work too hard; that's what it comes down to, doesn't it?-- You probably - you'd cut out a bit of information but-----

It is pretty much it?-- The summary of Bundaberg Hospital would be not enough staff, not enough resources.

Do you think it's limited to Bundaberg Hospital?-- No, I don't.

No. So how helpful is it to people who are tasked with the management of this close to impossible assignment to give answers like that?-- Well, it is up to them to put a case to the Corporate Office-----

How helpful is it?-- It is identifying the issues. It's helpful.

Well, it would come as a real surprise to them to be told there is not enough staff, not enough money and everyone works too had. That's all you could do?-- I wouldn't say everybody works too hard. The safe hours are in issue. Not everyone works too hard.

Well, you do, or did?-- Well, there is a safety issue, a patient safety issue with hours worked.

I understand that but that's all you are saying in here, isn't it. That's not-----?-- We're identifying the problems-----

MR DOUGLAS: The questioner and the answer are over each other. How the shorthand writer copes, I have no idea. Mr Ashton should slow down and allow the witness to answer the question.

COMMISSIONER: Don't get so excited, Mr Ashton.

MR ASHTON: Thank you, Commissioner. Do you want to say

anything more on that topic?-- Just that we identify the issues were lack of funding, lack of staffing-----

COMMISSIONER: And that was a patient safety issue?-- -----and unsafe hours, and it is a patient safety issue which is why-----

MR ASHTON: That's the best you could do?-- Yep.

In trying to help respond to this detailed survey?

MR BURNS: Well-----

COMMISSIONER: He has responded-----?-- I have identified alternative models in my response.

MR ASHTON: Right.

MR DOUGLAS: Sorry, Mr Ashton is making comments now and it is inappropriate, it's unhelpful, it's not probative and it won't assist you.

COMMISSIONER: I know. This might have been a good cross-examination in the Magistrates Court, Mr Ashton, but because you are making comments on things rather than asking questions, it's not helping-----

MR ASHTON: Well, the problem is that he's complaining about criticism from management that the answers are unhelpful.

COMMISSIONER: You have made your point. Good though it might be or not.

MR ASHTON: Now, you have made the observation several times, doctor, that management ignored issues - problems. They were essentially problems of the kind we have just been talking about?-- Yes.

When you say "ignored", I wonder do you really mean that? Do you mean that they weren't fixed?-- Well, they weren't fixed as far as I'm aware.

Yes?-- What are you referring to? Any problems in particular?

Well, you have used the expression "ignored" a number of times. I can't take you to a specific example now. You had complaints, for example, about the one-in-one rostering arrangements?-- When Dr Nankivell was about to leave, I would have been one-in-one on-call, and I don't think that is appropriate and I don't think the public should be subject to that.

And I think in response to a number of points that Mr Allen took you through, you said that they were ignored?-- Yes.

I'm just asking you, do you really mean-----?-- That's why I left. I had the feeling I was being ignored.

Do you mean the matters about which complaint was being made weren't fixed?-----

COMMISSIONER: And you were given no explanation as to why-----?-- I was given no explanation and nothing was ever rectified.

MR ASHTON: You were never told that there wasn't enough money for some of these things?-- I was told that we were over budget and we didn't have enough money, yes.

That's an explanation, isn't it?-- That's an explanation.

And on the 30th of August 2002 - incidentally, it looks like you might have resigned. "Dr Baker informed the meeting that he had resigned on 30 August 2002." Do you remember that?-- Yes, and I left in November, yes.

COMMISSIONER: Mr Ashton, I see it is past 1 o'clock. How much longer do you think you'll be?

MR ASHTON: Virtually finished. Last question, Commissioner. "He commented he did not wish to be told to provide a third-world surgical service by the hospital management. He expressed an opinion that the Queensland Health management had no interest in providing a quality surgical service in the Bundaberg Health Service District." Do you really believe that?-- Yes.

They had no interest?-- They don't. They didn't.

Didn't then?-- No.

Don't now?-- And what has happened demonstrates that.

They had no interest?-- They had more interest in meeting targets than providing safe care, and that is my belief.

They have no interest in providing quality surgical services?-- No.

All right. Thank you. Thank you, Commissioner.

MR COUPER: Can I seek an indulgence of the Commission? I'll be brief. I have a commitment elsewhere this afternoon. I received notice late yesterday afternoon that this witness was coming on. Might I have a few minutes to ask him some questions before the Commission rises?

COMMISSIONER: Yes.

MR COUPER: Thank you.

CROSS-EXAMINATION:

MR COUPER: Doctor Baker, my name is Couper. I appear for Professor Stable. Can I ask you a couple of things? Can I take you back to paragraph 23 of your statement?-- Yes.

In particular, to your evidence that Mr Leck told you that the Director-General was not happy with you, as I think you put it recently?-- Yes.

And the Director-General would protect the organisation. I think you have said - I just want to be clear about this - you don't know whether, in fact, Mr Leck spoke to Dr Stable or not about that topic?-- I can't confirm that. You will have to ask Peter Leck himself, but that is the - that is what he said to me, and I assumed that that was the message being passed on.

It was an assumption on your part?-- It was an assumption.

Can I take you to your direct dealings with Dr Stable?-- Yes.

And you attended a meeting on 3 December 2001?-- Yes.

It is a meeting with which you deal in paragraph 25 of your statement?-- Yes.

It would be right to say, wouldn't it, that that meeting was a meeting at which the senior medical staff aired their concerns and frustrations with local management?-- Yes.

And that Dr Stable listened to those concerns in a genuine

way?-- He did. He did. He listened, yes.

And at the end of the meeting, he proposed some solutions?-- One of the solutions was proposed by one of the anaesthetists, and he agreed with that, and-----

I will come to that one in a moment, but one of the outcomes of the meeting was the making available by Dr Stable of more funding for VMOs in surgery and paediatrics?-- Yes.

All right. Now, one of the VMOs, who was a potential VMO who was discussed at the meeting, was Dr Anderson?-- Yes.

I don't want to go into the background of Dr Anderson, but can I suggest to you that, as you have said, it was suggested by Dr Joyner that Pitre Anderson be engaged as a VMO?-- In neurology, yes.

In neurology. It is right to say, isn't it, that Dr Stable inquired of those clinicians present whether that would be acceptable to them to have Dr Anderson back on staff?-- Yes, he did.

Now, you don't know the background as to why he made that inquiry, I take it?-- No.

Can I suggest this to you: information provided to him was that there were members of the senior clinical staff who had been antagonistic to Dr Anderson coming back on board. Were you aware of that?-- I wasn't aware of any of the clinicians having that view.

In any event, Dr Stable ascertained from the meeting that there was no objection amongst the senior medical staff to Dr Anderson being engaged as a VMO; is that correct?-- Correct.

He indicated if that was the case, Dr Anderson could be an appropriate VMO when that position was made available?-- Yes.

That was an example of an occasion on which Dr Stable's actions contradicted a view you had about Queensland Health's policy in that case of never reemploying Dr Anderson?-- Yes.

So, the impression you had from Mr Leck about that matter was plainly wrong, given Dr Stable's conduct-----

MR DOUGLAS: That's not an appropriate question at all. It is a question of what he was told on one occasion and what he was told on the other.

MR COUPER: I retract that. I won't ask it, Commissioner. The case is that after that meeting, did you report back to Dr Glasson at the AMAQ about the contents of the meeting?-- Yes.

And you told Dr Glasson that the meeting had been a productive one?-- It had, yes.

And you were likely to withdraw your resignation?-- Yes.

At no stage during your contact with Dr Stable did he suggest to you that he was unhappy with you or that there was any potential threat to your position or any future position with Queensland Health, correct?-- He didn't speak to me personally, no.

At no stage was it suggested during the course of the meeting that people who were raising criticisms were the subject of any threat of any sort?-- No.

Thank you, Commissioner.

COMMISSIONER: Thank you. Mr Boddice, do you have any questions?

MR BODDICE: It would be less than 10 minutes.

COMMISSIONER: We will try and get the doctor away.

MR BODDICE: Thank you.

CROSS-EXAMINATION:

MR BODDICE: Dr Anderson, my name is Mr Boddice and I'm from - sorry, Dr Baker, my name is David Boddice and I appear for Queensland Health. Could I ask you about Dr Anderson, first of all? You said you had some knowledge of an event which had occurred whereby Dr Anderson had resigned from the hospital?-- Yes.

And that would appear to be the case. Could I take you to the transcript of the meeting you had on the 30th of November? If you go to page 2-----?-- Yes.

-----you see at the top there, you have recorded that Dr Hawken - in talking about Dr Anderson - said, "For historical reasons, there is nothing personal."?-- Yes.

And your response is, "Yeah, I understand that."?-- Yeah.

So, certainly at that meeting you knew the background or something about the background of the fact of Dr Anderson's resignation from Bundaberg Hospital?-- Yes. I know some of it. I do not know the full story.

But certainly at the time of the meeting also you must have known something about it by that response?-- Yes.

And you will see further down on that page, when there's a discussion about other doctors in the area not wanting to volunteer as VMOs because of a concern that that might appear

to be not being supportive of Dr Anderson-----?-- That's an assumption made by Lyn Hawken.

But you say, "Yes, they do not want to be involved in all of this." So, it seems not just an assumption by Dr Hawken-----?-- Two of them were on the point of retiring, so they didn't want to come back to the public hospital.

And you said, "Yes, they do not want to be involved in all of this."; you see that? Your understanding was that there had been an issue in relation to Dr Anderson performing private sessions in public time?-- Yes, that was my understanding.

Commissioner, there's been evidence given in the previous Commission about that, so I won't take that any further. The second matter I wanted to address, Dr Baker, is just in relation to the chronology. There's the letter of 2 November 2001?-- Yes.

And you had been taken to the meeting of 16 November?-- Yes.

And then there's the subsequent letters?-- Yes.

And then on the 30th of November, which is the meeting that's recorded-----?-- Mmm.

-----you will notice on page 1 there's a reference to a written reply?-- Yes, that was handed to me at that meeting.

All right. Would you have a look at this document, please? Is that a copy of that written reply that's - that you are referring to?-- Can I just read it?

Yes, sure?-- Yes.

I tender that letter, Commissioner.

COMMISSIONER: Thank you, that will be Exhibit 412.

ADMITTED AND MARKED "EXHIBIT 412"

MR BODDICE: That's a letter dated 30 November 2001 from Mr Leck to yourself?-- Yes.

And you will see it deals with a series of points - 10 in total - which would seem to be in response to your request for certain conditions about your employment?-- Yes.

Okay. And so when we go to the transcript of the meeting on page 1 where Dr Hawken says, "So have we addressed all of those concerns of yours, Sam.", and you're recorded as, "Yes, most of them.", that's in response to that-----?-- That's in response to that, yes.

Then you said that - you went to a situation where you were appointed as the temporary director in 2002?-- Yes.

In about mid-2002, did you indicate that you wanted to undertake part-time duties at the hospital?-- Yes. One of the private surgeons, due to ill health, wanted someone to take over his practice for six months, and I talked with management about going part-time.

And that was a request for you - that you be able to be appointed in a temporary part-time position as the Director of Surgery?-- Yes. I also thought it would free up some funding to get another person as well.

And that request was accepted by management at the Bundaberg Base Hospital?-- It was, yes.

And you subsequently received a letter of appointment dated the 12th of June 2002, I suggest, appointing you in the temporary part-time position of Director of Surgery?-- Most probably.

Could I just show you these two letters?-- Yes.

COMMISSIONER: You had better hand that up. That's the exhibit.

MR BODDICE: Don't keep that?-- I won't keep it. I will look at while you ask me questions about it.

MR BODDICE: Yes, if he can keep it. We will ensure they won't go away. You will see there's two letters there, aren't there, Dr Baker? There's one dated the 6th of May 2002-----?-- Yes.

-----where you are writing to Mr Leck indicating that you would like to be appointed to a part-time acting Director of Surgery position-----?-- Yes.

-----from the 30th of June 2002, and there's a subsequent letter dated the 12th of June 2002?-- Mmm.

Which is the letter of appointment of you?-- Yes.

And that was to terminate on the 14th of January 2003?-- Yes, because they have to advertise for the Director of Surgery formally and then I was open - everyone is open to reapply for that. That's why that was a temporary position.

Now, I tender those two letters, Commissioner, so I tender, firstly, the letter of 6 May 2002 from Dr Baker to Mr Leck.

COMMISSIONER: That's 413.

ADMITTED AND MARKED "EXHIBIT 413"

MR BODDICE: And the letter of 12 June 2002 being the letter of appointment. If you hand those up to the Commissioner?

COMMISSIONER: Exhibit 414.

ADMITTED AND MARKED "EXHIBIT 414"

MR BODDICE: You subsequently resigned from the hospital on 30 August 2002?-- Yes.

That's that temporary part-time position?-- Yes.

But that was a three months' notice requirement?-- Yes. And I left in November.

And you said that you subsequently moved to Townsville?-- The following year. I stayed in Bundaberg until February of 2003.

When did you apply for the position in Townsville?-- It is a private position.

All right. It wasn't-----?-- It wasn't a public appointment.

You had done some locum work in Townsville in - in the first half of 2002?-- Yes.

Was that in a private capacity for - with the hospital?-- It was both, private and public.

Was it your intention to move to Townsville?-- I was considering it.

And was that part of that process to go-----?-- It was part of looking at it, yes.

And that was, I suggest, March and April of 2002 you did that locum work?-- Yes.

Doctor, the final topic I wanted to cover was in relation to these deaths you refer to in your statement?-- Yes.

Now, in relation to the first one, you indicate this was in respect of a junior doctor?-- Yes.

Do you know whether Dr Nydam arranged for that junior doctor to be counselled in respect of what occurred?-- I personally spoke with her, but I'm unaware of Dr Nydam organising that.

You don't know either way whether-----?-- I don't know whether he organised - I didn't receive a reply to that letter.

So, your complaint is really not receiving the reply to the letter?-- My complaint is bringing up issues and not getting a response - an appropriate response.

But you don't know whether, in fact, Dr Nydam addressed the issue in the letter?-- The counselling issue?

Yes?-- I'm unaware whether he addressed the counselling issue.

The condition that the person had there, which was an aortic aneurysm, is that a condition that can be difficult to diagnose?-- It can be.

And is it also one that, even if it is diagnosed, depending on what it is, it may be, for example, that Bundaberg Hospital could not have been able to surgically treat it?-- We had a vascular surgeon in Bundaberg who can treat this.

Mmm. Say, for example, if the vascular surgeon wasn't available at that time, that person would have to be transferred out of Bundaberg?-- Either transferred out or the general surgeon would do it if it was immediately life-threatening.

It is one, again, that even with surgical treatment, the result can be fatal?-- There is a mortality rate associated with it, yes.

And the second case, you are aware that that case was referred to the coroner?-- The first one?

The second case?-- The second case, yes.

And, indeed, in your documentation, you have the fact that - if you look at the records, they reveal that it was reported to the coroner?-- Yes.

And are you aware of the fact that the coroner did consider the matter? You will see there is a letter, for example, from the coroner enclosing the autopsy report?-- Yeah, there's an autopsy report, yeah.

You see that the autopsy report reveals that this condition is something that is a well-known component of a syndrome from which that patient suffered?-- Yes.

And that she could not have been saved?-- That's debatable.

Certainly the view that's expressed in the autopsy report is that she could not have been saved and the misplaced tube did not influence the outcome?-- The context of that patient was she was known to have Mar Fan syndrome. She had been getting regular ultrasounds of her aorta during her pregnancy, and my issue with these cases are junior doctors missing things where senior doctors supervising would say, "Hang on, don't consider this." She went to the Emergency Department with back pain and shoulder pain and told it was musculoskeletal when she was

dissecting her aorta.

She was referred to the coroner?-- Yes.

And the autopsy report suggests-----?-- Once it ruptures, yes.

-----she could not have been saved. It was part of the syndrome and the event did not influence the outcome. Do you accept that's what the autopsy-----?-- I accept that's what that says, but I think earlier diagnosis was possible.

So, you disagree in relation to the outcome of the autopsy-----?-- I believe earlier diagnosis would have been a possibility if there had have been more supervision in the Emergency Department. The outcome might not have changed. In the case of the first case, that patient could not walk out of the Emergency Department his blood pressure was so low. He was put into a taxi. I thought that was inappropriate.

And as you said, you don't know what Dr Nydam did in respect of that?-- I do not know what he did, but I never received a written response to that letter.

Thank you, Commissioner.

COMMISSIONER: Mr Douglas, anything in re-examination?

MR DOUGLAS: Yes.

RE-EXAMINATION:

MR DOUGLAS: Can I put a copy of this in your hands, please? I have distributed copies to the parties. Mr Groth has a copy. You supplied to my staff a bundle of committee minutes. I've given you all of the committee minutes that you have given us, sir?-- Yes.

Do you agree that what you have there is a copy of the bundle which you gave to the Commission staff?-- As far as I can recollect.

I flagged two pages for you to deal with. For those behind me and beside me, you will see that's a meeting of the Medical Staff Advisory Committee. It was the name of the Bundaberg District, record of meeting, and it says, "Amended 12 September 2002", and what appears to be, at least by reference to the written page - there's a date 10 September 2002. Why would it say "amended 12 September 2002". What's the significance of the meeting-----?-- I think they amended the minutes.

Was that a common event?-- If the minutes get sent out and people don't agree with them, they get amended.

I will ask you about this document as a matter of form at the moment - in effect, the proforma with this as an example. Is this generally the form that the minutes took-----?-- Yes.

-----in 2001 and 2002?-- Yes.

Thank you. And if you look at the document, you will see the note, "Meeting of Medical Staff Advisory Committee.", and then there's a notation of those who were present?-- Yes.

And there's a notation of those who have apologised?-- Yes.

Do you see that?-- Yes.

And then on the right-hand side, a confirmation of minutes, and there seems to be a person noted as - in a conventional way - of moving confirmation of previous minutes and it is seconded?-- Yes.

Is that what occurred essentially at every meeting?-- Yes.

As you recall?-- As I recall, yes.

One also sees on that document at the foot of the page in much smaller type "copies to", and there are the names of various people. Do you see that?-- Yes.

And the first one is Mr Peter Leck, the last one is Dr Julian Zurauskas, and then words in parenthesis, "30 copies"?-- Yes.

Is it your recollection that routinely there was a notation to the effect that copies were sent out to a designated group of people?-- Yes. To all senior clinicians.

And also to Mr Leck?-- And also to Mr Leck, yes.

If we can remain with this specific document, then - that is, the minutes for the meeting of the 10th of September 2002. There are a number of items dealt with. The last item, which is said to be matters on notice, under the box "Issue", there's a notation "Acting Director of Surgery". At that time, that was you, was it not?-- Yes.

And Mr Ashton referred to this in his cross-examination of you. There's a notation there to the effect that, in fact, you had resigned on 30 August 2002?-- Yes.

Just pausing there; that would mean that the three month period of notice expired on or about the 30th of November 2002?-- Yes.

And that was - was that when you, in fact, concluded?-- Yes, that's when I concluded.

All right. Just coming back to it, Mr Ashton, I think, read this into the record - we will make it clear - before I do, does that accurately record what you said on that occasion?--

The matters on notice?

Yes?-- Yes.

Just turning back a page, of the various persons recorded as being present in the meeting, one is Mr Peter Leck?-- Yes.

There are others as well?-- Yes.

There's you, Dr Pitre Anderson and others; is that not so?-- Yes.

And if I can just read into the record what you say there. After announcing your resignation, "he", that is you, Dr Baker, "commented that he did not wish to continue to be told to provide a third world surgical service by the hospital management. He", that is you, Dr Baker, "expressed an opinion that the Queensland Health management had no interest in providing a quality surgical service in the Bundaberg Health Service District." Have I correctly quoted it?-- Yes.

You say that was the effect of what you said?-- Yes.

You were then the acting Director of Surgery, so appointed at the Bundaberg Hospital?-- At that time, yes.

At that time?-- Yes.

Were you asked by anyone at the meeting for any particulars as to what you were expressing at that time?-- No.

Were you ever challenged by anyone present at the meeting as to the statements which you made to that effect?-- No.

Did Mr Peter Leck challenge you at that meeting?-- No.

Did he come to you after the meeting and ask you what it was that you were seeking to advert to by making those comments?-- No.

Could I ask you to turn to the next flagged page, thank you? Do you see that there is a meeting of the Medical Staff Advisory Committee for the 8th of October 2002 - 8 October 2002? Do you have that?-- Yes.

Thank you. That document, in terms of the proforma portion thereof, and its completion, follows more or less the same as the previous document, does it not?-- Yes.

There are various persons noted as being present?-- Yes.

You were the chairman of that meeting?-- Yes.

You had been the chairman of that Advisory Committee for approximately 12 months at that time?-- Approximately.

Mr Leck is noted as being present, correct?-- Yes.

So, too, is Dr Nydam, among others?-- Yes.

If you turn a couple of pages over, out of the various business issues noted therein, there's a heading, second item on the page, "Surgical Issues"; do you see that?-- Yes.

The item under the box heading "Action/Process", is said to pertain to equipment; do you see that?-- Yes.

I will read it into the record: "Dr S Baker decried the sad situation whereby surgeons were 'not provided with equipment to do the job they are trained to do'. Dr J Williams reminded committee members that deputations for specific funding to purchase equipment could be made to the hospital foundation." Have I correctly quoted it?-- Yes.

Do you recall that was the effect of what was said more or less on that occasion?-- Yes.

You would have read the minutes after the meeting?-- Yes.

So, too, one would have thought if they took them up would be - that would be the case with anyone else to whom the minutes were sent?-- What do you mean by that, sorry?

I will say it again. Forget my question. Don't bother answering it. Were you challenged in relation to that statement that was recorded there that I read into the record by any person present at the meeting?-- No, I was just advised by Dr Williams that we could go outside the standard channels of funding to make an application to the hospital foundation, as documented in the minutes.

Did Mr Leck ask you for particulars of what you were referring to on that occasion at that meeting?-- No, he didn't.

Did he subsequently take the matter up with you after the meeting?-- No, but in that letter I have just been provided by Queensland Health, there is a promise of obtaining a particular piece of equipment to do our work which we never - we were never given.

The letter you were referring to is the letter you received on the 30th of November 2001 from Mr Leck and-----?-- No, it is a letter of appointment - oh, sorry, yeah, it is that letter where he says, "This is what we agreed to", yes, sorry.

And that was just under 12 months before the date of these minutes?-- Yeah, he promised a certain piece of equipment that a lot of public hospitals have, which we haven't - didn't have at Bundaberg, which allows us to do keyhole surgery safely, and we never received it, the funding for it.

When you speak of keyhole surgery, are you speaking of laparoscopic surgery?-- Yes, I am, laparoscopic surgery.

Did that piece of equipment, to your knowledge, arrive at all at Bundaberg Hospital prior to your departure?-- No, it never arrived.

That's the evidence of Dr Baker. There may be some questions arising out of my questions.

COMMISSIONER: I hope not, but are there? No.

MR DOUGLAS: It seems not.

COMMISSIONER: Thank you, doctor, you are excused from further attendance.

WITNESS EXCUSED

We will adjourn until 2.30 P.M.

MR DOUGLAS: I should say, I tender those minutes, if I haven't already done so.

COMMISSIONER: I don't think you have.

MR DOUGLAS: Thank you.

COMMISSIONER: They will be Exhibit 415.

ADMITTED AND MARKED "EXHIBIT 415"

THE COMMISSION ADJOURNED AT 1.31 P.M.

THE COMMISSION RESUMED AT 2.30 P.M.

MR DOUGLAS: Commissioner, I call Deborah Faye Miller

MR FARR: While she is being called in, Commissioner, I will announce my appearance on her behalf.

COMMISSIONER: Thank you, Mr Farr.

MR APPLEGARTH: If I could usefully spend 10 seconds, there is just a transcript correction that I would suggest, if I could hand up to you-----

COMMISSIONER: Yes, you can, but there is no-one to hand it up at the moment.

MR APPLEGARTH: I will ask Channel 7 to act as the messenger. I think, I am fairly sure, I said "rorting" rather than "reporting" in those three places on page 6321.

COMMISSIONER: That sounds right to me.

MR DOUGLAS: Yes.

COMMISSIONER: We will have that amended.

MR DOUGLAS: Could the witness be sworn, please, Commissioner?

DEBORAH FAYE MILLER, SWORN AND EXAMINED:

MR DOUGLAS: Madam, is your full name Deborah Faye Miller?-- Yes, it is.

Could you speak up a little, please?-- Yes.

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

You are employed by Queensland Health, are you not?-- Yes.

You are employed in the position of - is it correct to say your present employment is as Acting Executive Director, Workplace Reform?-- No.

You were acting in that position until fairly recently, were you?-- I was in that position for two weeks.

I see?-- Up until the end of last week.

Thank you. I was just going off your resume, actually. So your present position is that you are the Chief Operations Liaison Officer for Queensland Health?-- That's correct.

Thank you. You have been an employee of Queensland Health since 1989, have you not?-- That's correct.

And at the request of the Commission staff, you have prepared a statement, have you not?-- That's correct.

And that statement is dated 4th October 2005?-- Yes.

You have a copy of that statement with you?-- I do.

Thank you. And there are a number of attachments to that statement as well?-- There are.

Commissioner, the statement is being distributed, I am told. I tender that statement.

COMMISSIONER: That will be Exhibit 416.

ADMITTED AND MARKED "EXHIBIT 416"

MR DOUGLAS: Is the content of that statement true and correct to the best of your knowledge and ability?-- Yes, it is.

Thank you. I want to ask you a number of questions to start with about the RecFind system that's referred to in your statement?-- Yes.

Is the RecFind system a system of electronic management of documents within Queensland Health?-- Not fully. It is more like an index of documents.

But an electronic form?-- In electronic form, yes.

So specifically to the issue we're dealing with here, if there are submissions or briefings which at any time are made to, say, the General Manager of Health Services by any subordinate within Queensland Health, would that document ordinarily find its way on to the RecFind system?-- The title of the document and some of the details surrounding the document, but not the document itself.

So there would not be an electronic version of the document on RecFind?-- Right.

Merely an identification of the document and some particulars which might otherwise serve to assist the person utilising the RecFind system to identify a document which might be of interest to his or her inquiry?-- Correct.

COMMISSIONER: And are documents stored electronically within Queensland Health?-- Usually on the Queensland Health network every area has a drive and it would be reasonable to expect that if a document's prepared within Queensland Health, that it would be prepared electronically and saved on to their

individual drive within that broader network.

What's the broader network? Does that cover the whole of Queensland Health?-- That's the whole State, yes.

So anyone can access that document?-- No. What happens is that each area would - has only the access to the documents for that particular area.

But what about the central office?-- It is the same at central office. So I would only see the documents in relation to the GMHS's office. I wouldn't be able to see documents on, say, the zonal drive or the Procurement Strategy Unit's drive.

Nor could the Director-General of Health?-- I don't know what his access would be.

MR DOUGLAS: Can I be even more specific by reference to the document in question here about which you relate your recollection? The submission by the SAS group, which is dated 30 July 2003, when you first saw that document, as you relayed in your statement, had it already been entered on RecFind?-- Yes, it had.

Now, at that point in time, did it exist otherwise on any other central database?-- It would have been on the drive of whoever the officer who wrote that document.

So the answer to my question is no, isn't it, because it wouldn't be on a central database, such that even the General Manager of Health Services, apart from the physical document that he received, he didn't go on to an electronic document management system and find that document?-- That's correct. I couldn't access that document electronically.

As a matter of routine, say in the case of a briefing or a submission, who is it that enters it on RecFind before it comes into your hands?-- There are a number of different entry points, depending on who has training. Of course, it is specialised training to be able to enter a document.

Could you identify those for us, please?-- In the case of our office, Cheryl Brennan, the executive support officer, had the ability to enter documents on it. Most of the documents, though, would come through the central processing unit where all the correspondence is sent, tracked and then distributed to wherever it might need to go.

Does the ability to enter it also correspondingly entail an ability to remove it from RecFind?-- I can't answer that. I am not sure. I would assume - I know Cheryl had the ability to put documents on and take documents off, because we did it - or she did it on a regular basis, but I am not sure. I think it is - I believe it is an access issue.

Okay. Is there any other central recording management system of an electronic nature which existed within Queensland Health in 2003, other than RecFind?-- We do have the Queensland

Health electronic processing - I know it as QHEPS - I am not sure what the acronym stands for - but we do have access to some documents on that system, but they are more policy documents. They wouldn't be a briefing or submission.

So, for example-----?-- So, no, I guess, to your question.

Thank you. For example, to make it clear, we have heard evidence in this proceeding about a credentialing and privileging policy which was last promulgated by Queensland Health in 2002?-- Correct.

One would find that on QHEPS?-- More than likely. I don't - I can't say yes or no because I actually haven't sought that document from that system, but you would expect it to be on that system.

Thank you. I don't suggest there is any significance about that, but it is a central site for more generic documents as opposed to specific documents?-- Yes.

Is that so?-- That's so.

Once a routine unobjectionable document, say in the nature of a submission or a briefing made to the General Manager of Health Services, is finalised and dealt with, the hard copy or a hard copy would be maintained in a file in that person's office?-- No, usually the original copy is put on a departmental file.

Thank you. Is the document otherwise then scanned on to some electronic database?-- No, not that I would be aware of, no.

Thank you. You are familiar with Freedom of Information requests?-- I am.

Have you assisted at any time in the searching for documents the subject of a Freedom of Information request?-- Yes, I have.

Has the system changed at all within Queensland Health for the location of documents between 2003 and now?-- Not that I am aware of.

Thank you. Coming back to Freedom of Information requests that you have assisted in pursuing, have you utilised RecFind as a means of locating documents?-- Yes.

Is it the salient means of locating documents under FOI requests, to your knowledge?-- Look, I don't personally - I haven't personally or professionally had to do that myself. I understand that it would be one of the systems used to look for those sorts of documents.

If a request was made, whether pursuant to the FOI legislation or otherwise, for a particular document - say a request was made by a Minister, for instance, and you were asked to assist and that document consisted of a submission or a briefing made

to the General Manager Health Services, say in 2003, what process would you go through in order to locate that document? Say it was on a particular topic?-- And it is for an FOI purposes?

Or for any purposes?-- For any purpose. Well, if we were trying to locate it, I would look at my files first to see if I had a copy of it. Then I would probably get Cheryl to check or the SO to check RecFind to see if the document's registered on RecFind. We would - I would also contact records, because sometimes documents that aren't on RecFind are in the hard copy departmental record. So there is a number of things that I would do to search for a document. If I knew that the document might have been produced in an area, I would call that area as well to identify whether there were any documents in relation to that issue that they might have.

As a central record, I suggest to you that RecFind in 2003 was the salient means of tracking documents which were of the nature of submissions and briefings made by the department to the General Manager of Health Services?-- Not in all cases.

In most cases?-- Probably in most, but not in all cases.

When you say not in all cases, what are the other cases that wouldn't constitute a circumstance in which RecFind was the central repository of those documents existing?-- They're not all - like, all briefings and submissions are supposed to go on RecFind and as best we can we ensure that happens. However, documents are often walked somewhere into an office and then walked out again with that officer and might never get to see - or get to be processed on to RecFind.

That would be the exception rather than the rule, would it not?-- It is - it is something that doesn't happen all the time but it does happen in a number - not a number - it doesn't happen all the time but it does happen.

It wouldn't happen deliberately?-- No, no.

COMMISSIONER: You have a system, I suppose, which attempts to prevent that sort of thing happening?-- Yes, we do, which is, yes, ensuring that it is checked before - signed that it has been tracked on. Our office used to be very diligent with that, any documents coming through we were very careful.

They all went under RecFind?-- Yes, we tried to make sure if we were able to catch them - again, if they were walked in by a departmental officer and they walked them back out, then there were some occasions, I guess, where documents wouldn't have been put on to RecFind, but, as you said, it is infrequent.

MR DOUGLAS: And an exception?-- I wouldn't say it was an exception, but it was infrequent.

I want to ask you now - and you focus on this at paragraph 20 of your statement, if it assists you, but I am sure you will

remember from my questioning - pick it up from my questioning - the situation of documents being removed from RecFind after having earlier been placed there, you address that in your statement, don't you?-- Yes, I do.

And what you identified to the Commissioner in your statement is that a certain regime seems to have existed in that respect whilst Dr Youngman was the General Manager of Health Services and then it changed subsequently when Dr Buckland assumed that role?-- No, that's not what I have said in my statement.

I see?-- I have said I was unaware of what the - I was unaware of the process when Dr Youngman was in the position, as I didn't have anything to do with that process. So he may have had a similar system, but I don't know.

Thank you. Let's address the system as you knew it to be once you took up your role as, in effect, liaison officer to Dr Buckland. Can we address that?-- Uh-huh.

Now, you tell the Commissioner, as I understand your evidence, that there were occasions when documents that had been placed on RecFind were removed from RecFind?-- Yes.

And when they were removed, in the instances that you identify, generically-----?-- Yes.

-----there was a deliberate decision made to remove them?-- Yes.

They didn't slip off the system?-- No.

A document which you knew to be on RecFind, a decision was made by the appropriate person to remove it from RecFind?-- That would be correct.

Okay. And you identify in your statement, it seems, a number of instances where that might occur, do you not? Paragraph 20 of your statement, I think it is correct to say?-- That talks about the process, yes.

So the two instances you identify there is where, in the instance of a briefing or a submission made to the General Manager of Health Services by departmental officer, there were, as you call it, some minor revisions required or a need for further work to be undertaken?-- Uh-huh.

Correct?-- Yes.

And the second instance you identify is where there were significant concerns with the accuracy of the content of the document. Is that correct?-- Yes.

And to be fair to you, you go on to say in that second instance that - I will quote: "The GMHS" - the General Manager Health Services - "would often meet with the relevant departmental officers to discuss the issues directly."?-- That's correct.

You go on to say - for the sake of completeness I will read it into the record: "The document would be removed from RecFind and in most instances the copy would be held until such time as revisions were made and the document was tracked back on to the system. In some cases, following further consultation, the document would be returned with very different recommendations or advice."?-- In some cases.

Thank you. Can I just identify or attempt to identify with you, in the abstract, without going to any particular document, from your experience a vice in that approach? Can I start, before I do that, with confirming with you that you are the holder of a number of tertiary qualifications?-- Yes.

Thank you. You partly completed a Bachelor of Science in New Zealand, is that not so?-- Correct.

All the disciplines that go with that. You hold a general nursing certificate which you obtained in 1992?-- Correct.

You obtained a Bachelor of Nursing at the ACU here in Brisbane in 1994?-- Correct.

You completed a Master of Business Administration at the Southern Cross University at Lismore in 1999?-- Correct.

I suggest to you, from your background, you have extensive experience in administrative processes, particularly within the health sphere?-- Correct.

Thank you. And that was the case in 2003?-- Correct.

Can I come back then to what I might suggest to you is a vice associated with the process of having documents which have been tracked on to RecFind taken off, in the manner in which you have identified? I want you to take the example of a submission which is prepared by a senior departmental officer and is provided to the General Manager Health Services. Can I ask you to assume that in a generic sense?-- Uh-huh.

And can I ask you to assume that that particular document identifies what that officer apparently genuinely believes to be irregularities in the manner in which somebody within Queensland Health is conducting its affairs? Can I ask you to assume that?-- Uh-huh.

Can I ask you to assume also that the submission in question requests that the General Manager Health Services permits the undertaking of audit activity to further investigate that particular issue. Can I ask you to assume that-----?-- Uh-huh.

-----in a generic case? On the assumption I have just asked you to make, I suggest to you that to have a circumstance in which such a submission is removed from RecFind might result in a circumstance in which that document is lost to scrutiny by any person who might be utilising RecFind in order to

identify whether such a document ever existed?-- My response would be-----

Yes, thank you, what's your response to that?-- That that document would be seen to be a final draft and wouldn't be endorsed or seen to be a completed document until it had received the General Manager's signature, or, if it was a DG signature, a DG signature.

When you say the General Manager's signature or the DG's signature, are you referring to the signature of the General Manager Health Services or the Director-General of Health?-- If a document - sorry, I apologise, the document you talked about was specifically for the general manager, was it not?

As a submission?-- So therefore it would be a final draft until the General Manager of Health Services, in this case, had signed that document off.

Doesn't it retain its status, in the assumptions I have asked you to make, as a submission - I have asked you to assume a bona fide submission - made for the purposes of informing the Director-General and perhaps seeking some decision by him? The fact that it hasn't been signed off by the General Manager or perhaps the Director-General doesn't detract from that status, I suggest to you?-- With regard to submissions and briefings, it is a large organisation of over 60,000 people. There is usually more than one opinion and one point of view for the general manager to make a decision on a specific issue. He would want, or she would want to, in whichever case, would want to see - seek advice from the people that would have knowledge about that specific issue, not from one specific person. So they would want a comprehensive view of the issue or the matter.

Can I suggest to you what you have said is eminently sensible but nothing you have just said by way of answer detracts from the fact that the submission made by the departmental officer in question still represents a submission available for the consideration of the General Manager Health Services along with any other submission, be it in consensus with the first or not?-- Submissions within the department are documents that are prepared to sign off on some specific decision.

COMMISSIONER: But suppose-----?-- Signing off a decision, the general manager or the person authorising that document would want to get a view of the various views before making a decision.

So he might, but suppose, for example, you had an FOI application asking whether any submission had been made to the General Manager Health Services on topic X. How do you find whether any such submission has been made in order to answer that inquiry, or the Director-General makes an inquiry as to whether any submission has been made to General Manager Health Services on topic X? How do you respond-----?-- Again, RecFind is not the only system we would use to identify documents for FOI.

But why wouldn't that document - I should rephrase that - wouldn't that document, that submission, normally find its way on to RecFind as a submission?-- Submissions are put on to RecFind once they are endorsed. So until the point that they are endorsed, they are a draft document.

No, not a draft, they are a submission. They are a submission by X to the General Manager. That's what they are?-- But they are considered to be in draft until such time as they are signed off and put on a departmental record.

Well, you say that, but that's just not accurate English. They may be a draft so far as any view that the General Manager may be expressing, but they are not a draft so far as the person who makes the submission is concerned. That person is making a submission about topic X to the General Manager. What I really want to know is if someone wants to make an inquiry as to whether any such submission has been made on that topic, how do they go about finding it - not on RecFind?-- If an FOI application comes through - and can I talk about it from my perspective as a departmental officer; what I would do in relation to searching for that document?

Mmm?-- I would search my network drive, a key word search, to find any key words that would come up with what the FOI was in relation to. So that would bring up a number of documents. That might be e-mails, if I have saved them to the network, it might be word documents, it would be draft briefings, draft submissions on the network, but-----

We're not talking about draft submissions. This is a real submission, an actual submission.

MR DOUGLAS: A cleared submission.

COMMISSIONER: A cleared submission by officer X to the General Manager. Why would you not find that on RecFind?-- Submissions are only put on to RecFind once they are actually endorsed.

But why? That's what I want to know?-- That's just the way the department tracks those documents.

MR DOUGLAS: Does it make any difference if it is a briefing?-- No, I don't believe so.

COMMISSIONER: So a briefing - so a briefing doesn't go on RecFind?-- Again, all documents, briefings and submissions are drafts until they are signed, at which point they are-----

Well, they are not drafts. You can call them what you like but they are not drafts. They are briefings or submissions and you are saying the briefings or submissions do not go on RecFind. Is that what you are saying?-- I am saying-----

If they are not signed off by-----?-- I am saying endorsed briefings or submissions are put on RecFind.

MR DOUGLAS: Endorsed by whom?

COMMISSIONER: The person to whom the submission is made?-- Whoever the briefing or submission is made to.

COMMISSIONER: It is no longer a briefing or submission then; it is a decision by the person who endorses it. Isn't that correct?-- I am sorry?

MR DOUGLAS: I am sorry, I will make-----?-- It is just the way we put documents on to - I am just trying to tell you how we-----

COMMISSIONER: I understand what you are-----?-- -----put documents on to RecFind.

I accept what you are telling me, what you believe, but it doesn't seem to make any sense to me at the moment?-- But it is not actually an electronic document management system in the sense of a system where you can search for documents and print them out from that system.

We understand that?-- It is an index.

We understand that?-- And it's at the end of its life cycle, and it is almost ready to fall over. It crashes on almost a daily basis, so it is not-----

But that's not the reason you don't put them on RecFind?-- Sorry?

That's not the reason why you don't put any notation of this submission on RecFind, the fact that-----?-- No, it is because briefings and submissions, up until the time they are actually signed off are final. They are draft documents.

MR DOUGLAS: Can I be more specific by way of general example at the moment? If there was a briefing or a submission - and if it is different, please say so - put by the department to the General Manager of Health Services in 2003 to the effect that it was believed that there was a financial defalcation, theft, taking place at a particular hospital. Now, you wouldn't expect, I suggest to you, that the departmental officer making that briefing would need to go and canvass the individual or body concerned as to what their views were about the alleged defalcation before making the submission to the General Manager Health Services?-- No.

That may be an extreme example, but I suggest to you, as a matter of logic and common sense, and having regard to your extensive training, it is just a nonsense to suggest that somehow a submission or briefing by senior departmental officer is a draft as opposed to a final document when it comes to the Commission - sorry, when it comes to the General Manager of Health Services?-- There is - I mean, that is just the way documents are managed within Queensland Health.

I'm suggesting to you, having regard to your training and experience, it's a nonsensical way in which to record documents?-- In this day and age I believe we should be able to do it electronically but without funding to fund that sort of system, then you have to operate with what you have.

COMMISSIONER: Why don't you operate the RecFind? Why don't you put them on RecFind? What's so wrong with putting a submission or a briefing on RecFind? It means that everyone then within the system who needs to find it can find a reference to it on RecFind. Isn't that logical?-- The problem is if the document is not endorsed-----

So?-- -----and is put on file-----

Yes?-- -----officers like myself can search RecFind to get - by subject.

Yes?-- And if correspondence comes in, they can - they then use that correspondence or that information that they've sought through RecFind, they either go to the departmental file or they would go, if it's not on the departmental file, to the area or the author, if they are still there, to prepare that correspondence which then might not be an accurate representation of the actual information.

MR DOUGLAS: Could I suggest to you what you've just said, and I ask you to comment on this, doesn't make sense because if you identified on RecFind the fact that there was a submission in the hypothetical sense I have identified, you would as a next step then seek to identify what the result was of making that particular submission, that is what the General Manager of Health Services did in response. You wouldn't just stop with the briefing or submission, would you?-- In some cases a departmental officer who was relatively junior might just do a subject search, get a - get the departmental file and then use that as an authorised and validated source for information to put into correspondence to then, whether it would be DG correspondence, ministerial correspondence or into another briefing or submission-----

Do you seriously believe that that's a risk, do you?-- I did it myself under - when I was working with Dr Youngman.

And-----?-- And it was just that Dr Youngman knew and had the history of the issue that he picked me up a couple of times in relation to that.

COMMISSIONER: But if you call them submissions and briefings instead of misdescribing them as drafts, you wouldn't have any such problem, would you? You would know they were just a submission or a briefing by a person which may or may not have been accepted by the person to whom the submission or briefing was made?-- I'm sorry, there's - there are a number of briefings and submissions on the system that - where the information within them is probably not as accurate as it should be.

That may be so?-- And it then forms correspondence.

No, it doesn't, not necessarily. It is only as accurate as that briefing or submission may be. I just don't understand why you appear to be concealing documents within Queensland Health by misdescribing them as drafts when they're submissions or briefings. Is there some reason why submissions or briefings which have not yet been accepted by the person to whom the submission or briefing is made should not be disclosed on RecFind? And you can keep saying, "Well, they might be misinterpreted." That's all you're saying, isn't it?-- We're not trying to conceal documents with the process that we have set up, Commissioner. It's about ensuring that the information is as accurate as possible that's actually put on a departmental record.

MR DOUGLAS: And it is more difficult to access in those circumstances?-- The information is accurate information that you then access in whatever circumstance you need to access that information for.

If it's not on RecFind, it's more difficult to access?-- I wouldn't agree with that. I would say that the information would be more accurate - is likely to be more accurate.

If an FOI application was made, I suggest to you the first port of call in the instance of a briefing or submission being made at some point in time to the General Manager Health Services would be RecFind?-- It would be one of the systems that we use to try and identify documents in relation to that-----

COMMISSIONER: It would be the first one, wouldn't it? If you were being sensible and you put all proper documents on RecFind, it would be the first port of call, wouldn't it?-- It would be one of the ports of call.

No, it would be the first one, wouldn't it?-- Probably, but you would-----

Well, it would be pretty sensible-----?-- Yes, you would go to RecFind to then identify the departmental files.

And it would be pretty silly to go searching through paper files when you could turn it up on RecFind, wouldn't it?-- You - you would use a number of different methods-----

You keep telling me?-- -----for getting the information.

But please listen to my question. It would be pretty silly to go searching through paper files if you could look it up on RecFind, wouldn't it?-- Yes, you would look it up on RecFind.

MR DOUGLAS: There is no other electronic means available to determine the existence of documents if one was undertaking an FOI search?-- No, you can do word searches around subject or words to - on the network as well to pull all documents or any document that might sit on the network in relation to a

specific issue.

So what would be the network that could be determined? For instance, if there was a briefing or submission, could that be picked up by word search on the network?-- Yes, as well as any other documents that had been prepared around that specific subject area.

So if the document was sitting on the hard drive of the author of the hypothetical briefing or submission, that could be accessed centrally on an FOI search?-- No, not on the hard drive but then most offices are - I don't know what the training is but I was told that to put all documents on to the network because otherwise there was no way of ensuring that - that they were backed up.

All right. Well, that's even-----?-- And computers changed - like, you have computers rotate through an area too. There is only a certain period or life cycle of a computer.

Let's take it one step further down, that you believe that a number of circumstances of briefing or submission might find its way on to the Queensland Health electronic network; is that so?-- You mean like the broad state network?

The network that you just identified that one could do a word search in respect of?-- Yes, the network.

But, of course, it could be removed from that network too?-- Not easily, no.

You say it couldn't be removed from that network only to the extent that the network is backed up, so it might be on the backup tapes?-- That's correct.

But it otherwise, if it was the subject of search in that network, if it had been removed from the network itself albeit on the backup tapes, it wouldn't show up on a word search?-- Not in it had been removed from the network, no.

And this process that you describe in your statement whereby documents which you describe variously as drafts or which haven't been endorsed in addition to, in some circumstances as you identified, being removed from RecFind, would they also be the subject of an instruction to remove them from the Queensland Health network?-- No. I - I haven't seen a document where there's been a request to remove it from the network.

All right. I want to ask you some questions specifically now about the submission of the 30th of July 2003?-- Yes.

Now, you were the first person to receive that within the office of the General Manager Health Services were you not?-- I don't recall being the first officer. It may have gone to the Executive Support Officer before I received it.

Thank you. In fact, at some point in time you made a notation

on that - the original of that document and I'll read out the words, "Cheryl, delete from system. Organise meeting with Glenn and Col and Gary." Do you recall writing those words?-- I do.

And you acknowledge that they're words that you wrote at some point in time on that document after the 30th of July 2003?-- I do, yes.

Had you instructed - I'm sorry, I'll start again. Cheryl referred to in that notation is one Cheryl Brennan?-- Yes.

She was the secretary to Dr Buckland, the General Manager Health Services?-- Yes, Executive Support Officer.

Had you given her an instruction prior to the 30th of July 2003 to delete something from the system, a document from the system?-- Not that I'm aware of.

Did you give her an instruction after that particular date that you wrote that to delete something from the system?-- Sorry, can - yes, I do recall telling her to delete a document from the system before that.

All right. And did you ever discuss with her what you meant by deleting a document from the system?-- Usually it was removing a document from RecFind and, as I have explained in my statement, there are a couple of - those were a couple of instances but the others might be because there is a duplicate document. Sometimes documents will come through the correspondence unit as well as the officer - departmental officer will walk them up as well if they were urgent, so we will end up with two documents that get two different numbers on the system. Therefore, we'll delete a document from the system, one of them.

On this particular occasion did you have any discussion with Cheryl, that is apart from your note, as to what you wanted with this document?-- I don't recall actually speaking to her in relation to that document.

On any other occasion prior to this particular occasion did you have a discussion with Cheryl as to what you meant when you gave her an instruction that she ought delete a document from the system?-- So you're talking in relation to this document and did I speak to her in relation to this document-----

I'm talking about any other occasion prior to this having a discussion with Cheryl as to what you meant when you gave an instruction that a document ought be deleted from the system?-- The system you - is RecFind and we both understood the system to be RecFind, so if I'd asked her to delete a document from the system, if it had been a duplication, yes, I have asked her to delete a document from the system.

Can I remain with the document of the 30th of July 2003. You recite in your statement in paragraph 23 onwards what occurred

at a subsequent meeting which was organised on the 15th of August 2003?-- That's correct.

And, in fact, you set out helpfully within your statement a transcription of your notes on that occasion?-- I do.

It would appear that the meeting went on for some time?-- I didn't record the time.

All right. There are four topics, number topics, which were discussed?-- Correct.

Looking at the substance of it, it appears to be a meeting where the General Manager Health Services, Dr Buckland, was discussing at some length the content of the submission with the officers concerned?-- That would be correct.

It's also correct to say that you were attempting in your notes to encapsulate the salient or portions of the discussions that were taking place?-- I was.

Do you agree with me that nowhere in your notes is there anything which involves you or the - Dr Buckland saying to these individuals, "You should never have given us this particular document without seeking the consultation and approval or endorsement of the zones"?-- I haven't documented - I hadn't documented in my notes. However, as I said in my statement, I would be very surprised if that conversation hadn't occurred because it was one of the clear discussion points around removing that document from the system - sorry, RecFind.

Thank you. Can I just go to your answer. You say in your statement and you have repeated now that you considered that it was a salient issue at the time of this meeting that the zones had not been consulted nor had their approval or endorsement been obtained to the subject matter of this submission of the 30th of July?-- Correct.

Notwithstanding the moment of that particular issue as you identified it, nowhere in your notes is there any reference to that?-- Can I comment?

Can you answer my question first, please?-- No, there is nowhere in my notes.

Can I suggest to you the fact that it doesn't appear in your notes would - enables you to say, I suggest, that it wasn't a matter which was raised at the meeting?-- That's not correct.

If it was so important-----

MR FARR: Well, can the witness finish answering the question, please?-- Not necessarily.

COMMISSIONER: I think you're right?-- Can I just say something?

MR DOUGLAS: I apologise.

COMMISSIONER: Yes, you say whatever you like?-- Can I say on a number of occasions the surgical access service were requested by the General Manager of Health Services, Dr Buckland, to consult with the zones and the districts. This was - it would not have required me to document it. It was something that was - was told to the surgical access team on a number of occasions.

MR DOUGLAS: Look at your notes as appear as transcribed in paragraph 24. You have noted in item 1 after referring to a number of hospitals, "Data suggests shift between emergency and elective." The first dot point is, "Memo to be prepared by Gary" - Gary Walker - "and sent out - let districts know that they will be contacted under GMHS authority by the manager SAS to discuss changes in data. Include zonal reps. (Shift of 4.5 billion)"?-- Correct.

The substance of the meeting in that regard as you recall it was that apparently, after reading the submission and after hearing from these departmental representatives from SAS at the meeting, Dr Buckland was authorising these gentlemen to make contact, with his authority, to talk about the changes in data that they had identified?-- No. That's not what it means.

It's not what it means?-- That note that I have taken is a note where Dr Buckland has asked for a memo to be provided because the - there has been no consultation prior to ensure that the information provided in the document of the 30th of July is - whether it is an accurate representation of what they have presented.

I suggest to you that nothing was said at that meeting on the 15th of August 2003 whereby Dr Buckland or you in his presence expressed any displeasure at the manner in which these three gentlemen attending had gone about their task?-- I cannot recall in detail the discussion but I would assume that - that that discussion happened because, as I have stated just earlier, it was a key factor in the discussion and the decision to remove that document from the system.

But your notes don't enable you to say that; correct?-- They don't.

And your recollection doesn't enable you to say that, does it?-- I can just go on past meetings and what would have happened.

Your recollection doesn't enable you to say that either, does it? Please give me an answer to my question?-- I cannot recall and I have not documented that there was consultation, but based on the fact that it was a key point in our discussions earlier in relation to that document, I would be very surprised if it had not been brought up.

You're speculating I suggest to you. Please answer my question

subject to the ruling of the Commissioner?-- I can only say that based on my notes it has not been documented but, because it was a key factor in the discussion before that meeting, I would be very surprised if it hadn't been brought up.

A number of irregularities were identified in this memorandum, weren't they?-- I didn't see the memorandum. I never got to see that memo.

You certainly saw the submission of the 30th of July 2003 and you read it?-- I did.

And you said in your statement that the - Dr Buckland was particularly interested in his prior discussions with you at the instance of Nambour; isn't that so?-- Nambour was one of a number of districts that were discussed.

And the General Manager Health Services was particularly interested in Nambour, was he not?-- He was interested - sorry, the general manager-----

He was particularly interested in Nambour, being one of the hospitals which had been raised in the 30th of July memorandum?-- One of them. There were a number that he was - that we discussed.

You know subsequently that Nambour was fined some $600,000 by the General Manager Health Services who succeeded Dr Buckland to the tune of about 600,000?-- Sorry, what are you-----

That Nambour was fined about $600,000-----?-- Yes, sorry, yes.

On account of reclassifying patients?-- "Fined" is a word that we probably wouldn't have used but-----

What do you want me to say, levied, fined? You know in fact they were penalised?-- They didn't provide-----

To the tune of 600,000; is that not so?-- That's correct. They didn't provide the service; therefore, they wouldn't have utilised that expenditure; therefore, it was pulled back so that districts that had gone over with their targets could be provided with funding-----

COMMISSIONER: But they didn't provide the service because they'd wrongly reclassified-----?-- Sorry, I missed-----

They did not provide that service because they wrongly reclassified emergency patients as elective surgery patients?-- That is my understanding.

And that was the subject of a 30th of July memo?-- It was.

MR DOUGLAS: It was also the subject of the subsequent memo of the 11th of September that you refer to in your statement?-- That's a document that I didn't actually see at that time or around that time.

That's the document - another document prepared by the SAS in relation to this same issue?-- It was.

No-one showed-----?-- However-----

No-one showed you that?-- Sorry?

No-one showed you that?-- I didn't see that document.

Thank you?-- That I recall.

I may be forgiven for suggesting this and please tell me if I'm wrong but in your statement you suggest in a veiled fashion that in fact those memoranda, that is, those submissions, of 11th September and 15th October 2003 may never have been received in Dr Buckland's office; do I understand you to make a suggestion of that nature?-- I don't believe the submission of the 11th of September or the 15th of October - I - they didn't come through a process which I - where I saw - that I believe I saw those documents. I don't recall them.

But you're not suggesting that they weren't in fact given to the General Manager Health Services?-- They may have.

Thank you. Just excuse me for a moment, Commissioner. Yes, thanks, Commissioner.

COMMISSIONER: Thank you. Cross-examination? You, Mr Harper?

MR HARPER: I have no questions, Commissioner.

MR ALLEN: No, questions, Commissioner.

MR MARTIN: No, thank you.

MR APPLEGARTH: No questions.

COMMISSIONER: Mr Farr.

MR FARR: Just a couple, thank you, Commissioner.

RE-EXAMINATION:

MR FARR: Ms Miller, can I just ask you to clarify something for me. You speak of when a submission is received by General Manager of Health Services or the Director-General, that the submission or briefing note is endorsed. What do you actually mean by the word "endorsed"?-- "Endorsed" is that the document - that the DG or the GMHS has read the document, has endorsed the content of it and has made - and usually makes the decision, if it's a submission, in relation to recommendations that might be proposed by the relevant departmental officers.

COMMISSIONER: By endorse the content of it, you mean agreed with the content of it?-- Yes.

MR FARR: And then, if someone in that position or one of those positions is in receipt of such a submission, agrees with the contents and wishes to endorse the contents, what physically do they do?-- They will sign the document and they will write comments on it, if they feel that there is additional work that needs to be done or if there is something else in relation to that document that's required by the - by an officer.

I see?-- In the department.

And to convey the approval of the recommendation if you like, which I take it would often be the case with a submission, would it be the subject of a second document from the Director-General for instance or would it be that document with a written endorsement on the front of it?-- Sorry, I don't understand the question.

Would the approval of - if the submission made a recommendation?-- Yes.

The DG or GMH agreed with the recommendation?-- Mmm-hmm, yes.

Do they put the approval on the submission itself or is it a separate document again?-- There is an approved or a not approved I think and they would - they would circle either the approved or cross out the not approved and then they would put - if there were a series of recommendations and they only approved one or two, they would write which ones they would approve, which ones they hadn't and sometimes why, or they would set up a meeting to discuss that with the departmental officer.

I see. So that the RecFind system which you've referred to as an index system, was it an index system for all documents generated or was it an index system for submissions that had been approved or endorsed?-- The RecFind is usually used for briefings, formal briefings, and submissions. In some cases it might record Director-General correspondence that comes into the department and then that it might put a title of a correspondence sent out, but it doesn't hold memo - like, it's not a record of memos or letters that would go to - within the department. It is only purely briefings and submissions and external correspondence coming in. In some cases other documents might get on but it wasn't a normal occurrence to put on other documents. So, for example, with regards to FOI, if it had been a memo or a letter from one departmental officer to another departmental officer, RecFind would not pick up that document.

I see. Or it would not index that document you have told the Inquiry that, in fact, you fell prey to making the mistake by using a document that you discovered via RecFind that I assumed from your evidence contained inaccurate information?--

It did.

I think you said that happened to you twice?-- A couple - it was probably more than twice. It was a few times.

I see. And it was - is it the case that when those mistakes and errors occurred in your personal circumstances, that it was a document that wasn't the subject of endorsement? How did it come about that this information was on there which was inaccurate?-- I can't recall, I mean, it was a few years ago, but it may have been a submission or a briefing that was on the system that when I went to the hardcopy departmental file or record, it may not have been a signed document, which means that it would - may not have been authorised.

Did you go to RecFind on those occasions on the understanding that what you were going to be locating would be something which is reliable?-- Yes.

COMMISSIONER: But can I just ask you a question arising out of that. There would no doubt be documents which would be endorsed by the general manager which it may turn out later were not accurate. That can happen, can't it?-- Yes.

So there's no great advantage in having them endorsed by the general manager so far as accuracy is concerned. The accuracy may remain whether it's endorsed by him or not?-- But you're more likely to get accuracy if it is actually an endorsed document.

Why?-- Because they have then signed it off as being - that they have agreed with the content of that submission or briefing.

But they are probably less likely to know about the facts, the subject of a briefing, than the people from whom it comes, aren't they?-- The briefing is - or submission is supposed to provide a representation of the facts at that time, so it should provide that information.

I understand that?-- But if a briefing or submission comes up after the story, then it would only-----

I understand that, but the point I'm making is that a general manager is less likely to know the facts relevant to the subject matter of the briefing than those people who provide the briefing?-- It depends on the subject.

Mmm. But there would be many cases in which the general manager would be dependent on those people below him for the facts?-- In some cases. With regard to Dr Buckland, he had actually been a Medical Superintendent, a District Manager and a Zonal Manager, so he would have a very good understanding of-----

Yes, I understand that. I won't ask any further questions.

MR FARR: Can I pick up on a line that the Commissioner just raised? If, in fact, a submission was endorsed, say by the General Manager of Health Services, and it was discovered, subsequent to the endorsement, that there was a basic error in the document - there was a factual inaccuracy, but discovered subsequently, do you know what the system is then in so far as the document that has been placed on to RecFind? Is there a system?-- There isn't a system that I'm aware of. What would probably happen in that case would be that another submission would be prepared and presented.

I see?-- So, it would go through what we have just been through, and do we remove that previous one due to the inaccuracies in it, or - there's no system in Queensland Health to actually mark a document as not containing valid and authorised information.

And can you just walk us through, if you like, the physical features of what would occur in this circumstance? If we did have an endorsed submission which was subsequently discovered to be inaccurate, there was then a second submission correcting that inaccuracy, which is then endorsed appropriately, if both of those documents, for instance, ended up on RecFind, a person who then is making a search of that topic, would they bring up in that search both documents, or is there a risk that only one or the other would come up, or are they linked somehow together so that someone is going to get the full picture?-- If the process had been carried out as it should have, then they should both be on the hard - on the file - departmental file, but, in some cases, documents would be endorsed, they would be on RecFind, and you wouldn't be able to locate them on a departmental file. So, in some cases, it wouldn't - they both may not be there.

So, do I understand from that answer that in an ideal world-----?-- In an ideal world, yes-----

-----they would both come up to the searcher?-- Yes.

Who would be able to see the full picture?-- Yes.

But as I understand what you have said, there are no guarantees that that would occur, in fact?-- No.

You were asked a number of questions about the problems of an unendorsed submission, for instance, being on RecFind. But can I ask you this - and I think you have really already identified it - but I would just like to clarify it to ensure that I have understood correctly - is your evidence that one of the dangers of having an unendorsed submission, to use the terminology the department uses, on RecFind, that if it is a document that contains an error, that error could be promulgated if used by another person elsewhere?-- That's correct.

And you have had - that's the personal experience of which you have spoken?-- That's correct.

All right. Commissioner, I don't have any further questions of this witness, but can I clarify just one question that you, in fact, asked of her, and I think really it was put just in the hypothetical, but given the media, I would prefer her to clarify it. When you suggested to my client or put to my client that why would she be or why would you be trying to conceal documents, I didn't understand you to be suggesting Ms Miller personally; you were meaning "you" in the generic sense.

COMMISSIONER: Yes, I was not suggesting in any sense that Ms Miller was attempting to conceal documents.

MR BODDICE: Thank you. That's all I have.

COMMISSIONER: Thank you. Mr Douglas?

MR DOUGLAS: Thank you.

RE-EXAMINATION:

MR DOUGLAS: Could I take you again to this particular document - that's the memorandum of 30 July 2003. Do you need to put a copy in your hands? We can do that easily. Do you have that now, or can I give you a copy?-- 30 July?

Yes, thank you. Do you see - if you turn to the second page of the document, do you see there under the heading "Purpose", "To gain approval to establish an ongoing audit process to identify the extent of reclassification of emergency

presentations to elective surgery to maximise surgical access funding. This in turn will potentially lead to adjustments in funding arrangements and changes in elective surgery business rules." Have I correctly recited that?-- Yes.

If you then go to the last page under the heading "Recommendations", and there are four recommendations made by the author of the document, the third of which is - and I'll read it into the record - "Approves performance of detailed clinical and chart audits for those hospitals showing significant reclassification of emergency presentations to elective surgery." I think I've correctly recited it?-- You have.

If you go now, please, to paragraph 24 of your statement where you recite the content of the meeting of the 15th of August 2003, can I invite you to read to yourself that document again, but, in particular, the dot points in items 1 and 2 thereof. I suggest to you that at the 15th of August meeting, at which you and Dr Buckland were present, as were the members of the SAS team, Dr Buckland did give his approval to perform detailed clinical and chart audits for those hospitals showing significant reclassification of emergency presentations to elective surgery?-- No.

He didn't?-- He asked for the surgical access team to consult with the districts to establish whether, in fact, the information provided was accurate or not, not to-----

Sorry to interrupt you; look at paragraph 1, second last dot point?-- Paragraph 1 - sorry, which document? In the submission?

No, in your recitation of notes which appears at paragraph 24 of your statement. The second last item is, "Continue to monitor reclassification of emergency to elective." Is it correct to say that at that meeting, Dr Buckland instructed the SAS team to continue to monitor reclassification of emergency patients across to elective patients?-- Correct.

Look at the next dot point. Is it correct to say that Dr Buckland at that meeting asked the SAS team to canvass with him what should be given by way of elective surgery funding to Nambour that year, having regard to their previous conduct in respect of reclassification?-- Are you talking about, sorry, point 2?

Last dot point, item 1?-- That would have - based on my recollection of that meeting, that would have been asking Surgical Access to speak to the District Manager and discuss the issue of their activity in relation to the reclassification.

Not just that, but what should be given to Nambour this year. Wasn't that a reference to the elective surgery funding which would be given prospectively to Nambour, having regard to their previous conduct of reclassification?-- My interpretation of that dot point is that Dr Buckland would

have been asking the surgical access team to meet with the District Manager, discuss the data that had been provided in that submission to ascertain whether that was, in fact, a true reflection of the situation, and where it was to discuss what activity hadn't been done as elective surgery and then to discuss what funding should then be drawn back in association with that issue.

When you say "drawn back", do you mean the penalty or fine we discussed earlier?-- The money drawn back in from districts that didn't achieve their targets was then put into a pool that would be distributed to facilities that had gone over their targets, so therefore paying for work that they had done which they had not been funded for.

COMMISSIONER: Or had misdescribed the emergency surgery as elective surgery. This was the topic of the discussion, wasn't it?-- I don't understand what you are saying, sorry.

Nambour, according to the memorandum which was before the submission which was before Dr Buckland misdescribed emergency surgery as elective surgery-----?-- They had-----

-----to a substantial amount?-- They had classified - yes, they had reclass - my understanding - and I wasn't there looking at-----

No, no-----?-- The contention was that-----

They had misdescribed-----?-- Yes.

They had misdescribed-----?-- They had classified emergency as elective, yes.

And this item, the last document under "1", was a discussion as to what should be given to Nambour this year; in other words, how much should be taken back because of that misdescription in the previous year?-- Correct.

Thank you.

MR DOUGLAS: And that issue was an issue which was raised by the SAS in the 30 July memorandum?-- It was.

A serious issue?-- Yes, it is.

Go to the next item, item 2. Just read it to yourself and I'll ask you a question about it. It is correct to say that at the meeting of 15 August 2003, Dr Buckland instructed the SAS team to canvass the latest data on the Royal Brisbane Hospital and Nambour in relation to matters of total presentations, waiting times, the access block and all performance across two years?-- Correct.

That is, you understood the instruction to be to the SAS team by Dr Buckland that they were to, in effect, conduct an audit of information involving those two hospitals in respect of elective surgery?-- I guess it depends how you define

"audit", yes.

Do you see the heading is "Emergency Departments"?-- Correct.

The discussion involved reclassification in that instance at those two hospitals - RBH and Nambour - in the emergency departments, didn't it?-- Correct.

And you can recall, and your notes assist you in refreshing your memory, that responsive to what was canvassed by the SAS in the submission of the 30th of July, Dr Buckland thought that that warranted an audit of those two hospitals, at least, under those four subject matter headings?-- It is documented, so, yes, I guess.

That would accord with your recollection?-- As I said, I don't recall the exact details of that meeting. These are my notes from that meeting and, yes, I would agree that he has asked for the surgical access team to go and meet with the relevant people in those two emergency departments to look at the titles as stated.

So, at least to the extent of those two hospitals, it is correct to say, I suggest to you, according to your recollection of this meeting, that Dr Buckland was authorising the SAS to undertake detailed clinical and chart audits for those hospitals - those two hospitals - showing significant reclassification of emergency presentation to elective surgery?-- No, I don't believe it was an indepth audit as you are suggesting. It may have been just to look at the data. I don't recall the details around that specific point on emergency departments, and how detailed an audit he was requiring them to undertake on that, if it was, in fact, an audit. It may have been to just pull together some of the data or it may have even been to speak to the district managers and come back with their views or their medical superintendants or the directors of those departments. I don't know from my notes that it would have been to conduct a significant audit of those two facilities.

According to your recollection, and upon your researches, Dr Buckland never noted or made his own notation on this submission of 30 July 2003?-- The table on page-----

I will be more precise about it. You are going to the table. I'm taking you to the front page where you have put handwriting?-- Sorry, yes.

It is correct to say where it says "Approved", "Not Approved", "Proforma Comments" in the document, Dr Buckland never put any handwriting at all-----?-- No, not on the document.

What he did, he made some ticks and some arrows and put those on what appears to be Table 1 in this document?-- Correct.

And yet I suggest to you from your notes made on 15 August 2003, in fact it was the case, as your notes record, I suggest, that Dr Buckland did approve a cause of action to be

adopted by the SAS responsive to their memorandum of 30 July 2003?-- I cannot say clearly, yes.

You only have to look at your notes to see that that's so-----

MR FARR: She has answered the question. I don't think she can take it any further.

COMMISSIONER: Yes, she has.

MR DOUGLAS: Thank you. I have no further questions.

COMMISSIONER: Thank you. You are excused from further attendance. Thank you for coming.

WITNESS EXCUSED

MR DOUGLAS: I'm instructed that Mr Roberts is ready to give evidence.

COMMISSIONER: All right.

MR DOUGLAS: There is representation for him from Messrs Gadens.

COMMISSIONER: Is there? Well-----

MR DOUGLAS: I call Colin Roberts.

COLIN ROBERTS, SWORN AND EXAMINED:

MR DOUGLAS: Sir, is your full name Colin Roberts?-- It is.

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

And is it correct to say that you are an employee of Queensland Health?-- I am.

What's your present role within Queensland Health?-- I work within the Southern Zonal Management Unit, managing their elective surgery reporting targets and distribution of funding.

Thank you. You commenced employment with Queensland Health in 1987?-- I did.

Between August 2002 and January 2005, you were the principal project officer, funding and incentives, for the Surgical Access Service of Queensland Health?-- That's correct.

For the purpose of this Commission, and its request, have you prepared two statements?-- I have.

Do you have copies of those statements?-- I do.

Thank you. Is the first of those statements dated 30 September 2005?-- It is, yes.

Thank you. Is the second of those statements dated 3 October 2005?-- It is.

Is the content of each of those statements true and correct to the best of your knowledge and ability?-- It is.

I tender those statements.

COMMISSIONER: They will together be Exhibit 417.

ADMITTED AND MARKED "EXHIBIT 417"

MR DOUGLAS: You were the principal author of the submission which is dated 30 July 2003, which has been tendered in these proceedings?-- I was.

Do you have a copy of it with you?-- I do.

Thank you?-- May I say something?

Yes?-- The exhibit presented had an attachment B. The attachment B was not on the original submission.

Thank you. You identify in your second statement that the exhibit does bear an attachment B, but, in fact, if one looks at the face of the document, there is only one attachment referred to, that is attachment A?-- That is correct.

So, attachment B, you say, in your second statement, was never part of that particular document?-- No, it wasn't. It was part of another submission to apply for additional funding.

That is identified in the second statement, Commissioner.

COMMISSIONER: Yes.

MR DOUGLAS: Thank you. Could I ask you, please, at this point, about the meeting which occurred on the 15th of August 2003 which followed that submission?-- Certainly.

You say that present at that meeting were yourself and Mr Walker and also Dr Buckland?-- Yes.

Do you recall who else was present?-- I do not recall whether Dr Cuffe was present or not. Glen accompanied us to most meetings with Steve, but I don't recall whether he was there at that time. Deb Miller also regularly accompanied Steve Buckland to his meetings, but, again, I don't have a clear recollection of whether Deb was present there or not, but I assume that she was.

In paragraph 18 of your statement, you say that you have what you describe as a clear recollection that Dr Buckland said at one stage of that meeting - and I'll quote - "Why the fuck did you put this in writing?" I don't want that to be put out of context. Do you recall how it was that he came to say that and the manner in which it was said?-- It wasn't out of character with Steve at all. Steve is a - given to colourful language. As we entered, that was one of the first things that Steve said to Gary and myself regarding the submission that we were there to discuss.

Did he say it in a jovial manner or some other tone?-- It wasn't a jovial manner, but I didn't feel incredibly threatened by the statement.

You go on to say that the rest of the meeting was - and I'll quote you - "reasonably amicable in tone"?-- Yes.

And you then go on to canvass what was discussed at the meeting. You say, and I'll quote you, "At no stage during the meeting did Dr Buckland say he was displeased that he could not see in the face of the submission evidence of consultation with an approval from the zones or districts."?-- That is correct.

Do you recall for how long the discussion went on?-- We probably talked for between 10 and 15 minutes and at the end of that time, we went away with Steve's verbal approval to continue with the audit process to see if there was validity in what we had found.

In fact, you describe that process that you went through subsequent to that meeting in your statements?-- Yes, I do.

The instruction that you received from Dr Cuffe referred to in paragraph 21, do you have a clear recollection of that?-- Yes.

You say that you never received any similar direction whilst in the employ of Queensland Health?-- No, that's correct. So, these were - this was a submission which was a formal document in Queensland Health. There was a mechanism in place where I would prepare the submission, the submission would go to my line manager and be signed off, to his line manager, et cetera, up the line, okay? So, it was - I had not been requested to remove such a document previously.

And you make it clear also in your statement that you, at no time, received any direct instruction or confirmation by Dr Buckland to the same effect?-- I have never heard Steve tell me or mention in my presence that he ordered the removal of that document.

Thank you. You mention in your statement the fact that, in paragraph 23, RecFind was used to track all submissions and briefing notes within Queensland Health. Do you see that?-- Yes.

You go on to say in paragraph 23, "In the week following Dr Cuffe's instruction" - that's the one to which I just referred - "a search of RecFind showed no record of the submission including information on its current status, location or any notations by the GMHS."?-- That is correct.

Did you undertake that search of RecFind?-- No, I had - I was - went to the secretary of support for our team and sat with her as she went through RecFind. The normal process would be on Gary's signature, the record is lodged on RecFind. As it proceeds up the line to Dr Cuffe and Dr Buckland, that document is tracked along the way, so that at any pint, someone can look on RecFind and discover who has the document and what its current status is, including, after signature or approval or not approval, any comments on the front of that document.

You say comments on the front of that document; do you mean comments by the ultimate recipient, in this instance, General Manager of Health Services?-- Yes.

What do you say to the suggestion that until the document is dealt with in the sense of being approved in that instance by the General Manager of Health Services, the document is simply a draft?-- As I say, the - a submission is entered on to RecFind after it has been signed off for submission up the line, okay? We commonly tracked the progress of documents by looking on RecFind to see whether or not that had gone into the General Manager Health Services' office, and whether it had been approved or not approved out of there, okay? It was

quite common to find that it had been tracked into the office, but not yet endorsed or not endorsed by the general manager health services.

At some point in time, do you say that you were given some information, whether it be by Dr Buckland or anyone else, to the effect that your submission of 30 July 2003 was approved in part or in whole?-- No, not at all. I - after the discussion in Steve's office, I did not see the original of the document again. Again, in the normal case of submissions, after approval or non-approval by the General Manager Health Services, the original of the document or a copy would come back down to myself. The original of the document would be returned to the Surgical Access Service and I would either maintain the original myself or copy and put the original on the files.

You never received back the original of that document?-- I did not.

Given your background and experience, what was the status of the instructions you were given by Dr Buckland in the meeting of 15th August 2003?-- I am sorry, can you be more explicit?

You were given certain instructions on the 15th of August 2003 by Dr Buckland?-- I was - the outcome of the discussions were that we were to proceed with the audit process, including consultation with the zones and the districts and report back to Dr Buckland on the findings of that secondary audit process.

And you did that?-- Yes.

That was the process which is referred to in your memorandum or submission of the 11th of September 2003?-- Yes.

Did you ever receive that document back from Dr Buckland?-- No, but that was not submitted in the usual way. After - after the events surrounding the initial submission, I did not have any reasonable expectation that that document would be tracked through the RecFind system.

Why do you say that?-- At that time there was a great deal of sensitivity, both in terms of information which could be accessed under Freedom of Information laws, and the - on the 5th of September, I believe Dr Stable announced his resignation from the position. So I was - I was not at all surprised that I didn't receive back any noted copy of that submission, but I have reason to believe that it was - it was read by Steve and referred to Dan Bergin, the central zonal manager, for comment.

You are aware that Mr Walker prepared a submission of 15 October 2003?-- I believe he has stated that. I don't have that submission with me.

Did you see that document?-- No, I don't believe I did. That's the one with a top secret and confidential stamp at the top.

Thank you. That's the evidence of this witness.

COMMISSIONER: Thank you. Mr Allen, do you have any questions?

MR ALLEN: No, thank you, Commissioner.

COMMISSIONER: Mr Applegarth? I take it you don't, Mr Harper.

MR HARPER: No, Commissioner.

CROSS-EXAMINATION:

MR APPLEGARTH: Mr Roberts, my name is Applegarth. I appear for Dr Buckland. You may have seen a statement that Dr Cuffe has given in relation to the same matter?-- No, I haven't.

Anyway, it might help if I read this. It is from paragraph 10 of his statement and he is talking about a standing direction about when the Surgical Access Service would have to consult with the relevant districts and hospitals and get the endorsement of them, and he says, "My understanding is that that direction, the standing direction related to submissions and briefings about surgical activity targets, funding associated with those targets, and the annual business rules associated with the elective surgery program." Did that-----

COMMISSIONER: I think you should read the whole of that.

MR APPLEGARTH: Certainly. "That direction did not apply to all submissions and briefs originating from the SAS. I didn't understand the direction to apply to submissions such as the 30 July 2003 submission." If we could just work through that, was it also your understanding that the direction about consultation required consultation with the relevant districts, and so on, in relation to submissions and briefings about surgical activity targets, funding associated with those targets, and the annual business rules associated with the elective surgery program?-- For our major submissions, where the allocation of the year's funding and targets and any variations to the business rules for that year were to be signed off by all three zonal managers as well as by my line manager and Dr Cuffe prior to submission. For smaller submissions that impacted one district and had a financial implication or target implication, they were signed off by the zonal manager and there was a consultation process entered into.

Okay. Just on this one, the 30 July 2003 submission - and you may have a copy with you?-- I do.

Its recommendations include, on the last page, the second one is, "It seeks approval of amendment elective surgery business rules." Do you see that?-- Yes, that's true.

So that would fall within your understanding of the standing

direction to consult with the districts before putting forward a submission in relation to changes to the business rules?-- No, the intention of this submission was that Steve would authorise additional audit processes to work through and at the end of that process, the business rules would be amended to preclude the process which we had identified.

We might be at cross-purposes, Mr Roberts. Do you have the submission in front of you?-- Yes, I do.

If you just turn to the page before the annexure, before the attachments. Do you see recommendations? And it is seeking the General Manager Health Services' approval of amendment to the elective surgery business rules?-- No, elective surgery business rules are attached to the document or drafts, or the normal process of drafting elective surgery business rules in consultation with the zones would have - would have been adhered to.

Okay. Well, you don't think that - it is not your understanding that this submission of the 30th of July was seeking the General Manager Health Services' approval of amendment to the elective surgery business rules?-- It was seeking-----

Let me just finish the question. Notwithstanding that there was no draft attached?-- You are finished your question?

Yes?-- The - we sought Steve's approval to amend the business rules to clarify the qualification criteria. Now, that is a very broad statement.

So if this document had come back to you with the front page circled "approved", would you have interpreted that as involving his approval of the second recommendation, the amendment of elective surgery business rules?-- It would have provided some authority to the amendment of the business rules submission, which was prepared in consultation with the zones.

And you see the fourth recommendation there approves financial adjustments for those hospitals shown, et cetera. If the document had come back with "approved" circled, you would have interpreted that as being the approval of financial adjustments to particular districts?-- The-----

That's what you were asking for?-- I am asking for Steve's approval to make financial adjustments if those districts are found to have - after the carrying out of the second audit process and establishing the purpose behind it.

Okay. Commissioner, we thought it might be quicker, rather than having different documents put before the witness, if we give the witness, and you, and counsel assisting, and Queensland Health, at least, documents we have just done in a hopefully helpful format. So they are existing exhibits, they are cross-referenced. It may just speed the process up.

COMMISSIONER: All right, thank you.

MR APPLEGARTH: Mr Roberts, I would just like you to look at these documents. If you have any difficulty with any of them, please say so. But what we have tried to do is put together some documents - so I won't take you through all of them, but helpfully they are, you know, in a form you can look at. If you haven't seen the document before, please tell me that you need time to read it. Could you look at the one we have just tabbed 4?

COMMISSIONER: I don't have a copy yet.

MR APPLEGARTH: I am sorry, Ms Klease, I think, intended one to go up to you.

COMMISSIONER: All right.

MR APPLEGARTH: Tab 4 is a document that's already in as Exhibit 384, and you have probably seen that before. It is the briefing the people from the central zone put forward. Have you seen that?-- I have.

And you will see that it discusses this issue about classification and reclassification, and if you turn over to the second page, in terms of background, it deals with certain criteria, and after dealing with dot points it says: "NB, this definition does not include source of referral code." Do you see that?-- I do see that.

You probably saw that at about the time this thing went around the ridges in September 2003?-- Dr Buckland referred this to the Surgical Access Service for comment.

Yes. It looks like he has sent it back to Dr Cuffe, the line manager, and it came down to you, I suppose?-- It did.

And you will see there - I don't want to take too much time if you have already read it, but you will see that it identifies, in the issues, circumstances in which they contend that under the 2002/2003 elective surgery business rules, that hospitals weren't precluded from patients with a referral source code of having been admitted through the emergency department being classified?-- They were not precluded.

Right. And they give what might be thought to be some helpful examples of those types of cases?-- Yes, but all of those dot points had been excluded during the second audit process.

Well, let's leave aside the second audit process. You see-----?-- This document was prepared after the second audit process.

Okay, I just want to try, and as quickly as possible - and tell me if I am going too quick - just identify what their view was of the way that the then current business rules operated-----?-- Certainly.

-----in mid-2003. And you see the examples that they give,

the first example of a patient who is already on a waiting list, but they deteriorate, they come in through the emergency department and then they proceeded, it seems, to have the elective surgery undertaken?-- And that is a perfectly valid elective surgery case, because the person was already on the elective surgery waiting list prior to presentation.

Right. Then they deal with the second instance of junior medical staff being cautious dealing with particular patients, and some of them mightn't be true emergencies, but, for example, on the last dot point on the page following stabilisation and observation, someone deems them to be elective patients and they're scheduled for surgery at the next available space in the elective surgery list. Do you see that type of example?-- The person-----

Do you understand the example?-- I understand completely, thank you.

That person may not actually be formally put on a waiting list but they might undergo elective surgery a couple of days after they come in through the emergency department?-- No, they undergo surgery a couple of days after presenting, so the admission of that person was not planned, they presented to the emergency department, they required surgery, they received their surgery.

And the view that you took was that if the elective - sorry, if the surgery that they underwent, whatever it may be - let's say they had a polyp removed from their bowel, that would not qualify for funding out of the elective surgery fund?-- That is correct.

Thank you. The next example at the top of the next page, people who are kept in hospital having come in because there mightn't be adequate support for them to return home, or distance and the like. You understood that proposition?-- Certainly.

And you took the view that because they came in through the emergency department, they should be paid out of the general fund rather than the elective surgery fund?-- Their admission was not planned. There have always been social admissions or similar admissions to the hospitals.

Okay?-- And those payments are made from base operating budget.

Then the next example, which is where the emergency department operates, as they say, a transit lounge admission portal, and the type of example I am sure you are familiar with, it is where someone who is due to have wait surgery goes through the emergency department on a Sunday night, for example?-- Yes.

And was it your view that if those people were coded as having been admitted through the emergency department, that they weren't eligible for funding out of elective surgery?-- No, not at all. Again, those people would - had a planned

admission, they were already present on the waiting list for their procedure, whether they presented through ED and waited for their admission.

In that instance was your concern that - that there was a phenomena, at least in some hospitals, of retrospective reclassification that these people had come through, there hadn't been a claim on the elective surgery fund, but when someone realised that these people or people like them could have a claim on the elective surgery fund, that there were, as it were, reclassifications and claims came in in bulk?-- I would like to show you two documents which were - which are the surgical activity returns from Nambour Hospital during that year.

Well, I am sure you would like to show them to me but perhaps I will-----?-- To illustrate the point that you are making here.

COMMISSIONER: Well, I would like to see them, yes.

MR APPLEGARTH: I wasn't - I mean, I would like to see them, too, I just - I am conscious of the time and I was hoping to get through as much as I could, and if I can see the documents overnight I will probably be quicker.

COMMISSIONER: All right.

WITNESS: They are quite simple documents.

MR APPLEGARTH: Very well.

COMMISSIONER: Well, I will - well, the difficulty is, of course, I was really hoping to get rid of this witness this afternoon.

MR APPLEGARTH: Yes. I was, too, but obviously this morning went longer than we all-----

COMMISSIONER: You mean you won't finish your cross-examination of this witness this afternoon?

MR APPLEGARTH: I fear not.

COMMISSIONER: How long will you be?

MR APPLEGARTH: I think half an hour.

COMMISSIONER: Oh, I see. We might even sit on to finish him then. That would be-----

MR APPLEGARTH: I will see-----

COMMISSIONER: If you promise you are going to be half an hour.

MR APPLEGARTH: We have been over this territory before.

COMMISSIONER: We have indeed, and I have heard your promises before.

MR APPLEGARTH: The rest of it-----

COMMISSIONER: We will try to allow this poor man to go this afternoon. Now, you were going to explain those documents to us?-- Yes.

MR DOUGLAS: Could they be put on the overhead perhaps?

COMMISSIONER: That's a good idea. Put them on the overhead.

MR DOUGLAS: Are the colours important, Mr Roberts?-- No.

MR APPLEGARTH: Can this not come out of my half hour?

COMMISSIONER: It comes out of your half hour. You asked about it.

WITNESS: If you could put the other document on first, please? This is the surgical activity report for Sunshine Coast.

COMMISSIONER: Yes?-- You see the date at the top it was submitted on 31/12/02.

Yes?-- Okay. At that point six months' activity had been performed.

Yes?-- And the large oval at the top shows the mix of elective, other and emergency surgery, and the small oval at the bottom indicates their year to date progress against targets. You can see that at that point, at the end of December, Nambour and Caloundra were 1,093 weighted separations behind target.

Yes?-- If we then go to the second document, if we can put that on the overhead, please? Okay, this is the return from the 1st of July 2003. The circle at the top is the same period, okay, and the blue circle at the bottom is the progress to date.

Yes?-- You can see that between the 31st of December, when those patients had already been well and truly discharged, to this document, there had been a change in the net position from 1,098 weighted separations behind target to 428 weighted separations ahead of target.

Yes?-- Okay? The number of patients treated - the total surgical activity is very similar between the two returns.

Yes?-- Okay? The mix of surgery has - shows a transfer between patients formerly classified as emergency surgery to elective surgery.

It is a reclassification?-- It is indeed and that is what occasioned us to go down this path.

MR APPLEGARTH: In the case of Nambour, is the problem bulk reclassification? There seemed to be a high volume of reclassification?-- A huge volume of reclassification, without any evidence of undertaking additional work, and at the start of 2 - the financial Year 2002, there were medical indemnity issues where elective surgery was very restricted at Nambour Hospital.

Right. Just to quickly follow through on Nambour, when you met with Dr Buckland on - I think it was the 15th of August, discussion addressed Nambour?-- Nambour and the other hospitals, yes, but Steve had been aware of Nambour prior to this.

And Dr Buckland made it clear that there had to be a process followed in relation to Nambour to deal not only with all the other hospitals, but Nambour specifically because it seemed to be a particular problem?-- Dr Buckland gave us approval to undertake further audits to identify what process had been - had been gone through by these hospitals.

Okay, but just concentrating on Nambour?-- Yes.

That process is followed through with Nambour and I think still during the time Dr Buckland is General Manager Health Services, there is further investigation of Nambour?-- Yes.

And he supports the imposition of a financial penalty on Nambour?-- On the 12th of January Dr Buckland approved a submission to impose a $600,000 penalty on Sunshine Coast.

He might have been Acting Director-General then?-- He was.

But that process was in train during the time that he was General Manager Health Services and Acting Director-General?-- That was the culmination of a series of meetings and submissions and briefs put up.

Thank you. If we just go back quickly to the points I was taking you through before in that central zone submission, and the final point was-----

COMMISSIONER: Before you go on to that, perhaps it is a good idea if I make those two documents exhibits. And I will make them both Exhibit 418.

ADMITTED AND MARKED "EXHIBIT 418"

MR APPLEGARTH: Mr Roberts, I wasn't meaning to rush through this, but just the final dot point in the central zone submission was that, reading between the lines, there seemed to be a suggestion that some hospitals had actually been working with members of the SAS, and as a result they had

altered their practices in relation to classification, and that may be an explanation as to why there was a change in the mix, if I can use that phrase?-- Okay. I went-----

Do you understand that's the point that's being made there? That that may be an explanation as to why, when you analysed the figures in that sort of macro sense, that there seems to be an increase in the claims from particular hospitals on the elective surgery fund, and even perhaps substantial reclassification, is because particular administrators in particular hospitals had been trained and encouraged, as it were, in certain instances like these, to make claims on the elective surgery fund where they hadn't made them in the past?-- The statement is they were working with the SAS. I went to the SAS in the 2nd of August 2002. During my time with the SAS that was certainly not the case.

Okay. But you can't rule out the possibility that other officers of the SAS-----?-- No, I can't.

-----went out there and actually trained people and encouraged them to alter their practices, which actually encouraged them to deal with cases which were in fact eligible for elective surgery funding where they hadn't been claiming them in the past?-- I can make no statements concerning previous actions.

All right. Well, leaving that last point aside, did you - when you came to write this submission of the 30th of July 2003, were you reasonably familiar with the types of contentions that appear in that central zone submission about the way the system operated and the way they interpreted the 2002/2003 surgery rules?-- I was - I was well aware of the ambiguity in the definitions - national definitions of elective surgery. However, I - well, yes, I was aware of the issues which were raised.

Well, correct me if I am wrong, but these sorts of intentions, some of which you agree with, some of which you disagree with, don't seem to find their way into your submission of 30 July 2003, is that correct?-- The submission of the 30th of July-----

You-----?-- -----was to seek approval to undertake further audits.

Yes, you have said that before?-- Yes, I have.

But I asked you a question the types of contentions that, for example, the central zone's making, and the way they interpret it - you call it an ambiguity - their views of how things operate at practice, that doesn't seem to appear in your submission of the 30th of July?-- No, it does not.

Is there a reason for that?-- Yes, the intention of the submission was to seek approval to undertake further audits, to find out whether those patients who had been changed from - who had presented from emergency department were in fact legitimate elective surgery admissions or otherwise.

Okay. I would just be repeating myself if I said that the submission was about, amongst other things, changing the business rules? You disagree with that?-- No, I don't. I - the intention was to prevent the spread of reclassification and direct funds towards those hospitals which were able to provide additional services.

Okay. If we can move as quickly as possible, Mr Roberts, through a few of these documents, it seems - are you saying that it was only the central zone that seemed to take up these points about interpretation at about this time? See, your second statement has some rather pointed remarks about central zone, as it were, being on its zone, that it was the central zone pushing a political barrow?-- As a result of the audit process, the three districts identified from the central zone were those districts which had shown decreases in surgical services, with corresponding increases in claims for elective surgery funding.

Okay, perhaps I can ask this question: were you aware when you wrote the submission of the 30th of July 2003, that zones other than the central zone had interpretations of the business rules with which you did not agree?-- I was aware of a range of interpretation of the business rules amongst the districts.

Right. If you turn to just this document tab 5, and it seems to be a faxed message from the northern zone management, and you understand that Terry Meehan was the zone manager there - zonal manager?-- Yes.

And if I can point out, it seems to be "TM" on the 7th of October, sending a note to Mr Walker, and the second point he makes is that "current business rules still seem unclear on district and hospital targets/funding and therefore we will not be endorsing until resolved." Do you see that note?-- Yes, I do.

Did that come to your attention in about October 2003?-- Yes.

But was it the case that you understood some months earlier that the northern zone found the business rules unclear, to say the least?-- This specific comment was in relation to applying different payments for hospitals of different size within one district.

Okay. If we can then - Commissioner, that document hasn't been tendered and I should tender it. Can we hand it up as a separate document?

COMMISSIONER: Yes. That is a fax message dated - what's the date, Mr Applegarth?

MR APPLEGARTH: The fax is dated 3 October 2003 but the endorsement Gary Walker seems to be dated 7 October.

COMMISSIONER: It is that which you want, isn't it? I will put the fax as an endorsement.

MR APPLEGARTH: Yes.

COMMISSIONER: All right.

MR APPLEGARTH: Just moving as quickly as we can, Mr Walker - sorry, Mr Roberts, you understood that the people up in Toowoomba had particular views about the way in which the rules should be interpreted and you may have seen in recent days the document which we have tabbed at 2 which is their point of view about the way the rules operated. Have you seen that document before, the-----?-- This was Toowoomba's response to the outcomes - to the second audit process, yes.

And without taking time, for example in the last page they give examples of the types of cases that they thought were appropriately reclassified, some of them a bit similar to the central zone one where people go in through the emergency department as an admission module and so on, but you were aware of those kind of views being expressed by people in the southern zone?-- Toowoomba Hospital - at Toowoomba District, yes.

Do you think Toowoomba was the only place that expressed that view in the southern zone?-- No, there were a range of interpretations of the business rules amongst the districts.

And if you turn to the tab that is 1, that's QEII making similar points about the way in which they said the rules applied in practice; do you see that?-- Yes.

And you're aware that, for example, QEII and other hospitals took the type of view that the rules in practice ought be interpreted in a way different to that contended for by the surgical access team?-- The general-----

If you can answer it yes or no, feel free to. If that's unfair to you-----?-- There was a range - there was a range of interpretations of the business rules amongst the districts.

Now, you didn't put in your submission of the 30th of July that simple proposition let alone something in more detail, that the views taken by the zones differed from that contended for by the surgical access team?-- No, I did not.

Why is that?-- Because the purpose of the submission of the 30th of July was to seek approval for - to undertake additional audits to identify what the true situation was.

Now, Mr Roberts, do you have your first statement there?-- I do.

If you turn to paragraph 26?-- Just bear with me. Yes.

You make a comment about what a reasonable person would expect that a patient admitted for elective surgery and so on?-- Yes.

I just don't quite understand. That doesn't refer to what I might call intra-hospital transfer where someone is, as it were, seen in the emergency department and then, for example, stabilised or sent on through and goes to what might be loosely called an elective surgery ward?-- It does not.

Because you didn't take the view that in that case a reasonable person would think that that was a case that qualified for funding out of the elective surgery funds?-- The admission had not been planned prior to the patient's presentation at the hospital.

Okay. It may not have been planned but after they go into the emergency department, someone sees that there is something wrong, they might have a hernia, which isn't an emergency condition, and they're kept in hospital because they can have the hernia operation in a few days?-- Yes, they - they are assessed in emergency as requiring surgery, they proceed to have their surgery.

And in that case that I have just given you, the person who comes in with some condition, they take off all their clothes and they're found to have a hernia and they're, as it were, kept in hospital and they had the hernia operation two days later, you didn't think that the hernia operation qualified for payment of that elective surgery fund?-- No, they were not assessed at - the admission was not planned. The person presented as an emergency; they required emergency surgery; they received emergency surgery. I can't see how a reasonable interpretation of that is an elective admission.

Now, you describe the hernia operation a couple of days down the line as emergency surgery?-- Yes.

Isn't it simply the point that you place a lot of focus upon the point of admission?-- No, my focus is on the intention to admit the patient for a surgical procedure after assessment at outpatient clinic or a private consultant, okay. The patient is booked for surgery, they're entered on an elective waiting list, they proceed to surgery, they have their surgery, they're discharged.

Have you ever worked in a hospital in this sort of area where - I know you've worked in hospitals in certain areas but have you worked in the type of area that would be concerned with these sorts of aspects of administration and people who get - come in through the emergency department for whatever reason but then go on to another-----?-- Have I worked in an emergency department are you asking?

Now, have you worked in that area of administration that would be concerned with that simple example of whether the hernia operation three days down the line should be paid for out of an elective surgery pot or out of base funding? Have you ever worked in that sort of area in a hospital?-- I have worked in the managing and reporting patient activity in hospital and funding and costing since 1993.

But have you had to make those sort of administrative decisions?-- Those areas do not make those sort of administrative decisions.

But you've never had to administer that type of area within a hospital? Your concern-----?-- I have not administered-----

Your concern has been with case mix and these sorts of matters?-- My concern has been with hospital funding, costing and activity reporting, including the funding for elective surgery services.

Now, in the submission of the 30th of July you say you consulted with Mr Zanco?-- Yes.

Did he support the views expressed in that submission?-- I don't believe he supported the views. My consultation with Mr Zanco was in relation to the national minimum data set standards for elective surgery admissions whether our-----

That's not to answer my question. He disagreed with the view that was taken in the body of the submission then, did he?-- I am not sure whether he agreed or disagreed. That was not the point of consultation with Mr Zanco.

So when you had Mr Zanco being consulted, you weren't meaning to imply he has been consulted and supported the views in this submission?-- That's not what consultation means. Consultation means in discussion with.

Right. But you knew that he generally had a different view to you and his view tended to align with the types of views we have seen expressed in these different submissions from the hospitals, didn't you?-- You would have to ask Mr Zanco what his views were.

Did you ever ask Mr Zanco what his view was about these matters?-- No.

Did he ever tell you?-- Michael has worked in a hospital area, okay. He's terribly keen on getting the hospitals as much funding as possible.

Well, that's a bad thing, is it?-- I'm sorry, I'm administering a pool of funds for the provision of elective - additional elective surgery services.

Mr Zanco is one of these people who had been out training the people in the hospital that there might be circumstances in which they hadn't been making proper claims on the elective surgery fund that they're entitled to. You knew that?-- I'm sorry, are you suggesting that these claims are proper claims?

No, I'm just saying that he had been out training people in the hospitals to your knowledge and suggesting to them that their practices could be improved, that they had not in the past been making claims on the elective surgical fund when they could have been. You knew that, didn't you?-- No, not

to my knowledge. While I was with surgical access team Mr Zanco did not go to any of the districts and provide training.

Well, you deliberately didn't include the hospital view in this submission of the 30th of July-----

COMMISSIONER: You have asked that question actually four times.

MR APPLEGARTH: Okay. The upshot of the meeting on the 15th of August was that you would have to go and consult with the zones and districts on this issue of classification and reclassification?-- Yes, that we were authorised to proceed with a secondary audit in consultation with the zones and districts.

Well, the consultation was really on two levels. One was what the practices were in relation to classification and reclassification and whether the hospitals justified that by particular view of the business rules?-- No, the audit process concentrated on whether there had been specific action by the districts to amend records which - amend patient records who had presented through emergency to ensure that they conformed with the funding requirements for elective surgery.

Whatever your intention may have been, what seems to happen over the following month or so is that the hospitals in these various documents which we have seen, after being consulted by the surgical access team, write in and say, "This is the view that we take of the practice of classifying and reclassifying and we think what we're doing is appropriate"?-- That was the right of reply, which we encourage them to undertake, so-----

Well, the right of reply. Why didn't you consult them before you wrote the submission of the 30th of July?-- We did consult. That was the consultative process. We went through each of those situations with the hospitals. We identified the number of patients who had presented on transferred from other districts, the number of patients who had already been recorded on elective surgery waiting lists who presented through ED, that was the process we undertook.

I'd suggest to you that at the meeting that happened on the 15th of August, that Dr Buckland, in effect, said that the submission although it had helpful information seemed to be unbalanced and untested?-- Why do you say that? That's not my understanding of the meeting at all.

You don't think he said anything like that?-- No. Steve-----

Not even-----?-- -----gave us approval-----

Not even with the F-word in there somewhere?-- No.

MR DOUGLAS: The witness should be allowed to answer the question.

MR APPLEGARTH: Do you remember my question? I'm sorry, to have interrupted. I'm trying to do things quickly and I didn't mean to be rude?-- My impression - you're asking for my impression of the outcome of the meeting? The outcome - the tone of the meeting-----

Not the outcome of the meeting, I just want you to tell me whether it is your recollection that during the meeting Dr Buckland suggested that the submission, while it had helpful information, was unbalanced because it hadn't had the input from the hospitals and the zones and a lot of the assertions in it were untested. Do you remember him saying words to that effect?-- No, that was not my recollection of the meeting. My recollection was that Steve gave us approval to undertake additional audits to ascertain whether this reclassification practice was - was valid or not.

And he said that you should go out and consult with the zones and the hospitals about their practices in relation to classification and reclassification?-- Yes.

Leaving aside the obvious problem with Nambour and perhaps some problems with a couple of the other hospitals that were discussed in some detail at the meeting, you accept, don't you, that the assumption that was made in that 30 July 2003 submission that this reclassification was unauthorised, was wrong, then the central southern and northern zones were actually classifying and reclassifying patients to which they were entitled to have funding, if your view was wrong and they were right, they were accessing funds to which they were entitled?-- I'm sorry, I have not made sense of your statement, could you state it again.

No, I'll move on. Did it occur to you that it might be better rather than spending Dr Buckland's time going through these things and him saying, "Well, go away and do this", that if you had gone away and done it in the first place, then come back to him with a more complete picture?-- No, we wouldn't have had acceptance by the districts or the zones of the need for process and I doubt that the process would have occurred.

Well, the process, instead of there being 10 hospitals that you thought had acted irregularly, it came down to, what, three?-- Yes. Four had acted irregularly but only three had accessed funding to which - for which they had not provided additional services.

This meeting on the 15th of August, was it as it were the regular monthly meeting with the surgical access team?-- No, not at all. It was a summons.

A summons?-- A summons to go up to meet with Steve.

Yes?-- However-----

You talked about other issues?-- The regular-----

MR DOUGLAS: Let the witness finish.

MR APPLEGARTH: Sorry, I don't want to interrupt; I'm just under the pressure of time estimates. It'll probably be quicker if I let him answer.

COMMISSIONER: It probably would?-- Okay. The normal process was we would submit - put up a submission to Steve. Steve would then want to talk about it, okay. He would - we would discuss the issues involved and he would have a submission in front of him and he would either approve or not approve and note it at that time. So the submission process from SAS was a two-step: we put the document up; we talked with Steve; Steve makes the decision.

MR APPLEGARTH: Okay. Just on the meeting of the 15th of August, the matters that had been addressed in the 30 July submission was a subject of discussion?-- Yes.

That wasn't the only subject of discussion that day?-- Can you-----

Well-----?-- What do you suggest was a subject of a discussion?

Well, I suggest it was a subject of discussion but there were other matters that - there was discussion about a three million dollar fund that was going to be there for - to pay increases in elective surgery?-- I recall the discussion of the work classification submission. It may well be that I left the meeting after those discussions.

It might be just as quick, if no-one objects, if I show the witness paragraph 24 of Deborah Miller's statement?

COMMISSIONER: Yes, yes.

MR DOUGLAS: We will put a copy before the witness.

MR APPLEGARTH: Mr Roberts, these were notes that were apparently taken by Ms Miller, who was apparently at the meeting. You will see she has divided it up into one, two, three, four. Does that assist you that there was discussion not only about the matter the subject of the matter of the 30 July submission but other topics as well?-- I don't recall a discussion on emergency departments.

But, of course, you can't rule out that it happened? You're not suggesting it didn't happen; you just can't recall it?-- I'm not suggesting it didn't happen; I can't recall the discussion.

What about the topic three, $3 million?-- We had additional funding for - for-----

COMMISSIONER: Was that discussed? Perhaps you could just answer was that discussed, do you recall?-- I can't recall if that was discussed.

All right?-- If I was present in the discussion of the $3 million-----

MR APPLEGARTH: What about the 50 million dollar one, that item 4?-- I can't recall if that was discussed. However, that's the - relates to the attachment B on that - on that submission. There was a separate submission for that 50 million bucks.

Did that attachment B get walked in or something? Was it in the meeting?-- No, it was on - it was attached to a submission.

Right. You can hand that back, thank you, Mr Roberts. Just a couple of other things. In the submission of the 30th of July, the change that you recommend in the business rules on - in the section "Recommendations", you seek the "approval for amendment of the elective surgery business rules" and so on to "specifically exclude" and you use the word "presentations"?-- Presenting.

Well, it says "presentations from emergency department". Does that mean people who have been admitted through the emergency department or they present to the emergency-----?-- Yes, admissions-----

-----department?-- Presentations through the emergency department. People who turn up at the emergency department and they're then subsequently admitted.

Right?-- That was not what we included in the draft business - in the business rules submission.

The issue of classification and reclassification seems to have a lot to do with whether you take the view that the point of admission is important. That - I don't want to spend too much time on this but it seems from your submission that you use this term, if you turn back to the page that deals with issues, and I can't see a number on it but it's the - leaving aside the cover page, if you go two pages in there's the definitions at the top of the page and you use a term there "Emergency Surgery Presentations"?-- Just hold on a second, please. You're talking about an emergency submission isn't-----

I'm just trying to understand what the point you were making is. In the paragraph that says "curbing emergency reclassification" and in the third line of that paragraph, it uses the term "reclassifying emergency surgery presentations"?-- Sorry, I'm not with you. I don't have the section that you're referring to. Where are we?

COMMISSIONER: Which document are you talking about?

MR APPLEGARTH: I'm talking about the submission of the 30th of July?-- Yes, I have the 30th of July.

COMMISSIONER: You have that.

MR APPLEGARTH: If you turn over?-- Sure.

It's above the-----?-- Yes, I have it.

You see that term "emergency surgery presentations"?-- I'm sorry, I'm just trying to - "when a patient was admitted from an emergency presentation", is that what you're referring to?

No, if you go to the paragraph - just look at me, Mr Roberts - on the page that is above that section headed "Proposed Solutions"?-- Starting "curbing"?

Yes, if you go down to the third line?-- Yes.

You use this term of art "emergency surgery presentations"?-- Yes.

What do you mean by emergency surgery presentations? Is that just saying someone presents at the emergency department and is admitted in the emergency department?-- They present at emergency, they are admitted and receive emergency surgery.

Thank you. Just then if you go to what we've tabbed as document 4, which is Exhibit 384, you will see that seems to be a note that Dr Buckland wrote. The date is obscured but we think was on about the 1st of October 2003. It is writing on the central zone's submission and he seems to be directing a comment back to Dr Cuffe. If you look back at our index or our chronology, we have tried to write out what it says but you see the point that he's making, that he's asking for input from the surgical access team as to whether the view of the central zone was accepted or not?-- That's what he's asking, yes.

Now, were you consulted by Dr Cuffe to respond to that question to provide the advice that Dr Buckland sought?-- I prepared a brief to Dr Buckland.

I'm sorry?-- I prepared a brief to Dr Buckland in response to this brief.

Is that the one of the 8th of October? If you turn over to tab 6, I think you'll find it?-- Yes, it is.

Now, Dr Buckland's question was focussing upon the business rule and the contention that it didn't include a source of referral code?-- That is correct.

So you were tasked by Dr Cuffe to advise Dr Buckland about that point; correct?-- I was tasked by Dr Cuffe to provide advice to Dr Buckland on Dan's - on central zone's brief.

He wanted some particular advice about the significance or otherwise of the absence of the source of referral code in the definition. He wanted that specific advice, didn't he? You understood that?-- I understood-----

Well, did Dr Cuffe give you that document?-- He did.

And the result was your submission of the 8th of October, which is Exhibit 397, which we put a Post-It sticker 6 on; do you see that?-- Yes.

You didn't address that question in your briefing, did you?-- I did not respond to the presence or otherwise of that - of source of admission as included within the surgical business rules.

Now, when you're at school, high school, wherever, if you're set a question on an exam, if you don't answer the question, you're not doing your job, are you? You don't expect to get marks for it if you don't answer the question?-- I don't believe I got marks for this.

You didn't answer the question, did you?-- No, I responded to the brief submitted by central zone.

And when your thing of the 8th of October goes up to Dr Buckland he makes the handwritten comment that the brief doesn't answer the question asked and he repeats the question?-- He does.

Did that come back to you?-- I saw the returned brief, yes.

Now, did you answer the question that Dr Buckland was asking? Did you provide the advice that he was specifically seeking?-- I don't believe I was asked to provide that advice on that second brief.

Do you know who was?-- No.

You should know because you're the person who's writing these submissions. I mean-----?-- We did not provide a following brief. I have no record of a following brief except to Dr Cuffe for resolution of the Nambour reclassification issue.

So as far as you know, the surgical access team didn't respond to Dr Buckland's inquiries for advice about this specific point that had been raised by the central zone?-- I did not - from reading my brief here in response, okay, to Dan Bergin's brief, I have not included a response on source of admission.

And you can't give any reason why you didn't?-- My reason was that that was-----

Too hard a question?-- No, it wasn't too hard a question, it was a question which completely avoided the issue.

As you saw it?-- Yes.

But not as the General Manager, Health Service who is trying to get advice from all quarters saw it. He's trying to resolve the issue?-- I can't comment on what the - what Steve's intention was.

Well, it is pretty clear, isn't it? His intention was he's got the Central Zone saying, "This is the way the business rules operate."?-- He's-----

He's seeking advice from the Surgical Access Team as to whether that interpretation is right or wrong, and so far as we can tell, the Surgical Access Team treats his question twice asked with ignore?-- The advice that Steve - I'm - Central Zone supported the actions of their districts that they had taken and responded to Steve that we had no valid claim to prevent releasing funding for additional services to those districts.

Well, the Surgical Access Team, apparently not having answered Dr Buckland's question twice asked, it seems as if the Central Zone's interpretation won either on the merits or by default, correct? You put nothing up to suggest-----?-- Sorry, a penalty was applied to Nambour Hospital of $600,000.

We have heard about Nambour. Just on the issue of interpretation, you didn't put anything up to contradict the view taken by Central Zone as to the proper interpretation of the business rules?-- It wasn't on a proper interpretation, it was on a lack of inclusion of that particular-----

Okay?-- -----clause.

This interesting debate that panned out in August, September, October, could have been had prior to July, couldn't it? You could have asked central zone for their view of how the rules were being interpreted in practice. You could have done that, couldn't you?-- No, on the 1st of July - in early July we received the final reports from the hospital on their achieved surgery. In April, Steve had sent the memo to the districts advising that they needed to achieve total surgery. It wasn't until the final surgical activity returns came in that we saw the claims by Sunshine Coast, in particular.

Okay. Thank you. But just on this point of interpretations - it is practically my last question - this issue which was teased out in August, September and October as to how the business rules should be interpreted, and what the zones said they were doing in practice, those views could have been sorted out by the Surgical Access Team before 30 July 2003,

couldn't they?-- The interpretation of the business rules was not in question.

Just answer "yes" or "no". They could have done that - you could have done that, couldn't you? You could have done it before 30 July?-- There was no reason to do it before the 30th of July.

Because you didn't want to find out their interpretation?-- No, because-----

You just wanted to put-----

MR DOUGLAS: Let the witness answer.

WITNESS: No, that was not the situation. Our audit process was occasioned by the documents that I've shown where there was wholesale reclassification by a district in order to go into funds of which they had no further entitlement.

MR APPLEGARTH: I have nothing further.

MR FARR: You will be pleased to know I have no further questions, but with one proviso: we have been attempting to obtain some instructions from Bergin over last night and today but without a couple of issues which was raised in relation to Mr Roberts which was dated yesterday. Can I simply place on record, if it is considered necessary by Mr Bergin, we might be able to put in an addendum statement. I don't know if we require a recall of the witness.

COMMISSIONER: All right. Thank you. Mr Douglas?

MR DOUGLAS: Thank you. I have no re-examination. May this witness be excused?

COMMISSIONER: Yes. Thank you, Mr Roberts. You are excused from further attendance?-- Thank you, Commissioner.

WITNESS EXCUSED

MR APPLEGARTH: You made the Northern Zone facsimile an exhibit, but I don't think we handed to Mr Groth or your Honour a copy of it.

COMMISSIONER: No. It was Exhibit 419.

MR APPLEGARTH: Yes. Thank you.

COMMISSIONER: You can hand that up.

MR DOUGLAS: Commissioner, the next two witnesses are Dr Cuffe and, if she's required by any party, Ms Brennan.

COMMISSIONER: Right. Thank you.

MR DOUGLAS: Just before Mr Farr deals with something, I have had very cooperative discussions, as usual, with Mr Applegarth about these issues. In relation to Dr Cuffe, it would suit Mr Applegarth's convenience, which he's kept me very well abreast of, if Dr Cuffe be dealt with in the afternoon after lunch. Mr Applegarth has another commitment which really has to be serviced, with respect, before this Commission. Can I tell you, Commissioner, though, that, as you probably know, arrangements have already been made for Dr Krishna, I think it is, to give evidence tomorrow morning. So, what I propose is that Dr Krishna give evidence - Mr Andrews will be taking him - and then we can get on to Dr Cuffe after lunch. Does that suit your convenience, Commissioner?

COMMISSIONER: Yes, that's fine.

MR APPLEGARTH: Thank you, Commissioner. It was a pro bono brief which are rather hard to flick.

COMMISSIONER: You don't have to explain. Mr Farr?

MR FARR: Can I please explain one issue, Commissioner: Ms Brennan is someone who I've attempted to confer with today, but she did not - she wasn't well during the course of my conference. I wonder if the parties might be able to indicate to me whether anyone requires her to give, in fact, oral testimony, or whether the submission of her statement would be-----

COMMISSIONER: I would have thought there was nothing contentious in her statement. Does anyone suggest to the contrary?

MR APPLEGARTH: From our point of view, I don't think so. Can we review it overnight? If there is any matter, it might only be a short matter which could be done in a supplementary statement.

COMMISSIONER: You can indicate to Mr Farr if that's the case, otherwise she's entitled to assume she won't be needed tomorrow.

MR DOUGLAS: I agree with Mr Farr. I think I've indicated that to you as well. My only concern was that I obviously have to test Dr Cuffe with respect to his evidence as to what information or instruction, call it what one will, he was given by Ms Brennan, and it may be something arises out of that such that some parties may suggest she may be required.

COMMISSIONER: Ms Brennan says she can't remember that.

MR DOUGLAS: She does, but I didn't want to suggest that course be adopted, short of Dr Cuffe giving evidence.

COMMISSIONER: As long as the other parties don't want her, we can dispense with her.

MR DOUGLAS: Thank you.

COMMISSIONER: We will now adjourn.

THE COURT ADJOURNED AT 5.02 P.M. TILL 10 A.M. THE FOLLOWING DAY